

NO. 85-17210-F

ANDREA ACOSTA, ET AL : IN THE DISTRICT COURT OF  
VS. : HARRIS COUNTY, T E X A S  
MONSANTO COMPANY, ET AL : 151ST JUDICIAL DISTRICT

DEPOSITION OF RICHARD J. MAHONEY  
TAKEN ON MAY 22, 1992

**COPY**

TAXABLE COSTS

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PAID BY: PLF.DEF.

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I N D E X

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DESCRIPTION

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Mahoney 2	Trust Agreement, Brio Site Task Force, Houston, Texas
Mahoney 3	Monsanto Company 1991 Annual Report
Mahoney 4 (1212)	Memo dated June 23, 1976 from John J. Spano - World Headquarters to H. M. Keating
1465	Document titled Shipments to Friendswood Site (Based on Existing Records) dated 12/1/84
Guilliams 1	Monsanto Company's Supplemental Response to Plaintiffs' First Set of Interrogatories and Request for Production

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3 FOR THE DEFENDANTS MONSANTO COMPANY AND  
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5 Ms. Phyllis J. Cohen  
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16 FOR THE DEFENDANTS AMOCO CHEMICALS  
17 CORPORATION, ATLANTIC RICHFIELD COMPANY,  
18 CHEVRON CHEMICAL COMPANY, UNION CARBIDE  
19 CHEMICALS & PLASTICS COMPANY, INC., AND  
20 HOECHST CELANESE CORPORATION:

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14                   Thompson & Knight  
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                  1700 Pacific Avenue  
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15

16           THE VIDEOGRAPHER:

17                   Mr. Ray Blackstone  
18                   Legal Media Systems, Inc.  
                  230 Westcott, Suite 200  
                  Houston, Texas 77007

19

20           ALSO PRESENT:

21                   Mr. Robert J. Berendt  
22                   Ms. Jana Green  
                  Ms. Jefferie Kmieck  
                  Ms. Donna Ramage  
                  Mr. Frank Staggs  
                  Ms. Robin Young

23

24

25

1                   The oral videotaped deposition of  
2                   RICHARD JOHN MAHONEY was taken on May 22,  
3                   1992, beginning at 10:04 a.m., in the offices  
4                   of Jamail & Kolius, 1200 Smith, Suite 2600,  
5                   Houston, Harris County, Texas, before  
6                   Jana L. Martin, a Certified Court Reporter  
7                   and Notary Public in and for the State of  
8                   Texas, pursuant to the Texas Rules of Civil  
9                   Procedure.

10

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15

RICHARD JOHN MAHONEY

was called as a witness and, having been  
first duly sworn, testified as follows:

16

EXAMINATION

BY MR. JAMAIL:

17

Q. Mr. Mahoney it is, is it?

18

A. Yes, it is.

19

Q. Would you tell us your full name, please.

20

A. Richard John Mahoney.

21

Q. Where do you live, Mr. Mahoney?

22

A. St. Louis.

23

Q. Mr. Mahoney, my name is Joe Jamail. We've  
never met, correct?

24

25

A. No, we haven't.

- 1 Q. I'm the lawyer representing some of the  
2 children in the case pending against Monsanto  
3 and others here in Harris County. You're  
4 here to give your deposition testimony,  
5 correct?
- 6 A. That's right.
- 7 Q. Have you given your deposition before?
- 8 A. In this case, no.
- 9 Q. Any case?
- 10 A. Yes.
- 11 Q. How many times?
- 12 A. Several times. Half a dozen times.
- 13 Q. Generally, what type of cases were they that  
14 you gave your deposition in?
- 15 A. Oh, they were product cases, employee cases.
- 16 Q. People suing Monsanto?
- 17 A. Generally, yes.
- 18 Q. More specifically, were each of the cases  
19 involving a suit against Monsanto?
- 20 A. Yes.
- 21 Q. What we do here today, Mr. Mahoney, is take  
22 your testimony as to what you know about  
23 facts that I'm going to inquire about. If  
24 you don't understand one of my questions, I  
25 want you to tell me you don't understand it

- 1 and not speculate on the question and try to  
2 guess at an answer. Would you do that?
- 3 A. Sure.
- 4 Q. Because what we do here is going to be made  
5 public. This is a public proceeding. And  
6 I'm going to want some ideas about Monsanto's  
7 policy about pollution, toxic wastes, what  
8 Monsanto's attitude is about it. So be sure  
9 you understand my question because we don't  
10 want and you don't want the Jury or the  
11 public to get a misinterpreted answer. Do  
12 you understand? .
- 13 A. I do.
- 14 Q. You are the ultimate spokesman for Monsanto,  
15 are you not?
- 16 A. Yes. I'm chairman and chief executive.
- 17 Q. The chief executive officer carries out or  
18 executes, I take it -- and you correct me if  
19 this is inaccurate -- the policy of the board  
20 of directors.
- 21 A. That's right.
- 22 Q. You are both: You are chairman of the board  
23 of directors that make the policy --
- 24 A. Uh-huh.
- 25 Q. -- and the chief executive officer who

- 1           executes and makes sure they're carried out.
- 2    A.    That's right.
- 3    Q.    For how long have you been the chief
- 4           executive officer?
- 5    A.    Since 1983.
- 6    Q.    What were you before that?
- 7    A.    President.
- 8    Q.    For how long were you president?
- 9    A.    Three years.
- 10   Q.    1980?
- 11   A.    1980.
- 12   Q.    What did you do -- let's start in 1960.
- 13   A.    1960 -- I joined the company in 1962.
- 14   Q.    Okay. And then from '62 to '70, where were
- 15           you stationed?
- 16   A.    I was in Massachusetts and St. Louis during
- 17           that period, I think -- yes -- and I think I
- 18           was in New Jersey, as well.
- 19   Q.    Were you always involved in the chemical part
- 20           of the company?
- 21   A.    Chemicals and plastics, yes.
- 22   Q.    Say it again.
- 23   A.    Chemicals and plastics.
- 24   Q.    All right.
- 25   A.    We generally make a distinction.

- 1 Q. Okay. How about environmental policy. Were  
2 you ever involved in making environmental  
3 policy for Monsanto?
- 4 A. As chief executive, certainly.
- 5 Q. Well, as president you were, too, weren't  
6 you?
- 7 A. To a degree.
- 8 Q. Just not much?
- 9 A. You're talking about making policy.
- 10 Q. All right. Let me rephrase it. Were you  
11 asked at all what your ideas about -- were  
12 about polluting the environment while you  
13 were president?
- 14 A. Well, environmental policy? Asked about?  
15 Sure.
- 16 Q. Okay.
- 17 A. Sure.
- 18 Q. So at least since 1980, you've been involved  
19 with Monsanto regarding its environmental  
20 policy?
- 21 A. Sure.
- 22 Q. What about industrial hygiene, Mr. Mahoney?  
23 Have you ever involved yourself with that?
- 24 A. Well, yes. I'm trying to -- yes.
- 25 Q. Okay. The -- when were you told that your

- 1 deposition was first requested in this case?
- 2 Do you remember?
- 3 A. I think it was about a week ago.
- 4 Q. Is that the first time?
- 5 A. I think so, yes.
- 6 Q. Are Woodard, Hall & Primm your lawyers in  
7 this matter?
- 8 A. Who?
- 9 Q. Woodard, Hall & Primm. Have you ever heard  
10 of them?
- 11 A. Woodard, Hall & Primm?
- 12 Q. Yes.
- 13 A. Yes. Yes. That's our lawyers.
- 14 Q. Well, you look surprised.
- 15 A. I -- I was trying to get --
- 16 Q. Have you ever seen them before today?
- 17 A. I met Mr. Hall today and I -- I was -- the  
18 Primm part I hadn't --
- 19 Q. I don't know who Primm is, either.
- 20 A. I don't know.
- 21 Q. Or what it is. The -- you met Mr. Hall for  
22 the first time today?
- 23 A. Yes.
- 24 Q. And he's your lawyer?
- 25 A. Yes.

1 Q. Okay. Did you meet any of these other people  
2 up there that pretend to be lawyers?

3 MS. COHEN: I object to the form of  
4 the question.

5 MR. JAMAIL: I'll rephrase it.

6 Q. Have you met anybody else up there who  
7 alleges that they're a lawyer?

8 A. From this firm?

9 Q. From Woodard, Hall & Primm.

10 A. Yes. To my right.

11 Q. Who is it?

12 A. Phyllis.

13 Q. Phyllis what?

14 A. Cohen.

15 Q. When is the first time you met her?

16 A. This morning.

17 Q. Anybody else?

18 A. No.

19 Q. Well, have you talked to anybody about this  
20 case that we're talking about before today or  
21 this morning?

22 A. Yes, I have.

23 Q. To whom?

24 A. Chief counsel --

25 Q. Who is that?

- 1 A. -- Monsanto. Richard Duesenberg.
- 2 Q. Where is he?
- 3 A. St. Louis. And Bob Berendt who is -- works  
4 in the law department.
- 5 Q. Who is he?
- 6 A. He's sitting at my right over here.
- 7 Q. Is that him there?
- 8 A. That's him.
- 9 Q. Okay. What does he do, now?
- 10 A. He handles litigation for the company.
- 11 Q. Is that the same man that asked the Jury to  
12 give Monsanto punitive damages in its action  
13 in Marshall, Texas?
- 14 A. I think he was in that case, yes.
- 15 Q. How did that grab you?
- 16 MS. COHEN: I object to the form of  
17 the question. It's argumentative.
- 18 Q. What did you think about him asking for  
19 punitive damages on behalf of Monsanto?
- 20 A. I thought it was appropriate.
- 21 Q. Well, I thought you were an outspoken  
22 advocate against punitive damages.
- 23 A. No, sir. I'm not.
- 24 Q. You're not? You're in favor of them?
- 25 A. I said that punitive damages are being abused

1 in this country.

2 Q. Are you in favor of people who have been  
3 abused and who have a legitimate right to ask  
4 for legitimate damages receiving punitive  
5 damages?

6 A. I think that's appropriate, yes.

7 Q. Good enough for me. The -- so a week ago is  
8 the first time you heard about your  
9 deposition, right?

10 A. Yes.

11 Q. Nobody told you it was wanted April the 1st,  
12 I take it.

13 A. I don't recall anymore. No, I don't.

14 Q. It didn't happen?

15 A. I don't -- I just don't know.

16 MR. JAMAIL: Mark that, will you.

17

18 (An instrument was marked Mahoney  
19 Exhibit No. 1 for identification.)

20

21 Q. Mr. Mahoney, would you --

22 MR. JAMAIL: What is this, Janet?

23 MS. EVANS: Last page.

24 Q. This has been marked Mahoney No. 1 for  
25 purposes of identification, and would you

1           were too busy to come, to be here for a  
2           deposition.

3                       MS. COHEN: I object --

4    Q.    Is that your position or not?

5                       MS. COHEN: I object to the --

6    Q.    Did they make it up?

7                       MS. COHEN: I object to the form of  
8           the question. It's argumentative.

9    Q.    Do you find this lawsuit burdensome to you in  
10           being able to conduct the everyday affairs of  
11           Monsanto?

12   A.    No.

13   Q.    Well, this is an affidavit prepared and filed  
14           by your lawyer Mr. Hall who you just met.  
15           Did he talk to you last week about filing an  
16           affidavit?

17   A.    No.

18   Q.    Sir?

19   A.    No.

20   Q.    Did he?

21                       MS. COHEN: I'm going to object to  
22           the form of the question. I don't believe  
23           there's any affidavit in that document.

24   Q.    Did you talk to anybody last week and tell  
25           anybody from Woodard, Hall & Primm that you

- 1           were just too damn busy to get down here for  
2           your deposition this last Wednesday?
- 3    A.    Did I talk to anybody --
- 4    Q.    Yes.
- 5    A.    -- at Woodard, Hall?  No.
- 6    Q.    Are you at all familiar with the subject  
7           matter of what this case is about,  
8           Mr. Mahoney?
- 9    A.    Yes.
- 10   Q.    As chief executive officer and chairman, you  
11          have to be, don't you?
- 12   A.    Yes.
- 13   Q.    This is a major lawsuit against your  
14          company.
- 15   A.    Yes, it is.
- 16   Q.    And you take it seriously?
- 17   A.    Yes.
- 18   Q.    And you do have some information that might  
19          be useful to us in this matter, don't you?  
20          You're here to give it if you do?
- 21   A.    If I have it, I'll give it.
- 22   Q.    Have I been overly dramatic so far?
- 23   A.    No.
- 24   Q.    Would you read Paragraph 5 and the rest of  
25          that affidavit or that representation to the

1 Court in which this case is pending signed by  
2 your lawyer Mr. Hall. Just read it out  
3 loud.

4 A. "Plaintiffs are not seeking to depose  
5 Mr. Mahoney in order to learn any additional  
6 information or to serve any useful purpose  
7 but instead only" to -- "instead only wish to  
8 harass Monsanto in an overly dramatic fashion  
9 by taking the deposition of its chairman of  
10 the board. Simply, there is no information  
11 that Mr. Mahoney could provide which could  
12 not be obtained from another witness with  
13 more direct personal knowledge and  
14 involvement in the issues at hand."

15 Q. Read the next paragraph, please, sir.

16 A. "In Salter v. Upjohn 593," and some other  
17 references, "the United States Court of  
18 Appeals for the Fifth Circuit applying Texas  
19 law affirmed" that a court -- "a trial  
20 court's decision that the plaintiff in a  
21 product liability action was not entitled to  
22 depose the president of Upjohn until the  
23 plaintiff had deposed the corporate employees  
24 most familiar with the subject litigation and  
25 had determined that the information provided

1 by employees with greater knowledge of the  
2 facts was inadequate."

3 Q. Please keep reading.

4 A. Paragraph 7: "As chairman and chief  
5 executive officer of a multinational  
6 corporation, Richard J. Mahoney has an  
7 extraordinarily demanding schedule, and it  
8 would be extremely burdensome to both him and  
9 Monsanto for him to be deposed in this  
10 manner. Plaintiffs have not demonstrated a  
11 good-faith basis for contending that  
12 Mr. Mahoney's deposition would be of any  
13 relevance or that Plaintiffs have any  
14 legitimate need for such deposition."

15 Q. Did they ask you about that before they filed  
16 that?

17 A. No.

18 Q. It's signed by your lawyer Mr. Hall, right?

19 A. About this language? No, not about this  
20 language. They asked me about -- they  
21 mentioned deposition. They said that they  
22 didn't think I had any basis for it, but --

23 Q. Did you tell them it was too burdensome for  
24 you to come down here --

25 A. No, I didn't say that.

1 Q. -- and explain to the --

2 A. No.

3 Q. -- parents and the Jury --

4 A. No.

5 Q. -- the parents of these children how come  
6 they're sick?

7 A. No.

8 MR. JAMAIL: I want to attach the  
9 entire protective order.

10 Q. The impression it gives is that you didn't  
11 want to be deposed at all in this matter. Is  
12 that true or not?

13 A. The impression?

14 Q. Yes.

15 A. I guess that's the impression it gives, yes.

16 Q. Is it true that you didn't want to be  
17 deposed?

18 A. Here I am. I'm here.

19 Q. Well, did you want to come on behalf of  
20 Monsanto --

21 A. Did I want --

22 Q. -- and explain why these children have been  
23 damaged by the exposure to the chemicals  
24 manufactured and improperly, as we say,  
25 disposed of by Monsanto?

- 1 A. Say that again.
- 2 Q. Do you want to explain that or not?
- 3 A. I don't have anything to explain.
- 4 Q. You don't? You think it was all right?
- 5 A. I don't know what "it" is you're talking  
6 about.
- 7 Q. "It" is the improper disposal of toxic  
8 wastes. That's what "it" is. And my  
9 question is: Is it too burdensome for you,  
10 as the head man at Monsanto, to come and to  
11 explain to a Jury Monsanto's position? And  
12 if it is a position that you think it's all  
13 right to expose these children to toxic  
14 wastes, we want to know it.
- 15 MS. COHEN: I'm going to object to  
16 the question. There's about four questions  
17 in there.
- 18 Q. Did you understand it?
- 19 A. Well, I lost the first couple when you got to  
20 the --
- 21 Q. Answer the last one.
- 22 A. Well, let me get the last one.
- 23 Q. Sure.
- 24 A. I'm not trying to be contentious.
- 25 Q. I know.

- 1 A. I'm just trying to understand the question.
- 2 Q. Let me just rephrase it for you. Is it too  
3 burdensome on you, as chief executive  
4 officer, as your lawyers are claiming, to  
5 come here to testify and try to explain  
6 Monsanto's position relative to the illnesses  
7 caused by the exposure of toxic wastes caused  
8 to be deposited in open earthen pits by  
9 Monsanto?
- 10 MS. COHEN: I object to the form of  
11 the question. It's argumentative.
- 12 Q. You can answer it.
- 13 A. You better work out whatever you're going to  
14 work out here.
- 15 Q. It's already worked out. You have to answer  
16 the question.
- 17 MS. COHEN: You can answer the  
18 question, Mr. Mahoney, if you understand it.
- 19 THE WITNESS: Oh, I'm sorry. I  
20 thought you were objecting to the question.
- 21 MS. COHEN: I'm objecting to the  
22 question. You are free to answer it.
- 23 A. It's not too burdensome because I'm here.  
24 I'm here. It's -- and I'm here.
- 25 Q. So that's not factual what your lawyers said?

