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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CECIL SCOTT, ET AL

VS.

MONSANTO COMPANY

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* CIVIL ACTION
* NO. B-84-1103-CA
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SEPTEMBER 2, 1987
VOLUME XIII

BEFORE THE HONORABLE JOE J. FISHER
UNITED STATES DISTRICT JUDGE, AND A JURY

REPORTED BY:

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My name is Phillip S. Smith and I live in Barrington, Illinois. I am a former employee of Industrial Biotest Laboratories, Inc. [2184]

I visited with Mr. Peck of Monsanto in my home to discuss Aroclor compounds and what my involvement might have been with them. Peck asked me if I had consulted a private attorney regarding my liability in speaking to anybody about Aroclor products. [2184-2185]

I was first employed at IBT in January 1971, as an assistant toxicologist and concluded my employment in June 1977. I worked on Monsanto's Aroclor studies and helped prepare the reports. I audited studies. I spent approximately nine months looking at studies done from 1970 through 1976. [2185-2186]

Otis Francher was manager of the lab when I started there. Paul Wright was hired as a section head of toxicology about two months after I started at the lab and he was in charge of the rat and dog toxicity areas and I was an employee in rat toxicity and worked with Wright in Monsanto's Aroclor studies. Mannie Reyna was an employee in the rat toxicity department. I am familiar with the care and handling of the rodents used in regards to Monsanto's Aroclor chronic oral toxicity studies. [2187]

The initials on that document regarding the Aroclor study, P.L.W. is Paul L. Wright and it is addressed to Marino L. Keplinger who is manager of the laboratory. [2188]

There was a problem with the survivability of the rodents on Monsanto's Aroclor study. The document says the tumor incidents in females with 1254 is bothersome, 82 percent at 10 parts per million and 100 percent at a 100 parts per million. [2188]

I have personal knowledge of deficiencies with regard to Monsanto's Aroclor studies. The report of raw Aroclor studies was falsified. I signed two reports that contained false information and someone forged my name to one of the other studies. [2189-2190]

TBD means "too badly decomposed". When these initials appear in a report it means that the animal was too badly decomposed and the technician disposed of the animal. The pathologist never gets a chance to look at tissue because the technician has the animal thrown away. 70% or more of the animals that died during the course of the study were too badly decomposed. [2190-2192]

In the document that I am looking at is a statement by Dr. Francher. "I am ashamed to publish the work done on these studies." I, too, would be ashamed. [2192]

I know of no other client of IBT besides Monsanto that wanted its papers reviewed by lawyers before they could be put in final form. [2193]

In most rodent studies, the animals were housed in a small cage and depending on what room they were in, there were either water bottles or an automatic watering mechanism that was supposed to supply water to the animals, feed, pans underneath the cages to catch urine, feces, food that was kicked out. The conditions were poor, there were many loose animals. Dr. Wright had knowledge of the conditions. [2194]

The visits of Monsanto personnel to IBT included Dr. Hunt, Dr. Sharph, Dr. Levinskis, possibly a Dr. Wheeler and Dr. Paul Wright. [2194] Had any of these personnel visited the rodent's rooms, they would have seen the deficient conditions. [2195]

Paul Wright continued to come back to IBT after he returned to Monsanto until the time I left the employment of IBT and he was still interacting with IBT in Monsanto studies. [2195]

I am looking at graphs of body weight data for the control and test groups of the three Aroclor materials in the two-year study on Aroclor that Biotest did. A majority of the data is falsified. [2196] Paul L. Wright falsified the part of the data with regard to Aroclors. I observed him fabricate the body weight data for the rodents used on Monsanto's Aroclor studies. He never requested that the study be redone. [2197]

CROSS-EXAMINATION

With respect to the three sets of reports on Aroclor, the first group concludes that the effect was normal. The second group concludes that all had a slightly tumorigenic effect and the final set concluded that the product does not cause cancer. These are the first reports that were done dated November of '71. [2198] On the signature page on the report of Aroclor 1254, Paul Wright forged my signature. [2199]

Monsanto received special treatment from other customers of IBT. After Paul Wright returned to Monsanto he personally dictated changes to reports of products for Monsanto. [2199] I know testimony has been given by Dr. Levinskis that he found these reports valid. No one could validate the Aroclor studies without making any investigations. [2200] I never worked for Monsanto. [2201]

REDIRECT EXAMINATION

In 1971, then these reports were being done, I was just starting to learn about writing lab reports and I prepared a small section. Dr. Paul Wright and Jim Plank prepared many sections and they told me I was going to have to sign the report. [2233]

I complained to Paul Wright about the falsification that I observed. [2234]

I had a problem with my eyes and still do, which required surgery. It appeared to others as if I was sleeping on the job when I was not. [2235]

I have not asked to be paid for my time in connection with this testimony. I am only being reimbursed for expenses. [2236]

RE CROSS EXAMINATION

I did not tell anybody other than IBT employees in 1971 about the deficiencies. [2237]

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September 3, 1987
Volume XIV

BEFORE THE HONORABLE JOE J. FISHER
UNITED STATES DISTRICT JUDGE, AND A JURY

Reported by:

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ALSO PRESENT:

Mr. William Papageorge, Corporate
Representative for the Monsanto
Chemical Company.

PHILLIP S. SMITH,

HAVING BEEN DULY CAUTIONED AND SWORN TO TELL THE
TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. POHL:

Q Would you state your full name?

A Phillip, middle initial "S," Smith.

Q And where do you live?

A Barrington, Illinois.

Q Are you a former employee of Industrial
Biotest Laboratories, Inc.?

