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EXHIBITS

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFFS:

Plaintiffs' Exhibit No.:

1760	108	108
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1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: March 7, 1986, being one of the regular judicial days
3 of this Court, the matter as hereinbefore set forth came on
4 for hearing before the Honorable Richard P. Goldenhersh, a
5 Judge in and for the Twentieth Judicial Circuit of the State
6 of Illinois, Belleville, St. Clair County, Illinois, and the
7 following was had of record, to-wit:

8
9 * * * * *

10
11 (The following proceedings were had in open Court.)

12
13 RAYMOND R. SUSKIND

14 being called on behalf of the defendant, having been first
15 duly sworn, testified as follows:

16 CROSS EXAMINATION

17 BY MR. CARR:

18 Q. Doctor, do you have in front of you yet Plaintiffs'
19 Exhibit 1459, the June 12th, 1956 report from Monsanto
20 Company?

21 A. Yes, I do, sir.

22 Q. And it relates to a meeting with a Dr. Oettel from
23 the BASF plant and persons from the Monsanto Company, does it
24 it not, sir?

1 A. I don't know who these others are, sir. I can't
2 tell. I don't know who Dr. Hoffman is and Dr. Palm.

3 Q. Well, you know Soensken is the plant superintendent
4 part time, don't you, sir?

5 A. Yes, sir.

6 Q. And that's the meeting that took place in which
7 various things were discussed, and we went into the cage
8 business yesterday. On the second page, if you will direct
9 your attention to the top of the page, it points out the
10 belief of Dr. Oettel with relation to what is the potent
11 chloracnegen that's in the compound, correct, sir, that is
12 the compound?

13 A. He believed that that was the -- a potent
14 chloracnegen.

15 Q. He also said he believed further that this impurity
16 can show up in the production of any chlorinated phenols,
17 does he not, sir?

18 A. He says that, sir.

19 Q. Now this document is dated 1956, and this is a
20 German scientist from BASF who says it's his belief that the
21 impurity that can cause chloracne can show up in the
22 production of any chlorinated phenol, correct, sir?

23 A. That's what he said, sir, according to this report.

24 Q. Chlorinated phenols would include those things that

1 go into making up Lysol, Santophen, orthchlorophenol,
2 pentachlorophenol, trichlorophenol and 2,4,-D and all those
3 are chlorinated phenols; you do know that, don't you, Doctor?

4 A. They are, but I don't know that he includes all of
5 those.

6 Q. Doctor, could you please, let's start out today, if
7 you don't mind, Dr. Suskind, answering my questions?

8 A. I'll do the best I can, sir.

9 Q. Because you may want to say something else on
10 another point, and we'll go on interminably this way. Would
11 you please, sir, listen to my question and answer it, and
12 then don't go on to something else, because the point I want
13 to make, whether you believe it's true or not true, is that
14 chlorinated phenols as stated by Dr. Oettel as far back as
15 1956 that he believes that the impurity in these products can
16 occur in any chlorinated phenol. Now, that's the point that
17 I want to make, Doctor.

18 A. He said that, sir.

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

20 A. According to this report he said that.

21 Q. Yes. And this report is a Monsanto document, is it
22 not, sir?

23 A. I assume it is, yes.

24 Q. And it is fair to say that Monsanto was aware of

1 and knew what is contained in one of its reports back in
2 1956, isn't that correct, sir?

3 A. Would you repeat the question.

4 (Court reporter read back the last question.)

5 A. Yes, sir, that's true.

6 Q. Doctor, in the next paragraph the author of this
7 report states that he in the last sentence that he learned at
8 Bayer that while they experienced chloracne during the
9 production of trichlorophenol that they have now licked the
10 problem according to the research director at Elberfeld, that
11 is, Dr. Hanson, correct, sir?

12 A. That's what the report states.

13 Q. So that would indicate that Monsanto would know the
14 contents of its report that some chemical company was capable
15 in 1956 of producing one of these chlorinated phenols called
16 trichlorophenol that does not contain the chloracne causing
17 impurity; would that be a fair statement, sir?

18 A. No, sir.

19 Q. That would not be a fair statement?

20 A. No, that would not be a fair statement.

21 Q. Does it state there-- Is trichlorophenol a
22 chlorinated phenol?

23 A. Yes, sir.

24 Q. And does it state that he learned at Bayer that

1 they licked the problem of the causation of chloracne during
2 the production of trichlorophenol?

3 A. That's what it says.

4 Q. And that would indicate that they knew how to
5 produce trichlorophenol, this particular chlorinated phenol
6 that would not contain the impurity that would cause
7 chloracne, would it not, sir?

8 A. No, sir.

9 Q. It does not indicate that?

10 A. No, sir.

11 Q. Doctor, what else can it indicate other than that
12 as I have stated?

13 A. It can indicate that they have a production method
14 which in this instance licked the problem, and that could
15 mean that it could contain a lower concentration of, a lower
16 concentration of whatever the chloracnegen is.

17 Q. Doctor, you did say it indicates that they licked
18 the problem, and they're no longer getting chloracne?

19 A. No, I didn't say that.

20 Q. Oh, isn't that what he said?

21 A. No, sir.

22 Q. They've now licked the problem. They have
23 experienced chloracne during production of trichlorophenol,
24 but now they've licked it?

1 A. He doesn't say that they do not get chloracne. He
2 says they licked the problem. That could mean they get less
3 chloracne, they could get--

4 Q. Doctor, if you got chloracne, whether you've got
5 one case or ten cases, you've got chloracne, haven't you,
6 sir?

7 A. Yes.

8 Q. Don't you as a reasonable person read this to mean
9 that they licked the problem of causation of chloracne?

10 A. Yes.

11 Q. All right. And this is something that was reported
12 to Monsanto in 1956 in their own report, was it not, sir?

13 A. Yes.

14 Q. And, Doctor, the report that's attached to this is
15 a conference at your laboratory with this same Dr. Oettel
16 present, isn't that correct, sir?

17 A. That's true, sir.

18 Q. Now, according to what you told us today and I
19 think sometime earlier, you said this conference took place
20 in 1960, did you not, sir?

21 A. It did, sir.

22 Q. Do you have any documentation to support that, sir?

23 A. I don't have it with me, but I know that there is a
24 memorandum like this, which I have seen in which there is a

1 date, sir.

2 Q. Doctor, you -- this memo that's attached here
3 suggests that the Dr. Oettel tells you he's -- on page 4, if
4 you would, of the document that's attached, in the last third
5 of the page, he talks about a compound called tetrachloro
6 diphenyl dioxane, which Dr. Oettel tells you he's convinced
7 that this is the active agent that causes chloracne; do you
8 see that, sir?

9 A. Yes.

10 Q. Well now, he's telling you there that he thinks the
11 impurities that's in this process is something that he calls
12 tetrachloro diphenyl dioxin, correct, sir, dioxane?

13 A. Yes.

14 Q. You knew years before, you had already deduced
15 years before 1960 that it was 2,3,7,8-TCDD that caused the
16 chloracne, did you not, sir?

17 A. Yes, sir.

18 Q. So since you knew that in 1957, and that's when you
19 did know it and reported it at Chicago, Illinois, that it was
20 2,3,7,8-TCDD, it would be unlikely that Dr. Oettel in 1960
21 was for the first time learning that if Kemmig and Schulz and
22 Dr. Suskind knew it in 1957, isn't that correct, sir?

23 A. No, sir.

24 Q. Doctor, what you said in your -- in your

1 conference in 1957 was published and presented elsewhere, was
2 it not, sir?

3 A. Yes.

4 Q. What Kemmig and Schulz said, they published and
5 what you drew upon for your conclusion, they published that
6 in a German periodical where Dr. Oettel is from in 1957 as
7 well, did they not, sir?

8 A. That's true.

9 Q. And why do you think if Dr. Oettel would just be
10 coming to the conclusion in 1960 that it's a dioxin impurity
11 in the trichlorophenol or trichlorophenate which causes
12 chloracne when you and Kemmig and Schulz had established it
13 three years before?

14 A. But he's just saying that, he's supporting that.
15 He's saying it's tetrachloro diphenyl dioxin, he's saying
16 that.

17 Q. Doctor, he is just deducing that whereas you knew
18 it had been established at that time by tests by Kemmig and
19 Schulz?

20 A. Well, that was his opinion, sir.

21 Q. Well, Doctor, the date is really not important, we
22 won't spend a lot of time on it.

23 A. It is 1960, sir.

24 Q. I'm sorry?

1 A. It is 1960.

2 Q. Whether it is 1960 or not, you knew that in 1957,
3 at least by 1957 you knew that the agent in the chlorinated
4 phenols, the trichlorophenate that caused the chloracne and
5 the other systemic problems was in fact 2,3,7,8-TCDD, did you
6 not, sir?