- 1 A. I'll have to go back and read everything they  
2 said and take it one at a time. I mean I  
3 don't want to be cute about it, but the  
4 answer is I'm here.
- 5 Q. If you don't want to be cute about it, then  
6 don't be cute about it.
- 7 A. I'm not trying to be.
- 8 Q. Okay. My question is: Do you feel like it's  
9 necessary for you at all to even make an  
10 appearance to explain the plight of these  
11 children because of their exposure to the  
12 toxic wastes generated by Monsanto and caused  
13 to be improperly deposited of?
- 14 A. Well, I'm here to talk about anything I  
15 know.
- 16 Q. Okay. You think it's all right to dispose of  
17 toxic wastes where they will harm people?
- 18 A. No.
- 19 Q. That's wrong, isn't it?
- 20 A. Yes.
- 21 Q. And that's your philosophy, isn't it?
- 22 A. Yes.
- 23 Q. Anyone that would do that would be violating  
24 the standards as you know them to exist as  
25 far as human decency is concerned, wouldn't

- 1           they?
- 2    A.    That's right.
- 3    Q.    It would be a gross disregard for the rights  
4           of people who are injured and damaged by them  
5           by the exposure, wouldn't it?
- 6    A.    That's right.
- 7    Q.    It would be not -- totally -- it would be  
8           totally imprudent for someone to do that,  
9           wouldn't it?
- 10   A.    Yes, it would.
- 11   Q.    We're probably going to get along better than  
12           you thought we were.  The -- do you have any  
13           knowledge at all, Mr. Mahoney, of the Brio  
14           site?
- 15   A.    No.
- 16   Q.    Have you ever been there?
- 17   A.    No, I haven't.
- 18   Q.    Have you ever seen any photographs of it?
- 19   A.    No, I don't think so.
- 20   Q.    Have you been given any statistical data  
21           regarding it?
- 22   A.    No.
- 23   Q.    Do you even know how much waste, toxic waste,  
24           Monsanto caused to be dumped into this site?
- 25   A.    I don't know -- I don't know the stuff about

1 the Brio site that you're asking. I really  
2 don't.

3 Q. Okay. You've never seen any figures or  
4 numbers on it?

5 A. No, I haven't.

6 Q. Your lawyers have never furnished you with  
7 you any information regarding this Brio site?

8 A. Well, you asked about numbers. I --

9 Q. Numbers of toxic wastes.

10 A. No, I don't know any numbers.

11 Q. They've never furnished you any of those  
12 numbers?

13 A. No.

14 Q. Have they ever furnished you anything  
15 regarding the Brio site? Has anybody?

16 A. Oh, sure.

17 Q. Who?

18 A. Chief counsel.

19 Q. That would be --

20 A. Mr. Duesenberg.

21 Q. All right. He's not here today?

22 A. No.

23 Q. What did he give you?

24 MS. COHEN: I'm going to instruct  
25 Mr. Mahoney not to disclose privileged

1 communication --

2 MR. JAMAIL: Can you speak up,  
3 please.

4 MS. COHEN: I'm going to instruct  
5 Mr. Mahoney not to disclose privileged  
6 communications between counsel and himself to  
7 the extent they were made in the context of  
8 the attorney/client relationship.

9 MR. JAMAIL: There's no way he  
10 understands that.

11 Q. If they were given to you as factual data and  
12 you use them in any way to testify about, I'm  
13 entitled to know about it. Now, tell me what  
14 numbers he gave you.

15 A. None. No numbers.

16 Q. No numbers of any kind?

17 A. No.

18 Q. Did he give you -- let me just try to clear  
19 it up, Mr. Mahoney. I'm not trying -- I'm  
20 trying to be -- ask very easy questions, and  
21 usually I do. Did he give you any  
22 statistical data regarding the Brio site?

23 A. No.

24 Q. Okay. And you've never been to the site?

25 A. I haven't.

- 1 Q. Do you know how many millions of pounds of  
2 styrene tars Monsanto caused to be delivered  
3 and stored in these open earthen pits?
- 4 A. No, I don't.
- 5 Q. Do you know how much vinyl chlorides or vinyl  
6 chloride tars or monomers that Monsanto  
7 caused to be sent to these open earthen pits?
- 8 A. No.
- 9 Q. Well, what do you know about the Brio site?
- 10 A. The Brio site was a company that took  
11 material from factories and reprocessed it  
12 and went out of business as I --
- 13 Q. You don't have any firsthand knowledge?
- 14 A. No, I really don't.
- 15 Q. You were told that?
- 16 A. I was told that.
- 17 Q. I'll move to strike that in that you don't  
18 have any firsthand knowledge. Let me clarify  
19 my question.
- 20 A. Okay.
- 21 Q. Do you have any firsthand knowledge of  
22 anything that goes on at the Brio site?
- 23 A. No.
- 24 Q. Or anything that went on at the Brio site?
- 25 A. No.

1 Q. Have you tried to read anything prior to your  
2 deposition so you could give testimony  
3 regarding the Brio site, what its processes  
4 were, whether or not they stored chemicals in  
5 open unlined pits?

6 A. No, I don't have any -- any background in the  
7 Brio site.

8 Q. All right, sir. Then I can ask you some  
9 hypothetical questions, perhaps, and we can  
10 shorten this. Let me -- before I do that,  
11 Monsanto is part of what is called a  
12 Superfund Task Force as it regards the Brio  
13 site, correct?

14 A. Yes.

15 Q. You know that?

16 A. Yes.

17 Q. The -- Monsanto has been designated as the  
18 person or party most reasonably probably at  
19 fault in the matter as far as the cleanup  
20 costs are concerned?

21 MS. COHEN: I'm going to object to  
22 the form of the question.

23 Q. All right.

24 MS. COHEN: It's argumentative.

25 Q. Let me rephrase it. Do you know what PRP is?

- 1 A. Yes.
- 2 Q. What does that mean to you?
- 3 A. Principally responsible party.
- 4 Q. Party. Monsanto is a principally responsible  
5 party for the cleanup in the -- Monsanto --  
6 in the Brio site, correct?
- 7 A. I'm guessing. I don't know. I really --
- 8 Q. Nobody told you this, as chairman of the  
9 board?
- 10 A. I guess we're a PRP, I think is the --
- 11 Q. Well, sir, you're the majority PRP.
- 12 A. Okay.
- 13 Q. They didn't tell you this?
- 14 A. I'm trying to answer your very specific  
15 questions.
- 16 Q. I know you are and I want --
- 17 A. I know we're involved in the site, and I know  
18 we're involved in a significant way; but  
19 you're asking me, "Are you a principal PRP,  
20 majority PRP?" I mean those are questions I  
21 don't -- I can't answer.
- 22 Q. All right. You don't know the answer?
- 23 A. I don't know the answer to that.
- 24 Q. You mean these lawyers and all that counsel  
25 and your environmental people at Monsanto

1 never told you, "Hey, look we are the  
2 majority partner in this. We are 55 percent  
3 responsible"?

4 A. Yes. I know that number. I've read that  
5 number.

6 Q. Well, that's a majority, isn't it?

7 A. Yes.

8 Q. And that's a principal party responsible,  
9 isn't it?

10 A. Well, you're getting into some phrases, now,  
11 and I don't want to argue with you.

12 Q. I don't want to argue with you, either, and I  
13 don't want you to agree just to agree,  
14 please. We just have to get to the facts.  
15 All right? PRP -- you're aware of that term  
16 because you're head of one of the largest  
17 chemical companies in the world.

18 A. Uh-huh.

19 Q. You know what that means.

20 A. I certainly do.

21 Q. And that's an EPA --

22 A. Right.

23 Q. The Environmental Protection Agency came to  
24 Monsanto and others and said, "Hey, look.  
25 Either you people clean this mess up at Brio

- 1 or we're going to do it and then charge you  
2 and put penalties on you." Isn't that the  
3 way that works?
- 4 A. I don't know that that's the way it went at  
5 Brio.
- 6 Q. But --
- 7 A. It's a practice they do. Sure.
- 8 Q. That's generally the way it works?
- 9 A. Sure.
- 10 Q. Well, Monsanto didn't voluntarily go in there  
11 and say, "Hey, we're going to pay 55 percent  
12 to clean this up," did they? You know that.
- 13 A. I don't -- I don't know. I don't know what  
14 was said.
- 15 Q. Well, you know the EPA forced that from them,  
16 don't you?
- 17 A. I don't know that.
- 18 Q. Nobody told you that?
- 19 A. No.
- 20 Q. Okay. You're actively involved in the  
21 management and operation of Monsanto, are you  
22 not, sir?
- 23 A. Yes, I am.
- 24 Q. Was this just not a big enough thing or deal  
25 for them to come to you and get you to pay

1 attention to it?

2 A. Well, we've got 42,000 people in this  
3 company, and they're responsible people; and  
4 I delegate that authority to them. I listen  
5 to their advice. I trust them. And they're  
6 handling it, and I don't get involved in  
7 everything that goes on in this company.

8 Q. How do you know they're handling it?

9 A. Near as I can see, they are. I have  
10 confidence in the people I put in there.

11 Q. But you've stated you had no reports; you  
12 have no firsthand knowledge; you don't know  
13 anything that's going on over there.

14 A. Well, I've got confidence in the people  
15 handling it. I have to do it that way.

16 Q. What you do, then, so we can get your  
17 management style, is that the problem comes  
18 to you and you just -- you pass it on to  
19 somebody in your company; and that's it, as  
20 far as you're concerned?

21 A. No. I set policy, and I put good people in  
22 place; and I trust their judgment. If I find  
23 their judgment wanting, then I remove them.

24 Q. Well, how do you know it's wanting if you  
25 haven't made any checks and have no firsthand

1 knowledge of anything that's going on at  
2 Brio?

3 A. Well, the people I have in place have a long  
4 history of good performance, and I trust  
5 them.

6 Q. So that's my question. You gave it to them,  
7 and then that's it: out of sight, out of  
8 mind?

9 MS. COHEN: I object to the form of  
10 the question. It's argumentative.

11 A. No.

12 Q. Is that right or wrong?

13 A. No, it's not right.

14 Q. Okay. But you have done nothing to check to  
15 see whether or not anything has been done to  
16 clean up Brio, have you?

17 A. Personally, no.

18 Q. And nobody has reported to you as to what has  
19 been done, have they?

20 A. I have a general knowledge they're in a  
21 process. They're in a process to get it  
22 cleaned up.

23 Q. That's all you know?

24 A. That's all I know. It's going along  
25 according to what the plan was with the EPA,

- 1 as near as I'm told, and I presume it's on  
2 schedule.
- 3 Q. When did that plan go into effect?
- 4 A. I don't know.
- 5 Q. 1985?
- 6 A. I don't know.
- 7 Q. That would be about right?
- 8 A. I really don't know.
- 9 Q. I think that's the year. Is that not the  
10 year? Yes. Would it interest you to know  
11 that, other than for testing, not one -- not  
12 one cupful of contaminated soil has been  
13 removed from that site? Would that at all  
14 interest you?
- 15 A. Sure it would.
- 16 Q. Why?
- 17 A. Seems like a long time, but there's a process  
18 going on, as I understand it, and that  
19 process is long. It is a very, very long,  
20 tenuous process that goes on; and I'm not  
21 surprised at the time it takes.
- 22 Q. You're not? You said it seemed like a long  
23 time.
- 24 A. But I'm not surprised at --
- 25 Q. If Brio had been pregnant at the time, the

1 baby would be in the third grade.

2 MS. COHEN: I object to the form of  
3 the question. It's argumentative.

4 MR. JAMAIL: It wasn't a question.  
5 It was a statement.

6 MS. COHEN: Then I'll object to the  
7 statement on the same basis.

8 Q. Who is Richard Guilliams? Do you know?

9 A. I've just learned his name this morning.  
10 He's working on this case on behalf of  
11 Monsanto I think out of our Texas -- our  
12 Chocolate Bayou plant.

13 Q. You don't know him?

14 A. I don't know him.

15 Q. And you never heard of him until this  
16 morning?

17 A. That's right.

18 Q. And he's chairman of the Brio Task Site Force  
19 Technical Committee, Monsanto's employee?

20 A. Well, I don't know the title of that  
21 committee.

22 Q. Well, he is.

23 A. Okay.

24 Q. But you never heard of him till this morning?

25 A. That's right.

- 1 Q. Just to be fair about it, you just -- you  
2 have had very little interest in what has  
3 gone on out there at Brio?
- 4 A. I have appropriate interest for what I do for  
5 a living. I mean I have people that are  
6 full-time on these things. And I'm sure --
- 7 Q. You, yourself, have no interest and knowledge  
8 about what is going on there?
- 9 A. I don't have a lot of knowledge about it. I  
10 have interest in it. Of course, I do.
- 11 Q. What is your interest in it?
- 12 A. My interest is seeing that whatever is the  
13 right thing to be done is done and --
- 14 Q. What do you mean by that?
- 15 A. I've got people that are complying with --  
16 with the requirements of the -- of the  
17 Environmental Protection Agency. They're  
18 good people, and I presume they're moving as  
19 fast as they possibly can --
- 20 Q. What if --
- 21 A. -- and that's -- I've got good people doing  
22 it.
- 23 Q. You say you want to see the right thing done?
- 24 A. Uh-huh.
- 25 Q. Correct?

- 1 A. Yes.
- 2 Q. Does that mean if Monsanto did as I earlier  
3 explained to you, caused toxic wastes to  
4 be -- by the millions of pounds be stored in  
5 open, unlined, earthen pits where people who  
6 live in the area would be exposed to it and  
7 children were damaged, you would expect  
8 Monsanto to do the right thing by them,  
9 wouldn't you?
- 10 A. If people were damaged?
- 11 Q. Yes.
- 12 A. Of course.
- 13 Q. Sir, would you?
- 14 A. If people were damaged, of course, I would.
- 15 Q. And if it was done in a calloused way as I  
16 explained to you, you would not have any  
17 objection to those people receiving punitive  
18 damages, would you?
- 19 A. If that was -- if that was the case,  
20 absolutely.
- 21 Q. And even if it's against Monsanto?
- 22 A. Of course.
- 23 Q. Very good.
- 24 A. If Monsanto did anything wrong, of course.
- 25 Q. All right. The -- do you know how many wells

1           have been tested out at that site since  
2           1987 --

3    A.    No.

4    Q.    -- for contamination of water?

5    A.    No, I don't.

6    Q.    Do you know whether any have been tested?

7    A.    I don't know, personally, no, I really don't.

8    Q.    You do know that Monsanto, being in charge of  
9           the Task Force through Mr. Guilliams -- and,  
10          incidentally, do you know who a Chuck  
11          McLaughlin is?

12                   MS. COHEN:  I'm going to object to  
13                   the question -- the form of the question.

14                   MR. JAMAIL:  I'll take it --

15                   MS. COHEN:  -- because there's two  
16                   parts to it.

17                   MR. JAMAIL:  Sure.  I'll take it  
18                   another way.

19    Q.    You have told me that you knew who Richard  
20           Guilliams was by information you received  
21           this morning, and I've told you -- and please  
22           accept it -- he's testified that he's the  
23           chairman of the Brio Task Force Technical  
24           Committee.

25    A.    All right.

1 Q. Now, Chuck McLaughlin, have you ever heard  
2 that name before?

3 A. No.

4 Q. All right. He is an employee of Monsanto.  
5 Okay? He is the project manager of the Brio  
6 Task -- Brio Site Task Force, if you'll just  
7 accept that.

8 MS. COHEN: He is not an employee  
9 of Monsanto any longer. He does not work for  
10 Monsanto Company.

11 MR. JAMAIL: He used to work for  
12 Monsanto. Okay? Why did you all fire him?  
13 No answer. Can you tell me?

14 MS. COHEN: I don't think my  
15 deposition is being taken today, and I don't  
16 think he was fired.

17 MR. JAMAIL: It doesn't matter  
18 whether it's taken or not. I'm asking you a  
19 question. How long has it been since he's  
20 been an employee of Monsanto?

21 MS. COHEN: I do not know the  
22 answer to the question.

23 Q. Do you know the answer to that?

24 A. No.

25 Q. Okay. Well, as such, based on your

1           experience and your -- in the chemical  
2           business and as the highest ranking officer  
3           and the highest ranking member of the board  
4           of directors of Monsanto, you know that  
5           Monsanto does have the right to go in and  
6           test these wells as often as they like to see  
7           whether or not they continue to be  
8           contaminated? This is well water we're  
9           talking about.

10                           MS. COHEN: I'm going --

11    A.    I don't know -- I don't know --

12    Q.    You don't know what their rights are?

13    A.    I don't know what the rights are, and I'm not  
14           sure what the question is.

15    Q.    All right. The question is: Monsanto does  
16           have the right as the 55 percent -- well, as  
17           Task Force manager, employee of -- I mean  
18           Richard Guilliams, chairman of the site, to  
19           go in and have those wells tested?

20                           MS. COHEN: I object to the --

21    A.    I really don't know.

22    Q.    If you don't know, tell me you don't know.

23    A.    I don't know.

24    Q.    If you would assume with me that he did have  
25           that right, would you think it prudent on his

1 part to go in there and to test those wells  
2 to see whether they're contaminated with  
3 vinyl chlorides and benzene or any other  
4 thing? Do you think it would be prudent for  
5 him to go in and check them now?

6 A. I suppose.

7 Q. Okay. The -- I want to ask you, first, if  
8 you've ever seen this before. And I'm not  
9 saying you should or shouldn't have seen it  
10 but --

11 A. No.

12 Q. You've never seen it before? Do you mind if  
13 I walk around there? I want to go over  
14 something with you here. This is an  
15 instrument marked -- let me show it to your  
16 lawyer. It's a trust agreement, the Brio  
17 Task Force --

18 MS. COHEN: Thank you.

19 Q. -- Site. Okay? That's the label, correct?

20 A. Okay. Yes.

21 Q. All right. On Page 6 of this, under Rules of  
22 the Donors' Committee, the donors are the  
23 other -- are other chemical companies that  
24 were involved originally in the matter. Just  
25 take my word for that.

- 1 A. Okay.
- 2 Q. Okay? If you will look at that paragraph  
3 that I have highlighted there for you,  
4 Monsanto has the absolute right to veto  
5 anything the donor committee wants to do,  
6 don't they?
- 7 A. The highlighted part that says "... provided  
8 that no decision shall be made pursuant to  
9 this section without the concurrence of  
10 Monsanto Company."
- 11 Q. That's a veto, isn't it?
- 12 A. Well, I don't know. I got -- I don't know  
13 the whole context of this thing.
- 14 Q. Well, as far as --
- 15 A. It says "... provided that no decision shall  
16 be made pursuant to this Section ..." This  
17 section is Rules of the Donors' Committee.  
18 I'm not a lawyer. I'm trying --
- 19 Q. I know.
- 20 A. -- to figure out what this thing --
- 21 Q. I don't want you to answer any questions --
- 22 A. I don't know any more than what I can read  
23 here, honestly.
- 24 Q. As far as -- and the Jury will have the whole  
25 thing --

- 1     A.     Yes.
- 2     Q.     -- but as far as that paragraph that I've  
3           pointed out to you is concerned, the  
4           rules-making powers, Monsanto has the right  
5           to veto anything that all the other donors  
6           want to do, if they so decide?
- 7     A.     Well, you're going to have to let me read the  
8           paragraph.
- 9     Q.     Please do it.
- 10    A.     Okay. Monsanto has to agree with the rules  
11       of that committee, is what this thing says to  
12       me. Monsanto has to agree with the rules of  
13       that committee.
- 14    Q.     So Monsanto would have the right to veto what  
15       all the other donor members decided to do  
16       regarding the testing of these wells?
- 17    A.     But I don't know what else is in here. There  
18       maybe 20 other ways that -- you know, it's  
19       hard for me to know that.
- 20    Q.     I know it. But I'm not trying to trick you.  
21       Taking just what that says -- and let's just  
22       limit it to 6, then, where I've drawn with  
23       the red pencil -- red pen -- Monsanto can  
24       veto the other donors as it relates to that  
25       paragraph?

