

IN THE MATTER OF:

Schlumberger Industries, Inc.
vs.
American Insurance Company, et al.

Cause No. 95-CP-23-3135 (HFF)

COPY

Deposition of Thomas M. Bistline
June 16, 1998

INTERIM COURT REPORTING
811 Dallas, Suite 1150
Houston, Texas 77002-5912
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1 IN THE COURT OF COMMON PLEAS

2 STATE OF SOUTH CAROLINA

3 COUNTY OF GREENVILLE

4
5 SCHLUMBERGER INDUSTRIES, INC.,

6
7 Plaintiff,

8
9 vs. C.A. NO. 95-CP-23-3135 (HFF)

10
11 AMERICAN INSURANCE COMPANY,

12 ET AL.,

13
14 Defendants.

15
16 Deposition of THOMAS M. BISTLINE, taken on
17 behalf of the Defendant London Market Insurers, at
18 the offices of Husch & Eppenberger, 100 North
19 Broadway, in the City of St. Louis, State of
20 Missouri, on the 16th day of June, 1998, before Dawn
21 L. McTeer, Registered Professional Reporter and
22 Notary Public.

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1 THOMAS M. BISTLINE,
2 of lawful age, having been first duly sworn to
3 testify the truth, the whole truth, and nothing but
4 the truth in the case aforesaid, deposes and says in
5 reply to oral interrogatories propounded as follows,
6 to-wit:

7 EXAMINATION

8 QUESTIONS BY MR. SEVER:

9 Q: Could you, please, state your name for the
10 record, sir?

11 A: My name is Thomas M. Bistline.

12 Q: Would you spell your last name, please?

13 A: B-I-S-T-L-I-N-E.

14 Q: Good morning, Mr. Bistline. My name is Jay
15 Sever. I represent London Market Insurers also
16 sometimes referred to as Lloyds of London or
17 Lloyds. We are defendants in an insurance coverage
18 suit that is entitled Schlumberger versus American
19 Insurance, et al. We're here today to talk to you
20 about some documents and about your role as records
21 custodian. If you have any questions at all or you
22 need further explanation of anything that I'm trying
23 to put to you, please don't hesitate to ask me to
24 clarify. I see that you are a lawyer, so I don't
25 have to give you the rest of the speech I usually

1 give deponents, most of whom in this case have been
2 over the age of 60. Could I ask you to give your
3 home address, please?

4 A: My home address is 15182 Isleview, one word,
5 I-S-L-E-V-I-E-W, Drive in Chesterfield, Missouri.

6 Q: Your business address, please?

7 A: 10300 Olive Boulevard, Creve Coeur, 63131.
8 I have to look at my business cord. 63166 will
9 work.

10 Q: I see you work for Solutia, Inc.?

11 A: Correct.

12 Q: Who is that?

13 A: Solutia, Inc. is a company that was created
14 on September 1st, 1997, as a spin-off from Monsanto
15 Company. We are the chemical businesses formerly
16 operated by Monsanto.

17 Q: Does Monsanto still have a headquarters here
18 in the St. Louis area?

19 A: Yes.

20 Q: I take it Solutia also has its headquarters
21 in the St. Louis area?

22 A: That's correct.

23 Q: Solutia's headquarters are near this address
24 10300 Olive Boulevard?

25 A: That's our corporate headquarters.

1 Q: You work for the general counsel's office
2 for Solutia?

3 A: Yes.

4 Q: You are an attorney?

5 A: Correct.

6 Q: Your boss is whom?

7 A: Carl Barnickol, B-A-R-N-I-C-K-O-L.

8 Q: His position is general counsel?

9 A: General counsel.

10 Q: How long have you held this position, I
11 guess, since you were created in September 1 of
12 '97? That's the beginning of your position for
13 Solutia. My question goes to how long have you been
14 assistant general counsel?

15 A: I've been assistant general counsel first at
16 Monsanto since September 1, 1986.

17 Q: You were an assistant general counsel for
18 Monsanto Company at that time?

19 A: That's correct.

20 Q: You were based here in St. Louis?

21 A: Correct.

22 Q: Where, by the way, was Monsanto's
23 headquarters?

24 A: 800 North Lindbergh Boulevard in St. Louis.

25 Q: If I may, how far away from that are you

1 now, Solutia?

2 A: Right across Lindbergh Boulevard. Solutia,
3 in fact, occupies what was the west campus of
4 Monsanto.

5 Q: Were you with Monsanto prior to 1986 when
6 you went to the general counsel's office?

7 A: Yes.

8 Q: What did you do then?

9 A: I started with Monsanto in February of
10 1982. I came on as a litigation attorney, and was
11 eventually promoted to assistant general counsel.

12 Q: As a litigation attorney, I take it that you
13 were an adjunct somehow to the general counsel's
14 office?

15 A: We call it the law department, and I've been
16 a member of Monsanto's and now Solutia's law
17 department since February 1982.

18 Q: Between '82 and '86, I take it, that you
19 were actively dealing with cases?

20 A: That's correct.

21 Q: Litigating?

22 A: Correct.

23 Q: After you transferred into the Attorney
24 General, I'm sorry, general counsel's office in
25 1986, what did you do? What was the general nature?

1 A: Let me correct the first part of that
2 question. I've always been, as you phrased it, part
3 of the general counsel's office. As I said earlier,
4 we call that the law department. I've been a member
5 of the Monsanto and now Solutia law department since
6 February 1, 1982. That affiliation does not change.

7 Q: I take it the nature of your duties changed
8 in 1986?

9 A: To an extent.

10 Q: How so?

11 A: When I became assistant general counsel, I
12 inherited some administrative duties that I did not
13 previously have.

14 Q: Were part -- was one of those administrative
15 duties dealing in some manner with production of
16 Monsanto records?

17 A: No, I had that assignment prior to becoming
18 assistant general counsel.

19 Q: You did. When did you take on that
20 assignment?

21 A: Well, to some extent, I've had it since I
22 began with Monsanto. Specifically with respect to
23 documents relating to PCBs, if that's where we're
24 headed, I inherited that responsibility in January
25 of 1982. I think I misspoke on the date I became

1 assistant general counsel. It was '88, not '86.

2 Q: Just so I'm clear, you joined Monsanto as a
3 lawyer?

4 A: That's correct.

5 Q: That was in 1982?

6 A: That's correct.

7 Q: You held a position in the law department,
8 but as a litigation attorney, between '82 and '88?

9 A: First as a litigation attorney from '82
10 until about '83, and then as assistant litigation
11 counsel for a year, and then as litigation counsel
12 for a couple of years before I became assistant
13 general counsel.

14 Q: Now, let's go ahead and get to what happened
15 in 1985 when you were given the job to oversee the
16 production of PCB records. What was the nature of
17 that job change?

18 A: We have had PCB litigation pending.
19 Monsanto has had PCB litigation pending for a number
20 of years. The attorney who had previously been
21 responsible for those cases, Mr. Joseph Nassif, was
22 involved in a large trial, and our supervisor at the
23 time asked me if I would take on responsibility for
24 the PCB cases that were then pending in January '85.

