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FACSIMILE TRANSMITTAL MEMO

TO: Edward M. Roth, Esq.
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FROM: Carol A. Nickerson
Secretary to Gerson H. Smoger

DATE: December 15, 1993

RE: Montague

This transmittal consists of 2 pages, including this cover memo.

If there are any problems during transmission, please contact Carol Nickerson at (510) 746-8746.

We use a Sharp FO-220 machine. Our Fax Number is (510) 746-8799.

Thank You.

MEMORANDUM

TO: Paul Merrell/Eddie Roth
FROM: Gerson Smoger
DATE: December 15, 1993
SUBJECT: 328: Merrell 12/15 memo

I generally agree, but I do disagree with one part, as you note. I believe that a firm can never represent a client and sue that client at the same time unless there is an affirmative showing by a party needing to use that lawyer that the other party deliberately tied that law firm up to prevent their representation of the agreed party. Under these circumstances, Evans & Dixon properly withdrew.

What is really important is that the request for withdrawal made by Monsanto indicates that they were not a disinterested third party. If they had a sufficient need for Evans & Dixon to withdraw on the basis of a conflict, then they are a sufficiently interested party that we have a fear of disclosure of client confidences to them. This is what we should argue.

In addition, Peter did give Wray client confidences. We need a very short declaration from Peter that should say that: 1) he had discussions and correspondence with Wray regarding his case wherein he divulged client confidences to him; 2) he has never freely permitted Wray to withdraw from representation to him; 3) that he feels he would be severely prejudiced should any firm Wray is associated with be allowed to represent Gaffey or Monsanto.

Lastly we need the Court to see the publication of Peter's that Gaffey is being sued over. We have to demonstrate to the court how inextricably bound Monsanto is to this case. Also say that all of Gaffey's acts alleged were done in the course and scope of his employment by Monsanto and on Monsanto's behalf.