1 A. Well, it says they have -- whatever is done  
2 has to be made with their concurrence and  
3 that sounds like veto, but veto has a little  
4 different --

5 Q. All right.

6 A. -- thing than concurrence, you know.

7 Q. Let me rephrase it, please. Nothing can get  
8 done --

9 A. I don't to debate you. I'm trying to  
10 understand what you're --

11 Q. I know you are. Nothing can be done in that  
12 paragraph -- and I know you haven't read all  
13 this, and I don't want you to -- let's limit  
14 it to that paragraph -- without Monsanto's  
15 saying it can be done?

16 A. I think that's what that says.

17 Q. All right.

18 MR. JAMAIL: We want to introduce  
19 this, the entire instrument.

20 MS. COHEN: Did you mark it?

21 MR. JAMAIL: Mark it. You can do  
22 it later, if you want, or you can do it now.  
23 I don't care. Mahoney 2, please.

24

25

1                   (An instrument was marked Mahoney  
2                   Exhibit No. 2 for identification.)

3

4     Q.     Mr. Mahoney, are you familiar at all -- and  
5             if you're not, just tell me -- with the  
6             location of the Southbend Subdivision as it  
7             relates to the Brio superfund site?

8     A.     It's near it, and that's all I know.

9     Q.     That's all you know. Do you know that  
10            Monsanto and Farm & Home, the developers, had  
11            knowledge that a subdivision was going in  
12            this close proximity years before they  
13            stopped sending chemical wastes, toxic wastes  
14            to this site?

15    A.     No, I don't have any knowledge of that.

16    Q.     If that occurred, do you have an opinion as  
17            a -- well, as a human being and as chief  
18            executive officer and chairman of the board  
19            as to whether or not Monsanto should have  
20            taken steps at that time to ascertain whether  
21            or not the wastes they were causing to be  
22            sent to this site were being properly  
23            disposed of?

24    A.     Well, I don't know -- help me understand what  
25            you're asking.

1 Q. Okay.

2 MR. JAMAIL: Would you read it  
3 back to him slowly, please.

4

5 (The pending question was read  
6 by the reporter.)

7

8 A. I really don't have an opinion.

9 Q. Do you think they can just dump it without  
10 concern as to whether or not people are going  
11 to drink the water that's contaminated or  
12 breathe the air that's contaminated? Is that  
13 what you're saying?

14 A. Well, I don't know that they were dumping it,  
15 and that's the point I'm trying to make.

16 Q. Well, if they were storing it in open,  
17 unlined, earthen pits where --

18 A. I don't know what they were doing --

19 Q. -- it could leach into the ground.

20 A. -- and so --

21 Q. I want you to assume with me that's what they  
22 were doing.

23 MS. COHEN: That's what who was  
24 doing?

25 Q. Monsanto was causing its wastes to be placed

1 in open, unlined, earthen pits.

2 A. Is that a fact?

3 Q. Yes, sir.

4 MS. COHEN: Well, I object to  
5 that.

6 A. I don't know that.

7 Q. Well, if I tell you to assume that with me,  
8 would you do it, please?

9 A. Sure.

10 Q. If it's wrong, it's wrong. Then do you think  
11 that Monsanto had a responsibility to make  
12 certain its wastes were not being sent or  
13 causing them to be sent to a place where they  
14 were improperly disposed of in open, unlined,  
15 earthen pits?

16 A. It takes a long time to get to the question,  
17 now. And I'm trying to find the words one at  
18 a time because I don't want to sound foolish,  
19 but I --

20 Q. You don't.

21 MR. JAMAIL: Would you read it back  
22 to him, please.

23

24 (The pending question was read  
25 by the reporter.)

- 1 Q. Do you think they had such responsibility?
- 2 A. I don't know. I really don't know. I don't  
3 know the facts at the time.
- 4 Q. I just gave you the facts. Just take what I  
5 just gave you.
- 6 A. Well --
- 7 Q. If that was it.
- 8 A. If that -- if -- if -- if -- but you're  
9 saying we caused that stuff to be put in open  
10 pits, and that's --
- 11 Q. Caused it to be sent.
- 12 A. I'm having trouble with the hypothetical  
13 when --
- 14 Q. Let me --
- 15 A. -- when what I know about the facts don't  
16 square.
- 17 Q. You said you didn't know anything.
- 18 A. And I don't know a lot -- I know --
- 19 Q. Do you now know something about the facts?
- 20 A. I know what I know. And what I -- what I --  
21 I don't know what I don't know and I --
- 22 Q. You don't know anything firsthand. All you  
23 know --
- 24 A. Right.
- 25 Q. -- is what some of your lawyers --

- 1 A. I'm trying to understand the hypothetical  
2 versus the real, and I don't deal --
- 3 Q. Well, you don't know --
- 4 A. -- all day in hypotheticals.
- 5 Q. You don't know what is real, anyway.
- 6 A. That's right.
- 7 Q. You say you don't know what went on out  
8 there.
- 9 A. I really don't know the facts, and I'm trying  
10 to go with a hypothetical, and it's --
- 11 Q. Well, go with my hypothetical. If I'm wrong,  
12 the Judge and the Jury will punish me.  
13 Okay? Will you do that?
- 14 A. Sure.
- 15 Q. But you don't know anything other than what  
16 your lawyers have told you. You've told me  
17 that. You know none of these facts. Is that  
18 correct?
- 19 A. That's correct.
- 20 Q. So they may not have told you the facts,  
21 right?
- 22 A. I doubt that -- whatever they told me, I have  
23 confidence in them.
- 24 Q. Well, you have to. You're defending the  
25 lawsuit.

- 1 A. Well, I know these people. I've worked with  
2 them for years.
- 3 Q. Well, you've never known a bad person in your  
4 whole life?
- 5 A. A bad -- of course, I have.
- 6 Q. You've never known anybody that would lie to  
7 you in your whole life?
- 8 A. Certainly, I have.
- 9 Q. Okay. Now, let's get back to this case.
- 10 A. But not these people.
- 11 Q. Do you remember my hypothet?
- 12 A. Now, do it again so I can get it right.
- 13 Q. Suppose you are the chief executive officer  
14 of Monsanto and someone comes to you and says  
15 to you, "Mr. Mahoney, President Mahoney, we  
16 are storing or we're causing to be sent -- we  
17 are the people who manufacture" --
- 18 A. Uh-huh.
- 19 Q. -- a product that creates toxic wastes.
- 20 A. Yes.
- 21 Q. "And we, as the manufacturer, are getting rid  
22 of these wastes and they're being stored or  
23 processed in open, unlined, earthen pits that  
24 are migrating into the water and into the  
25 soil." Would you continue just to keep doing

- 1           that, or would you do something about it, if  
2           that were the fact?
- 3    A.    Well, I'd first find out who's saying that.
- 4    Q.    One of your own people are saying it.
- 5    A.    And, secondly, I'd find out is it hazardous,  
6           and I don't know the answer to that.
- 7    Q.    Now, suppose you go out and you inspect and  
8           you see that these are the facts.  What would  
9           you do?
- 10   A.    I'd ask somebody to do whatever is right.
- 11   Q.    What is right?
- 12   A.    I don't know.
- 13   Q.    You're the man that has to decide.
- 14   A.    No.  No.  I'd get the person who was in  
15           charge of that area and I'd say, "Do what is  
16           right."  That's the way --
- 17   Q.    You kind of run it like the post office.  Is  
18           that it?
- 19   A.    No, it's not like the post office.
- 20   Q.    Mr. Mahoney --
- 21   A.    I tell people to do what is right.
- 22   Q.    -- would you not stop the deliverance of such  
23           toxic wastes that can cause cancer in  
24           children or not?
- 25   A.    Would I stop the deliverance of wastes that

- 1           could cause cancer in children?
- 2    Q.    Yes.
- 3    A.    Certainly, if I thought it was causing  
4           cancers in children.
- 5    Q.    If the literature said it could cause cancer  
6           and cause other kinds of defects including  
7           birth defects, would you put a stop to it  
8           immediately and find out about it?
- 9    A.    If I thought that was going on, I certainly  
10           would.
- 11   Q.    And you wouldn't send another drop out there,  
12           would you?
- 13   A.    Well, I don't know -- you see, you're --
- 14   Q.    If that happened, you would -- would you --  
15           I'll go either way.
- 16   A.    I'd stop it. I'd stop it. I'd stop it, yes,  
17           if I knew those facts.
- 18   Q.    The failure to stop it is malicious, isn't  
19           it?
- 20   A.    It would be, if you knew that.
- 21   Q.    Yes. The failure to stop it would be a gross  
22           disregard for the rights of people who might  
23           be exposed to it, wouldn't it?
- 24   A.    If you knew that, it sure would be.
- 25   Q.    And if you knew that and you didn't take

- 1 steps to stop it, it would be almost  
2 criminal, wouldn't it?
- 3 A. It's a big -- it's a big front end of that  
4 question: if you knew it.
- 5 Q. Yeah.
- 6 A. Yeah.
- 7 Q. If you had reason to know it -- how about  
8 that? -- and then ignored it?
- 9 A. Well, now you're getting into lawyers' terms.
- 10 Q. No. That's not lawyer.
- 11 A. I have no reason to know.
- 12 Q. This is people. This is not lawyers. It's  
13 people. If you had reason to know, are you  
14 taking the position on behalf of Monsanto  
15 that it was all right for you just to turn  
16 your ass to it and neglect it and ignore it  
17 while the chemicals that we talked about are  
18 still being stored in the way I told you? Is  
19 that all right, in your opinion?
- 20 MS. COHEN: I object to the form of  
21 the question.
- 22 A. I don't understand the question.
- 23 Q. Well, let me try to rephrase it for you,  
24 sir. Are you saying it's excusable conduct  
25 on behalf of a reasonably prudent chemical

1 manufacturer, once something becomes known to  
2 him, to ignore the fact that what he's doing  
3 could cause irreparable damage to people? Is  
4 that all right?

5 A. Now, are you still on the hypothetical --

6 Q. Yes.

7 A. -- or what did I know?

8 Q. No. I'm on the hypothetical.

9 A. It's wrong to cause damage to people --

10 Q. And --

11 A. -- if that's what you're asking, and -- yes,  
12 it is. It's always wrong to harm people.

13 Q. And if Monsanto had employees who were  
14 responsible employees charged with the duty  
15 of making these reports -- and you said you  
16 had a great deal of confidence in these  
17 people -- and he reported such, that there is  
18 a subdivision here, and we are sending  
19 chemicals that can be harmful to that, do you  
20 think Monsanto, as a reasonably prudent  
21 chemical company, should have ignored his  
22 warning?

23 A. I -- I'm lost in the hypothetical. I'm going  
24 to have to go back again because I really --

25 Q. Well, listen closely.

1 A. -- I don't spend a lot of time in  
2 hypotheticals.

3 MS. COHEN: Mr. Mahoney, why don't  
4 you listen to the hypothetical question and  
5 take a moment to make sure you understand --

6 THE WITNESS: That's what I'm  
7 trying to do.

8 MS. COHEN: -- and if you can  
9 answer it, go ahead and try.

10 Q. Sure. We got plenty of time, and Ms. Martin  
11 will be glad to read it back to you.

12

13 (The pending question was read  
14 by the reporter.)

15

16 A. Okay. The hypothet -- let me get the  
17 hypothetical. I -- we're sending harmful  
18 chemicals in this hypothetical --

19 Q. Wastes, yes.

20 A. -- to something and it's a subdivision?

21 Q. To Brio, and it's a subdivision.

22 A. And somebody can get injured because of it?

23 Q. Yes.

24 A. Then you shouldn't do it.

25 Q. And Monsanto knows that these toxics, if

1 people are exposed to them in quantity, can  
2 be dreadfully injured. Should they have  
3 continued to send them?

4 A. Now, this is back in the hypothetical again.

5 Q. Yes.

6 A. If they know there's a hazardous material  
7 that could hurt --

8 Q. Yes.

9 A. No. Of course not.

10 Q. They shouldn't have sent it to begin with,  
11 should they?

12 MS. COHEN: Assuming the fact of  
13 the hypothetical.

14 Q. Assuming the facts.

15 A. On that hypothetical, of course.

16 Q. Now, sir, I have to ask you hypotheticals  
17 because are you totally unaware of what went  
18 on out there. That's the only way I can  
19 question you. But the hypothetical I asked  
20 you is in evidence in this case. There is an  
21 exhibit. A Mr. Ron Sadow, do you know who he  
22 is?

23 A. No.

24 Q. Have you ever heard of him?

25 A. No.

1 Q. They didn't tell you about Mr. Sadow -- your  
2 lawyers?

3 A. No.

4 Q. That he was reporting this to higher-ups, and  
5 they just kind of said "out of sight, out of  
6 mind"? Have you ever heard that phrase?

7 A. I heard that this morning. I didn't --

8 Q. Who told you?

9 A. I didn't know the context. Phyllis.

10 Q. What did she tell you about this out of  
11 sight, out of mind?

12 MS. COHEN: I'm going to instruct  
13 Mr. Mahoney not to disclose the content of my  
14 conversation with him.

15 MR. JAMAIL: Well, baloney. He can  
16 tell me what you told him about if it's not a  
17 lawyer/attorney privilege.

18 Q. What did she tell you about out of sight, out  
19 of mind?

20 MS. COHEN: Mr. Mahoney, I'm going  
21 to instruct you not to answer that question.

22 Q. Are you going to answer it?

23 A. I got an instruction from counsel.

24 Q. Well, what do you have to hide about that?

25 A. Nothing.

1 Q. Well, would you go on and answer it, then.

2 A. Well, look, I --

3 MS. COHEN: I'm going to instruct  
4 you not to answer his question.

5 A. -- you two --

6 MR. JAMAIL: On what basis,  
7 Ms. Cohen?

8 MS. COHEN: On the basis of the  
9 attorney/client privilege.

10 MR. JAMAIL: You mean you can prep  
11 him and tell him what to answer, and that's  
12 attorney/client privilege?

13 MS. COHEN: I've stated my reason.

14 MR. JAMAIL: I disagree.

15 MS. COHEN: Well, you can disagree  
16 all you want. I've stated my reason.

17 Q. All right. Well, you go on and answer.

18 MR. JAMAIL: The Judge will rule on  
19 the objection. Let him answer the question.

20 MS. COHEN: Mr. Mahoney, I'm  
21 instructing you not to answer the question.

22 Q. You're going to have to come back at some  
23 later date, then, Mr. Mahoney.

24 Mr. Mahoney, out of sight, out of  
25 mind, in the context I'm using it is that we

- 1           have got a problem with disposing of certain  
2           wastes generated by styrene tars and vinyl  
3           chloride; so if we could just get them out of  
4           sight, we don't have to think about them  
5           anymore. We don't care what it does or who  
6           it does it to. Is that your philosophy, sir?
- 7    A.    No, it's not my philosophy.
- 8    Q.    Is that a proper philosophy?
- 9    A.    Not in that context.
- 10   Q.    Is that a proper business technique?
- 11   A.    Not in the context you did it, no.
- 12   Q.    It's imprudent, isn't it?
- 13   A.    In the context you did it, that's right.
- 14   Q.    It would not be the reasonable act of a  
15        prudent chemical manufacturer, would it?
- 16   A.    The way you said it.
- 17   Q.    It would not?
- 18   A.    Would not.
- 19   Q.    It would be a total knowing actual disregard  
20        for the rights of people who would be injured  
21        by it, wouldn't it?
- 22   A.    Well, I'm going to -- back to what -- is this  
23        the hypothetical again? I was with you for a  
24        while. Now you're getting it to punishment  
25        of people.

- 1 Q. Out of sight, out of mind.
- 2 A. Oh. It's not a good practice, and it  
3 shouldn't be done.
- 4 Q. It would be an actual knowing disregard for  
5 the rights of people who might be injured,  
6 correct?
- 7 A. Well, I've -- frankly, I've forgotten what  
8 the out-of-sight, out-of-mind hook was to --
- 9 Q. Well, we make this waste and it can be toxic  
10 and poisonous and stuff, and we just get it  
11 off the premises and don't do anything else  
12 about it.
- 13 A. Okay. If that's the context, you're making  
14 toxic, poisonous stuff, get it off the  
15 premises and don't think about it, that's  
16 wrong.
- 17 Q. And it would be an actual knowledgeable act  
18 which would result in a total disregard for  
19 the rights of people who might be injured by  
20 it?
- 21 A. That's right.
- 22 Q. Correct?
- 23 A. That's right. In that context, sure.
- 24 Q. Yes.
- 25 MR. JAMAIL: Well, where is

1 Mr. Sadow's exhibit? Do we have it here?  
2 I'd like for him to see it. Well, we'll get  
3 on to something else.

4 Q. Are you denying in any way, sir, because you  
5 told me you don't know any of the facts in  
6 this case, that the residents of Southbend  
7 Subdivision that are represented by myself,  
8 Mr. Krist, Mr. Dalton Jones and Mr. Dana  
9 Kirk -- do you deny that these people were  
10 exposed to toxic and carcinogenic chemicals  
11 from the Brio site?

12 A. I don't know what they were exposed to.

13 Q. You can't deny that, can you?

14 A. I have no personal knowledge what they were  
15 exposed to.

16 Q. So you don't deny it?

17 A. I don't know.

18 Q. So you can't deny it if you don't know.

19 A. That's right. I can't deny it.

20 Q. Okay.

21 A. No. That doesn't sound right. Say that  
22 again. That's unfair.

23 MR. JAMAIL: Read it. Read it back  
24 to him.

25 Q. I'm not trying to be unfair. I'm asking you

1 to give an answer to me.

