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December 5, 1989

FEDERAL EXPRESS

Thomas E. Kotoske, Esq.
540 University Avenue
Third Floor
Palo Alto, CA 94301

Re: Nevada Power Co. v. Monsanto

Dear Mr. Kotoske:

Your letter dated November 21, 1989, regarding Monsanto's responses to plaintiff's Interrogatories and Requests for Admissions was received by us on November 22. I have reviewed the contents of your letter and believe it is appropriate to correct some of the misconceptions.

In the third paragraph of your November 21 letter you assert that Monsanto has fraudulently concealed key facts from Nevada Power, facts that "draw a marked distinction between this case and Electric Bound (sic) v. Monsanto." Assuming that you are referring to Electric Power Board of Chattanooga v. Monsanto, this statement is puzzling because, contrary to your letter, the Sixth Circuit concluded that "[e]ven if the defendants took 'affirmative action' to conceal the hazards of PCBs in their use in electrical equipment, the utilities . . . cannot show that they failed to 'discover the operative facts that are the basis of [their] cause of action within the limitation period'." Electric Power Board of Chattanooga v. Monsanto, 879 F.2d 1368, 1377 (6th Cir. 1989). Because fraudulent concealment is not an exception to the statute of limitations under the facts in the present litigation, Monsanto rejects as baseless your assertion of fraudulent concealment in this case.

Your reference to Monsanto's "abusive discovery practices in PCB litigation" is unfounded and inaccurate. For example, as you are well aware, in Scott v. Monsanto, 868 F.2d 786 (5th Cir. 1989), the Court of Appeals approved a jury verdict in favor of Monsanto, after extensive discovery and trial, and affirmed the trial court's rejection of plaintiffs' efforts to sanction Monsanto for alleged discovery violations, finding that plaintiffs had failed to demonstrate any basis for such sanctions. Scott did involve PCBs. 868 F.2d at 792-93.

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Your reference to the Keplinger case further demonstrates your desire to move discussions in this case away from the central issues. Monsanto was in no way implicated in fraudulent conduct or as a co-conspirator in Keplinger. A careful reading of the Keplinger opinion and indictment would confirm that Monsanto was a victim of any fraudulent misconduct. And, even more to the point, PCBs were not involved in Keplinger. The chemical at issue in Keplinger was an anti-bacterial agent that continues to be widely used in ordinary household bath soap.

Your reference to the "Kemmer" (sic) case is also inappropriate and inaccurate. Kemner, which did not involve PCBs, is presently on appeal. When Monsanto challenged, as baseless and improper, discovery sanctions that had been ordered in the trial court, those sanctions were withdrawn and vacated. Monsanto believes that its position with regard to those sanctions has thus been vindicated.

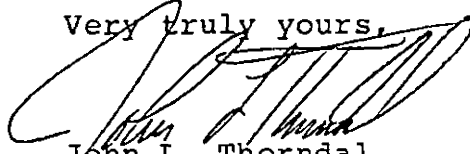
As you state in your letter, your objection to Monsanto's discovery requests are limited to just four documents (Numbers 203-208, 209-211, 212, and 249) of the 522 pages contained in your Exhibit 1. Monsanto's responses regarding these four documents provided full and complete responses to your various discovery requests. On their face, the four documents in question are obviously photocopies of documents which were obtained from some source other than the files of Monsanto. For example, document numbers 203-208, 209-211, and 212 appear to be photocopies of documents that were stored on microfiche, presumably obtained from the files of Industrial Bio-Test Laboratories. Similarly, because of its margin notations, document number 249 presumably came from the files of Westinghouse. Clearly, all four are not photocopies of documents produced from or maintained in the records and files of Monsanto. My client is unable to admit, therefore, that your photocopies are of documents that were produced from or are maintained within their records or files when such is not the case.

As stated in Monsanto's response to your Interrogatory No. 1(c), "Monsanto's records do contain copies of Document Nos. 203-208, 209-211, 212 and 249 as having been generated or received by Monsanto, but Monsanto's file copies of those documents are not the same as the photocopies contained in plaintiff's Exhibit '1'." If you want a copy of the documents as maintained in Monsanto's files, we would be happy to make them available.

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We trust that the above clarifies Monsanto's position on its responses and obviates the need for a sincere efforts conference and motion practice on plaintiff's discovery requests.

Very truly yours,



John L. Thorndal

JLT/ad

cc: J. RANDALL JONES, ESQ.
JONES, JONES, CLOSE & BROWN - HAND CARRIED

Bruce Featherstone, Esq.
J. Bruce Alverson, Esq.