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3 IN THE CIRCUIT COURT
4 TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
5 ST. CLAIR COUNTY

6 FRANCES E. KEMNER, et al)
7)
8 Plaintiffs,)
9)
10 VS.) No. 80-L-970
11)
12 MONSANTO COMPANY,)
13)
14 Defendant.)

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16
17 Before the HON. RICHARD P. GOLDENHERSH, Judge
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20 REPORT OF PROCEEDINGS

21 JURY TRIAL

22 March 20, 1986
23
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APPEARANCES:

MR. REX CARR and MR. JEROME SEIGFREID
on behalf of the Plaintiffs;

MR. KENNETH R. HEINEMAN and MR. JOSEPH NASSIF
on behalf of the Defendant.

KIMBERLY GANZ, CSR, RPR, CM
Official Court Reporter

1 Q. And, Doctor, do you believe that the fact that it
2 occurs in a so-called unexposed person might suggest or
3 indicate that he was exposed if you have found complaints of
4 loss of libido to exist in a third or better of the so-called
5 exposed population?

6 A. Well, I will answer your first question by saying
7 no, we don't think that the fact that they were found in the
8 unexposed had anything to do with exposure and I think we
9 stated in our paper, sir.

10 Q. All right, Doctor. Then if you found that loss of
11 libido was a relatively common problem occurring in, say, 30
12 percent of your exposed population regardless of their age,
13 you wouldn't take that to be, then, as a pretty strong
14 indication that dioxin affects the libido?

15 A. No, sir.

16 Q. You would not?

17 A. No, sir. Not in 1979, sir.

18 Q. And, Doctor, would you -- I take it then that you
19 wouldn't say that the libido, loss of libido occurring in the
20 so-called unexposed population would not support a view that
21 the unexposed population were, in fact, exposed? Is that
22 also correct?

23 A. Absolutely not. We would not agree to that.

24 Q. Doctor, back to the Nestmann problem. The Nestmann

1 exhibit that we were discussing, on this particular one
2 Haning, as well as -- Haning was found by Doctor Nestmann to
3 have a moderately severe psychoneurosis, was he not, sir? Do
4 you have the Exhibit 1779 in front of you, Doctor?

5 A. Yes, I do.

6 Q. And, Doctor, I think you have testified earlier
7 that you were aware that these reports by Doctor Nestmann
8 were given to the compensation commission?

9 A. I believe so, yes.

10 Q. Doctor, handing you Plaintiffs' Exhibit 1780 and
11 ask if that represents to you that that is a portion of the
12 compensation commission transcript dealing with Harold Young
13 and, Your Honor, I would like to offer that exhibit into
14 evidence at this time.

15 THE COURT: Any objections?

16 MR. HEINEMAN: One moment please, Your Honor.

17 THE COURT: Sure.

18 MR. HEINEMAN: May counsel approach the bench, Your
19 Honor?

20 THE COURT: Sure.

21 (Bench conference had out of the hearing of the
22 jury.)

23 MR. HEINEMAN: This exhibit, which is what number?

24 THE COURT: 1780.

1 MR. HEINEMAN: Your Honor, I thought Mr. Carr said
2 it was a transcript. What I have is definitely not a
3 transcript.

4 MR. CARR: Right. I agree. It is part of the
5 record. I misspoke. It is part of the compensation record.

6 MR. HEINEMAN: All right. Your Honor, at this
7 point we would object to their document as being hearsay and
8 as having no authentication or identification by this
9 witness, no foundation has been laid by the witness in court
10 with respect to allowing it to be admitted into evidence. It
11 is not a document created by -- well, I have said what I need
12 to say.

13 MR. CARR: Your Honor, the status of this record is
14 the same as many other Monsanto records that we have
15 heretofore offered. These are documents that were produced
16 to us by Monsanto from their files dealing with the subject
17 of dioxin and dealing with these people. There has been a
18 considerable issue made of the compensation commission
19 hearing and records thereof and these documents are
20 authenticated and Monsanto has represented to us that they
21 are authentic.

22 THE COURT: I think they probably fall under that
23 status. I think also since it is part of the record of an
24 official tribunal, I can take judicial notice of it, too, and

1 I would do that also since I don't think there is any dispute
2 that it is part of the record of the Workmen's Compensation
3 Board of West Virginia at the time, the way it was
4 constituted in the '50s. On both things I will deny it.

5 I think you should correct for the jury that this
6 part of the record was not a transcript.

7 MR. HEINEMAN: Am I, in terms of the future rulings
8 of the court, am I to understand that anything that is an
9 official record of the Workers Compensation Commission will
10 be admitted under judicial notice of this court?

