UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE COLONNADE ONE AT OLD GREENWICH LIMITED PARTNERSHIP, ET AL.,	)	
PLAINTIFFS,	)	
VS.	)	NO. B-88-336-(JAC)
ELECTROLUX CORPORATION AND SARA LEE CORPORATION, ET AL.,	)	
DEFENDANTS.	)	

DEPOSITION OF THOMAS M. BISTLINE
MARCH 29, 1990

COPY

G O R E R E P O R T I N G C O M P A N Y
408 OLIVE STREET ST. LOUIS, MISSOURI
241-6750

WATER_PCB-SD0000056977

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

THE COLONNADE ONE AT OLD GREENWICH LIMITED PARTNERSHIP, ET AL.,	)	
Plaintiffs,	)	
vs.	)	NO. B-88-336-(Jac)
ELECTROLUX CORPORATION AND SARA LEE CORPORATION, ET AL.,	)	
Defendants.	)	

Deposition of THOMAS M. BISTLINE, taken on behalf of the Plaintiffs, at the Stouffer Concourse Hotel, 9801 Natural Bridge Road, in the County of St. Louis, State of Missouri, on the 29th day of March, 1990, commencing at 10:12 a.m., before Victoria L. Wilson, Registered Professional Reporter and Notary Public.

WATER_PCB-SD0000056978

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

Mr. Ronald F. Ochsner
Pepe & Hazard
Goodwin Square
Hartford, Connecticut
06103-4302

FOR THE DEFENDANTS:

Ms. Courtney M. Price
Anderson, Kill, Olick & Oshinsky
Suite 7500
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

FOR THE DEPONENT AND MONSANTO COMPANY:

Mr. Gerard H. Davidson, Jr.
Smith, Helms, Mulliss & Moore
300 North Greene Street
Suite 1400
P. O. Box 21927
Greensboro, North Carolina
27420

- - - - - - -

WATER_PCB-SD0000056979

INDEX

	PAGE
Examination by Mr. Ochsner	5

EXHIBITS

Plaintiffs' Deposition Exhibit 1	9
Plaintiffs' Deposition Exhibit 2	11

WATER_PCB-SD0000056980

THOMAS M. BISTLINE,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

MR. OCHSNER: Let the record reflect that we are proceeding with the deposition of the representative designated by Monsanto Corporation in a subpoena issued pursuant to Federal Rules, Civil Procedure Rule 30(b)(6), issued by the Plaintiffs in the matter of The Colonnade One at Old Greenwich Limited Partnership versus Sara Lee and Electrolux Corporations, et al., the defendants.

EXAMINATION

QUESTIONS BY MR. OCHSNER:

Q. If you will, please, state for the record your full name.

A. Yes, my name is Thomas M. Bistline.

Q. And how do you spell that?

A. It is B-i-s-t-l-i-n-e.

Q. And your work address?

A. 800 North Lindbergh Boulevard,

WATER_PCB-SD0000056981

St. Louis, Missouri 63167.

Q. And your home address?

A. 15182 Isleview, that's one word, I-s-l-e-v-i-e-w, Drive in Ballwin, Missouri 63011.

Q. And in what capacity are you appearing at this proceeding?

A. I am appearing as the designated witness on behalf of Monsanto Company in response to Plaintiffs' subpoena that you mentioned earlier.

Q. Now, would you just describe for us briefly what your position is with Monsanto Corporation?

A. Yes. My title is litigation counsel at Monsanto Company. I am a member of the law department there. I am a lawyer and as is relevant here, my duties include the management and supervision of litigated matters involving polychlorinated biphenyls or PCBs that involve Monsanto. I am also the custodian of those business records of Monsanto that remain from our manufacture and sale and distribution of PCBs.