A Yes, I am.

Q Now, prior to your testimony here before the
Court today, have you visited with anyone from
Monsanto in your home in recent months?

A Yes, I have.

Q Who was that?

A A Mr. Tim Peck.

Q And, very, very briefly, what was the
substance of that visit and the nature of the
visit?

A Mr. Peck wanted to discuss Aroclor compounds

1 and what my involvement might have been with
2 them.

3 Q How was it that he came to your house?

4 A He came to the front door and said that he
5 was passing through the neighborhood and thought
6 he would stop in and chat with me.

7 Q Where do you live in relationship to
8 Chicago, Illinois?

9 A About 40 miles northwest of Chicago.

10 Q Did he indicate anything to you about your
11 personal liability if you say anything against
12 Aroclor products?

13 A Mr. Peck asked me if I had consulted a
14 private attorney regarding my liability in
15 speaking to anybody about Aroclor products.

16 Q Are you still willing to testify here before
17 this jury?

18 A Yes, I am.

19 Q All right. Tell us briefly what your job
20 was at IBT?

21 A For most of my time at IBT I was an
22 assistant toxicologist.

23 Q When were you first employed?

24 A January, 1971.

25 Q When did your employment conclude?

1 A June of 1977.

2 Q And in addition, let me ask you this: With
3 regard to the Monsanto rodent Aroclor studies,
4 did you personally work on Monsanto's Aroclor
5 studies?

6 A Yes, I did.

7 Q Did you personally help prepare the reports
8 of the conclusions on Monsanto's Aroclor studies?

9 A Yes, I did.

10 Q In addition to your personally having worked
11 on their studies, was there a point in time at
12 IBT when the parent company of IBT conducted an
13 audit of what had gone on in recent years at that
14 laboratory?

15 A They had conducted an inhouse investigation.

16 Q What was your role in that investigation?

17 A I had testified in that investigation.

18 Q Well, I'm not talking about that. With
19 regard to the actual looking at the documents,
20 auditing the work that had been done and so
21 forth, did you have a role in that?

22 A I audited studies, yes.

23 Q And for what period of time did you go back
24 and audit prior studies?

25 A I spent, with a number of people,

1 approximately nine months time looking at studies
2 that had been done from 1970 through 1976.

3 Q Who was Otis Francher?

4 A Otis Francher was manager of the laboratory
5 when I started there.

6 Q Who is Paul Wright?

7 A Paul Wright was hired as section head of
8 toxicology about two months after I started at
9 the laboratory and he was in charge of the rat
10 and dog toxicity areas and I was an employee in
11 the rat toxicity.

12 Q In connection with Monsanto's Aroclor
13 studies, did you personally work with Paul L.
14 Wright?

15 A Yes.

16 Q Who was Mannie Reyna?

17 A Mannie Reyna was an employee in the rat
18 toxicity department.

19 Q Are you familiar with the care and handling
20 of the rodents used in regards to Monsanto's
21 Aroclor chronic oral toxicity studies?

22 A Yes, I am.

23 Q Are you familiar with the electronic
24 weighing machine at IBT?

25 A Yes, I am.

1 Q Let me ask you very briefly about a few
2 documents that Dr. Calandra proved up and that we
3 have taken the liberty of blowing up.

4 Regarding the Aroclor study, whose initials
5 appear at the top left-hand corner of this
6 document, "P.L.W."

7 Do you recognize those initials?

8 A Paul L. Wright.

9 Q It also is addressed to a man named "M.L.K."
10 Who is that?

11 A Marino L. Keplinger.

12 Q Who was he?

13 A Manager of the laboratory.

14 Q With regard to the Aroclor studies, one
15 comment is: Unless survival can be improved, I'm
16 concerned that all of your rat carcinogenic
17 studies will be judged to be inadequate.

18 Was there a problem with the survivability
19 of the rodents on Monsanto's Aroclor study?

20 A Yes.

21 Q On the second page, the document goes on to
22 say: The tumor incidents in females with 1254 is
23 bothersome, 82 percent at 10 parts per million
24 and 100 percent at a 100 parts per million. With
25 regard to the tumors in the animals and with

1 regard to mortality of the animals during the
2 course of the study, was there a small or a large
3 percentage of the animals that died during the
4 course of the study?

5 A There was a --

6
7 MR. JONES: Your Honor, I would like to
8 interpose an objection at this point, if I
9 may.

10 Your Honor, I would object that the
11 proper predicate has not been laid to show
12 that this witness has personal knowledge of
13 those facts that he's about to testify to.
14 In fact, I anticipate his answer based upon
15 the deposition which showed that he does not
16 have personal knowledge, but it's based on
17 hearsay.

18 THE COURT: Objection overruled.

19
20 BY MR. POHL:

21 Q Do you have personal knowledge of
22 deficiencies with regard to Monsanto's Aroclor
23 studies?

24 A Yes, I do.

25 Q Let me just -- let me just jump ahead for a

1 moment and cover some things generally and then
2 we will come back and detail it.

3 Do you have personal knowledge that the raw
4 data with regard to Monsanto's Aroclor studies
5 was either falsified or fabricated?

6 A The report of the raw data was falsified.

7 Q You know that personally?

8 A Yes.

9 Q Did you actually sign reports that contained
10 false data?

11 A I signed two reports that contained false
12 data, yes.

13 Q In addition, did someone forge your name to
14 one of the other Aroclor studies?

15 A Yes, they did.

16 Q Now, let me ask you one other question:
17 What do the initials TBD mean in regard to the
18 Monsanto Aroclor studies?

