

IN THE COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA

- - -  
SAMUEL ALSTON : JANUARY TERM, 1988  
:   
VS. :   
:   
SEPTA, et al. : NO. 5475

- - -  
January 30, 1990  
- - -

Continued oral deposition of THOMAS M.  
BISTLINE, held in the offices of Kohn, Savett, Klein  
& Graf, P.C., 2400 One Reading Center, 1101 Market  
Street, Philadelphia, Pennsylvania 19107 commencing  
at 11:00 a.m., on the above date, before Harvey  
Krauss, a Registered Professional Reporter and a  
Notary Public of the Commonwealth of Pennsylvania.

- - -  
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I N D E X

| WITNESS            | PAGE NO. |
|--------------------|----------|
| Thomas M. Bistline |          |
| By Mr. Kohn        | 123, 224 |
| By Mr. Malin       | 223      |

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E X H I B I T S

| NO.       | DESCRIPTION | PAGE NO. |
|-----------|-------------|----------|
| Exhibit 4 | Document    | 224      |
| Exhibit 5 | Document    | 223      |

1                   THOMAS M. BISTLINE, after having  
2           been previously sworn, was examined and  
3           testified as follows:

4                   - - -

5                   EXAMINATION

6                   - - -

7   BY MR. KOHN:

8           Q.       This deposition is being continued  
9           pursuant to the order of the court after the last  
10          session.

11                   Mr. Bistline, have you undertaken any  
12          preparation since this deposition began on January  
13          4th, with respect to the subject matter of the  
14          deposition?

15                   MR. MALIN: I object. I'd like you  
16          to define what you believe the subject matter of the  
17          deposition is.

18   BY MR. KOHN:

19           Q.       Have you done anything since January 4th  
20          to prepare for your deposition today?

21           A.       Yes, I did, Mr. Kohn. I reviewed a copy  
22          of Monsanto's response to plaintiff's first set of  
23          document requests.

24           Q.       Anything else?

1 A. Other than conferring with counsel, no.

2 Q. When did you review the response to the  
3 document request?

4 A. Yes.

5 Q. All right. And when did you confer with  
6 counsel?

7 A. Yes.

8 Q. How much time did you spend reviewing  
9 the document request?

10 A. Half an hour.

11 Q. How much time did you spend conferring  
12 with counsel?

13 A. Possibly an hour.

14 Q. Which counsel did you confer with?

15 A. Mr. Malin.

16 Q. Anyone else?

17 A. No.

18 Q. Did you speak to anyone else in your  
19 office, on your staff in connection with preparing  
20 for the deposition today?

21 A. No.

22 Q. All right. I have placed before you  
23 what was marked at the last deposition as Exhibit 3,  
24 and ask you if you could turn to Page 6 of that

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1 exhibit.

2 A. Yes.

3 Q. Document request number 4, which appears  
4 on the page requests, "All documents sent or  
5 received by you, to or from any purchaser or  
6 consumer of your PCB products relating to the  
7 effects or uses of PCBs."

8 And the response to that request  
9 states, among other things that Monsanto objects on  
10 the grounds that it is quote, "unduly burdensome,"  
11 close quote.

12 Why, is responding to that document  
13 request unduly burdensome?

14 MR. MALIN: I'm objecting to that  
15 question. I am directing the witness not to answer  
16 it.

17 Request number 4 is not one of the  
18 requests that is in issue in this case, with respect  
19 to burdensomeness. Those are limited to those which  
20 are subject to your motion to compel. Accordingly,  
21 the question is irrelevant to the issues that are  
22 before us at this time, and I direct the witness not  
23 to answer

24 BY MR. KOHN:

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1 Q. I take it, just so the record is clear,  
2 that you are going to follow the instructions of  
3 your counsel each time instructing you not to  
4 answer, so I don't have to ask you if you're going  
5 to follow the instruction.

6 A. That's correct. Yes.

7 Q. Turn to the next page of Exhibit 3.

8 A. All right.

9 Q. Request 5 refers to quote, "All copies  
10 of scientific or medical literature, journals,  
11 articles or treatises which refer or relate to  
12 PCBs," close quote.

13 To your knowledge, does Monsanto  
14 maintain a file of scientific or medical literature  
15 or journals relating to PCBs?

16 MR. MALIN: <sup>you may</sup> Don't answer that  
17 question.

18 A. Yes.

19 Q. And do you know where that file is  
20 maintained?

21 A. At our world headquarters in St. Louis.

22 Q. Is it maintained in a particular  
23 department or unit in Monsanto's world headquarters?

24 A. Yes.

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1 Q. Which department or unit?

2 A. I believe the name of the department is  
3 the environmental policy staff.

4 Q. That's a department separate from the  
5 legal department?

6 A. Yes.

7 Q. Who is currently in charge of that  
8 department?

9 A. Well, let me ask you to clarify that, at  
10 which level, because it's a fairly extensive  
11 department.

12 Q. I'm not quite sure what you mean by  
13 which level. Who has ultimate responsibility?

14 A. Ultimate responsibility for that  
15 department is vested in the vice president, whose  
16 name is Harold Corbett.

17 Q. What is his job title?

18 A. Senior vice president for environmental  
19 policy, I believe.

20 Q. Is there an individual or group of  
21 individuals that are responsible for retaining the  
22 literature file within that department?

23 A. Specifically regarding PCBs?

24 Q. Yes, correct.

## Bistline

1 A. Yes.

2 Q. And do you know who that individual or  
3 individuals are?

4 A. Yes. I know who has custody of that.

5 Q. And can you identify that person for us,  
6 please?

7 A. The person's name is Dr. Robert Kaley.

8 Q. And do you know how long he's been  
9 employed by Monsanto?

10 A. Oh, I believe since 1973.

11 Q. All right. Do you know for what period  
12 of time he has had responsibility for maintaining  
13 the scientific literature file with respect to PCBs?

14 A. It would be since, I would guess, 1985.  
15 It may be 1986, but I'm not sure. '85 or '86,  
16 sometime in that time frame.

17 Q. All right. Do you know whether the  
18 scientific literature file under his authority is  
19 indexed or computerized, in any way?

20 A. There is a computer index for that file,  
21 yes.

22 Q. And can you describe what information is  
23 contained on that computer index?

24 A. I'd like to confer with my counsel for a

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1 moment.

2 MR. KOHN: We have a continuing  
3 objection to any conferences while questions are  
4 pending.

5 (Whereupon, a discussion was held off  
6 the record.)

7 MR. MALIN: Objection and I'm  
8 directing the witness not to answer, inasmuch as  
9 that is subject to the work product of counsel  
10 rather than having been developed in conjunction  
11 with counsel. I direct the witness not to answer  
12 that question.

13 BY MR. KOHN:

14 Q. Do you know when the computer index of  
15 the scientific literature was developed?

16 A. Initially, in '85 or '86, when Dr. Kaley  
17 took charge of that.

18 Q. And who worked on developing the  
19 computer index?

20 A. A number of people, Mr. Kohn.

21 Dr. Kaley, of course, being one of  
22 them.

23 And several attorneys from Monsanto  
24 Company.

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1 Q. Can you identify the attorneys?

2 A. Well, I was one of them. And, I'm not  
3 sure I can identify all of them.

4 Mr. David Moore. Mr. Joseph Nassif.

5 Mr. Gerard Davidson.

6 There may have been others, but those  
7 are the ones I can recall right now.

8 Q. What litigation was that computer index  
9 developed in connection with?

10 A. PCB litigation.

11 Q. Which PCB litigation?

12 A. Well, there were many cases pending, at  
13 that time. It was designed -- that data base was  
14 designed to provide support to counsel litigating  
15 PCB cases for Monsanto. Access restricted to  
16 counsel and those directed by counsel.

17 Q. Dr. Kaley does not have access to that  
18 index?

19 A. At my request he accesses, yes.

20 Q. He only accesses it if you request that  
21 he can access?

22 A. I or counsel.

23 Q. Dr. Kaley is not a lawyer, is he?

24 A. No, he's not.

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1 Q. What specific role did you play in  
2 connection with the development of the computer  
3 index of the scientific literature file?

4 A. I reviewed a suggested protocol for  
5 development of the data base, and made suggestions  
6 as to how I felt it should be designed.

7 Q. Who prepared the suggested protocol that  
8 you reviewed?

9 A. It was a cooperative effort among  
10 several people.

11 Specifically, Mr. Moore, Mr. Davidson  
12 and Dr. Kaley.

13 Q. All right. Can one access the  
14 information in the computer file by the author of  
15 the literature?

16 MR. MALIN: Hold on.

17 Excuse me.

18 (Whereupon, a discussion was held off  
19 the record.)

20 MR. MALIN: I'm objecting and direct  
21 the witness not to answer, inasmuch as the  
22 information with respect to how the information is  
23 accessed in a data base, which is the subject of the  
24 lawyer work product is privileged and the witness

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1 need not answer that question. So, I, therefore,  
2 direct him not to answer.

3 BY MR. KOHN:

4 Q. The hard copies of the scientific  
5 literature, is that actually within this  
6 environmental policy staff department?

7 A. Yes.

8 Q. Are the articles also under full text  
9 input or have they been input into a computer?

10 A. The articles are not in full text, no.

11 Q. All right. Do you have any  
12 understanding as to how this universe of articles  
13 was initially gathered or collected?

14 A. Yes.

15 Q. And, can you describe how they were  
16 gathered?

17 A. In very general terms, the articles were  
18 gathered with an eye toward what we believed, as  
19 counsel representing Monsanto, as advised by  
20 scientific consultants, would be the articles which  
21 are most relevant to the issues we face in PCB  
22 litigation. Those were the articles that then were  
23 captured from the scientific literature and which  
24 comprise that data base.

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1           Q.       Does Monsanto maintain some other  
2 collection of scientific literature, greater than  
3 the information which is in that particular data  
4 base?

5           A.       I'm a little confused by what you mean  
6 greater than, Mr. Kohn.

7           Q.       Articles that are not included in this  
8 data base.

9           A.       Yes. Certainly.

10          Q.       Where is that literature kept  
11 physically?

12          A.       We have many collections of scientific  
13 literature, Mr. Kohn, that have nothing to do with  
14 PCBs that are housed at various sites within the  
15 company.

16          Q.       Do you have any scientific literature  
17 which does relate to PCBs which is not included in  
18 that data base?

19          A.       There are undoubtedly articles relating  
20 to PCBs, in various libraries, scientific libraries  
21 in the company.

22                   However, none of those libraries  
23 specifically is designed to acquire and keep that  
24 literature. Their inclusion would be more

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1 incidental than anything else.

2 Q. Getting back, then, to the data base  
3 under the control of the environmental policy  
4 staff.

5 A. Well I object to that characterization,  
6 because it's not under the control of the  
7 environmental policy staff.

8 Q. Okay. The data base which is physically  
9 housed within the environmental policy staff  
10 department, does that data base contain unpublished  
11 articles and studies as well as published ones?

12 MR. MALIN: Hold on.

13 (Whereupon, a discussion was held off  
14 the record.)

15 A. Can I just ask for a clarification on  
16 that?

17 Q. Certainly.

18 A. The term published or unpublished  
19 statements is used in different contexts, and I'm  
20 not quite sure what context you mean that in.

21 Q. How many different contexts do you use  
22 those terms?

23 A. Well, I would understand it in at least  
24 two different ones; first, being whether the article

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1 has appeared in peer reviewed scientific  
2 literature. That's one instance in which I've heard  
3 the term published use. Another sense in which I  
4 have heard the term published used is in reference  
5 to something which is available to the public.  
6 Although, perhaps, not published by major scientific  
7 publication or something like that. An example of  
8 that would be government documents.

9 Q. Those are two. Excuse me.

10 A. Right. If you could clarify it for me,  
11 or perhaps you have another meaning for the term  
12 "published" that I am not aware of, but I need to  
13 understand what you mean before I could answer that  
14 question.