7 A. Which is what he says, too.

8 Q. Excuse me, Doctor. Could you answer that question?

9 A. Yes, sir.

10 Q. You knew that in 1957, did you not?

11 A. I knew it from Kemmig and Schulz's publication. I
12 had no personal experience with it, sir.

13 Q. Well, you accepted what they said in that
14 peer-reviewed authoritative article, did you not, sir?

15 A. I quoted what they said, yes, sir.

16 Q. You also knew in 1956, at least Monsanto knew in
17 1956 that particular impurity insofar as reported by Bayer
18 could be removed from the process, isn't that correct, sir?

19 A. I didn't know that in 1956, sir, cause I hadn't
20 seen this.

21 Q. Doctor, Monsanto knew it in 1956, did they not?

22 A. But I didn't, sir.

23 Q. Sir?

24 A. I didn't.

1 Q. But Monsanto did?

2 A. From this memoranda I assume, that first memoranda.

3 Q. Is it correct, sir, that while you didn't know it
4 Monsanto knew it from this memorandum?

5 A. If they had this memorandum, they would have known
6 it or they would have known what Dr. Oettel told them.

7 Q. Dr. Suskind, they wrote the memorandum. You see
8 their letterhead there?

9 A. Yes.

10 Q. So they certainly knew what they put in their
11 document, did they not, sir?

12 A. Yes, sir.

13 Q. All right. Now, Doctor, insofar as the elimination
14 of this chloracne causing agent is concerned, they also knew
15 in 1955, '55, yes, when you performed your various
16 experiments that Diamond Alkali had a process of treating TCP
17 where no acne developed, isn't that right, sir?

18 A. According to my experiments, sir. It was not
19 according to the --

20 Q. Excuse me, Dr. Suskind. Could you listen to my
21 question and answer my question. Monsanto also knew that
22 Diamond Alkali could create TCP, and it could be used in
23 experiment, their diluting, their purifying process, they
24 diluted it, they filtered, they precipitated it, they washed

1 it, and that it eliminated the chloracne causing agent. They
2 knew that in 1955 as well, did they not, sir?

3 A. No, sir.

4 Q. Doctor, didn't you give them, didn't they pay for
5 the report that you made on these various substances, the
6 normal TCP?

7 A. I performed those experiments, sir, yes, sir.

8 Q. For them, did you not, sir?

9 A. Yes, sir.

10 Q. They got a copy of the report, did they not, sir?

11 A. Yes, sir.

12 Q. They knew that no chloracne was caused by the
13 Diamond Alkali processed TCP, did they not, sir?

14 A. Under experimental conditions, yes, sir.

15 Q. And they knew that for a fact because you reported
16 that for a fact again on Page 3 of your 1960 conference
17 report of Kettering Laboratory, did you not, sir? Page 3
18 where you again discuss your experiments, where the sodium
19 TCP made from trichlorophenol purified by whose technique,
20 Dr. Suskind, what technique did you use to purify the
21 trichlorophenol?

22 A. It was prepared by the Diamond Alkali technique,
23 sir.

24 Q. Yes. And that technique, this trichlorophenol

1 prepared by that technique did not produce acne, did it, sir?

2 A. It produced less acne.

3 Q. Excuse me, Doctor. According to what you said
4 then, not what you say now, but according to what you said
5 then and according to what you said in the federal court last
6 year under oath which I read to you yesterday, according to
7 what you said in this 1960 memo no acne developed in the
8 cases exposed to the treated TCP samples in the
9 concentrations used?

10 A. Yes, sir.

11 Q. Isn't that what you said then?

12 A. Yes, sir.

13 Q. It was the truth then, wasn't it, sir?

14 A. It still is, sir.

15 Q. That no acne developed, is that correct, sir?

16 A. Under those experimental conditions.

17 Q. So we won't have to go back to that now. You agree
18 that no chloracne developed in using the TCP prepared by the
19 Diamond Alkali technique, is that correct, sir?

20 A. Under those experimental conditions.

21 Q. Is that correct, sir?

22 A. Yes, sir.

23 Q. Doctor, you went on to discuss with Dr. Oettel the
24 fact, and this is at the bottom of Page 3, the fact that the

1 skin problems themselves, that is, the chloracne was not
2 disabling, but the other symptoms such as vertigo, aching
3 muscles, dyspnea and headaches were disabling, isn't that
4 correct, sir?

5 A. That's true.

6 Q. Matter of fact you knew at that time that there
7 were at least by 1953, '55 there were at least four workers
8 who still were unable to work because of their aching pains
9 and muscles, isn't that right, sir?

10 A. No, sir.

11 Q. Well, how many workers were there, sir?

12 A. There were no workers who were disabled in 1953.
13 They claimed they couldn't work, but they really were not
14 disabled, sir, according to my judgment.

15 Q. Doctor, there were at least four workers as late as
16 1953, four years after this accident who were not working
17 because of aching muscles and pains and problems that they
18 said they had associated with it, is that not correct, sir?

19 A. No, sir.

20 Q. Sir?

21 A. No, sir.

22 Q. Why were they not working, sir?

23 A. One of them was not working because of heart
24 disease, he thought he had heart disease. There were other

1 complaints, but they were complaints, sir, they were not
2 verified by objective examination as being disabling.

3 Q. Doctor, were these men required to submit to
4 examination by Monsanto physicians in order to continue to
5 get their disability pay?

6 A. I believe so.

7 Q. Yes. And they were examined by Monsanto physicians
8 and they -- Monsanto physicians gave a report to the company
9 and based upon that report these workers continued to get
10 their disability pay, didn't they, sir?

11 A. They did.

12 Q. Sir?

13 A. I don't know, I have no idea.

14 Q. Well, you know they were still off work, and you
15 know they still got paid, don't you, sir?

16 A. No, I do not know that, sir.

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

18 A. No, sir.

19 Q. You don't know they were still on disability?

20 A. No.

21 Q. Didn't you discover that in your 1953 examination?

22 A. No, sir. In '53?

23 Q. Yes, in your 1953 report, did you not report the
24 number of workers who were still off work on disability.

1 Q. They may have been off work, but that they were on
2 disability, I don't know. That's not my business as a
3 physician.

4 Q. Well, they were either off work with no pay and had
5 survived for four or five years or they were off work with
6 disability pay from Monsanto, is that correct, sir?

7 A. I can't tell you that, I don't know.

8 Q. Sir, if you would let me finish my question. One of
9 those two alternatives would be the circumstance, would it
10 not, sir?

11 A. It's possible, yes.

12 Q. Not possible, it is one of those two alternatives,
13 isn't it, sir?

14 A. All right.

15 Q. Now, Doctor, these problems you did consider to be
16 disabling, did you not, sir?

17 A. Yes, in 1949 and '50.

18 Q. Excuse me, Doctor. Your description in this report
19 is in 1960, is it not, you said this report is 1960?

20 A. Indeed it is.

21 Q. And you said these problems of vertigo, aching
22 muscles, dyspnea and headaches were disabling, did you not,
23 sir?

24 A. I did, sir, in 1949 and '50. That's what I was

1 referring to, sir. There's no date here.

2 Q. Doctor, they had aching muscles in 1949 that
3 disabled them, is that correct?

4 A. They did indeed.

5 Q. And there's no problem about that in your mind?

6 A. That's true.

7 Q. They had aching muscles in 1950 that disabled them,
8 correct, sir?

9 A. That's true.

10 Q. Doctor, did you give them a test to prove they did
11 or did not have aching muscles? If so, what test was it,
12 sir?

13 A. I don't understand the question, sir.

14 Q. They were off work, because they had aching muscles
15 in 1949 as you just said, correct, sir?

16 A. Right, yes.

17 Q. There's no doubt in your mind they had aching
18 muscles in 1949, isn't that right, sir?

19 A. Yes, they could not work, sir.

20 Q. Absolutely no doubt about it in your mind?

21 A. That's right.

22 Q. They told you that they had aching muscles in 1949,
23 didn't they, sir?

24 A. Yes, sir.

1 Q. There was no doubt in your mind but what they had
2 those aching muscles, isn't that right, sir, in '49?

3 A. I believe so.

4 Q. Did you have any evidence other than what they told
5 you that their muscles ached and hurt? Did you have any
6 objective evidence to support their painful aching muscles,
7 sir?