2 A. Well, you know --

3 MR. JAMAIL: Read it back to him.

4

5 (The pending question was read  
6 by the reporter.)

7

8 A. I don't know whether they were is the way I  
9 hear the question.

10 MS. COHEN: Of your own personal  
11 knowledge.

12 A. Of my knowledge.

13 Q. Mr. Mahoney, what did you receive your degree  
14 in in college?

15 A. Chemistry.

16 Q. You will agree, will you not -- or you may  
17 not. Don't do it for the sake of agreement.  
18 I need your testimony -- that benzene is a  
19 human carcinogen, causes cancer?

20 A. It causes cancer. I think it's classified as  
21 a human carcinogen. And there's a whole  
22 variety of classifications. I think that's  
23 correct. I'm trying to be very specific with  
24 the answer --

25 Q. I know it, and I want you to be.

- 1 A. -- because there's a lot of technical  
2 definitions in this business.
- 3 Q. Well, as far as you're concerned, as chairman  
4 of the board and CEO of one of the biggest  
5 chemical companies in the world and as a  
6 chemist, you know that benzene is extremely  
7 harmful to human beings who are exposed to  
8 it?
- 9 A. Large exposures, I think, is the --
- 10 Q. Yes.
- 11 A. -- correct --
- 12 Q. We know that it's in gasoline.
- 13 A. Yes. And that's the context I'm talking  
14 about.
- 15 Q. Do you know anybody that runs around sniffing  
16 gasoline all day?
- 17 A. No, I don't.
- 18 Q. I don't, either. But people who have it --  
19 are exposed to it in sufficient quantities  
20 can expect to suffer serious harmful effects?
- 21 A. I don't know that.
- 22 Q. Well, you know it has some.
- 23 A. A lot of benzene isn't good for you.
- 24 Q. Okay. You wouldn't put it on your  
25 strawberries, would you?

- 1 A. No.
- 2 Q. How about vinyl chloride? Is that a human  
3 carcinogen?
- 4 A. Vinyl chloride monomer, I think, has been  
5 classified that way.
- 6 Q. As a chemist -- well, just as a person who  
7 reads and is knowledgeable, because you are  
8 in a very high position in the chemical  
9 business, you do know that vinyl chlorides  
10 and monomers and benzene and -- to name just  
11 a few -- are not helpful to humans who are  
12 exposed to them?
- 13 A. That's right, in that context of exposure.
- 14 Q. And they can, if the exposure is great  
15 enough, cause serious harm to people?
- 16 A. Yes.
- 17 Q. Cause cancers?
- 18 A. In -- in -- under the definition --
- 19 Q. Yes.
- 20 A. -- of laboratory animals and the variety and  
21 there are some humans, I think, and --
- 22 Q. I don't want to take it -- I don't want it to  
23 be broader than my question in the context  
24 I'm giving it to you. Okay?
- 25 A. Sure.

- 1 Q. I won't present to the Jury that it's meant  
2 to be.
- 3 A. Yes.
- 4 Q. I'm being as straight as I can with you,  
5 Mr. Mahoney.
- 6 A. Let me just make a point. That's probably  
7 vinyl chloride, and that's not -- that's not  
8 a carcinogen.
- 9 Q. That's correct. The monomers.
- 10 A. Monomers. And in certain circumstances.  
11 That's the only point I'm making.
- 12 Q. We know that. Okay? But I'm talking about  
13 in the context I'm talking to you about in  
14 this case.
- 15 A. Right.
- 16 Q. Okay? What about dichloroethane?
- 17 A. I don't know anything about dichloroethane.
- 18 Q. And trichloroethane.
- 19 A. Oh. Trichloroethane. Okay. Those are  
20 dry-cleaning -- used in dry-cleaning.
- 21 Q. You can pronounce it. I can't.
- 22 A. I'm just trying to --
- 23 Q. I couldn't even pass chemistry, so go ahead.
- 24 A. Well, those are, I think, dry-cleaning  
25 solvents.

- 1 Q. And they can be harmful if exposure --
- 2 A. I think it's been reported, yes.
- 3 Q. As cancer-causing agents?
- 4 A. I think -- I think perchloroethylene has or
- 5 trichloroethylene. I'm not sure which.
- 6 Q. And these -- these chemicals we're talking
- 7 about can cause other problems other than
- 8 cancers, as far as you know, as far as you've
- 9 read?
- 10 A. No. I don't know that for a fact.
- 11 Q. You don't know one way or the other?
- 12 A. I don't know that for a fact, no, I don't.
- 13 Q. Okay. The -- but we can agree that these
- 14 chemicals can cause adverse health effects in
- 15 humans if exposure is great enough?
- 16 A. Certain kinds of exposure, I'm sure.
- 17 Q. Do you agree with me that children, because
- 18 they are smaller and younger and tender, are
- 19 more susceptible to greater risk because of
- 20 exposure to carcinogenic chemicals?
- 21 A. I don't know that.
- 22 Q. You'll leave that to the doctors?
- 23 A. I'd leave that to somebody -- somebody
- 24 besides me.
- 25 Q. Okay. Do you disagree, Mr. Mahoney, with the

1 test -- well, with this proposition, since  
2 you haven't heard the testimony: that the  
3 exposure to such chemicals and even the  
4 perceived exposure to such chemicals can  
5 cause stress and anxiety in people, including  
6 children, who believe that they've been  
7 exposed in sufficient quantities to cause  
8 them to have health problems?

9 A. I don't know. I don't even have an opinion.

10 Q. Well, you know what stress is, don't you?

11 A. Yes.

12 Q. And if people believe that they're going to  
13 be hurt, they usually get under stress, don't  
14 they, normally?

15 A. Normally, they do.

16 Q. Sure. And they worry about their health,  
17 don't they?

18 A. I suppose some do.

19 Q. Well, you would, wouldn't you?

20 A. Under stress?

21 Q. Yes.

22 MS. COHEN: I'm not sure I  
23 understand the question.

24 MR. JAMAIL: I'm not asking you.

25 MS. COHEN: Well, I have an

1 objection because --

2 MR. JAMAIL: Okay. Let me rephrase  
3 it.

4 MS. COHEN: -- I don't think the  
5 witness is clear as to what --

6 MR. JAMAIL: Let me rephrase it.

7 MS. COHEN: -- he's responding to.

8 Q. If you were fearful that you had been exposed  
9 to highly toxic chemicals and that you were  
10 going to have cancer or some other dreaded,  
11 horrible disease, that would cause you some  
12 mental anxiety, wouldn't it?

13 A. I suppose it would.

14 Q. And you wouldn't have any reason to think  
15 others would not react like it?

16 A. I suppose under those hypothetical conditions  
17 you just raised. I mean they're all  
18 hypothetical so I'm --

19 Q. Sir, you seem to dislike my hypothetical  
20 questions so much. If you had read and taken  
21 the time and the interest in these children's  
22 welfare and their lives and what your company  
23 did to them, I wouldn't have to ask you  
24 hypothetically; but because you haven't, because  
25 it has been burdensome to you, I'm required

1 to ask you hypothetical questions. You  
2 understand that, don't you?

3 A. Yes.

4 Q. Okay.

5 MS. COHEN: I'm going to object to  
6 the form of the question as argumentative.

7 Q. The -- do you agree that a corporation, a  
8 chemical corporation, a corporation who  
9 manufactures chemicals in great quantities  
10 has certain responsibilities to the public?

11 A. Absolutely.

12 Q. Tell me what you think those responsibilities  
13 are.

14 A. Safety of the public, public good,  
15 good-quality products, products that deliver  
16 service and value, all those things.

17 Q. You mentioned the most important thing first,  
18 and that's safety --

19 A. Absolutely.

20 Q. -- to the public. And you believe that,  
21 don't you?

22 A. Yes, I do.

23 Q. Will you agree that it is the responsibility  
24 of a prudent, responsible chemical company  
25 that's in the business of manufacturing and

- 1           selling chemicals to determine the effect of  
2           its waste products on the receiving stream?
- 3    A.    On the receiving stream?
- 4    Q.    Yes, wherever it's going to be sent.
- 5    A.    You mean where it goes?
- 6    Q.    Yes.  Is that a responsibility?
- 7    A.    That's contemporary practice.  That's what we  
8           do these days.
- 9    Q.    And that's the responsibility of the chemical  
10           company?
- 11   A.    That's what we do these days.
- 12   Q.    Sir, is it or is it not?  Answer "Yes" or  
13           "No," and then you can explain.
- 14   A.    Yes, because I'm going from my experience.  
15           And I haven't been involved except for the  
16           last several years, and that's the way we do  
17           it.
- 18   Q.    Well, in -- a step farther, you do that so  
19           that you can determine whether the waste as  
20           discharged or processed or disposed of will  
21           or will not adversely affect the environment  
22           or human life, don't you?
- 23   A.    Sure.
- 24   Q.    And you have that responsibility, don't you?
- 25   A.    Yes, we do.

- 1 Q. And is it your responsibility, also, to  
2 acquire a thorough knowledge of subsurface  
3 formation before disposing of the chemical  
4 waste products if they're toxic and can get  
5 into the water? Do you have that  
6 responsibility?
- 7 A. Well, first of all, there's a lot of  
8 regulations that describe all that; and the  
9 people who handle that stuff, you know, they  
10 assure us that. We don't go out and --
- 11 Q. I know. But that is the responsibility that  
12 you have to --
- 13 A. You've got to be sure. The law is very  
14 clear, and that's the right thing to do,  
15 absolutely.
- 16 Q. And you have that responsibility --
- 17 A. Yes.
- 18 Q. -- without question?
- 19 A. Yes.
- 20 Q. All right. And is it also your  
21 responsibility -- the company's, not you  
22 personally -- okay? -- the company's  
23 responsibility to consider the potential  
24 threat of contamination of ground water  
25 before disposing of its chemical wastes or

1 causing it to be disposed of in open, unlined  
2 pits?

3 A. I don't know. I don't know. I don't know  
4 open, unlined pits.

5 Q. Well, suppose -- let me -- if you don't know,  
6 let me try on expand on it. Suppose it's in  
7 a container of such that can leak into the  
8 soil and into the water where people will  
9 drink it and also into the air where people  
10 breathe it. I think you told me earlier --

11 A. You're asking me what would I do?

12 Q. Yes. What is the responsibility of the --

13 MS. COHEN: Mr. Mahoney, why don't  
14 you listen, let him complete his question,  
15 and answer that question.

16 THE WITNESS: Okay.

17 Q. I think you've told me the company did have  
18 the responsibility to make sure that that  
19 didn't happen. Is that correct?

20 A. Yes.

21 Q. Okay. And you're still of that opinion?

22 A. Yes.

23 Q. They have the responsibility to see that  
24 their wastes don't get stored or put in such  
25 a place. You're nodding. Is that "Yes"?

- 1 A. Yes. Yes.
- 2 Q. All right. The -- if you were a person, the  
3 CEO of a nuclear plant -- this is another  
4 hypothet because it's the only way I can talk  
5 to you -- of a nuclear plant that produced a  
6 lot of nuclear waste -- now, we both know  
7 what those are. We don't know the content of  
8 it, but that's bad stuff, right?
- 9 A. Uh-huh.
- 10 Q. Nuclear waste can be really bad stuff?
- 11 A. Uh-huh.
- 12 Q. Right? You have to speak up.
- 13 A. I'm sorry. Yes. Yes.
- 14 Q. Do you have a position as to whether or not  
15 it is the responsibility of the nuclear  
16 company that manufactures the nuclear product  
17 and generates the nuclear waste, manufactures  
18 the energy and also manufactures the -- you  
19 can't manufacture one without the other, can  
20 you?
- 21 A. I'm not a -- I don't know anything about that  
22 sort of thing.
- 23 Q. Okay. Well, part of the waste --
- 24 A. I doubt it, but I don't -- I don't know.
- 25 Q. Let me get something straight. Back to

1           Monsanto, you can't manufacture your product  
2           without generating some waste, can you?

3           A.     That's right.

4           Q.     And all that waste generated is part of the  
5           manufacturing process?

6           A.     Generally speaking, yes.

7           Q.     Sir?

8           A.     Yes.

9                         MS. COHEN:   You need to speak up a  
10           little bit, Mr. Mahoney.

11          A.     I'm sorry.   Yes.

12          Q.     That's an integral part, part and parcel of  
13           the manufacturing process?

14          A.     Yes.

15          Q.     Okay.   Now, go back to the nuclear waste  
16           thing again.   What is your position, as  
17           CEO -- if you were the CEO of a nuclear waste  
18           company -- nuclear company that generated  
19           waste and you say, "Well, I've got to get rid  
20           of this stuff, but, man, this is bad.   It's  
21           going to hurt people, and it could be  
22           expensive to get rid of," do you think they  
23           have a responsibility to make sure the person  
24           they -- they retain to get rid of it has the  
25           expertise and the experience necessary to do

- 1           so properly?
- 2    A.    Yes.
- 3    Q.    The failure to ascertain that is a gross  
4           disregard for the rights and welfare and  
5           safety, as you put it, of the public, isn't  
6           it?
- 7    A.    Yes.
- 8    Q.    And it would be an actual knowing act of  
9           disregard for the safety, health and welfare  
10          of the public?
- 11   A.    Now, we're with this nuclear person?
- 12   Q.    Yes.
- 13   A.    Yes.
- 14   Q.    Is that right?
- 15   A.    Yes.
- 16   Q.    He would have an obligation to thoroughly  
17          examine and check the qualifications, the  
18          expertise and the processes by which these  
19          people he's contracting with would dispose of  
20          it to make sure, as best he could, it was  
21          disposed of properly, correct?
- 22   A.    Yes.  That's, I think, a fair statement,  
23          yes.
- 24   Q.    That the people that were doing it were doing  
25          it right that were disposing of it?

- 1 A. Yes. That sounds right.
- 2 Q. That they had the expertise to do it?
- 3 A. Yes.
- 4 Q. And they would have, of course, a continuing  
5 obligation, would they not, to make sure that  
6 that -- for as long as they contracted with  
7 them, that they continued to dispose of it  
8 properly, wouldn't they?
- 9 A. They have an obligation under that set,  
10 certainly.
- 11 Q. No question about it?
- 12 A. I don't think so.
- 13 Q. And the failure to follow through with those  
14 obligations and responsibilities would, in  
15 your opinion, be a gross disregard for the  
16 rights, health and welfare and safety --
- 17 A. Now, what is it they were doing?
- 18 Q. Well, if they didn't check to see whether  
19 these people had expertise and were disposing  
20 of the nuclear waste properly --
- 21 A. Sure.
- 22 Q. -- would that be a gross disregard for the  
23 rights, health and safety of the public --
- 24 A. That's right.
- 25 Q. -- who might become exposed to it?

- 1 A. That's right.
- 2 Q. Is that right?
- 3 A. That's right.
- 4 Q. Now, what is the difference between that and  
5 disposing of toxic chemicals?
- 6 A. Is this going to be another hypothetical?
- 7 Q. Yes. What is the difference between that  
8 and -- your answer to that and disposing --
- 9 A. I can tell you how I'd behave.
- 10 Q. Sir, what is the difference, in your opinion,  
11 as to the propriety of business management --  
12 what is the difference between the obligation  
13 of the nuclear waste manufacturer and a  
14 chemical waste manufacturer that manufactures  
15 wastes that can be carcinogen and harmful,  
16 hurtful to people?
- 17 A. Well, you just described a nuclear condition.
- 18 Q. Yes.
- 19 A. And now tell me about the chemical product.
- 20 Q. Same thing. Do the same responsibilities  
21 hold for a person --
- 22 A. Hazardous?
- 23 Q. -- trying to get rid of chemical wastes that  
24 can be harmful to people?
- 25 A. If people -- if it can be harmful to people,

1           absolutely.

2       Q.    They have the same obligation, don't they?

3       A.    Sure.

4       Q.    No question in your mind about it?

5       A.    If it can be harmful to people.

6       Q.    There's no question in your mind about it?

7       A.    That's right.

8       Q.    It would be a total gross disregard for the  
9           rights of people's safety, wouldn't it?

10      A.    If people knowingly do things that are  
11           wanting --

12                   MS. COHEN:   Yes or no.

13      A.    Yes.   Yes.   Yes.

14      Q.    Can we take about a ten-minute break?

15      A.    Okay.

16                   THE VIDEOGRAPHER:   Going off the  
17           record, 11:05 a.m.

18

19                   (A recess was taken.)

20

21                   THE VIDEOGRAPHER:   11:15 a.m., on  
22           the record.

23                   MR. JAMAIL:   Would you --  
24           Ms. Martin, would you please mark this as  
25           Mr. Mahoney next.   Mr. Mahoney 3.

1 (An instrument was marked Mahoney  
2 Exhibit No. 3 for identification.)

3

4 Q. Mr. Mahoney, this is redundant, but I got to  
5 ask it this way: Do you know what that is?

6 A. Yes. That's our annual report.

7 Q. Okay. Would you turn to where the profit  
8 part is.

9 A. Which profit part?

10 Q. How much you made last year.

11 A. Oh. Well, it's right on the front page.

12 Q. First, before you do that, would you explain  
13 for the Jury: What is the purpose of this  
14 Mahoney 3 that I have just handed you?

15 A. This is the annual report, and we send it out  
16 to shareowners, tell them how the company is  
17 doing and what our financial condition is,  
18 what our policies are.

19 Q. The -- it's to notify the public as to the  
20 progress under the management in place of  
21 Monsanto?

22 A. Yes.

23 Q. And to inform them and the shareholders,  
24 whoever they are, "This is how much we made,"  
25 or, "This is how much we lost"?

1 A. That's right.

2 Q. In 1989, can you tell me what Monsanto's net  
3 worth was?

4 A. Well, the --

5 Q. In '89.

6 A. Let's see. Shareowners' equity was \$29 a  
7 share. I have to get how many shares they  
8 were. A hundred thirty-two by thirty-six --  
9 3.9 billion, looks like.