11 THE COURT: Assuming that it is relevant, it could
12 be.

13 MR. HEINEMAN: All right.

14 THE COURT: I would think so, assuming that it is
15 relevant.

16 MR. HEINEMAN: All right.

17 THE COURT: Now, you know, I mean, as the question
18 of relevancy or any other objection that I can't think of
19 right now. If it is raised then, I will consider it but I
20 would think as a general rule, that is true.

21 MR. HEINEMAN: But the record of the court or the
22 commission would be judicially noticed. All right.

23 (The following proceedings were had in the hearing
24 and presence of the jury).

1 Q. Doctor, I described this as a transcript. In fact
2 it is not a transcript. It is a portion of the records on
3 file with the West Virginia Industrial Commission, is it not,
4 sir, and not a transcript of testimony? At least the part
5 that we have here contains no testimony, isn't that correct,
6 sir?

7 A. Well, all I see are letters to the commission, sir,
8 and I see a cover sheet.

9 Q. My question, Doctor, it does not contain any
10 testimony, does it, sir?

11 A. But the cover sheet indicates, so --

12 Q. It is not a transcript of testimony, is it, sir?

13 A. All but the first sheet, sir.

14 Q. The first sheet is simply an index, Doctor. It is
15 not a transcript, isn't that correct, sir?

16 A. But I am not sure what it is an index of, sir.

17 Q. All right, Doctor. And also show you Plaintiffs'
18 Exhibit 1780A and ask you to confirm that that is a part of
19 1780 and it has on the top of it Employer Exhibit Number 1
20 and it is a report signed by Doctor Nestmann, is it not, sir?

21 A. Yes, it is a report signed by Doctor Nestmann.

22 MR. CARR: Your Honor, I would like to pass that
23 report to the jurors, if I might.

24 A. Sir, is there a date?

1 THE COURT: Go ahead, Mr. Carr.
2 (Plaintiffs' Exhibit 1780A is passed to the jury).
3 Q. Doctor, the date you can see there is July 6, 1955?
4 A. Thank you, sir.
5 Q. Doctor, this particular exhibit has a number of
6 statements about Harold Young, does it not?
7 A. Which statement?
8 Q. The 1780A that I have passed to you, sir?
9 A. 1780A is the findings of Doctor Nestmann, sir, yes.
10 Q. And could I have a 1780B. Doctor, 1780B is a
11 blowup of the second page or signature page of the Nestmann
12 report, is it not, sir?
13 A. Yes, I believe it is.
14 MR. CARR: Your Honor, I would offer 1780B into
15 evidence at this time.
16 THE COURT: All right.
17 MR. HEINEMAN: It is already admitted.
18 MR. CARR: The blowup has not been, counsel.
19 THE COURT: It is part of 1780.
20 MR. HEINEMAN: Well, may the record we have made in
21 connection with 1780 apply?
22 THE COURT: Sure.
23 MR. HEINEMAN: To 1780A and B as well, Your Honor?
24 THE COURT: Right. It so applies.

1 Q. Doctor, is there in that Nestmann report any
2 diagnosis of Doctor Nestmann that Mr. Young has a case of
3 severe psychoneurosis?

4 A. No. But there is no diagnosis or impression here,
5 sir.

6 Q. Doctor, could you answer my question, please, sir?

7 A. No.

8 Q. And, Doctor, this particular sheet is not on Doctor
9 Nestmann's stationary, is it? It appears to be progress
10 notes, something like you would use in a hospital record,
11 sir?

12 A. I can't say from the way this is.

13 Q. Doctor, you see there is no letterhead, do you not,
14 sir?

15 A. Yes. But I can't assume that it is hospital
16 records, sir.

17 Q. May I just give the question to you one more time
18 Doctor. It is not, it does not have Doctor Nestmann's
19 letterhead on it, does it, sir?

20 A. I don't see Doctor Nestmann's letterhead, sir.

21 Q. It has the words progress notes and then over to
22 the left it has got hospital number, does it not, sir, and
23 then room or ward? Do you see that, sir, and then a place
24 for the doctor?

1 A. It is illegible so I can't really verify that.

2 Q. You can't make out the abbreviation hospital number
3 and the doctor and the bed and the room or ward?

4 A. No, I can't but I will accept that, sir.

5 Q. Thank you, Doctor. And, Doctor, do you recall I
6 asked you, suggested to you I think it was yesterday that
7 perhaps the reports that were given to the Workmen's Comp
8 Commission had been edited so as to remove certain diagnoses
9 concluding or referring to the psychoneurosis and you said
10 no, that could not be. Do you recall that?

