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ATTORNEYS FOR Third-Party Defendant
Monsanto Company

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. L-073370-86

CITY OF PERTH AMBOY,
A Municipal Corporation,

Plaintiff/
Counterclaim-
Defendant,

v.

WITCO CORPORATION,

Defendant/
Counterclaimant/
Third-Party
Plaintiff,

v.

MONSANTO COMPANY, et al.

Third-Party
Defendants.

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Civil Action

ORDER DENYING THIRD-PARTY
PLAINTIFF WITCO CORPORATION'S
APPLICATION TO COMPEL DISCOVERY

This matter having been opened to the Court on
application by Carella, Byrne, Bain, Gilfillan, Cecchi & Stewart,

HARTOLDMON0044392

attorneys for Defendant/Counterclaimant/Third-Party Plaintiff Witco Corporation ("Witco") for an Order, to compel Third-Party Defendant Monsanto Company ("Monsanto") to produce a "computer index to PCB-related documents," and counsel of record having appeared, and the Court having reviewed the moving papers and papers submitted in opposition thereto, and having heard the oral arguments of counsel, and the Court having conducted an *in camera* review of the documents submitted to the Court pursuant to the Court's Order of July 24, 1992, and for good cause shown;

IT IS on this 4th day of Sept., 1992;

ORDERED that Witco's application to compel Monsanto to produce a "computer index to PCB-related documents" is hereby denied for the reasons set forth by the Court on the record on July 31, 1992, a copy of which is attached hereto.

IT IS FURTHER ORDERED that a copy of this Order be served within seven (7) days from receipt of this Order by counsel for Monsanto.



HON. THOMAS B. MANNION, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
MIDDLESEX COUNTY
DOCKET NO. L-073370-86

CITY OF PERTH AMBOY,)
)
 Plaintiff,)
)
 vs.)
)
 WITCO CHEMICAL CORPORATION,)
)
 Defendant-)
 Third-Party)
 Plaintiff,)
)
 vs.)
)
 MONSANTO, et als.,)
)
 Third-Party)
 Defendants.)

TRANSCRIPT
OF
JUDGE'S
DECISION

Place: Middlesex County Courthouse
New Brunswick, N.J. 08903

Date: July 31, 1992

BEFORE:

HON. THOMAS B. MANNION, J.S.C.

TRANSCRIPT ORDERED BY:

MARY B. PARENTE, ESQ. (Pitney, Hardin, Kipp & Szuch)

APPEARANCES:

JAMES TYRRELL, ESQ. (Pitney, Hardin, Kipp & Szuch),
Attorney for Third-Party Defendant, Monsanto.

Patricia A. Meade, Transcriber
36 Cranmer Road
Bayville, N.J. 08721

1 THE COURT: This is the matter of City of Perth Amboy
2 versus Witco and versus Monsanto, et al, docket number
3 L-073370-86.

4 Counsel, do you want to state your name for the
5 record, please.

6 MR. TYRRELL: Good morning, Your Honor. My name is
7 James Tyrrell from Pitney, Hardin, Kipp and Szuch for third-
8 party defendant, Monsanto Company, and with me but not appear-
9 ing is Thomas Bistline, in-house counsel at Monsanto,
10 B-i-s-t-l-i-n-e.

11 THE COURT: All right. The record should reflect that
12 this is the return date of an in camera review of the certain
13 documents that have been submitted pursuant to the previous
14 Court ruling in the motion on this matter, I believe was on the
15 24th, is that correct?

16 MR. TYRRELL: Yes, Your Honor.

17 THE COURT: 7/24, July 24, 1992.

18 The record should reflect further that I have reviewed
19 the document that has been referred to as Monsanto's computer
20 taxonomy, t-a-x-o-n-o-m-y.

21 My review leads to me cite the case I cited at the
22 motion which is IBM Peripherals, U.S. District Court, Northern
23 District of California, February 10, 1975, 5C0SR878, and I make
24 similar findings which I'll state as follows:

25 The document I just referred to is a computerized

1 child support system developed by IBM's counsel. The material
2 contained therein was prepared solely for litigation and was
3 put in computerized form so as it could be used in connection
4 with any litigation.

5 Two, all documents and other materials referenced by
6 this document, in this case Monsanto, are available through
7 normal discovery to the plaintiffs. The document in no way
8 hides, destroys or deprives the third-party plaintiff, Witco,
9 of access to any evidence whatsoever.

10 Three, the document in question created by Monsanto's
11 counsel reflects their mental impressions, theories and thought
12 processes, and the Court is not satisfied that the information
13 contained in that document can be segregated from such lawyers'
14 mental impressions and/or theories.

15 Four, to allow Witco a more detailed description of
16 the document or to allow Witco to make use thereof would im-
17 pinge upon the right of Monsanto's counsel to organize mate-
18 rial in the perspective they want it to be put in and to uti-
19 lize such information in their trial preparations. Witco has
20 failed to make a sufficient showing of need in order to jus-
21 tify such a result.

22 And, five, Witco has failed to show that there are no
23 alternative means available to them to obtain the equivalent
24 information without undue hardship.

25 In view of that, I'm returning herewith the document.

1 in question to Monsanto's attorney and further order that the
2 application by Witco to receive that document is denied.
3 Counsel for Monsanto will submit the appropriate Court order.

4 Let the record reflect the items being returned.

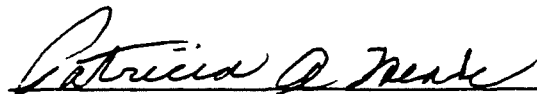
5 All right, we stand in recess.

6 (End of proceedings.)

7
8
9
10 I, Patricia A. Meade, assigned transcriber, do hereby
11 certify that the foregoing transcript of proceedings in the
12 Middlesex County Civil Court on July 31, 1992, Tape No. 1,
13 0018-0156, is a true and accurate record of the proceedings to
14 the best of my knowledge and ability.

15
16 Date

17 8/24/92



Patricia A. Meade, AOC #284