15 Q. I understand that. So the two examples  
16 you gave me are examples of terms that are  
17 published?

18 A. Publicly available, yes. And published  
19 in that sense, yes.

20 Q. Does the data base of scientific  
21 articles contain some articles which have not been  
22 peer reviewed in scientific literature?

23 MR. MALIN: Hold on.

24 (Whereupon, a discussion was held off

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1 the record.)

2 MR. MALIN: The witness may answer  
3 that question.

4 A. Does the data base contain articles that  
5 have not been peer reviewed in scientific  
6 literature?

7 Q. Yes.

8 A. The answer is, yes.

9 Q. And does the data base contain materials  
10 which are not otherwise available to the public,  
11 such as the governmental documents that you  
12 mentioned?

13 A. To my knowledge, no.

14 MR. MALIN: Object to the form of  
15 that question. Otherwise available to the public.  
16 Government documents are otherwise available to the  
17 public.

18 Q. That's right. I was using that as an  
19 example of documents which are available to the  
20 public.

21 To your knowledge, does that data  
22 base contain documents which are not available to  
23 the public?

24 A. To my knowledge, no.

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1 Q. All right. Does the computer index give  
2 one the ability to access the list by the subject  
3 matter of the article?

4 MR. MALIN: I object to that question  
5 for the same reasons I referred to earlier.

6 That's subject to the work product  
7 privilege.

8 Q. Can you access the file by the date of  
9 the article?

10 MR. MALIN: Same objection.

11 Q. Can you describe the type of software  
12 that this index is recorded on?

13 MR. MALIN: Hold on.

14 (Whereupon, a discussion was held off  
15 the record.)

16 MR. MALIN: The witness may answer  
17 that, if he knows.

18 A. I believe the name of the software is  
19 Basis, Mr. Kohn.

20 Q. Do you know the type of computer that is  
21 used in that department?

22 A. It's an IBM computer.

23 Q. A mainframe or smaller computer?

24 A. I believe the data for this data base is

## Bistline

1 recorded on the mainframe.

2 Q. All right. Has the identity or the fact  
3 that that computer index exists ever been disclosed  
4 in any other litigation involving PCBs, that you're  
5 aware of?

6 A. I don't know the answer to that.

7 Q. You don't know whether or not the index  
8 itself has been produced in any other litigation?

9 A. I'm quite certain the index has not been  
10 produced.

11 Q. Has anyone, other than an employee of  
12 Monsanto, ever seen a copy of that index?

13 A. Well, counsel for Monsanto have seen  
14 it. Other than that, other than those involved with  
15 defense of PCB litigation for Monsanto, no.

16 Q. Have any scientific experts or  
17 consultants ever seen that index?

18 A. I'm not sure, but if any had seen it,  
19 they would have been retained in connection with the  
20 defense of PCB litigation for Monsanto.

21 Q. Does Monsanto maintain similar indexes  
22 for chemicals other than PCBs?

23 MR. MALIN: Hold on.

24 (Whereupon, a discussion was held off

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1 the record.)

2 MR. MALIN: I object and direct the  
3 witness not to answer. That's not relevant here or  
4 to any issue that's currently before the court on  
5 this motion.

6 MR. KOHN: Well, what we're trying to  
7 get at is if the index is prepared in a similar way  
8 or using the same type of software for other  
9 instances that have been produced, then it may be  
10 that this one must be produced as well.

11 MR. MALIN: That's very attenuated,  
12 so attenuated I'm going to stick with the objection  
13 and direct the witness not to answer.

14 Q. Is there a partial text of the  
15 scientific literature or a synopsis of the  
16 scientific literature maintained in the computer  
17 bank?

18 MR. MALIN: Hold on.

19 (Whereupon, a discussion was held off  
20 the record.)

21 MR. MALIN: The witness may answer  
22 the question.

23 A. I'm sorry. Could I have that question  
24 back again, please.

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1 (Whereupon, the above portion of the  
2 notes of testimony was read by the court reporter.)

3 A. By that I assume you mean, is there a  
4 summary of the article?

5 Q. Right.

6 A. I can't recall whether there is or not.  
7 There may be, but I'm not sure.

8 Q. All right. Do you know physically how  
9 big an area this collection of scientific articles  
10 encompasses?

11 A. I'm not sure I could answer that. There  
12 are several large file cabinets. That's about as  
13 good as I can do right now.

14 Q. Do you have any objection if someone  
15 from our office came and looked at those several  
16 file cabinets of articles?

17 A. I certainly would.

18 Q. If you continue through Exhibit Number 3  
19 on Page 7, request number 6 quote, "All summaries,  
20 lists, compilations or schedules of litigation in  
21 which you have been a party in the use or effects of  
22 PCBs were an issue."

23 Monsanto's response states, "Monsanto  
24 objects on the ground that the request is, quote,

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1 'unduly burdensome,' close quote.

2 Can you tell me why it is burdensome  
3 to comply with Request Number 6?

4 MR. MALIN: First, I object and I  
5 direct the witness not to answer. Request Number 6  
6 is not one of the requests that are in issue in this  
7 litigation, and the question is not proper with  
8 respect to any of the other requests which are at  
9 issue.

10 And, accordingly, I direct the  
11 witness not to answer the question. 7, 8, 9, 11 and  
12 14, this is not the case.

13 MR. KOHN: Request Number 7 refers  
14 back to Request Number 6, with respect to all  
15 litigations identified therein. That's why, I  
16 think, we're entitled to an answer to that.

17 MR. MALIN: We have produced for you  
18 all of the PCB litigation to which Monsanto is now a  
19 party or ever was a party.

20 MR. KOHN: That's right. I wanted to  
21 get to how burdensome it was.

22 MR. MALIN: Limited to dielectric  
23 fluids, which are an issue in this case.

24 MR. KOHN: What I want to get at is

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1 how tough it was to pull that list together.

2 MR. MALIN: The list we already had  
3 given you.

4 MR. KOHN: Yes.

5 MR. MALIN: How tough it was to pull  
6 that list together?

7 MR. KOHN: Right.

8 MR. MALIN: Since we've already  
9 produced that list, it's not relevant to any issue  
10 that's currently before the court on any of these  
11 motions. We've already given you the list.

12 MR. KOHN: It's relevant to the good  
13 faith of the burdensomeness objection.

14 MR. MALIN: Well --

15 MR. KOHN: Which was asserted to this  
16 request.

17 MR. MALIN: The objection stands.  
18 The direction stands.

19 MR. KOHN: I ask the court reporter  
20 to mark as the next numbered Bistline exhibit, a  
21 document that has the heading, "Lawsuits Served on  
22 Monsanto Involving Polychlorinated Biphenyls  
23 Manufactured for use in Dielectric Fluids.

24 (Marked as Exhibit Number 4 for

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1 identification)

2 BY MR. KOHN:

3 Q. I place before you Bistline Exhibit 4.  
4 Have you ever seen that document before today?

5 A. I have seen this list before, yes.

6 Q. Do you know where this list was typed?

7 A. Where it was typed?

8 Q. Yes, or printed.

9 MR. MALIN: I object to the form of  
10 that question as vague. Where, what building it was  
11 typed in, what building of Monsanto?

12 MR. KOHN: Yes. Let's start with  
13 that.

14 A. I am uncertain, Mr. Kohn, this was typed  
15 by a secretary in the law department or, perhaps,  
16 one of Mr. Malin's clerical employees.

17 Q. Do you know from what source this list  
18 was compiled?

19 A. Several sources.

20 Q. What were those sources?

21 A. Chiefly, files maintained, case files  
22 maintained by the Monsanto law department on  
23 litigation, PCB related litigation. I believe, some  
24 of the cases were identified through a review of

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1 documents which were on the business document data  
2 base.

3 Q. What --

4 A. I'm sorry.

5 Q. Excuse me. Go ahead.

6 A. No. Go ahead.

7 Q. What do you mean by the business  
8 document data base?

9 A. The document data base about which I  
10 testified at the last session of my deposition.

11 Q. Were there lists in existence prior to  
12 this list which were used in preparation of Exhibit  
13 Number 4?

14 MR. MALIN: I'll object to that  
15 question as vague. I don't understand. If you  
16 think you understand the question, you may answer  
17 it. I don't think I understand it.

18 A. Well, I understand you to ask whether  
19 there was another list of cases from which this was  
20 drawn.

21 Q. Or that was used in any way in  
22 connection with the preparation of this list.

23 A. The answer is, yes. This is an  
24 evergreen list, and we attempt to keep it current.

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1 Q. And who has responsibility for  
2 maintaining the list from which this list was  
3 prepared?

4 A. Ultimately I guess I do.

5 Q. Is there anyone who has more hands-on  
6 responsibility for keeping that list up-to-date?

7 A. David Moore. Who is a lawyer for  
8 Monsanto.

9 Q. Now, this document bears the title,  
10 lawsuits filed, et cetera, with respect to  
11 polychlorinated biphenyls manufactured for use in  
12 dielectric fluids. Is there a list of litigation  
13 involving PCBs and Monsanto for use in something  
14 other than dielectric fluids?

15 MR. MALIN: Hold on.

16 (Whereupon, a discussion was held off  
17 the record.)

18 MR. MALIN: The witness may answer  
19 that question.

20 A. Yes, there is.

21 Q. What other uses of PCBs are there which  
22 have resulted in litigation?

23 MR. MALIN: Well, I'll object to that  
24 question as phrased.

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1                   If the witness thinks he understands  
2 that, he may answer it.

3           A.       I'm not sure I can catalogue for you all  
4 of the various uses which may have resulted in  
5 litigation. We do have PCB-related litigation  
6 pending against Monsanto that does not relate to  
7 dielectric fluid.

8                   As best I can recall, at present, the  
9 other uses that may involve litigation would be uses  
10 of hydraulic fluid or heat transfer fluid.

11                   There have been some cases involving  
12 use of PCBs in recycled oil. Other than that,  
13 nothing suggests itself to me at the moment.

14           Q.       Do you know approximately how many cases  
15 there are involving the use of PCBs that was  
16 originally manufactured for use in hydraulic fluid?

17           A.       Offhand, I don't, Mr. Kohn.

18           Q.       Do you know how many cases there are  
19 involving the heat transfer fluid?

20           A.       Again, offhand, I don't know.

21           Q.       How about for the recycled oil?

22           A.       Again, I don't know that number.

23           Q.       Do you know, approximately, whether the  
24 number is greater than or less than the number of

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1 cases listed in Exhibit Number 4?

2 A. It would be less.

3 Q. Less for all three of those categories?

4 A. That's correct.

5 Q. All right. Do you know how many hours  
6 it took to compile Bistline Exhibit Number 4?

7 A. This list, Mr. Kohn, is the result of a  
8 large amount of work that has gone on for an  
9 extensive period of time.

10 I couldn't quantify it for you  
11 precisely in hours, how long it took originally to  
12 constitute the first list. But, it took at least  
13 two -- at least three people, excuse me, about a  
14 month of checking through old files, to constitute  
15 the first list.

16 Q. All right. When was the first list  
17 constituted?

18 A. My best recollection is 1985.

19 Q. After that work was done back in 1985,  
20 leaving that work aside, do you know how long it  
21 took to put together Bistline Exhibit Number 4, from  
22 the work that had already been done before this case  
23 was ever started?

24 MR. MALIN: I object to that

Bistline

1 question. I think it's almost unanswerable.

2 You had asked for an amalgamation of  
3 apparently, of time both before and after this case  
4 was started, despite the fact that it appears to  
5 attempt to create a dichotomy. I don't know if  
6 that's possible. If the witness thinks that's  
7 possible, I suppose he can attempt to answer it.

8 A. I can't answer the question. I don't  
9 know.

10 Q. Was Bistline Exhibit 4 prepared  
11 especially for this litigation?

12 A. This particular litigation?

13 Q. Right, this particular list.

14 A. Yes.

15 Q. And, from the first time that someone  
16 was given the responsibility to prepare this list  
17 for the Paoli case, do you know how much time was  
18 spent preparing this list?

