

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTONIA TOLBERT, et al.,)
Plaintiff,)
-vs-) Case 01-C-1407-S
MONSANTO COMPANY,)
PHARMACIA, INC., and)
SOLUTIA, INC.,)
Defendant.)

STIPULATIONS

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel that the deposition of ROBERT G. KALEY may be taken on behalf of the Plaintiff at 400 20th Street North, The Clark Building, Birmingham, Alabama, at 1:30 p.m., Wednesday, July 30, 2003, before Michele H. Bailey, Court Reporter and Notary Public for the State of Alabama at Large.

1

APPEARANCES

For the Plaintiff:
Shelby, Roden & Cartee
BY: ROBERT B. RODEN
2956 Rhodes Circle
Birmingham, Alabama 35205

For the Defendants:
Lightfoot, Franklin, White & Lucas
BY: KEVIN E. CLARK
400 20th Street North
The Clark Building
Birmingham, Alabama 35203

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IT IS FURTHER STIPULATED AND AGREED that the signature to and the reading of the deposition by the witness is not waived, the deposition to have the same force and effect as if full compliance had been had with all laws and rules of Court relating to the taking of depositions.

IT IS FURTHER STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of trial, or at the time said deposition is offered in evidence, or prior thereto.

IT IS FURTHER STIPULATED AND AGREED that notice of filing of the deposition by the reporter is waived.

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Mr. Roden

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1 I, Michele H. Bailey, a Court Reporter of
2 Birmingham, Alabama, acting as Commissioner, certify
3 that on this date, as provided by Rule 30 of the
4 Alabama Rules of Civil Procedure and the foregoing
5 stipulations of counsel, there came before me in
6 Birmingham, Alabama, Wednesday, July 30, 2003,
7 1:30 p.m., **ROBERT G. KALEY**, called as a witness on
8 behalf of the Plaintiff, for oral examination,
9 whereupon the following proceedings were had:
10 **ROBERT G. KALEY**,
11 having been first duly sworn, was examined and
12 testified as follows:
13 THE COURT REPORTER: Usual stipulations?
14 MR. RODEN: Yes.
15 MR. CLARK: He would like to read and sign
16 if he hasn't already communicated that to you.
17 EXAMINATION BY MR. RODEN:
18 Q Okay. Dr. Kaley, I guess we can just
19 assume this is just another deposition that we want
20 to continue it -- do we want to make it a
21 continuation of the last one or just make it
22 separate?
23 MR. CLARK: No, and let me say this for

5

1 the record. This is -- we are putting up Dr. Kaley
2 as a rule 30(b)(6) witness on subjects identified in
3 one D and one E of the plaintiff's 30(b)(6)
4 deposition notice. And we would object to any
5 questions beyond the scope of those two subsections
6 and will raise objections at the appropriate time
7 as well.
8 Q Let me ask -- I guess, let me go ahead and
9 mark that then. Let's mark this then, the notice of
10 deposition.
11 (Plaintiff's Exhibit No. 1 was
12 marked for identification.)
13 Q All right. Dr. Kaley, I'm going to show
14 you the 30(b)(5) and (6) deposition. As I
15 understand, you are being presented to us on the
16 issues in this notice of D and E of that notice. Is
17 that your understanding?
18 A That is my understanding.
19 Q And it's -- the notice involves the action
20 that has been brought by Solutia and Pharmacia
21 against several foundries. Do you understand that
22 to be the case?
23 A I understand that the subject of this

6

1 notice is my knowledge of those issues, yes.
2 Q And I guess I will mark for identification
3 the lawsuit that has been filed which is Exhibit 2.
4 Are you familiar with that?
5 (Plaintiff's Exhibit No. 2 was
6 marked for identification.)
7 A I'm familiar that the suit exists. I'm
8 not necessarily familiar with the content.
9 Q Did you provide any information to counsel
10 for preparing that lawsuit?
11 A I answered some questions as they were in
12 the process of preparing that, yes.
13 Q Okay. Now, have you been involved with
14 the sampling of various areas around the Monsanto
15 plant in the last several years?
16 A Not actively. I'm aware of what has been
17 done, yes.
18 Q You have been given the results of that
19 sampling?
20 A I would say for most of them, yes.
21 Q Are you familiar with the location of the
22 various foundries named in this lawsuit?
23 A Only in the most general terms.

7

1 Q Okay. Do you have any knowledge
2 concerning any testing that has been done in and
3 around any of these facilities, these foundries?
4 A No, I do not.
5 Q Who would have that information?
6 A Craig Branchfield, if it exists.
7 Q Who would be the one who had done any
8 sampling, if there was any done, around these
9 foundries?
10 A Well, if it were done at the direction of
11 Solutia, it would have been done under Mr.
12 Branchfield's management. I don't -- you know, I
13 don't know who would have actually done the
14 sampling. It would have been a contractor to
15 Solutia under Mr. Branchfield's management.
16 Q So you don't have any knowledge as to
17 whether it would have been, for instance, Mike Price
18 or anyone else?
19 A Not specifically, no.
20 Q Okay. What information do you have
21 concerning the foundries and the contribution that
22 these foundries played on any PCB contamination in
23 Snow Creek?

8

1 A I mean, all I know is as we have thought
2 about those issues over the past "x" number of
3 years, ten years or so, I mean, those issues have
4 come up as to whether the foundries could have
5 contributed to that. I have no specific knowledge
6 whatsoever.

7 Q Well, let me ask this: Are you familiar
8 with the waste water outfalls from the Monsanto --
9 the old Monsanto facility?

10 A In general, yes. Not in excruciating
11 detail.

12 Q Can you give me some general -- your
13 general knowledge as to the location of the waste
14 outfalls as it would relate to Snow Creek, for
15 instance?

16 A Well, my knowledge would be that there
17 were no, quote, waste outfalls that went to Snow
18 Creek. There were stormwater discharges that
19 ultimately made their way to Snow Creek.