19 A In the necroses logs the TBD means "too
20 badly decomposed."

21 Q I'm going to show you --

22
23 MR. POHL: May I approach the witness?

24 THE COURT: Yes.
25

1 BY MR. POHL:

2 Q -- a document marked Plaintiffs' 2916, which
3 is a part of the Monsanto Aroclor reports. It's
4 entitled "Histopathologic" -- "Histopath Logistic
5 Sheet." Are you familiar with that document?

6 A Yes, I am.

7 Q It contains in its text, a tabulation with
8 regard to rats used on Monsanto's Aroclors
9 studies, does it not?

10 A Yes, it does.

11 Q And in regards to the information listed
12 with some of these rats -- and I'm just flipping
13 through some of the pages -- do you see the
14 initials TBD, and TBA?

15 A Yes.

16 Q And again, what do those initials mean when
17 used together?

18 A It means that the animal was too badly
19 decomposed and the technician disposed of the
20 animal.

21 Q When an animal is too badly decomposed and
22 is destroyed or thrown away, what happens to the
23 ability of the pathologist to use that animal to
24 determine whether it died from cancer, whether it
25 died from tumors or other things?

1 A The pathologist never gets a chance to look
2 at any tissues from the animal because the
3 technician has thrown it away.

4 Q With regard to the Monsanto Aroclor studies,
5 have you looked at the tabulations regarding the
6 histopathology to determine approximately what
7 percentage of the animals on this study were just
8 thrown away and no one will ever know what it was
9 that killed them?

10 A Approximately 70 percent or more of the
11 animals that died during the course of the study,
12 that are reported in the histopath log sheet were
13 too badly decomposed.

14 Q Now, another document that we have had blown
15 up, and I will just go to the second page of it,
16 is a statement by the man you have identified as
17 Dr. Francher. He says "I'm ashamed to publish
18 the work done on these studies."

19 With regard to the -- "I am ashamed to
20 publish the work done on these studies," with
21 regard to the Monsanto rodent studies, would you
22 be ashamed of the work that was done on the
23 rodent studies?

24 A Yes, I would.

25 Q There is another document that refers to the

1 papers being submitted to Monsanto's lawyers
2 before they could be published. And again I will
3 just go to the second sheet.

4 "I hope to get copies of all the studies in
5 the hands of Bill Papageorge, Scott Tucker and
6 the lawyers next week. I do not anticipate a lot
7 of changes from them and hope that the attorneys
8 agree that we can go ahead with publication."

9 Was there any other client of IBT besides
10 Monsanto that wanted its papers reviewed by
11 lawyers before they could be put in final form?

12 A Not that I know of.

13 Q Are you familiar with the "swamp"?

14 A Yes, I am.

15 Q Are you familiar with the other rooms at IBT
16 where the rodents were housed?

17 A Yes, I am.

18 Q In as brief a manner as you possibly can,
19 can you describe generally the conditions of the
20 animals in those rooms and how they were cared
21 for and housed?

22 A The animals in most rodent studies were
23 housed in a small cage; and depending on what
24 room they were in, there were either water
25 bottles or an automatic watering mechanism that

1 was supposed to supply water to the animals,
2 feed, pans underneath the cages to catch urine,
3 feces, food that was kicked out.

4 The conditions in most rooms were generally
5 poor, there were many loose animals.

6 Q Did Dr. Wright have knowledge of what you
7 have described as generally poor conditions with
8 regard to the housing and care of the animals?

9 A Yes, he did.

10 Q During the course of these studies, were
11 there visits by representatives of Monsanto to
12 IBT?

13 A During my employment there, there were
14 visits from Monsanto personnel to IBT.

15 Q Without going into any detail, can you just
16 identify some of the names for the jury of some
17 of the people from Monsanto who came to the
18 premises of IBT while you were employed there?

19 A Dr. Hunt, a Dr. Levinskis, a Dr. Sharph,
20 possibly a Dr. Wheeler and Dr. Paul Wright had
21 worked at Monsanto before he came to work at IBT
22 and he went back to Monsanto after approximately
23 18 months. And after that, he would come and
24 visit at IBT.

25 Q If any of the gentlemen that you have

1 identified from Monsanto had gone to any of the
2 rooms where the rodents were being housed that
3 were on Monsanto studies, would they have been
4 able to observe these deficient conditions that
5 have been described to this jury?

6 A Yes.

7 Q How would they have -- how would even a
8 casual observer been able to note those
9 conditions?

10 A The smell in the rooms was terrible, and
11 just looking at the general conditions of the
12 cleanliness of the rooms.

13 Q Now -- and for how long did Paul Wright
14 continue to come back to IBT after he returned to
15 employment at Monsanto?

16 A As far as I know, up until the time I left
17 the employment of IBT --

18 Q He was still --

19 A -- Industrial Biotest.

20 Q He was still interacting and working with
21 IBT regarding the Monsanto studies?

22 A Yes.

23
24 MR. POHL: May I approach the witness?
25

1 BY MR. POHL:

2 Q Let me show you Document 2881, which has
3 previously been identified and is one of the IBT
4 records which we obtained. Do you know what that
5 document is?

6 A Yes, I do.

7 Q What is it?

8 A They're graphs of body weight data for the
9 control and test groups of the three Aroclor
10 materials in the two-year study on Aroclor that
11 Biotest did.