25 Q: Mr. Nassif's last name was spelled how?

1 A: N-A-S-S-I-F.

2 Q: Your supervisor at the time was?

3 A: Robert Barends.

4 Q: He was general counsel?

5 A: No, he was associate general counsel at
6 Monsanto Company.

7 Q: Let me ask you, when you took on that role,
8 what did you do?

9 A: After I said yes?

10 Q: After you said yes.

11 A: I went about familiarizing myself with what
12 cases were pending, what information Monsanto had by
13 way of documents and other personal type sources of
14 information. I spent an extensive amount of time
15 with counsel representing Monsanto around the
16 country to learn the status of the various cases
17 that were then pending and what strategy had been
18 put in place. In general, took over the day-to-day
19 management and responsibilities for the litigation
20 as it existed then.

21 Q: I'm talking now specifically about your role
22 in dealing with document productions. I take it it
23 was a larger role dealing with the ongoing cases?

24 A: Right. When I say I took responsibility for
25 the PCB cases, that entailed, as part of the duty,

1 becoming custodian of Monsanto's documents relating
2 to PCBs.

3 Q: I see. There was a larger role in actually
4 dealing with PCB litigation?

5 A: That's correct.

6 Q: I take it that Monsanto was a party in some
7 of this litigation?

8 A: Yes, that's correct.

9 Q: Were you involved in any way in litigation
10 in which Monsanto was not a party?

11 MS. RUTTER: At what time, counsel?

12 MR. SEVER: During the period we're talking
13 here after 1985.

14 A: Only to the extent that Monsanto would
15 receive subpoenas seeking production of documents or
16 other information to which we would respond as a
17 third party.

18 Q: (By Mr. Sever) Were you actively
19 representing Monsanto when Monsanto was a party?

20 A: Again, we're talking about PCB cases?

21 Q: Yes, I'm sorry.

22 A: I was in-house counsel for Monsanto. I had
23 responsibility for the management of the cases.

24 Q: You held this position and fulfilled these
25 duties for how long?

1 A: By these duties you mean with respect to
2 PCB?

3 Q: PCBs cases.

4 A: Since January 1, 1985.

5 Q: Continuing through today?

6 A: That's correct.

7 Q: So does Solutia have some relationship with
8 the PCB cases?

9 A: By agreement with Monsanto, at the time that
10 Solutia was created, a spin-off, we have undertaken
11 to manage and direct the litigation. Monsanto has
12 given us the authority to do that in our name just
13 as I was doing it when I was a Monsanto employee.

14 Q: Now, we've given you some documents here to
15 look at, which we thank you for taking the time to
16 do today this morning. Let me ask you did you bring
17 anything with you to the deposition?

18 A: No.

19 Q: Do you have indexes of the records that you
20 are custodian over, PCB records?

21 A: It depends on how you want to define index.
22 I don't have a list of documents written down, no.

23 Q: You have a data base?

24 A: Yes.

25 Q: When you were going to look for a group of

1 documents, say, in this collection of PCB oriented
2 records, you refer to your data base?

3 A: That's the source of the documents. That's
4 correct.

5 Q: Are the PCB related documents kept by
6 Solutia, or are they still in the Monsanto building?

7 A: The originals of the documents are stored at
8 an off-site facility. We call it the records
9 center, which is, I guess, a couple of miles within
10 the Monsanto campus. They're in boxes in that
11 facility.

12 Q: I'm sorry. It was the records center?

13 A: Records center, yes.

14 Q: Do you have access to information which
15 would inform you as to how many times these records
16 or subsets of these records have been produced to
17 other parties?

18 MS. RUTTER: I'm going to object to that
19 question, counsel. I think you're getting into an
20 area that involves privilege and work product.

21 MR. SEVER: Well, let me tell you what I'm
22 after here. What I'm trying to establish is that,
23 when we're dealing with these productions, these
24 earlier productions in the Whitfield action and
25 productions that may have predated his fulfilling

1 his role as custodian of PCB records, in general,
2 that he has some way, if necessary, to go back and
3 see what was produced and to who. That's all I'm
4 trying to get at. I don't see anything privileged
5 there. It is merely a custodian type of question.

6 MS. RUTTER: Since this gets into or at
7 least very close to an area of privilege, I think I
8 better consult briefly with my client in relation to
9 this issue.

10 (Discussion off the record.)

11 MS. RUTTER: I think Mr. Bistline can answer
12 the question that you have posed. May the court
13 reporter read it back.

14 (The requested portion of the record read
15 by the reporter.)

16 A: The answer to that question is yes.

17 Q: (By Mr. Sever) Let me ask you now, because
18 I think we'll get to it later, are you aware there
19 has been some litigation involving Schlumberger that
20 is previous to this insurance coverage litigation
21 that you're currently here for?

22 A: Specifically with regard to?

23 Q: PCBs.

24 A: Yes, I'm aware of that.

25 Q: I'll represent to you that there is an

1 action that was filed in 1976 that we refer to as,
2 among ourselves, the Whitfield action. Are you,
3 generally, familiar with the litigation I'm talking
4 about?

5 A: I'm familiar with the Whitfield litigation,
6 although I don't think it was filed in 1976. It was
7 1985.

8 MR. GEDDIE: Actually it was December of
9 '84.

10 A: Yes, I'm familiar with the Whitfield action.

11 Q: (By Mr. Sever) I appreciate it. Are you
12 also aware that Monsanto made a production of sorts
13 in that action?

14 A: Yes.

15 MS. RUTTER: Objection to the form of the
16 question.

17 Q: (By Mr. Sever) Are you privy to -- are you
18 able to by looking at your records determine what
19 documents were produced in the Whitfield action by
20 Monsanto?

21 A: Yes.

22 Q: Did you, by the way, have active management
23 of Monsanto's role in that case?

24 A: Yes.

25 Q: So that, even though the filing of the suit

1 predated your taking over for Mr. Nassif, you
2 actually took over management of the case after he
3 left, correct?

4 A: That's correct.

5 Q: Did Mr. Nassif have a role with respect to
6 the Whitfield case?

7 A: He may have. I don't recall precisely what
8 status the case was at the time.

9 Q: I can probably short-circuit that. Who was
10 it that was responsible for the document production,
11 the documents that were eventually produced in the
12 Whitfield action at Monsanto headquarters?

13 A: I was the attorney in charge of the defense
14 of Monsanto at Monsanto in the Whitfield case on and
15 after January of 1985.

16 Q: I don't know when the actual production was
17 made. Do you recall whether you were the person
18 that was overseeing production of documents in that
19 case?

20 A: Yes, I was.

21 Q: That's all I wanted to know. Let's get to
22 the records that you looked at this morning. I take
23 it you were given two boxes of records and a few
24 other stacks of documents and that you looked
25 through everything that you were given this morning?

1 A: I didn't look at every page. I, generally,
2 looked through the collections of documents.

3 Q: Now, I gave you two boxes of documents. I
4 see from looking at the documents that you have
5 brought back into the deposition that you were nice
6 enough or someone was nice enough to put the
7 documents into different files. Were you
8 responsible for that?

9 A: It was done at my request. I didn't do it
10 personally.

11 Q: What I'm going to do is, in the process of
12 asking you to identify whether these records are
13 Monsanto business records or kept in the ordinary
14 course of Monsanto's business, go through these
15 files individually so that we can determine, I
16 guess, whether you can authenticate them.

17 A: Fine.

18 Q: Let me ask you one more general question
19 before we start going through these. I take it that
20 the labeling of the files that I'm about to go
21 through was done based on the subject matter of the
22 contents that are now in the files?