8 A. Yes, sir.

9 Q. What was it that you had, sir?

10 A. The fact that they could not perform their daily
11 work in the plant.

12 Q. Who told you they couldn't perform their daily work
13 in the plant? How did they prove that to you, sir?

14 A. The records of the company showed that.

15 Q. No, the records of the company showed these men
16 said they could not work and did not work, isn't that
17 correct, sir?

18 A. It was demonstrated by their not being able to
19 work.

20 Q. Excuse me, sir. Didn't the records of the company
21 show that they said they couldn't work and that they, in
22 fact, did not work?

23 A. Observations by the --

24 MR. CARR: Your Honor, would you direct the witness

1 to answer my question.

2 THE COURT: Doctor, answer the question please.

3 A. Thank you. Would you repeat the question please.

4 THE COURT: That response was not an answer.

5 (Court reporter read back the last question.)

6 A. That is true.

7 Q. Doctor, they said in 1949 and 1950 they couldn't
8 work and didn't work because of aching muscles, isn't that
9 correct, sir, and pains?

10 A. That's true.

11 Q. Was there any objective evidence as a physician
12 that you had to support their claims of aching muscles and
13 pains, sir? If so, tell me what it is.

14 A. The only objective tests we did --

15 MR. CARR: Your Honor, direct the witness --

16 A. Muscle biopsies.

17 Q. Dr. Suskind, would you-- I'm making an objection
18 now. I'm asking the Court to do something. Would you please
19 not interrupt me, sir?

20 A. I'm trying to answer your question.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer the question as I gave it to him.

23 THE COURT: Doctor, that answer was not a response.
24 When either counsel, when Mr. Heineman makes an objection or

1 when Mr. Carr makes an objection, when either one would you
2 please stop at that point in time, because they're trying to
3 intersperse the objection before an answer comes out, because
4 of whatever the basis of the objection is, and it should be
5 resolved before an answer comes out. Generally on this
6 particular matter I don't believe your answer was responsive
7 to the question, and I would appreciate it if you would
8 answer the question, sir.

9 MR. HEINEMAN: May counsel approach the bench, Your
10 Honor.

11 (At this time a conference was had at the bench out
12 of the hearing of the jury.)

13 MR. HEINEMAN: Your Honor, that answer that the
14 witness was in the midst of when Mr. Carr interrupted him in
15 order to ask the Court to instruct the witness was so
16 obviously responsive.

17 THE COURT: Absolutely not. There was no way in the
18 world that that was responsive to the question that was asked
19 of him, number one. Well, that's it, I mean, that's your
20 objection. There's no question it wasn't responsive to the
21 question.

22 MR. HEINEMAN: May I finish my objection? The
23 question was for objective signs or evidence to support their
24 claim. The doctor began to describe the fact that a muscle

1 biopsy was taken. In the midst of his saying that he was
2 interrupted by Mr. Carr to ask you to direct him to answer.
3 Now, a muscle biopsy is an objective sign of their inability
4 to work.

5 MR. CARR: It was negative.

6 MR. HEINEMAN: So what?

7 MR. CARR: I asked him what objective signs were to
8 support their claim.

9 MR. HEINEMAN: Well, you may disagree--

10 MR. CARR: A negative muscle biopsy is not an
11 objective sign, it's negative. It doesn't support. It
12 wasn't responsive, and he knew it wasn't responsive.

13 MR. HEINEMAN: You may not like the answer, Mr.
14 Carr.

15 MR. CARR: If he gives me a negative answer, it's
16 not responsive.

17 MR. HEINEMAN: That's ridiculous.

18 THE COURT: Objection is overruled. It was not
19 responsive.

20 (The following proceedings were had in open Court.)

21 MR. CARR: Would you read the question to the
22 witness again please.

23 (Court reporter read back the question.)

24 A. We did muscle biopsies.

1 Q. Did they support the claims, sir?

2 A. They did not.

3 Q. Doctor, my question to you was what objective --

4 A. They were negative. May I finish the answer? You
5 asked me if they supported the claim.

6 Q. I asked you what objective evidence there was to
7 support the claims. The muscle biopsies did not support the
8 claims, did they, sir?

9 A. Yes, they did.

10 Q. Oh, they were negative, weren't they, sir?

11 A. They could still have a polyneuritis with a
12 negative--

13 Q. Doctor, my question is-- Yes, they could have.

14 A. -- Muscle biopsy, sir. You asked me if they had--

15 MR. CARR: Your Honor, would you direct the witness
16 to stop his answer while I'm trying to give him another
17 question.

18 MR. HEINEMAN: Objection, your Honor, he's trying
19 to interrupt the answer.

20 THE COURT: Objection is overruled. Let Mr. Carr
21 finish his question please.

22 Q. Doctor, a negative biopsy of the muscles does not
23 support a claim for aching muscles, does it, sir?

24 A. No, it rules it out.

1 Q. All right. And, Doctor, the man can have a poly--
2 peripheral neuritis without any objective findings, can he
3 not, sir?

4 A. Yes, he might.

5 Q. Now, Doctor, I want to know and I'll ask you again
6 what objective tests were performed which supported the
7 claims of these disabled workers, a large number of them in
8 1949 and 1950 that they could not work because of aching
9 muscles and pains?

10 A. No other than that which I've indicated.

11 Q. Doctor, you haven't indicated any objective
12 evidence that supports the claim. You suggested evidence
13 that negated the claim, did you not, sir?

14 A. Yes, sir.

15 Q. So I want to know was there any objective evidence
16 in 1949 or 1950 to support the claims of these workers that
17 they had these aching muscles and pains that would not allow
18 them to work?

19 A. I don't believe so.

20 Q. Now, what objective evidence did you have in 1951
21 to support their claims, sir?

22 A. We had the same evidence, sir.

23 Q. Which is none, correct, sir?

24 A. But their complaints, sir.

1 Q. No question in your mind though that they were
2 disabled in 1949 with these aching muscles and pains,
3 correct, sir?

4 A. Yes, they were.

5 Q. And no question in your mind but what they were
6 disabled in 1950 with these aching muscles and pains,
7 correct, sir?

8 A. I believe so.

9 Q. But you had nothing except what the men told you to
10 base that judgment on objectively, isn't that correct, sir?

11 A. No.

12 Q. What did you have objectively to base that claim of
13 theirs on, sir?

14 A. The experience that they had in attempting to go
15 back to work.

16 Q. Doctor, that is a --

17 A. That's objective.

18 Q. That is subjective, is it not?

19 A. No, it's objective.

20 Q. They told you their experience, did they not, sir?
21 It's something they told you?

22 A. It was borne out by the records.

23 MR. CARR: Your Honor, would you direct the witness
24 to answer my question.

1 Q. It is something they told you, was it not, sir?

2 A. No, sir.

3 Q. They didn't tell you that?

4 A. They did.

5 Q. Yes, indeed they told you that, and they didn't
6 show up for work, did they, sir, and they were given money
7 for time off, weren't they, sir?

8 A. I don't know about that, sir.

9 Q. Well, they didn't show up for work; you know that
10 from the records, don't you, sir?

11 A. No, I don't.

12 Q. Well, what -- didn't you just say you were basing--
13 it was borne out by the fact that they didn't show up for
14 work, didn't you just say that, sir?

15 A. Yes.

16 Q. Now, Doctor, you can't have it both ways. The
17 records show they didn't show up for work, doesn't it, sir?

18 A. Because the -- but the medical department --

19 Q. Excuse me, Doctor.

20 MR. CARR: Your Honor, would you direct the witness
21 to answer my question.

22 THE COURT: Doctor, answer the question please. It
23 was a straightforward question.

24 A. They didn't show up for work.

1 Q. That's what the records show, correct, sir?

2 A. That and other things.

3 MR. CARR: Your Honor, would you ask the jury to
4 disregard the latter part of the witness' answer.

5 THE COURT: The jury is so instructed.

6 MR. CARR: And instruct the witness to answer my
7 question.

8 MR. HEINEMAN: Your Honor, may counsel --

9 THE COURT: Wait a second. That last remark was
10 totally uncalled for by the question. I am requesting that
11 you answer the question as posed to you by either counsel, no
12 more, no less.

13 MR. HEINEMAN: May counsel approach the bench?

14 THE COURT: Yes, you may.

15 (At this time a conference was had at the bench out
16 of the hearing of the jury.)

17 MR. HEINEMAN: I object, Your Honor, to Mr. Carr's
18 question and to the Court's instruction to the witness on the
19 basis, on the following basis. The question that Mr. Carr
20 asked clearly left the implication that what he was asking
21 was the only thing that was shown by the records. He said
22 that is what was shown by the records. The witness is trying
23 to say, yes, that was shown, but there were other things
24 shown by the record which would demonstrate the same thing,

1 and that's what the witness was trying to say.