19 A. No, I don't.

20 Q. Continuing over to Page 8 of Exhibit  
21 Number 3. Before the Request Number 7 is the  
22 statement, quote "Without waving its objections,  
23 Monsanto refers plaintiffs to the list of all  
24 lawsuits regarding PCBs as a component of dielectric

## Bistline

1 fluids to which Monsanto has been or is a party  
2 which it previously produced in response to  
3 plaintiffs' first request for production of  
4 documents, Request Number 10 in Williams v. Septa,  
5 et al, "and the case numbers." That document was  
6 not produced in the Williams case; am I correct?

7 MR. MALIN: We've already made that  
8 clear to you, Mr. Kohn, that's an error. We thought  
9 we had produced it because, there was a request, but  
10 apparently because of an order issued by Judge  
11 Kelly, it wasn't necessary to develop it and to  
12 produce it. So, that's an error of counsel, and not  
13 the witness.

14 BY MR. KOHN:

15 Q. Is there any procedure in place to  
16 update Bistline Exhibit Number 4 to make sure that  
17 it continues to contain all lawsuits involving  
18 Monsanto and dielectric fluids and PCBs?

19 A. I'm not sure I would describe it with  
20 the term so official as a procedure, Mr. Kohn. But,  
21 it is a responsibility of mine and Mr. Moore's, to  
22 make certain that we have an accurate count of -- an  
23 accurate hold on litigation currently pending, and  
24 as new cases come in they are added to the list.

## Bistline

1 Q. Request Number 7 seeks with respect to  
2 all the litigation also identified in response to  
3 Request Number 6 certain information.

4 Do you believe it is burdensome to  
5 comply with producing the documents requested in  
6 Request Number 7?

7 MR. MALIN: Mr. Kohn, the witness has  
8 testified extensively with respect to what is  
9 involved in the production of those particular  
10 documents, what is involved what will be necessary  
11 to do. The question has been asked and answered.

12 MR. KOHN: I thought we didn't cover  
13 any information about the request at issue the last  
14 time. I must be mistaken.

15 MR. MALIN: I'll permit the witness  
16 to answer it.

17 A. Your question was, do I believe it's  
18 burdensome for us to comply with this request?

19 Q. Yes.

20 A. I do believe it is, sir.

21 Q. And can you tell me why it is burdensome  
22 to comply with that request?

23 A. The request as phrased, sir, requires  
24 Monsanto to dig back through all of its case files,

Bistline

1 to obtain at least seven different categories of  
2 documents or information. There are a large number  
3 of cases, as you can see from the list that we've  
4 provided you with. The case files are extensive.  
5 It would require a great deal of time and effort by  
6 paralegal and clerical employees of Monsanto simply  
7 to locate all of the various categories of  
8 information you've asked for.

9 Further, to the extent that we don't  
10 have in a Monsanto case file the information you  
11 request, it may be, although I'm not conceding that  
12 I do, but it may be that I have an obligation to go  
13 further and check back with outside counsel who  
14 represented us in those cases to determine whether  
15 that information is available in counsel's file.  
16 Again, that is a burdon, cost and expense to the  
17 company.

18 Q. Have you made any attempt to calculate  
19 how much time is involved in complying with Request  
20 Number 7?

21 A. Only in a general sense. In that it was  
22 part of the total number of hours that I submitted  
23 in my affidavit to the court.

24 Q. But, you don't know what part of that

Bistline

1 total this request makes up?

2 A. Specifically, no. It would be many,  
3 many hours of effort.

4 Q. Where are the case files in Monsanto's  
5 possession housed?

6 MR. MALIN: Mr. Kohn, I believe you  
7 asked that question previously.

8 However, I'll permit the witness to  
9 answer it again.

10 A. Well, in at least two locations at  
11 Monsanto, that I am aware of, Mr. Kohn. There is  
12 both the law department's active case file, which is  
13 physically housed in the same building that I work  
14 in at Monsanto. And then there is our file storage  
15 facility, which is not on the campus. It's at an  
16 off-site warehouse.

17 Q. Physically, how much area do the active  
18 case files take up?

19 A. An area of at least -- let me see if my  
20 math is any good. Approximately, 2500 square feet,  
21 just for the physical files.

22 Q. They're located in one room?

23 A. The active case files, yes.

24 Q. One file storage room?

## Bistline

1 A. Yes.

2 Q. Is there a file clerk or clerks who are  
3 assigned responsibility for that room?

4 A. Yes.

5 Q. And if somebody wants a file they can  
6 ask the clerk and the clerk gets the file for them?

7 A. Yes.

8 Q. How many file clerks are assigned to  
9 that room?

10 A. Two.

11 Q. That's their whole job at Monsanto to  
12 work in that room and get files for people?

13 A. No.

14 Q. What other jobs do they have?

15 A. They are what I would describe as  
16 general purpose clerical employees who have a number  
17 of other functions besides tracing down files.

18 Q. What other functions do they have that  
19 you're aware of?

20 A. General clerical work, sir.

21 Q. Request subpart C of Request Number 7  
22 asks for all transcripts of depositions taken in any  
23 of those cases.

24 Does Monsanto maintain any separate

Bistline

1 filing system with respect to deposition  
2 transcripts? In other words, are depositions cross-  
3 filed somewhere other than in their individual case  
4 file?

5 A. Well, the answer is yes and no.

6 We have no master deposition file.

7 Q. What is the yes part?

8 A. For certain individuals, an effort has  
9 been made to collect their deposition transcripts.

10 Q. Do you know how many such individuals  
11 that effort has been made?

12 A. No.

13 MR. MALIN: Just a moment.

14 (Whereupon, a discussion was held off  
15 the record.)

16 MR. MALIN: Go ahead.

17 BY MR. KOHN:

18 Q. And the names of any such individuals?

19 MR. MALIN: Object, and direct the  
20 witness not to answer, unless it's limited to the  
21 Papageorge deposition, which is an issue in this  
22 case or the Papageorge depositions.

23 Q. Do you know whether such a file has been  
24 maintained for Mr. Papageorge?

## Bistline

1           A.       I believe we have most of the  
2 depositions that Mr. Papageorge has given in  
3 connection with PCBs.

4           Q.       Where physically are those deposition  
5 transcripts kept?

6           A.       In the building which houses the  
7 document archive.

8           Q.       Do you know how many separate  
9 litigations Mr. Papageorge has given testimony,  
10 deposition testimony?

11          A.       PCB cases?

12          Q.       PCB cases, yes.

13          A.       Between 15 and 20.

14          Q.       All right. Is there an index or listing  
15 of the cases in which Mr. Papageorge has given  
16 deposition testimony involving PCBs which is  
17 maintained in any computer of any kind?

18                   MR. MALIN: Don't answer that  
19 question yet.

20                   (Whereupon, a discussion was held off  
21 the record.)

22                   MR. MALIN: The witness may answer  
23 that question.

24          A.       I don't know.

Bistline

1 Q. All right. Are the individuals for whom  
2 a separate deposition file has been created only  
3 employees of Monsanto or are there other people not  
4 employed by Monsanto who have given depositions in  
5 PCB cases and a separate file has been created for  
6 them?

7 MR. MALIN: You may answer that  
8 question.

9 A. The deposition file is not restricted to  
10 Monsanto employees.

11 Q. To your knowledge, are there any  
12 independent or so-called independent inspections or  
13 expert's depositions maintained in these separate  
14 files?

15 A. There are some.

16 Q. Do you know the identity of those  
17 scientists or experts?

18 MR. MALIN: Hold on. Don't answer  
19 that yet.

20 I object and I direct the witness not  
21 to answer. It's not relevant here. It doesn't have  
22 anything to do with the Papageorge transcript, and  
23 it indicates the work product and thinking of  
24 counsel with respect to its strategy there.

Bistline

1 MR. KOHN: I think --

2 MR. MALIN: And it's an  
3 identification of those people.

4 MR. KOHN: I think as your co-counsel  
5 has pointed out to you, we have requested not only  
6 in C but request all transcripts of depositions  
7 taken in these cases, but subpart G specifically  
8 requests expert deposition transcripts. So, in  
9 light of that, we would request that you reconsider  
10 your objection.

11 (Whereupon, a discussion was held off  
12 the record.)

13 MR. MALIN: Answer the question with  
14 respect to whether or not such an index actually  
15 exists, and no further.

16 A. I have to ask you the question again,  
17 because I thought you already asked that question.

18 Q. My question is, do you know the names of  
19 any of these experts or scientists for whom a  
20 separate deposition file has been created?

21 MR. MALIN: Well, I object. I direct  
22 the witness not to answer that.

23 Q. Could you then answer Mr. Malin's  
24 question with respect as to whether an index exists

## Bistline

1 of the names of people who have a separate  
2 deposition file?

3 A. Yes, there is such an index, yes.

4 Q. And, who created that index?

5 A. I believe Miss Hurley did.

6 Q. Miss Hurley is someone on your staff?

7 A. Yes. Miss Hurley is a legal assistant  
8 who works for me.

9 Q. She is not an attorney?

10 A. No, she is not. She is a legal  
11 assistant.

12 Q. When was the last time you saw a copy of  
13 that list?

14 A. Oh, I can't recall specifically. Within  
15 the last several months.

16 Q. All right. And you can't recall any  
17 names on it other than Mr. Papageorge?

18 MR. MALIN: I object and direct him  
19 not to answer with respect to any other names on the  
20 list. He's said such a list exists.

21 BY MR. KOHN:

22 Q. Subpart D of Request Number 7 asks for  
23 all trial transcripts in the cases involving PCBs.

24 Does Monsanto maintain any sort of

## Bistline

1 separate file similar to the deposition files of  
2 trial transcripts?

3 A. I don't think so. I'm not positive, but  
4 I don't believe we do.

5 Q. All right. Do you know approximately  
6 how many of the cases on Bistline Exhibit Number 4  
7 have gone to trial?

8 A. Let me look.

9 MR. MALIN: Could we have a more  
10 concrete definition of what you mean by "trial"? Do  
11 you mean, did they go to a summary judgment or did  
12 they go to a verdict or directed verdict? Did the  
13 trial actually start?

14 MR. KOHN: Trial actually started.

15 A. Okay. Well, let me just check the list  
16 here.

17 Q. All right.

18 A. I'm not sure. I don't recall.

19 On page 5.

20 Q. Right.

21 A. The last entry on the page, David J.  
22 Cito, et al versus Monsanto Company.

23 Q. Yes. That was a case that did go trial?

24 A. That case did go to trial.

## Bistline

1 Q. Do you know what the outcome of that  
2 trial was?

3 A. The trial court directed a verdict in  
4 Monsanto's favor during the first week of  
5 plaintiff's evidence.

6 Q. Was that directed verdict tested on  
7 appeal, do you know?

8 A. Yes, it was.

9 Q. And do you know what the result of the  
10 appeal was?

11 A. The directed verdict was upheld.

12 Q. All right. Has that case been concluded  
13 now?

14 A. Yes.

15 Q. All right.

16 A. Over on top of page 6, the first entry,  
17 City of Bloomington versus Westinghouse, et al.

18 Q. Yes.

19 A. I believe, on page 9, approximately  
20 halfway down the page, Barry Friedman, et al.,  
21 versus F.E. Myers Company. That case was tried.

22 Q. All right. Do you know the result of  
23 that case?

24 A. I believe a verdict was returned against

## Bistline

1 F.E. Myers and Company, but not against Monsanto or  
2 General Electric.

3 MR. MALIN: There was a directed  
4 verdict in favor of Monsanto Company and General  
5 Electric at the close of the plaintiff's evidence.

6 THE WITNESS: You're correct, Mr.  
7 Malin. Thank you.

8 MR. MALIN: I assume the witness does  
9 not have to answer with respect to those cases in  
10 the Federal Court in which Monsanto and other  
11 defendants obtained a summary judgment in which  
12 you're now going to appeal to the Third District,  
13 which you are counsel, and, therefore, of which you  
14 are aware.

15 MR. KOHN: That's right. I'm just  
16 asking for cases in which there was a trial. My  
17 understanding is a summary judgment is not a trial.