10 Q. \$3.9 billion?

11 A. I'm calculating that, yes.

12 Q. That was approximately the net worth of  
13 Monsanto --

14 A. Yes.

15 Q. -- in 1989?

16 A. Yes.

17 Q. Sir, the reason I'm asking this -- you're  
18 probably aware of it -- is so that the Jury  
19 can properly assess, if they get to this  
20 point, the net worth of Monsanto so that  
21 punitive damages can be considered; and in  
22 order to consider punitive damages, they're  
23 entitled to know the worth of the company.  
24 That's the reason I'm asking these  
25 questions.

1 MS. COHEN: I object to the form of  
2 the question.

3 Q. Do you understand?

4 MR. JAMAIL: I want to just  
5 enlighten him as to why.

6 Q. Did they go over any of this with you?

7 MS. COHEN: I'm going to instruct  
8 him not to answer the question.

9 Q. I wonder why they didn't do that.

10 MS. COHEN: I'm going to instruct  
11 Mr. Mahoney not to answer any questions  
12 concerning our discussions.

13 MR. JAMAIL: Would you like to take  
14 him out and go over it with him now?

15 MS. COHEN: You can proceed with  
16 the deposition, Mr. Jamail.

17 MR. JAMAIL: I'm so grateful.

18 Q. Mr. Mahoney, what was the net worth of  
19 Monsanto in 1988?

20 A. Well, I'll have to go back and find '88.

21 Q. Well, I've got an answer to their admissions,  
22 if you'll just go with me, 3.8 --

23 A. I'm not sure -- I don't think we go back  
24 to '88. No, I don't think we go back that  
25 far.

- 1 Q. Well, they answered under oath that it was  
2 worth \$3.8 billion, 3,800,000,000. Would  
3 that sound about right?
- 4 A. About right, yes.
- 5 Q. Would you look, please, at what Monsanto's  
6 net worth was in 1990.
- 7 A. It's in that same range. I'd have to  
8 multiply the numbers together to get that.
- 9 Q. Around \$4 billion?
- 10 A. Well, it's -- thirty-two by one-thirty is,  
11 roughly, about four -- a little over  
12 4 billion.
- 13 Q. A little over 4 billion. Would the same be  
14 true for '91 and today?
- 15 A. No. It was about 3.6 in '91, and it's about  
16 the same today.
- 17 Q. 3,600,000,000?
- 18 A. Yes.
- 19 Q. Okay. Mr. Mahoney, these financial  
20 statements, annual reports have to be as  
21 accurate as Monsanto can make them, don't  
22 they?
- 23 A. Absolutely.
- 24 Q. And you go to great pains to make sure that  
25 they -- that the statements made are truthful

1 as much as you can and that the reports are  
2 accurate?

3 A. Yes.

4 Q. Including the statements made to the company,  
5 the numbers?

6 A. Yes.

7 Q. Mr. Mahoney, again, since the only way we can  
8 talk, apparently, is by hypothet -- but by  
9 hypothet, I was getting your opinion as to  
10 the questions I was asking under those  
11 conditions, and you understood that, didn't  
12 you?

13 A. That's what I guessed at. I mean --

14 Q. All right. If someone were going to punish  
15 someone, let's first define what you believe  
16 punishment to be, punitive or punishing to  
17 be. What do you understand the word to  
18 mean?

19 A. Personally? Company? Are we hypothetical  
20 again or what?

21 Q. Company.

22 A. Company. Punishment is pain.

23 Q. If it didn't hurt, it wouldn't be punishment,  
24 would it?

25 A. That's right.

- 1 Q. Okay. Monsanto --
- 2 A. Well, I don't know. I don't know. We're  
3 getting awfully --
- 4 Q. No, we're not.
- 5 A. -- dictionary here.
- 6 Q. No. No. I'll get you -- would you like a  
7 dictionary?
- 8 A. No. I'll look it up but I mean --
- 9 Q. Hey, that's my favorite book.
- 10 A. I've been punished before, and it didn't hurt  
11 a lot; and I've been hurt, and it didn't  
12 punish me.
- 13 Q. Well, if you were going to punish a large  
14 company, you would have to fine them in order  
15 to punish them, wouldn't you?
- 16 A. No.
- 17 Q. What would you do with them?
- 18 A. If you were going to --
- 19 Q. Punish them. Let me rephrase it. If the law  
20 said that the only recourse for punishment  
21 was punitive damages, once a company had been  
22 proven to have been grossly negligent, then  
23 the damage award would have to be such as  
24 would be hurtful, would it not, for it to be  
25 punishing?

- 1 A. To punish.
- 2 Q. Yes.
- 3 A. Anything punishes. A public reputation  
4 punishes. I mean -- no, I don't agree with  
5 that.
- 6 Q. Well, if the law -- you disagree with the  
7 law?
- 8 A. With which law?
- 9 Q. If the law says the only way that you shall  
10 consider punishing these people to keep them  
11 from doing it again is to assess damages,  
12 then under those conditions, the punishment  
13 would have to be great enough, the damages  
14 would have to be great enough to hurt,  
15 wouldn't they?
- 16 A. That's the law. But I'm just saying that any  
17 number -- you can get adverse publicity which  
18 is more hurtful than money.
- 19 Q. Oh, I don't think so. I've seen corporations  
20 get adverse publicity and just go on down the  
21 road.
- 22 A. Well --
- 23 Q. But if that -- in the context that I --
- 24 A. In our company it does matter. It really  
25 does matter.

1 Q. In the context that I have asked the  
2 question, if that is the only choice, then  
3 the assessment of punitive damages has to be  
4 large enough to hurt, correct?

5 MS. COHEN: I think he's already  
6 said "No."

7 A. I said I can see all kinds of ways that  
8 damages can hurt that aren't large.

9 Q. Let me just give it to you again, and please  
10 listen closely. If the only choice a Jury  
11 has is to say -- in answer to a question of  
12 punitive damages, is to say a number, a  
13 figure of money, then under your own  
14 definition of punish, it would have to be a  
15 large enough number to hurt, if that was the  
16 only option?

17 A. I don't agree.

18 Q. Why?

19 A. Because --

20 Q. Because it's Monsanto that's going to have to  
21 pay?

22 MS. COHEN: I object to the form of  
23 the question.

24 A. No. I just don't agree with it.

25 Q. Huh?

- 1 A. I don't agree.
- 2 Q. Why?
- 3 A. I've told you. I think that anything hurts a  
4 company.
- 5 Q. Sir --
- 6 A. Anything hurts a company.
- 7 Q. -- you're not listening to my question.  
8 Forget about the other things that hurt. If  
9 the only option of punishment was what I told  
10 you, the assessment of damages, that's the  
11 only option that a Jury has --
- 12 A. Uh-huh.
- 13 Q. -- then are you denying that in order to make  
14 it punishing that it has -- are you saying it  
15 could be a small amount --
- 16 A. Sure.
- 17 Q. -- that doesn't hurt?
- 18 A. Anything hurts.
- 19 Q. Would 10 percent of your net earnings hurt?
- 20 A. Sure, it would.
- 21 Q. What were your net earnings last year?
- 22 A. Last year? I don't know. Get the book, and  
23 we'll get the accurate numbers. I don't have  
24 to guess. The net earnings were 296 million  
25 last year.

1 Q. Would the complete payment of your net  
2 earnings as punitive damages in this case  
3 hurt?

4 A. Sure, it would.

5 Q. Okay.

6 A. \$2 would hurt.

7 Q. Oh, sure. The -- that's a little miserly,  
8 isn't it?

9 MS. COHEN: I object to the form of  
10 the question.

11 Q. Don't you think, really? Now, we've been  
12 getting along pretty good till now. Now,  
13 come on.

14 A. You're talking about Monsanto shareowners.

15 Q. I'm talking about your company, yes. You  
16 didn't -- you weren't bashful about sending  
17 your man down there to Marshall to ask for a  
18 bunch of punitive damages, were you?

19 MS. COHEN: I object to the form of  
20 the question.

21 Q. Were you?

22 A. I didn't send anybody anywhere.

23 Q. You didn't stop him from going, did you?

24 A. No.

25 Q. You knew he was going, didn't you?

1 A. Sure.

2 Q. You thought you were entitled to them, didn't  
3 you?

4 A. Yes, we did.

5 Q. And you didn't turn them down, did you?

6 A. No.

7 MR. JAMAIL: Give me the  
8 dictionary, will you?

9 MR. KRIST: Break out the  
10 dictionary.

11 MR. JAMAIL: Damn, if she didn't  
12 already turn to the page.

13 Q. Would you look under "punitive," sir.

14 A. Okay.

15 Q. Would you agree with it?

16 A. Punitive. It says inflicting, involving or  
17 aiming at punishment. That's what --

18 Q. Do you agree with that?

19 A. I'm -- I'm reading it.

20 Q. Do you agree with that definition?

21 A. Yes. That's what it is.

22 Q. And what do you --

23 A. I wasn't trying to be -- I was trying to  
24 understand what you were asking me. I was  
25 just reading it, yes.

- 1 Q. You've told me candidly earlier, before you  
2 decided not to -- to back off of it that  
3 "punish" means to hurt.
- 4 A. "Punish" means to hurt, yes.
- 5 Q. You're still with that?
- 6 A. Yes.
- 7 Q. Well, \$250 million of cleanup costs for some  
8 of these chemical waste sites that you  
9 created was -- you claim that wouldn't hurt,  
10 didn't you? Didn't you?
- 11 A. We deal in the word "materiality," I think,  
12 is what we talked about.
- 13 Q. Now, let's don't go to qualifying a bunch of  
14 stuff. Did you claim it or not?
- 15 A. Claim it where? Show me where I claimed it  
16 and I'll --
- 17 Q. I'm going to show you right now, sir. I  
18 don't want you to guess at anything. This is  
19 your financial annual report, Mahoney 3.  
20 Just read it to yourself for now, starting  
21 with that last sentence, "Because..."
- 22 A. Yes.
- 23 Q. You say in there that Monsanto could pay  
24 \$300 million and it wouldn't affect the  
25 shareholders at all, don't you?

1 A. Let me read what it says.

2 Q. Sure.

3 A. It says, "Because of the uncertainties  
4 associated with" remediate -- "remediation  
5 activities, Monsanto's future expenses to  
6 remediate these sites could be as much as an  
7 additional \$300 million. These potential  
8 future expenses would be expected to be  
9 incurred over the balance of the decade.  
10 While the costs and results for remediation  
11 of waste disposal sites cannot be predicted  
12 with certainty, management believes that,  
13 with future developments in remediation  
14 technology and evolving government policies  
15 toward evaluation of risks and benefits,  
16 Monsanto's liquidity and profitability in any  
17 one year will not be materially affected."

18 Now, that is a definitional --  
19 that's why I said "material." That's a  
20 definitional thing.

21 Q. "... will not be materially affected," right?

22 A. That's a definitional thing.

23 Q. That's in addition to 250 million you've  
24 already set aside to clean them up, isn't it,  
25 or a hundred eighty or whatever you said in

1           that report?

2    A.    It says what we spent in 1991.  That's  
3           right.

4    Q.    And part of this is the Brio site, isn't it?

5    A.    I don't know.

6    Q.    Well --

7    A.    I suppose.  I mean I'm just reading this  
8           thing, now.

9    Q.    So if four to five hundred million dollars is  
10           the cost to clean up the toxic waste  
11           generated by Monsanto that they've agreed  
12           under the EPA guidelines as part of the  
13           superfund to clean up, that four to five  
14           hundred million dollars would not materially  
15           affect the liquidity and profitability of  
16           Monsanto in any one year?

17                   MS. COHEN:  I object to the form --

18    Q.    Is that what you're saying?

19                   MS. COHEN:  I'm going to object to  
20           the form of the question.

21    Q.    You can answer it.

22                   MS. COHEN:  You can answer it if  
23           you can.

24    Q.    You may answer it.

25    A.    I can read what -- what -- this is an SEC-

1 required statement --

2 Q. Right.

3 A. -- and it has all kinds of definitions, and I  
4 have to rely on the people that put the  
5 definitions and meet them. I don't know -- I  
6 mean you have to make these statements  
7 according to the Securities and Exchange  
8 Commission. And we've got an army of people  
9 that look at those words and say those are  
10 the rights words.

11 Q. And that was accurate? Had to be.

12 A. It wouldn't be there if they weren't  
13 accurate.

14 Q. Sir --

15 A. What it said, though, was over a ten-year  
16 period --

17 Q. That \$400 million would not materially --  
18 four hundred to five hundred million dollars  
19 would not materially affect Monsanto's  
20 profitability or liquidity. Isn't that what  
21 it says?

22 MS. COHEN: I'm going to object to  
23 the form of the question to the extent it  
24 mischaracterizes the term "materiality"  
25 versus how that term is used under the

1 regulations of the Securities and Exchange  
2 Commission.

3 MR. JAMAIL: Oh, crap.

4 A. I think that's exactly what --

5 Q. Is that what it says or not?

6 A. It's a very precise definition.

7 Q. Is that what this says?

8 A. No, it's not, in my judgment.

9 Q. Well, interpret it for me. Tell me what you  
10 think it means.

11 A. I'm going to tell you -- I'm going to tell  
12 you what this thing -- I can only read it and  
13 go through the SEC requirements.

14 Q. Sir, that's what was given to the public,  
15 wasn't it?

16 A. Right. And it's absolutely accurate.

17 Q. And what it's saying here at the end -- read  
18 it for me. You don't have to interpret it.

19 A. "Monsanto's liquidity and profitability in  
20 any one year will not be materially" --  
21 "materially affected" by all the words that  
22 went in front of it.

23 Q. That's right.

24 A. And they're all very carefully stated.

25 Q. Sure. And that's \$300 million in addition to

1           what's already been paid.

2     A.     With a lot of words around it.

3     Q.     \$300 million in addition to what's been  
4           paid.

5     A.     I'm going to --

6     Q.     Is that right?

7     A.     It says, "Because of the uncertainties  
8           associated with remediation activities,  
9           Monsanto's future expenses to remediate these  
10          sites could be as much as an additional" --  
11          but what this says is --

12    Q.     Read it all.

13    A.     -- that the costs -- "These potential future  
14          expenses would be expected to be incurred  
15          over the balance of the decade. While the  
16          costs and results of remediation of waste  
17          disposal sites cannot be predicted with  
18          certainty, management believes that, with  
19          future developments in remediation technology  
20          and evolving government policies towards  
21          evaluation of risks and benefits" -- and,  
22          therefore -- "Monsanto's liquidity and  
23          profitability in one year will not be  
24          materially affected."

25                           It is anticipating a whole series

- 1 of events, and that's what that says.
- 2 Q. That's their statement and representation to  
3 the public?
- 4 A. Yes.
- 5 Q. Monsanto's?
- 6 A. Yes.
- 7 Q. And, again, it ends with "Monsanto's  
8 liquidity and profitability in any one year  
9 will not be materially affected"?
- 10 A. Well, I'm going to have to go back --
- 11 Q. Is that what it says, the last sentence?
- 12 A. That's the last sentence but --
- 13 Q. That's all I asked you about.
- 14 MR. JAMAIL: I'll introduce it.
- 15 Q. Now, the public has a right to rely on that,  
16 don't they?
- 17 A. That book? Absolutely.
- 18 Q. And not only that, that's filed with the SEC  
19 under penalties of perjury, isn't it?
- 20 A. Well, it isn't perjury, I don't think, but  
21 it's filed with the SEC under law.
- 22 Q. You're still not supposed to lie or  
23 misrepresent, are you?
- 24 A. Absolutely not.
- 25 Q. And while we're --

1 MR. JAMAIL: And I do want to  
2 attach this.

3 Q. And while we're on that subject, do you  
4 believe it's ever all right to misrepresent  
5 facts to the government about material --  
6 material matters that -- that the government  
7 might need in order to protect the  
8 environment or protect the people's safety?  
9 Do you think it's ever all right for Monsanto  
10 or any other chemical company to misrepresent  
11 such facts to the government?

12 A. Misrepresent important facts to the  
13 government?

14 Q. Yes.

15 A. No.

16 Q. Why?

17 A. Because misrepresentation is wrong.

18 Q. That's fraud, ain't it?

19 A. Well, I don't know what -- the definition of  
20 fraud.. I'm --

21 Q. Well, it means to mislead, really.

22 A. Yes.

23 Q. Would you agree with that?

24 A. Yes.

25 Q. Misrepresenting material facts to the

1 government who is charged with the  
2 responsibility of protecting the environment  
3 and the safety of people who dwell in certain  
4 areas is a gross disregard for the rights of  
5 the people who have to be -- who rely on  
6 those reports, is it not?

7 A. The way you said it, it sure is.

8 Q. And it would be a knowing malicious, wanton,  
9 willful act to misrepresent such material  
10 facts, wouldn't it?

11 A. And under what context, now?

12 Q. Falsifying the amount of toxic wastes put in  
13 a certain place.

14 A. Falsifying? Yes.

15 Q. Or misrepresenting it.

16 A. Well, you said -- I mean you went on to this  
17 horrible, horrible, horrible, horrible, and  
18 I'm trying to get --

19 Q. Well I didn't go say "horrible." You said  
20 "horrible."

21 A. No. You did.

22 Q. Oh, listen. Come on.

23 A. Come on.

24 Q. Listen to the question.

25 A. All right. I'll listen carefully.

- 1 Q. If Monsanto -- and let's just narrow it.
- 2 A. All right.
- 3 Q. -- the company misrepresented material facts
- 4 to a government agency that was charged with
- 5 the safety of the environment and health of
- 6 people generally, you've told me, I think,
- 7 that would be a gross disregard for the
- 8 rights of those people. Is that correct --
- 9 A. Yes.
- 10 Q. -- or not?
- 11 A. Yes.
- 12 Q. To do so would -- if Monsanto did that, would
- 13 be a wanton, willful, knowing act and
- 14 disregard of the rights and safety of those
- 15 people, wouldn't it?
- 16 A. That's right.
- 17 Q. And you wouldn't condone it, would you?
- 18 A. No, I wouldn't.
- 19 Q. And you think that's a proper case for
- 20 punitive damages, don't you?
- 21 A. Now you're into the law again.
- 22 Q. No. No. You asked for punitive in --
- 23 A. Yes, you are.
- 24 Q. Is that right?
- 25 A. What is?