20 Q All right. Where would the stormwater
21 discharges be located?

22 A Well, there was -- there's two or three on
23 the north side of the plant which I believe carried

9

1 waste water from the north side of the plant and
2 ultimately from the West End landfill. And there
3 was a discharge on the east side of the plant which
4 was our primary plant stormwater discharge that went
5 through a series of drainage ditches to what is now
6 lovingly called the 11th Street ditch and then to
7 Snow Creek. And then there was some surface water
8 drainage from the south landfill which eventually
9 crossed -- well, Highway 202 once it existed and
10 also made its way to Snow Creek.

11 Q Okay. Let me show you, if I might -- are
12 you familiar with Golder Associates?

13 A Yes, I am.

14 Q This is a map, if you will, that as I
15 understand was prepared by that Golder that I will
16 mark and we will copy later as Exhibit 3, if I can,
17 just so I can get an idea or at least you can give
18 me your general idea of where the stormwater
19 discharges would have been located in reference to
20 this map, if you can. Do you recognize this map?

21 A Yes, I do.

22 (Plaintiff's Exhibit No. 3 was
23 marked for identification.)

10

1 Q Okay.

2 A This is a map of basically our plant site
3 and the surrounding areas. It was really prepared
4 to describe what are called areas of concern in some
5 of the work we were doing for ADEM. I don't know
6 what the date on this map is, 1999. So these were
7 basically addressing consent decrees that we -- work
8 we had done on ADEM, but with the top of the map
9 being north, the south landfill is the area south of
10 what's marked as Highway 202.

11 Q Can we put a -- is it marked south
12 landfill?

13 A Well, no, it's marked SWMU and something I
14 can't even read, so...

15 Q All right. Can I just put an "s" here for
16 south landfill?

17 A Sure.

18 Q Okay.

19 A So the south landfill basically -- you
20 want the current discharge system or the former
21 discharge system?

22 Q No, the former.

23 A This reflects unfortunately the situation

11

1 after the extensive remediation we did in 1996 and
2 '97, but in this area marked ALCD on the north and,
3 well, the top right of the map, there were two
4 residential neighborhoods through which a couple
5 stormwater ditches ran. The south landfill
6 discharge that I spoke about ran under Highway 202
7 to a ditch which ran behind what was Morris Hill
8 Missionary Baptist Church and then into the area
9 that's marked ALCD on this map. It was joined in
10 areas in a big tract of land owned by Monsanto by
11 another ditch which left our Monsanto plant in about
12 the center of the map. This was known as discharge
13 point 001 in our waste water permit. Those waters
14 flowed through, as I said, Monsanto-owned
15 properties, joined the ditch which was draining the
16 West End landfill.

17 Q Which is the 11th Street ditch?

18 A I mean, the south landfill. No, we are
19 still in the Monsanto-owned property. We are still
20 south of Bethel Missionary Baptist Church.

21 Q Okay.

22 A That material or that creek then left
23 Monsanto property after about -- well, ran behind

12

1 and under some of the property of Bethel Missionary
2 Baptist Church, under West 10th Street, under some
3 railroad tracks, and then joined the 11th Street
4 ditch.

5 Q The 11th Street ditch, is that also
6 adjacent to the Miller property, they call it, I
7 believe?

8 A Well, it's on the other side of the
9 railroad tracks from it. Really, I wouldn't call it
10 adjacent to it. It's really -- well, it's north of
11 it. It does run along the north side of that after
12 -- on the other side of the railroad tracks.

13 Q And prior to entering the discharge,
14 discharge 001, was there a limestone pit?

15 A During part -- you know, certainly during
16 the operation of -- if we are talking about when
17 PCBs were being manufactured there.

18 Q Right.

19 A Yes, there was.

20 Q Okay. And that was located on the --

21 A Well, it was just west of that 001
22 discharge. It would have been on the east side of
23 the Monsanto facility.

13

1 A My recollection and understanding is that
2 was from the old parathion manufacturing process.

3 Q Okay. So the discharge 001 that
4 ultimately went into the Monsanto property and into
5 the 11th Street ditch, did it eventually -- did the
6 11th Street ditch eventually converge into Snow
7 Creek?

8 A Yes, that's correct.

9 Q Okay. Now, just in point of reference,
10 once it reached the 11th Street ditch, would east of
11 that ditch be considered downstream?

12 A Yes.

13 Q All right. Does the ditch -- is there --
14 does the ditch also go west?

15 A Yes.

16 Q All right. And would that be considered
17 upstream?

18 A Yes, that's right.

19 Q Okay.

20 A It goes west up to the point where our --
21 what we just talked about, what I think are 4, 5,
22 and 6 discharge points and then actually further
23 west even than that into a very highly formally

15

1 Q And then where was the other stormwater
2 discharge?

3 A The other discharges are on the top left
4 center of the map. There is labeling here, old
5 limestone bed. That would have been part of that
6 stormwater discharge system, and there were several
7 discharge points along here which discharged into
8 the west side of -- or the west end of the 11th
9 Street ditch.

10 Q Okay. And was any of the discharges going
11 through the -- is that -- would that be discharge
12 002 or is it --

13 A You know, I don't know. My recollection
14 is it's like, 04, 05, and 06.

15 Q Okay.

16 A But that's just my recollection. Craig
17 would be much more -- Mr. Branchfield would be much
18 more knowledgeable about those numbers.

19 Q But whatever that -- I don't know what we
20 would call it. The discharge to the old limestone
21 pit, did that discharge include any PCB material?

22 A No, it did not.

23 Q What materials did that include?

14

1 industrialized area.

2 Q Okay. Can you tell me basically -- that's
3 what I was -- I'm trying to get a relationship as to
4 what -- if you can tell me generally speaking where
5 any of these foundries, and I think there's 20 in
6 number, where they would be located in relation to
7 what I will call the upstream from the 405 or
8 whatever that discharge point was.

9 A Yeah, 4, 5, and 6. Well, there are
10 actually three of them, 4, 5, and 6. Well, my
11 understanding with at least some of those foundries
12 and operations are in what is basically the upper
13 left corner of this map or the northwest section of
14 this map.

15 Q You said the majority of them are?

16 A Well, some of them are. I don't -- I
17 haven't counted. I don't know what the 20 -- I
18 frankly don't know what the 20 facilities are and I
19 don't know where the individual ones are listed. I
20 know that some of them are up in that northwest
21 quadrant.