12 Q You are talking about the Monsanto-sponsored
13 Aroclor studies?

14 A Yes.

15 Q And was this data -- does it pertain to the
16 body weight of the animals?

17 A Yes, it does.

18 Q Was this data a part of the Monsanto
19 Aroclor -- the IBT Aroclor report?

20 A Yes.

21 Q All right. Is the data contained on Page 1
22 of that report, for example, falsified?

23 A Yes, it is. A majority of the data is
24 falsified.

25 Q On every page?

1 A Yes.

2 Q Who falsified the data with regard to the --
3 that part of the data with regard to the Aroclor
4 study?

5 A Paul L. Wright.

6 Q Do you have any personal knowledge
7 whatsoever that Paul L. Wright fabricated the
8 data on the Aroclor study?

9 A I observed him fabricate the body weight
10 data that is on this exhibit in front of me.

11 Q Were you in the room with him when he
12 fabricated the body weight data for the rodents
13 used on Monsanto's Aroclor studies?

14 A Yes, I was.

15 Q After Paul Wright returned to Monsanto and
16 after he made his trips back to IBT, did he ever
17 request that the study be redone or any curative
18 measure whatsoever be conducted so that an
19 accurate study can be made?

20 A Not to my knowledge.

21 CROSS - EXAMINATION

22 MR. POHL: May I approach the witness,
23 again?

24 THE COURT: Surely.
25

1 BY MR. POHL:

2 Q I will try to be brief about this, but there
3 are three sets of reports on the Aroclor studies,
4 are there not?

5 A Yes.

6 Q The first group concludes that the effect
7 was normal, correct?

8 A Yes.

9 Q The second group concludes that all had a
10 slightly tumorigenic effect?

11 A Yes.

12 Q And the final set concluded that the product
13 does not cause cancer?

14 A Yes.

15 Q All right. Does your signature appear on
16 the conclusion page or a purported copy of your
17 signature appear on the conclusion page of the
18 first three Aroclors reports dated November 12,
19 1971?

20 A These are the three reports that found
21 nothing wrong.

22 Q Okay. These are the first reports that were
23 done, dated November of '71?

24 A Yes.

25 Q Let me show you very briefly just one of

1 those, which is the report on Aroclor 1254; and
2 turn to the signature page.

3 It says, "report prepared by," and then has
4 a signature line for Phil S. Smith, assistant
5 toxicologist. Do you see that?

6 A Yes, I do.

7 Q Is that your signature?

8 A No, it is not.

9 Q Did you sign the report?

10 A No, I did not.

11 Q Who forged your signature?

12 A Paul Wright.

13 Q With regard to the actual care, feeding,
14 housing of the animals, were Monsanto's rodents
15 treated -- the rodents on Monsanto's studies
16 treated differently than the other rodents?

17 A No, they were not.

18 Q With regard to Monsanto's paper work, the
19 reports of its conclusions and so forth, did
20 Monsanto receive any special treatment different
21 from other customers of IBT?

22 A Yes, they did.

23 Q After Paul Wright returned to Monsanto, did
24 he ever return to IBT and personally dictate
25 changes to reports of products for Monsanto?

1 A Yes, he did.

2 Q After -- well let me approach it this way.

3 There has been testimony by a man named Dr.
4 Levinskys that he validated the IBT Aroclor
5 studies and he found them to be proper and valid,
6 and he wrote that in a report that he prepared.

7 Let me ask you from your perspective as an
8 assistant toxicologist and one who actually
9 worked on these studies and was there everyday
10 when the work was being done: Could one validate
11 the IBT Aroclor studies without making any
12 investigation or drawing any conclusions as to
13 the housing of the rodents, the feeding of the
14 rodents, the dosage of the rodents, the watering
15 of the rodents, the survivability of the rodents,
16 or the subtleties of the handling of the rodents?

17 A No, they could not.

18 Q Based upon what you observed with the
19 animals that were fed the Aroclor products while
20 you were an employee of Monsanto and based upon
21 what you learned as one the authors of the
22 Monsanto-sponsored Aroclor studies, if someone
23 came to you today and said that Aroclors were as
24 harmless as common table salt, how would you
25 respond?

1 A Number one, I thought you said that while I
2 was an employee of Monsanto.

3 Q I mean, an employee of IBT.

4 A I never worked for Monsanto.

5 Q I'm sorry.

6

7 MR. JONES: Your Honor, may I interpose
8 an objection.

9 I would object to the witness answering
10 any opinion questions along that line.
11 There has been no predicate laid that he is
12 qualified to give such opinions.

13 In fact, if the Court will permit me to
14 take him on voir dire, I could establish
15 that.

16 THE COURT: I don't know whether
17 counsel insists on the question or not. I
18 think the objection will be --

19 MR. POHL: I will just withdraw the
20 question.

21 Pass the witness for cross examination.

22 THE COURT: You wish to cross examine
23 him?

24 MR. JONES: Yes, Your Honor.

25

it won't take but just a minute.

REDIRECT EXAMINATION

BY MR. POHL:

Q Without being a certified toxicologist, without being a certified pathologist, are you able to recognize the falsification of data when you see it?

A I feel that I am able to do that, yes.

Q Why would you have signed those two reports and possibly signed the third back in 1971, but not today?

A In 1971, when these reports were being done, I was just starting to learn about writing laboratory reports at IBT, and I had prepared a small section of these reports. And Dr. Paul Wright and Mr. Jim Plank had prepared many sections, and they told me that I was going to have to sign the report.

Q You talked about the swamp with Mr. Jones. Were the other rooms -- how did they compare to the swamp?