11 A. I believe I recall that vividly, sir.

12 Q. Yes, you do, Doctor. I hand you now what has been
13 marked as Plaintiffs' Exhibit 1781 and I will represent to
14 you, sir, that these are hospital records furnished to us by
15 Monsanto relating to Harold Young as per our request a couple
16 of weeks ago and, Your Honor, I will offer 1781 into evidence
17 in just a minute.

18 THE COURT: Any objection?

19 MR. HEINEMAN: One moment, Your Honor.

20 THE COURT: Sure. Go ahead.

21 MR. HEINEMAN: Would counsel approach the bench,
22 please?

23 THE COURT: Sure.

24 (Bench conference had out of the hearing of the

1 jury.)

2 MR. HEINEMAN: Your Honor, we will object to this
3 on the same grounds that we have objected before to these
4 outside medical record. A, they are hearsay. B, there has
5 been no authentication, no identification, therefore, no
6 foundation.

7 THE COURT: I will incorporate your argument on
8 both sides and the ruling is the same. They are admitted
9 over objection. I will incorporate your arguments and yours
10 at this time.

11 MR. CARR: Thank you.

12 (The following proceedings were had in the hearing
13 and presence of the jury)

14 Q. Doctor, I will now hand you what has been marked
15 Plaintiffs' Exhibit 1781 and ask you to confirm that this is
16 a copy of the progress notes signed by Doctor Nestmann that
17 is in the exhibit 1780 that I previously had given you?
18 1781, sir. We are now looking at 1781, sir.

19 MR. HEINEMAN: What is the number of the new
20 exhibit?

21 MR. CARR: 1781A which is the progress notes signed
22 by Doctor Nestmann that is part of exhibit 1781 which are the
23 hospital records relating to Harold Young and, Your Honor, I
24 would like to pass that report of Doctor Nestmann's to the

1 jury as well.

2 THE COURT: Fine.

3 MR. CARR: Have I given the Court a copy of that?

4 THE COURT: No, I don't have it.

5 MR. HEINEMAN: Has the witness identified it?

6 (Plaintiffs' Exhibit 1781A is passed to the jury).

7 Q. Doctor, the exhibit I gave you is part of the
8 hospital records, is it not, sir? These two, Doctor, are the
9 same, are they not, sir?

10 A. I have to assume that is part of the hospital
11 record only because there is a room and ward number, bed and
12 doctor.

13 Q. No, Doctor, what I want you to do is to confirm
14 that 1781A is an exact duplicate of the record of Doctor
15 Nestmann's in 1781, that is the hospital records. One is
16 just a copy of the other. That is what I want you to do,
17 sir.

18 A. Okay.

19 MR. HEINEMAN: Do you have a copy of 1781A?

20 MR. CARR: 1781A, counsel, is this here.

21 Q. Doctor, is 1781A that has been passed to the jury
22 is part of the hospital records 1780, is it not, sir? 1781,
23 rather?

24 A. It appears to be.

1 Q. Well, Doctor, it is exactly. One is a copy of the
2 other, is it not, sir? 1781 is an exact copy, photocopy,
3 even the tear in the page is the same. One is a photocopy of
4 the other, isn't that correct, sir?

5 A. Yes, it is.

6 Q. And signed by Doctor Nestmann, is it not, sir?

7 A. I believe so.

8 Q. Doctor, 1781B is a blowup of the second page of
9 that hospital report signed by Doctor Nestmann, is it not,
10 sir?

11 A. Yes, I believe it is.

12 MR. CARR: I offer 1781B into evidence, if it please
13 the Court.

14 MR. HEINEMAN: Can we have the same record, Your
15 Honor?

16 THE COURT: Sure.

17 MR. HEINEMAN: With respect to 1781.

18 THE COURT: I will incorporate all arguments. It
19 is admitted over objection.

20 Q. Doctor, the hospital report is word for word -- the
21 two exhibits bearing Doctor Nestmann's signature are exactly
22 the same word for word with the exception of one line, I am
23 sorry, three lines referring to the Carnow medical index and
24 the impression of severe psychoneurosis, isn't that correct,

1 sir?

2 A. It does appear that way, sir.

3 Q. And, Doctor, the progress notes from this hospital
4 report that was sent to the commission or given to the
5 compensation commission does not contain the impression of
6 severe psychoneurosis for Harold Young, does it, sir?

7 A. I don't know, sir.

8 Q. Look at it, sir, if you would, 1780, sir?

9 A. Yes, sir. I have it right here.

10 Q. It does not contain, does it, sir, the diagnosis of
11 severe psychoneurosis for Harold Young?

12 A. No. But I don't know whether this was sent to the
13 commission.

14 Q. Doctor, you see that marked Employers Exhibit 1?
15 It is part of the record that was sent to the commission and
16 that is in the commission's record. You do see that, do you
17 not, sir?