23 A: I'm not sure what you mean by subject
24 matter. Essentially what we did was go through the
25 two boxes of files. Based upon a fairly quick

1 review, tried to separate them in to documents that
2 we produced in response to the subpoena in this
3 action, documents, which we may not have produced
4 them, we believe are Monsanto documents and either
5 those we can't identify or are not Monsanto
6 documents.

7 Q: Were you responsible for responding to a
8 subpoena that was served in connection with this
9 action to Monsanto last year sometime?

10 A: I believe in April of '97, yes.

11 Q: Monsanto bates stamped and produced a group
12 of documents?

13 A: Yes.

14 Q: Do you recollect approximately how many
15 boxes of documents that was?

16 A: We produced, I think, around 40 boxes of
17 documents, 110,000 pages or something in that
18 vicinity.

19 Q: I think that's close to accurate. I'll
20 represent to you what we've tried to do is cull
21 through those for those that we're interested in in
22 this case. That's what we have here today. Let me
23 ask you, there's a bates number on some of these
24 documents that starts letters MONS. Is that
25 Monsanto's bates number?

1 A: Yes, that is Monsanto.

2 Q: Are these documents bates stamped with any
3 other type of bates number, or is this the only one,
4 MONS?

5 A: You mean a Monsanto number, one that
6 originated at Monsanto?

7 Q: Yes.

8 A: I believe some of the documents may bear one
9 that was applied to them by Monsanto for the
10 Whitfield case.

11 Q: Does that begin with the letter designation
12 SHL?

13 A: No.

14 Q: The documents that -- all of the documents
15 that you produced in response to this 1997 subpoena
16 bore the MONS designation prior to the bates number?

17 A: That's correct. Not all of them. Let's see
18 if I can separate this out. Maybe I misspoke in my
19 last answer. The documents -- most of the
20 documents, I would say 34, 35 boxes of the documents
21 we produced last year, bore the MONS number. There
22 were five or six boxes of documents which were
23 produced somewhat later than the first 34 or 35
24 that, I think, bore the SHL prefix.

25 Q: I think that's accurate.

1 A: The documents we produced in response had
2 the MONS or SHL prefix on them. Sorry for the
3 confusion.

4 Q: I'm going to deal with those, that
5 production and those series of documents first.
6 Then we'll go on to the other documents.

7 A: Fine.

8 Q: All right. The first file I have here,
9 which we're going to go ahead and mark as Exhibit A
10 to the deposition, is labeled, "Manufacturing Specs
11 Monsanto Docs." If you could look at these
12 documents for me and ascertain whether these are
13 documents kept in the ordinary course of Monsanto's
14 business, I would appreciate it.

15 (Bistline Deposition Exhibit No. 1 marked for
16 identification.)

17 Q: (By Mr. Sever) Have you had a chance to
18 look at Exhibit 1?

19 A: Yes, I have.

20 Q: Are those records that are kept in the
21 ordinary course of Monsanto's business?

22 A: Yes.

23 Q: Those are records that are currently kept
24 under your custodianship?

25 A: That's correct.

1 Q: They were records that were produced in
2 response to the 1997 subpoena?

3 A: Yes.

4 Q: Exhibit 2 here is a folder labeled,
5 "Labels." There appears to be two types of bates
6 number ranges contained in this exhibit, one being
7 the MONS number that we referred to earlier and the
8 other being the SHL number. I will ask you, though,
9 to do the same review as you did for Exhibit 1,
10 please.

11 (Bistline Deposition Exhibit No. 2 marked for
12 identification.)

13 Q: (By Mr. Sever) Have you had a chance to
14 review that stack?

15 A: Yes, I have.

16 Q: Are those documents kept in the ordinary
17 course of Monsanto's business?

18 A: Yes.

19 Q: They were produced, also, in response to the
20 1997 subpoena?

21 A: Yes.

22 Q: The Exhibit 2 appears to contain a group of
23 Monsanto labels, correct?

24 A: That's correct.

25 Q: Most of those labels are for the product

1 Arochlor?

2 A: I believe they all relate in one form or
3 another, at least as far as I could tell, to
4 Arochlor products.

5 Q: Is there a way for us to gauge a date by
6 referencing to or looking at the document itself?

7 A: There may be some indications on some of
8 these labels. The others on the date which the
9 label was current is not obvious just by looking at
10 it.

11 Q: As records custodian, are you someone who is
12 in a position to know the particular date of labels
13 of Arochlor?

14 A: I couldn't look at the label and tell you
15 with any degree of confidence when it was used.
16 That would be something that would require a great
17 deal of research.

18 Q: Is there a person at Monsanto that you would
19 deem most knowledgeable about that subject matter?

20 A: No.

21 Q: Not at Monsanto?

22 A: No.

23 Q: What about at Solutia?

24 A: Not even at Solutia.

25 Q: It would be someone who is retired, I

1 suppose?

2 A: Perhaps some retired person could look at
3 it.

4 Q: Do you know who I'm referring to when I say
5 Mr. Pappageorge?

6 A: Yes I do.

7 Q: Would he be someone that would be most
8 knowledgeable?

9 A: Mr. Pappageorge would be for the types of
10 warnings and the dates in which those warnings were
11 current. I don't think even Mr. Pappageorge will be
12 able to look at a particular label and say I know
13 this label was used on this type of container during
14 these dates. I'm not sure there's anybody that
15 could give you that kind of encyclopedic
16 information.

17 Q: You're not familiar with the document that
18 places the labels with dates somehow?

19 A: Not that I'm aware.

20 (Bistline Deposition Exhibit No. 3 marked for
21 identification.)

22 Q: (By Mr. Sever) Exhibit 3 is a folder
23 labeled, "Monsanto Labels," but with "(Re: PCBs)."
24 I'll hand you this and ask you to do the same thing,
25 if you would, and note that I will ask you whether

1 any of them are related to PCBs. Have you had a
2 chance to look at Exhibit 3?

3 A: Yes, I have.

4 Q: Now, are those records that are kept in
5 Monsanto's ordinary course of business?

6 A: Yes, they appear to be.

7 Q: Again, those are labels of various chemicals
8 manufactured by Monsanto?

9 A: They are labels. Not all of them refer to
10 chemicals. Presumably, all were used on Monsanto
11 products.

12 Q: Some of those, I saw at least one, I think,
13 are Arochlor labels, correct?

14 A: Yes, there is one in here that specifically
15 refers to Arochlor.

16 Q: The label brings me to a point I was going
17 to ask you before. Do you organize your files in a
18 way that you're able to tell which files contain
19 labels, for example? Would you be able to go
20 directly to a label file?

21 A: That wouldn't be how I would do it.

22 Q: Are they in a particular form of
23 organization that you can describe generally?

24 A: The originals of the documents are, as I
25 said before, stored in the records center, boxes

1 which they were sent to the records center.

2 Q: We talked briefly about the MONS number and
3 the SHL designation bates number. Were these
4 documents bates stamped with the MONS and SHL bates
5 numbers specifically for this production, the one
6 that was made in 1997?