A The other -- the other rooms were not -- were not wet like the swamp was, but there were more loose animals in the other rooms that would

1 get up on the cage racks and chew animals' feet
2 and toes. And in the swamp, there weren't as
3 many -- the loose animals wouldn't get up in
4 there.

5 Q Did you complain to anyone at IBT about the
6 falsification of data that you saw going on or
7 the conditions that you observed?

8 A Yes, I did.

9 Q On few or many occasions did you complain to
10 the management -- can you hear me?

11 A I can hear you.

12 Q On few or many occasions did you complain to
13 the management of IBT about either the
14 falsification of data or the horrid conditions
15 that the animals were living in?

16 A I didn't -- I still didn't -- the microphone
17 distorted the first word in your question.

18 Q On few or many occasions did you complain to
19 the management about the conditions at IBT or the
20 falsification of data?

21 A I complained about it on many occasions.

22 Q Did you complain to Paul Wright, for
23 example?

24 A Yes, I did.

25 Q There were some questions asked about the

1 job that you had after IBT and you were fired for
2 sleeping on the job.

3 A Yes.

4 Q With regard to that particular incident --
5 won't take but a second -- do you have a problem
6 with your -- did you have at that time a problem
7 with your eyes?

8 A Yes, I did and I still do.

9 Q Did it require surgery?

10 A Yes, it did.

11 Q Did it appear as if you were sleeping when
12 you were not?

13 A Yes, it did.

14 Q Can you explain that in 10 words or less to
15 the jury.

16 A I have a convergence deficiency that causes
17 my left eye to drift out; and when I am tired and
18 reading a lot, it will drift out and I have
19 double vision so that I will cover my left eye
20 with my hand so I can continue reading and not
21 have double vision.

22 Q Is that what you were doing at the other job
23 when they saw you and thought you were sleeping?

24 A Yes.

25 Q Did other people -- were other people called

1 to testify before the grand jury and to assist
2 the government and give testimony besides
3 yourself?

4 A Yes, they were.

5 Q All right. Have you asked to be paid or is
6 anybody paying for your time in connection with
7 the deposition you gave or your testimony in this
8 trial?

9 A No, I have not.

10 Q Has any offer to pay you been made for your
11 testimony?

12 A Other than reimbursing my expenses for being
13 here, there has been no offer for paying for my
14 testimony.

15 Q Does that include your direct out-of-pocket
16 expenses only such as the plane fare to get here
17 and the plane fare when you leave today to go
18 home?

19 A That's correct.

20 THE COURT: I think it's unnecessary to
21 go into that.

22 MR. POHL: Pass the witness.

23 THE COURT: Mr. Jones, anything else?

24 MR. JONES: Your Honor, I only have
25 about two questions, and that will be it.

RECROSS EXAMINATION

BY MR. JONES:

Q You testified about these alleged deficiencies today at IBT. Did you tell the United States Government of those deficiencies in 1971?

A I did not tell anybody other than IBT employees in 1971 about the deficiencies.

Q And you also then, based upon that, did not bring that to the attention of the people out at the Monsanto Company?

A I had -- was not in a position to bring that to the attention of the Monsanto Company.

MR. JONES: That is all I have, Your Honor.

MR. POHL: One question about that.

REDIRECT EXAMINATION

BY MR. POHL:

Q The data which you say was falsified and the data with regard to the 70 percent of the animals that were too badly decomposed to even determine what caused their death, was that data part of a

1 group of data that was submitted to the Monsanto
2 Company for its review?

3 A It's part of the raw data for the study file
4 that Monsanto would have received at some point
5 in time.

6 Q So, if Monsanto had read that study file,
7 would they have seen and could have drawn some of
8 of the same conclusions that you were able to
9 draw from these documents?

10 A They would have been able to see the data,
11 yes.

12
13 MR. POHL: Thank you.

14 THE COURT: All right. I believe this
15 concludes your testimony. And you may be
16 excused. And you may leave.

17 THE WITNESS: Thank you, Your Honor.

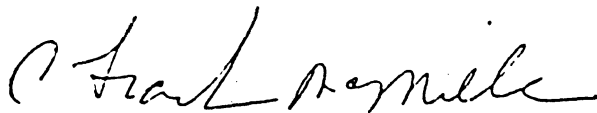
18 THE COURT: Ladies and gentlemen of the
19 jury, we have a hearing in another matter,
20 which is probably going to take 15 minutes
21 or so. And we need to have a recess.

22 So, we are going to excuse you for 30
23 minutes. Please return to your places in 30
24 minutes. That will be ten minutes before
25 11:00.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 OFFICIAL REPORTER'S CERTIFICATE
4
5

6 I, FRANK MCMILLAN, OFFICIAL COURT REPORTER FOR
7 THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN
8 DISTRICT OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE AND
9 FOREGOING PAGES CONSTITUTE A TRUE, CORRECT AND COMPLETE
10 TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE STYLED AND
11 NUMBERED CAUSE.

12 WITNESS MY OFFICIAL SIGNATURE IN THE CITY OF
13 BEAUMONT, TEXAS, ON THE 11th DAY OF October 1987.
14
15
16

17 
18 C. FRANK MCMILLAN
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF TEXAS
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CECIL SCOTT, ET AL

VS.

MONSANTO COMPANY

*
*
*
* CIVIL ACTION
* NO. B-84-1103-CA
*
*

SEPTEMBER 2, 1987
VOLUME XIII

BEFORE THE HONORABLE JOE J. FISHER
UNITED STATES DISTRICT JUDGE, AND A JURY

WITNESS: DR. PAUL L. WRIGHT

SHOWING OF VIDEO DEPOSITION
READING FROM VIDEO DEPOSITION

PAGE
1983
1992

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REPRESENTATIVE FOR THE MONSANTO
CHEMICAL COMPANY.

