

STATE OF ALABAMA
IN THE CIRCUIT COURT OF CALHOUN COUNTY

SABRINA ABERNATHY, et al.,

Plaintiffs,

CIVIL ACTION NUMBER

versus

CV-96-269
(Consolidated)

MONSANTO COMPANY, et al.,

Defendants.

-----/

COPY

DEPOSITION OF BRUCE W. ELEY

The deposition of BRUCE W. ELEY was taken before Deborah Salers Garrett, Certified Shorthand Reporter, Registered Professional Reporter, as Commissioner, commencing at 1:00 p.m. on January 6, 1999, by the Plaintiffs, at the law offices of Lightfoot, Franklin & White, The Clark Building, 400 North 20th Street, Birmingham, Alabama, pursuant to the stipulations set forth herein.

Regional Reporting Service, Inc.
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A P P E A R A N C E S

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No exhibits were marked for identification,
 offered or attached as exhibits hereto.

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by the parties, through their respective counsel, that the deposition of BRUCE W. ELEY may be taken before Deborah Salers Garrett, CSR, RPR, as Commissioner and Notary Public, Alabama at Large, at Birmingham, Alabama, on January 6, 1999, at 1:00 p.m.

IT IS STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel to any questions except as to form or leading questions and that counsel may make objections and assign grounds at the time of trial or at the time said deposition is offered in evidence or prior thereto.

IT IS STIPULATED AND AGREED that notice of filing by the Commissioner is waived.

1 STATE OF ALABAMA, BIRMINGHAM, JANUARY 6, 1999

2
3 BRUCE W. ELEY,
4 after having been first duly sworn, was
5 examined and testified as follows:
6

7 EXAMINATION

8 BY MR. DON BARRETT

9 Q. Would you state your name for the
10 record, please, sir?

11 A. Bruise W. Eley, E-l-e-y.

12 Q. Mr. Eley, my name is Don Barrett. I
13 represent the plaintiffs in this case.
14 Nice to meet you.

15 A. Thank you.

16 Q. Where do you live?

17 A. In St. Louis, Missouri.

18 Q. Okay.

19 A. The address, 1729 Carman Valley Drive,
20 C-a-r-m-a-n.

21 Q. With a St. Louis address or a suburb?

22 A. It is actually a suburb, Ballwin,
23 Missouri, B-a-l-l-w-i-n.

1 Q. And who is your employer?

2 A. Solutia, Inc., S-o-l-u-t-i-a.

3 Q. And before the spinoff did you work for
4 Monsanto?

5 A. Yes.

6 Q. How long have you worked -- How long
7 have you continuously worked for
8 Monsanto or Solutia?

9 A. I believe it will be thirty years next
10 June, this coming June.

11 Q. Mr. Eley, you were -- your name was
12 given to the plaintiffs as a fact
13 witness in the case and not an expert
14 witness. So we're here today to find
15 out what facts that you know that are
16 relevant to the case and what your
17 testimony would be.

18 A. Yes, sir.

19 Q. And my questions are directed in that
20 way.

21 What is your position with
22 Solutia? And go back -- Take us back,
23 if you will, since the time you were

1 hired by Monsanto, and just tell us kind
2 of what you have done and what you do
3 now and how long you have done it.

4 A. Starting with present and going back?

5 Q. Either way.

6 A. Okay. My memory is probably a little
7 bit better starting with initially when
8 I came on board with Monsanto in 1969.
9 I was hired in June 1969 as an
10 environmental research engineer, working
11 with the inorganics division of
12 Monsanto. I was in that job for
13 approximately a year, year and a half,
14 at which time I moved over from the
15 inorganics division to central research
16 department, again doing research in the
17 environmental area.

18 In September of 1971 I joined the
19 medical department of Monsanto -- then I
20 believe it was called the department of
21 medicine and environmental health -- as
22 an industrial hygienist.

23 Q. Let me stop you. What is your

1 educational background? What sort of
2 degrees do you hold?

3 A. Educational background, both my degrees
4 are from the University of Arkansas, a
5 BS in civil engineering and an MS in
6 civil engineering, and the discipline
7 actually was environmental engineering
8 or what was called at that time sanitary
9 engineering. And that was a part of the
10 civil engineering department.

11 Q. Okay. Back -- Up until this time frame
12 that you are talking about, 1971, '72,
13 up until that time had you done any
14 research on PCBs?

15 A. No, sir.

16 Q. Okay. Go on and take us forward.

17 A. As I said, in 1971 I joined the medical
18 department as an industrial hygienist.

19 Q. All this time you were working in St.
20 Louis?

21 A. Correct, correct. In fact, as you will
22 see, all through the thirty years I have
23 continued to work out of St. Louis.

1 Q. All right.

2 A. Between 1971 and 1978 I progressed in
3 the field of industrial hygiene. And by
4 progress, I mean I started out as
5 industrial hygienist and then a senior
6 industrial hygienist and a specialist.
7 We had a progression in the area of
8 industrial hygiene within our
9 department.

10 Q. What does an industrial hygienist do?

11 A. Industrial hygienist, I guess the
12 simplest definition is a person by
13 training or experience who is involved
14 in the anticipation, recognition, and
15 control of workplace stresses. And by
16 stresses, I mean stresses due to either
17 chemical or physical agents.

18 Q. Okay. That's -- You dealt with the
19 health and safety of workers on the
20 plant site?

21 A. Correct.

22 Q. All right. Take us beyond 1979.

23 A. In or around 1978 I became manager of

1 corporate industrial hygiene, again in
2 the department of medicine and
3 environmental health.

4 Q. During any of this time, up until this
5 point, had you done any research with
6 PCBs or any sort of work with PCBs?

7 A. No research. I had involvement with
8 PCBs only by nature of their being
9 manufactured at Monsanto facilities.

10 Q. And why would you -- Why would you have
11 involvement with them particularly?

12 A. Well, any involvement I would have with
13 a PCB manufacturing facility would be
14 the same involvement I would have from
15 the standpoint of a corporate oversight
16 role in the industrial hygiene programs
17 in the plants. That is, I would
18 periodically go into plants, tour
19 various processes -- and that would
20 include all processes in that plant --
21 determine what type of monitoring the
22 plant was involved in, what kind of
23 assistance or support they needed from

1 St. Louis.

2 Q. Did you do that in Anniston during this
3 time period?

4 A. Yes.

5 Q. And on your trips to Anniston, it was
6 your job, as I understand it, to keep
7 the workplace safe and clean?

8 A. It was more of an advisory and support
9 role to the on-site people. Each one of
10 our plants had industrial hygiene
11 contact people or industrial hygienists
12 and safety people.

13 Q. I understand. But working with those
14 on-site people, that was your ultimate
15 job, was to keep the plant -- to keep --
16 in Anniston, to keep PCBs and other
17 chemicals or substances from being --
18 from coming into contact with the
19 workers?

20 A. That's correct.

21 Q. Okay.

22 A. Even though, I might add, that as I
23 recall probably one of the first trips I

1 would have made to Anniston would have
2 been in 1973 or after 1973, I believe.
3 And at that time I believe that the PCB
4 or Aroclor manufacturing unit was shut
5 down, or it may have been leveled and
6 not even in existence.

7 Q. Okay. Were you aware of the history of
8 the Anniston plant when you went down
9 there as to the problems they had had
10 with PCBs, when you went down there
11 during the 1970s?