7 A: The SHL numbers were specific to this
8 subpoena or Monsanto's response to this subpoena.

9 Q: The MONS, those documents had been bates
10 stamped previous to the issuance of the subpoena?

11 A: That's correct.

12 Q: Did you know when those documents were first
13 bates stamped and put together?

14 A: First stamped with the MONS number?

15 Q: Yes.

16 A: I think about in the '94 to '95 time period.

17 Q: Was it in connection with another
18 litigation?

19 A: Yes.

20 Q: Are you at liberty to tell us which
21 litigation that was?

22 A: I don't recall offhand which litigation the
23 MONS number first was used in. I just can't recall
24 at this point.

25 Q: That was, though, a production that was made

1 as part of another litigation?

2 A: That's correct.

3 Q: When this production, the production in
4 response to the 1997 subpoena was made, did Monsanto
5 tender the entirety of that production?

6 A: Of?

7 Q: Of the previous production with the MONS
8 numbers.

9 A: I understand what you're saying. I believe
10 the answer to that is yes. That's correct.

11 Q: All right. Exhibit 4 is a file folder that
12 is marked, "Brochures (Monsanto Documents)." Again,
13 there are both MONS bates documents and SHL bates
14 stamped documents. I'll have you do the same thing
15 with these.

16 A: Just for your information, I'm putting these
17 yellow tabs here. The pages are just illegible.

18 MS. RUTTER: Which page ranges are those?

19 THE WITNESS: Page MONS-076746 and 747.

20 Q: (By Mr. Sever) Have you had a chance to
21 review Exhibit 4?

22 A: I have flipped through the pages. As you
23 can see, there are lots of pages in this exhibit.

24 Q: Are you able to tell from your review of the
25 documents contained in the file folder Exhibit 4

1 whether those are documents maintained in the
2 ordinary course of Monsanto's business?

3 A: Yes, they appear to be.

4 Q: You were nice enough to indicate a couple of
5 documents, I believe, bates range MONS-076746
6 through 747 that were for some reason illegible?

7 A: That's correct.

8 Q: Did you notice whether those documents also
9 bore a bates range number at the bottom?

10 A: The only number on either of those two pages
11 is the number that I called back to you, just a MONS
12 number.

13 Q: Would that indicate to you, while they were
14 illegible, that those are documents, nevertheless,
15 kept in the ordinary course of Monsanto's business?

16 A: Yes, that's correct.

17 (Bistline Deposition Exhibit No. 4 marked for
18 identification.)

19 Q: (By Mr. Sever) We're going to make as
20 Exhibit 5 a folder containing documents that is
21 labeled, "Safe Handling (In Monsanto's file)." I
22 would ask you, please, again to do the same review.

23 (Bistline Deposition Exhibit Nos. 5, 6, 7
24 marked for identification.)

25 Q: (By Mr. Sever) Have you had a chance to

1 look at Exhibit 5?

2 A: Yes, I have.

3 Q: Are those all records that are kept in the
4 ordinary course of Monsanto's business?

5 A: They appear to be documents that were taken
6 from Monsanto's files, yes.

7 Q: Some of those that were produced in response
8 to the 1997 subpoena, correct?

9 A: Yes, I believe they were all produced in
10 response to the 1997.

11 Q: I think we've established all MONS and SHL
12 documents were produced in response to the 1997
13 subpoena?

14 A: That's correct.

15 Q: I've got to separately ask you about these
16 files, because we're going to maintain them in
17 separate exhibits. I apologize for the repetition.
18 Let me show you Exhibit 6. Before I do that, let me
19 ask you about the SHL documents briefly. I take it
20 SHL designates Schlumberger?

21 A: Right. That was the intent.

22 Q: The reason that these documents were
23 designated Schlumberger was what, the SHL
24 designation?

25 A: They were documents which, as a result of

1 conversations among counsel, that were agreed to be
2 produced in addition to documents MONS.

3 Q: Does Monsanto in its records kept at the
4 records center have a file or group of files that is
5 designated Schlumberger?

6 A: Not that I know of, no.

7 Q: Let me show you Exhibit 6. It's a file
8 labeled, "MSDS Product Questionnaire Shipping
9 (Monsanto Docs)." If you could take a look at that,
10 please.

11 A: Yes.

12 Q: Are those documents kept by Monsanto in the
13 ordinary course of business?

14 A: Yes, they appear to be.

15 Q: Exhibit 7 is another file folder that
16 contained a stack of documents. The file folder is
17 labeled, "Reports (Including Drafts) Monsanto
18 Docs)." I'd ask you to take a look at these
19 documents, please.

20 (Bistline Deposition Exhibit Nos. 8 through 16
21 marked for identification.)

22 Q: (By Mr. Sever) Have you had a chance to
23 review Exhibit 7?

24 A: Yes, I have.

25 Q: Are those all documents that are kept in the

1 ordinary course of business by Monsanto?

2 A: Yes, they appear to be.

3 Q: The SHL documents that we were talking about
4 a second ago, was it you that went in and found
5 those documents for their production?

6 A: I didn't do it personally, no.

7 Q: Someone at your office did?

8 A: It was done -- there was a clerical person
9 at Monsanto. The documents are reviewed for
10 production by outside counsel.

11 Q: The clerical person at Monsanto is the
12 person who went and looked for the documents?

13 A: She conducted the search.

14 Q: She did pursuant to some instructions that
15 came from outside counsel?

16 A: I don't recall whether I gave the
17 instructions or whether counsel. From either me or
18 counsel.

19 Q: I take it from your previous testimony that
20 the instructions that came that led to the searching
21 for those documents came as a result of discussions
22 between counsel involved in this litigation and
23 Monsanto's outside counsel?

24 A: That's correct.

25 Q: Were you given written instructions as to

1 what you should look for in connection with that
2 production?

3 A: I wasn't given any instructions. I don't
4 believe that the instructions to my clerical person
5 were in writing. I believe it was a conversation.

6 Q: So there's nothing that you could give me
7 that would show me what you were looking for?

8 A: With response to the subpoena indicates what
9 we looked for and what we produced.

10 Q: Fair enough. Exhibit 8, again, is a
11 grouping of documents, including some that fall into
12 this SHL category. It is the file that is labeled,
13 "Correspondence, C-O-R-R-E-S, Memos, Call Reports,
14 Et Cetera, (Monsanto Docs)." There's a post-it on
15 the first document which bears bates number
16 MONS-096401. That says, "Customer Notification
17 Index." I'll ask you, after you have a chance to
18 look at these and determine whether they are kept in
19 the ordinary course of business, the import, if any,
20 of that post-it.

21 (Bistline Deposition Exhibit Nos. 17, 18 marked
22 for identification.)

23 Q: (By Mr. Sever) Have you had a chance to
24 review Exhibit 8?

25 A: Yes, I have.

1 Q: Are all of those documents documents
2 maintained by Monsanto in the ordinary course of
3 Monsanto's business?

4 A: Yes, they appear to be.

5 Q: You are records custodian of all those
6 documents?

7 A: That's correct.

8 Q: Exhibit 9 is another file folder labeled,
9 "Correspondence, Memos, Et Cetera (In Monsanto's
10 files)." We have both MONS series numbers contained
11 in this file and SHL series documents in this file.
12 If you could look at that, please. Have you had a
13 chance to review the documents contained in the file
14 folder marked Exhibit 9?