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1 of Dr. George J. Levisksas.

2 THE COURT: Who do you have next?

3 MR. JONES: Your Honor, the defendant
4 will make its offer in its case in chief.

5 THE COURT: Thank you. Who do you have
6 next?

7 MR. POHL: With that, Your Honor, at
8 this time we call Dr. Paul L. Wright by
9 video deposition.

10 THE COURT: Do you have additional
11 objections to make or do you make the same
12 objections?

13 MR. JONES: Yes, Your Honor, we do.

14 Yesterday you stated, Your Honor, that
15 if we had additional objections other than
16 those running objections to make them at the
17 appropriate time and this is one of those
18 times, Your Honor.

19 We would object to the testimony of
20 Paul Wright to the extent that he seeks or
21 seeks to invoke his Fifth Amendment rights
22 under the constitution of the United States
23 on the ground that such testimony is
24 irrelevant, it's immaterial, it's
25 inflammatory and its prejudice outweighs its

1 probative value.

2 Monsanto specifically objects for the
3 reason that there is no adverse inference
4 that can be drawn from such invocation of
5 the Fifth Amendment, rights to the Defendant
6 Monsanto. And, therefore, the testimony is
7 irrelevant.

8 No adverse inference can be drawn for a
9 couple of reasons, Your Honor. Number one,
10 the witness was not an employee of Monsanto
11 at the time of the deposition. Monsanto did
12 not control or influence him or could
13 influence him in any way. He was
14 represented by counsel at the deposition.

15 And, in fact, I as counsel for Monsanto
16 Company specifically objected to his taking
17 the Fifth Amendment and requested that he
18 answer the questions.

19 THE COURT: Let's not argue your
20 objections. Just make them.

21 MR. JONES: All right, Your Honor.
22 That's the first objection, Your Honor.

23 The second objection that we have to
24 the testimony is that there is no
25 substantial independent evidence to support

1 the inference which the plaintiffs seek to
2 draw; that being, that the invocation of the
3 Fifth Amendment by Paul Wright, which they
4 are seeking to draw, is not that he may have
5 committed a crime but the fact that Monsanto
6 knew that he committed a crime or alleged or
7 knew of the alleged deficiencies of IBT.

8 Your Honor, since there is no
9 independent corroborating evidence on that
10 point under the authority of the United
11 States versus James, that testimony should
12 be excluded.

13 But even if they did have corroborating
14 evidence, Your Honor, they have got to also
15 show that the inference that they draw is
16 more probable than any other inference and
17 that they haven't done.

18 We would also object to the testimony
19 on the ground that Paul Wright's knowledge,
20 whatever it may be, cannot be imputed to
21 Monsanto because if, in fact, there were
22 deficiencies at IBT and if, in fact, he knew
23 of those deficiencies, he didn't tell them
24 to Monsanto. And under case law, Your
25 Honor, if an employee acts adverse to the

1 interest of its employer --

2 THE COURT: Let's not argue.

3 MR. JONES: Okay, Your Honor.

4 Your Honor, we'd also in that case,
5 what we would like to do is just refer to
6 the Court the brief that we filed in support
7 of the motion in limine which contains many
8 of these objections. And we would request
9 that the deposition testimony be excluded.

10 MS. BAKER: Could I be heard just for
11 the record?

12 THE COURT: Yes.

13 MS. BAKER: And rely for our part on
14 our briefs filed with the Court and on the
15 fact that a lot of cases represented by
16 United States versus James has been
17 overruled by the United States Supreme
18 Court. Thank you.

19 THE COURT: The Court overrules the
20 additional objections as well as the
21 original objections and gives counsel a
22 running objection to all of these matters
23 and deny the request.

24 All right. Let's proceed.

25 MR. JONES: Your Honor, may I state one

1 additional thing and then we can go on with
2 the deposition.

3 May we request an instruction from the
4 Court to the jury that no adverse inference
5 may be drawn against Monsanto Company as a
6 result of this testimony for the reasons
7 that we stated earlier?

8 MR. POHL: Your Honor, I would like to
9 be heard on that.

10 THE COURT: Yes.

11 MR. POHL: Your Honor, I don't want to
12 engage in argument, but the fact, the
13 evidence already shows from Monsanto's
14 witnesses that Dr. Wright was hired back by
15 Monsanto at Monsanto's request.

16 He came back in a high management
17 position, that after he came back, he
18 continued to coordinate with IBT. We have
19 read to the jury this very morning documents
20 that Paul Wright had knowledge of and even
21 Manual Rhame, one of Monsanto's current
22 employees, testified that he personally told
23 Dr. Wright about these deficiencies that
24 we're going to detail a little bit later in
25 this case.

1 THE COURT: All right. The Court will
2 instruct the jury that this testimony is
3 being offered for the purpose of showing the
4 knowledge, if any, on the part of Monsanto.

5 And Monsanto, being a corporation, of
6 course, it acts through agents, servants and
7 employees. And the jury may give such
8 circumstantial weight or value to the
9 evidence as they consider it is entitled to.
10 Now, on the question of knowledge of
11 Monsanto.

12 All right. You may proceed.

13 MR. POHL: We are ready to proceed,
14 Your Honor.

15 THE COURT: All right.

16
17 (WHEREUPON THE FOLLOWING PORTIONS OF THE
18 VIDEO DEPOSITION WERE SHOWN TO THE JURY.)