Q. All right. Now, some preliminary matters. First of all, have you ever taken a deposition before?

A. Have I taken --

WATER_PCB-SD0000056982

Q. I'm sorry. Have you ever given a deposition or been deposed before?

A. Yes, I have had my deposition taken previously.

Q. On approximately how many occasions?

A. I think three.

Q. Now, to ensure that the record is clear here with respect to your understanding, I just want to go over a few items. First, we are in an informal setting but I must advise you that the testimony that you give here has the same effect as if you were testifying in court. You are testifying under oath and you are subject to the penalties of perjury. Do you understand that?

A. Yes.

Q. Now, if you don't understand a question, I would ask that you request me to clarify it. If you answer a question, I will presume that you understood the question. Do you understand that?

A. Yes.

Q. Now, if at any point during the proceeding you want to take a break or have a recess for a period of time, just ask me and we can do that.

Now, is there any reason that you feel

WATER_PCB-SD0000056983

that you cannot testify today?

A. No.

Q. Are you feeling fine?

A. Yes.

Q. And are you on any medications that might affect your ability to testify?

A. No.

Q. Now, with respect to your duties as the custodian of records, could you define for me or describe for me the types of records that you maintain for Monsanto Corporation?

A. In PCB litigation I assume you are referring to.

Q. Yes.

A. The law department currently, and me, in particular, or I, in particular, I am the custodian, as I said earlier, of those business records of Monsanto which exist that relate to our previous business in manufacturing, selling, distributing polychlorinated biphenyls. Generally, the records consist of such items as sales records and invoices, documents related to the manufacture and physically cooking the material, manufacturing it, documents relating to contacts, communications with our customers,

health and safety records, similar items.

Q. And where are these records maintained at?

A. They are physically housed at Monsanto's world headquarters at 800 North Lindbergh in St. Louis.

Q. Are you familiar with those files?

A. Yes.

Q. Now, did you have an opportunity at some point to respond to a request for documents pertaining to the civil action by The Colonnade One versus Sara Lee and Electrolux Corporations?

MS. PRICE: Counsel, do you have a copy of the specific request you are referring to? Because, if so, I think it would be better if it were in the record and we were all looking at it.

THE WITNESS: Off the record for a second.

(Discussion off the record)

MR. OCHSNER: Do you want to mark this as Plaintiffs' Deposition Exhibit Number 1, please?

(Plaintiffs' Deposition Exhibit 1 was marked for identification.)

Q. Mr. Bistline, I hand you what's been

WATER_PCB-SD0000056985

marked as Plaintiffs' Deposition Exhibit 1 and ask you if you recognize that document.

A. Yes. This is the subpoena which was recently served on me for this deposition that contains a copy of the schedule of documents that the Plaintiffs served earlier. I can't remember the precise date but it was several months ago. It was pursuant to this schedule of documents that I requested and had my staff compile responsive documents, reviewed them, and produced them to you in this matter.

Q. Now, in responding to that, did you identify documents within your files which were responsive to that request?

A. Yes.

Q. And did you cause those records to be removed from the files in your system?

A. They were.

Q. Was the file that you removed those records from the correct file for those documents?

A. My best information is yes, that it was.

MR. OCHSNER: Now, Counsel, I think you have a copy of those. I want to provide you with those.

Q. At this point, Mr. Bistline, I'm going

WATER_PCB-SD0000056986

to hand you --

MR. OCHSNER: I would like to have this marked as Plaintiffs' Deposition Exhibit Number 2.

(Plaintiffs' Deposition Exhibit 2 was marked for identification.)

Q. At this time, Mr. Bistline, I'll hand you what's been marked as Plaintiffs' Deposition Exhibit Number 2 and ask you to review it to ensure that you have an opportunity to review all the documents.

A. Yes.

Q. Now, Mr. Bistline, you recognize those documents?

A. Yes, I do. These are the copies of the documents that I have produced to you pursuant to your request.

Q. And the documents that I handed you are numbered -- well, describe for me the numbering on those, if you would, please.

A. On each document or each page of the documents that you have handed me there is usually in the right-hand corner a number that begins with the three letters LUX followed by a six-digit number beginning with 000001 through 000222. The pages, I believe, are consecutively numbered.

