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PLEASE REPLY TO

July 15, 1992

Via Federal Express

Honorable Thomas B. Mannion, J.S.C
Superior Court of New Jersey
Middlesex County Courthouse
Room 8
One Kennedy Square
New Brunswick, New Jersey 08903

RE: City of Perth Amboy v. Witco v. Monsanto
Docket No. L-73370-88
Our File No. 757000-6

Dear Judge Mannion:

Please accept this letter memorandum in lieu of a more formal brief in support of Witco's motion to compel Monsanto to produce a copy of its computer index to PCB related documents, which is scheduled for oral argument on July 24, 1992.

Witco has previously requested this computer index from Monsanto in writing on April 30, 1992, May 15, 1992 and June 4, 1992. Monsanto admittedly has removed the documents from a number of different locations and sources and consolidated those documents in a central location for which the computer index was created.

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It is believed that in the early 1980's Monsanto collected all documents in its possession that in any way related to the sale and manufacture of PCBs. Upon collection of these documents, Monsanto's law department maintained custody and control of these documents. It is further believed that these documents have been summarized, indexed and listed on a computer program, which computer program Monsanto has utilized in responding to discovery demands. The computer list of documents includes both non-privileged and privileged documents.

Monsanto has claimed that its computerized index and centralization of its documents is protected by the work product privilege, see Rule 4:10-2(c), because the list was created and maintained by Monsanto's attorneys in connection with the defense of pending and anticipated litigations and that other courts, i.e. Indiana, Texas and Wisconsin have protected this index from disclosure to Monsanto's adversaries. The fact that attorneys directed the collection, organization and retention of these documents does not prevent disclosure of these documents. Furthermore, even if an attorney prepared the computer index, that fact alone does not make the index privileged. The mere gathering or listing of documents is not work product, even if done by an attorney.

Rule 4:10-2(a) specifically permits any party to discover the existence, description, nature, custody, condition and location of any document. Witco simply seeks to obtain a copy of this list, which has already been prepared and reflects the compendium of Monsanto's documents pertaining to its sale and manufacture of PCBs. Monsanto cannot complain that production of this list is burdensome or costly. In

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fact, production of this list would be the most efficient and cost effective response to Witco's discovery demands. From this list, Witco can identify additional relevant documents to request, and can identify those documents withheld by Monsanto on the claim of privilege that the Court should review. To date, Monsanto has never produced to Witco a Vaugh index detailing those documents withheld by Monsanto on the basis of privilege.

Witco does not seek discovery of the mental impressions, conclusions, opinions, or legal theories of Monsanto's attorneys. To the extent that the such entries on the computer index have to be redacted, that task is not insurmountable.

New Jersey courts favor open discovery for litigants in search for the truth. As the note to Rule 4:10-2 states, our courts have placed increasing limitations on the so-called work product exception. Accordingly, Witco renews its demand that Monsanto produce a copy of its computer index.

Very truly yours,

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI & STEWART

Alfred C Constants III

ALFRED C. CONSTANTS III

ACC:sc
cc: J. Tyrrell, Esq. (via telecopier)

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