12 A. No, sir.

13 Q. And nobody advised you that they had any
14 problems?

15 A. No.

16 Q. All right. So we are now at 1979?

17 A. 1970 -- Well, between 1978 -- And again,
18 it would be the 1978, '79 time frame
19 until 1981. In, again, September -- Why
20 September, I don't know. But September
21 of 1981 is when I left the corporate
22 department of environmental -- or the
23 department of medicine and environmental

1 health, and I went into one of the
2 operating units of the agricultural
3 company.

4 Q. Okay.

5 A. Of Monsanto.

6 Q. Which manufactured agricultural
7 chemicals?

8 A. Agricultural chemicals, herbicides,
9 pesticides.

10 Q. Not PCBs?

11 A. No.

12 Q. And how long did you stay in that
13 division?

14 A. I was in the agricultural division until
15 about 1991.

16 Q. Okay. And during this period of time
17 you had no reason or it was not part of
18 your job description or responsibility
19 to have anything to do with PCBs one way
20 or the other?

21 A. None whatsoever.

22 Q. All right. We are at 1991 now. Then
23 what happened?

1 A. In 1991 I came back into corporate
2 group. The corporate group at this time
3 was called environmental safety and
4 health, a corporate staff group. And I
5 came into a small group called
6 environmental affairs.

7 Q. Okay. What were your responsibilities?

8 A. Primarily a role in environmental
9 technical support. And that is I still
10 dealt with occupational safety and
11 health issues. I dealt with hazard
12 communication from the standpoint of
13 material safety data sheets. I was
14 involved in industrial hygiene auditing
15 of plants. I have been involved in
16 supporting other groups, whether it be
17 industrial hygiene or safety. And from
18 time to time I would also provide some
19 technical support to our legal staff if
20 there were questions regarding questions
21 on various processes historically at
22 Monsanto or that currently existed or
23 the various products that were

1 manufactured.

2 Q. I see. And this was from 1991 forward
3 to the present time?

4 A. 1991 until the present time. And up
5 until the split -- Actually between
6 1980 -- Between 1991 and when we split
7 in -- I believe it was 1997, when we had
8 the split from Monsanto to Solutia. At
9 that time my title was manager of
10 environmental and technical support.
11 And currently my title is manager of
12 environmental affairs, I think only
13 because I'm still in kind of our
14 environmental affairs group.

15 Q. But you do the same thing. They just
16 changed -- They changed the letterhead
17 on the stationery, and they changed the
18 sign out in front of the building. But
19 the fact is you continued to do the same
20 thing?

21 A. From one day to the next day there was
22 really not any difference other than who
23 was signing the paycheck.

1 Q. When was the first time that you had any
2 contact or business dealings with the
3 PCB problem in Anniston?

4 A. The first time that I was involved --
5 and it was only a very limited one-day
6 trip or maybe a two-day trip -- was in
7 November of 1995.

8 Q. Okay. Before November of 1995 had you
9 ever dealt with PCB discharges or spills
10 or problems for either Monsanto or
11 Solutia anywhere?

12 A. No.

13 Q. And had you done any study of PCBs, the
14 characteristics of them or the health
15 implications or the environmental
16 implications or anything like that prior
17 to November of '95?

18 A. No.

19 Q. So --

20 A. And I guess to -- Again, to straighten
21 the record from what I just said, other
22 than, as I mentioned earlier between --
23 or in the 1970s and -- probably up until

1 -- well, 1971 until 1978 when I was
2 involved as a field industrial hygienist
3 I would from time to time go out to the
4 various plants. So I have been through
5 a PCB manufacturing facility.

6 Q. Right. But as far as any problems or
7 anything like that at the Anniston
8 plant, you didn't even know they
9 existed?

10 A. Absolutely, correct.

11 Q. All right. So we come to November 1995.
12 Why did Monsanto send you to Anniston?

13 A. I think -- It is my understanding the
14 reason was -- is that they may need --
15 They felt they might need some
16 additional support in the overall
17 remediation project. They really didn't
18 know. But they did know that I had had
19 a long experience with Monsanto
20 facilities and just asked me to come to
21 the Anniston plant and meet some of the
22 people.

23 Q. Okay. At that time were you informed

1 that Monsanto -- that Monsanto's -- Let
2 me restate that.

3 Mr. Eley, when you went to
4 Anniston in November of '95 or when you
5 were preparing to go, did anybody at
6 Monsanto tell you that Monsanto had had
7 a history of PCB discharges into the
8 environment surrounding the plant for at
9 least twenty-five years?

10 A. No.

11 Q. Did they tell you -- What was your
12 impression as to why there was a
13 remediation? What did they tell you
14 about it?

15 A. Well, at that point in time, I believe,
16 it is my understanding there was a very
17 active sampling program I believe
18 underway on the east side of the plant.
19 And I believe that they were also doing
20 some remediation work at a west end or
21 west side landfill.

22 Q. Why did they do that? Did they tell you
23 what -- why they were doing this

1 remediation?

2 A. I don't believe so.

3 Q. Okay. All you knew was that there was
4 apparently some PCB waste or residues in
5 the property, on the ground there within
6 the plant site? Is that all they told
7 you?

8 A. I think the only thing that I became
9 aware of is that there were landfills, a
10 south landfill that included I guess a
11 number of different cells, and there was
12 a landfill on the west side of the
13 plant.

14 Q. Okay. And nobody at that time told you
15 that the PCBs -- that Monsanto knew that
16 the PCBs were off the property?

17 A. No.

18 Q. Okay. When did you learn that PCBs had
19 escaped from the plant site and were in
20 the surrounding environment? When did
21 you first hear that?

22 MR. PRATER: Object to form.

23 A. I may have -- Well, now that I think

1 about it, when you say on-site,
2 off-site, as I recall, in November of
3 1995 when I came to the plant, again,
4 for two days I believe it was, I was
5 aware that there was sampling that was
6 occurring on the east side of Monsanto
7 property.

8 Q. On property owned by --

9 A. And I'm not sure whether this was
10 property that was owned by Monsanto,
11 even though when you look at the
12 property east of Monsanto and north of
13 Highway 202 there -- I don't know how
14 many acres there are in that particular
15 area, but there are sections or parcels
16 of that that is owned by Monsanto.
17 Whether that monitoring had been done
18 just on Monsanto parcels or in other
19 areas along that ditch system, I'm not
20 quite sure at that particular point in
21 time.

22 Q. So that wasn't brought to your attention
23 one way or the other at the time. You

1 knew there was some sampling going on
2 over there, but it was not -- You don't
3 recall whether anybody told you whether
4 it was on-site or off-site at the time?

5 A. No, no.

6 Q. When is the first time, then -- which I
7 think was my original question -- that
8 you learned that there indeed had been
9 PCB escaping from the plant site
10 property, from Monsanto's property, into
11 the environment?

12 MR. PRATER: Objection.

13 A. I believe I became much more aware of
14 those particular issues in and around
15 March of 1996.

16 Q. Okay. Between November of '95 and March
17 of '96 did you have anything else to do
18 with the Anniston plant?

19 A. No.

20 Q. So in March of '96 what happened?

21 A. In March of 1996 -- Well, Monsanto at
22 the time -- And I may actually go back
23 and forth between Monsanto and Solutia

1 on some of these dates, but at that time
2 it would have been Monsanto. Monsanto
3 had entered into a consent order with
4 the State of Alabama, the Alabama
5 Department of Environmental Management.
6 And as a part of that consent order
7 there was requested for Monsanto to
8 conduct very expansive soil -- PCB and
9 soil monitoring program in various
10 off-site areas.