2 MR. CARR: That's not what my question was.

3 MR. HEINEMAN: You want to have it read back.

4 THE COURT: The context of the question was focusing
5 on one thing. It was an aspect of the record. There was
6 nothing in the context to give the inference to anyone that
7 that was the only thing that was shown by the record. It was
8 a narrowly phrased question. The context of it was narrowly
9 focused. He gave an answer that was not responsive in that
10 it went beyond the clear focus of the question and the
11 context of the question and the prior questions. It was
12 totally uncalled for. It's something that he's done many,
13 many times. It's been repeated quite often, and it's just
14 another instance of his refusal to answer the question,
15 refusing to abide by the rules of the court.

16 MR. HEINEMAN: Your Honor --

17 THE COURT: Your objection is overruled.

18 MR. HEINEMAN: Thank you, sir. And, your Honor, I
19 obviously disagree with your interpretation of what has
20 occurred here, and I just want to make sure the record
21 reflects that.

22 THE COURT: The record so reflects.

23 (The following proceedings were had in open Court.)

24 Q. Dr. Suskind, the men said they had aching muscles

1 and pains and could not work and they did not show up for
2 work, and the record reflected the fact that they did not
3 show up from work, did it not, sir?

4 A. No, sir.

5 Q. The record did not reflect that fact, sir?

6 A. No, sir.

7 Q. The record shows that they came to work, is that
8 right, sir?

9 A. No, sir.

10 Q. Did it show they came to work or did not come to
11 work, sir? Which did it show?

12 A. They did not come to work.

13 Q. All right. The records show they did not come to
14 work, correct, sir?

15 A. No, sir.

16 Q. I just asked you, Doctor, which did it show.

17 A. Which record?

18 Q. The work records at the plant, sir. Did they show
19 that the workers came to work or did not come to work?

20 A. They did not come to work, sir.

21 Q. That's what the record shows, correct, sir?

22 A. The work records, yes.

23 Q. All right. And they said they couldn't work
24 because of aches in muscles and pains, and the workers'

1 records show that they didn't come to work, correct, sir?

2 A. The work records, yes, sir.

3 Q. Now, Doctor, what objective evidence did you have
4 as a physician to base the judgment on in 1949 and 1950 that
5 these men could not work because of their aching muscles and
6 pains?

7 A. Their complaints and the medical records of the
8 company, the medical records of the company.

9 Q. Doctor, to start with, their complaints are not
10 objective, are they, sir?

11 A. No.

12 Q. So we can eliminate that. Did you understand my
13 question to ask you what were the objective signs and
14 symptoms that would indicate that they could not work? Did
15 you understand that, sir?

16 A. Yes.

17 Q. So what they told you is not objective, is it, sir?

18 A. Correct.

19 Q. All right. Now, what objective signs as a
20 physician did you have to rely upon to support their claim
21 that they could not work because of aches and pains?

22 A. The observations made in the medical records of the
23 company, sir.

24 Q. What observations, sir?

1 A. That they attempted to go back to work, and they
2 were observed not to be able to work, sir. That is
3 objective.

4 Q. Who said that?

5 A. That's in the records, sir.

6 Q. What record is it in?

7 A. The medical records. I don't have them here.

8 Q. Doctor, we have the medical records here, we have
9 your reports on these records, we have everything that's in
10 evidence.

11 A. I'm talking about the medical records of the
12 company, sir.

13 Q. Doctor, now you can remember from 1949 that they
14 were observed by somebody, and they couldn't work?

15 A. Yes, sir.

16 Q. With what particular man are you talking about?

17 A. I'm talking about the four people that we examined
18 in 1949, some of whom were not able to go back to work.

19 Q. That's Exhibit 1694, isn't it, sir?

20 THE COURT: What was that number?

21 MR. CARR: 1694, Your Honor.

22 THE COURT: Okay.

23 Q. With relation to the first man named there, Ival
24 McLanahan, point out for me, sir, in the record where it

1 indicates he was observed and could not work?

2 A. I'm not talking about this report, sir. I'm
3 talking about the medical records that were in the company.

4 Q. What did the medical records say about Ival
5 McLanahan? What days could he work what days could he not
6 work? What days did he come up to try to show to work?

7 A. I can't tell you that, but I know the medical --

8 Q. Doctor, the reason you can't--

9 A. It is my best recollection, sir--

10 Q. Doctor, you have absolutely no recollection of any
11 particular medical record pertaining to any particular man,
12 isn't that a fact, sir?

13 A. That is not so.

14 Q. Tell me, sir, did -- what days did McLanahan not
15 work according to your best recollection?

16 A. This is almost 40 years ago, and I cannot recall
17 the--

18 Q. I know that, Doctor. That's my whole point.

19 A. I cannot recall the specific date, sir, but I am
20 sure --

21 Q. No, Doctor --

22 A. I'm absolutely sure that the medical records of
23 these people indicated, not the work records, the medical
24 records indicated that they tried to go back to work, and

1 they could not.

2 Q. What would the medical records say, sir? The men
3 said they tried to go to work and could not? Does it say
4 there were some--

5 A. They were observed by the foreman.

6 Q. Medical records? Who observed them, sir?

7 A. The foreman.

8 Q. Is that in the medical records, sir?

9 A. Would be.

10 Q. Would be, sir?

11 A. It could be.

12 Q. It could be, couldn't it, sir?

13 A. Sure it could be.

14 Q. But you don't know that it is, do you, sir?

15 A. Not at the moment I don't, but that's what the
16 medical records usually have.

17 Q. Doctor, now you're just saying what they usually
18 have. I'm asking you, sir, what do you have by way of
19 objective evidence to support the claims of these workers
20 that they could not work, and what you're giving me--

21 A. I said there are medical records.

22 Q. What you're giving me, Dr. Suskind, is your
23 speculation on what the medical records might contain, isn't
24 that correct, sir?

1 A. It's not a speculation, sir, it's an actual fact.
2 The medical records indicated that these people tried to go
3 back to work, and they couldn't go back to work.

4 Q. That's what they said, correct, sir?

5 A. They were observed not to be able to work.

6 Q. Doctor, how can you observe not to be able to work,
7 sir, what somebody says, oh, I can't do that. Now, Doctor,
8 what objective about that is there, sir, when a man says, oh,
9 this hurts me to lift this. Is that objective evidence, sir?

10 A. It's as objective as you can have it.

11 Q. Doctor, it's not at all objective, and you know
12 it. It's what the man tells you. He says, oh, my back
13 hurts, oh, this wears me out to do this. That's all there
14 is, and that's all there can be with relation to that kind of
15 complaint, isn't that correct, sir?

16 A. That's true. They were observed within the plant.

17 MR. CARR: Your Honor, would you ask the jury to be
18 -- disregard the latter statement that the doctor gave,
19 because my question was that's all there is and that's all
20 there can be, isn't that correct, sir.

21 THE COURT: The jury is so instructed.

22 A. The answer is no, sir.

23 Q. What else can you have when a man tells you, sir,
24 that he can't lift something, that it hurts him? What else

1 can you have, sir?

2 A. The observation that he's unable to work.

3 Q. What is that observation based upon, sir, other
4 than what he tells you it affects him?

5 A. An observation that the man cannot lift a glass or
6 cannot lift a --

7 Q. Oh, Doctor, aches and pains don't prevent you from
8 lifting a glass. None of these men said they were prevented
9 from doing anything. They said the aches and pains prevented
10 them from working, that it hurt them to do something.

11 A. It hurt them to lift the glass.

12 Q. Yes, Doctor. Now--

13 A. It hurt them to lift the book, it hurt them to do
14 the work they were required to do, sir.

15 Q. Indeed, sir.

16 A. Indeed, sir.

17 Q. Now, on what evidence do you base your opinion that
18 they've got the pain? What is the evidence?

19 A. The observations made by the foreman and reported
20 to the doctor.

21 Q. Doctor, could you tell whether or not I'm having
22 pain and not having pain by watching me lift this paper?

23 A. Not if you drop it.

24 Q. What if I lift it like that, Doctor? Can you tell

1 that I'm having pain?

2 A. Yes.

3 Q. How can you tell that, Doctor?

4 A. The fact that you're not doing it adequately.

5 Q. Doctor, this is something completely within my
6 control, isn't it, sir?

7 A. Not necessarily.

8 Q. Well, Doctor, it is. I can lift that like that if I
9 want to or I can lift it like that if I want to. It's
10 completely within my control. That's not objective, is it,
11 sir?

