Monsanto

LAW DEPARTMENT

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January 31, 1989

Mr. David F. Zoll
Chemical Manufacturers Association
2501 "M" Street, N.W.
Washington, D.C. 20007

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Dear Mr. Zoll:

On November 28, 1988, Judge Robert Kelly of the U.S. District Court of the Eastern District of Pennsylvania entered a significant decision en re Paoli Rail Yard litigation. That decision dismissed the personal injury claims of 37 plaintiffs who sought recovery for a wide variety of diseases allegedly caused by exposure to PCBs. Judge Kelly ruled that the testimony of plaintiffs' experts was inadmissible because their opinions were not based on valid scientific or medical evidence. That decision has been appealed to the Third Circuit Court of Appeals. Both Monsanto Company and General Electric Company are defendants in the Paoli case. We believe that CMA should support the position taken in Paoli by Monsanto and General Electric and file an amicus brief in the Third Circuit, urging that court to uphold Judge Kelly.

Judge Kelly's decision is significant in several respects:

- As previously mentioned, it extends the very favorable line of cases (begun with Judge Weinstein's opinion in Agent Orange) that hold that an expert's opinion must be based on generally accepted medical and scientific evidence.

- The opinion states that reliance by an expert on animal test data to support a causation opinion in the face of contrary human data is not acceptable.

- The opinion rejects reliance on evidence of harmful effects caused by other substances as proof that the chemical in question caused injury.

The Paoli opinion is the first test in the Third Circuit of this approach to expert testimony in toxic tort cases. An affirmance is therefore extremely

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important to the continued ability of CMA members to keep from evidence expert opinions that are not based on sound scientific authority. We urge CMA to support Monsanto and General Electric in this matter.

Very truly yours,

Thomas M. Bistline

Thomas M. Bistline
Litigation Counsel

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