22 Q Can you be specific as to which ones those
23 are?

16

1 A I know FMC is up there, if that is one of
2 the defendants. I know that Huron Valley Steel, I
3 believe, is up there, if that is one of the
4 defendants. And I think Union Foundry is up there
5 if that is one of the defendants. Those are the
6 ones that I can think that are still operating. As
7 far as the ones that aren't still operating, I don't
8 know.

9 MR. CLARK: Bobby, let me break in here
10 real quick. I don't know how this relates to the
11 two subjects that he is going to testify on,
12 Monsanto's knowledge of the persistence of PCBs in
13 the environment and Monsanto's efforts to minimize
14 the risk PCBs could have on the environment. I
15 don't think discussions about the foundries fall
16 within that. That's probably something that was
17 either covered or should have been covered by Mr.
18 Branchfield.

19 MR. RODEN: Well, I mean, I agree that --
20 I will say this. D and E are very general, so I
21 don't know, but, obviously, this notice has to do
22 with factual allegations concerning the lawsuit
23 filed by Solutia against McWane and others, and I'm

17

1 know where the McWane Union Foundry facility is
2 located?

3 A I know vaguely that it is located north
4 and west of our existing facility, but I have no --
5 I couldn't give you an address. I couldn't drive
6 you to Anniston and put you on that property.

7 Q According to the complaint, it's at 1501
8 West 17th Street.

9 A Okay.

10 Q Now, what I'm trying to determine is: Is
11 that facility located upstream or downstream from
12 the discharge area of the -- what I will call the 4,
13 5, and 6 discharge?

14 MR. CLARK: You are asking him for his
15 opinion not for his testimony as a Rule 30(b) (6)
16 rep?

17 MR. RODEN: Well, I'm asking whatever he
18 knows. I mean, I don't know how you can
19 differentiate the two.

20 MR. CLARK: I am having a hard time
21 fitting your line of questioning into these two
22 areas. That's what I'm struggling with. I mean, if
23 you know, you can --

19

1 trying to see what he does know about it.

2 MR. CLARK: Okay. Well, I will let you go
3 a little while.

4 MR. RODEN: And I don't know what he does
5 know and I am trying to --

6 MR. CLARK: We are only putting him up for
7 D and E. That's my concern is that you are covering
8 areas that technically go outside the scope of that.

9 MR. RODEN: Well, but D and E would
10 include the persistence of PCBs in the environment
11 which, I guess, would include anybody in addition to
12 Monsanto who put it there.

13 MR. CLARK: I don't know about that.

14 MR. RODEN: Well, that's --

15 MR. CLARK: I will let you ask some more
16 questions, but just keep that in mind.

17 Q Well, Dr. Kaley, the lawsuit alleges that
18 there was foundry sand, fluff, and other waste fill
19 material that was put into the West Anniston area by
20 various foundries, and I'm trying to find out what
21 you know as a representative of Solutia concerning
22 those allegations concerning these specific
23 foundries, if anything. And, for instance, do you

18

1 A I do not know specifically where Union
2 Foundry, any discharge from Union Foundry into the
3 11th Street ditch would occur with regard to those
4 three particular discharge points.

5 Q Whether it's downstream or upstream?

6 A Of those three particular discharge
7 points, that's correct, I do not know that.

8 Q What about the discharge point of 001,
9 same question?

10 A That would be upstream of that discharge
11 point. It would be discharged -- clearly upstream
12 of the point at which the ditches gaining the 001
13 discharge ultimately merged with the 11th Street
14 ditch.

15 Q All right. Okay. What about Walker
16 Industries?

17 A I do not know.

18 Q U.S. Pipe and Foundry?

19 A I believe U. S. Pipe and Foundry is down
20 south of Anniston, and I believe -- I don't think it
21 discharged into the 1th Street ditch at all, at
22 least the facility that I'm aware of.

23 MR. CLARK: Bobby, let's move to another

20

1 line of inquiry here. I just don't think this is
2 within the scope of D and E. And I think you would
3 agree with me this is questioning that could have
4 been asked of Mr. Branchfield and probably was asked
5 for all I know.

6 Q Well, all right. What then -- there
7 obviously has been found PCBs in the environment in
8 West Anniston; correct?

9 A In some places, yes.

10 Q Okay. And does the PCBs that are found --
11 when we say in the environment, we mean the various
12 water tributaries, right, and in the soil? What
13 areas of the environment have PCBs been found? Let
14 me ask you that.

15 A Well, they have been found in sediments in
16 various ditches and in some places in Snow Creek,
17 and they have been found in soils in some
18 residential properties.

19 Q Okay. And do you have any information
20 that you can give me as to whether or not the PCBs,
21 the persistence of PCBs in the sediments in Snow
22 Creek and in the soils of some residential
23 properties came -- where those came from?

21

1 A Some of them, I'm sure, came from the
2 Monsanto facility. Some of them, I'm sure, did not
3 come from the Monsanto facility.

4 Q Do you have any knowledge or any way to
5 quantify that?

6 A None whatsoever.

7 Q Okay. Now, when we last talked, we talked
8 about the consent decree and the various zones that
9 the consent decree would cover.

10 A I recall that, yes.

11 Q Okay. And I think we talked about the
12 fact that those zones are mainly confined to the
13 flood planes in the area of West Anniston.

14 A Well, yeah, that is generally correct,
15 yes.

16 Q Okay. And, for instance, if the -- and we
17 have got the map concerning the various levels which
18 I believe was marked Exhibit 1 to your last
19 deposition.

20 A Okay.

21 Q And with respect to the persistence of
22 PCBs in the West Anniston area, have you found in
23 your experience that PCBs, in fact, exist outside,

22

1 for instance, zone three or north of zone three?

2 A As I sit here today, I can't specifically
3 say whether they have or have not.

4 Q Okay. All right.

5 A I mean, I'm sure that information exists
6 and Mr. Branchfield has it, but I don't know
7 specifically if there are properties outside that
8 zone to the north that have PCBs on them or not.

9 Q Are you familiar -- during the process of
10 litigation, have you become familiar with the
11 residence of Flora Reed?

12 A I am sure I have seen her address and
13 maybe even seen it described at times, but I
14 couldn't point it to you at a map. It's not
15 something I have knowledge of, no.