12 A. It is, sir.

13 Q. Something that's completely within my control is
14 objective, is that what you're saying, sir? I'm the subject
15 and it's completely within my control and that's your
16 definition of objective, is that correct, sir?

17 A. Yes, sir.

18 Q. Well then, Doctor, you have redefined the word
19 objective, haven't you, sir?

20 A. No, sir.

21 Q. Doctor, the word objective means, does it not,
22 something that is not within the control of the subject,
23 isn't that correct, sir?

24 A. Not necessarily, no.

1 Q. Isn't that a definition of the word objective?

2 A. No.

3 Q. Is subjective defined as something that is within
4 the control of the subject?

5 A. Yes.

6 Q. Yes. Now is how I lift this within my control,
7 sir?

8 A. Yes.

9 Q. Then it is subjective, isn't it, sir?

10 A. Not altogether.

11 Q. Doctor, what part of it isn't subjective? It's all
12 within my control, isn't it, sir? It is all within my
13 control, isn't it, sir?

14 A. No.

15 Q. What part of it isn't within my control? The speed
16 that I lift it? That's within my control, isn't it, sir?

17 A. If you're having pain and cannot lift it.

18 Q. What part of it is not within my control when I
19 lift this object, and I say, oh, I'm having pain lifting this
20 object? What part of this transaction that I've just
21 described to you is not within my control?

22 A. Some and all of it.

23 Q. What part is not, sir, within my control?

24 A. I don't understand the question.

1 Q. You understand exactly what I'm asking, Dr.
2 Suskind.

3 A. I don't understand it at all, cause it doesn't make
4 any --

5 Q. Watch this transaction, Dr. Suskind. Oh, it hurts
6 me to lift this file. Now, this transaction that you've just
7 seen, what part of it was not within my control?

8 A. That was within your control, sir.

9 Q. It was all within my control, wasn't it, sir?

10 A. The way you were doing it, yes, sir.

11 Q. Doctor, everything that I did was within my
12 control, wasn't it, sir?

13 A. At this moment, yes, sir.

14 Q. Thank you, Doctor. And when the worker is out
15 there lifting an -- up a box of 2,4,5-T and saying, oh, this
16 hurts me, what part of that transaction is not within his
17 control?

18 A. It might be all of it, sir, not in his control.

19 Q. Excuse me, sir. Describe to me please, sir, what
20 part of that transaction is not within his control.

21 A. All of it.

22 Q. All of it is not within his control, is that what
23 you're saying?

24 A. If it's real, and he cannot lift it --

1 Q. Excuse me, Doctor.

2 MR. HEINEMAN: Objection, Your Honor, he
3 interrupted the answer.

4 A. You can't control the pain.

5 THE COURT: Overruled.

6 A. He can't control the pain. If he has pain, that's
7 not under his control.

8 Q. Exactly right, Doctor.

9 A. Okay. Then what are you trying to prove?

10 Q. Is this complaint of pain objective or subjective?

11 A. His complaint is a subjective complaint.

12 Q. All right. And how can you prove objectively,
13 Doctor, that he has the pain? You can only go on what he
14 says --

15 A. No, you can -- observations.

16 Q. Observation. All right, Doctor. What about --
17 does this indicate that I'm having pain or not?

18 A. The way you're doing it, no.

19 Q. What about how can I do it, sir, that indicates
20 that I'm having pain?

21 A. It's up to the judgment of the observer, and it was
22 observed that these men could not lift because of fatigue and
23 pain and, that was not under their control, sir.

24 Q. Doctor, the observation is not under the control,

1 the person making the observation, but the person performing
2 the act has it completely within his control.

3 A. No, sir, not if he has pain.

4 Q. Doctor --

5 A. If he has pain, he cannot control it.

6 Q. Right, Doctor. Now, he has pain in 1953, and he
7 does the same thing, Doctor. What do you have other than his
8 statement that he has pain to support his claim that he has
9 pain, sir?

10 A. Observations.

11 Q. What observations?

12 A. Observations within the plant that he's able to
13 perform.

14 Q. Doctor, these men didn't go back to work, for four
15 years they were out of work, they didn't go back to the
16 plant. They became disabled in '49 and didn't go back to
17 work, isn't that right, sir?

18 A. No, sir.

19 Q. Oh, Doctor, you know --

20 A. Let's go back to the records and you can see that
21 many of them did go back to work.

22 Q. Many of them did. I'm not quarrelling with that.

23 A. You said they didn't go back to work. They did,
24 sir.

1 Q. Doctor, we're talking about the four. Did you hear
2 me, sir?

3 A. Yes, sir, that's what I'm talking about.

4 Q. The four did not go back to work, did they, sir?

5 A. Not immediately, but they did eventually go back to
6 work.

7 Q. After four years they went back to work.

8 A. No, sir. Mr. Hurley went back to work.

9 Q. Yes.

10 A. Mr. McLanahan went back to work.

11 Q. Yes. What four was it that was out of work the four
12 years, Doctor?

13 A. At the moment I can't tell you, cause I haven't
14 looked at it.

15 Q. They were four that were out of work for four
16 years, weren't there, sir?

17 A. No, sir. You'll have to point that out to me.

18 Q. No, Doctor, you point it out to me.

19 A. No, sir.

20 Q. Because you're the one that said it.

21 A. I didn't say they were out for four years. You
22 did, sir.

23 Q. No, Doctor, you told us earlier and there's
24 testimony that four of these were out of work for four

1 years.

2 A. Where is that, sir?

3 Q. Sir?

4 A. Where is it?

5 Q. Doctor, I don't have to respond to your question of
6 where it is. Now, my question is, sir, I want you to assume
7 that there were a number of men that were out of work, did
8 not go back to work for a period of years. Will you assume
9 that please, sir?

10 A. I'm assuming that that's true.

11 MR. CARR: Your Honor, would you direct the witness
12 to not respond the way he's doing. There is evidence in this
13 case, and I just don't feel the necessity, Your Honor, of
14 going back and reproving each point over and over again.

15 THE COURT: Doctor, wait until the assumption is
16 done. Unless I sustain an objection to it you have to
17 assume it as true. Unless I sustain an objection to it after
18 the assumption is proposed to you, you have to take it as
19 true.

20 MR. HEINEMAN: Your Honor, may counsel approach the
21 bench?

22 THE COURT: Yes, you may.

23 (At this time a conference was had at the bench out
24 of the hearing of the jury.)

1 MR. HEINEMAN: The man just said I'll assume that
2 it's true. Now, under those circumstances what gives rise to
3 an instruction from the Court? I don't undersand. The man
4 -- he asked him to assume. And he said I'll assume it's
5 true.

6 MR. CARR: No, he said--

7 MR. HEINEMAN: He did not. You want to read it
8 back? He said I'll assume it's true.

9 THE COURT: I think he said more than that.
10 Objection is overruled.

11 MR. HEINEMAN: I'll be happy to have it read.

12 THE COURT: You know, we're not going to take time
13 going over all of this twice when it's interrupted by nine
14 million things to begin with. I'm sitting here, I'm listening
15 to it, I heard it closer than you did. Objection is
16 overruled. Let's proceed.

17 (The following proceedings were had in open Court.)

18 Q. Doctor, I want you to assume that a number of these
19 men did not go back to work for a long periods of time
20 because they said they had pain, some as little as three
21 months, some as much as three to four years. Will you assume
22 that please, sir?

23 A. I shall assume it, sir.

24 Q. And now, Doctor, what with reference to these men

1 would you say there were objective symptoms to support their
2 claims of inability to work because of pain and aches?

3 A. I don't think I can answer that, cause I don't know
4 what the assumption includes. Does it include pains in the
5 heart?

6 Q. Doctor, you heard my question. I'd like for you to
7 tell me what there is objectively in the condition of these
8 men, and if you want to, you can look at Exhibit 1701, what
9 there is objectively in the condition of these men to support
10 their claims that they had aches and pains which prevent them
11 from working?

12 A. I don't have 1701, sir. What is 1701?

13 Q. It is your 1953 report, sir, Defendant's 1701.

14 THE COURT: She'll get it in a minute.

15 MR. CARR: He has his own copy there, your Honor.

16 A. What is it, sir?

17 Q. Tell me please, sir, from any records that you have
18 that's available to you what objective evidence there is to
19 support the claim that these various workers, that they could
20 not work because of their aches and pains?

21 A. Their complaints, sir.

22 Q. Doctor, the complaints they have you've already
23 agreed are subjective, have you not, sir?

24 A. Yes.

1 Q. And now listen to my question. What objective
2 signs did they have to support their claim that they could
3 not work because of aches and pains and their other
4 conditions?