- 1 Q. My question. Did you say "Yes"?
- 2 A. I don't know.
- 3 Q. If that happened --
- 4 A. Punitive damage has a very specific legal  
5 aspect to it, and you're asking in a  
6 hypothetical; and I can't answer.
- 7 Q. You knew enough about it to ask for it in  
8 Marshall, Texas. Wouldn't you say that  
9 misrepresentation of such facts would be  
10 grounds for punitive damages?
- 11 A. I don't know.
- 12 Q. You don't deny it, do you?
- 13 A. I don't know.
- 14 Q. Uh-huh. The superfund cleanup potentially  
15 responsible party is determined  
16 percentagewise among the members who have to  
17 participate by -- generally by the amount of  
18 wastes they contributed to such superfund  
19 site. Is that correct?
- 20 A. I think that's accurate.
- 21 Q. And you've told me earlier that it is never  
22 proper to misrepresent facts to anybody  
23 regarding the toxic wastes dumped in any such  
24 site, especially the governmental agency. Is  
25 that right?

- 1 A. That's right.
- 2 Q. I'm going to hand you what has been  
3 previously marked as Exhibit 1465 in this  
4 case, sir, and ask you just to look at the  
5 heading, if you would, Mr. Mahoney. Do you  
6 know what that is?
- 7 A. No.
- 8 Q. It's a Monsanto -- it's written in at the  
9 top, is it not?
- 10 A. Yes, it's written --
- 11 Q. Read that for me.
- 12 A. Well, it says "Monsanto" something.
- 13 Q. "Records."
- 14 A. "Records."
- 15 Q. It's been furnished by Monsanto.
- 16 A. Okay.
- 17 Q. And this was an exhibit attached to a letter  
18 sent to -- take my word for it -- sent to the  
19 Environmental Protection Agency. You  
20 recognize that as an agency of the  
21 government, do you not?
- 22 A. Yes, I do.
- 23 Q. United States Government?
- 24 A. Yes.
- 25 Q. This was what was represented to them -- read

1 the date of this, please, sir.

2 A. This is that ink --

3 Q. Yes.

4 A. I think it says 12/4/84.

5 Q. That's what it looks like to me.

6 A. Okay. It could be 12/11/84. I don't know.

7 Q. And it says for the years 1967 through 1980,  
8 and this is an exhibit furnished by Monsanto  
9 to the EPA --

10 MS. COHEN: I'm going to object to  
11 the form of the question. I don't think  
12 that's been established.

13 Q. -- in the year nineteen -- December of 1984.  
14 Read the total amount of styrene tars it said  
15 it sent to the Brio site. That's what it's  
16 referring to.

17 A. 111,497.1 -- I guess that's k, thousand  
18 pounds.

19 Q. Well, is it's 111 million pounds is what that  
20 reads..

21 A. I'm not sure of that.

22 Q. k was million then.

23 A. Was it? Okay. I don't know.

24 Q. That's what has been testified. 111 million  
25 pounds of styrene tars were sent to the Brio

1 site in the years I just told you about.

2 MS. COHEN: May I see the exhibit,  
3 please.

4 Q. Would you look at what has been marked as  
5 Guilliams Exhibit No. 1 -- Guilliams Exhibit  
6 No. 1.

7 MR. JAMAIL: We want to attach  
8 this, 1465.

9 Q. -- and I'll ask you if you've ever seen that  
10 before.

11 A. No.

12 Q. Well, sir, it's a -- it's a Monsanto Company  
13 Supplemental Response to Plaintiffs' -- and  
14 that's us, me and my co-counsel -- First Set  
15 of Interrogatories and Request for  
16 Production. I would like for you -- and the  
17 date of this is 29th day of April, 1992,  
18 correct?

19 A. That's what it says.

20 Q. Who signed that?

21 A. Douglas Dougherty.

22 Q. Who signed it? That's his name, but who  
23 signed it? Isn't that Phyllis Cohen?

24 A. Yes.

25 Q. It's your lawyer, right? One of them.

1 A. Yes.

2 Q. Did you just meet her today, too?

3 A. Yes.

4 Q. These are answers that are sworn to. Okay?

5 MS. COHEN: I object to the form of  
6 the question.

7 Q. The -- do you see on Exhibit 1465 any mention  
8 of vinyl chloride or vinyl chloride monomers  
9 or vinyl chloride tars or anything at all  
10 connected with vinyl chlorides?

11 A. No.

12 Q. Do you agree that misrepresentation can occur  
13 by omission as well as commission?

14 A. Yes.

15 Q. There's nothing there mentioned about vinyl  
16 chlorides, is there?

17 A. I don't see it, no. I don't see anything.

18 Q. Okay. Now, look at this Exhibit 1 attached  
19 to these sworn answers given by your lawyers  
20 on your behalf, and would you read what it  
21 says about the amount of styrene monomer tars  
22 delivered to the Brio site. And that's what  
23 it's asking about, the Brio site. Read the  
24 amount delivered to the Brio site that your  
25 lawyers swear that was delivered by

- 1           Monsanto.
- 2    A.    599.40 million pounds.
- 3    Q.    599.4 million pounds, right?
- 4    A.    Uh-huh.
- 5    Q.    There seems to be a 498-million-pound
- 6           discrepancy, doesn't there?
- 7    A.    Well, at least -- between these two?
- 8    Q.    Yes.
- 9    A.    Yes. They're different by -- well -- you did
- 10           the arithmetic?
- 11   Q.    Go ahead and do it.
- 12   A.    This one is a hundred eleven, four
- 13           ninety-seven thousand -- are you calling that
- 14           million? Okay.
- 15   Q.    I don't know. Maybe it's thousand. You're
- 16           reading it as thousand. So it would be a
- 17           599-million-pound discrepancy?
- 18   A.    I don't know how to read this thing, frankly.
- 19   Q.    Say it's 111 million. Let's give them the
- 20           benefit of the doubt.
- 21   A.    Okay. We'll give them the benefit of the
- 22           doubt. Then, yes, it's the difference
- 23           between those two, whatever you --
- 24   Q.    How much is the difference? How many
- 25           millions of pounds in difference?

1 A. Well, let's see. Six hundred from -- it's  
2 about 500 million, roughly.

3 Q. 500-million-pound discrepancy. Would you say  
4 that could be misleading?

5 A. Yes.

6 Q. No question about it, is there?

7 A. If what -- I mean if you're saying -- if  
8 it's -- I don't know the context of that  
9 document or that one, but the 500 million is  
10 different.

11 Q. And it's --

12 A. If they're talking about the same place, it's  
13 different.

14 Q. They're talking about the same place and  
15 they're talking about the years '60 to '77.

16 MS. COHEN: I'm going --

17 Q. Correct? And over here they're talking about  
18 the years '67 to '80, right?

19 MS. COHEN: I'm going to object to  
20 the form of the question. Can I see the  
21 documents, please.

22 MR. JAMAIL: Sure. I attach both  
23 of them to this deposition.

24 MS. COHEN: I object to the form of  
25 the question. The document 1465 clearly

1 references existing records and document --  
2 the interrogatory answer clearly references  
3 an estimate based on the fact that there's a  
4 loss of records.

5 Q. She'd made her objection. If you're looking  
6 at this as a normal, rational human being,  
7 this would be misrepresentative if this is  
8 accurate, would it not? Let me rephrase it.  
9 1465 is misrepresentative of the actual  
10 tonnage sent if Exhibit Guilliams 1 is  
11 accurate?

12 MS. COHEN: I'm going to object to  
13 the form of the question.

14 MR. JAMAIL: You've made it. Let  
15 him answer.

16 MS. COHEN: Mr. Mahoney has no  
17 context in which 1465 was prepared.

18 Q. Go ahead and answer it, please.

19 A. I'm listening to my -- I'm trying to hear  
20 what is going on.

21 Q. You can answer the question. She's made her  
22 objection.

23 MR. JAMAIL: Now, don't interrupt  
24 again. You've made it.

25 Q. If 1465 was submitted to the United States

- 1 governmental agency, the EPA, and if  
2 Guilliams No. 1 is accurate, 1465 is a  
3 misrepresentation of what actually was sent  
4 to that plant, that dump by Monsanto?
- 5 A. If that's accurate and that's different --
- 6 Q. Yes.
- 7 A. -- they're different. Now,  
8 misrepresentation -- and you know that  
9 there's a whole bunch of legal words around  
10 that phrase, and I -- they're different and  
11 if that one's more accurate than that one,  
12 that's accurate and that's wrong.
- 13 Q. If this is wrong, it would be misleading,  
14 wouldn't it?
- 15 A. I don't know whether it was. If you give bad  
16 information, it's misleading, absolutely.
- 17 Q. And if Monsanto gave it, it misled the EPA if  
18 this exhibit is correct, if Guilliams 1 is  
19 correct?
- 20 A. If they -- if somebody said, "I'm going to  
21 mislead the EPA," that's it. If it's just,  
22 "I put that in and" -- I don't know what  
23 this thing is.
- 24 Q. It says from the existing records of  
25 Monsanto.

1 A. If that's -- and I'm absolutely certain  
2 somebody pulled the existing records and said  
3 that's what it was, if that's what that thing  
4 says.

5 Q. And if this one is correct, Guilliams 1 --

6 A. Well, I don't know. Is this an estimate or  
7 is this --

8 Q. Your lawyers swore to this, sir.

9 A. Okay.

10 MS. COHEN: Why don't you let him  
11 read them.

12 A. Let me find out what we've got here because  
13 I'm --

14 Q. You just look at it.

15 A. -- you're mixing a lot of lawyer words in  
16 here.

17 Q. See what you've got.

18 MS. COHEN: Why don't you --

19 Q. Sir, you've got a 500-million-pound  
20 difference. That's what you've got.

21 A. Okay. This one says, "Because of the passage  
22 of time and consequent loss of records, many  
23 documents reflecting sales to the site are no  
24 longer available. Many of the individuals  
25 who may have knowledge are deceased or

1           retired.  However, Monsanto provides the  
2           following estimates of the volumes of  
3           materials sold to the owners of the Brio site  
4           during the dates specified based on the  
5           information available to it:"  And that's  
6           599.

7                         Now, this one is an esti -- this is  
8           based on existing records, and I don't know  
9           what the context of that one is.

10    Q.     Just take the two at face value because we're  
11           not going to go behind them.  One of them is  
12           wrong, isn't it?

13                         MS. COHEN:  I'm going to object to  
14           the form of the question.

15    Q.     Is one of them wrong?

16    A.     Look, are we first saying these are -- we're  
17           talking about the same thing because I'm --

18    Q.     Yes, sir.

19    A.     Okay.

20    Q.     The same Brio site.  Is one of them wrong?

21    A.     One of them must be wrong, but they're  
22           different context.  One says it's an  
23           estimate, and the other one says it came from  
24           files; and I don't know which one is right.

25    Q.     Well, you don't have to know.  Your lawyers

1           made that estimate based on whatever records  
2           they had. Now, let me ask you this -- and  
3           they swore to them -- there's no mention of  
4           vinyl chlorides or any connection with vinyl  
5           chloride, vinyl chloride monomers, vinyl  
6           chloride tars in 1465, is there?

7   A.    I didn't see it when I -- no. No. No.

8   Q.    And by leaving that out and if they actually  
9           sent 20 million pounds of that stuff, mixed  
10          chlorinated solvents, 22 million pounds, then  
11          that would be misleading, wouldn't it, 1465?

12  A.    Well, that's not vinyl chloride, I don't  
13          think. That says "solvents."

14  Q.    Well, do you see any chlorinated solvents on  
15          this?

16  A.    Well, I don't find -- no.

17  Q.    Sir?

18  A.    No.

19  Q.    Then that would be misleading to the reader,  
20          wouldn't it?

21  A.    Yes.

22                   MS. COHEN: I object to the form of  
23                   the question.

24  Q.    Did you say "Yes"?

25  A.    In the context you're giving it, I don't

1 know -- let's get straightened out what it is  
2 we're doing here.

3 Q. You're straightened out. You're not  
4 confused. You know good and well that this  
5 is misleading.

6 A. This is different from that.

7 Q. And misleading.

8 A. But this one says -- see, you're talking  
9 about misrepresentation, and that's a legal  
10 term, and I don't want --

11 Q. That's not legal.

12 A. -- to get cute.

13 Q. Misrepresentation means misleading.

14 A. This one's says based on this information;  
15 this one says based on this; and they're  
16 different documents.

17 Q. Just take the two documents, sir. And if all  
18 you had were these two documents, one of them  
19 is misrepresenting the facts, isn't it?

20 MS. COHEN: I'm going to object to  
21 the form of the question as --

22 Q. Is that correct or not?

23 MS. COHEN: -- argumentative.

24 A. I don't know --

25 Q. Sir, do you know what is right and what is

- 1 wrong?
- 2 A. Yes, sir.
- 3 Q. Which one of these is wrong?
- 4 A. I don't know.
- 5 Q. One of them is, isn't it?
- 6 A. One is different.
- 7 Q. One of them is the wrong amount.
- 8 MS. COHEN: I'm going --
- 9 A. One is the wrong amount.
- 10 MS. COHEN: I'm going to object to
- 11 the form of the question.
- 12 Q. If being the wrong amount is relied on by the
- 13 governmental agency to assess costs, then
- 14 that would be misleading information given to
- 15 that governmental agency, wouldn't it?
- 16 A. It would be wrong information.
- 17 Q. And it would mislead them?
- 18 A. It would mislead them.
- 19 Q. And it would have misled them, if this -- if
- 20 Guilliams 1 is correct, by 500 million pounds
- 21 of styrene tars, correct?
- 22 A. Yes.
- 23 Q. And would mislead them by 22 million pounds
- 24 of mixed chlorinated solvents, correct?
- 25 A. Yes. In that same definition, yes.

1 Q. Okay. Is it your policy at Monsanto to hide  
2 things from the public?

3 A. No.

4 Q. It's not?

5 A. No, it isn't.

6 Q. Do you know who Mr. John J. Spano is?

7 A. No.

8 Q. Have you ever heard of him?

9 A. No.

10 Q. J. R. Thurrott?

11 A. No.

12 Q. Let me just hand this to you, and go down  
13 that list of people at the top and tell me if  
14 you know any of them.

15 A. I know Levinskas' name. I don't know him  
16 personally.

17 Q. What is world headquarters Monsanto,  
18 St. Louis?

19 MS. COHEN: Let us take a look at  
20 the exhibit, Mr. Jamail.

21 MR. JAMAIL: Okay. Sure.

22 Q. Do you know what that is?

23 A. Yes. That's the headquarters of Monsanto.

24 Q. Okay. You've never heard of John J. Spano?

25 A. No.

- 1 Q. Do you know any of these people on this copy  
2 list?
- 3 A. I mentioned I know Levinskas' name.
- 4 Q. Who is he?
- 5 A. He was, I think, a -- what do you call it? --  
6 hygiene person of some kind. This is back in  
7 1976. I don't think I was --
- 8 Q. That's not the Dark Ages.
- 9 A. I know, but it was -- you know, I didn't know  
10 a lot of these people and it was --
- 11 Q. Okay.
- 12 A. Levinskas, I know the name. The others I  
13 don't.
- 14 Q. He was an industrial hygienist, was he not?
- 15 A. I think so. I'm just trying to go from  
16 memory.
- 17 Q. Well, was it Monsanto's policy to hide things  
18 from the public?
- 19 A. No.
- 20 Q. If you have information that might be helpful  
21 to ascertain whether or not some of those  
22 chemicals these people were making at  
23 Monsanto were toxic or not and how they  
24 should be disposed of and whether they were  
25 affecting the public, do you think that the

- 1           what the legal requirements are.
- 2    Q.    I didn't say "legal." I never mentioned it.
- 3    A.    Yes, but --
- 4    Q.    That's a hedge, and you don't want to start
- 5           hedging at this late time in this
- 6           deposition.
- 7    A.    No. I'm not hedging.
- 8    Q.    It was wrong to hide such information.
- 9    A.    It would be wrong to hide harmful information
- 10           from the public anytime, absolutely.
- 11   Q.    Would you please read what has been marked
- 12           Exhibit 1212, please, that Mr. Levinskas,
- 13           your industrial hygienist at Monsanto, got a
- 14           copy of. Would you read it out loud when
- 15           you're through reading it.
- 16   A.    "As I discussed with you" -- this is from
- 17           John Spano to somebody named Keating.
- 18   Q.    John Spano says he's with world headquarters,
- 19           doesn't he?
- 20   A.    That's right, yes.
- 21   Q.    Go ahead and read it.
- 22   A.    It says "word headquarters," but I'm sure he
- 23           meant "world."
- 24   Q.    Well, it's hard to read the original. That's
- 25           a retyping. You can't read that. See? Just

1 go ahead and read that.

2 A. "As I discussed with you yesterday, I'm glad  
3 George Levinskas has put together a statement  
4 on his assessment of toxicity of styrene for  
5 'distribution to Monsanto personnel.' I had  
6 not seen it before you sent me a copy.  
7 However, I agree with you concerning your  
8 uneasiness about George's opinion that the  
9 statement could be used outside the company.  
10 I don't think outside use should include  
11 press relations purposes. The statement  
12 should not be released in its entirety to the  
13 press to answer queries. Instead, it would  
14 be considered mainly as background for our  
15 public relations representatives to phrase  
16 specific answers to specific questions. And  
17 the proposed answers should be properly  
18 cleared within Monsanto before being given to  
19 the press. I have no opinion as to internal  
20 or other use.

21 "I suggest that whatever  
22 distribution you propose should include  
23 proper restrictions on press use in the  
24 covering letter."

25 Q. Mr. Spano, by this memo, is telling these

1 people, including the industrial hygienist  
2 Mr. Levinskas, to keep certain information  
3 regarding toxicity of styrene tars from  
4 people, isn't he?

5 A. No. I don't -- I can't conclude that. He's  
6 talking about toxicity of styrene.

7 Q. All right. Of styrene. And --

8 A. And I --

9 Q. And asking them not to release it to the  
10 press?

11 A. Well, I'm going to read what he says --

12 Q. Sure.

13 A. -- because this is pretty convoluted language  
14 here, and I'm going to read what he says.

15 Q. I didn't write it, sir.

16 A. Look, I know it. I'm struggling with it. I  
17 have to read this kind of stuff all day, and  
18 I'm sympathetic; but I'm struggling with it.