11 Q. Okay. And that occurred sometime
12 between November of '95 and March of '96
13 to your recollection?

14 A. That's correct.

15 Q. And you had nothing to do with the
16 negotiation with the Department of
17 Environmental Management to arrive at
18 this consent order, did you?

19 A. None whatsoever.

20 Q. The first thing you knew, there was a
21 consent order, and you were requested to
22 help implement it?

23 A. Correct.

1 Q. So in March of '96 you went back to
2 Anniston?

3 A. Went back to Anniston.

4 Q. And what was your job?

5 A. My job specifically was a fairly narrow
6 role. That is to implement, coordinate
7 the off-site soil sampling that was
8 required under that consent order in, I
9 believe, four specific areas. And I
10 think those areas were like area A, B,
11 C, and D.

12 Q. Okay. Did you have anything to do
13 with -- Did you make any sort of
14 qualitative judgments as to where the
15 soil sampling ought to take place, or
16 was this just set out for you by others,
17 that you are to sample here, get so many
18 samples in such a way and take them in
19 areas A, B, C, and D?

20 A. I think generally the procedures were
21 laid out. Most of those types of
22 decisions on actually physically how to
23 take the samples and all of that was

1 done by consultants that Monsanto used
2 for -- in that endeavor.

3 Q. Okay. What specifically did you -- The
4 consent order I suppose set out -- gave
5 a road map of things that had to be
6 done; is that correct?

7 A. That's correct.

8 Q. Then you had consultants, independent
9 people, environmental people who
10 actually did the sampling --

11 A. That's correct.

12 Q. -- did the work?

13 A. That's correct.

14 Q. So tell me precisely, then, what was
15 your role?

16 A. I was the Monsanto representative that
17 would go out and gain access for
18 Monsanto people like myself or
19 contractors to go on-site and actually
20 take the samples at the various
21 properties within these areas.

22 Q. Okay. And how long did that happen --
23 take place?

1 A. The off-site samplings, it seems like it
2 went on for months and months. I'm not
3 quite sure.

4 Q. Were you able to get the samples that
5 were required by the plan?

6 A. I believe so, yes.

7 Q. Let me back up just a little bit. The
8 notice of deposition requested that you
9 bring certain documents to this
10 deposition today. Are you aware of
11 that?

12 A. Yes.

13 Q. Do you -- We have already discussed this
14 with your lawyer, and I think I know
15 what your answer is. Do you have any of
16 those documents with you?

17 A. No, I do not.

18 Q. Why did you not bring any of these
19 documents?

20 A. I think, as we discussed, any of the
21 documents that would be relevant there
22 are Solutia documents or Monsanto
23 documents that have been submitted

1 either to the state or in this
2 particular litigation.

3 Q. Do you know of any documents or notes or
4 memoranda that were made regarding
5 discussions with or interviews of any of
6 the named plaintiffs in this case?

7 A. No.

8 Q. Do you know whether or not you had any
9 discussions with any of the plaintiffs
10 in this case?

11 A. I'm not sure of all the plaintiffs in
12 this case. But there are a couple of
13 individuals that I believe are
14 plaintiffs that I had met and had brief
15 discussions with.

16 Q. What are their names?

17 A. One lady was Louise Kirkland.

18 Q. Okay. And what is the other person's
19 name?

20 A. His name is Mr. McFarland, who had a --
21 His residence was own Bancroft. And I
22 cannot remember his first name.

23 Q. But Mr. McFarland, anyway?

1 A. McFarland.

2 Q. Anybody else that you can recall?

3 A. I believe that there is a Mr. Hobbs, and
4 I think his name is James or Jim Hobbs.
5 I had met Mr. Hobbs.

6 Q. Okay.

7 MR. PRATER: Don, I think any such
8 contacts were inadvertent,
9 and I think Donald Stewart
10 has worked with them or
11 worked those issues out at
12 the time.

13 MR. BARRETT: That's not a
14 problem. I'm not going
15 there.

16 MR. PRATER: Okay.

17 Q. Who else besides Mr. Hobbs that you can
18 recall?

19 A. There was a lady that I met, just had a
20 brief conversation with, and that was --
21 I think her name was Cathy Shears,
22 S-h-e-a-r-s.

23 Q. Okay. We have Ms. Kirkland,

1 Mr. McFarland, Mr. Hobbs, and

2 Ms. Shears. Who else?

3 A. I have talked over the phone with
4 Ms. McCord. Ms. McCord owns the McCord
5 Grocery Store on Clydesdale.

6 Q. Okay. And who else have you -- Anybody
7 else on the telephone?

8 A. I think that's the extent. I think
9 that's the extent of it.

10 Q. Okay. Let's go back then. First, I
11 want to know what Ms. Kirkland, Louise
12 Kirkland, told you. Tell us about your
13 conversation with her.

14 A. Okay. Ms. Kirkland lives on Pine Grove
15 Road or Pine Grove Avenue. And that is
16 in the area where we were to identify
17 the residents and occupants and gain
18 permission to sample in their yard. I
19 had at that particular point in time
20 contacted everyone on Pine Grove except
21 the -- Ms. Kirkland, where she lived.
22 It seemed like no one was ever home.

23 Late one afternoon I happened to

1 see a car there, so I stopped and went
2 in and met Louise Kirkland and
3 inadvertently did not ask her, as I
4 should have, whether she was represented
5 in the case, and briefly discussed with
6 her the soil sampling that Monsanto was
7 doing in the area at the request of the
8 Alabama Department of Environmental
9 Management and asked her permission to
10 take soil samples.

11 These were surface samples in her
12 yard. And she said fine and gave me
13 written permission to take those
14 samples. We did then take those samples
15 and have those analyzed. And it was
16 only after I had that discussion with
17 her did I learn that in fact she was a
18 plaintiff in this particular case.

19 Q. Was that the sole extent of your
20 conversation?

21 A. That was the sole extent of the
22 conversation.

23 Q. By the way, do you remember what those

1 results were?

2 A. The results in both cases, one sample in
3 the front yard and one sample in the
4 back yard, were less than five as per
5 the immunoassay screening technique that
6 our consultants were using.

7 Q. Less than five what?

8 A. Less than five PPM. Excuse me.

9 Q. You mean you had a sampling technique
10 that the detection limit was five parts
11 per million?

12 A. On the screening, on the immunoassay
13 screening -- And I don't know all the
14 technicalities of this particular
15 procedure. But we used a procedure, and
16 this was a similar procedure that I
17 believe had been used by both the
18 Alabama Department of Public Health and
19 ADEM in their sampling. This was a
20 screening at five PPM. Now, if the
21 result comes back and it says less than
22 the screening level of five, it has been
23 our experience that that does not mean

1 that it is perhaps four point nine. We
2 just can't tell. We just know it is
3 less than five PPM.

4 Q. Could be four point nine?

5 A. Could be. But our experience would
6 indicate it is a fairly conservative
7 method. And generally when we screen at
8 less than five, it has been our
9 experience -- again, not in every case,
10 but it has been our experience that we
11 were generally less than three or
12 something of that sort.