5 A. The medical records.

6 Q. Now, Doctor, that is not -- medical records contain
7 all kinds of subjective things and objective things. I want
8 to know what objective signs that you know of to support
9 their claim, sir, that they could not work and point it out
10 for me, sir, in any records that you have.

11 A. There's nothing in this examination of that
12 exhibit, sir.

13 Q. There are no objective signs in your report of
14 1953, there are no objective signs in your report of 1949 and
15 1950 to support the claim of aches and pains save the
16 exception of one person, that's Jonathan Hurley, who had his
17 nerve biopsy and it showed his nerve fibers to be destroyed
18 and myelin sheath to be degenerated, isn't that correct, sir?

19 A. Would you repeat the question, please. It's a long
20 one.

21 (Court reporter read back the last question.)

22 A. No, there are no objective findings, not signs,
23 findings.

24 Q. Is it correct, sir, that there were no objective

1 findings to support their claims they could not work other
2 than their -- other than in the one case of Jonathan Hurley?

3 A. That is true, sir.

4 Q. Yes. Now, Doctor, back to the BASF report, sir,
5 Exhibit 1459. These problems of vertigo, aching muscles,
6 dyspnea and headaches were disabling in your judgment at that
7 time, were they not, sir?

8 A. Yes.

9 Q. And, Doctor, these problems of aching muscles and
10 headaches in the instances of some of these people continued,
11 some mild, some moderate, some severe, isn't that correct,
12 sir?

13 A. No, sir.

14 Q. What is incorrect about it, sir?

15 A. Are you quoting this, sir?

16 Q. Excuse me. What is incorrect about it, sir?

17 A. I don't believe there were any that we regarded as
18 severe in 1953.

19 Q. Doctor, Exhibit 1701 said these symptoms in most of
20 the 23 cases were mild except in instances of Westfall,
21 Steele, Willard, Hudnall, Selby, Beckman and Stover. Don't
22 you remember that?

23 A. That doesn't mean to say they were severe. You used
24 the word severe, and I don't think they were severe.

1 Q. Well, you say you did not use the word severe?

2 A. I don't believe so.

3 Q. Doctor, at this point in time I certainly don't
4 wish to go through this exhibit again with you, but you at
5 least describe these six people as having complaints that
6 prevented them from working for a period of time, did you
7 not, sir, and they were something other than mild, sir?

8 A. According to their complaints, yes, sir.

9 Q. And, Doctor, these complaints you no longer called
10 bizarre, isn't that right, sir?

11 A. Where is that found, sir?

12 Q. Doctor, is it that I have to prove everything that
13 -- by a citation for your memory to function on this? Isn't
14 it a fact that once upon a time you and others considered
15 these complaints bizarre but that in your conference here
16 with Dr. Oettel as described in this report you no longer
17 termed them bizarre? You see that right at the top of Page
18 4, Doctor?

19 A. That's the memorandum, but I would have to check my
20 own use of that word, cause I don't remember using that word,
21 sir. This is a memorandum not written by me, sir.

22 Q. Doctor, it is quoting you, however. The whole
23 paragraph is quoting you, sir.

24 A. I'm not altogether sure that that's so.

1 Q. Dr. Suskind, it says Dr. Suskind stated that in the
2 Monsanto cases the skin problem was not disabling, but the
3 many other symptoms, such as vertigo, aching muscles, dyspnea
4 and headaches were. In close checking the varying secondary
5 symptoms once termed bizarre, it developed that all of the
6 typical symptoms were common to both the German and Monsanto
7 case with the exception of the dyspnea and intolerance to
8 cold. Isn't that what it says here?

9 A. Yes, but that's referring to both the German and
10 Monsanto cases.

11 Q. Sure it is.

12 A. I don't know whether I said bizarre, that's what
13 I'm saying, I don't know whether I said it.

14 Q. Well, Doctor, you no longer, if you termed them
15 bizarre once upon a time, you no longer termed them bizarre,
16 isn't that correct, sir?

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

19 THE COURT: Sure.

20 (At this time a conference was had at the bench out
21 of the hearing of the jury.)

22 MR. HEINEMAN: Object to the form of the question
23 as being misleading to the witness and to the jury. The
24 witness -- there's absolutely no evidence that this witness

1 used the term bizarre, and now Mr. Carr is saying if you no
2 longer use the term bizarre. Now, that is a totally
3 misleading premise, and I object to it. The witness has said
4 I didn't write the memorandum, I'm not, that's not quoting
5 me.

6 THE COURT: Wait a minute. If I remember right, the
7 question was if you used the term bizarre, you no longer used
8 it at this time. That's different than what you just said
9 and what you're basing your objection on.

10 MR. HEINEMAN: The question he just asked at that
11 moment, Your Honor, was that if you no longer use the term
12 bizarre --

13 MR. CARR: I said if you use the term bizarre, you
14 no longer use it, isn't that correct, sir.

15 MR. HEINEMAN: All right. If that be the case, he
16 didn't use the term bizarre. There's no evidence that he
17 ever did, and I object to it as not being based upon any
18 evidence whatsoever in the case, and it's misleading to the
19 witness and to the jury.

20 THE COURT: The way it was phrased it's not.
21 Overruled.

22 (The following proceedings were had in open Court.)

23 Q. Would you answer my question please, Doctor.

24 A. What is the question please.

1 MR. CARR: Would you read the question to him again
2 please.

3 (The court reporter read back the last question.)

4 A. No, sir, that's not correct.

5 Q. It's not correct, sir?

6 A. No, sir.

7 Q. They are still bizarre in your judgment?

8 A. No, sir.

9 Q. Are you saying they were never considered bizarre
10 in your judgment then?

11 A. I cannot recall using the term bizarre, sir.

12 Q. Doctor, do you understand my question, sir?

13 A. Yes, sir.

14 Q. If you had, in fact, even though you may not be
15 able to recall it at this point in time termed these
16 complaints bizarre or inexplicable or something of that sort,
17 you no longer at this point in time use that term to describe
18 these varying secondary symptoms, isn't that correct, sir?

19 A. No, sir.

20 Q. Did you still use these things, sir?

21 A. No, sir.

22 Q. Did you understand my question, Dr. Suskind?

23 A. Yes, I did, sir.

24 Q. Are you just playing a game with me?

1 A. No, I'm not playing a game. I don't know--

2 Q. Did you understand me to say that if you once
3 called them inexplicable, strange, or bizarre, whatever words
4 it may have been that were used to describe it, if you did
5 that, sir, you no longer are doing that, isn't that correct,
6 sir?

7 A. If that's the question, no, I'm not calling them
8 bizarre.

9 Q. Thank you. And, Doctor, because you consider that
10 they indeed are real complaints and real problems, don't you,
11 sir, these symptoms?

12 A. Yes.

13 Q. And, Doctor, a symptom is something different than
14 a mere complaint, isn't it, sir?

15 A. Not necessarily, no.

16 Q. Doctor, did I say that it always was necessarily?
17 A symptom is a sign to a physician of some problem, isn't it,
18 sir?

19 A. Yes.

20 Q. And a complaint isn't necessarily a sign of a
21 problem, is it, sir?

22 A. No.

23 Q. Because a complaint can be manufactured, it can be
24 made up, but a symptom is a sign, isn't it, sir?

1 A. Yes.

2 Q. And these secondary problems, the vertigo, the
3 aching muscles, the shortness of breath and the headaches
4 were symptoms, weren't they, sir?

5 A. They were complaints, sir, not symptoms.

6 Q. Doctor, are they not described as symptoms by you
7 in or at least it's reported that you described these as
8 symptoms, sir?

9 A. It is indeed.

10 Q. Have you ever -- do you now disagree and say that
11 they are not symptoms, sir?

12 A. No, I do not disagree with that.

13 Q. Then they are symptoms, aren't they, sir?

14 A. As of 1949 and '50, yes, sir.

15 Q. Doctor, this document was written in 1960, you
16 say. Were they not considered symptoms by you in 1960?

17 A. Of the cases in 1960? No.

18 Q. Doctor, if they were symptoms in '49 and symptoms
19 in '50, and you called them symptoms in '49 and '50, aren't
20 they still symptoms in '60 or '79 or '84 or '85?

21 A. They are indeed of the cases that were examined in
22 1949 and '50. That's all I'm saying.

23 Q. What about the ones you examined in '53? Weren't
24 they symptoms there, sir?

1 A. Some of them, yes.

2 Q. There were 27 out of 29 had these symptoms, didn't
3 they, sir?

4 A. According to your records, sir, yes.

5 Q. Doctor, according to whose interpretation of these
6 records? These were symptoms according to whose
7 interpretation?