19 "I am glad George Levinskas had  
20 put together a statement on his assessment of  
21 toxicity of styrene for 'distribution to  
22 Monsanto personnel worldwide.' I had not  
23 seen it before you sent me a copy. However,  
24 I agree with you concerning your uneasiness  
25 about George's opinion that the statement

1           could be used outside the company."

2                       I guess he could say it could be  
3           used out of context. I don't know what he's  
4           talking about.

5   Q.   Well, what he's saying, for whatever  
6           reason --

7                       MS. COHEN: Mr. Mahoney, if you  
8           don't know, you don't need to speculate.

9   A.   I really don't know.

10   Q.   Do you need some time? Sir? Mr. Mahoney?

11   A.   Look, I can read English; but I'm having  
12           trouble understanding what this is.

13   Q.   I know you can read English.

14   A.   This is a stray memo. I don't know what he's  
15           talking about.

16   Q.   Let me ask you this: Just if somebody handed  
17           you this on the street and you were reading  
18           it, wouldn't you get from this the  
19           interpretation that they didn't want certain  
20           information given to the press --

21   A.   Oh, I don't know.

22   Q.   -- for whatever reason?

23   A.   I could say that -- I could say that it could  
24           be taken out of context so --

25   Q.   No. No.

1 A. -- wait for questions and answers. I don't  
2 know what he's talking about.

3 Q. Let's don't take it out of context. Let's  
4 say that he is --

5 A. No. That's what he is saying: "I agree with  
6 you concerning your uneasiness ... that the  
7 statement could be used outside the company.  
8 I don't think outside use should include  
9 press relations purposes. The statement  
10 should not ... Instead, it would be  
11 considered mainly as background for our  
12 public relations representatives to phrase  
13 specific answers to ..."

14 Q. And he's talking about toxicity of styrene?

15 A. That's right. That's right.

16 Q. And he's telling --

17 A. That much I --

18 Q. He's telling whoever the recipients are of  
19 this thing, "Don't turn it over to the  
20 press". --

21 MS. COHEN: Again --

22 Q. -- is he not --

23 MS. COHEN: -- Mr. Mahoney --

24 Q. -- for whatever reason?

25 MS. COHEN: -- if you don't know,

1 don't speculate.

2 A. I really don't know.

3 Q. Is that what he's saying?

4 A. I don't know what he's talking about.

5 MR. JAMAIL: I want to introduce  
6 this one. Mark it Mahoney next.

7 Q. Now, let me go back to Mr. Sadow with you for  
8 a minute. If you will just take my word for  
9 it, unless he was lying about it, which I  
10 don't think he was, nor do I even hint that  
11 he was, Mr. Sadow was the environmental  
12 process technology manager for air and water  
13 pollution control, hydrocarbons and polymers  
14 division at Monsanto, Texas City, from 1965  
15 to 1973. Do you have any reason to dispute  
16 that?

17 A. No.

18 Q. That's a pretty high position for that plant,  
19 isn't it?

20 A. What did you say? He was the manager? Well,  
21 I mean that's a fancy title. I'm trying to  
22 find out --

23 Q. I know it. Well, you gave it -- one of your  
24 people gave it to him. I didn't give him  
25 that.



1 A. He's the manager of process technology.

2 That's an important job.

3 Q. Important job?

4 A. Yes.

5 Q. Is he a man that should be listened to --

6 A. Sure.

7 Q. -- if he makes recommendations to  
8 higher-ups --

9 A. Sure.

10 Q. -- regarding pollution and toxicity of  
11 hydrocarbons and polymers and things of that  
12 nature?

13 A. Sure.

14 Q. That was his job, wasn't it?

15 A. That's what his title is, and I'm sure that's  
16 his job.

17 Q. If management refused to listen to him --

18 MR. JAMAIL: Let's mark that.

19 MS. EVANS: No.

20 Q. If management refused to listen to him --

21 MS. COHEN: We'll be happy to take  
22 a look at it.

23 MS. EVANS: Yes, I'm sure you  
24 would. You're not getting it, though.

25 Q. If management refuses to listen to him -- let

1 me rephrase it -- ignores his warnings and  
2 what he's got to say, then that would be a  
3 violation of Monsanto's policy as you  
4 understand it?

5 A. Sure, if he's talking about his field.

6 Q. Yes?

7 A. I don't know what he's talking about.

8 Q. No. Let's keep him in his field.

9 A. Keep him -- sure.

10 Q. And the failure to listen to him would be the  
11 failure to act as a reasonably prudent  
12 chemical company as you understand it should  
13 act?

14 A. Wait just a minute, now.

15 Q. The failure to even adhere --

16 A. Oh, to listen to him, absolutely. But to  
17 agree with him is --

18 Q. I'm not saying agree.

19 A. To listen, absolutely.

20 Q. Listen and interrogate --

21 A. Sure.

22 Q. -- investigate --

23 A. Sure.

24 Q. -- inquire, to make sure he's either right or  
25 wrong?

- 1 A. Perfectly sensible.
- 2 Q. And to fail to do so is a complete failure to  
3 act as a reasonably prudent chemical company?
- 4 A. If he's talking about important stuff, sure.
- 5 Q. Okay. And if we're talking about toxic  
6 wastes that can harm people, we're talking  
7 about important stuff, aren't we?
- 8 A. You're right.
- 9 Q. The failure to do that, to listen to him and  
10 at least investigate, would be a complete  
11 disregard on the part of management that he  
12 was to report to, would it not?
- 13 A. If he's talking about hazards of that kind,  
14 sure.
- 15 Q. Now, I want to read you something that  
16 Mr. Sadow swore to. We already have placed  
17 him as Monsanto's manager in charge of the  
18 place, the air pollution and the water  
19 pollution and what have you at the Texas City  
20 plant.. Now, the Texas City plant -- you do  
21 know this much about this case, don't you? --  
22 the Texas City plant is what is involved with  
23 Brio, sending their chemical wastes to Brio.  
24 That's the plant we're talking about.
- 25 A. Yes. Yes.

1 Q. Okay. Now, would you read what has been  
2 highlighted?

3 MR. JAMAIL: It's line 20,  
4 Page 2758 from testimony previously given in  
5 the Slaughter matter, Counselor.

6 Q. Just read it out loud.

7 A. "So, basically, from" -- this is a question,  
8 it says.

9 Q. Yes.

10 A. "So, basically, from 1965 and 1973, once  
11 these styrene monomer tars went outside to  
12 the Ralph Lowe facility" --

13 Q. Excuse me. The Ralph Lowe facility is the  
14 very same facility we're talking about as  
15 Brio. Do you know that much about it?

16 A. Yes. That was the name they used to use.  
17 -- "at least from your department's  
18 standpoint, that ended the problem?"

19 ANSWER: "Right. That was sort of  
20 out of sight, out of mind."

21 Q. That was his answer, wasn't it?

22 A. That's -- I -- well, yes. ANSWER: "Right.  
23 That was sort of out of sight, out of mind."

24 Q. Now, that is Mr. Ron Sadow giving that  
25 testimony, correct?

1 A. That's --

2 Q. Look at the front and make sure.

3 A. Yes. That looks like it.

4 Q. Mr. Ron Sadow, the man we talked about in  
5 charge of all this for Monsanto, right?

6 MS. COHEN: I object to the form of  
7 the question.

8 Q. Is that right?

9 A. That's what he says.

10 MR. JAMAIL: I don't have any other  
11 questions.

12 MR. KRIST: We have none.

13 MR. KIRK: We have none.

14 MS. COHEN: I have none.

15 THE VIDEOGRAPHER: 11:55 a.m., end  
16 of deposition.

17 MR. WARE: Hey, I have some  
18 questions.

19 THE VIDEOGRAPHER: 11:55 a.m. Back  
20 on the record.

21 MR. WARE: Why don't we take a  
22 break. Generally, when he quits, a lot of  
23 people like to leave.

24 THE VIDEOGRAPHER: 11:56 a.m., off  
25 the record.

1 (A recess was taken.)

2

3 THE VIDEOGRAPHER: This is Tape  
4 No. 2. It's 12:05 p.m., on the record.

5

6

EXAMINATION

7

BY MR. WARE:

8

Q. Mr. Mahoney, my name is Lee Ware. I

9

represent Farm & Home Savings Association and

10

a number of people -- home builders -- who

11

built in the Southbend Subdivision which is

12

adjacent to the Brio site. Are you familiar

13

with the fact that there is a subdivision

14

there that this lawsuit involves?

15

A. Yes.

16

Q. All right. You've been -- you've been with

17

Monsanto how long?

18

A. 30 years.

19

Q. Is the term line versus staff -- is that

20

meaningful to you in terms of the

21

organization?

22

A. Yes.

23

Q. How many line people do you have that report

24

directly to you?

25

A. I guess one.

- 1 Q. Just one? Who is that?
- 2 A. That would be the president.
- 3 Q. Okay. And how many people report direct to  
4 him in that line?
- 5 A. Oh, about ten people, I guess.
- 6 Q. The president has been with Monsanto how  
7 long?
- 8 A. 25 plus years, I think.
- 9 Q. Out of the ten people that report to him --
- 10 A. Ten or so people.
- 11 Q. Out of the ten or so that report to him,  
12 who's been there -- what is the shortest  
13 length of time that anybody's been with  
14 Monsanto?
- 15 A. The shortest length of time?
- 16 Q. Yes, out of those ten.
- 17 A. I don't know. I could get you the  
18 information. I just don't know offhand.
- 19 Q. Your involvement with Texas City -- were you  
20 ever there?
- 21 A. No -- you mean ever in the plant? Yes, I've  
22 been in the plant; but I've never been  
23 assigned there, no.
- 24 Q. Were you ever at Chocolate Bayou?
- 25 A. Sure.

- 1 Q. Were you assigned there?
- 2 A. Visiting. I've never worked in the plants.  
3 I've never worked in manufacturing.
- 4 Q. You've never -- you've never been assigned  
5 with Monsanto in Texas?
- 6 A. No, I've never been in -- I've never been in  
7 manufacturing anywhere.
- 8 Q. All right. But you are a chemist?
- 9 A. Well, I have a degree in chemistry, and I've  
10 never practiced it. I went into marketing  
11 after that. I'm not a practicing chemist.
- 12 Q. Your background is marketing?
- 13 A. My whole career has been in commercial  
14 marketing, new products, things like that.
- 15 Q. And, of course, in running Monsanto's  
16 business?
- 17 A. Yes.
- 18 Q. All right. If you assume that there are  
19 styrene tars that are put in pits in the  
20 ground and you assume that somebody builds a  
21 subdivision next door to it, to where those  
22 pits are, adjacent property, do you have any  
23 criticism, from an environmental health  
24 standpoint, of the people who build the  
25 subdivision?

- 1 A. Well, putting a subdivision next to a  
2 chemical plant is not the greatest idea in  
3 the world. I mean there's possibilities of  
4 explosions and all kinds of things. I don't  
5 know specifically this --
- 6 Q. I'm talking about from an environmental  
7 health standpoint. Do you have any criticism  
8 of them for doing that from an environmental  
9 health standpoint?
- 10 A. Well, I wouldn't put a subdivision next to a  
11 chemical plant if I had a choice, no.
- 12 Q. I understand that. Do you have any  
13 criticism?
- 14 A. I mean I just don't think it's good practice.
- 15 Q. Do you have any criticism?
- 16 A. Therefore, I have criticism, I guess.
- 17 Q. What is the basis of your criticism?
- 18 A. Well, I believe it's -- I think you could --  
19 you could have a plant that could have an  
20 emission. It could explode. It probably --  
21 probably on occasion puts out smells. I just  
22 don't think it's a great idea.
- 23 Q. Okay. I want you to assume that this  
24 particular plant never has an explosion. I  
25 want you to assume that the smells are

- 1 controlled, and I want you to assume that  
2 there's never an emission. Do you have any  
3 other criticisms?
- 4 A. And never could, huh?
- 5 Q. Any other criticisms?
- 6 A. You said it never had one?
- 7 Q. Right.
- 8 A. Well, then that doesn't say that it couldn't.
- 9 Q. Okay.
- 10 A. I mean I wouldn't -- I wouldn't site a plant  
11 in this day and age in a built-up area, and I  
12 wouldn't put a housing development next to a  
13 plant.
- 14 Q. If you assume that you have chlorinated  
15 solvents in pits and somebody builds a  
16 subdivision adjacent to the pits on the  
17 adjacent property, would you have any  
18 additional criticisms other than the ones  
19 you've already --
- 20 A. I'd have to know what the environmental  
21 conditions are and a whole bunch of things  
22 before I could -- I really can't comment.  
23 I'd have to know a lot more than I know.
- 24 Q. What about the environmental conditions would  
25 be important to you?

- 1 A. The environmental conditions of which now?
- 2 Q. Whichever ones are important to you.
- 3 A. The environmental conditions of the plant,  
4 that I'd like to know that whatever is there  
5 is not going to hurt anybody.
- 6 Q. Okay. Chlorinated solvents, will they hurt  
7 people?
- 8 A. They can.
- 9 Q. Are chlorinated solvents liquids?
- 10 A. Yes, chlorinated solvents are liquids. Sure.
- 11 Q. Okay. Styrene tars, will they hurt people?
- 12 A. Now, there are -- there are definitions where  
13 they don't have to be so I'm -- I don't want  
14 to be cute, but there are definitions; but  
15 generally speaking, they're thought of as  
16 liquids.
- 17 Q. Styrene tars, are they liquid?
- 18 A. I don't know what styrene tars are, frankly.  
19 They're probably semiliquid, sort of -- I  
20 don't know. I would guess that. I've never  
21 worked in styrene. I just don't know  
22 anything about it.
- 23 Q. If you assume that what is in the adjacent  
24 property are styrene tars and chlorinated  
25 solvents and they're stored in pits in the

1 ground, is there any other additional  
2 environmental information that you would need  
3 before you could state whether or not you  
4 would be critical of the people that built  
5 the subdivision from an environmental health  
6 standpoint?

7 A. I'd want to know what is going on. Is there  
8 a hazard or not? I don't know. But I still  
9 think it's not a great idea to put a  
10 development next to a chemical plant.

11 Q. It's not a good idea to send your waste out  
12 to a place where there are subdivisions,  
13 either, is it?

14 A. It depends on what -- what controls they  
15 have, and it depends on a whole bunch of  
16 things.

17 Q. Well, assume there are styrene tars and  
18 chlorinated solvents being put in the  
19 ground.

20 A. I don't know. I really don't know. You have  
21 to get somebody more expert than me about  
22 that.

23 Q. Do you also have an opinion --

24 A. I don't have an opinion.

25 THE COURT REPORTER: I'm sorry?

1                   MR. WARE: He doesn't have an  
2                   opinion.

3       Q.       In terms of running a chemical company, what  
4                   are your responsibilities? How do you do the  
5                   right thing with respect to adjacent property  
6                   owners?

7       A.       Well, the first level is meeting the law.  
8                   That's a given. The second thing is to make  
9                   sure you've done everything humanly possible  
10                  to be safe, be a good neighbor, I guess.

11      Q.       First of all, you don't blow your plant up?

12      A.       You sure don't.

13      Q.       Just because you've got a plant and you've  
14                  got the capability to screw it up and blow it  
15                  up, that doesn't mean that you just -- a  
16                  chemical manufacturer doesn't have any right  
17                  to do that and hurt the people adjacent to  
18                  them, do they?

19      A.       No.

20      Q.       You don't have the right to make emissions  
21                  that would be harmful to them, do you?

22      A.       There are -- now we're going to get  
23                  technical. The general answer is of course  
24                  not. But there are emissions that are  
25                  permitted by law and they are permitted by

1 law because somebody's examined levels of  
2 emissions and said they are not harmful.

3 Q. I'm talking about harmful emissions.

4 A. There are emissions that can be considered  
5 harmful that are permitted by law, but --

6 Q. Is that okay?

7 A. Look, people qualified in -- generally, in  
8 the Environmental Protection Agency set the  
9 standards. We meet the standards, and we  
10 don't knowingly violate standards; and  
11 that's -- you know, and then you try to do  
12 more than that if you can. I mean it's tough  
13 understanding what the laws are half the  
14 time.

15 Q. What you try to do -- the right thing is to  
16 do everything humanly possible not to hurt  
17 the people next door, right?

18 A. Right. That's correct. And there's no  
19 equivocation about that.

20 Q. And you understand that, in terms of the Gulf  
21 Coast, there are a lot of refineries, a lot  
22 of petrochemical industries, right?

23 A. Yes.

24 Q. And you understand that there are all kinds  
25 of subdivisions that can be affected by what

1 goes on and what happens on those complexes,  
2 right?

3 A. Sure.

4 Q. And you understand that it's the duty of --  
5 you people who run those complexes not to  
6 do -- not to run your business in such a way  
7 as to hurt them?

8 A. That's right.

9 Q. And you may not like where they build their  
10 subdivisions; you may not like where they  
11 choose to live, but you understand that you  
12 don't have any right to hurt them just  
13 because they have to live there or choose to  
14 live there?

15 A. That's right.

16 Q. And my people are strange about ground -- you  
17 can understand why -- just like you people  
18 are a little strange about chemicals. Their  
19 business is territory, ground. They make --  
20 they build residences for people.

21 MS. COHEN: I object to the form of  
22 the question.

23 Q. You understand that?

24 A. Yes. Your firm builds homes.

25 Q. Yes. And your firm makes chemicals.

- 1 A. Right.
- 2 Q. And your job, when you're making your  
3 chemicals, is to make sure that the chemicals  
4 that you're in the process of manufacturing  
5 stay on your property and don't get on  
6 somebody else's property, right?
- 7 A. Right.
- 8 Q. And part of your job is to make sure that  
9 when you take your waste stream and send it  
10 out someplace that it gets sent someplace  
11 where it doesn't hurt people, right?
- 12 A. Yes.
- 13 Q. Now I want to go back. In terms of  
14 environmental health, have you got any  
15 criticism of my people that you haven't told  
16 me about?
- 17 A. Of your people?
- 18 Q. Yeah. Farm & Home Savings Association are  
19 the people that built homes in Southbend  
20 Subdivision.
- 21 A. I don't know is the answer. I don't know.
- 22 Q. Okay. By my count that's the 47th time since  
23 10:43 that you have used the phrase "I don't  
24 know" --
- 25 A. Uh-huh.