18 A. No, I don't. Where does it say that?

19 Q. Doctor, if you would look at the exhibits that have
20 been given you, this is where it says it, sir.

21 A. No, sir. It doesn't say that, sir.

22 Q. It doesn't say severe psychoneurosis?

23 A. No, it doesn't say that this is part of the
24 commission's record. This does not refer to that record,

1 sir. This is only an index and it has somebody else's name
2 on it.

3 Q. Doctor, this has been given to us and the Court has
4 admitted it into evidence as part of the commission's
5 record. Would you accept that as correct and true, sir?

6 A. If that is the case, I accept it but --

7 Q. And, Doctor, this particular report is listed as
8 Employers Exhibit Number 1 in these commission records, is it
9 not, sir?

10 A. There is an item which reads Employers Exhibit
11 Number 1, yes, sir.

12 Q. And that item is the progress notes dealing with
13 Harold Young, signed by Doctor Nestmann, is it not, sir?

14 A. It appears to be that, sir.

15 Q. And, Doctor, it is word for word identical to the
16 hospital record, progress notes, with the exception that the
17 impression of severe psychoneurosis and the sentence
18 preceding that is omitted from the report given to the
19 commission, isn't that correct, sir?

20 A. Well, all I can say is that it doesn't contain
21 those three lines, sir.

22 Q. Doctor, I would like for you to answer my question
23 that the two reports are word for word identical with the
24 exception that the hospital notes, Exhibits 1781 and 1781A

1 include the severe psychoneurosis impression of Doctor
2 Nestmann, isn't that correct, sir?

3 A. That is correct.

4 Q. Doctor, are you aware of the fact, sir, that this
5 is considered editing?

6 A. No, sir. It doesn't have to be that at all.

7 Q. It doesn't have to be that at all?

8 A. No, not at all, sir.

9 Q. But it is, isn't it?

10 A. No, sir.

11 Q. Doctor, did Doctor Nestmann arrive at an impression
12 as part of the hospital records that this man was suffering
13 from in his impression severe psychoneurosis?

14 A. Yes.

15 Q. The man was hospitalized, was he not, sir, by
16 Doctor O'Dell?

17 A. I don't know who he was hospitalized by, sir.

18 Q. If you look at the front of the exhibit, it will
19 tell you. His doctor is Doctor O'Dell and he was employed by
20 Monsanto. That pay is going to be by Monsanto. Private
21 pay. Doesn't it say that, sir?

22 A. I don't see what you are referring to, sir. I see
23 O'Dell's signature July 27, 1955, but I don't see the other.

24 Q. Doctor, would you look at the exhibit that is the

1 hospital record Herbert J. Thomas's exhibit 1781, sir?

2 A. I have it, sir.

3 Q. Now, do you see, sir, that it is the Herbert J.
4 Thomas Memorial Hospital record?

5 A. I do.

6 Q. And do you see that the admitting doctor is Doctor
7 O'Dell?

8 A. Yes.

9 Q. And do you see that it is the employer Monsanto?

10 A. Yes, I do.

11 Q. And do you see that the account will be billed to
12 Monsanto, private pay?

13 A. Yes, I do, sir.

14 Q. And, Doctor, the next two pages of those hospital
15 records contain, does it not, sir, the Nestmann report?

16 A. Yes, sir.

17 Q. And, Doctor, so that you can see that they are in
18 chronological order, Monsanto has put microfilm page numbers
19 or page numbers on this exhibit and this report is in the
20 exact chronological order, is it not, sir, on these hospital
21 records?

22 A. I believe this is just one hospital record, sir.
23 One single record, that is correct.

24 Q. Doctor, my question to you is, you can examine the

1 numbers on Exhibit 1781 and you will see that they are
2 numerically consistent, one follows the other, they are all
3 part of one record, are they not, sir? This is the way it
4 was given to us by Monsanto, Doctor Suskind. Do you see
5 that, sir?

6 A. Yes, I do, sir.

7 Q. And, Doctor, this report which contained -- when
8 the man was hospitalized for his various problems and worked
9 up and examined by Doctor O'Dell, Doctor O'Dell caused to be
10 included in that record these progress notes, did he not,
11 sir?

12 A. I believe he wrote progress notes, yes.

13 Q. No, he wrote at the bottom of page two, sir, copy
14 for chart, Richard O'Dell, M.D., isn't that right, sir? On
15 the page number 9566145, sir?

16 A. Correct.

17 Q. And he caused Doctor Nestmann's report to be
18 incorporated in this hospital chart, did he not, sir?

19 A. Yes, I believe so.

20 Q. And there is no question that what he would have
21 known and Doctor Nestmann would have known, that the hospital
22 progress reports have been part of the hospital records in
23 July of '55 contain Doctor Nestmann's impression of severe
24 psychoneurosis, isn't that correct, sir?