13 Q. Okay. And that's it with Ms. Kirkland?

14 A. Correct.

15 Q. What about Mr. McFarland on Bancroft?

16 A. Mr. McFarland lived in one of the areas
17 in which we were doing soil sampling.
18 So I approached Mr. McFarland along with
19 his -- also I think at the time he lived
20 next door to his grandfather, and then
21 his brother lived in an adjacent
22 property. And I discussed our soil
23 sampling program and gained his

1 permission to conduct sampling on his
2 property. So that was a fairly brief
3 conversation.

4 I saw Mr. McFarland some months
5 later when -- at that time the
6 residential purchase property program
7 had been expanded to include not only
8 the east side area but also a north side
9 area, encompassing his property. And I
10 went over there and met with
11 Mr. McFarland with a lady from -- who
12 was coordinating that purchase property
13 program from Prudential Relocation
14 Services.

15 Q. Who was working for y'all?

16 A. Working as a consultant for Monsanto.

17 Q. Okay.

18 A. And I accompanied her over there to make
19 the offer on -- to Mr. McFarland on his
20 property.

21 Q. And how did that conversation go?

22 A. I guess the conversation -- Well, I
23 don't know. What do you mean, how did

1 it go? I mean, the conversation went
2 well.

3 Q. I'm sorry. What did he say, and what
4 did you say?

5 A. Oh, I don't think I was really a part of
6 that conversation. I accompanied the
7 consultant over there only because I was
8 familiar with the area and knew the
9 people. The offer went forth in writing
10 to Mr. McFarland. And as I recall, he
11 looked at the offer and looked at the
12 information there and seemed like he was
13 quite pleased with that offer and felt
14 that was certainly a reasonable offer
15 for his property.

16 Q. Did he take the offer?

17 A. I guess it was sometime subsequent to
18 that meeting did we find out that
19 Mr. McFarland had joined as a plaintiff
20 in the litigation, and so I think all
21 contact, to the best of my knowledge,
22 was broken off at that time.

23 Q. So in fact he did not ever accept the

1 offer and consummate the purchase?

2 A. That's correct. That's my
3 understanding.

4 Q. Okay. What was the offer for his
5 property?

6 A. I'm afraid I don't know.

7 Q. Okay. Do you have any idea?

8 A. I have no idea.

9 Q. Okay. What was the range of offers for
10 residential properties that Monsanto was
11 making?

12 A. Under those residential purchase
13 property programs, I have seen numbers,
14 but it would be speculation to even give
15 you a range. I just was not that
16 actively involved in the appraisal
17 process or drafting those offers or
18 anything of that sort.

19 Q. Okay. Who was in charge of that?

20 A. The lady from Prudential Services at
21 that particular point in time that was
22 working directly with the property
23 owners was Sherry Wartell.

1 Q. Where did Ms. Wartell live?

2 A. Ms. Wartell lives in Houston, Texas.

3 Q. And who was she working for specifically
4 in Anniston? Under whose supervision
5 and operation was she working, yours?

6 A. Well, they were consultants to Solutia.
7 No. They certainly weren't working
8 under my supervision at all.

9 Q. Whose supervision was she working under?

10 A. I'm not -- I think it would have been at
11 that particular point in time under the
12 supervision of Alan Faust, who was our
13 -- and continues to be our remediation
14 project manager.

15 Q. Did you ever have any other conversation
16 with Mr. McFarland or overhear any other
17 conversation?

18 A. No.

19 Q. The first one just being he granted you
20 permission in some words, short words,
21 said okay, fine?

22 A. Yeah. It was written permission in all
23 cases.

1 Q. But nothing beyond that?

2 A. That's correct.

3 Q. Okay. What about Jim Hobbs?

4 A. Mr. Hobbs is a property owner at the
5 intersection -- This is commercial plot
6 owner at the intersection of West Tenth
7 Street and Duncan Avenue. Mr. Hobbs had
8 contacted -- I don't know whether it was
9 the plant manager. I think it may have
10 been Alan Faust, inquiring on the PCB in
11 soil monitoring that Monsanto had been
12 doing and whether we would perform some
13 sampling on his residential property.

14 (Mr. Warran Lightfoot entered
15 the deposition proceedings.)

16 Q. Okay.

17 A. At that point in time that particular
18 property served as his office, and also
19 he leased that property to a gas
20 cylinder supply company. As a result of
21 that, I went over and talked with
22 Mr. Hobbs, told him about the monitoring
23 program that we had underway in the

1 north side area. And when I say the
2 north side area, I'm talking about the
3 area really bounded by Duncan, West
4 Tenth Street, and Clydesdale. And I
5 talked about the PCB issue from the
6 standpoint of the two drainage ditches
7 and indicated to him that given where
8 his property was located, that he was
9 certainly out of the flooding of those
10 particular drainage ditches but that we
11 hadn't really taken, as I recall,
12 samples right next to his property
13 across the street and that we would do
14 some sampling on his property, which we
15 subsequently did.

16 Q. Okay. And was that -- Did you ever have
17 any further conversations with Mr. Hobbs
18 about that?

19 A. After we conducted the soil sampling,
20 I'm pretty sure that I had written him a
21 letter indicating the sample results.

22 Q. Okay. And do you know what those -- Can
23 you remember what those sample results

1 were?

2 A. I think there were five or six samples
3 taken. Again, those were screened at a
4 level of five PPM, and all of those were
5 less than the screening level used by,
6 again, the air sampling -- the soil
7 sampling consultants that we used.

8 Q. Do you know why you chose or why your
9 consultants chose such a high detection
10 limit?

11 A. I don't believe it was the consultants
12 that chose those. It is my
13 understanding that that was a part of
14 that procedure and, again, a part of
15 that consent order and the sampling
16 procedure. And I think it originated
17 back to the particular technique or
18 methodology being used by the Alabama
19 Department of Environmental Management
20 and the Public Health Department.

21 Q. Did you ever have any further discussion
22 with Mr. Hobbs? That is, did he ever
23 say anything to you in any way?

1 A. No, other than just thank you.

2 Q. Okay. Tell us about your conversation
3 on the telephone with Cathy Shears.

4 A. Well, Cathy Shears is the one --

5 Q. You had a brief conversation and spoke
6 to her, that's correct.

7 A. Correct. I spoke with her. As a part
8 of the off-site monitoring program, we
9 were sampling properties immediately
10 south and immediately north of -- or
11 adjacent to West Tenth Street between
12 Duncan and at that time Parkwin. And
13 Ms. Shears, I believe, owned two
14 properties, either one or two properties
15 that were right along West Tenth Street.

16 And so I went and talked with
17 Ms. Shears about -- I'm not so sure that
18 I even got into the discussion of
19 sampling because I did ask her whether
20 she was represented by counsel or
21 involved in any litigations. At that
22 point in time she said yes and I said,
23 "Well, that being the case, then, we

1 really can't discuss things any
2 further." And so at that point in time
3 the conversation was severed, and I
4 left.

5 Q. So she didn't really -- She never said
6 anything to you that had anything to do
7 with this lawsuit specifically?

8 A. No. The only thing that she happened to
9 mention -- either she mentioned or
10 someone there at that particular
11 property mentioned was the odor evolving
12 from the Monsanto facility back some
13 years ago. They made some comment to
14 that effect.