18 MR. MALIN: All right.

19 MR. KOHN: All right.

20 MR. KOHN: Or rather, should not be  
21 trial.

22 A. On page 18.

23 Q. All right.

24 A. Cecil Scott, et al., versus Monsanto

## Bistline

1 Company.

2 Eight of the plaintiffs in that case  
3 had their cases tried.

4 And the juries returned a verdict in  
5 Monsanto's favor, which was upheld by the Fifth  
6 Circuit.

7 Q. Any other cases on the list that have  
8 gone to trial?

9 A. Just let me finish it here.

10 Over on page 19, the case entitled  
11 Tanaka Brothers Farms versus Monsanto was, I  
12 believe, Mr. Kohn, tried jointly with the Cito case.  
13 They were related actions.

14 Q. All right.

15 A. And my best recollection is, they were  
16 tried together. Either they were tried together or,  
17 Tanaka had previously been dismissed. I just don't  
18 recall which, as I sit here.

19 Q. Your recollection is, the results of the  
20 Tanaka was the same as the result in the Cito case?

21 A. Yes.

22 Q. All right.

23 A. My best recollection is that those were  
24 the cases that were taken to trial.

Bistline

1 Q. Do you know if the cases that involved  
2 PCBs and the other types of fluids, the hydraulic  
3 fluids, recycled oil, do you know whether any of  
4 those cases have gone to trial?

5 MR. MALIN: Hold on.

6 (Whereupon, a discussion was held off  
7 the record.)

8 MR. MALIN: The witness may answer  
9 the question.

10 A. Yes.

11 Q. Do you know approximately how many of  
12 those cases have gone to trial?

13 A. My best recollection is that there have  
14 been two other cases which have gone to trial.

15 Q. And do you know the name and the court  
16 of those cases?

17 A. I don't recall the name of the case.  
18 But, there was a case tried in New Hampshire.

19 Q. In the local court or in the Federal  
20 court?

21 A. I'm not even sure of that. It was back  
22 in the late 1970s.

23 And, all I know is the case was  
24 tried, and I'm not sure what court it was in.

## Bistline

1 Q. All right.

2 A. Then, in addition, there was a case that  
3 involved the use of PCBs as an ingredient in silo  
4 coating, which is a category that I had forgot when  
5 I was talking earlier. That went to trial in state  
6 court in Michigan, although what county, I can't  
7 recall. The name of the case was Haley versus  
8 Monsanto.

9 Q. As you sit here today, do you recall the  
10 outcome of either of those cases?

11 A. In the New Hampshire case, my  
12 recollection is that a verdict was returned against  
13 Monsanto, although I don't know the amount.

14 And in Haley, I believe a verdict was  
15 also returned against Monsanto. But, again, I can't  
16 recall the amount.

17 Q. Well, this Bistline-4, without asking  
18 you the current status of every case on this list,  
19 is there some summary or index or list that you have  
20 available to you, that would give you the current  
21 status of all of these cases?

22 A. Yes.

23 Q. Does that list have a name of any kind?

24 A. I call it the case status list.

## Bistline

1 Q. And is that a list for all PCB cases not  
2 just the dielectric fluid cases?

3 A. That's correct.

4 Q. Is that list generated by a computer?

5 MR. MALIN: I object to that.

6 The list generated by a computer, the  
7 computer has to have input. The question really  
8 doesn't have much meaning. If you think you  
9 understand that question, Mr. Bistline, you can  
10 answer.

11 A. I'm not sure, because it's a list that's  
12 prepared by outside counsel. I'm not sure whether  
13 it's on computer or not.

14 Q. I see.

15 And you receive some sort of hard  
16 copy of that list periodically?

17 A. Yes. Can we take a two-minute break?

18 Q. Yes.

19 (Whereupon, a short recess was then  
20 taken.)

21 BY MR. KOHN:

22 Q. Is that the list you received from  
23 outside counsel?

24 A. That's correct.

## Bistline

1 Q. Which outside counsel?

2 A. Mr. David Moore.

3 Q. And what office is he with?

4 A. His law firm is the Smith, Helms, Mullis  
5 and Moore, a firm in Greensboro, North Carolina.

6 Q. All right. And does that firm have a  
7 general supervisory role in connection with all PCB  
8 litigation?

9 MR. MALIN: Hold on.

10 (Whereupon, a discussion was held off  
11 the record.)

12 MR. MALIN: I'm going to object to  
13 that as irrelevant. And I direct the witness not to  
14 answer.

15 BY MR. KOHN:

16 Q. Are any personnel of that firm used in  
17 connection with production of documents in PCB  
18 cases?

19 MR. MALIN: Hold on.

20 (Whereupon, a discussion was held off  
21 the record.)

22 MR. MALIN: I'm objecting and direct  
23 the witness not to answer on the same basis.

24 BY MR. KOHN:

## Bistline

1 Q. Subpart F of Request Number 7 seeks all  
2 documents produced by you in those cases which refer  
3 or relate to the use or effects of PCB.

4 Monsanto maintains a list or index or  
5 schedule of the documents it has produced in other  
6 cases; is that correct?

7 A. I'm not certain that such a list exists  
8 for all documents that have been produced in such  
9 other cases.

10 Q. Does such a list exist for some cases?

11 A. Yes.

12 Q. Do you know how much cases exists?

13 A. Do I know how many cases are on the  
14 list?

15 Q. Yes.

16 A. The answer is no, I don't.

17 Q. Does Monsanto also have a practice of  
18 physically segregating in a separate file the  
19 document it has produced in any PCB litigation?

20 A. Such a file is created, but it's not  
21 necessarily maintained.

22 Q. All right. What is your practice or  
23 procedure with respect to when the file is no longer  
24 maintained?

Bistline

1 MR. MALIN: Hold on.

2 (Whereupon, a discussion was held off  
3 the record.)

4 MR. MALIN: I'm going to object and  
5 direct the witness not to answer on the basis that I  
6 don't understand what the question means with  
7 respect to when it is maintained, or if the witness  
8 understands, and the question is, understanding with  
9 respect to what the word "maintained" means. So, I  
10 would request that, Mr. Kohn, you clarify what you  
11 mean by "maintained."

12 BY MR. KOHN:

13 Q. Let me ask you this. Is it Monsanto's  
14 practice to maintain a separate file the documents  
15 it has produced in a case during the pendency of  
16 that case?

17 A. Sometimes, yes, and sometimes, no.

18 Q. And can you tell us on what basis the  
19 list or the segregation of the documents is  
20 sometimes accomplished and sometimes not  
21 accomplished?

22 MR. MALIN: Hold on.

23 (Whereupon, a discussion was held off  
24 the record.)

Bistline

1 MR. KOHN: Wait for your reply.

2 MR. MALIN: You may answer the  
3 question.

4 A. Thank you.

5 The baseline is a judgment that I  
6 make about the individual case.

7 Q. As you sit here today, do you have any  
8 way to tell me of the cases listed on Bistline  
9 Exhibit 4, whether you have a separate file of the  
10 documents Monsanto has produced in those cases?

11 A. Without making an inquiry of my staff, I  
12 don't have any basis, no.

13 Q. In those instances in which a separate  
14 file of the documents produced is maintained,  
15 physically where is that file kept?

16 A. It would be kept in the same location  
17 where the other documents are kept.

18 Q. That is in the 2500 square foot file  
19 room?

20 A. No. That was the active case file.

21 The documents are housed in another  
22 building, and it's in that other building where  
23 these files of documents may be kept.

24 Q. Is that the same on-site storage

## Bistline

1 facility we talked about, or is this now a third  
2 building?

3 A. This is not the off-site storage  
4 facility. It is another building on the Monsanto  
5 campus in St. Louis, that houses the document  
6 archive.

7 Q. Does that building have a name?

8 A. I believe we call it "N" as in Nancy  
9 building.

10 Q. And is that building simply a document  
11 archive?

12 A. No.

13 Q. Now, subpart G of Request Number 7 asks  
14 in addition to the deposition transcripts of experts  
15 the, quote, "reports," close quote, of experts.  
16 Does Monsanto maintain a separate segregated file of  
17 expert reports rendered either on behalf of  
18 plaintiffs or on behalf of Monsanto or other  
19 defendants in PCB cases?

20 MR. MALIN: Hold on.

21 (Whereupon, a discussion was held off  
22 the record.)

23 MR. MALIN: The witness may answer  
24 the question.

Bistline

1 A. No.

2 Q. Do you maintain any sort of file with  
3 respect to experts or potential experts in the field  
4 of PCBs?

5 MR. MALIN: Wait. Don't answer that.  
6 With respect to potential experts, I direct the  
7 witness not to answer that, because that's not  
8 within the ambit of Request Number 7. And it's not  
9 relevant here.

10 The witness may answer any other  
11 remainder of that question.

12 THE WITNESS: Could I have it back,  
13 please.

14 (Whereupon, the above portion of the  
15 notes of testimony was read by the court reporter.)

16 A. Yes.

17 Q. And, what information or types of  
18 information are contained in that file?

19 MR. MALIN: Well, hold it.

20 (Whereupon, a discussion was held off  
21 the record.)

22 MR. MALIN: I direct the witness not  
23 to answer that question on the grounds of utter  
24 irrelevancy on the issue here. Also, a work-product

## Bistline

1 privilege which attaches to the selection of what is  
2 in those files and who is in those files.

3 BY MR. KOHN:

4 Q. What documents are kept in these expert  
5 files?

6 MR. MALIN: Well, that's objected to,  
7 and I direct the witness not to answer, work-product  
8 privilege.

9 Q. Where are these files --

10 MR. MALIN: As well as irrelevancy.

11 Q. Where are these files physically kept?

12 A. In the "N" building.

13 Q. And, who is involved in determining what  
14 documents are placed in those files?

15 A. Well, I am. And, other counsel  
16 representing Monsanto.

17 Q. Anyone else?

18 A. Anyone other than --

19 Q. Other than the people you had already  
20 mentioned.

21 A. No.

22 Q. Do you make a practice of keeping  
23 affidavits or opinions rendered in other cases in  
24 those files?

Bistline

1 MR. MALIN: Hold on.

2 (Whereupon, a discussion was held off  
3 the record.)

4 MR. MALIN: I object on the grounds  
5 that these files constitute work-product. Selection  
6 of information going into them constitutes work-  
7 product, and the witness is not required to answer.  
8 I direct him not to do so.

9 BY MR. KOHN:

10 Q. Do you know physically how much room  
11 these expert files occupy in the "N" building?

12 A. No, I don't have an estimate on that.

13 Q. Do any of your outside experts or  
14 consultants have access to those files?

15 A. No.

16 Q. What are the files used for?

17 A. The defense of litigation.

18 Q. How are they used in defense of  
19 litigation?

20 MR. MALIN: Hold on. I object.  
21 Direct the witness not to answer.

22 BY MR. KOHN:

23 Q. Continuing on top of page 9 of Bistline  
24 Exhibit Number 3 --

## Bistline

1 A. Yes.

2 Q. -- is the statement quote, "In addition,  
3 in many if not most instances the documents  
4 requested in sub-parts e, f and g, are subject to  
5 protective orders issued by the relevant court which  
6 restrict the use and disclosure of such documents,"  
7 close quote.

8 Do you know how many of the cases  
9 listed on Bistline-4, are subject to protective  
10 orders?

11 A. Offhand, Mr. Kohn, I don't know.

12 Q. Do you maintain a separate index or  
13 listing of cases in which protective orders have  
14 been issued?

15 A. I believe we have such a list.

16 Q. What leads you to believe you have such  
17 a list?

18 A. Well, the fact that I have asked for it  
19 to be created.

20 Q. Do you recall when you asked for it to  
21 be created?

22 A. Oh, approximately, 18 months ago, I  
23 believe.

24 Q. Do you maintain physically a separate

## Bistline

1 file of all the protective orders segregated from  
2 the other files?

3 A. That I don't know.

4 Q. Did you provide any information with  
5 respect to the last four lines of the response to  
6 Request Number 7 that make reference to these  
7 protective orders?

8 (Whereupon, a discussion was held off  
9 the record.)

