

D. Walker

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

FRANCES E. KEMNER, et. al.,

Plaintiffs,

VS.

MONSANTO COMPANY,

Defendant.

NO. 80-L-970

REPORT OF PROCEEDINGS

Before the HON. RICHARD P. GOLDENHERSH

JURY TRIAL

May 17, 1985

APPEARANCES:

Mr. Rex Carr & Mr. Jerome Seigfreid
On Behalf of the Plaintiffs;

Mr. John R. Musgrave
Mr. Joseph Nassif
On Behalf of the Defendant.

Agnes C. Hackmann, CSR, RPR
Official Court Reporter

1 BE IT REMEMBERED AND CERTIFIED THAT heretobefore,
2 on to wit: Friday, May 17, 1985, being one of the regular
3 judicial days of this Court, the matter as hereinbefore set
4 forth came on for hearing before the HONORABLE RICHARD P.
5 GOLDENHERSH, Circuit Judge in and for the Twentieth Judicial
6 Circuit, St. Clair County, Illinois, and the following was
7 had of record, to wit:

8 THE COURT: Good morning.

9 (Plaintiff's Exhibits Nos. 1404

10 and 1405 were marked for iden-
11 tification.)

12 JAMES D. WILSON

13 resumed the stand, having been previously duly sworn, was
14 further examined and testified as follows:

15 EXAMINATION

16 BY MR. CARR:

17 Q I will hand you now what has been marked Plaintiff's
18 Exhibit 1404 and 1405 and ask if you recognize those as your
19 calculations based upon the issue of TCDD in the fat tissues?

20 A 1404 is at least some notes and that is some calcula-
21 tions that are in mine dated the 16th of February, '84. 1405
22 is some more calculations and notes of mine dated the 2nd of
23 February, '84.

24 Q And for the Court and counsel, 1404 is the exhibit that

1 starts with the word "mean" and 1405 is the one that starts
2 with the word "assume". Offer these exhibits into evidence
3 if it please the Court.

4 MR. MUSGRAVE: Just a moment, Your Honor.

5 THE COURT: Sure.

6 MR. MUSGRAVE: No objection, Your Honor.

7 THE COURT: Admitted without objection.

8 (Copies of exhibits were passed
9 to the jury.)

10 Q (By Mr. Carr) Dr. Wilson, 1404, that is the one
11 starting with the word "mean", you make certain calculations
12 and in the middle of the page you point out something similar
13 to what was testified to yesterday that there has been reported
14 that there has been 5 to 30 parts per trillion of TCDD in
15 range cattle. Isn't that correct?

16 A (By the Witness) Yes, sir. That is the same report
17 that we discussed yesterday.

18 Q And you also again make the note that there is less
19 than 10 parts per trillion in beef from a Cambridge super-
20 market. That would indicate, would it not, that the cattle
21 that is fed in feed lots as opposed to the cattle that are on
22 the range are less likely to have TCDD in their tissues?

23 A I don't know whether that is the case or not. The
24 Mazelson report described results from cattle that were allowed

1 to graze in a specially treated plot and it is hard for me to
2 tell whether that is representative of range cattle or not.

3 Q Well, it certainly is significantly more than not
4 detectable at 10 parts per trillion in beef or rather -- not
5 detectable, but less than 10 parts per trillion in beef from
6 a Cambridge supermarket. Isn't it, sir?

7 A That is correct.

8 Q And you make some conclusions here that half-life is
9 3 to 5 years, that food is a source of, at least in this
10 instance, a source of exposure to human beings and that you
11 have no data as to the dissemination of TCDD in 2,4,5 T as
12 opposed to being attached to airborne particulate. Is that
13 correct, sir?

14 A That is correct.

15 Q Now, the suggestion or the calculation there that a
16 half-life is 3 to 5 years, again, that is similar to what you
17 found yesterday in another exhibit that we discussed. I don't
18 have the number right now in front of me, but it was the same
19 calculation. Was it not?

20 A I think the one we discussed yesterday I assumed it
21 was a little bit lower than that with an upper limit of about
22 three years. But I think I used the range of about three
23 months to three years in those other calculations.

24 Q No. The one I referred you to yesterday was again

1 3 to 5 years. You have used different ranges at other places.
2 But if you need specific -- .

3 A Yes, please.

4 Q I don't have my hand on it right at this moment. We
5 will pass on from that and if it becomes important I will get
6 that out for you.

7 A All right.

8 Q But in any event, your calculations based upon the,
9 well, if you look at 1403, the last page of 1403 that you have,
10 I don't know that it was passed to the jury.

11 A Yes.

12 Q But the last page of 1403, you say it does not appear
13 that the data available on TCDD in air, water or food stuffs
14 are consistent with a depuration half-life of the order of
15 100 days. They do seem to be consistent with a several-year
16 half-life for clearance from fat.

17 A Right.

18 Q And several years would certainly, the 3 to 5 years
19 would certainly be in that range. Would it not?

20 A Right, and as I say I used 3 years as one of the cases
21 in those calculations.

22 Q Now, you also make a point in 1405, the document starts
23 with the word "assume", that the Canadian people, that is the
24 ones from Ottawa and Kingston that were studied that had the

1 higher level in them, you point out that they could not
2 realistically have gotten that much from the fish and probably
3 not from food and this means that they had a heavy 2,4,5 T
4 exposure at sometime in the past. Don't you say that, sir?

5 A That is not exactly what I said. I said the high --
6 the ones -- the high TCDD individuals, those with approximately
7 100 parts per trillion in both studies and there were two or
8 three individuals with very high, well, comparatively high
9 concentrations and it is those that I was referring to.

