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April 12, 1990

Dr. Cate Jenkins
Environmental Protection Agency
United Parcel Box 102
Waterside Mall
Washington, DC 20460

Re: Kemner, et al vs. Monsanto

Dear Dr. Jenkins:

Thank you for your correspondence of April 9, 1990. I am enclosing a considerable amount of material which I will identify in this letter. However, before I do, I would like to point out some inaccuracies in your memorandum of February 23, 1990 to Dr. Raymond C. Loehr. You state that the Zack-Suskind study of 1980 "The Mortality Experience of Workers Exposed to Tetrachlorodibenzodioxin an a Trichlorophenol Process Accident" was the study that was shown to be a fraud in the Kemner case. This is not the case. This study published in the Journal of Occupational Medicine (Monsanto Exhibit No. 62 enclosed) is the earliest published study by Monsanto and I had no information available which would suggest that that study was fraudulent. However, a later, not a predecessor study as described by you in your memo, study by Zack-Gaffey was disclosed to be fraudulent. This study, entitled "A Mortality Study of Workers Employed at the Monsanto Company Plant in Nitro, West Virginia," was published in Human and Environmental Risks of Chlorinated Dioxins and Related Compounds in 1983. As you can see, it was not a predecessor study but was, in fact, a subsequent study. It is this study which put 4 workers exposed to TCDD in the group described as unexposed.

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I am enclosing Monsanto memorandum written by one Marcie Strauss when Monsanto learned that that study was going to be attacked, she undertook to dig into the facts surrounding that study and issue a private memorandum. That memorandum, Plaintiffs' Exhibit 1463, is enclosed in its entirety. As you can see from Attachment I to that memo, Ms. Strauss identifies by name the 4 workers who were counted in Table 11 as unexposed. The excuse belatedly given for not including these 4 in the exposed category is that they were "maintenance workers and not production workers in that department. These 4 were also clearly identified as 4 who had earlier been exposed in the 1949 accident as were the other 5 who had been omitted from Table 10, workers exposed to TCDD as shown in Plaintiffs' Exhibit 1464. The death certificates for these 9 are also enclosed (Plaintiffs' Exhibit 1461). That these workers were all exposed in the 1949 accident is shown by their inclusion in Plaintiffs' Exhibit 1460. Mind you, all of these documents have been produced by Monsanto and they are all part of Monsanto Company files.

Plaintiffs' Exhibit 1462 compares Table 2 of the 1980 study with the later 1983 study by Zack-Gaffey. The duplicate workers in each study are underlined.

Plaintiffs' Exhibit 1465 is my analysis, the correctness of which was confirmed by Dr. Roush dealing with the later published (1983) Zack-Gaffey Report.

Plaintiffs' Exhibit 1466 is a press release issued by Monsanto on October 9, 1980 to publicize the completion of the Zack-Gaffey study. Please note that in this press release the Zack-Gaffey study is there described as a study by "Judith A. Zack and Raymond R. Suskind." Dr. Suskind had his name removed and when this study was published in 1983, it was known as the Zack-Gaffey study. Please note that this press release and the Zack-Gaffey study itself purports to test whether or not any relationship existed between TCDD exposure and mortality. This study was not for the purpose of determining whether or not there was a relationship between production workers and non-production workers in the 2,4,5-T department. Obviously, maintenance employees in that department are probably more likely to be exposed to TCDD than the production workers. Certainly the maintenance workers who are also exposed to the contaminants of the 1949 accident in that same department were exposed to TCDD. The

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representation in the Zack-Gaffey study that these persons were not exposed is clearly fraudulent and a lie.

Plaintiffs' Exhibit 1482 are questions prepared by Ms. Strauss for use in preparing Monsanto witnesses for the various dioxin trials. The answers to many of these questions are self evident.

I have previously sent complete copies of the testimony of Dr. Roush for July 8 and July 9, 1985 to Carol Van Strum of the Greenpeace organization. If she has not sent you copies of those transcripts, please let me know and I'll send you this material. (Some of this material I have not sent to Ms. Van Strum and I am going to send a copy of this letter to her along with material I have not previously given her. If either you or Ms. Van Strum find that I'm referring to a document that you do not have a copy of or to a day's testimony that you do not have a copy of, please let me know and I'll send it on.)