15 Q. Okay. I see. And no other
16 conversation?

17 A. No.

18 Q. Now, you had a telephone conversation
19 with a Ms. McCord who owns a grocery
20 store over on Clydesdale?

21 A. Correct. It is my understanding that
22 Ms. McCord had discussed with one of the
23 other property owners along West Tenth

1 Street on what Monsanto's intent was in
2 terms of purchasing additional
3 properties north of West Tenth Street.
4 And the person that she talked with
5 evidently had -- I had met sometime or
6 she had my name. And so Ms. McCord
7 called me over at the plant. I was not
8 at the plant at that time. My office
9 was in St. Louis. But they contacted
10 me, and I called Ms. McCord.

11 Q. Okay.

12 A. And I told her at that point in time to
13 the best of my knowledge, no, we had no
14 plans of purchasing property in that
15 particular area. And as I gather from
16 that telephone conversation -- and I
17 believe this was the individual that
18 brought up the point that she was
19 looking at doing some modernization or
20 improvements on that particular
21 structure and that she just had a
22 general inquiry and wanted to know what
23 our intention was before she made

1 further improvements in the property.

2 Q. And what did you tell her?

3 A. I told her at that particular point in
4 time to the best of my knowledge we do
5 not have any plans of purchasing any
6 properties in that particular area and
7 that it was my idea that, if she cared,
8 to proceed with what improvements she
9 had planned.

10 Q. Okay. How long did your soil sampling
11 in areas A through D last there? How
12 long were you in Anniston?

13 A. Well, I'm still in Anniston --

14 Q. Okay.

15 A. -- working on other types of projects.
16 I can't recall. The only way I could
17 answer that is to know when the final
18 report was submitted to the Alabama
19 Department of Environmental Management
20 that summarized all of the off-site
21 sampling done in areas A, B, C, and D
22 and expanded into another area that we
23 called E.

1 Q. Where was E?

2 A. E was an area that covered the west --
3 the area along West Tenth Street and
4 extending over to Parkwin. The original
5 area -- And I don't know if it was area
6 D or which particular area it was. But
7 the way it was drawn or demarcated by
8 the Alabama Department of Public Health
9 -- because I think they are the people
10 that actually drew the maps. That is my
11 understanding -- that area only went
12 east to a point directly behind what was
13 the Lambert Recycling center, about
14 midway between Parkwin Avenue and
15 Clydesdale.

16 Q. Okay. Let me ask you. Did you find, in
17 your sampling, samples in area A that
18 exceeded the five parts per million
19 detection limit of PCBs?

20 A. I would have to -- And you may have a
21 little bit better idea at this junction
22 of what area A was. At one time, yes,
23 you know, the A, B, C, and D, but it

1 really got to the point where we had the
2 four areas: one area being on or along
3 Zinn Parkway; another area being west of
4 our facility, along First Avenue;
5 another area, the north side area over
6 there along West Tenth and West Ninth
7 Street; and the other area over there by
8 the First Missionary Baptist Church and
9 Pine Grove area. So that is the way --
10 And if you ask me right now which was A,
11 B, C, and D, I can't tell you.

12 Q. That is difficult for you. Let me ask
13 you. Did you find -- Were there samples
14 taken in areas A, B, C, or D that had --
15 where PCBs were found above the
16 detection limit set of five parts per
17 million?

18 A. Yes.

19 Q. Were they found -- how many of those
20 samples did you find?

21 A. What we would normally do, just to clear
22 this up a little bit, is we would take
23 the soil samples, not myself, but the

1 consultants would take the soil samples.
2 They would screen those samples, and
3 then any samples that resulted in a
4 screening level greater than five, using
5 their technique, would then be sent to
6 an outside laboratory for analysis, that
7 analysis being more sophisticated, using
8 GC and electronic capture detection.

9 Q. Right.

10 A. And then we would then get back
11 analytical results on those particular
12 samples.

13 Q. Right.

14 A. It is very difficult and I'm not so sure
15 that I can give you a fair
16 representation of -- If you looked at
17 the total number of samples that were
18 taken in all of these areas, I'm not so
19 sure I could really do justice in
20 telling you what percent or how many of
21 those were above the screening level of
22 five. There were -- and it depended
23 upon what particular area. In some

1 areas, very few. In another area,
2 particularly I guess over there between
3 -- in or around the Lambert Recycling
4 and right behind there, where you have
5 the drainage ditch, there were I believe
6 a high percentage of those that were
7 above the screening level of five.

8 Q. What is the highest level that you
9 remember?

10 A. In that particular area around that
11 drainage ditch?

12 Q. Anywhere in areas A, B, C, or D.

13 MR. LIGHTFOOT: Six.

14 THE WITNESS: Excuse me?

15 MR. LIGHTFOOT: Trying to harass
16 Mr. Barrett down there. Go
17 ahead.

18 A. In A, B, C, or D, as I recall, the
19 highest that I can recall in A, B, C, or
20 D was on the order of three hundred and
21 fifty parts per million.

22 Q. Okay.

23 MR. PRATER: Don, you are making a

1 lot of progress and moving
2 fine. But can we take a
3 short break?

4 MR. BARRETT: Sure.

5 (A break was taken.)

6 Q. Mr. Eley, after you got through testing
7 these areas you testified about, have
8 you done anything further for Monsanto
9 in connection with their PCB problem in
10 Anniston?

11 A. I've had a number of projects after
12 that. The ones that come to mind is a
13 part of the residential purchase
14 property program on the east and north
15 side after we acquired a number of those
16 structures.

17 Q. Why did you buy those structures? Why
18 did Monsanto want to acquire those
19 houses?

20 A. I really wasn't involved in the
21 implementation or design of that
22 purchase property program.

23 Q. But somebody is bound to have told you.

1 You had to know.

2 A. I don't think anyone ever sat me down
3 and said this is why we are doing this.
4 I mean, I did know that there is a large
5 acreage on the east side and the north
6 side that were adjacent to the two
7 ditches, that we needed to acquire those
8 properties just to put in an engineering
9 remediation, which we have essentially
10 done. But I was not involved in those
11 type of discussions.

12 Q. I see.

13 A. In order to prepare those areas such
14 that we could perform the construction
15 necessary for the remediation, we
16 demolished approximately fifty
17 structures at one time and then came
18 back some months later and demolished
19 six or seven structures. And I
20 coordinated the demolition of those
21 particular structures.

22 Q. Okay. And this was -- The acquisitions
23 were made because of the PCB problem in

1 the area; is that a fair statement?

2 MR. PRATER: Object to the form.

3 A. Well, it is my understanding that the
4 acquisitions of both those purchase
5 property programs certainly originated
6 with the issue of PCBs associated with
7 those two drainage systems on the east
8 and west side of the plant.

9 Q. Okay. All right. How long did the
10 purchase of these properties take? How
11 many months was involved in that?

12 A. I think that that purchase property
13 program was well over a year, but,
14 again, I'm not sure exactly at what time
15 it started and when it stopped.

16 Q. Okay. And you bought some sixty-five
17 properties?

18 A. I'm not sure all total how many
19 properties. A number of these
20 properties were only empty lots, so I'm
21 not sure what the final count was.

22 Q. And what was the price range for these
23 purchases?

1 A. I have no idea on the price range. From
2 time to time I would hear a price, but I
3 just don't recall that information.