15 A: Yes, I have.

16 Q: Are those all documents kept in Monsanto's
17 ordinary course of business?

18 A: They appear to be.

19 Q: You're the records custodian of those
20 documents?

21 A: Yes.

22 Q: I'll show you Exhibit 10, another file
23 folder containing documents, both documents with the
24 MONS bate stamp on them and SHL. This folder is
25 labeled, "Toxicological Studies, abbreviated T-O-X,

1 for Monsanto (Monsanto Docs)." If you could,
2 please, take a look at this file. Have you had a
3 chance to review Exhibit 10?

4 A: Yes, I have.

5 Q: Again, those are all documents that are
6 maintained in the ordinary course of Monsanto's
7 business?

8 A: That's correct.

9 Q: You're the records custodian of those
10 documents?

11 A: Yes, I am.

12 Q: Exhibit 11 is another file folder labeled,
13 "Toxicity (In Monsanto File)," and contains both
14 MONS series documents and SHL series documents.
15 Again, I'll ask you to look at this file, please.
16 Have you had a chance to look at Exhibit 11?

17 A: Yes, I have.

18 Q: Those are all documents that are kept in
19 Monsanto's ordinary course of business?

20 A: Yes, they are.

21 Q: You're the records custodian of those
22 documents?

23 A: I am.

24 Q: I neglected to ask you going back to Exhibit
25 9, there was a post-it on the first document that

1 said something about product list. I apologize.
2 Does the designation of this document as a customer
3 notification index affect your testimony at all?

4 A: No.

5 Q: What is this document, if you know?

6 A: I could just tell you what it appears to
7 be. It appears to be a list of customer information
8 letters that Monsanto has sent to its PCB customers.

9 Q: With your permission, I'm going to take this
10 post-it off. I don't think it's pertinent to your
11 testimony. Do you agree?

12 A: That's right.

13 MS. RUTTER: Counsel, as a way of
14 background, you're aware we didn't receive these
15 documents until yesterday. We went through them
16 very hastily.

17 MR. SEVER: I didn't want to confuse the
18 record.

19 Q: (By Mr. Sever) Exhibit 12 is a file folder
20 labeled, "Marketing/Sales Strategies" containing a
21 few documents that all appear to be the MONS
22 series. Have you had a chance to look at Exhibit
23 12?

24 A: Yes, I have.

25 Q: Those are all documents kept by Monsanto in

1 the ordinary course of business?

2 A: Yes.

3 Q: You are the custodian of those records?

4 A: That's correct.

5 Q: Exhibit 13, which I'll hand you, is another
6 file folder containing SHL series documents. The
7 file folder is labeled, "Sales to Sangamo,"
8 S-A-N-G-A-M-O. You've had a chance to review those
9 documents?

10 A: Yes, I have.

11 Q: Those are kept in the ordinary course of
12 Monsanto's business?

13 A: That's correct.

14 Q: Do you have any idea where those documents
15 were obtained? Do you have special sales files that
16 might designate Sangamo?

17 A: Not that I'm aware of.

18 Q: How does Monsanto keep its historic records
19 relating to sales of Arochlor, if you know?

20 A: They're kept in a number of ways. These
21 documents, some of the documents in Exhibit 13, are
22 actual invoices that would reflect sales. Other
23 records that pertain to sales would be more of a
24 summary year end or month end summary that would
25 compile sales by customer, by product. Those would

1 also be records that we would refer to when looking
2 for sales to a particular customer.

3 Q: Are those sales records, any of those that
4 you referred to, kept as part of this PCB collection
5 of documents that we've referred?

6 A: Those records that pertain to PCBs, yes,
7 they're part of the PCB archives.

8 Q: I notice documents you looked at bear the
9 SHL as opposed to MONS bates designation?

10 A: That's correct.

11 Q: These were documents that were not made as
12 part of the original production of the MONS series?

13 A: That's correct.

14 Q: Are these documents that are contained
15 within the documents that Monsanto has designated as
16 PCB related?

17 A: Yes.

18 Q: At what point in time did Monsanto organize
19 its documents into the PCB related documents that
20 we're referring to?

21 A: That's been an ongoing process, Mr. Sever.
22 Originally documents were collected in the early
23 1970s in response to litigation that was then
24 pending. Over the years, as other cases were filed,
25 additional collections of documents that had been

1 created subsequent to the earlier litigation were
2 collected. As you may know, Monsanto exited the PCB
3 business in 1977, and thereafter the law department
4 undertook the task of consolidating in one place all
5 of the documents that we could then find that were
6 relative to our manufacture and sale of PCBs.

7 Q: Would that effort have included within it
8 getting documents relating to Monsanto's marketing,
9 actual marketing visits, they paid on customers
10 relating to the sale of PCBs?

11 A: If those documents were still in existence
12 in files relating to PCB products, they would have
13 been collected, yes.

14 Q: Is it the case that, therefore, any document
15 that would have been in existence at the time that
16 we're talking about, I take it, after 1977?

17 A: As I said before, the document collection
18 occurred at various points in time during the 1970s.

19 Q: Let me see if I can understand this. Do you
20 know when the effort was made to gather the Sangamo
21 related documents?

22 A: I don't believe an effort was ever made
23 specifically to gather Sangamo documents. The
24 documents relating to Sangamo would have been
25 collected along with documents relating to other

1 Monsanto PCB customers whenever search and
2 collection effort was made.

3 Q: You don't know precisely when that is?

4 A: It could have been at any time subsequent
5 to, I guess, about 1971 when the first sweep, if you
6 want to use that term, was made.

7 Q: Exhibit 14 is another file folder labeled,
8 "Salesman's Manual" with a collection of documents
9 bearing a MONS series bates number. I'll ask you to
10 look at this, please. Are those documents all kept
11 in the ordinary course of Monsanto's business?

12 A: Yes, this document is kept in the ordinary
13 course of Monsanto's business.

14 Q: Those are documents over which you are the
15 records custodian?

16 A: That's correct.

17 Q: Exhibit 15 is another file folder labeled,
18 "PCB Losses/Environmental Assessments" contains
19 some more documents bearing the MONS designation.
20 If you could take a look at this exhibit, please.
21 Have you had a chance to review Exhibit 15?

22 A: Yes.

23 Q: All those documents, are they maintained by
24 Monsanto in the ordinary course of business?

25 A: Yes.

1 Q: You are the records custodian of those
2 records?

3 A: That's correct.

4 Q: Exhibit 16 is another file folder labeled
5 with, "? (Probably Monsanto)." By the way, I take
6 it your counsel was nice enough to label the file
7 folders. Who labeled these just for the record?

8 MS. RUTTER: Someone who works for me.

9 MR. SEVER: At counsel's direction,
10 nonetheless?

11 MS. RUTTER: Yes.

12 Q: (By Mr. Sever) Because there may be some
13 question here, I see it's been labeled, "Probably
14 Monsanto." I'll ask you if you can tell me which,
15 if any, of these documents are not kept by Monsanto
16 in the ordinary course of business that might
17 short-circuit this?

18 A: Mr. Sever, all of these documents were
19 documents that were found within Monsanto's files
20 relating to PCBs. I think the question mark was
21 whether these were documents created by Monsanto's
22 employees or documents outside of Monsanto that
23 found their way into the files.

24 Q: You were at least, with respect to documents
25 in Exhibit 16, unable to tell whether Monsanto

1 created those documents?