16 Q The way I have analyzed this zone three,
17 she is outside of zone three.

18 A Okay. I will be willing to take your word
19 for that.

20 Q She has -- there has been PCBs found in
21 her soil.

22 A Okay. I will take your word for that.

23 Q And she is in -- she is up above the flood

23

1 plane.

2 A Okay.

3 Q And there has been PCBs found in tree bark
4 by our experts.

5 MR. CLARK: Object to the form.

6 Q Would her property, if it is outside zone
7 three, be part of the consent decree?

8 A If it is outside zone three, my
9 understanding would be that it would not be sampled
10 under the consent agreement.

11 Q Okay. Have you been -- during your
12 tenure, have you actually done any review of the
13 various soil samples that have been taken on the
14 various properties?

15 A Only in the most cursory manner.

16 Q Okay. Again, is that something that
17 Mr. Branchfield would have done?

18 A Yes.

19 Q Okay. What efforts can you tell me you
20 are personally familiar with that Monsanto has done
21 to minimize the risk that PCBs could have on the
22 environment as -- which is, I think, part E of this
23 notice?

24

1 A Well, where do you want me to start?
2 Q In the beginning.
3 A When do you want me to stop?
4 Q In the beginning.
5 A Well, basically in 1966 Monsanto and
6 others became aware of the presence of PCBs in the
7 environment. At that time Monsanto began an effort
8 to, number one, understand the detection and
9 presence of PCBs in the environment, to understand
10 the efforts to -- of how they could have gotten
11 there, why they were being found there, and that
12 effort continued for basically 10 or 15 years
13 subsequent to that time in great detail.

14 I think Monsanto undertook efforts at its
15 plants to see if PCBs were being discharged, to see
16 eliminate those discharges to the best of their
17 ability, many details along that range.

18 They also undertook research programs to
19 understand the biodegradability of PCBs, the
20 accumulation of PCBs in animal tissues, to
21 understand how PCB moved in soils and in water, a
22 large area of research there. They also undertook
23 efforts to, on a corporate basis, to eliminate uses

25

1 of PCBs. They looked at the use patterns of PCBs
2 and undertook efforts to establish rules around the
3 uses of PCBs so that what were called open uses were
4 eliminated to, again, keep PCBs from being released
5 into the environment as much as possible. Undertook
6 efforts with customers to handle PCBs appropriately.
7 Undertook product research to come up with
8 substitutes for PCBs and, in fact, did come up with
9 some that eventually were not financially or were
10 not successes commercially, but we did have
11 substitutes for some PCB products. We actually
12 designed a PCB product which was meant to be more
13 environmentally compatible by removing the higher
14 chlorinated PCBs.

15 And within that milieu of efforts, I mean,
16 there's tons of detail which I can go into however
17 you want to, but that's basically, you know, in that
18 first 10 or 15 years the efforts we undertook to
19 minimize those risks.

20 Q You came on board with Monsanto in what
21 year?

22 A 1973.

23 Q And so all this that you have talked -- at

26

1 least from '66 to '73, this is something you have
2 learned through, I guess, reading documents and
3 being told?

4 A Yes, that's correct.

5 Q And when you came on board, who was one of
6 the people that may have been the one that gave you
7 this information?

8 A Well, I mean, I came on board into a group
9 that was doing a lot of the PCB analysis. So
10 certainly my supervisor Scott Tucker, Dr. Paper --
11 not Dr., I guess Mr. Papageorge, I guess, would have
12 been the primary two sources.

13 Q Did you work with Jim Bryant?

14 A Jim Bryant? I know who Jim Bryant is. I
15 probably did analysis. He was actually in the
16 product research group where I was in the analytical
17 service group, but, you know, I'm sure -- I mean, I
18 know Jim, and I'm sure I did samples that he
19 generated in his laboratory work at some point or
20 another, but I was never in the same working group
21 with him.

22 Q He wasn't ever any kind of supervisor over
23 you?

27

1 A No.

2 Q Prior to '66, though, there were -- were
3 there means and methods to prevent the PCBs from
4 getting into the environment?

5 A Well, I mean, I'm sure there were things
6 that had we known they were getting into the
7 environment and had we had understanding that in
8 retrospect we could have done, but the fact was that
9 the means to measure the PCBs in the environment
10 were not in place so that there was no -- you know,
11 there was no signal that that issue existed.

12 Q Would that also include air emissions?

13 A It would especially include air emissions.
14 Those methods are, I would say, in the developmental
15 stage even as we speak today.

16 Q So there was no way to measure air
17 emissions in the late sixties?

18 A No, I didn't say that, but the methods
19 were very crude.

20 Q Okay.

21 A And they would only have measured very
22 high levels.

23 Q Okay. As a matter of fact, weren't they

28

1 being measured at the other facility which was
2 where? Where was the other PCB facility?

3 A Besides Anniston?

4 Q Right.

5 A Sauget, Illinois.

6 Q Right.

7 A I'm not aware that they were.

8 Q You are not. Okay. You have never seen
9 anything concerning that?

10 A Not that I recall.

11 Q Okay. So you are saying that in 1966
12 there was an undertaking made then to reduce the
13 amount of PCBs going into the environment?

14 A Well, in 1966 late, I think, December of
15 1966, the first publication or really it was a
16 little news blurb in a kind of a popular science
17 magazine appeared.

18 Q Right.

19 A We at that point began efforts to
20 understand the situation and gear up. It was really
21 probably '68 or '69 before we really began to take
22 specific efforts at Anniston or Sauget to minimize
23 those discharges, but there was -- you know, there

29

1 was certainly an active period of learning before
2 that to understand what the situation really was and
3 to develop the methods to measure the PCBs that were
4 being discharged, if they were.

5 Q Now, what -- and I know I have probably
6 asked you this before, and I apologize, but what
7 specific PCB products, aroclor products, were being
8 manufactured at the Anniston facility?

9 A I mean, essentially all of them were. I
10 can list the numbers, if you want me to do that.

11 Q Yeah, would you.

12 A All right. I believe at Anniston aroclor
13 1221, 1242, 1248, 1254, 1260, probably 1262, and
14 1268 were being manufactured at Anniston. I don't
15 know about aroclor 1232. It was a blended material.
16 I don't know whether that blending occurred at
17 Anniston or not. And 1016 was not manufactured at
18 Anniston.