8 A. According to my record and my interpretation.

9 Q. Thank you, Doctor. And, Doctor, these symptoms
10 that existed in '49 and 1950 and 1953, if they still exist in
11 1979, they are still symptoms, aren't they, sir?

12 A. If they are symptoms.

13 Q. Doctor, I said if they are -- if they are symptoms,
14 they're symptoms, aren't they, sir? Aren't they, sir?

15 A. No, no.

16 Q. If they're not symptoms, they're not symptoms?

17 A. One has to --

18 Q. Doctor, do you understand my question?

19 A. I absolutely do, Mr. Carr.

20 Q. Doctor, if an aching muscle is a symptom, it is a
21 symptom, isn't it, sir?

22 A. It could be a complaint, sir.

23 Q. I know it could be, but you called it a symptom,
24 didn't you, sir?

1 A. These terms were used --

2 Q. You called it a symptom, didn't you, sir?

3 A. These terms were used synonymously.

4 Q. Doctor, you called it a symptom, didn't you, sir?

5 A. We did, but they were used synonmously with the
6 term complaint.

7 MR. CARR: Your Honor, would you direct the witness
8 to just answer my question.

9 THE COURT: Doctor, that latter part was not
10 responsive to the question. Please just answer the question.

11 Q. Doctor, you called them symptoms in '49, and you
12 called them symptoms in '50, you called them symptoms in '53,
13 did you not, sir?

14 A. Yes.

15 Q. Now, Doctor, if these -- and in this instance
16 aching muscles were symptoms, were they not, sir, in '49 and
17 '50 and '53?

18 A. If we called them that, sir, yes.

19 Q. Well, you did call them that, didn't you, sir?

20 A. We also used the word complaint, sir.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer my question.

23 Q. You called them symptoms, did you not, sir?

24 A. Yes.

1 Q. Doctor, what are they symptoms of?

2 A. What are what symptoms of, sir? What symptoms are
3 we talking about?

4 Q. What are they -- what are they symptoms of, sir
5 these symptoms, what are they signs of, what are they
6 symptoms of, sir?

7 A. They are symptoms of a complaint.

8 Q. Symptoms of a complaint?

9 A. Yes, sir.

10 Q. What kind of disease is a complaint, sir? Is it --
11 what kind of a disease is a complaint?

12 A. A complaint is a complaint, and it could be used
13 synonymously with a symptom.

14 Q. Is that a disease, sir, a complaint is a disease?

15 A. No, neither is a symptom, a symptom is not a
16 disease.

17 Q. Doctor, as a physician you use the word symptom to
18 describe signs of a disease, do you not, sir?

19 A. No.

20 Q. You don't?

21 A. No.

22 Q. Doctor, when you take somebody's temperature and
23 they have a fever, that is a symptom, isn't it, sir?

24 A. They have a what?

1 Q. They have a fever.

2 A. Yeah.

3 Q. It is a symptom, isn't it, sir?

4 A. That's an objective finding, sir, not a symptom.
5 There's a difference.

6 Q. A fever is not a symptom?

7 A. It's an objective finding.

8 Q. Well, what is a symptom then?

9 A. A symptom could be a complaint as well, and these
10 men were complaining.

11 Q. Doctor --?

12 MR. CARR: Your Honor, would you direct the witness
13 --

14 A. I'm answering the question, sir.

15 THE COURT: Doctor, you did go beyond the question.

16 Q. Doctor, I'm directing your attention to a fever.
17 Is a fever a symptom?

18 A. It could be, but it's a finding, an objective
19 finding.

20 Q. Doctor, is a fever a symptom?

21 A. Yes.

22 Q. And of what disease may this symptom be a sign of?

23 A. What symptom, sir?

24 Q. The fever, Dr. Suskind.

1 A. Infection.

2 Q. Yes. Now, Doctor, is an aching muscle a symptom?

3 A. No.

4 Q. An aching muscle is not a symptom?

5 A. No.

6 Q. Is a headache a symptom?

7 A. No.

8 Q. Is weakness a symptom?

9 A. No.

10 Q. Is shortness of breath a symptom?

11 A. No.

12 Q. Is pain in the heart a symptom?

13 A. No.

14 Q. Is inability to see a symptom?

15 A. If it's real, yes.

16 Q. Doctor, I'm telling you all these things are real.

17 I'm not talking about imaginary things, am I, sir? I'm

18 asking you about real things. Is a pain in the heart a

19 symptom?

20 A. It could be a complaint, sir.

21 Q. Doctor, I'm not asking you about complaints. I'm

22 asking is pain in the heart a symptom?

23 A. No, sir.

24 Q. Is an ear ache a symptom?

1 A. Could and could not be.

2 Q. Doctor, if it is a symptom, what is it a symptom
3 of?

4 A. A symptom is an indication of a problem.

5 Q. It is an indication of a disease, isn't it, sir?

6 A. A symptom can also be --

7 Q. Dr. Suskind, a symptom--

8 A. May I finish my answer, sir?

9 MR. CARR: Your Honor, would you direct the
10 witness--

11 THE COURT: Doctor, please listen to the next
12 question. I think you completed--

13 A. I hadn't finished this answer.

14 THE COURT: Doctor, I think you answered the
15 question. Go ahead, Mr. Carr.

16 Q. Dr. Suskind, a symptom is a sign of a disease,
17 isn't it, sir?

18 A. It could be.

19 Q. It is a sign that you physicians and sometimes
20 mothers or fathers rely upon to indicate that a disease
21 process is going on in their child's body or in the patient's
22 body, isn't that correct, sir?

23 A. It could be.

24 Q. Not could be, sir. It is.

1 A. No, sir.

2 Q. Is it not, sir?

3 A. It could also be a complaint.

4 Q. Doctor, I'm not talking about complaints now. A
5 complaint is merely a manifestation of the symptom, it's the
6 -- it's what the patient tells you, it is the fact that the
7 aching muscle exists that is the symptom. It is a fact that
8 the fever exists. The patient can tell you, I feel hot. That
9 is a complaint, isn't it, sir?

10 A. Yes, sir.

11 Q. But when you touch the child's forehead and find
12 the fever, then that is the symptom, isn't it, sir?

13 A. Correct.

14 Q. The statement is not the symptom, is it, sir?

15 A. No, the statement is a complaint.

16 Q. It is the aching muscle that is the symptom, isn't
17 it, sir?

18 A. No, no, no, sir, no, sir. The aching muscle is a
19 complaint.

20 Q. No, Doctor. If I tell you that I have an aching
21 muscle, that is a complaint.

22 A. That is true, sir.

23 Q. But if I have the aching muscle, that is a symptom,
24 isn't it, sir?

1 A. No, sir, it's a complaint, because there's no
2 objective finding of the aching muscle.

3 Q. Doctor, are only objective findings the only thing
4 you consider symptoms? There are subjective symptoms, there
5 are objective symptoms.

6 A. Precisely.

7 Q. Isn't that correct, sir?

8 A. Precisely.

9 Q. Now, Doctor, I'm asking you about symptoms. What
10 is an aching muscle a symptom of?

11 A. It's a complaint of, and it could be an
12 polyneuritis.

13 Q. No, Doctor. I didn't tell you that I complained
14 about it. I'm asking you I've got an aching muscle, accept as
15 true, if you will, sir, that I have an aching muscle, accept
16 as true that I have an ear ache, accept as true that I have a
17 headache, accept as true that I have a heart pain, accept as
18 true that I have shortness of breath. These are all
19 symptoms, are they not, sir, of various disease processes?

20 A. They're also complaints, sir, yes.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer my question and ask the jury to disregard the last
23 statement.

24 THE COURT: The jury is so instructed to disregard.

1 Doctor, answer the question only. Your answer was not
2 responsive to the question. Could you repeat the question or
3 have it read back.

4 Q. Doctor, what is an aching muscle a symptom of?

5 A. An aching muscle can be a symptom of a fatigue, an
6 injury to the muscle, stressing the muscle, and it also can
7 be a complaint.

8 Q. Doctor, I'm not talking about complaint now, so put
9 that out of your mind. I'm asking you what is an aching
10 muscle a symptom of?

11 A. It could be a polyneuritis.

12 Q. Yes. Doctor, in the case of these men that had the
13 aching muscle symptoms, what was that a sign of in your
14 judgment in '49 and '50?