The next important area of fraud that I believe was visited upon us by Monsanto relates to the Suskind-Hertzberg study, Human Health Effects of 2,4,5-T and Its Toxic Contaminants, Plaintiffs' Exhibit 1467 published in JAMA in 1984. The most obvious fraud deals with cancer histories shown in Table 1 of that study. (Plaintiffs' Exhibit 1471A) At the time I cross-examined Dr. Roush on this study, we had in the courtroom the complete medical records containing the history of the medical problems upon which Dr. Suskind's conclusions were based. I also had the work history of these workers as well at the time I examined Dr. Roush. You should know at this point that I was never able to cross-examine Dr. Suskind on these same topics as he refused to return to court so as to allow me to complete my cross-examination. I was just about to this area when he refused claiming heart trouble and absolutely refused to return.

You will note that according to Table 1 there should be only 8 exposed persons who have skin cancer. You will note in the Suskind computer tape printout which he used in part for his study, Plaintiffs' Exhibit 1472, and also by Dr. Roush's examination and as summarized in Plaintiffs' Exhibit 1473, there were 16 skin cancers in the exposed group rather than 8 as set out in the table. Two of these skin cancers were, in fact, included in the unexposed group meaning that there was only one skin cancer in the unexposed

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group as compared to 16 in the exposed group. Plaintiffs' Exhibit 1474 also summarizes these findings.

The next area of fraud that I uncovered dealt with the findings of psychoneurosis as reported by Dr. Nestmann, a psychiatrist who was engaged by Monsanto to examine many of the workers exposed to the contaminants in the March 1949 explosion. His reports, Plaintiffs' Exhibit 1779, clearly describe these workers as being afflicted with moderately severe or severe psychoneurosis.

Plaintiffs' Exhibit 1754 dated November 18, 1955, shows (page 3) that the Monsanto people discussed and were quite concerned about these findings of Dr. Nestmann (parenthetically it also shows that Monsanto knew how to distill 2,4,5-T so as to get rid of the chloracne agent (they didn't call it dioxin at that time) having been so informed by the German scientists but they decided not to do so).

Plaintiffs' Exhibit 1752 discusses their knowledge and their use of Dr. Suskind as an expert witness and their comparison of the problems with their workers with the problems that the people had at BASF.

The testimony of Dr. Suskind on March 6, 1986, addresses the fact that Monsanto amended Dr. Nestmann's report and except for one or two workers submitted reports which omitted the findings of Dr. Nestmann about the severe psychoneurosis.

The next area of fraud deals with the fact that Dr. Suskind who examined a group of 36 workers in 1949 reexamined this same group of workers in 1953 and did a follow-up examination in 1979 which resulted in the JAMA publication of 1984, the Suskind-Hertzberg study.

The significance of this material is that Dr. Suskind found in his 1953 examination that 29 of the 36 examined had problems in addition to chloracne. He reexamined these 36 workers in 1953 and found that of the 29 with complaints in addition to chloracne, 27 of these 29 continued to have these same problems. He published, however, over a period of years this statement that only a few of the workers continued to complain of these problems. Clearly, 27 out of 29 is not a few.

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In his 1979 reexamination of these workers, 13 of the original 36 were dead and their average age at death was only 54. Plaintiffs' Exhibit 1748.

Of those survivors that were found and reexamined, 10 of the 11 examined had the same kind of complaints.

Finally, I am enclosing a copy of Plaintiffs' Exhibit 2179 which is a study protocol dated November 1984. The study, in fact, took place of the workers at the Krummrich Plant in Sauget, Illinois, and it was completed. During the course of the trial, many of the doctors engaged in that study testified in behalf of Monsanto having examined the plaintiffs for various health effects. One of these investigators is Dr. James R. Webster. I am enclosing Plaintiffs' Exhibit 2096 which indicates his bias against finding anything wrong with the workers from any kind of dioxin exposure. During the course of this trial, we were assured that the results of this study would be published shortly. The last word I had in May of 1987 is that the final draft was at that time being edited. To this date, to my knowledge, the results of the study have never been released. You might want to inquire of Monsanto as to the results because my own examination of some medical records shown to us indicated that there were a number of workers at the Krummrich Plant who had significant problems. Plaintiffs' Exhibit 1507A is enclosed.

Yours truly,



RC:md

Encs.

cc: Carol Van Strum
Dr. med. Friedemann Rohleder MPH (USA)
Prof. Alastair Hay
Monty Hollow
Timothy J. Cuddinghan