19 Q Okay. Now, the various plants, the
20 facilities, the unions that have been sued in this
21 case --

22 A Yes.

23 Q -- as I understand from your prior

30

1 testimony, I believe you said that you felt like the
2 foundries in Anniston were using aroclor 1268 in
3 their processes?

4 A I don't know whether I said that. I
5 believe what I may have said and certainly what I
6 would say is that in many of the samples where
7 aroclor 1268 has been detected as a major or the
8 predominant aroclor product in those samples, it
9 appears to be associated with foundry sand.

10 Q Explain that to me. What do you mean?

11 You are saying that in the samples that you are
12 aware of where the 268 is found there has also been
13 some evidence of foundry sand and other materials?

14 A Well, I mean, you know, Craig has
15 described the difference in his view of between what
16 looks like foundry sand and what looks like regular
17 soil. And in those samples that looked like foundry
18 sand in many of those samples, aroclor 1268 was
19 there at higher levels proportionally than it would
20 be in the samples of, quote, normal soil.

21 Q Can you tell me -- do you have any
22 information as to what, for instance, McWane Union
23 Foundry would have used in their facility?

31

1 A No, I do not.

2 Q Who could tell me that with Solutia or
3 Monsanto?

4 A Well, I would assume that if any knows
5 that, Craig does. I don't, you know.

6 Q All right. So is the basis, and I guess
7 we can pull it, but the basis for your belief that
8 the foundries in Anniston were using aroclor 1268 is
9 based on the fact that you have been told at least
10 to some extent that the 1268 is found predominantly
11 along with the foundry sand?

12 A If I said that it was being used, that
13 would be --

14 Q Okay.

15 A -- but whether it's being used
16 specifically or whether that association is as a
17 result of something other than direct use, I'm not
18 sure I know that. But what we discussed before and
19 your final conclusion is true. Yes, it is basically
20 on samples where I have looked at the results and
21 have been told essentially what the nature of the
22 sample was for those results. That's the basis of
23 my statement whatever it was.

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1 Q Now, other than these, I think you said at
2 least based on your knowledge of the area that the
3 Huron Valley Steel Corporation, the FMC Corporation,
4 and the Union Foundry in your mind were all upstream
5 from the discharge --

6 MR. CLARK: Object to the form of the
7 question.

8 Q -- from the 11th Street ditch; right?

9 MR. CLARK: Object on the basis it's
10 outside the scope of the 30(b)(6) deposition notice.

11 A Yes.

12 Q Okay. Are there any others that's listed
13 on here that you can just tell me just so I will
14 know which ones to your knowledge are upstream?

15 MR. CLARK: Repeat the objection on the
16 basis that the line of inquiry is outside the scope
17 of the 30(b)(6) deposition notice.

18 A There are none others on there that I can
19 testify would be upstream. I don't know.

20 Q Okay. Now, just to be sure, and I assume,
21 Kevin, that a lot of this was covered with
22 Mr. Branchfield, I was there, but I don't remember
23 some of this stuff being covered, but let me just

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1 Pharmacia?

2 MR. CLARK: I object to the line of
3 questioning as being outside of the deposition. And
4 I would not answer that.

5 MR. RODEN: Well, it is inside the
6 deposition.

7 MR. CLARK: Well, it's outside the two
8 areas of testimony for which we are putting him up
9 as a 30(b)(6) witness.

10 MR. RODEN: Well, here is my problem,
11 Kevin. I understand what you are saying, but I want
12 to be sure he doesn't -- I don't know if Mr. -- I
13 don't remember Mr. Branchfield being asked that. If
14 he was asked that and he said he doesn't know and if
15 Dr. Kaley doesn't know, then the person that knows
16 that wasn't produced. Do you see what I am saying?
17 If he doesn't know, that's fine.

18 MR. CLARK: I am just saying is my
19 recollection is you probably had an opportunity to
20 ask that question and didn't. I will let him answer
21 this question, but I won't let him delve further
22 into this testimony.

23 Q Do you remember the question?

35

1 ask him this: Is there anything that you know, Dr.
2 Kaley, that -- do you have any information from your
3 work with Solutia that would be concerning the
4 allegation that many other sources of PCB
5 contamination exist from parties using products
6 containing PCBs?

7 MR. CLARK: Object to the form.

8 Q Is there anything you know personally that
9 would -- that you could provide me about that
10 particular allegation?

11 MR. CLARK: Objection to the question on
12 the basis it's outside of D and E of the deposition
13 notice. If you want to answer, you can.

14 A I guess I would need some definition. Are
15 you talking about in Anniston specifically --

16 Q Yeah, in Anniston.

17 A -- with regard to the defendants in that
18 action?

19 Q Right.

20 A I have no specific knowledge.

21 Q Okay. Do you have any knowledge
22 concerning the agreements which Solutia has with,
23 indemnity agreements, with Monsanto which is now

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1 A I have no specific knowledge of the
2 indemnity agreements between Pharmacia and/or
3 Solutia.

4 Q Okay. Do you have any personal knowledge
5 of how, if it did, any one of these foundries listed
6 in this complaint contributed to the PCBs into Snow
7 Creek, I mean, personal knowledge? Do you have --
8 have you done any studies or any sampling or
9 anything that you have that in your mind that could
10 tell us what you might know concerning their
11 contribution to PCBs into Snow Creek?

12 A I have no personal knowledge.

13 Q Have you visited any of these foundries
14 for the purpose of determining -- for the purpose of
15 determining if any of their processes contributed to
16 the PCB contamination in the West Anniston area?

17 A No.

18 Q Are you familiar with the -- you came on
19 board in, you said, '83?

20 A '73.

21 Q '73, excuse me. Are you familiar with the
22 Tull Chemical incident in 1984?

23 MR. CLARK: Object to the question on the

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1 grounds it's outside the scope of the subject to
2 which Dr. Kaley is put up as a rule 30(b)(6)
3 witness. Answer if you want to.