15 A. We believed at that time that they did have a
16 polyneuritis, sir.

17 Q. Doctor, and what was the cause of the polyneuritis
18 that they had?

19 A. We believed at the time that the -- that the
20 polyneuritis was associated with the process material that
21 caused first their chloracne, and that was the material from
22 the runaway reaction in Building 41. We felt that was
23 associated--

24 Q. Doctor, I asked you what was the cause of it, and

1 you said it's associated with. That would indicate to me
2 that it wasn't caused by the process or the material in the
3 process. I'm asking you, sir, in your judgment as a
4 physician what was the cause of the aching muscles these men
5 had?

6 A. We don't know, sir, and we didn't know then either.

7 Q. What is your judgment today, sir, that was the
8 cause of these aching muscles?

9 A. Today we believe that the impurities in the
10 trichlorophenol in that accident could have caused their
11 aching muscles, their polyneuritis.

12 Q. Doctor, I'm asking you not what could have caused
13 it. A lot of things could have caused it. I'm asking you in
14 your judgment what caused the aching muscles these men had in
15 1949?

16 A. At the present time we believe that it is probably
17 from the TCDD.

18 Q. And, Doctor, what caused the vertigo that these men
19 had in '49 and '50?

20 A. I have no idea, sir.

21 Q. Was there any other event that took place other
22 than this exposure to these chemicals in this runaway
23 reaction that could possibly be a cause of the vertigo?

24 A. I don't know. Whether it was the TCDD I don't

1 know, but it could very well be the TCDD.

2 Q. Doctor, do you have any other evidence, any other
3 medical theories at all other than the exposure to the TCDD
4 to account for this problem of vertigo?

5 A. They were exposed to trichlorophenol and other
6 contaminants like the pentachloranisol and the
7 trichloranisol. Those were also in there, sir.

8 Q. Then it was the exposure to the chemicals that
9 caused it in your judgment, is that right?

10 A. We assumed that that was so, yes.

11 Q. -- Including the TCDD. What was the cause of the
12 shortness of breath, sir, in your judgment?

13 A. I really don't know.

14 Q. Give me your best scientific judgment, Doctor. You
15 studied these cases now since 1949.

16 A. I said I don't know.

17 Q. I'm asking you for your opinion as a scientist,
18 Doctor, as a man that has looked at these people since 1949
19 up to the present time. What, sir, in your judgment was the
20 cause of these problems, the shortness of breath in this
21 instance that these men had?

22 A. Only a few had that, sir.

23 Q. Well, the few that had it, what was the cause of it
24 in your judgment?

1 A. I have no idea, I cannot tell you.

2 Q. Doctor, did they have it before they were exposed
3 to the chemicals so far as you know?

4 A. I don't know, sir.

5 Q. So far as you know, Doctor?

6 A. I really don't know.

7 Q. My question is so far as you know, Doctor.

8 A. I said I didn't know, sir.

9 Q. My question is, sir, as far as you know did they
10 have the shortness of breath before the exposure to the
11 chemicals?

12 A. I am answering the question correctly.

13 MR. CARR: Your Honor --

14 A. I don't know.

15 MR. CARR: Would you direct the witness--

16 Q. You don't know what you know, sir?

17 Q. I don't know what the cause of their shortness of
18 breath, because --

19 Q. That isn't what I asked you, Doctor.

20 A. Yes, you did, sir.

21 Q. Doctor, as far as you know, insofar as the
22 information you have that is available to you, do you know of
23 any other cause except the exposure to these chemicals that
24 could be the cause of this shortness of breath?

1 A. Yes, sir.

2 Q. What other causes do you know of, sir?

3 A. They could have respiratory infections.

4 Q. Doctor, do you know of any of these men having the
5 respiratory infections?

6 A. Some of them complained about it, yes, sir.

7 Q. Prior to the incident, sir?

8 A. At the time of the incident.

9 Q. Yeah, that's what I'm talking about, prior to the
10 incident, Doctor, what other than the incident do you know of
11 could have caused this shortness of breath?

12 A. I said I don't know.

13 Q. What you're saying is you don't know of anything
14 other than this incident that could have caused the shortness
15 of breath, is that correct?

16 A. No, sir, that is not what I said.

17 Q. And if you know some other cause, please state it,
18 sir.

19 A. Yes, respiratory infections, card -- previous
20 cardiac disease --

21 Q. Doctor, what respiratory infections--

22 MR. HEINEMAN: Objection, your Honor, he's
23 interrupting the answer.

24 THE COURT: Go ahead and finish the answer.

1 A. Thank you, sir. Respiratory infections, the
2 presence of asthma, a large number of things that could
3 occur, especially in winter time and this was winter time,
4 and these individuals like ourselves could have had any
5 number of things that could have caused shortness of breath.

6 Q. Doctor, you're speculating.

7 A. At the time of the incident and after it.

8 Q. Doctor, you're speculating as to things that can
9 cause shortness of breath, and I agree all of these things
10 can cause shortness of breath, but what do you know of that
11 any one of these individuals or all of these individuals had
12 to cause the shortness of breath?

13 A. Well, I know one of them had pneumonia.

14 Q. Before the incident?

15 A. No, no.

16 Q. Doctor, I asked you--

17 A. Following the incident, and it had nothing to do
18 with the incident.

19 MR. CARR: Your Honor, would you ask the witness to
20 wait a moment and let me finish my question.

21 THE COURT: Let Mr. Carr finish the question please.

22 Q. Doctor, what condition did any one of these men
23 have before their exposure to cause the shortness of breath
24 that you know of? Do you know of anything that any of these

1 men had before the exposure to cause the shortness of
2 breath? If so, name the man and name the condition.

3 A. I don't know of any.

4 Q. Thank you, Doctor. Doctor, headaches, what is
5 headaches in these men, what caused the headaches, sir?

6 A. I can't tell you.

7 Q. Your best judgment, sir, after having followed
8 these men, after knowing that the headaches started at the
9 time of the exposure in case after case after case, what
10 caused the headaches in your judgment, Doctor?

11 A. It wasn't in case after case, but there were people
12 in that 1949 --

13 Q. The people that had the headaches, sir.

14 A. In the 1949 accident there were people who, when
15 they--

16 Q. Doctor--

17 A. Clean the operation. May I finish?

18 Q. No, you may not, Dr. Suskind, unless you're
19 answering my question.

20 A. I am answering your question.

21 Q. You are not allowed to give a speech, sir, you're
22 allowed to answer my question. My question is, sir, other
23 than the exposure to chemicals, what other cause of headaches
24 existed to your knowledge, sir?

1 A. There could be any other cause of headaches, but --

2 Q. Now, Doctor, when you say could, you're
3 speculating. I want you to tell us, sir, in the instance of
4 any one of these persons that had headaches what other causes
5 for these headaches were there to your knowledge, sir, other
6 than the chemical exposure?

7 A. All of the causes of headaches that any population
8 --

9 MR. CARR: Your Honor, the witness is not answering
10 my question.

11 THE COURT: Doctor, that is not responsive to the
12 question. Listen to the question again and respond to it.
13 Mr. Carr, ask the question again.

14 MR. CARR: Would you read the question to the
15 witness.

16 (Court reporter read back the question.)

17 A. Respiratory infections.

18 Q. Which person had a respiratory infection before the
19 exposure to the chemical?

20 A. I don't know, but you're asking what other --

21 Q. Doctor, I'm asking you about your knowledge. I'm
22 not asking you to speculate. We all know all kinds of causes
23 of headaches. There's a lot of causes to headaches.

24 A. Yes, sir, and that's what you have to take into --

1 Q. What I want to know, sir, is not what are the
2 causes of headaches in general. I want to know, sir, the
3 headaches that these men had, these real individuals, the
4 real headaches that they had, what caused the headaches, what
5 information do you have, what knowledge of any other cause of
6 the headaches in these specific individuals do you have, sir,
7 what knowledge do you have as to the cause of these headaches
8 other than the exposure to the chemicals?

9 A. At this time I cannot tell you, sir.

10 Q. Thank you. There were no other--

11 THE COURT: Mr. Carr, is this a good point for a
12 break?

13 MR. CARR: Yes, Your Honor.

14 THE COURT: We'll take a short recess at this time,
15 and then we'll resume testimony.

16 (At this time a short recess was taken.)

17 (The following proceedings were had in open Court.)

18 Q. Doctor, these symptoms that you considered to be
19 disabling, aching muscles and the headaches and shortness of
20 breath and so forth, the respiratory problems, these are also
21 not just symptoms, these are health effects as well, are they
22 not, sir from TCDD exposure?

23 A. They were health effects.

24 Q. From TCDD exposure?