4 Q. You don't have any idea? You were the
5 coordinator, and you don't have any
6 idea?

7 A. No. I didn't have any -- From the
8 standpoint of the actual residential
9 purchase property program, I didn't
10 coordinate that. That had begun before
11 I even came on-site.

12 Q. What did you do?

13 A. I wasn't involved in that aspect of the
14 program. What I was talking about was
15 demolishing the houses after they had
16 been purchased by Monsanto.

17 Q. Okay. During the course of that program
18 did you have any conversations with any
19 of the plaintiffs in this case?

20 A. I don't believe so.

21 Q. All right. Did you learn anything about
22 this case that's relevant to this
23 lawsuit that you know anything about?

1 MR. PRATER: Object to form.

2 A. No.

3 Q. What about after that? What have you
4 done?

5 A. I think prior to the demolition project
6 I was also involved in a program of
7 temporary relocation and housecleaning
8 for occupants in the east side area that
9 had not moved or were selling properties
10 and yet it would take sometime for them
11 to close on other properties. And we
12 had a program which we offered that
13 involved cleaning their house.

14 Q. Why on earth would Monsanto clean
15 somebody's house?

16 A. Again, I think this was -- I don't think
17 this was a part of the consent order,
18 but I think -- I don't know whether it
19 was an addendum to that consent order.
20 But that was something that was
21 reviewed, commented on, and approved
22 between Solutia and the Alabama
23 Department of Public Health and ADEM.

1 Q. Do you know why?

2 A. No.

3 Q. You never heard it was because there
4 were PCBs in the dust that was settling
5 in these people's homes?

6 A. No.

7 Q. Did you have an opinion at the time that
8 these homes were being cleaned because
9 of some problem with PCBs in the dust or
10 not?

11 MR. PRATER: Object to the form.

12 A. I think I had an opinion at the time
13 that the housecleaning was being offered
14 to people because of a concern that
15 those individuals may have regarding
16 possible contamination with dust
17 containing PCBs.

18 Q. But you yourself were never told of any
19 actual findings of PCBs in the dust that
20 was made by anybody; is that correct?

21 A. As I recall, I think I had seen some
22 information, and I think this was
23 information that derived from the

1 Alabama Department of Public Health or
2 ADEM on some levels of PCB in dust in
3 samples they collected.

4 Q. So the answer is yes?

5 A. Yes.

6 Q. When you were sampling areas A, B, C,
7 and D, doing soil sampling, did you do
8 any dust sampling?

9 A. No.

10 Q. Why not?

11 A. Again, we had a particular procedure
12 that was approved as part of that
13 off-site sampling, and that procedure as
14 I understand dealt solely with the issue
15 of taking soil samples in off-site
16 areas.

17 Q. Okay. What else have you done on behalf
18 of Monsanto or Solutia in Anniston?

19 A. For several months I was involved in
20 working with a committee set up at the
21 Bethel Missionary Baptist Church, I
22 think -- I call it the relocation
23 committee -- on acquiring new

1 furnishings and equipment for the church
2 that was subsequently built at their new
3 location. And I don't recall exactly
4 what the address was. But for a period
5 of several months I worked directly with
6 the church committee in acquiring what
7 furnishings and equipment they needed.

8 Q. Did you buy them a van?

9 A. I wasn't involved in the purchase of the
10 van.

11 MR. BARRETT: Off the record.

12 (Discussion held off record.)

13 Q. During those months did you have any
14 other job at Monsanto or Solutia other
15 than the work with this committee at the
16 church to buy them --

17 A. Well, that was one of the particular
18 projects, and I'm not sure exactly when
19 that time was. But in addition to that
20 there were times that I was actively
21 involved in purchasing some commercial
22 properties that the remediation project
23 management felt they needed in order to

1 perform the engineering work and
2 construction work.

3 Q. I see. In connection with the cleanup
4 of the PCBs?

5 A. Correct. The remediation on, again, the
6 east side and north side areas.

7 Q. All right. And what else have you done
8 there in Anniston?

9 A. At one time we were using a borrow pit
10 on Monsanto property south of Highway
11 202. And prior to going in there and
12 using that soil, part of that borrow
13 pit, I was asked to go meet with the
14 local residents on Monsanto Drive near
15 there just to make them aware of what
16 kind of activities we were going to be
17 starting such that when they heard heavy
18 equipment and bulldozers or whatever,
19 they knew what we were doing.

20 Q. Okay. In the course of doing that did
21 you have any discussions with any of the
22 named plaintiffs in this case to your
23 knowledge?

1 A. I don't believe so, no.

2 Q. Have you ever had, other than these
3 discussions you have already testified
4 to, any discussions with any of the
5 named plaintiffs in this case?

6 A. I don't believe I have, no.

7 Q. All right. And what else have you done
8 for Monsanto?

9 A. Sometime in 19 -- 1998, toward the
10 latter part of the year, Solutia was
11 requested by the Alabama Department of
12 Environmental Management to do surveys
13 along Snow Creek where there were
14 possible dredging piles located,
15 dredging materials that had been dredged
16 by the city or whomever over the last
17 number of years. In order for us to do
18 those surveys, we needed to gain
19 permission from property owners. So
20 again, I determined who property owners
21 were along Snow Creek in certain areas
22 where we thought there may be debris
23 piles -- not debris piles, but dredging

1 piles, and contacted those property
2 owners for one of our consultants, a
3 hydrologist, to do an on-site survey.

4 Q. And were those surveys accomplished with
5 the way Monsanto or Solutia wanted them
6 to be accomplished?

7 A. To the best of my knowledge, yes.

8 Q. Did they take soil samples?

9 A. No.

10 Q. What did they do?

11 A. It was a visual on-site survey where
12 there were certain parameters, certain
13 criteria that were noted by the
14 hydrologist from the standpoint of
15 existence of possible debris material,
16 where the debris material was situated,
17 what was the extent of vegetation, what
18 was the slope angles, what was the
19 length, width, this type of preliminary
20 data.

21 Q. While you were there, why didn't you
22 take a PCB sample? Isn't that what you
23 were looking for, whether or not there

1 is PCB along Snow Creek?

2 MR. PRATER: Object to form.

3 A. Again, I'm not sure exactly how those
4 surveys were initiated. The only thing
5 I was asked to do is get permission from
6 the property owners for an individual to
7 go on-site, if they could go on-site,
8 because some of those areas were fairly
9 difficult to get to, and collect this
10 kind of data. Again, the request came
11 from ADEM. So other than that, I was
12 not aware of what would be happening
13 with that data.

14 Q. Okay. So to your knowledge, do you know
15 of any sampling, PCB sampling, that has
16 been done of sediments or dredged
17 materials either in or along Snow Creek?

18 A. It is my understanding that in the past
19 there may have been some soil samples of
20 sediment taken, but I don't recall --

21 Q. Anything about it?

22 A. -- seeing that.

23 Q. And did you accompany the hydrologist

1 consultant who went down and took these
2 measurements along Snow Creek?

3 A. No.

4 Q. Did you read his report, or did you talk
5 to him about what he found?

6 A. I read a section of his report only to
7 see what kind of data and in what form
8 was submitted to ADEM, principally
9 because there was one of the property
10 owners that requested that any data that
11 was sent to ADEM be sent to him. And so
12 I had to determine, well, when do we
13 send data and what data was sent that
14 pertained to this property owner's
15 property such that I could then send him
16 the information, which I did.