2 A: That's correct.

3 Q: However, those documents are kept in the
4 ordinary course of business at Monsanto?

5 A: Yes, they are.

6 Q: They are, nevertheless, Monsanto's business
7 records?

8 A: They were found within Monsanto's files kept
9 within the ordinary course of business.

10 Q: Is there some reason they wouldn't be
11 Monsanto's business records?

12 A: Monsanto didn't create them.

13 Q: That's the distinction.

14 A: Or may not have created them more precisely.

15 Q: You are records custodian of those files?

16 A: That's correct.

17 Q: We have finished with the MONS or SHL
18 designated stamped documents. We're going to move
19 into some additional documents that, I believe, were
20 part of previous Monsanto productions bearing
21 different bates numbers. The first series I'm going
22 to give you bears the designation bates number SMO
23 before each of the numbers. When you were reviewing
24 them, someone was kind enough to note those
25 documents which do not have -- which are not

1 Monsanto documents specifically, but are
2 non-Monsanto attachments. I think the most prudent
3 way for us to go about this is for me to give you
4 the bates numbers of those non-Monsanto attachments
5 and ask you whether, as to all of the remainder of
6 the documents, they are, in fact, Monsanto
7 documents?

8 A: Okay.

9 Q: For the record, the bates numbers of those
10 marked non-Monsanto attachments is SMO-021609,
11 SMO-021610.

12 A: I think it's 618, counsel.

13 Q: 610 I have before 618. Did I miss one?

14 A: No, you're correct.

15 Q: The next one is 021618. The next one is
16 SMO-021634. The next one is SMO-0216979. The final
17 one is SMO-021485.

18 A: The second to the last IS 021679.

19 Q: 021679, rather than 6979, is the second to
20 the last one. Have you had a chance to review the
21 documents we were just calling out?

22 A: I looked at them, the specific ones that you
23 called out.

24 Q: Sure. My question for you is, save for
25 those documents bearing the bates numbers that we

1 just read, are the remainder of the documents
2 contained in the file folder marked as Exhibit 17
3 documents which are kept in the ordinary course of
4 Monsanto's business?

5 A: They appear to be, yes.

6 Q: Those would be records that you are the
7 custodian over?

8 A: That's correct.

9 Q: The only exception to those being, again,
10 those with bates numbers that we just read, correct?

11 A: The documents with bates numbers that we
12 read typically are attachments to other documents
13 that appear in the file. Everything that --

14 Q: Just to be clear, you wouldn't be keeping
15 attachments in your file. Those would not be in the
16 Monsanto files?

17 A: If they were attached to Monsanto documents
18 that were not in Monsanto's files, yes, they would
19 be in Monsanto's files.

20 Q: It may be Monsanto keeps the attachments in
21 their files as well. It's just they're not Monsanto
22 documents?

23 A: These were documents that were not created
24 by Monsanto.

25 Q: Nevertheless, as to these non-Monsanto

1 attachments, the documents may be kept in Monsanto's
2 record collection?

3 A: That's correct.

4 Q: In fact, all of the documents in Exhibit 17
5 are, in fact, kept in the ordinary course of
6 business by Monsanto?

7 A: I'm looking at them right now.

8 Q: I'll try to repeat my question. Is it the
9 case all of the documents in Exhibit 17 are those
10 that are kept in the ordinary course of Monsanto's
11 business?

12 A: For the most part, that's correct. However,
13 there are several documents, and I'll read out the
14 bates numbers if you want.

15 Q: Certainly. We may want to remove them from
16 the exhibit, so that perhaps what we should do is go
17 through them individually, if you wouldn't mind.

18 A: The first document that I see that I have no
19 indication from the face of the document that it was
20 taken from Monsanto's files is SMO-027875 through
21 027879. I say that I can't determine whether this
22 was taken from Monsanto's files, this particular
23 document, because it doesn't have on the document
24 itself a number that's associated with a Monsanto
25 document production. It may be that the Monsanto

1 number has been covered over. I just can't tell
2 you. What I can tell you is this doesn't have a
3 Monsanto number on it.

4 Q: Do you recognize the subject matter
5 addressed in the document itself?

6 A: It appears to be a draft of a letter that
7 was sent by Monsanto with a signature of Elmer P.
8 Wheeler to a list of customers in March of 1969.

9 Q: Elmer P. Wheeler is a previous Monsanto
10 employee?

11 A: He was a Monsanto employee. That's correct.

12 Q: Do you have any reason to doubt the
13 authenticity of the copy of the letter you have
14 here?

15 A: Just by looking at it, I don't. I couldn't
16 affirmatively tell you it is. It appears to be.

17 Q: Let's go ahead and move on to the next one
18 you have a question about.

19 A: The next one that I can't tell is number
20 SMO-0006129.

21 Q: Are you able to determine from the subject
22 matter of that document whether it appears to be a
23 Monsanto created document?

24 A: This one I can't tell you. The next
25 document is numbered SMO-026154 through 026161.

1 Again --

2 Q: This document appears to be a series of
3 Monsanto invoices, perhaps?

4 A: Yes, they appear to be Monsanto invoices.
5 One is a customer problem report. These documents
6 all have Monsanto logos. They appear to be
7 documents from Monsanto. They simply don't have a
8 data base number or production number that would
9 indicate to me that these documents, in fact, came
10 from Monsanto's files.

11 Q: I guess, hence, you're unable to determine
12 whether those are currently kept as Monsanto
13 business records?

14 A: As I sit here, I could not do that.

15 Q: All right. Let's go ahead and leave them in
16 order. We'll just note for the record that these
17 are a problem.

18 A: The next document is a document numbered
19 SMO-027043. It's a one-page document. It appears
20 to be a document, a copy of a memorandum by David
21 Wood, who is a former Monsanto employee, again,
22 lacking a Monsanto number on it. I can't
23 affirmatively represent to you this came from
24 documents that we have in our files currently. The
25 next one is document numbered SMO-026128 through

1 026130. Again, it appears to be a document authored
2 by a David Wood, but lacking a Monsanto
3 identification number.

4 Q: David Wood, again, was a previous Monsanto
5 employee?

6 A: He's a retired Monsanto employee. The next
7 document is a document numbered SMO-027047 and 048.

8 Q: Could you repeat that?

9 A: 027047 and 48. Which appears to be a
10 memorandum authored by Mr. Jim Ali, a former
11 Monsanto employee.

12 Q: That's on Monsanto letterhead?

13 A: That's on Monsanto interoffice memorandum
14 letterhead.

15 Q: Your testimony is you don't know whether
16 that is kept in the ordinary course of Monsanto's
17 business?

18 A: I don't know whether this memorandum came
19 from Monsanto's files.

20 Q: Does that appear to be a copy of a Monsanto
21 document, however?

22 A: It does.

23 Q: Any others?

24 A: That was all in that exhibit.

25 Q: So except for those that we've just

1 identified, and I won't go back through them, it
2 appears that there were one, two, three, four, five,
3 six of them. Except for those six documents, the
4 remainder of those that are contained in Exhibit 17
5 are documents kept in the ordinary course of
6 Monsanto's business?

7 A: That's correct.

8 Q: You're the custodian over those records?

9 A: That's correct.

10 Q: The final exhibit that I have for you, Mr.
11 Bistline, is Exhibit 18 that is labeled,
12 "Unidentified-Monsanto Docs From Box # Group
13 (Sangamo History, Whitfield, et cetera)." I'm going
14 to ask you, if you would, to do the same thing you
15 did with Exhibit 17. I'll point out to you that a
16 number of documents contained in Exhibit 18 have on
17 them stickers or indications that they've been
18 exhibits in other actions. For purposes of what
19 we're doing today, I'd ask you to ignore that
20 sticker. It is not pertinent, I don't think, to
21 what I'm going to ask you. Have you had a chance to
22 look at Exhibit 18?