10 MR. MALIN: The witness may answer  
11 the question.

12 A. Did I provide Mr. Malin any information  
13 with respect to, what was it, the last four lines in  
14 our response to Number 7?

15 Q. Correct.

16 A. Yes, I did.

17 Q. And do you recall what information you  
18 provided him?

19 A. I advised him that the protective orders  
20 were outstanding in several cases that I had  
21 specific recollection of and asked him to consult  
22 further with Mr. Moore.

23 Q. Do you know whether those protective  
24 orders are, in fact, stipulations of the parties or

Bistline

1 whether they were orders rendered as a result of  
2 litigation?

3 MR. MALIN: I object to that. I  
4 don't understand it. If you think you can  
5 understand it in the context of what you know about  
6 it, you may answer it, Mr. Bistline.

7 A. My recollection, Mr. Kohn, is that the  
8 protective orders that I recall, are court orders.

9 Q. And were those orders rendered as a  
10 result of a contested motion with respect to the  
11 issuance of the protective orders or whether they  
12 were rendered as a result of an agreement or  
13 stipulation of the parties, if you know?

14 A. I would say both, depending upon the  
15 case.

16 Q. Are you aware of any order that  
17 restricts Monsanto's right to produce its own  
18 documents?

19 A. I am aware that by its terms or by  
20 reading of their terms, some, at least, of those  
21 orders, would restrict Monsanto from producing  
22 documents in response to a demand; for example, that  
23 we produce all the documents we produced in the  
24 Cecil Scott case. That, I believe, would run afoul

## Bistline

1 of that protective order.

2 Q. With respect --

3 A. However, I would -- if I could just  
4 complete the answer.

5 Q. Sure, please.

6 A. Those orders would not prevent us from  
7 producing documents properly discoverable in  
8 response to an appropriate discovery demand simply  
9 because they were produced in the Scott or other  
10 case.

11 Q. Is the provision of the Scott order that  
12 restricts Monsanto's ability to produce all  
13 documents produced in the Scott case apply to the  
14 records of the individual plaintiffs in that case  
15 which Monsanto had in its possession?

16 MR. MALIN: Hold on.

17 (Whereupon, a discussion was held off  
18 the record.)

19 MR. KOHN: With respect to those  
20 conferences, I only object to the extent the witness  
21 is consulting with counsel during a question. I  
22 have no objection to the lawyers talking to each  
23 other. Just note that.

24 MR. MALIN: Mr. Kohn, the protective

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1 order in the Scott case, I believe, should speak for  
2 itself. I think you have a copy of it.

3 And, therefore, I see no need for you  
4 to question the witness about it, unless you're  
5 going to ask the witness what his understanding of  
6 it is.

7 If you don't have a copy of it, I  
8 presume a copy could be produced for you. But I  
9 thought you had a copy of it at the last session.

10 MR. KOHN: I think we do. We had  
11 some other documents from the Scott case. We didn't  
12 have a copy of that order right here. I think we  
13 did, as Miss Kramer reminded me, we did ask for it  
14 at that session. So, if there wouldn't be any  
15 trouble, if you could send us a copy, we would  
16 appreciate it.

17 MR. MALIN: We'll consider that.

18 BY MR. KOHN:

19 Q. Have any of the documents, Mr. Bistline,  
20 to your knowledge, which was subject to a protective  
21 order in one case, produced in other litigation?

22 MR. MALIN: Well, I object to the  
23 question as unduly broad, unduly vague. Unless Mr.  
24 Bistline has some specific recollections, I'm going

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1 to direct him not to answer that question.

2 I think it's also very far afield and  
3 very attenuated from the issues that are before us  
4 at the moment.

5 BY MR. KOHN:

6 Q. Are the confidentiality orders, that  
7 you're aware of, or the protective orders limited to  
8 exposure of bona fide trade secrets of Monsanto?

9 A. They are in some instances.

10 Q. And some instances they are broader than  
11 simply limited to trade secrets?

12 A. That's correct.

13 Q. What other areas or subjects or purposes  
14 are the orders in place, other than protection of  
15 trade secrets?

16 A. We have in some cases, what I would term  
17 blanket protective orders, which cover all discovery  
18 responses.

19 Q. What is the purpose of that order of a  
20 blanket protective order?

21 MR. MALIN: I object to that. That  
22 is very attenuated and very far afield, and has  
23 nothing to do with any of the issues that are before  
24 us here.

Bistline

1 Blanket protective order in other  
2 cases, what their purpose and how many cases there  
3 are, I direct the witness not to answer.

4 Hold on.

5 (Whereupon, a discussion was held off  
6 the record.)

7 MR. KOHN: To the extent there has  
8 been an objection to producing documents in our  
9 cases because there are protective orders in other  
10 cases, I'm trying to probe whether there is any  
11 legitimate interest that the company has in  
12 protecting the confidentiality of those documents,  
13 if there's a blanket protective order. I'm trying  
14 to get at what interest the company has in  
15 protecting the information which is the subject of  
16 that order.

17 (Witness conferring with counsel.)

18 MR. MALIN: Well, the interest is not  
19 to violate the court order, amongst other things.

20 MR. KOHN: In the cases?

21 MR. MALIN: The objection stands.

22 BY MR. KOHN:

23 Q. In the cases where there is a blanket  
24 protective order, did the plaintiffs request a

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1 blanket protective order or did Monsanto?

2 MR. MALIN: I object to that. I  
3 direct you not to answer. The same direction.

4 BY MR. KOHN:

5 Q. Have you participated in any groups or  
6 seminars or symposium of people involved in the  
7 industry with respect to the subject of  
8 confidentiality orders or protective orders?

9 MR. MALIN: I object, direct the  
10 witness not to answer.

11 Very attenuated, very far afield and  
12 nothing to do with any of the issues that are before  
13 us with respect to this motion to compel.

14 BY MR. KOHN:

15 Q. Your Request Number 8 refers, again, to  
16 reports of experts or scientists or physicians. And  
17 part of Monsanto's response to that request states,  
18 quote, "Expert opinions from other cases are not  
19 relevant nor capable of leading to relevant evidence  
20 in the cases before the Court," close quote.

21 Do you believe that expert opinions  
22 in other cases are not relevant nor capable of  
23 leading to relevant evidence in the case before this  
24 court?

Bistline

1 MR. MALIN: Objection. Direct the  
2 witness not to answer.

3 Q. Do you intend to seek prior opinions of  
4 the experts that the plaintiffs will offer in this  
5 case?

6 MR. MALIN: Objection. I direct you  
7 not to answer that question.

8 I think it should be pointed out for  
9 the record, that in this particular case Alston, we  
10 have no idea what Mr. Alston's injuries are at this  
11 point. What is relevant, medically what is  
12 relevant, medically or any other way, for that  
13 matter. Exposure or any other possible aspect of  
14 this litigation.

15 BY MR. KOHN:

16 Q. Do you believe the qualification also of  
17 an expert are relevant in the litigation?

18 MR. MALIN: Objection. Don't answer  
19 that. That's irrelevant. Attenuated.

20 BY MR. KOHN:

21 Q. Request number 9 asks for "Transcripts  
22 of depositions given by William B. Papageorge,  
23 including but not limited to depositions in the  
24 following actions," and then it lists a series of

## Bistline

1 cases.

2 Do you know whether or not the  
3 depositions given by Mr. Papageorge in these listed  
4 cases are maintained in the separate Papageorge  
5 deposition file at Monsanto?

6 A. My best information, Mr. Kohn, is that  
7 they would be, yes.

8 Q. Is it your position that it's burdensome  
9 to respond to Request Number 9?

10 MR. MALIN: Object to that. The  
11 objection has been made. Direct the witness not to  
12 answer.

13 Q. How long would it take for Monsanto to  
14 produce the deposition transcripts requested in  
15 request number 9?

16 MR. MALIN: You may answer that  
17 question.

18 A. There would be several hours worth of  
19 reviewing and copy work to be done.

20 Q. Request Number 11 on page 12 of Exhibit  
21 3 asks for all documents produced by you in Scott v.  
22 Monsanto and the civil number, and Monsanto objected  
23 to this request, objection, amongst others that it's  
24 quote, "unduly burdensome," close quote.

## Bistline

1 Are the documents, which were  
2 produced by Monsanto in Scott v. Monsanto maintained  
3 in a separate file, to your knowledge?

4 A. I don't believe we have those separately  
5 maintained, Mr. Kohn.

6 Q. Is that litigation still ongoing in any  
7 way, shape or form?

8 A. The claims of plaintiffs, other than the  
9 eight whose cases were tried, are still pending,  
10 yes.

11 Q. All right. And you don't believe you  
12 have a separate file of the document you produced in  
13 that litigation?

14 A. I don't believe I have it in St. Louis,  
15 sir.

16 Q. Where is it?

17 A. If it exists, it may be in the office of  
18 outside counsel. I'm not certain whether he still  
19 has that or not.

20 Q. Have you asked or inquired about outside  
21 counsel, the Scott counsel with respect to  
22 production of documents in their cases of those  
23 documents?

24 MR. MALIN: The witness may answer

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1 that question.

2 A. No.

3 Q. Do you have any idea how long it would  
4 take outside counsel, if he had such documents  
5 segregated, to make them available to the plaintiffs  
6 in this case?

7 A. I really don't, Mr. Kohn.

8 Q. Does Monsanto maintain an index or  
9 schedule or lists of the documents produced to the  
10 plaintiffs in the Scott case?

11 A. I believe we have such a list, yes.

12 Q. And does that list correspond to, in  
13 some way, to the computer data base of documents the  
14 so-called business document data base?

15 MR. MALIN: Object. Direct the  
16 witness not to answer. Work product.

17 Q. The response to Request Number 7  
18 continues with the statement, "Moreover the  
19 requested documents are subject to a protective  
20 order."

21 MR. MALIN: 7 or 11?

22 MR. KOHN: 11, I'm sorry.

23 Q. The requested documents are subject to a  
24 protective order issued by the court in that case.

Bistline

1                   Are all documents which were produced  
2 in the Scott case subject to a protective order in  
3 that case?

4           A.       I believe they are.

5           Q.       Is this what you are refer to as a  
6 blanket protective order?

7           A.       Yes.

8           Q.       Request Number 12, refers to all  
9 studies, tests or analysis performed by you or at  
10 your request or direction concerning the use or  
11 effects of PCBs.

12          A.       Yes.

13          Q.       Does Monsanto conduct or has Monsanto  
14 ever conducted any regular tests or surveys of its  
15 own employees, with respect to the use or effects of  
16 PCBs?

17                   MR. MALIN: Object. I direct the  
18 witness not to answer the question with respect to  
19 Request Number 12, inasmuch as it is not one of the  
20 requests which are subject to a motion to compel for  
21 this deposition.

22                   You are aware, Mr. Kohn, that we  
23 produced in the Federal cases for you, at the order  
24 of Judge Kelly in this case, all of the studies

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1 which we had with respect to the effects, the human  
2 health effects on employees of Monsanto. And,  
3 therefore, I think it's not only irrelevant to this  
4 deposition but, you have that answer.

5 BY MR. KOHN:

6 Q. Does Monsanto conduct an annual medical  
7 survey on its employees?

8 MR. MALIN: I direct the witness not  
9 to answer.

10 MR. KOHN: I request all the annual  
11 medical surveys be produced to us.

12 MR. MALIN: Well, if you put it in  
13 the form of proper document request, we will respond  
14 to it.

15 MR. KOHN: It is in Request Number  
16 12.

17 MR. MALIN: We have responded.

18 BY MR. KOHN:

19 Q. Request Number 14 on page 13 of this  
20 document, asks for, quote, "All documents which  
21 support your contention that PCBs do not harm  
22 humans," close quote.

23 Are you aware that Monsanto has made  
24 that contention in this litigation.

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1 MR. MALIN: Objection. I'll object  
2 and direct the witness not to answer. Monsanto in  
3 this litigation, has made the contention that there  
4 is no scientific evidence to support the proposition  
5 that PCBs have serious adverse human health  
6 effects. And that has been, of course, set forth in  
7 Federal cases at length in the affidavits which were  
8 filed, as well as in the scientific literature.  
9 Monsanto's position is set forth in this request,  
10 and it's set forth as it does, the fact that this  
11 information is available in the public domain,  
12 wherein it was produced.