17 Q. Did -- do you know whether or not the
18 hydrologist discovered that there were
19 dredge materials along the bank of Snow
20 Creek?

21 A. It is my understanding there were
22 materials that looked like they came
23 from dredging in the past.

1 Q. I see. What other jobs have you
2 performed for Monsanto or Solutia in
3 Anniston?

4 A. I've been involved in what we call spot
5 remediations on some of the off-site
6 areas.

7 Q. Tell us what that is.

8 A. That would be where we sampled, for
9 example, a property on Zinn Parkway.

10 Q. Okay.

11 A. And the results of that soil sampling
12 indicated that levels were higher than
13 the screening level, and that had been
14 confirmed by analytical result. In that
15 case we would look at where those --
16 look at that property and look at where
17 those -- the extent of that impacted
18 area and then go in and essentially
19 remove that soil.

20 Q. Okay. And how would you know what the
21 impacted area was or is?

22 A. Through additional soil sampling taken
23 in a grid-like pattern around that area.

1 Q. I see. So you would find -- you
2 occasionally found hot spots of PCBs in
3 your sampling?

4 MR. PRATER: Object to form.

5 A. Yeah. We would find levels that would
6 be in excess of five PPM.

7 Q. Okay. And you felt it necessary to
8 carry that material away? What did you
9 do with it?

10 MR. PRATER: Object to the form.

11 A. Well, when we originally went out, I
12 think it was really a commitment we made
13 with the property owners that if we
14 found levels in excess, that we would
15 determine how best to remove that or
16 remediate that. In most cases it would
17 be either using a combination of
18 back-hoe or track-hoe. Generally that
19 would be the two we would use.

20 Q. Take it out of there and get rid of it?

21 A. We would take it out of there, and then
22 we had a procedure that had been written
23 up and reviewed, commented on and

1 approved by, I believe it was, the ADEM
2 people. And the procedure called for
3 the movement of that material over to a
4 fenced restricted area on Monsanto
5 property.

6 Q. What sort of relationship -- You talked
7 several times about the various
8 agreements that have been made with
9 ADEM. What sort of working relationship
10 has Monsanto or Solutia had with ADEM
11 from your observation?

12 A. Well, I guess I would characterize the
13 relationship as being a good one, a
14 professional relationship.

15 Q. They have managed to -- I mean, have you
16 gotten -- So far on every issue have you
17 worked out an agreement with ADEM as to
18 what needs to be done?

19 A. I don't know.

20 Q. But you haven't, as I understand it,
21 been privy to any of those negotiations
22 yourself anyway?

23 A. No, I have not.

1 Q. And what other activities have you
2 undertaken for Monsanto or Solutia?

3 MR. PRATER: Again in Anniston?

4 Q. In Anniston.

5 A. I think I've covered just about all the
6 ones I can think of.

7 Q. What are you doing now?

8 A. Now I'm still involved in doing some of
9 the spot remediations that I spoke
10 about. I'm still involved in those.
11 There are also several properties that
12 Solutia is acquiring, so I'm just seeing
13 where we are in terms of our -- those
14 real estate transactions, of when they
15 are going to close, whether the
16 conditions have been met for closing of
17 those transactions.

18 Q. How far away from the plant has Monsanto
19 either bought property or negotiated to
20 buy it, attempted to buy property in
21 connection with this PCB problem?

22 A. All the property I'm aware of has been
23 restricted to the -- either adjacent to

1 or right in the area of the east side
2 property and the north side property
3 extending to West Tenth Street. The
4 only other area that I'm aware of that
5 we have purchased property more than,
6 let's say, a couple of miles from the
7 plant, was a parcel that has been used
8 for many years, the borrow pit. And we
9 have used it as a source of clay
10 material.

11 Q. You said the only other place that we
12 have bought property more than a couple
13 of miles from the plant has been at this
14 borrow pit.

15 A. Right.

16 Q. Have you in fact bought property in
17 connection with this PCB problem two
18 miles from the plant?

19 A. No, no. And perhaps it was terminology.
20 I think all the property we have
21 acquired has been adjacent to the plant
22 or between an area bounded by Montrose
23 Avenue, West Eleventh Street or the

1 railroad tracks that adjoin West
2 Eleventh Street, and Bancroft Avenue
3 south of West Ninth Street. I just
4 don't know what the distances there are.

5 Q. Okay. How long have you known that you
6 were listed as a potential fact witness
7 on behalf of Monsanto for this trial
8 that we are here about today?

9 A. Last Wednesday.

10 Q. Okay. And have you had any discussions
11 with the attorneys representing Monsanto
12 prior to last Wednesday?

13 MR. PRATER: Object to the form.

14 I trust you are not going to
15 get into privileged issues.

16 MR. BARRETT: I don't know. We
17 will see.

18 A. You mean concerning this case?

19 Q. Yes.

20 A. No.

21 Q. So last Wednesday, then, would have been
22 the first conversation you had with the
23 attorneys concerning this case, or did

1 you have a conversation last Wednesday?

2 A. I had a conversation last Wednesday
3 saying to come to Birmingham --

4 Q. Okay.

5 A. -- this week.

6 Q. Okay. When was the first time that you
7 have talked to Mr. Prater or
8 Mr. Lightfoot or to any other attorneys
9 representing Monsanto about this case?

10 A. Yesterday.

11 Q. Okay. And how long a conversation was
12 that?

13 A. I think it was on the order of
14 forty-five minutes.

15 Q. Okay. And what did -- Tell us about
16 that conversation. What did they ask
17 you?

18 MR. LIGHTFOOT: Objection. Don't
19 answer that. That is
20 privileged.

21 Q. What did you tell them about this case?

22 MR. PRATER: Same objection.

23 MR. LIGHTFOOT: Don't answer.

1 That is privileged. He is
2 testing to see if we are
3 awake. We are awake.

4 Q. Did you -- Have you talked with your
5 attorneys about any other areas than we
6 have discussed today?

7 MR. LIGHTFOOT: Objection. Don't
8 answer. That is privileged.

9 Q. Are you going to decline to answer that?

10 A. Yes. I will decline to answer that.

11 Q. Other than the forty-five minutes you
12 talked to the lawyers, have you had any
13 other conversation with them since then
14 before this deposition began? You said
15 last Wednesday you talked forty-five
16 minutes with them. Have you had any
17 other conversations since then?

18 A. Well, I guess --

19 MR. PRATER: He and I met for a
20 little while today.

21 A. We met prior to us having lunch brought
22 in for maybe at most twenty minutes,
23 fifteen minutes or so.

1 MR. LIGHTFOOT: Bruce, you may not
2 be able to follow when we let
3 you answer and when we don't.
4 He is entitled to ask you
5 have you talked to us, where
6 were you, how long was it,
7 what day it was. But he is
8 not allowed to get into the
9 content of the discussion.
10 That is where we draw the
11 line.

12 MR. PRATER: Off the record.

13 (Discussion held off record.)