1 A. I assume so.

2 Q. Doctor, I don't want you to assume so. I want you
3 to look at the record and be sure that Doctor O'Dell who put
4 his signature on this chart as well as Doctor Nestmann would
5 have been aware of the diagnosis or the impression of Doctor
6 Nestmann, that is severe psychoneurosis on the part of Harold
7 Young. Doctor, you are now looking at the report that was
8 given to the commission. My question to you --

9 A. I am comparing them, sir. Yes.

10 Q. Didn't you already agree that they were the same
11 word for word, sir, except for the impression that was left
12 out?

13 A. No, sir. I did not. This is a copy for chart
14 signed by Richard O'Dell and is not in the report allegedly
15 submitted to the commission and there may be reasons for
16 that.

17 Q. Doctor, it wasn't allegedly submitted to the
18 commission. These records including the compensation
19 commission reports are reports that were given us by your
20 employer, Monsanto. They have been admitted into the record
21 of the evidence of this court. The Court has taken judicial
22 notice of the compensation commission. It is not alleged,
23 Doctor.

24 MR. HEINEMAN: Objection to the statement that the

1 witness is employed by Monsanto. I think Mr. Carr knows
2 better than that.

3 THE COURT: Objection is overruled.

4 Q. Doctor, the records in the commission that the
5 commission had of Doctor Nestmann's report, Employers Exhibit
6 Number 1, does not include the diagnosis of severe
7 psychoneurosis, does it, sir?

8 A. It does not and there could be reasons.

9 MR. CARR: Your Honor, would you instruct the
10 witness to quit responding -- I know there could be reasons
11 but quit volunteering things of that sort, Your Honor.

12 THE COURT: Doctor, again, you were offering
13 comments that are not called for within the scope of the
14 question that has been asked of you. I have asked you a
15 number of times today and I am asking you again please
16 refrain from doing that. Just answer the question that is
17 asked of you. No more, no less.

18 Q. And, Doctor, so that it is crystal clear, there is
19 no question that what Doctor Nestmann said, his impression of
20 Harold Young is that he has got a severe psychoneurosis based
21 upon his Cornell Medical Index Health Questionnaire and that
22 this isn't a part of the record that was in existence in July
23 of 1955, isn't that correct, sir?

24 A. In Exhibit 1781 and 1781A, yes, sir.

1 Q. Isn't that correct, sir?

2 A. It is in 1781 and 1781A, sir.

3 Q. And, Doctor, it was in existence prior to the time
4 of the compensation commission hearing, was it not, sir?

5 A. I don't know that, sir.

6 Q. You don't know that, sir?

7 A. No.

8 Q. Do you see the same date, Doctor, on the exhibits?
9 And, Doctor, do you recall that you testified before the
10 compensation commission in 1956, sir?

11 A. I recall that, sir.

12 Q. And if you will look at the state compensation
13 commission page preceding Doctor Nestmann's report or it is
14 on the very same page that Doctor Nestmann's report starts,
15 it bears a date there of the 20th day of July, 1956, sir?

16 A. I am not sure I am following you, sir. What
17 exhibit?

18 Q. 1781A, sir. 1780A, I am sorry.

19 A. May I see it, sir?

20 Q. Right there, Doctor. July of 1956?

21 A. Yes.

22 Q. There is no question but what Doctor Nestmann's
23 report, that the man has severe psychoneurosis, was in
24 existence prior to July of 1956, prior to November of 1956,

1 isn't that correct, sir?

2 A. Yes. Doctor Nestmann's report in 1955, I see.

3 Q. And, Doctor, the report that was in existence in
4 1955 as part of the hospital records was edited, was it not,
5 sir?

6 A. No, sir.

7 Q. Doctor, what do you consider editing means? Let me
8 answer it for you, Doctor. Editing is changing?

9 A. Well, you ask me a question and let me answer it.
10 Would you like me to answer your question, sir?

11 MR. CARR: Your Honor, would you direct the witness
12 to --

13 A. Well, he asked me a question.

14 MR. HEINEMAN: Objection. He asked him a question.

15 THE COURT: And then he modified it and he has the
16 right to do so. Objection is overruled.

17 Q. Okay.

18 THE COURT: Wait until the question is fully asked
19 of you and then answer it, please.

20 Q. Doctor, editing means change, doesn't it, sir?

21 A. Not necessarily.

22 Q. Well, what else does it mean?

23 A. It means looking through a report and making sure
24 that the report is accurate. The report is accurate

1 grammatically, it is accurate factually, it is accurate in
2 this instance in the way of impressions or diagnoses. There
3 are a variety of things that in a medical report are
4 considered editing.