13 BY MR. KOHN:

14 Q. Can you define for me, Mr. Bistline,  
15 what is meant by the term "public domain"?

16 A. I would refer back to our discussion of  
17 public literature, Mr. Kohn, and say that I  
18 understand something to be in the public domain if  
19 it's available, generally. Either published  
20 scientific literature or published documents.

21 Q. These might be documents published from  
22 any number of sources or literally around the world?

23 A. Well, the scientific literature  
24 certainly is published around the world. Whether

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1 other documents are, possibly.

2 Q. Such as governmental bodies from other  
3 countries?

4 A. Yes.

5 Q. You would include those within the  
6 public domain?

7 A. I would, yes.

8 Q. Does Monsanto make any effort or attempt  
9 to monitor information as it comes into the public  
10 domain to attempt to obtain copies of that  
11 information with respect to PCBs?

12 A. Yes.

13 Q. And can you describe for me how you go  
14 about monitoring that?

15 A. Well, we review, on a periodic basis, I  
16 believe it's monthly, lists of newly published  
17 scientific information. That is a computer service,  
18 I believe, Mr. Kohn, although, I can't identify for  
19 you more specifically than that at this point. It's  
20 a publicly available service that I know catalogues  
21 newly published scientific litigation, or -- excuse  
22 me, literature.

23 In addition, to that, we do attempt,  
24 through various means, including participation in

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1 the group that has worked with the Environmental  
2 Protection Agency, to help establish cleanup  
3 standards. I believe it's called the consensus  
4 group, to monitor developments in governmental  
5 regulation, and the process by which governmental  
6 regulations are set, both in this country and  
7 elsewhere.

8 Q. Any other things that you do in an  
9 attempt to monitor the state of the information in  
10 the public domain?

11 A. Those are the main things.

12 I believe, that just about says it  
13 all.

14 Q. And that's been an ongoing process for  
15 some period of time at Monsanto?

16 A. That's correct.

17 Q. Do you know approximately when that  
18 process began?

19 A. We have always felt that as a  
20 manufacturer of a product, that we should be  
21 familiar with developments as they occur, and I  
22 would say to you, that we have made the attempt to  
23 be current on developments in the medical and  
24 scientific spheres with respect to PCBs, since --

## Bistline

1 well, since the 1930s.

2 Q. Does Monsanto get involved in any way  
3 shape or form, with scientific research with respect  
4 to PCBs?

5 MR. MALIN: Hold on.

6 (Whereupon, a discussion was held off  
7 the record.)

8 MR. MALIN: I object and I direct the  
9 witness not to answer the question. It's irrelevant  
10 to the issues that are before us here.

11 MR. KOHN: It gets back to one of the  
12 prior requests about scientific medical literature,  
13 articles, et cetera. If they are involved in some,  
14 perhaps, ongoing research where there would be  
15 articles that have not yet been published. Also, as  
16 to whether Monsanto is privy to information in some  
17 research that's not yet in the public domain.

18 BY MR. KOHN:

19 Q. What is the consensus group?

20 A. Well, I believe I described it for you  
21 earlier.

22 It is a group of scientists, I  
23 assume, they're all scientists, although, I'm not  
24 sure, that have been meeting with representatives of

## Bistline

1 the Environmental Protection Agency, to arrive at an  
2 agreement in that group which is why they call it  
3 the consensus group. It's the name of hope, to  
4 establish levels for cleanups of PCB containing  
5 sites.

6 Q. Does the consensus group include within  
7 it the people from EPA or is the consensus group a  
8 separate group that then goes and meets and confers  
9 with EPA?

10 A. I believe EPA representatives are in the  
11 consensus group.

12 Q. Does Monsanto have a representative or  
13 representatives in that group?

14 A. Yes.

15 Q. Who has been Monsanto's representative  
16 or representatives in that group?

17 MR. MALIN: Hold on.

18 I object. I direct the witness not  
19 to answer it. It's irrelevant on the issues before  
20 the court.

21 MR. KOHN: Its identity of a witness,  
22 potential witness in the case.

23 MR. MALIN: Well, on any of the  
24 issues here?

Bistline

1 MR. KOHN: Yes, on the issues of,  
2 this is a deposition in the case. If you want to  
3 come back every time we have a new deposition or a  
4 new issue to cover, we'll do it that way.

5 I thought we ought to do it once  
6 while he's here.

7 MR. MALIN: I'll let him answer that  
8 question.

9 A. Dr. John Craddock.

10 Q. What is his title or position?

11 A. Mr. Kohn, I don't know what his title  
12 is.

13 Q. Does he work in the world headquarters  
14 in St. Louis?

15 A. Yes, he does.

16 Q. Are other representatives of industry  
17 members of the consensus group?

18 A. I don't know who all is on the consensus  
19 group, other than, Dr. <sup>Craddock</sup>~~Kraddock~~. Representatives of  
20 EPA. And I believe, representatives of the  
21 environmental defense fund, perhaps others, I don't  
22 know.

23 Q. Who, at Monsanto, reviews the monthly  
24 lists of periodicals from the computer service that

Bistline

1 you mentioned?

2 A. I don't know who all would do that. I  
3 know I do.

4 And Dr. Kaley does, for purposes of  
5 our data base.

6 MR. KOHN: It's about 1:00. Why  
7 don't we take a shorter lunch break.

8 (Luncheon recess was then taken.)

9 - - -

10 AFTERNOON SESSION.

11 - - -

12 BY MR. KOHN:

13 Q. Mr. Bistline, do you recall taking an  
14 affidavit in connection with this litigation?

15 A. Yes.

16 Q. And, what role did you play in  
17 connection with the drafting of that affidavit?

18 A. Let me see this.

19 MR. MALIN: I don't quite understand  
20 that question, Mr. Kohn.

21 A. I'm having trouble with it, too.

22 MR. MALIN: He took?

23 A. It's my affidavit.

24 Q. Did you write the affidavit?

## Bistline

1 A. Do you mean, did I produce the first  
2 draft of the affidavit?

3 Q. Let's start with that. Did you produce  
4 the first draft of the affidavit?

5 A. Frankly, I don't recall whether I did or  
6 whether I requested counsel to do that for me, in  
7 the first instance.

8 Q. All right. Do you recall at some time  
9 reviewing a draft?

10 A. Yes.

11 Q. And that first draft that you reviewed  
12 you don't know whether or not you drafted that or  
13 whether someone at the White and Williams firm  
14 drafted it?

15 A. It was drafted at White and Williams.  
16 It was drafted, after consultation and discussion.  
17 More as an ~~administrative~~ <sup>ministerial</sup> act than a creative  
18 act.

19 Q. How many drafts of the affidavit did you  
20 review before you signed it?

21 A. I don't recall. I believe only one.  
22 But there may have been one other.

23 Q. Was the affidavit physically typed in  
24 your office or was it typed at some other location?

## Bistline

1 A. I believe this was typed in my office.

2 Q. Now, do you have the affidavit in front  
3 of you?

4 A. Yes, I could.

5 Q. Paragraph 4 of the affidavit states that  
6 the, quote, "Personal injury/property damage cases  
7 in which Monsanto was ever been a party alone would  
8 encompass excess of 400 cases."

9 What other types of PCB cases has  
10 Monsanto been involved in other than personal injury  
11 and property damage cases?

12 MR. MALIN: Well, I'm going to object  
13 on the grounds that you already asked him that  
14 question. He's answered it. He said that those  
15 include cleanup cases.

16 Those include hydraulic fluid cases.  
17 Those include heat transfer fluid cases and silo,  
18 whatever it is, silo protective coating.

19 A. Silo coating cases.

20 MR. MALIN: Silo coating process. I  
21 believe that's been asked and answered but, you may  
22 answer it again. If there is anything you have to  
23 add to that answer.

24 A. No, nothing to add to what I've said

## Bistline

1 previously.

2 Q. All right. In paragraph 4 then, you  
3 meant to limit that to the dielectric fluid PCB  
4 cases as opposed to the entire universe of PCB  
5 cases?

6 A. No, Mr. Kohn, that wasn't the intent.  
7 The intent was to describe to the court the total  
8 number of cases in which allegations are made of  
9 personal injury or property damage, whether or not  
10 that, in fact, involved a PCB use as a dielectric  
11 fluid.

12 Q. So that some of the cases you had in  
13 mind in connection with this paragraph 4, would be  
14 cases that are not contained on the list of  
15 litigation, Exhibit 4?

16 A. Oh, yes. Oh, yes.

17 Q. How did you determine that there were  
18 over 4500 individual plaintiffs involved in those  
19 cases as set forth in paragraph 4 of your affidavit?

20 A. That's from data that we have compiled  
21 with respect to cases in which we've been involved.

22 Q. You didn't, at the time you made this  
23 affidavit, go back and research that information  
24 originally for the first time?

Bistline

1           A.       I believe the number was one that was a  
2 current number.

3                   But, it's based on data that's been  
4 compiled for some period of time.

5           Q.       All right. Paragraph 5 of your  
6 affidavit states, quote, "Compliance with  
7 plaintiffs' request for production of documents in  
8 unrelated PCB litigation," et cetera, and picks up  
9 again, "would require an inordinate amount of time  
10 and expenditure of resources on the part of Monsanto  
11 Company as indicated below." And there's a  
12 paragraph which continues on page 2 of the  
13 affidavit.

14                   My question is, is the information on  
15 page 2 of the affidavit, related solely, to quote,  
16 "compliance with plaintiffs' request for production  
17 of documents in unrelated PCB litigation," close  
18 quote?

19           A.       Yes.

20           Q.       On page 2 of the affidavit, you state  
21 quote, "The number of pages required to comply with  
22 plaintiffs' request for production of documents  
23 would be in excess of 500,000 pages," close quote.

24                   Am I correct, that that number

## Bistline

1 500,000 pages was calculated by one of your legal  
2 assistants through the use of the computer and other  
3 indexes that she had available to her?

4 A. In the first instance, that's correct,  
5 yes.

6 Q. All right. Was there some other  
7 checking in the second or third instance?

8 A. Well, I believe, as I said, on the last  
9 session of my deposition I did look at those and  
10 consulted various sources to determine that that  
11 number was accurate.

12 Q. Your affidavit then continues quote,  
13 "and would require eight staff personnel to work  
14 eight hours per day, five days per week, for at  
15 least 120 days, or six months."

16 Could you explain how you went about  
17 calculating that information?

18 A. That is an estimate, Mr. Kohn, based  
19 upon our past experience with production of large  
20 numbers of documents in PCB cases, as to what it  
21 takes to obtain those documents, from the various  
22 sources that we had to go to to obtain them, to  
23 prepare them, that is, to copy them and to prepare  
24 them for counsel's review in order that they might

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1 be put in shape to produce.

2 Q. Well, was this based on past experience  
3 with respect to producing documents in unrelated PCB  
4 litigation?

5 A. That was part of it, yes.

6 Q. What other cases have you produced  
7 documents from unrelated PCB litigation?

8 A. I'm not sure I understand your question,  
9 sir.

10 Q. Well, the estimate of eight staff  
11 personnel working eight hours a day, five days a  
12 week for six months, you testified was based on your  
13 experience over the past, past experiences.

14 A. That's correct.

15 Q. And in those other cases, have you  
16 produced the same category or categories of  
17 documents that plaintiffs are requesting be produced  
18 in this case?

19 MR. MALIN: I'm afraid I still don't  
20 understand the question.

21 If the witness understands it, he may  
22 answer it.

23 A. I don't believe we had ever been called  
24 upon to produce physically, in fact, produce all of

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1 the various categories of documents which would be  
2 required if we were to comply literally with the  
3 terms of the document demand that plaintiffs served  
4 upon Monsanto in this case.