Q. One clarification with respect to that. You indicated that the documents ran from 1 through 000222?

A. 222, right. I have up to 222 in this group.

MR. OCHSNER: There should be a 223.

MS. PRICE: Not on this one.

MR. OCHSNER: All right. There is one --

MS. PRICE: Do you have a copy of it?

MR. OCHSNER: I do.

Q. I would ask you if the documents that you now have before you which consist of LUX documents 000001 through 000223 consist of the entire group of documents that were produced pursuant to the plaintiffs' request?

A. That is correct.

Q. Do you recognize this exhibit as being the records that you removed from the Monsanto files?

A. That's correct.

Q. And what's your basis for that recognition at this point?

A. Twofold. First of all, the numbering, which is in the corner of the documents, would

WATER_PCB-SD0000056988

indicate that these are the documents that I produced. And second of all, my familiarity from having personally reviewed these documents prior to production, my familiarity with these documents and knowledge of what was done to comply with your request.

Q. Now, there are a few of the documents I want to go over just very briefly. First, with respect to LUX -- and for sake of brevity, since there are not in excess of a thousand documents, I will just simply refer to the last three digits so we don't have to have quite so many zeros on the record.

A. Fine.

Q. LUX documents 001 and 004.

A. Yes.

Q. Do you recognize those documents?

A. I do.

Q. And what are those documents?

A. These are summaries prepared by my staff at Monsanto of sales of Pydraul 312 and Pydraul 312A to Electrolux Corporation either at Old Greenwich, Connecticut in the case of LUX 004 or at a location which could not be determined from an examination of our sales records in the case of

WATER_PCB-SD0000056989

LUX 001.

Q. And who would have prepared those records -- or, I'm sorry. Who would have prepared the sales summary?

A. The sales summary was prepared by a member of my staff at Monsanto and I can't remember the fellow's last name as I sit here. John is his first name. I'm embarrassed.

Q. I take it it suffices to say it was a member of your staff that prepared those.

A. Yes. He will be very put out with me that I can't remember his name.

Q. And do you recollect when these summaries were prepared?

A. Several months ago, Mr. Ochsner. It was shortly after I received your request for production. I don't have the precise date in mind.

Q. Now, turning, if you would, to LUX Exhibit Number 012 --

A. Yes.

Q. -- I would ask you to review that document and the following attached documents and ask you to describe for the record what that document is.

WATER_PCB-SD0000056990

A. Well, could you be more specific, sir, as to what you mean by "attached documents"?

Q. That would be the LUX up to 019.

A. This is a copy of a document which, again, was part of the production package that was retrieved from our files pursuant to your request. It appears to be a letter. 0012 does not have an addressee on it but it was signed by Mr. Donald Olson, who is formerly of Monsanto.

Q. Do you know Mr. Olson?

A. I know him, yes, I do.

Q. And what was his function with Monsanto?

A. Well, at the time I knew him, which is long after this letter was written, he was a product manager in the Monsanto Chemical Company.

Q. Now, I note that the correspondence to which you reflect does not have an addressee on it --

A. That's correct.

Q. -- is there a reason for that?

MS. PRICE: Counsel, I'm going to object to the form of the question, especially to the extent that this question or any others go much to the background or the history of the documents because I don't think there has been any

WATER_PCB-SD0000056991

foundation that Mr. Bistline has that sort of information. He has simply testified that he has custody of those records and any background or expertise in the contents has not been testified to as of this point.

Q. Do you want me to repeat the question?

A. Would you, please?

(The requested portion of the record read by the reporter)

MS. PRICE: I would also object to the form on the grounds that it calls for speculation.

A. Let me answer the question in this fashion, Mr. Ochsner. I have no personal knowledge of the circumstances of the creation of this document. The knowledge that I have has been gained as a member of Monsanto's law department in the course of my duties in supervising PCB litigation and I can only tell you what I have been told and I can tell you that I have been told that this is correspondence that was sent to a number of customers of Monsanto Company on or about the date indicated at the top of this letter, which is February 18th, 1970, and the documents LUX 000012 through 19 is the form of

WATER_PCB-SD0000056992

that letter.