5 Q. Doctor, you do consider, then, that this report was
6 changed, was it not, sir?

7 A. No, sir.

8 Q. Doctor, is the report that was in existence in 1955
9 by Doctor Nestmann, did it contain an impression severe
10 psychoneurosis?

11 A. No. But that doesn't mean that it was edited.

12 Q. It did contain that, did it not, sir?

13 A. It might have been inserted later, sir.

14 Q. Doctor, excuse me. How could it be inserted
15 later? It is in the hospital records that came in in July of
16 55, sir.

17 A. Okay.

18 Q. But that is not an insertion later, is it, sir?
19 Excuse me, Doctor. That is not an insertion later, is it,
20 sir?

21 A. It could be. It could very well be.

22 Q. Doctor, this is in a report that is part of the
23 hospital records dated July of 1955, isn't that correct, sir?

24 A. Yes, sir. We have --

1 Q. And, Doctor, that preceded the report that was
2 given to the commission by a year at least, did it not, sir?
3 It was earlier than the report given to the commission,
4 wasn't it, sir?

5 A. I don't know when this report was given to the
6 commission, sir.

7 Q. Doctor, I have given you the date. The date of the
8 hearing was November of '56. There is a date appears on the
9 same page of July of '56. That is a year before the hospital
10 record was made, is it not?

11 A. Yes.

12 MR. HEINEMAN: Your Honor, may counsel approach the
13 bench?

14 THE COURT: Yes, you may.

15 (Bench conference had out of the hearing of the
16 jury.)

17 MR. HEINEMAN: Your Honor, as Mr. Carr knows, the
18 Workmen's Compensation Commission hearing went on for a very
19 long period of time. To just allege to this witness that the
20 only hearing was November of '56 when this witness testified
21 is patently false.

22 MR. CARR: I am not suggesting that is the case.

23 MR. HEINEMAN: That is the hearing date that you
24 gave him.

1 MR. CARR: It is a side issue. It has nothing to do
2 with the question. The question is there is a report in
3 existence of July of '55 and this report came into existence
4 July of 1955 and that is the date the same exhibit was given
5 to the commission and bears the same date. All of it.

6 MR. HEINEMAN: You are putting them in a
7 chronological sequence which is not borne out, Mr. Carr. You
8 are saying that it has to be before because the hearing was
9 in November. There were hearings for three years on this, on
10 these workmen compensation matters in Nitro, West Virginia.

11 MR. CARR: The commission couldn't very well have
12 been prior to July of '55, could it, counsel?

13 MR. HEINEMAN: I don't know exactly when they
14 started.

15 MR. CARR: This particular hearing could not have
16 been in existence prior to July of '55. There is no way.
17 There could have been a hearing that predated July of '55
18 with regard to this exhibit.

19 THE COURT: Objection is overruled. Let's
20 proceed.

21 MR. HEINEMAN: Your Honor, further, Mr. Carr has
22 suggested that this document, 1781, is in chronological order
23 and I don't think it is.

24 MR. CARR: It is in the order it was given to me by

1 Monsanto.

2 MR. HEINEMAN: That isn't the point, Your Honor.
3 He made a representation that it was in chronological order
4 and, therefore, these documents necessarily followed each
5 other in a particular sequence. I don't think that is
6 accurate. It covers all kinds of dates.

7 MR. CARR: So what?

8 MR. HEINEMAN: You are basing a premise on
9 sequence.

10 THE COURT: Let's go ahead. Objection is
11 overruled.

12 (The following proceedings were had in the hearing
13 and presence of the jury).

14 Q. Doctor, the report that the commission has in its
15 file is changed from the report that Doctor Nestmann created
16 in July of '55, isn't it, sir?

17 A. No, sir.

18 Q. Look at the two reports again, Doctor.

19 A. It is different but I don't think that one can say
20 it was changed. This might have been submitted to them not
21 in '56, it might have been submitted to them in '55 when the
22 patient was being discharged and I don't know that the
23 Cornell Medical Index which is recorded in the hospital
24 record, the Cornell Medical Index Test was not done after his

1 hospitalization or after this was actually submitted. That
2 is a real possibility. That is a real possibility that the
3 Cornell Medical Index Test was may be done in Doctor
4 Nestmann's office. That is a possibility and he then added a
5 real possibility that he simply added this man was asked to
6 fill out a Cornell Medical Index questionnaire and this shows
7 evidence of psychoneurosis. I don't know from this record
8 whether it was done in the hospital or after the man was
9 discharged and, therefore, I cannot say that this record was
10 changed. It simply doesn't contain that statement.