5 Q. That's the document with respect to the  
6 so-called unrelated PCB litigation?

7 A. Again, I'm not sure how you're using  
8 that term, Mr. Kohn.

9 Q. Okay. I'm just using it as you have  
10 used it in paragraph five of your affidavit which  
11 states, beginning with "Compliance with plaintiffs'  
12 request for production of documents and unrelated  
13 PCB litigation," et cetera, "would require an  
14 inordinate amount of time as set forth below."

15 A. That's correct.

16 Q. And then we come to the calculations of  
17 the staff and the time.

18 So, it's clear, my question is  
19 simply, have you ever, in your past experience,  
20 produced the documents called for in plaintiffs'  
21 request for production of documents with respect to  
22 unrelated PCB litigation?

23 A. In the other cases, some of the  
24 categories of documents requested here, may have

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1    been produced.

2           Q.     Do you know whether they have or have  
3   not been?

4           A.     Some documents from some of the  
5   categories have been produced.

6                   Whether all documents -- some  
7   documents from some categories have not been  
8   produced. All documents from all categories clearly  
9   have not be produced.

10          Q.     Do you know which categories of  
11   documents have been produced in other cases?

12          A.     I could only guess at this time.

13          Q.     Did you make any effort to ascertain  
14   that information in connection with the preparation  
15   of the affidavit in this case, that is, which of  
16   those documents have been produced in other cases?

17          A.     To the extent that we are talking, Mr.  
18   Kohn, about documents from the business documents  
19   archive that I have referred to earlier --

20          Q.     Right.

21          A.     -- the particular category of documents  
22   isn't all that relevant. The difficulty is simply  
23   with the physical volume of documents that we're  
24   dealing with.

## Bistline

1                   The category of documents becomes  
2 important when we speak of having to go back to dead  
3 files, even active case files, and take from those  
4 files documents that are resident there and not  
5 elsewhere. Control those and make them available  
6 for production.

7           Q.       In those instance where the documents  
8 have been produced in other cases, I take it they  
9 were reviewed before they were produced in those  
10 cases by someone at Monsanto.

11          A.       Yes.

12          Q.       And the documents would have been  
13 reviewed to determine whether they disclosed any  
14 attorney-client privilege or work-product privilege  
15 before being produced in those other cases.

16          A.       Certainly.

17          Q.       All right. And they were numbered in  
18 those cases before production?

19          A.       They would have been, yes. That's  
20 correct.

21          Q.       When you calculated the eight people  
22 working eight hours a day, five days a week for six  
23 months, did you consider the fact that at least some  
24 portions of the documents had already been reviewed

## Bistline

1 by Monsanto prior to their production in other  
2 cases?

3 A. Yes.

4 Q. What would the people be doing for eight  
5 hours a day, five days a week for six months?

6 A. Among other things they would be  
7 consulting the list of documents that were  
8 identified according to our computer research as  
9 potentially relevant to the obtaining of those  
10 documents from the working archive.

11 Copying them, and reviewing them on a  
12 first cut basis for counsel to review, prior to  
13 final production. They would in addition, be as I  
14 said before, going to dead case files and, perhaps,  
15 other locations that would be required in order to  
16 obtain and control those documents, which are not  
17 covered in the document archive. That's a general  
18 description. But, I think that covers most of the  
19 activity.

20 Q. Are the documents that have been placed  
21 on the computer base, those documents that have  
22 previously been reviewed for privilege material or  
23 work-product material?

24 (Whereupon, a discussion was held off

Bistline

1 the record.)

2 MR. MALIN: The witness has testified  
3 that the computer system does not have documents on  
4 it, it merely gives you categories of documents.  
5 Accordingly, your question mischaracterizes his  
6 prior testimony, and I direct the witness not to  
7 answer any further.

8 BY MR. KOHN:

9 Q. Before a document is indexed on the  
10 computer system, is that document, even though it is  
11 not itself on the computer in its entirety, reviewed  
12 for privilege?

13 A. The documents were not reviewed  
14 individually for privilege. Certain categories of  
15 documents were excluded from being placed on the  
16 computer, because of privilege concerns. And those  
17 I can generally describe as correspondence files and  
18 pending litigation. Other than that, my  
19 recollection is that there was no other screening  
20 done for privilege.

21 Q. Do you have some estimate as to how many  
22 pages of documents your staff personnel are capable  
23 of reviewing in one day?

24 A. Individually? It would depend upon the

Bistline

1 individual.

2 Again, it would depend upon  
3 specifically, the review, the task being  
4 accomplished.

5 If we're talking about  
6 polychlorinated biphenyls going through a first cut,  
7 to get things ready for outside counsel to review,  
8 probably, 10 to 15,000 pages a day, on a first cut  
9 basis.

10 Q. The affidavit goes on to state, quote,  
11 "The cost to Monsanto would be over \$100,000."

12 Can you explain how you calculated  
13 that cost?

14 A. That is a rough estimate of what we  
15 would have to pay the clerical and paralegal  
16 personnel at Monsanto in order to, as indicated  
17 above, get the documents ready for review by outside  
18 counsel. That also includes the copying cost of the  
19 documents.

20 Q. But, wouldn't the copying cost be borne  
21 by the plaintiffs if they are obtaining a copy of  
22 the document?

23 A. For that it would, yes. But, we don't  
24 -- let me back up.

## Bistline

1                   The copying costs that I am referring  
2 to is the cost of producing the copies of the  
3 documents that my staff and outside counsel then  
4 review.

5           Q.       They don't review the documents that are  
6 already in the files?

7           A.       No, sir.

8           Q.       How much of this \$100,000 figure is  
9 duplicating costs and how much is salaries?

10          A.       I don't have any number in my head right  
11 now. But, 90 percent of it, roughly, is salaries.

12          Q.       The individuals you had in mind when you  
13 prepared this affidavit, are they already employees  
14 of Monsanto, or would you be hiring new additional  
15 people?

16          A.       No. These would be people who already  
17 work for me.

18          Q.       Have there ever been cases, that you're  
19 aware of, in which Monsanto was involved in which  
20 Monsanto produced in excess of 500,000 pages of  
21 documents?

22          A.       There's no case in which I have  
23 personally been involved in which that occurred.  
24 And I'm afraid I just can't speak to the others.

## Bistline

1 Q. What is the greatest number of pages of  
2 documents, that you're aware of, that Monsanto has  
3 produced in any litigation that you have been  
4 involved in?

5 A. In a PCB case?

6 Q. Yes, PCB case.

7 A. All right. Probably, on the order of  
8 120 to 125,000 pages.

9 Q. And do you know how much it costs  
10 Monsanto to produce the documents in that  
11 litigation?

12 A. Not as I sit here, no.

13 Q. Do you know when that production was  
14 made?

15 A. 1985 and 1986.

16 Q. Is that the Scott case?

17 A. No, sir.

18 Q. Which case was that?

19 A. I believe, it's the Carole Whitfield  
20 case. I think it's on your list.

21 Q. Maybe if you would just place Exhibit 4  
22 in front of you and refer me to the case that you  
23 have in mind.

24 A. All right.

## Bistline

1 MR. MALIN: Page 21.

2 A. Yes, page 21, the fifth case down from  
3 the top of the page.

4 Q. Carole M. Whitfield, et al. versus  
5 Sangamo Weston, Inc.

6 A. Carole M. Whitfield, et al. versus  
7 Sangamo Weston, Inc., yes.

8 Q. Is that case still pending?

9 A. No, sir, it's not.

10 Q. Do you know what the outcome of that  
11 cases was?

12 A. Yes, I do. I'm not at liberty to  
13 disclose it, but I do know the outcome.

14 Q. Was there a settlement in that case?

15 A. Yes.

16 Q. And the settlement is confidential, I  
17 take it?

18 A. That's correct.

19 Q. All right. Turning to Exhibit Bistline  
20 3, the responses to the request for production of  
21 documents.

22 A. Yes.

23 Q. If I can ask you to turn to page 8,  
24 Request Number 7?

## Bistline

1           A.       Yes.

2           Q.       With respect to Request Number 7A,  
3 "Docket sheets." Do you know how many separate  
4 documents there are that respond to that particular  
5 request?

6           A.       Well, taking a docket sheet as a  
7 singular entity, there would be at least one, for  
8 example, for each of the cases on Exhibit 4. And if  
9 that were, you could assume that there is at least  
10 one for every one of these cases that we've been  
11 involved in, perhaps, more. Depending upon whether  
12 the case was refiled in a different court.

13          Q.       That would be one docket sheet for the  
14 approximately 400 cases that are listed?

15          A.       That would be one each for each of the  
16 cases, that's correct.

17          Q.       And that list also contains all of the  
18 Paoli cases; am I correct?

19          A.       That's correct.

20          Q.       How many hours would it take to locate  
21 or review and produce those documents?

22          A.       I couldn't break it down that fine,  
23 sir.

24          Q.       Did you attempt to break it down that

Bistline

1 fine in preparation of your affidavit in this case?

2 A. No, sir, I didn't.

3 Q. Did you attempt to break down that file  
4 with respect to any of the other subparts of Request  
5 Number 7?

6 A. No. Not with respect to any individual  
7 subpart, no.

8 Q. With respect to Request Number 9 on page  
9 10, I believe we asked you about, did you attempt to  
10 break down how long it would take to comply with  
11 Request Number 9 in connection with the preparation  
12 of your affidavit?

13 A. Not specifically Number 9.

14 My recollection is that I asked my  
15 staff to estimate how long it would take to copy  
16 deposition and trial transcripts also, that we had  
17 readily available. I don't recall, offhand,  
18 specifically how, you know, what the number was for  
19 that particular item, now.

20 Q. What was their answer when you asked  
21 them how long it would take to copy the deposition  
22 and trial transcripts that you had readily  
23 available?

24 A. Again, I don't know the numbers.

## Bistline

1 Q. I take it it was something less than  
2 this eight people, eight hours a day for six months?

3 A. You can safely say it was less than the  
4 total number cited in my affidavit.

5 Q. In connection with request number 11.

6 A. Yes.

7 Q. Did you attempt to break down how long  
8 it would take to comply with Request Number 7 in  
9 connection with the preparation of your affidavit?

10 A. I don't think we did that separately.  
11 In fact, I'm not sure that we even considered number  
12 11, in the number that we have here.

13 Q. You mean, you didn't even consider  
14 number 11 in connection with, when you say the  
15 number we have here, you mean the affidavit number?

16 A. My best recollection is that the figures  
17 cited in my affidavit did not take into account the  
18 additional time that would be required, if we had to  
19 go back and get all the documents from the Scott  
20 case and produce those.

21 Q. Well, which of the document requests  
22 that are the subject of the motion does this  
23 affidavit take account of? Is it just Number 7,  
24 the, all litigations identified?

## Bistline

1           A.       It does take into account Number 7,  
2 yes. I believe Number 9 was the only one we didn't  
3 really look at as to, you know, make a separate  
4 estimate on.

5                   My recollection is that we just, more  
6 or less, assumed that it would fall in there, that  
7 whatever estimate we were making for the other  
8 requests, would simply be less than what the actual  
9 time we would spend would be. So that I didn't feel  
10 it was necessary for us to make a separate estimate  
11 for the Scott documents.

12           Q.       You didn't make a separate estimate for  
13 11, the Scott documents?

14           A.       Yes.

15           Q.       You didn't make a separate estimate for  
16 9, the Papageorge deposition transcript also?

17           A.       Not specifically for the Papageorge  
18 deposition transcripts, no. There were other  
19 categories of documents that we were asked to  
20 produce that fell within the general description of  
21 deposition transcripts, and trial transcripts and  
22 other materials of that sort that we had available,  
23 so we didn't pull Papageorge out separately. We  
24 just considered that category in general.

## Bistline

1           Q.       And, you did not consider request 14,  
2 the documents which support the contention that PCBs  
3 do not cause harm to humans, in preparation of the  
4 affidavit?

5           A.       I had asked for -- excuse me. An  
6 estimate for -- okay, now I recall what it was more  
7 precisely.