14 Q. Were you given any documents to review
15 by your lawyers?

16 MR. PRATER: Objection. Don't
17 answer.

18 A. I decline to answer.

19 Q. Have you reviewed any documents in
20 connection with the preparation of your
21 testimony?

22 MR. LIGHTFOOT: Hang on one
23 second.

1 You can answer.

2 A. Okay. Would you repeat that question?

3 Q. Have you reviewed any documents in
4 connection with your preparation to take
5 this deposition?

6 A. In preparation, no.

7 Q. Have you reviewed any documents
8 concerning this litigation at any time
9 within the last -- since learning that
10 you have been selected as a witness or
11 named as a potential witness?

12 A. No documents other than documents that
13 I've looked at in conjunction with
14 specific work requested by counsel.

15 Q. Within the last week?

16 A. Correct.

17 Q. What documents have you looked at within
18 the last week?

19 MR. PRATER: Don't answer that if
20 it was done at the request
21 and direction of counsel.
22 That is privileged.

23 A. I decline to answer the question.

1 Q. Have you reviewed any depositions in
2 connection with your preparation for
3 this deposition?

4 A. No.

5 Q. Regardless of what source they came from
6 -- I don't want to know who gave them to
7 you or why or anything else -- tell me
8 what documents you have reviewed in the
9 last week concerning this case.

10 MR. PRATER: I will allow him to
11 answer that with respect to
12 documents other than those
13 that may have been provided
14 to him by counsel that he
15 reviewed at the request and
16 direction of counsel, if
17 there are any such documents.

18 MR. BARRETT: I think y'all are on
19 thin ice right now. I think
20 you're wrong on that.

21 MR. LIGHTFOOT: We are close.

22 MR. BARRETT: I'll ask you to
23 reconsider that.

1 MR. LIGHTFOOT: Let's take a short
2 break on that.

3 (A break was taken.)

4 MR. LIGHTFOOT: I'll tell you the
5 way we come down on that,
6 Don. I think you are
7 entitled to know about -- the
8 identity of any documents
9 that we furnished to the
10 witness to prepare him to
11 testify. Whether it
12 refreshes his memory or not,
13 if it is to prepare for the
14 deposition, you are entitled
15 to know about it. We are
16 going to let him answer any
17 questions about those kinds
18 of documents.

19 What you are not
20 entitled to know about is a
21 separate project that
22 involves trial preparation.
23 It is not this witness's

1 testimony. It is help he is
2 giving counsel on our work
3 product. And we are going to
4 shield that. We may be right
5 or wrong, but -- You know, we
6 don't ask you to agree with
7 it.

8 MR. PRATER: We didn't know how to
9 articulate that in the
10 objections we were making
11 earlier.

12 MR. BARRETT: That's fine.

13 Q. So you understand what you are going to
14 be allowed to tell me?

15 A. Yes.

16 Q. Tell me. What documents?

17 A. It is my understanding I should speak to
18 any documents which I have looked at and
19 reviewed in preparation for my
20 deposition today that deal with this
21 particular case.

22 Q. That's correct.

23 A. And the only document that I can recall

1 looking at is a document that was
2 authored by me that was an example of a
3 communication to a property owner
4 discussing the results of the soil
5 sampling done on his premises.

6 Q. Okay. Is there any knowledge that you
7 have about this case that we have not
8 talked about so far today in this
9 deposition?

10 MR. LIGHTFOOT: Bruce, don't
11 answer as it relates to any
12 work product project you may
13 have for the lawyers. That
14 is a very broad question he
15 is asking you now, is there
16 anything that you know about.

17 A. I guess I'm thinking in terms of any
18 specific projects or work that I have
19 been involved in at Anniston on the
20 whole issue of PCB remediation --

21 Q. Right.

22 A. -- that has not surfaced today.

23 Q. Right.

1 A. And I cannot think -- I can't think of
2 any, no.

3 Q. There is not any fact -- Or is there any
4 fact that you know that concerns this
5 case that you have not testified about?
6 Is there anything about this case that I
7 have neglected to ask you or that you
8 know about that you are prepared to
9 testify about in this case?

10 MR. PRATER: Object to form.

11 A. No, I don't believe so.

12 MR. BARRETT: Mr. Eley, I enjoyed
13 visiting with you.

14 THE WITNESS: I did too.

15
16 (The deposition concluded at
17 3:00 p.m.)

18
19
20
21
22
23

1 I do hereby certify that the witness
2 whose attached deposition was taken before me
3 was by me first duly cautioned and sworn to
4 tell nothing but the truth in the cause
5 aforesaid; that the testimony contained herein
6 was by me reduced to writing in the presence
7 of said witnesses by means of stenography and
8 afterwards transcribed by means of computer
9 aided transcription. The foregoing is a true
10 and accurate transcript of the whole of the
11 testimony given by said witness, as aforesaid.

12 I do further certify that I am not
13 connected by blood or marriage with any of the
14 parties or their attorneys or agents and that
15 I am not an employee of any of them, nor
16 interested in the matter of controversy.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand and affixed my notarial seal at
19 Gadsden, Alabama, County of Etowah, this 18th
20 day of January 1999.

COPY

21 _____
22 Deborah Salers Garrett
23 Certified Shorthand Reporter
Registered Professional Reporter
Notary Public, Alabama-at-Large
My Commission expires: 3-7-2001

WITNESS' CERTIFICATE

I, the undersigned, BRUCE W. ELEY, do hereby certify that I have read the foregoing deposition transcript and that to the best of my knowledge said deposition is true and accurate with the exception of the following corrections listed below:

Page	Line	Reason for Change or Correction
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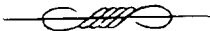
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(DATE)

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1/20/00

Regional Reporting Service, Inc. *Orig. to Thomas to
get w/ deposition*


755 Walnut Street
Post Office Box 755
Gadsden, Alabama 35901-0755

January 18, 2000

Don Barrett, Esq., Esq.
Richard Barrett, Esq.
Katherine Barrett, Esq.
Barrett Law Office, P. A.
P. O. Box 987
Lexington, Mississippi 39095

In Re: Sabrina Abernathy, et al., Vs. Monsanto Company, et al.,

Dear Mr. Barrett:

Enclosed is the original transcript and affidavit for the deposition of Bruce W. Eley, taken in the above-mentioned case.

If you have any questions or if I can be of any further assistance, please do not hesitate to call on me.

Thanks again so very much,

Deborah Salers Garrett
Court Reporter

Enc.
cc. Harlan Prater, IV, Esq.

Regional Reporting Service, Inc.


755 Walnut Street
Post Office Box 755
Gadsden, Alabama 35901-0755

**STATE OF ALABAMA
IN THE CIRCUIT COURT OF CALHOUN COUNTY**

Sabrina Abernathy, et al.,

Plaintiff,

CIVIL ACTION

Monsanto Company, et al.,

CV-96-269
(Consolidated)

Defendants,

AFFIDAVIT

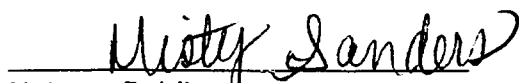
The undersigned affiant, being duly sworn, on oath says that the transcript of the foregoing deposition was made available for reading and signing by the deponent herein, said notification of availability having made via United States Mail and attorney's office on January 18, 1999.

To this date the deponent ~~has failed or refused to execute the foregoing~~ deposition transcript, and the deposition of BRUCE W. ELEY taken in the above-styled cause was mailed via United States Mail to the attorney who took said deposition this the 18th day of January, 2000.

Further Affiant Saith Not



Subscribed and sworn to before me this 18th day of January, 2000.
My commission expires: 11-01-2003.


Notary Public