4 THE WITNESS: If I want to?

5 A Yes, I have --

6 MR. CLARK: He is speaking not as a rule
7 30(b)(6) rep, but in his individual capacity.

8 A Yes, I have some understanding of that
9 situation.

10 Q Were you involved with that?

11 A I was involved in the aftermath of some of
12 it, yes.

13 Q And when you say "aftermath," what do you
14 mean?

15 A Well, eventually the Alabama attorney
16 general approached Monsanto about some issues around
17 PCBs in Snow Creek, and I was involved in some of
18 those discussions and some of the activity
19 subsequent to that.

20 Q And that had to with Tull Chemical's
21 contribution of PCBs into Snow Creek?

22 A That was the origin of the investigation,
23 yes, is my understanding.

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1 Q And wasn't it ultimately determined that
2 Tull Chemical did not, in fact, contribute
3 substantial amounts of PCBs into Snow Creek?

4 MR. CLARK: Object to the form.

5 A That would not be my understanding. I
6 don't know that.

7 Q Well, did you have any -- I guess I'm not
8 sure I understand your involvement with that
9 particular situation.

10 MR. CLARK: Let me just clarify for the
11 record, too, again, this is not testimony being
12 offered as a rule 30(b)(6) witness because again
13 it's outside of the areas for which he is being put
14 up today.

15 A Is there question pending? I thought you
16 just said you didn't understand. Is that a
17 question?

18 Q Well, here's -- and, again, I don't know
19 what your involvement was with this so that's what
20 I'm trying to understand. You said you were
21 involved with the aftermath, I think you said, and
22 I'm not sure I understand what that means.

23 A Without being a wise guy, that's still a

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1 statement and not a question. But I was involved in
2 Monsanto's investigations of the presence of the
3 PCBs in the sediments of Snow Creek and what is now
4 called the 11th Street ditch leading up to Snow
5 Creek. I did not do the measurements, but I was
6 aware of the results and I also was involved in
7 proposing a sediment removal to address those
8 issues. And ultimately as one of the steps, to get
9 back to the 30(b)(6) thing, one of the steps that
10 Monsanto undertook in about 1989 was to remove
11 sediments, a large amount of sediments, from the
12 11th Street ditch and dispose of them in accordance
13 with TSCA regulations.

14 Q But in 1984 was it Monsanto's position
15 that Tull Chemical had contributed to that
16 contamination?

17 A Certainly not in the area above. I mean,
18 all the area that I was involved in was above Tull
19 Chemical's discharge point, and, you know, we would
20 not have -- I mean, we were dealing with the
21 materials that were clearly not from Tull Chemical
22 because it was above their discharge point which is
23 down either in or near Oxford.

39

1 Q So they were downstream?

2 A Yes.

3 Q I have got you. And maybe this is what's
4 confusing me. I'm not sure I know who CSI is. I am
5 not sure you do. Do you know who CSI is?

6 A Not without seeing some context.

7 Q Here is a document that evidently is a --
8 it's along the lines of the ADEM -- the attorney
9 general and ADEM contacting Tull Chemical --

10 A Okay.

11 Q -- and talking about the Snow Creek
12 contamination.

13 A Okay.

14 Q And in their conclusion, they concluded
15 that Tull did not contribute -- did not
16 substantially contribute to the Snow Creek -- I
17 can't remember what their word was.

18 A Well, I mean, the statement says these
19 results reveal that Tull Chemical Company has not
20 caused any significant contamination of Snow Creek
21 sediments, and I agree that it says that. I have
22 not seen this document.

23 Q Okay.

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1 A I can't comment. I don't know what it's
2 addressing specifically.
3 Q Okay. And you --
4 A I do not know who --
5 Q CSI?
6 A -- or what that even means. I mean, if
7 you read the first station or the first sentence, it
8 doesn't even make sense, anyway, so I don't know
9 what it means.
10 Q Okay.
11 A I do not know what those three letters
12 stand for.
13 MR. CLARK: Before we go any further,
14 again, I want, Bobby, to just ask you how does this
15 pertain to Monsanto's knowledge of the persistence
16 of PCBs in the environment or any efforts they made
17 to minimize the risk PCBs could have on the
18 environment?
19 MR. RODEN: Well, it has a lot to do with
20 it if, in fact, their knowledge of the persistence
21 of PCBs in the environment has to do with the other
22 foundries contributing to that persistence.
23 MR. CLARK: That's a different question.

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1 That's the source of PCBs.
2 MR. RODEN: Well --
3 MR. CLARK: We are talking about
4 Monsanto's knowledge of the persistence of PCBs in
5 the environment. You are asking questions about the
6 source of those PCBs.
7 MR. RODEN: Well, how are they going to
8 get there?
9 MR. CLARK: We are not talking about
10 source.
11 MR. RODEN: I know, but if they are
12 persistent in the environment, you are talking about
13 how if they don't go away; is that you are saying?
14 MR. CLARK: Exactly.
15 MR. RODEN: Well, this notice has to do
16 with what Dr. Kaley knows concerning this area of
17 inquiry concerning these other foundries.
18 MR. CLARK: And that's not a part of D and
19 E.
20 MR. RODEN: Well, you are designating him
21 as D and E. He may -- he may know something about
22 it. I can't tell if he knows anything else about
23 these.

4 2

1 MR. CLARK: But we have designated a
2 witness for those others, and that witness had an
3 opportunity to be questioned and examined about
4 those. If the questions weren't asked, that was
5 plaintiff's --
6 MR. RODEN: Well, I understand that, but
7 it doesn't matter. If he is being produced pursuant
8 to this notice, I can ask him questions that's in
9 this notice. I can ask him. If he doesn't know, he
10 doesn't know.
11 MR. CLARK: Well, I will just put on the
12 record that anything beyond D and E is not Rule
13 30(b)(6) testimony. You can ask him just as an
14 individual that's before you now. That's fine, but
15 it doesn't bind the corporation.
16 Q All right. Now, let me go back to this
17 issue concerning aroclor 1268 --
18 A Okay.
19 Q -- and its use in the foundries. And
20 there was a deposition taken on March 23rd of '01
21 and the -- did you give a deposition March 23?
22 A I have no clue.
23 Q This is an excerpt from that deposition,