19
20 Raise your right hand. Do you solemnly
21 swear that the testimony you are about to give
22 will be the truth, the whole truth and nothing
23 but the truth so help you God?

24 A I do.

25 Q Dr. Wright, my name is Mike Pohl. As you

1 have just heard, I'm one of the attorneys for the
2 plaintiffs; that is, the parties who have brought
3 this civil lawsuit.

4 We are here today to ask you a number of
5 questions. Before we start those questions, let
6 me say first that the plaintiffs are calling you
7 as an adverse witness in that you were employed
8 by both by IBT and Monsanto.

9 Let me begin your deposition by asking you
10 to state for the Court and jury your full name.

11 A I am Paul Lee Wright.

12 Q If at any time during the course of the
13 deposition you don't understand one of my
14 questions because I speak too softly, because I'm
15 not careful in the way I worded the question,
16 because it is somehow confusing to you or because
17 there is some distraction in the room, I would
18 appreciate your stopping me and asking me to
19 repeat the question or to rephrase the question
20 so that we can be very clear that you understand
21 each and every question.

22 Can we have that agreement?

23 A I will do my best.

24 Q And you understand, Dr. Wright, that this
25 deposition, even though we are here in rather

1 informal proceedings, can be used at the time of
2 trial; that is, we can show this videotape or
3 read the question and answers or any part thereof
4 to the Court and jury?

5 A That's my understanding.

6 Q And you understand that you have just been
7 sworn by the court reporter?

8 A Yes, I do.

9 Q And you understand that that means that you
10 have been sworn to tell the truth and the whole
11 truth just as if you were sworn on the witness
12 stand in the courtroom before the jury?

13 A I understand that.

14 Q And in response to each of my questions, I
15 would like you to give me the full and complete
16 and truthful answer to each question, okay?

17 A All right.

18 Q And in what year did you obtain your Ph.D.?

19 A In 1961.

20 Q When were you first employed by Monsanto?

21 A In 1965.

22 Q When were you first employed by Industrial
23 Biotest Laboratories, Inc.?

24 A In 1971.

25 Q When you were employed by IBT, what was

1 job title?

2 A I believe it was manager of toxicology.

3 Q And when did your employment with IBT
4 terminate?

5 A In November of 1972.

6 Q Did you then return to employment with
7 Monsanto?

8 A Yes, I did.

9 Q And what was the first day that you
10 recommenced your employment with Monsanto?

11 A I believe it was November 1, 1972.

12 Q What was your job title at Monsanto when you
13 became re-employed by Monsanto?

14 A It, again, was manager of toxicology.

15 Q And you worked here in St. Louis in the
16 offices of Monsanto?

17 A Yes, I did.

18 Q You were criminally indicted; is that
19 correct?

20 A That's correct.

21 Q All right. And do you recall when you were
22 indicted?

23 A No, I don't. I believe it was in 1982.

24 Q After the indictment was handed down, you
25 ultimately went through a criminal trial, did you

1 not?

2 A Yes, I did.

3 Q And did you have an attorney representing
4 you in that criminal trial?

5 A Yes, I did.

6 Q What was that lawyer's name?

7 A The lead lawyer was Mr. James Robertson of
8 the Wilmer, Cutler & Pickering firm.

9 Q How many other attorneys, if any, assisted
10 in your representation during the course of those
11 criminal proceedings?

12 A There were two.

13 Q Were all three of those lawyers with the
14 Wilmer, Cutler & Pickering law firm?

15 A Yes, they were, as far as I know.

16 Q And you understood that law firm to be out
17 of Washington, D.C.?

18 A Yes, it was.

19 Q The criminal trial took place in Chicago,
20 did it not?

21 A Yes, it did.

22 Q Did you also have local attorneys
23 representing you in Chicago?

24 A Well, there was a firm Hapfin & Hapfin and
25 apparently was involved in the firm but they did

1 not represent me personally, as far as I know.

2 Q How long did the trial last?

3 A I believe about seven months.

4 Q And you were tried along with Dr. Keplinger
5 and a man named James Plant?

6 A That's correct.

7 Q And a Dr. Joe Keplinger did not complete the
8 trial because of physical illness; is that
9 correct?

10 A That's correct.

11 Q And so far as you understand, the trial as
12 to Dr. Keplinger has never been completed; is
13 that correct?

14 A I have no knowledge.

15 Q At the conclusion of the trial, were you
16 convicted?

17 A Yes, I was.

18 Q And were you sentenced by the judge?

19 A Yes, I was.

20 Q Did you take an appeal from that conviction?

21 A Yes, I did.

22 Q And was the conviction affirmed?

23 A Yes, it was.

24 Q I want to show you a document which I have
25 obtained from the district courts of Chicago

1 which is your indictment and ask you first, if
2 you have ever before looked at the grand jury's
3 indictment as it pertains to you, have you?

4

5 (Whereupon the video deposition was interrupted.)

6

7

8

 THE COURT: Do you need to go into this
 much detail?

9

10 (Video resumed.)

11

A Yes, I have seen the indictment. I don't
12 know the document you have.

13

14

 (Whereupon the video deposition was interrupted.)

15

16

17

 THE COURT: Is it necessary to go into
 this much detail?

18

19

 MR. MUSSLEWHITE: We can stop, Your
 Honor --

20

21

 THE COURT: Can you offer the rest of
 it by Q&A?

22

23

 MR. MUSSLEWHITE: Just want to go over
 one question, Your Honor.

24

25

 MR. POHL: If we can have about two
 more minutes then we are going to offer it

1 by Q&A.