11 Q. Doctor, when was the man discharged? Let me help
12 you, Doctor. On the first page he is discharged on July 27,
13 1955. The bottom of the page, Doctor, of the 1781?

14 A. July 27, 1955, yes, sir.

15 Q. And when was he admitted to the hospital, Doctor?

16 A. I assume that --

17 Q. It is also on the cover page, Doctor. July 22,
18 1955?

19 A. Admitted?

20 Q. Yes, Doctor.

21 A. Well, then how can this report be July 6?

22 Q. Doctor, could you answer my question? It shows July
23 22, 1955, does it not, sir?

24 A. Yeah. Which differs from the report.

1 MR. CARR: Your Honor, would you direct the witness
2 to answer my question?

3 THE COURT: Doctor. Again --

4 Q. Okay. Sorry.

5 THE COURT: Remember what I said before. Confine
6 your answers to the questions, Doctor.

7 Q. And, Doctor --

8 MR. HEINEMAN: Objection. May counsel approach the
9 bench?

10 THE COURT: Yes, you may.

11 (Bench conference had out of the hearing of the
12 jury.)

13 MR. HEINEMAN: Your Honor, this is what I am
14 talking about in terms of this sequence business that Mr.
15 Carr has alleged. The witness has laid eyes on something
16 that I didn't even see. The hospital record shows he was
17 admitted 16 days after this report.

18 MR. CARR: Exactly right, counselor. We have
19 already established that Doctor O'Dell had it made part of
20 his chart. It said so. If you turn the page, counsel, you
21 will see that. We have already established that Doctor
22 O'Dell --

23 MR. HEINEMAN: That has nothing to do with it.

24 MR. CARR: That is what you think.

1 THE COURT: Objection is overruled.

2 (The following proceedings were had in the hearing
3 and presence of the jury).

4 Q. Doctor, the man was admitted on July 22 and
5 discharged on July 27, was he not, sir?

6 A. That is what the head sheet of the Thomas Memorial
7 Hospital indicates, sir.

8 Q. And Doctor Nestmann's report was made on July 6,
9 1955, was it not, sir?

10 A. That is correct.

11 Q. Prior to the time the man entered the hospital on
12 that particular time, isn't that correct, sir? July 6 is
13 before he was admitted to the hospital on July 22, isn't that
14 correct, sir?

15 A. That is correct, sir.

16 Q. And, Doctor, the report of Doctor Nestmann was
17 written by Doctor O'Dell at the bottom. It says copy for
18 chart, isn't that correct, sir? Richard O'Dell, M.D.?

19 A. That is correct.

20 Q. And, Doctor, we have already established what
21 Doctor O'Dell did. He had Doctor Nestmann's report and he
22 put it in the hospital record as part of Harold Young's
23 chart, isn't that correct, sir?

24 A. That is what Doctor O'Dell did, sir?

1 Q. That is correct, sir, is it not, sir?

2 A. Yes.

3 Q. All right. Now, Doctor, that was in existence,
4 therefore, in July of '55, was it not, sir, with the
5 diagnosis on it psychoneurosis, severe psychoneurosis?

6 A. I am actually confused, sir, about the sequence.

7 Q. Doctor, this report was in existence in July of
8 1955 bearing the diagnosis severe psychoneurosis, was it not,
9 sir?

10 A. Yes, it was.

11 Q. And, Doctor, the document given to the commission
12 and as part of this record, sir, does not contain that
13 diagnosis, does it, sir?

14 A. It doesn't contain that particular diagnosis.

15 Q. It is changed or different from the diagnosis that
16 was made in July of '55, is it not, sir?

17 A. No. No, sir.

18 Q. Are you reading the same report, Doctor, that I am
19 reading?

20 A. Yes. I am reading 1780A.

21 Q. Does the document that is in the commission record,
22 does it include the diagnosis of severe psychoneurosis?

23 A. It doesn't include any diagnosis, sir.

24 Q. Doctor, does it include the diagnosis of severe

1 psychoneurosis?

2 A. No, it does not.

3 Q. It is different from the July of 1955 report that
4 is part of the hospital records, is it not, sir?

5 A. It is.

6 Q. And, Doctor, is a change -- when one edits
7 something, does one change something?

8 A. If you are asking about a general statement --

9 Q. Yes, Doctor, when one edits something, does one
10 make it different than what it was?

11 A. Might.

12 Q. And, Doctor, the report that was given to the
13 commission is changed from the report that was in the
14 hospital record?