23 A: Yes, I have.

24 Q: Are those records that are kept by Monsanto
25 in the ordinary course of business?

1 A: With the exception of the document numbered
2 Box 65-131529 through 131530, I can't tell you
3 whether these are copies from Monsanto's files.

4 Q: The first document in Exhibit 18, can you
5 testify this is kept in the ordinary course of
6 Monsanto's business?

7 A: This has a number that it was provided in
8 the course of Whitfield.

9 Q: You can't testify it's in the ordinary
10 course of Monsanto's business if they do not bear a
11 bates number designating them as such?

12 A: That's correct.

13 Q: Is it the case that all documents which you
14 are custodian of records, I'm sorry, records
15 custodian bear a particular bates designation?

16 A: Yes, in one form or another, they all have
17 an identifying number.

18 Q: Now, I take it, though, that Exhibit 18 does
19 contain a number of documents that indicate they
20 were generated by Monsanto?

21 A: Right. All of those documents appear to be
22 on Monsanto letterhead or to be addressed to or
23 authored by, both addressed to or authored by
24 Monsanto employees.

25 Q: You don't have any particular basis to doubt

1 the authenticity of those documents, do you?

2 A: No, I don't.

3 MR. SEVER: If we could have a break, I have
4 about four or five minutes of questions.

5 (Recess.)

6 Q: (By Mr. Sever) If I could ask you again
7 about the relationship between Solutia and Monsanto,
8 and I know you're a lawyer. I don't want to get too
9 technical here, because this may go to a jury.
10 Basically what is the nature -- you used the word
11 "spin-off." What is the nature of the relationship
12 between the two companies?

13 A: Solutia now is a completely independent
14 freestanding company. We have no legal relationship
15 with Monsanto. When I say "spin-off," actually the
16 mechanics was that back on September 1st, 1997,
17 every share owner of Monsanto received one share of
18 the stock in Solutia for every five years of
19 Monsanto stock that that individual owned.

20 Q: Specifically, too, the nature of that
21 agreement that you referred to earlier under which
22 you took over dealing with the Monsanto PCB issues
23 in your capacity as the general counsel at Solutia,
24 is it the case that Solutia is now answering for
25 Monsanto's liability with respect to PCB?

1 MS. RUTTER: Objection to the form of the
2 question.

3 A: I suppose it could be characterized in that
4 fashion.

5 Q: (By Mr. Sever) Was there a specific written
6 agreement by which Solutia took over the PCB
7 responsibilities?

8 A: There's no agreement that deals only with
9 PCBs. That was part of a larger agreement that had
10 to do with allocation of responsibilities within the
11 companies.

12 Q: Did that address the types of industrial
13 chemicals that Solutia -- strike that. Did that
14 agreement relate to the fact that Solutia was taking
15 over all the industrial chemical business from
16 Monsanto?

17 A: In part, yes.

18 Q: Is it fair for me to assume that, since
19 Arochlor, the PCB product, was an industrial
20 chemical, that, therefore, Solutia took over the
21 management function of all the Arochlor issues?

22 A: That's kind of the philosophy of how the
23 responsibilities were separated between the two
24 companies.

25 Q: There's nobody now at Monsanto who deals at

1 all with the PCB issues?

2 A: That's correct.

3 Q: Are you actively monitoring in any ongoing
4 way this particular insurance case?

5 A: Other than coming here and having produced
6 documents, no.

7 Q: Do you have a function that is to address
8 the indemnification agreements between Monsanto and
9 their previous PCB customers?

10 A: I'm not sure I understand the question.

11 Q: Where there is an issue created by the
12 indemnity agreements between the Monsanto Arochlor
13 customers and Monsanto, is it you who would deal
14 with the question?

15 A: If it comes up in the context of PCB
16 litigation, yes.

17 Q: Do you keep the indemnification agreements
18 that I'm talking about in separate files?

19 A: If you mean is there a file marked
20 indemnification agreement, no.

21 Q: How are the files marked? Are they marked
22 by subject matter?

23 A: The files are marked however the people who
24 created the files marked them.

25 Q: So that meaning that there was no

1 reorganization of the files when the segregation of
2 the PCB files was done?

3 A: The original PCB files that we're talking
4 about right now are housed in our records center.
5 They are specifically identified, but they have not
6 been removed, for example, from -- strike that. Let
7 me start again. Our normal records retention policy
8 says that documents are to be kept for a certain
9 amount of time. Documents that are no longer in
10 current use, but which still are required to be
11 retained for one reason or another, are sent to the
12 records center. Typically those documents are
13 collected by an individual who is going through his
14 or her files, and they are -- a list of the files is
15 made, and those files are sent directly to the
16 records center. When we collected documents for the
17 PCB litigation over the years, we have not removed
18 those original documents from the files of which
19 they were a part when they were sent to the records
20 center. We have noted where they are. Those
21 records are maintained in those boxes as they were
22 transmitted to the records center.

23 Q: In connection with the 1997 subpoena and any
24 further discussions that the parties in this case
25 have had with your outside counsel, has Monsanto

1 and/or Solutia made an attempt to obtain all of the
2 documents kept by Monsanto or Solutia that relate to
3 Schlumberger or Sangamo and their purchase and use
4 of PCBs?

5 A: Yes, I believe that we made a good faith
6 attempt to review the files to the extent we could
7 ascertain and ascertain all of those documents and
8 produce them.

9 MR. SEVER: I have no further questions, and
10 thank you very much for your time today.

11 EXAMINATION

12 QUESTIONS BY MR. GEDDIE:

13 (Plaintiff's Deposition Exhibit Nos. 1, 2, 3,
14 4, 5 marked for identification.)

15 Q: Mr. Bistline, I just have a few. Let me
16 pass over to you a folder that I have marked as
17 Plaintiff's Exhibit No. 1. Those are documents that
18 you were kind enough to go through today or this
19 morning?

20 A: That's correct.

21 Q: There are a number of notations on there
22 indicating that there are attachments to documents
23 that may not have been authored by Monsanto, but are
24 attached to Monsanto related documents?

25 A: That's correct.

1 Q: I guess my question is, having reviewed
2 those documents, do you have any reason to question
3 the authenticity of any of those documents in file
4 folder number one?

5 A: No.

6 Q: Let me pass, if I will, if I may, Exhibit
7 No. 2, Plaintiff's Exhibit No. 2, which is simply a
8 separate stack of documents. As the custodian of
9 records of Monsanto's Arochlor documents, do you
10 have any reason to question the authenticity of any
11 of the documents in that file folder number two?

12 A: Give me one minute, Mr. Geddie.

13 Q: Sure.

14 A: The only document as to which I couldn't
15 give you an opinion at this point is a document
16 that's marked Box 16-032970 through 032981. This
17 document appears to be, in part, a document created
18 by Monsanto and, in part, not. I have -- as to the
19 non-Monsanto part of that, I have no indication -- I
20 couldn't express an opinion on its authenticity.