8                       In several cases, we have been asked  
9 to produce, in response to discovery, a list of  
10 scientific authorities that our experts rely on in  
11 arriving at opinions that generally conclude that  
12 PCBs have not been shown to cause severe adverse  
13 human health effects, and I asked for an estimate of  
14 the time that would be required to pull those  
15 scientific articles and have them reproduced and  
16 added in here.

17          Q.       What was the answer to that? How long  
18 would it take to produce those scientific articles?

19          A.       It's about several days worth of work  
20 for a couple of people to Xerox them up and get them  
21 ready for production.

22          Q.       Less than two weeks?

23          A.       Probably, yes.

24          Q.       Less than one week?

## Bistline

1           A.       I don't recall. I believe it was a  
2 little more.

3           Q.       You recall it being that it was more  
4 than a week?

5           A.       I believe it was more than five days of  
6 work, yes.

7           Q.       Right. How long would it take to give  
8 us a copy of the list of those articles that were  
9 provided or prepared in the other litigation?

10                    If if we were willing to find the  
11 articles and all we wanted was the list, how long  
12 would that take?

13                   MR. MALIN: Would you restate the  
14 question, please.

15                   (Whereupon, the above portion of the  
16 notes of testimony was read by the court reporter.)

17                   MR. MALIN: I think the witness has  
18 testified there are lists of articles that were  
19 necessarily produced in litigation, unless I missed  
20 something.

21                   THE WITNESS: I did.

22                   MR. MALIN: You did so testify?

23                   THE WITNESS: Yes.

24                   MR. MALIN: The witness may answer

## Bistline

1 that question.

2 A. It wouldn't take any significant amount  
3 of time at all, Mr. Kohn.

4 Q. Request number 8, in Bistline Exhibit 3,  
5 the reports of experts, et cetera, rendered in any  
6 litigation.

7 Did you --

8 A. Request 8, yes.

9 Q. -- estimate how long would it take to  
10 find those reports as part of your affidavit in this  
11 case?

12 A. Okay.

13 MR. MALIN: Just a moment.

14 (Whereupon, a discussion was held off  
15 the record.)

16 MR. MALIN: You can answer that  
17 question.

18 A. These reports all fall into two  
19 categories the ones that we keep, generally,  
20 available in the witness files. And then others  
21 that we would have to go back through the case files  
22 to find. So, I didn't have an estimate specifically  
23 geared to number 8, no.

24 Q. How long would it take for the ones in

Bistline

1 the separate witness files?

2 A. I couldn't estimate that as a separate  
3 item, Mr. Kohn. Separate from, you know,  
4 reproducing and reviewing the entire witness files.

5 Q. Well, is it your testimony you do not  
6 know how long or you could not estimate how long it  
7 would take to pull the prior reports from the  
8 pre-existing witness files, not all the other stuff  
9 in the witness files, just the reports?

10 A. Just the reports?

11 Q. Just the reports.

12 A. I don't know how long that would take,  
13 no, sir, I don't.

14 Q. And how many witness files would you  
15 have to search to gather all this?

16 A. Several dozen.

17 Q. You think less than 50?

18 A. I'm sorry. I really don't know, but it  
19 would be quite a few.

20 MR. KOHN: Let me just mark, so the  
21 record is a little clearer, the affidavit we have  
22 been referring to, which was rendered in the Alston  
23 versus SEPTA case.

24 (Marked as Exhibit Number 5 for

Bistline

1 identification.)

2 BY MR. KOHN:

3 Q. Well, how much stuff would you have to  
4 wade through in these witness files to get to the  
5 report or reports?

6 A. I'm unwilling, on the basis of  
7 objections previously articulated, to specify for  
8 you all the kinds of material that are in these  
9 files. So, I'm going to respectfully decline to  
10 answer that.

11 Q. Physically how big is any given witness  
12 file?

13 A. Well, it depends on the witness.

14 Q. How about Dr. Harbison?

15 (Whereupon, a discussion was held off  
16 the record.)

17 MR. MALIN: I object and direct the  
18 witness not to answer, essentially, because, use or  
19 non-use of those witnesses is purely a work-product  
20 decision of counsel and reviews counsel's work  
21 product and, accordingly, the witness is not  
22 required to answer that.

23 BY MR. KOHN:

24 Q. What is the range or size of the witness

Bistline

1 files from the smallest to the biggest?

2 A. A few inches to probably several feet.

3 Q. Have any representatives of the General  
4 Electric Company ever had any access to the expert  
5 files, the witness files?

6 (Whereupon, a discussion was held off  
7 the record.)

8 MR. MALIN: The witness may answer  
9 that question.

10 A. No, Mr. Kohn, no one other than Monsanto  
11 counsel or members of my staff have access to those  
12 files.

13 Q. Has anyone from, or any representative  
14 of General Electric Company ever had any access to  
15 the business data bank file?

16 A. No, sir.

17 Q. Has any outside expert or consultant  
18 ever had access to the business data bank file?

19 A. No. But let me qualify that by saying,  
20 that the people that we had help us build the  
21 archive, the outside vendor that we used, had access  
22 to it, in that limited sense only. But other than  
23 that, no.

24 Q. Who or what was the outside entity or

Bistline

1 group that helped build that file?

2 MR. MALIN: I object. I direct the  
3 witness not to answer. The outside vendor who may  
4 have helped is irrelevant to any issue in this  
5 case.

6 MR. KOHN: I'm not asking what they  
7 did, just their identity.

8 MR. MALIN: Even that's irrelevant.

9 MR. KOHN: I think it's relevant to  
10 your continuing claim of work product with respect  
11 to that file. The question of work product, if you  
12 brought in some outside vendor.

13 I ask that you just give us the name  
14 and identity of this group or groups or vendor or  
15 vendors that worked with you on putting this file  
16 together.

17 MR. MALIN: The objection stands.

18 BY MR. KOHN:

19 Q. The outside group were not lawyers, were  
20 they?

21 MR. MALIN: Object. I direct the  
22 witness not to answer the question. Irrelevant.

23 BY MR. KOHN:

24 Q. Have any outside experts or consultants

## Bistline

1 ever had access to the file of scientific literature  
2 that we were speaking about before lunch today?

3 A. No.

4 Q. No expert retained or consulted by  
5 Monsanto has ever looked at the Monsanto files of  
6 scientific literature?

7 A. We provided, from time to time, experts  
8 with articles from that data base, but no expert has  
9 been given the index in order to peruse and  
10 determine what he or she might want to see from that  
11 data base.

12 Q. In other words, Monsanto selects from  
13 this data base what you want the expert to see and  
14 you give that to them?

15 A. I would say that's an incomplete  
16 characterization of the process.

17 Q. In addition, the expert may ask you for  
18 certain things and then you get them for him?

19 A. That's correct.

20 MR. KOHN: Let me take a short  
21 break. I think we're done. I just want to check my  
22 notes.

23 (Whereupon a short recess was then  
24 taken.)

Bistline

1 BY MR. KOHN:

2 Q. On this first day of deposition on  
3 January the 4th, you indicated that as part of your  
4 duties you have consulted with scientists both  
5 inside and outside of the company.

6 Can you identify for me the  
7 scientists inside and outside of the company that  
8 you have consulted with any connection with PCB  
9 litigation?

10 MR. MALIN: Hold on.

11 (Whereupon, a discussion was held off  
12 the record.)

13 MR. MALIN: I object to the question.  
14 I direct the witness not to answer. It's irrelevant  
15 to any issue that is now before the court with  
16 respect to this litigation.

17 MR. KOHN: Well --

18 MR. MALIN: As well as presenting  
19 attorney work product and the mental impressions and  
20 strategy of the case.

21 MR. KOHN: He was discussing his  
22 strategy with outside consultants. I don't know  
23 that there is much of a privilege left. This is the  
24 first deposition of the Monsanto witness in these

Bistline

1 cases. We're trying to identify some people that  
2 might be witnesses, with respect to the scientists  
3 inside the company that he spoke with about PCB  
4 litigation. We are simply asking for the names of  
5 those individuals.

6 MR. MALIN: Scientists inside the  
7 company?

8 MR. KOHN: Yes. Start with the ones  
9 inside the company.

10 Potential witnesses in the case.

11 MR. MALIN: The objection stands.

12 MR. KOHN: All right. I have no  
13 further questions at this time, subject to our right  
14 to seek whatever relief we may deem appropriate as  
15 to the instructions not to answer.

16 I have no other questions, now.

17 MR. MALIN: I have a question or  
18 two.

19 - - -

20 EXAMINATION

21 - - -

22 BY MR. MALIN:

23 Q. Mr. Bistline, does Monsanto have any  
24 documents which reflect any research which Monsanto

Bistline

1 has done on the human health effects of PCBs, which  
2 were not produced in the Federal litigation under  
3 the general caption of Brown versus Septa, et al.,  
4 and those particular cases which are now on appeal  
5 in the Third Circuit?

6 A. No. Mr. Malin, to the best of memory,  
7 we have produced all of the documents of that type  
8 that we had.

9 Q. To the best of your knowledge, and  
10 belief, Mr. Bistline, is it true that all of the  
11 documents on the human health effects of PCBs <sup>as</sup> *and*  
12 epidemiological studies are available in the public  
13 domain?

14 MR. KOHN: Objection, leading. I  
15 object to the form.

16 A. That's true, to the best of my  
17 knowledge.

18 MR. MALIN: No further questions.

19 - - -

20 FURTHER EXAMINATION

21 - - -

22 BY MR. KOHN:

23 Q. How many documents did you produce in  
24 the Federal litigation pertinent to the subject that

Bistline

1 Mr. Malin just questioned you on?

2 A. I think I have to defer to Mr. Malin for  
3 the exact count on that.

4 Q. You don't know, do you?

5 A. Between 4,000 and 4500 pages of  
6 documents were produced.

7 Q. And do they relate specifically to what  
8 that Mr. Malin just questioned you about in your  
9 redirect?

10 A. Whether they all do or not, I don't know  
11 at this point, Mr. Kohn.

12 Q. You don't know one way or the other how  
13 many documents covered the subject you just  
14 testified. You're sure all of the documents were  
15 given?

16 A. They are what they are.

17 MR. MALIN: They were produced, you  
18 have them. If you want to count them, you may do  
19 so. If you want us to enumerate them for you again,  
20 we would be willing to do that. There were several  
21 epidemiological studies. I don't know if *they can be called*  
22 epidemiological studies, *but* human health effect studies  
23 of Monsanto employees, *o* were produced.

24 BY MR. KOHN:

Bistline

1 Q. Mr. Bistline, how many separate human  
2 health effect studies did Monsanto produce?

3 A. Did we produce?

4 Q. Did you produce in the Federal  
5 litigation of Brown versus SEPTA, et al.?

6 A. We produced, I believe, several looking  
7 at the same group of people who worked at the  
8 Krummrich plant. We produced -- as I said, we  
9 produced several looks at that same group of  
10 Krummrich workers, I wouldn't say they were all  
11 separate studies. I think they were probably all  
12 different versions of looking at the same group.

13 Q. All right. And that's the only studies  
14 of human health effects that Monsanto had performed  
15 that you produced in the Brown case?

16 A. That's correct.

17 Q. Has Monsanto performed any studies of  
18 health effects on animals of PCBs?

19 MR. MALIN: Objection. I direct the  
20 witness not to answer.

21 MR. KOHN: I have no further  
22 questions.

23 MR. MALIN: Nothing further.

24 - - -

Bistline

(Deposition concluded.)

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Bistline

## C E R T I F I C A T E

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the deposition of the above matter, and that this is a correct transcript of the same.

---

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Bistline

## ACKNOWLEDGEMENT OF DEPONENT

I, \_\_\_\_\_, do hereby certify  
 that I have read the foregoing pages, \_\_\_\_\_  
 and that the same is a correct transcription of the  
 answers given by me to the questions therein  
 propounded, except for the corrections or changes in  
 form or substance, if any, noted in the attached  
 Errata Sheet.

\_\_\_\_\_  
 DATE

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 E R R A T A  
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Subscribed and sworn to before me this \_\_\_\_\_ day  
 of \_\_\_\_\_, 198 \_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

## LAWYER'S NOTES

[illegible]