4 3

1 and the question was, "There has been a suggestion
2 in questions that 1268 was the aroclor that could
3 have been used by foundries. Can you give me any
4 basis for asserting that aroclor would have been
5 used by foundries?" And your answer was --
6 A Somebody's answer was.
7 MR. CLARK: I object to the form.
8 Q Well, okay. Well, I will find it.
9 A Well, I mean, if you are going to assert
10 that this is my deposition, then I will accept that
11 assertion. You never asserted that. You said
12 somebody.
13 MR. CLARK: I object to the form on the
14 assumption that it is Bob Kaley's deposition.
15 Q Well, we will have to get it, I guess, but
16 I --
17 A I will take your word --
18 Q Okay.
19 A -- for the purpose of this, you know.
20 Kevin is going to object, anyway.
21 Q I'm just asking you, are saying just my
22 general understanding of the kind of processes that
23 the aroclor materials were being used for in foundry

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1 operations, then I believe some reports, I can't
2 give -- can't point you to anything specifically,
3 but various use surveys that talk about the fact
4 that those kinds of materials were being used. And
5 I'm just trying -- and you mentioned a VERSAR
6 report.

7 A Yes.

8 Q I'm just trying to -- other than what we
9 talked about earlier about your basis for thinking
10 that the 1268 was used in these foundries, that you
11 said before because the soil was -- found 1268 in
12 the foundry sand, is there another basis for it?
13 Does that refresh your memory about another basis?

14 MR. CLARK: Object to the form.

15 A Okay. If that was me saying that and it
16 very well could have been because I would say I
17 would stand by that testimony, I'm aware from my
18 studies and understanding of uses of PCBs that
19 aroclor 1268 or even a more highly chlorinated
20 aroclor which is decachlorobiphenyl was used in a
21 foundry process that was called lost wax casting. I
22 have reached the extent of my knowledge about lost
23 wax casting and its use in foundries, but that's

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1 what I was speaking of.

2 Q Okay.

3 A I have no evidence that any of those
4 foundries in Anniston were using that process or
5 that they weren't. They may very well have been,
6 but that was the basis of that statement and is
7 really the basis of my knowledge about the potential
8 for aroclor 1268-like materials being used in
9 foundries.

10 Q Okay. Now, with respect to the
11 persistency of the PCBs in the environment in
12 Anniston, West Anniston, do the PCBs in the soil
13 remain in the soil for a period of time and do you
14 know what period of time that would be? Once the
15 PCBs are put in the soil, how long --

16 A The answer to that question is dependent
17 on what kinds of PCBs were put in the soil. Some of
18 the lower chlorinated PCBs will disappear within
19 matters of hours or days.

20 Q Okay.

21 A Some of the more highly chlorinated will
22 disappear in matters of weeks or maybe years. Some
23 of the materials, it may be decades. I think

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1 because we have only been studying PCBs for decades,
2 they have only been made for decades, I don't think
3 we know specifically about the extent of time, but
4 the more highly chlorinated materials can persist
5 for long periods of time. The less chlorinated
6 essentially do not persist at all.

7 Q When you say "highly chlorinated," would
8 1242 be a lower or higher?

9 A I would consider that lower chlorinated.
10 It has some low small amounts of the higher
11 chlorinated congeners, but in general it is a lower
12 chlorinated product.

13 Q And how about 1248?

14 A 1248 and 1254 I would call moderately
15 chlorinated. 1260, 1268 I would call highly
16 chlorinated.

17 Q Okay. Now, do you have any --

18 A Can I supplement that answer?

19 Q Yeah, sure.

20 A And I want to be sure that we understand
21 that in each of those product designations there is
22 a wide range of congeners, so if 1268 has some of
23 those three and four chlorinated species, they are

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1 going to disappear more rapidly as well as a
2 preponderance of the more highly that are less
3 persistent and that would be true of each one of
4 those.

5 Q Okay. Now, I think we talked about, a
6 little bit, about the persistency with respect to
7 the persistency of PCBs in the environment. Your
8 explanation if, in fact, it's found to be true that
9 PCBs are found in various tree barks in the western
10 Anniston area --

11 MR. CLARK: Object to the form.

12 Q -- do you have any way to tell me how
13 long -- one, how it got there and, two, how long it
14 would stay in a tree bark? Do you have any way of
15 knowing that?

16 MR. CLARK: Object to the form.

17 A Well, I mean, assuming that the findings
18 are what they purport to be --

19 Q Correct.

20 A -- I think there are two explanations of
21 how they got there. One, they are deposition from
22 vaporized materials that have deposited on the tree
23 trunk or they could also have been PCBs that were

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1 attached to small particles of dust that blew up
2 against and adhered to the tree trunk. When they
3 got there, I don't think anyone knows. How long
4 they have been there, I don't think anyone knows.
5 How long they are going to stay there, I don't think
6 anyone knows. I don't think there is any way to
7 predict any of that.

8 Q But either one of those two ways is
9 through the air or not?

10 A I would say it's through air transport,
11 yes.

12 Q Okay.

13 A But it could be very, very, very small
14 amounts over very, very, very long periods of time,
15 so, you know...

16 Q You mean in an accumulative fashion?

17 A Well, it's definitely in an accumulative
18 fashion. I don't know think if those reports are
19 true and believable, then I think it is clearly an
20 accumulative fashion.

21 Q But you couldn't say how long -- there is
22 no way to know how long they have been there?

23 A That's correct.

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1 Q Okay. Now, you went through a long list
2 earlier when I asked you what efforts Monsanto has
3 taken to minimize the risk that PCBs could have on
4 the environment. Can you -- is there -- what
5 physical things, what structures or what things have
6 they actually done to reduce the or minimize the
7 PCBs, the risk that the PCBs have on the
8 environment? And I'm talking about such things as
9 the landfill or the sediment basin or anything like
10 that.