21 Q: With your agreement and agreement from
22 counsel, I'll just remove that from the file.

23 MR. SEVER: That's fine.

24 Q: (By Mr. Geddie) Let me show you what I've
25 marked as Exhibit No. 3. It is from the stack of

1 documents that you reviewed this morning. It's
2 entitled, "Generator the Travelers Engineering
3 Division." Is that a division of the Monsanto
4 Company?

5 A: Not that I'm aware of, no.

6 Q: Does that document appear to be prepared by
7 the Travelers Insurance Company or some subsidiary
8 of it?

9 A: That would be my surmise.

10 Q: Down in the lower right-hand corner, there
11 is a bate stamp number WM.

12 A: That's correct.

13 Q: Is that the nomenclature for the documents
14 produced in the Whitfield case?

15 A: It is.

16 Q: The second one is an SMO document.

17 A: Yes.

18 Q: Do those two bate stamps indicate to you
19 that Plaintiff's Exhibit No. 3 came from the
20 Monsanto files?

21 A: The WM number does. I don't believe SMO was
22 a Monsanto number.

23 Q: The WM document indicates to you that the
24 generator document was produced in connection with
25 the Whitfield case and it came from the Monsanto

1 files?

2 A: That's correct.

3 Q: It's an authentic document in that it was
4 maintained by Monsanto in the normal course of
5 business?

6 A: Correct.

7 Q: Let me show you what I've marked as
8 Plaintiff's Exhibit No. 4. In all fairness to you,
9 you marked with a yellow sticker just a question
10 mark on it. I would refer you to the second page,
11 and ask you if you can identify the source of the
12 information contained on that document?

13 A: Are you referring to the small type?

14 Q: No, to Mr. Wheeler's name.

15 A: This indicates that the information
16 contained on the document was furnished by Mr.
17 Wheeler, who at the time was a Monsanto employee.

18 Q: Below that, I believe, the questionnaire was
19 originally authored by the S. C. Johnson Company?

20 A: That's what it appears, yes.

21 Q: Based on the date stamp number, again, on
22 Plaintiff's Exhibit No. 4, the WM designation, does
23 that indicate to you that Plaintiff's Exhibit No. 4
24 was maintained by Monsanto in the normal course of
25 business?

1 A: It indicates it was produced in the
2 Whitfield case, which indicates it came from
3 Monsanto's files, yes.

4 Q: The last exhibit is Plaintiff's Exhibit No.
5 5. Do you have any reason to question the
6 authenticity of that document?

7 A: I have no reason. No, I have no reason to
8 question the authenticity.

9 Q: That's based on the date stamp nomenclature
10 at the bottom?

11 A: That's correct. SHL numbers which indicate,
12 again, it was produced by Monsanto, a document found
13 in its files.

14 Q: Let me get four people's names. Who was
15 Bill Pappageorge, and what were his job
16 responsibilities?

17 A: Bill Pappageorge was a long-time Monsanto
18 employee, who, as is relevant here, in 1970 became
19 the person at Monsanto who was the focal point for
20 our efforts to deal with the PCB issues and the
21 growing awareness of PCBs in the environment and the
22 appropriate Monsanto response.

23 Q: Just so the jury could understand, would one
24 appropriately characterize Mr. Pappageorge as
25 Monsanto's in-house expert on PCBs?

1 A: That would be fair.

2 Q: Who is Paul Benignus?

3 A: A long-time Monsanto employee. His title
4 would have been manager for PCBs. He had a long
5 relationship with PCBs as Monsanto product manager.

6 Q: Who was Randy Graham?

7 A: Randy Graham was a person in the sales area
8 of Monsanto who for a time with Monsanto was
9 associated with PCB products.

10 Q: Who was Elmer Wheeler?

11 A: Mr. Wheeler was Monsanto's chief industrial
12 hygienist/toxicologist for a number of years.

13 Q: On Exhibit No. 4, Plaintiff's Exhibit 4,
14 he's referred to as the manager of environmental
15 health?

16 A: That's correct.

17 Q: That job would involve what?

18 A: As I recall, at that time Mr. Wheeler was in
19 charge of industrial hygiene and toxicology at
20 Monsanto.

21 MR. GEDDIE: That's all I have, sir. Thank
22 you.

23 MR. SEVER: Thank you for your time. We do
24 some weird things here. You're going to send the
25 original to him. He's going to sign and send it

1 back to you. You are going to seal the original and
2 put a stamp over the seal, then send that to an
3 address that I'm going to give you along with
4 another copy. Then you can also send a copy to me.
5 I think you need to send a copy to plaintiff's
6 counsel. For the record, counsel have agreed to
7 separate the exhibits from the transcript for
8 efficiency purposes and because the exhibits are so
9 voluminous. I think we have an agreement among
10 ourselves to keep the exhibits in the order in which
11 they have been presented, and that we will each get
12 a copy of the exhibits in due course with the
13 transcript.

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1 COMES NOW THE WITNESS, THOMAS M. BISTLINE, and
 2 having read the foregoing transcript of the
 3 deposition taken on the 16th day of June, 1998,
 4 acknowledges by signature hereto that it is a true
 5 and accurate transcript of the testimony given on
 6 the date hereinabove mentioned.

7
 8
 9 -----
 10 THOMAS M. BISTLINE

11
 12 Subscribed and sworn to me before this
 13 ____ day of _____, 1998.
 14 My Commission expires: _____
 15

16
 17 -----
 18 Notary Public
 19
 20
 21
 22
 23
 24
 25

1 State of Missouri

2 SS.

3 City of St. Louis

4 I, Dawn L. McTeer, Registered Professional
5 Reporter and Notary Public in and for the State of
6 Missouri, duly commissioned, qualified and
7 authorized to administer oaths and to certify to
8 depositions, do hereby certify that pursuant to
9 Notice in the civil cause now pending and
10 undetermined in the Court of Common Pleas, State of
11 South Carolina, County of Greenville, to be used in
12 the trial of said cause in said court, I was
13 attended at the offices of Husch & Eppenberger, 100
14 North Broadway, in the City of St. Louis, State of
15 Missouri, by the aforesaid witness; and by the
16 aforesaid attorneys; on the 16th day of June, 1998.
17 The said witness, being of sound mind and being
18 by me first carefully examined and duly cautioned
19 and sworn to testify the truth, the whole truth, and
20 nothing but the truth in the case aforesaid,
21 thereupon testified as is shown in the foregoing
22 transcript, said testimony being by me reported in
23 shorthand and caused to be transcribed into
24 typewriting, and that the foregoing pages correctly
25 set forth the testimony of the aforementioned

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1 witness, together with the questions propounded by
 2 counsel and remarks and objections of counsel
 3 thereto, and is in all respects a full, true,
 4 correct and complete transcript of the questions
 5 propounded to and the answers given by said witness;
 6 that signature of the deponent was not waived by
 7 agreement of counsel.

8 I further certify that I am not of counsel or
 9 attorney for either of the parties to said suit, not
 10 related to nor interested in any of the parties or
 11 their attorneys.

12 Witness my hand and notarial seal at St. Louis,
 13 Missouri, this 24th day of June, 1998.

14 My Commission expires September 21, 1999.

15 ----- *Dawn L. McTear*
 16 Notary Public in and for the
 17 State of Missouri
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 25

Dawn L. McTear
 Notary Public-Notary Seal
 State of Missouri
 St. Louis County
 My Commission Expires 09/21/99

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