15 A. No, sir. It is different. Not changed.

16 Q. Doctor, does it contain the diagnosis, that is,
17 severe psychoneurosis?

18 MR. HEINEMAN: Objection. Asked and answered.

19 THE COURT: Objection is overruled.

20 A. There is no diagnosis on that chart, sir. The
21 diagnosis is not there, sir.

22 Q. The question I have asked you, does it contain the
23 diagnosis of severe psychoneurosis, Doctor?

24 A. It does not, sir.

1 Q. Doctor, the reports that you read of Doctor
2 Nestmann that were given to the commission, not just with
3 Harold Young but all of the reports signed by Doctor Nestmann
4 of which you are aware, none of those reports contained the
5 diagnosis of Doctor Nestmann, that is that the man had these
6 severe, moderate or mild psychoneurosis, isn't that correct,
7 sir?

8 A. That is not so, sir.

9 Q. Doctor, this morning Monsanto delivered to us the
10 workmen's compensation records that contain Doctor Nestmann's
11 report, his written reports that were submitted to the
12 commission. I have placed a yellow tab on each of those
13 reports that is in 1782. I would like for you to look at
14 each of those reports, sir, and tell me if there is a single
15 one of those reports that contains a diagnosis of severe
16 psychoneurosis?

17 MR. HEINEMAN: Objection, Your Honor. May counsel
18 approach the bench?

19 THE COURT: Yes, you may.

20 (Bench conference had out of the hearing of the
21 jury.)

22 MR. HEINEMAN: I object, Your Honor, to this
23 procedure when Mr. Carr is allowed to make these outrageous
24 statements. First of all, he is implying that we just gave

1 objections to it.

2 MR. HEINEMAN: Well, I will mark it and offer it
3 right now.

4 MR. CARR: Counsel, you cannot because I have got
5 the witness at this point in time and I am asking the witness
6 questions and I would object to you doing anything of the
7 kind to interfere with my cross examination.

8 THE COURT: You can mark it and offer it later.
9 Objection is overruled.

10 (The following proceedings were had in the hearing
11 and presence of the jury).

12 Q. How far along are you, Doctor?

13 A. I have a little more to go.

14 Q. Doctor, you are taking these reports out of the
15 exhibit, out of the order that they were in. I didn't ask
16 you to do that.

17 A. Well, I want to make sure that I have all of the
18 Nestmann --

19 Q. Doctor, all I asked you to do was to look at the
20 ones with the yellow tab.

21 A. I am doing that, sir.

22 Q. But you are doing more than that, Doctor. You are
23 breaking up the exhibit.

24 A. Not really. I am simply --

1 Q. Doctor, don't take any more out, Doctor, but
2 looking at the exhibits that have the pages that have the
3 tabs on them and see if those are Nestmann reports and
4 whether or not they contain a statement of severe
5 psychoneurosis or moderate or mild psychoneurosis, will you
6 do that please, Doctor?

7 A. Yes, sir.

8 Q. Doctor, that is not a Nestmann report. Here is the
9 yellow tab here, sir. Doctor, the page you are looking at is
10 not one with a yellow tab on it. It is not a Nestmann
11 report.

12 A. It is a diagnostic report, sir.

13 Q. Doctor, this is a summary about Doctor Nestmann's
14 testimony by counsel for Monsanto. I am asking you, Doctor,
15 to look at the Nestmann reports submitted by Monsanto.

16 A. That is reference.

17 Q. This is not a report. You see it says summary of
18 Doctor Nestmann's testimony. You know the difference between
19 testimony and a report, don't you, Doctor?

20 A. I believe I do, sir.

21 Q. Thank you, Doctor. One more, Doctor.

22 A. If you allow me to read these, I will be happy to
23 answer your question.

24 Q. Doctor, I am allowing you to read them. I want you

1 to look for statements in the reports of the psychoneurosis?

2 A. I would like to have the time to read them, sir.

3 Q. Now, Doctor, you have looked at all the pages that
4 have yellow tabs on them. On those Doctor Nestmann reports,
5 was there any mention to the commission in those reports that
6 any of the workers had severe, moderate or mild
7 psychoneurosis?

8 A. On these reports sent to the commission, sir --

9 Q. Could you answer my question, Doctor, please, sir?

10 A. Well, in those reports, sir, I don't see any
11 mention of psychoneurosis.

12 Q. Thank you, Doctor.

13 THE COURT: Mr. Carr, we are going to have to break
14 at this time.

15 MR. CARR: Yes, Your Honor. That is part of the
16 record.

17 THE COURT: Ladies and gentlemen, we will end the
18 proceedings for the day at this time. We will resume again
19 tomorrow morning at 9:30. I would remind you as I do on any
20 overnight break you are not to read, listen to or watch
21 anything about this case in particular or the subject matter
22 in general in any of the media. Thank you for your attention
23 and cooperation. Court is adjourned. Gentlemen, could I see
24 you in chambers, please.