2 THE COURT: All right. Make it roll
3 then.

4
5 (Video deposition resumed.)

6 Q Let me show this to you and your lawyer.

7 This is a certified copy which we obtained from
8 the United States District, the Northern District
9 of Illinois and pass it to you. Take a moment to
10 look at it and just identify it for the record as
11 to whether or not it's the indictment?

12 Does that appear to be the indictment?

13 A It appears to be, but I cannot -- am not
14 totally certain that that's the document at this
15 point in time.

16 Q But to the best of your knowledge today,
17 that appears to you to be a true and accurate
18 copy of the indictment that you were faced with?

19 A That is my assumption.

20 Q I want to ask you a few questions, Dr.
21 Wright, about the attorneys' fees associated with
22 your criminal trial --

23
24 (Whereupon the video deposition was interrupted.)

25 THE COURT: Let's don't go back into

1 that. Let's don't go back into the attorney
2 fees. Just go into details that are just,
3 thread bare, you've just worn it thread
4 bare. Get to the testimony that you want to
5 ask him about concerning his test, I suppose
6 and -- see if you can do that.

7 MR. MUSSLEWHITE: Can you do it to the
8 first question on there -- okay.

9
10 (Video deposition resumed.)

11
12 Q There was a manager of toxicology for IBT
13 and also there is a manager for toxicology for
14 Monsanto at a later point in time. You knew that
15 the United States Government and possibly others
16 might receive copies of the conclusions of the
17 studies that were being conducted at IBT, on
18 Monsanto's Aroclor products, did you not?

19 A On my attorney's advice, I hereby invoke the
20 right secured to me by the Fifth and Fourteenth
21 Amendments to the U.S. Constitution and
22 respectively refuse to answer that question on
23 the grounds that any information --

24
25 (Whereupon the video deposition was concluded.)

1 THE COURT: What is the necessity of
2 offering this?

3 MR. MUSSLEWHITE: Your Honor, there's
4 about only eight questions that we have that
5 go into the --

6 THE COURT: Well, let's get to the
7 eight questions then.

8 MR. MUSSLEWHITE: We will stop that and
9 read them.

10 THE COURT: All right.

11 MR. POHL: If you will turn to Page 31,
12 line 19, I will ask the question. You can
13 give the answer.

14 MR. MUSSLEWHITE: Okay.

15

16 (Reading from video deposition)

17 Q Dr. Wright, is it true that the result of
18 IBT's high mortality rate in connection with
19 Monsanto's Aroclor study and the practice of
20 substituting animals during the course of such
21 studies cause the toxic effects of Monsanto's
22 Aroclor studies to be seriously understated?

23 A On my attorney's advice, I hereby invoke the
24 rights secured to me by the Fifth and Fourteenth
25 Amendments to the U.S. Constitution and

1 respectfully refuse to answer that question on
2 the grounds that any information I give in
3 response may tend to incriminate me.

4 (End of reading)

5
6 MR. POHL: Page 33, line 12.

7
8 (Reading from video deposition)

9 Q Dr. Wright, is it true that the reports of
10 the conclusions reached in connection with the
11 IBT Aroclor studies were altered several times at
12 Monsanto's request?

13 A On my attorney's advice I hereby invoke the
14 rights secured to me by the Fifth and the --

15 (End of reading)

16
17 THE COURT: If he is going to invoke
18 the Fifth Amendment, all of these will --
19 there's no need of offering them.

20 MR. MUSSLEWHITE: Your Honor, our
21 purpose, if I may say so, is to show the
22 questions -- the information we tried to get
23 from this witness and if you will -- I'll --
24 we'll stop reading the Fifth Amendment and
25 just read the questions.

1 THE COURT: Did you not get the
2 information from other witnesses?

3 MR. POHL: Your Honor, this is the
4 witness that has the most direct knowledge
5 both from the point of view of IBT and
6 Monsanto.

7 THE COURT: Don't you think the Court
8 knows that? It's absolutely a waste of time
9 to ask a question and then to have him
10 invoke his Fifth Amendment right. That
11 doesn't add anything to the testimony.

12 MR. POHL: We want to show the jury,
13 Your Honor, that we attempted to go to the
14 one person from both Monsanto and IBT who
15 had the most --

16 THE COURT: The Court is reversing its
17 rulings. We will sustain the defendant's
18 objection and we will grant his request to
19 suppress this deposition of Mr. Wright's.
20 All right.

21 MR. JONES: Your Honor, in light of the
22 Court's recent ruling here, we would request
23 that the jury be instructed to disregard the
24 previous testimony.

25 THE COURT: Yes, the Court will request

1 the jury to disregard any portion of Mr.
2 Wright's testimony that has been read. All
3 right.

4 MR. POHL: Your Honor, at this time we
5 would --

6 THE COURT: Do not give it any
7 consideration or affect to Dr. Wright's
8 deposition in regard to your deliberation as
9 a jury in this case. Do not give it any
10 affect or consideration in your rulings.
11 All right.

12 MR. POHL: Your Honor, we would read
13 from the deposition and offer a summary of
14 Dan R. Bishop taken June 29, 1987. And I
15 will read a summary and there are some
16 questions and answers and I would ask Mr.
17 Musslewhite to respond to the questions.

18 THE COURT: All right. What witness is
19 this?

20 MR. MUSSLEWHITE: This is the last one
21 that I mentioned to Your Honor of the last
22 witness we have that was Monsanto's --
23 public relations man. It's a short offer.

24 THE COURT: You may proceed.

25 MR. POHL: Your Honor, in order to show