Q. Now, I direct your attention to LUX number 011 and ask you what that document is, if you know.

A. Well, again, I am told that this is from a larger set of documents which contained the names and addresses of the persons to whom the letter dated February 18th, 1970 was sent. Specifically, LUX 011 has in the lower left-hand corner the address or the words, "Office of the President, Electrolux," and an address in Old Greenwich, Connecticut.

Q. I take it that prior to disclosure, that there were other entries on this document.

A. That's correct.

Q. And that those have been marked out.

A. That's correct.

Q. Mr. Bistline, I would like you to look at a portion of the exhibit designated LUX 064, 065, and 066 and ask you if you can identify that portion of the exhibit.

A. Yes. Once again, sir, this is a copy of a document taken from the files that are in my custody which appears to be a copy of a letter to an individual at Electrolux dated October 27th,

WATER_PCB-SD0000056993

1965 from Mr. Elmer P. Wheeler who was an employee of Monsanto Company.

Q. And I take it that this document was taken from the same files that the preceding documents were taken, as well.

A. Yes, from the files in my custody at Monsanto, yes, that's correct.

Q. If you would look at LUX number 074 --

A. All right.

Q. -- and I'll ask you to identify that document, please.

A. Yes. Once again, it is a copy of a document that was taken from the files in my custody at Monsanto. This document appears to be a copy of a sales invoice reflecting the sale to Electrolux Corporation at an address in Old Greenwich, Connecticut of Pydraul 312, apparently 510 gallons, if I can read that correctly.

THE WITNESS: Is that a 5 or a 6, Dick?

A. Maybe 610.

MR. DAVIDSON: 8.

THE WITNESS: 810. We were both wrong.

A. 810 gallons.

Q. Could you briefly describe for me the current business practice of Monsanto with respect

WATER_PCB-SD0000056994

to retention of its business records?

A. Well, the Monsanto Company generates a large number of documents in the regular course of its business and we have a written procedure that prescribes for us the length of time and the manner in which certain categories of documents are to be retained. In general, that's it. I mean it is a written procedure.

Q. And what does that procedure specify with respect to the duration of retention of records?

A. That depends upon the type of document that is in question.

Q. Referring specifically to the documents that I have provided to you today, what is the policy with respect to the retention of those records?

A. These records are not subject to the normal records retention policy of the company because they are in the custody of the law department in connection with currently pending litigation so there is no specified period of time for their retention at this point. They are to be retained so long as in my opinion, as their current custodian, they are required for

WATER_PCB-SD0000056995

litigation purposes.

MR. OCHSNER: All right. I have no further questions.

(Thereupon, the deposition was concluded at 10:30 a.m.)

WATER_PCB-SD0000056996

COMES NOW THE WITNESS, THOMAS M. BISTLINE, and having read the foregoing transcript of the deposition taken on the 29th day of March, 1990, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_____

THOMAS M. BISTLINE

Subscribed and sworn to me before this _____ day of _____ , 1990.

My Commission expires: _____

_____

Notary Public

vw

Colonnade One v. Electrolux

WATER_PCB-SD0000056997

State of Missouri)
) SS.
City of St. Louis)

I, Victoria L. Wilson, Registered Professional Reporter and Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Subpoena in the civil cause now pending and undetermined in the United States District Court, Eastern District of Missouri, Eastern Division, to be used in the trial of said cause in said court, I was attended at the offices of Stouffer Concourse Hotel 9801 Natural Bridge Road, in the County of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 29th day of March, 1990.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me

WATER_PCB-SD0000056998

reported in shorthand and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this _____ day of _____, 1990.

My Commission expires November 14, 1992.

_____

Notary Public in and for the State of Missouri

WATER_PCB-SD0000056999