11 A Are you talking about Anniston
12 specifically?

13 Q Yeah, I'm sorry, yeah.

14 A Well, they worked very diligently in the
15 late 1960s to cut off PCBs at the source to get them
16 out of the discharge waters. They shut down the
17 plant in 1971 partly -- largely I think as a
18 business decision because once they withdrew from a
19 lot of markets, they didn't have the market for PCBs
20 and they decided to consolidate manufacturing in
21 Illinois, but it also had an effect on the discharge
22 of PCBs into the environment in Anniston. They
23 continued -- in the 1980s they did a -- we talked

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1 about the sediment removal in the 11th Street ditch.
2 They also undertook a closure of the south landfill
3 under RCRA, R-C-R-A, regulations and that included
4 putting an extensive soil cover on top of what were
5 the old PCB cells in that landfill. And then in the
6 1990s, they have obviously done a huge amount of
7 remediation including capping of landfills and
8 collection of stormwater and treating of stormwater,
9 a variety of things to actually eliminate the
10 potential for discharges.

11 Q The runoff from the landfill goes into
12 the -- ultimately goes into the catch basin?

13 A Yes, detention basin, that's correct.

14 Q And then does the PCB actually go into the
15 catch basin to your knowledge?

16 A Well, there should not be any PCBs going
17 into the catch basin because the soil on top of the
18 landfill are clean soils so there currently
19 certainly should be no PCBs attached to the sediment
20 particles going into that detention basin.

21 Q And are there any PCBs coming -- being --
22 traveling through the air from the landfill to your
23 knowledge?

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1 A Not that I'm aware of.

2 Q Is that something that's been monitored?

3 A We are doing some air monitoring, yes.

4 Q At the top of the landfill?

5 A I believe there is a monitor certainly at
6 the edge of the West End landfill, at the edge of
7 the south landfill. I don't know whether there is
8 still a monitor on top of the landfill or not.

9 Q Would that be something you would want to
10 have?

11 MR. CLARK: Object to the form.

12 A Not necessarily, no.

13 Q You think the air monitor at the bottom or
14 the edge at the lower end of the landfill would be
15 adequate?

16 A Well, I think -- I mean, the philosophy of
17 our air monitoring to the extent there is one is
18 largely to check for the levels of PCBs that are at
19 our fence line to determine or establish whether
20 PCBs are, in fact, leaving the facility at the fence
21 line.

22 Q The fence line being?

23 A Well, whatever the fence line is of our

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1 property in Anniston. I mean, that's primarily
2 where our monitors are currently located.
3 Q At the fence line?
4 A Yes. We have just instituted in April an
5 expanded air monitoring program to try to answer
6 some questions about the effects of temperature,
7 wind direction, potential source questions, but
8 those data are so new, we have so few of them, that
9 we are not able to really address those issues.
10 Q Is there monitoring in the catch basin,
11 samples taken? Do you know?
12 A Air samples?
13 Q No, no, I am sorry.
14 A Well, I mean, there actually is an air
15 sample near the catch basin.
16 Q Right.
17 A I do not believe -- certainly, there is
18 not routine monitoring of either the water or
19 sediments in the basin, no.
20 Q So the only way to know that the -- so
21 what you are -- you base the fact that PCBs aren't
22 going into the catch basin on the fact that the
23 landfill has clean soil on top of the PCBs?

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1 A That's correct.
2 Q Any other basis for that?
3 A No, that's -- I mean, the only way it can
4 get into the catch basin is through stormwater
5 runoff, and that's the only PCBs that would --
6 Q That would be from landfill?
7 A Would be from the landfill, would be from
8 the surficial soils on that landfill.
9 Q Do you know if there has been any
10 further -- since the cleanup of the 11th Street
11 ditch which was when? When was that?
12 A The one we talked about previously?
13 Q Yes, sir.
14 A 1989.
15 Q Has there been another cleanup since then?
16 A We are trying, but I don't think it's
17 occurred yet.
18 Q 11th Street ditch?
19 A Yes.
20 Q Why? What do you mean?
21 A Well, we had one of our proposed interim
22 actions, interim, whatever the term is --
23 Q Uh-huh.

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1 A -- was to clean up the 11th Street ditch.
2 We had a plan in to ADEM which was basically
3 approved, but then EPA basically took over
4 jurisdiction for the area including the 11th Street
5 ditch, so we now have an approved plan with EPA, and
6 we are negotiating with Norfolk Southern for access
7 to that property. That is my understanding, but
8 Craig would know better than I.
9 Q Okay. Okay. So whatever sampling has
10 been done in the 11th Street ditch, Craig would know
11 that?
12 A Yes.
13 Q You don't know if any additional sampling
14 that has been done detects higher levels of PCBs
15 than had been before in '89, for instance?
16 A I'm not aware specifically of what you are
17 talking about. There may or may not be. I don't
18 know.
19 MR. RODEN: Okay. Let's take about two
20 minutes.
21 (A short break was taken.)
22 MR. RODEN: I don't have any more
23 questions.

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1 (The deposition was concluded.)
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1 STATE OF ALABAMA)
2 COUNTY OF SHELBY)
3
4 I, MICHELE H. BAILEY, Shorthand Reporter in and
5 for the County of Shelby, State of Alabama, do
6 hereby certify:
7
8 That prior to being examined, the witness named
9 in the foregoing deposition, ROBERT G. KALEY, was by
10 me duly sworn to testify the truth, the whole truth,
11 and nothing but the truth.
12
13 That said deposition was taken before me at the
14 time and place set forth and was taken down by me in
15 shorthand and thereafter reduced to computerized
16 transcription under my direction and supervision,
17 and I hereby certify the foregoing deposition is a
18 full, true, and correct transcript of my shorthand
19 notes so taken.
20
21 I further certify that I am neither counsel for
22 nor related to any party to said action nor anyone
23 interested in the outcome thereof.
24
25 IN WITNESS WHEREOF, I have hereunto subscribed
26 my name this 11th day of August, 2003.
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1 I, _____ have read the
2 foregoing pages of my testimony or have had the
3 foregoing pages of my testimony read to me and have
4 noted any changes to form or substance of my
5 testimony together with their respective corrections
6 and the reasons therefore, on the following errata
7 sheet(s).
8
9 Signature _____
10 Date _____
11
12 I, _____, a Notary Public
13 in and for the State of _____, hereby
14 acknowledge that the above-named deponent personally
15 appeared before me, swore to the truth of the
16 foregoing statements and affixed her/his signature
17 above as her/his true act and deed.
18
19 Signature _____
20 Date _____
21 My Commission Expires _____
22
23

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