10 Q And what you point out there and what this shows is
11 that as we know there are several means by which one can get
12 TCDD in his body. That can be a direct exposure to the sub-
13 stance that contains it like soil or 2,4,5 T or Lysol or any-
14 other chlorinated phenol that contains dioxin. A direct con-
15 tact with it or indirect, that is, by ingestion of food that
16 has TCDD in it or water that has TCDD in it. Isn't that
17 correct, sir?

18 A Yes, that is correct.

19 Q And so persons could have and this could accumulate,
20 the TCDD that is in the fat tissue that comes from food on a
21 chronic basis, that is, on a day to day consumption of food
22 that has TCDD in it. The 3 to 5 year half-life means that if
23 I ate a steak today that had 10 parts per trillion hypotheti-
24 cally TCDD in it, that five years from now that 10 parts per

trillion would have been reduced to 5 parts per trillion having half-life in the body of five years.

A Let me see. Assuming a half-life of five years and the amount that you got from eating that steak now, half of it would be gone in five years. Yes, that is correct.

Q So, if I took in 10 parts per trillion and assume all that 10 parts per trillion got in my fat tissue and we know that won't occur, but there will be some part of that, whether it is 10 per cent or 30 per cent, whatever it is, some part of it will get in my fat tissue. But five years from now there will be half of that in there. We started out with 10. There would be 5 in there five years from now and ten years from now there would be two and a half parts per trillion in there. Fifteen years from now there would be 1.75 parts per trillion and so on. Would there not, sir?

A That is correct.

Q Now, in the meantime though if everyday for those 10 or 20 years I ate steak that contained the same level of TCDD, that is 10 parts per trillion, that half-life factor applies to any incoming, any new incoming TCDD ingestion as well. Does it not, sir?

A Yes.

Q So that at the end of five years I would have in me not just the 5 parts per trillion that I started out with with

1 the first steak that I ate, but also an amount for the next
2 day that I ate would have a little more than 5 parts per
3 trillion at the end of five years. What I ate the third day
4 would be a little bit more than 5 parts per trillion and all
5 that over that period of five years that I am eating that food
6 would be accumulating and adding up and storing in my body.
7 Would it not, sir?

8 A Yes, to a point.

9 Q Yes. Now, if I didn't eat any more, if I got out of
10 that exposure, if I didn't come into and this accumulation in
11 the body tissue comes about not just from eating food. But
12 from breathing air if there is TCDD vapor in the air that I
13 breathe or if there is dust in the air that I breathe that is
14 contaminated with TCDD or if I am a baby and I put a TCDD
15 contaminated toy in my mouth, this accumulation of TCDD comes
16 from all manner and form of exposure, doesn't it, sir, assuming
17 that the TCDD is there to start with?

18 A Making that assumption, yes, that is correct.

19 Q So, I can get it by walking on range land that has
20 been sprayed with 2,4,5 T and it is dusty and the 2,4,5 T has
21 not been degraded and it is still there. I will get it that
22 way. If I wade in a stream that has had discharges, if I swim
23 in a river that has had dioxin discharged into it, I would
24 absorb some through my skin thereby and if I eat the food I

1 would get it. If I am in a municipality that has an incinera-
2 tor that has been burning chlorinated phenols, paper, cans,
3 wood, whatever that might have chlorinated phenol or other
4 precursors to dioxins therein and I get that air or get the
5 dust that comes from the incinerator, that is another method
6 or form of me getting TCDD in my system and accumulating
7 therein. Isn't that correct, sir?

8 A Basically, yes.

9 Q So that by the time I am 50 years old if I ever get
10 to be that old, don't smile at me (laughing). By the time I
11 get to be 50 I could have accumulated in my body because of
12 the nature of the half-life and the nature of the exposures,
13 I could have accumulated a significant, well, an amount of
14 TCDD consistent with my exposure and the half-life factor.
15 Isn't that correct, Dr. Wilson?

16 A That is correct.

17 Q And let me -- could you mark this, please?

18 (Plaintiff's Exhibit No. 1406

19 was marked for identification.)

20 Q Hand you what has been marked Plaintiff's Exhibit 1406.
21 Ask you if you recognize that as a document prepared by Dr.
22 Hileman of the Dayton Laboratory.

23 A His name is at the top and it looks like his signature
24 at the bottom. I do.

1 Q And he makes the point at the very last sentence of
2 1406, just as you have agreed herewith, that human fat particu-
3 larly of an older individual whose body has had years to
4 accumulate these contaminants can prove to be a real challenge
5 to analyze. Does he not, sir?

6 A Let me have just a minute to read this.

7 Q All right. Go ahead.

8 A Yes, he says that here.

9 Q Now, this bio-accumulation factor from the food that
10 we eat, if we are unfortunate enough to eat the cattle that
11 have grazed on the 2,4,5 T land or from the use of the Lysol
12 if we happen to be the ones that get the batches that had the
13 levels of TCDD in it or from these other sources or from the
14 municipal incineration of the chlorinated phenols, any of these
15 other sources, we get that amount in our bodies, but we have
16 other opportunities from time to time out of the ordinary to
17 accumulate greater, larger amounts of dioxin. Don't we, sir?
18 And I will cite you an example that you listed in 1405. That
19 is the Canadians where you suggest that is a past episode of
20 heavy 2,4,5 T TCDD exposure.

21 A There is evidence for that, yes.

22 Q Another example would be the lady who died of cancer
23 in Italy that had the 1840 parts per trillion of TCDD in her
24 fat tissue and 6 parts per trillion in her blood. Do you recall