1 Q. -- this morning.

2 MS. COHEN: I object to the form of  
3 the question.

4 Q. What do you have to do to find out if you  
5 have any criticism of my clients?

6 MR. JAMAIL: I've got some.

7 A. Well, I'd have to spend some time and ask  
8 some people and get some opinions and do an  
9 investigation, I suppose, and form some sort  
10 of opinion.

11 Q. Sitting right here, you just don't have any  
12 crit -- you don't know if you have any  
13 criticism?

14 MS. COHEN: Other criticisms?

15 A. I made the ones I made. I just don't think  
16 it's a good idea to put a plant next to --  
17 houses next to a chemical plant.

18 Q. And other than that, have you got any  
19 criticisms?

20 A. I don't know. I just -- there's 44 or  
21 whatever it is.

22 Q. 44?

23 A. I'd be happy to look into the question, but I  
24 don't have an opinion sitting here.

25 Q. It's very important for me to know if you

1 have any opinions or if you're going to form  
2 any.

3 A. I don't have an opinion that I can give you,  
4 no.

5 Q. Okay. Your attorneys in this case have taken  
6 a position that the damages -- that they're  
7 going to prove that the damages that arise  
8 from the occurrences that are in question  
9 were the fault of my clients. Do you have  
10 any basis for supporting that?

11 A. I'm not going to answer the question. I  
12 don't -- I don't have an opinion.

13 MR. JAMAIL: Will you keep your  
14 voice up, please.

15 THE WITNESS: Keep your voice up?

16 MR. JAMAIL: Keep your voice up,  
17 please. I don't care whether you answer it.  
18 I just want to hear the question.

19 Q. Do you have any basis for attributing the  
20 damages that these minors have suffered as  
21 being the responsibility of Farm & Home  
22 Savings Association and the other people I  
23 represent?

24 MS. COHEN: Other than what he's  
25 already said that Farm & Home built the

1 subdivision?

2 Q. No. I'm asking any -- any basis at all.

3 THE WITNESS: I don't know how to  
4 answer the question. Do you have any  
5 advice?

6 Q. Well, let's break it down. Your lawyers have  
7 said that they're going to prove that the  
8 damages that these individuals or these  
9 children have suffered are caused by my  
10 people. What damages are you aware of, if  
11 any?

12 A. Well, I don't know how they're handling the  
13 case. I really don't. So I can't  
14 intelligently answer about the strategy of  
15 the case.

16 Q. Are you aware of any damages that these  
17 children are suffering?

18 A. I don't personally know of any.

19 Q. Let me ask you the question. In your job at  
20 Monsanto, one of the things that you ought to  
21 keep apprised of is whether or not you've  
22 hurt somebody out there in the public, right?

23 A. Yes. Yes.

24 Q. All right. Now, have you hurt these kids or  
25 not?

1 A. My information is no but --

2 Q. Okay.

3 A. That's -- you're asking me if -- I'm telling  
4 you what people have told me.

5 Q. I'm asking you --

6 A. People have told me that.

7 MR. JAMAIL: I object to that.

8 Ain't no way -- he doesn't know any of these  
9 facts. Are you denying, Mr. Ware, that these  
10 children are hurt?

11 MR. WARE: I'm asking him if he's  
12 denying it.

13 MR. JAMAIL: Go ahead.

14 Q. Are you denying the children are hurt?

15 MS. COHEN: He's testified that --  
16 he said it's not -- Monsanto did not hurt  
17 them.

18 Q. Are you denying that?

19 A. I -- the information I have is that there  
20 were -- there were no injuries caused by  
21 this --

22 Q. Chemical exposure?

23 A. Yes.

24 MR. KRIST: Well, I'm going to  
25 object to hearsay information; that he told

1 Mr. Jamail repeatedly he didn't have any  
2 knowledge of the facts and now he says that  
3 no one's hurt.

4 MR. JAMAIL: And I object --

5 MR. KRIST: That's not his  
6 knowledge.

7 MR. JAMAIL: I object further on  
8 the basis that Mr. Ware apparently has  
9 entered into some sort of conspiracy with  
10 Monsanto to try to minimize these damages.  
11 You can't boot strap him, Lawyer.

12 Q. What you've been told by your lawyers is that  
13 there is no --

14 MR. JAMAIL: And I object to it  
15 again. He has no way to know the answer to  
16 that.

17 Q. What you have been told -- you don't have  
18 personal knowledge -- what you've been told  
19 is no damage due to chemical exposure?

20 A. That's correct.

21 Q. And as far as you know --

22 A. I don't have any personal knowledge of that  
23 but --

24 Q. As far as you know, there's no way that they  
25 have -- given that and given the validity of

1           what they've said, then there's no way that  
2           they have of proving that my clients have  
3           caused them any damage?

4    A.    Who is "they"?

5    Q.    Is that right?

6    A.    Who is "they"?

7    Q.    Your lawyers.

8    A.    Start again.

9    Q.    Sure.

10   A.    I've lost track of the thing.

11   Q.    If they shot straight with you and there  
12        hasn't been any damage to the individuals due  
13        to chemical exposure, then there is no damage  
14        to be laid off on my client, is there?

15   A.    I don't know. I really don't know how to  
16        answer that. This is a very complicated  
17        case.

18   Q.    That's 45.

19                    MS. COHEN: I object to the form of  
20        the question. It's a statement.

21   Q.    Do you have any -- do you have any  
22        information available to you that suggests  
23        that my people -- by "my people," I'm talking  
24        about my clients, Farm & Home Association --  
25        Savings & Loan Association and the builders

1 in the subdivision -- have in any way damaged  
2 or hurt anybody?

3 A. I have no personal knowledge.

4 Q. Do you have any information provided to you  
5 by anybody other than your lawyers of that?

6 A. No, I have no knowledge of --

7 Q. I'm not just talking --

8 MS. COHEN: Do you have any  
9 information from anybody other than your  
10 lawyers? Just "Yes" or "No."

11 A. No. They --

12 MS. COHEN: "Yes" or "No."

13 A. The answer is no.

14 Q. You don't have to answer "Yes" or "No."

15 A. The answer is no, I don't have any other  
16 information beyond the lawyers. That's --  
17 that's the answer: No.

18 Q. Are you aware of any -- do you have any basis  
19 or make any contention that Farm & Home  
20 Savings Association or my clients need to be  
21 punished by punitive damages?

22 A. I don't have any opinion.

23 MR. JAMAIL: I do.

24 Q. Chlorinated solvents, do they leach?

25 A. I don't know. It depends on the conditions.

- 1 Q. If you put them in the ground, do they leach  
2 into the ground?
- 3 A. What is the ground? Clay? Is it cement? Is  
4 it --
- 5 Q. Clay with porosity associated with it and  
6 permeability associated with it.
- 7 A. I don't know. I don't know. It all depends  
8 is the answer.
- 9 Q. It could happen?
- 10 A. Could. Could not. All depends.
- 11 Q. If you were going to put it in the ground,  
12 you ought to check on that?
- 13 A. Yes.
- 14 Q. It would be terribly important to check on  
15 that if you have a subdivision next door,  
16 right?
- 17 A. Yes.
- 18 Q. As I understand it, Mr. Mahoney, you don't  
19 understand the process by which the chemicals  
20 that ended up in the Brio site were produced,  
21 do you?
- 22 A. No.
- 23 Q. That's just not your end of the work?
- 24 A. That's not my field.
- 25 Q. You're not under -- you're not familiar with

1 and don't know what the content, chemical  
2 content of the chlorinated solvents are?

3 A. No.

4 Q. You don't know what the content of the  
5 styrene tars are in terms of chemistry?

6 A. No.

7 Q. You're not even sure about what form they  
8 were put -- they were in, what state, what  
9 phase they were in when they were put in the  
10 ground, right?

11 A. That's correct.

12 Q. You don't know anything about the  
13 environmental conditions of Brio?

14 A. No.

15 Q. You have a general feeling that people  
16 shouldn't build their houses or shouldn't  
17 build too close to chemical plants because  
18 the people that run the chemical plant may,  
19 for some reason, blow it up?

20 A. Could be.

21 Q. You understand you have to get several -- you  
22 probably have to get about 20 miles away not  
23 to be affected if they really blow one up?

24 MS. COHEN: I object to the form of  
25 the question.

- 1 Q. You understand that?
- 2 MS. COHEN: I object to the form of  
3 the question.
- 4 Q. You heard about the Adams Terminal explosion  
5 out in Pasadena?
- 6 A. Yes.
- 7 Q. And you know how far away there were people  
8 that were affected by that; literally miles  
9 away?
- 10 A. Uh-huh.
- 11 Q. Right?
- 12 A. I don't know. I don't know.
- 13 Q. You would never condone sending waste product  
14 from the Texas City plant over to a location  
15 that was right across the freeway from a  
16 residential subdivision, would you?
- 17 A. I don't know. Is it a -- is it a authorized  
18 site or is it not? I mean you're --
- 19 Q. It's an authorized site.
- 20 A. Hypothetical now?
- 21 Q. It's an authorized site. You would never  
22 condone that, would you?
- 23 A. There's a lot of people that have to decide  
24 that and not me: the federal government, the  
25 state, local, the home builders.

- 1 Q. Let me ask you this: If somebody at Monsanto  
2 does something wrong, they do something wrong  
3 and they hurt somebody with your chemicals,  
4 the ones that you make, who has the final  
5 responsibility in your organization to see  
6 that that person is disciplined?
- 7 A. Somebody is hurt because of what?
- 8 Q. Chemical exposure from the chemicals that you  
9 make. Who at Monsanto has the ultimate  
10 responsibility to see --
- 11 A. Well, I have the ultimate responsibility for  
12 what goes on in this company.
- 13 Q. Have you ever disciplined anybody because of  
14 an exposure of chemicals that's occurred that  
15 you make?
- 16 A. I never have, no.
- 17 Q. Do you know if your predecessor ever did?
- 18 A. I don't know.
- 19 Q. Do you know if anybody under -- that's 47  
20 times.
- 21 MS. COHEN: I object to the form of  
22 the question.
- 23 Q. Does anybody under you ever discipline  
24 anybody because people have become exposed to  
25 chemicals, wrongly, that you have made?

- 1 A. I don't know.
- 2 Q. Have you all ever hurt anybody with the  
3 chemicals that you've made by unintentionally  
4 or negligently letting somebody become  
5 exposed to them?
- 6 A. Unintentionally?
- 7 Q. Yes.
- 8 MS. COHEN: I object to the form of  
9 the question.
- 10 A. I think the answer is yes, but I'm not -- do  
11 the question again.
- 12 Q. Sure. Have you all ever hurt anybody with  
13 the chemicals you make, unintentionally?
- 14 A. I don't know, specifically, but I suppose so.
- 15 Q. That's 48.
- 16 A. Yeah. Well, you know, I know what I know.  
17 You can keep counting, but I know what I  
18 know.
- 19 Q. Okay. Who in your organization --
- 20 A. I can count, too.
- 21 Q. -- do you look to -- have you ever asked  
22 anybody those questions?
- 23 A. Of course I have. I have.
- 24 Q. Okay. Who did you ask those questions of?
- 25 A. Well, we have a large structure that makes

- 1           sure that Monsanto is behaving properly, and  
2           we have a vice president of environmental and  
3           safety and manufacturing.
- 4    Q.    When you asked those questions, did anybody  
5           ever tell you that Monsanto had  
6           unintentionally hurt somebody with chemicals  
7           that they manufactured?
- 8    A.    The answer is yes, and there was an incident  
9           30 years ago, I guess, that I'm aware of; but  
10          I don't know of any since.
- 11   Q.    You all are involved in the cleanup of how  
12          many superfund sites at the present time?
- 13   A.    50, maybe.
- 14   Q.    Your report in the Wall Street Journal  
15          quotes -- it says you're involved in about 80  
16          superfund sites as a PRP.
- 17   A.    I don't know. It's -- it could be more, but  
18          I think it's less. I don't know.
- 19   Q.    Did you ever -- have you ever asked within  
20          your organization, "Has anybody ever been  
21          hurt because of these superfund sites that  
22          we're cleaning up?"
- 23   A.    Have I asked that?
- 24   Q.    Yes.
- 25   A.    Yes, I have.

1 Q. What have you been told?

2 A. "No."

3 Q. Nobody's been hurt by it?

4 A. Not that anybody knows.

5 Q. Okay.

6 MR. JAMAIL: You're talking about  
7 the cleanup of them? Is that what your  
8 question was?

9 Q. I'm talking about before you started cleaning  
10 them up, has anybody in Monsanto ever  
11 suggested to you, admitted to you that there  
12 has been somebody that was exposed to  
13 chemicals --

14 A. And the answer is no.

15 Q. -- in one of these sites?

16 A. The answer is no. Exposed to chemicals or  
17 hurt?

18 Q. Yes.

19 A. You said "hurt." And I said the answer to --  
20 the question was, "Was anybody hurt by these  
21 sites," and the information I have is no.

22 Q. In other words, there's been -- you've had  
23 exposures reported to you, but what you've  
24 been told is that the exposures weren't  
25 enough to hurt anybody?

1 A. I don't know what you mean by "exposure." I  
2 mean I'm exposed to everybody in this room  
3 but I'm not hurt. You can be exposed to  
4 things and not be hurt, so I'll answer  
5 that --

6 Q. I mean to come in contact with, when I say  
7 "exposure."

8 A. I don't know the answer to that.

9 Q. Have you ever asked if anybody had ever been  
10 exposed to chemical as a result of any one of  
11 these sites?

12 MS. COHEN: He's already said --

13 A. I've asked if anybody has been hurt by  
14 chemicals in these sites, and the answer I've  
15 been given is "No."

16 Q. Okay. And as far as you know, the last time  
17 that Monsanto had an involvement in which  
18 somebody was accidentally hurt by chemicals  
19 was 30 years ago?

20 A. Well, look, are you talking about accidents  
21 in a plant? We have a marvelous safety  
22 record but --

23 Q. I'm talking about outside people. I'm  
24 talking about outside people.

25 A. To my knowledge, then, no. And these weren't

1 outside people. These were people in the  
2 plant 30 years ago. That's the one I know  
3 about.

4 Q. Today, at the present time, 1992, are you  
5 aware of what policies or what procedures  
6 you've got in place to make sure that your  
7 waste product streams are disposed of  
8 safely?

9 A. In a general way, and I'm very comfortable  
10 with them, yes.

11 Q. What do you do? What are your general  
12 policies?

13 A. First of all, the Environmental Protection  
14 Agency declares the policies. You don't have  
15 a lot of freedom to deviate from the federal  
16 and state laws, and so those are  
17 fundamentally what -- what people are working  
18 against. And we make sure that we're in  
19 compliance with all the relevant laws.

20 Q. Other than that, what do you do?

21 A. Well, I put good people in place that I trust  
22 and make sure they -- they carry out their  
23 responsibilities, including the laws and  
24 including doing what is right.

25 Q. Have you ever fired anybody?

- 1 A. Did I personally?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. Okay. Do you ever do it because of  
5 environmental concerns? Have you ever done  
6 it because of environmental concerns?
- 7 A. No.
- 8 Q. Do you fire -- the primary reason when you  
9 get around to firing people -- what is the  
10 primary reason you get around to firing them?
- 11 A. Well, I've only done it once so the primary  
12 reason was that he wasn't capable of doing  
13 his job.
- 14 Q. Okay. He wasn't getting something run that  
15 you trusted him to run?
- 16 A. No. No. No. It was -- he wasn't doing his  
17 job.
- 18 Q. You've never disciplined anybody for  
19 environmental reasons?
- 20 A. No.
- 21 Q. I guess what I'm getting to is, as I  
22 understand it, you have -- that you put  
23 people in positions that you trust.
- 24 A. Uh-huh.
- 25 Q. And apparently you have a tremendous

1 selection process because you don't have to  
2 get rid of them and don't have to discipline  
3 them.

4 MS. COHEN: I object to the form of  
5 the question.

6 Q. Right?

7 A. You asked me if I got rid of many, and the  
8 answer is no. We have very good people doing  
9 that work.

10 Q. On the people that you've got doing -- making  
11 sure that your environmental waste product  
12 streams are taken care of --

13 A. Yes.

14 Q. -- responsibly today, how do you go about  
15 checking on these people that perform those  
16 jobs?

17 A. Well, the first thing I do is I put good  
18 people in jobs that report to me.

19 Q. I've heard that.

20 A. The second thing we do is we audit our  
21 practices. And the third thing we do is we  
22 stay in compliance. And the fourth thing I  
23 do is make speeches all over the country  
24 about the subject, including yesterday.

25 Q. How do you ever check on it?

- 1     A.    We have a whole variety of internal  
2            procedures to check.  And they bring them  
3            together, and they certify them; and they  
4            tell me about it.  And I -- it's like any  
5            other audit we do.  We do a safety audit and  
6            financial audit.  We do environmental audits,  
7            and we make sure we're in compliance and  
8            doing the right thing.
- 9     Q.    When you sell your waste product stream --  
10           say it's chlorinated solvents -- what are you  
11           required to do to make sure that they're  
12           responsibly taken care of?
- 13    A.    I don't know.
- 14    Q.    Do you ever make any checks of the people  
15           that you're giving the stream to --
- 16    A.    Do I personally?
- 17    Q.    -- selling the stream to.  No.  Your  
18           company.
- 19    A.    Well, I rely on our people to do it.
- 20    Q.    Do you know what they do?
- 21    A.    I don't know personally.  I'm sure they're  
22           doing whatever is required.
- 23    Q.    Do you have any opinion as to what they  
24           should do?
- 25    A.    They ought to do what is right.

- 1 Q. And to do what is right means whatever you  
2 have to do because that's what the law is?
- 3 A. No. Do what is right. And sometimes the law  
4 doesn't go far enough, I don't think.
- 5 Q. Okay.
- 6 A. And you ought to go beyond the law.
- 7 Q. With respect to you at Monsanto, if the  
8 people that hear this case decide that you  
9 need to do something you haven't done to be  
10 in compliance with the law, you don't have  
11 any trouble with them assessing punitive  
12 damages against you as the way of signifying  
13 to you what you're supposed to do?
- 14 A. I'm not going to get into an answer of what  
15 about punitive damages for your set of  
16 conditions. Punitive damages are a very  
17 specific legal situation and they require a  
18 full understanding of what is involved, and I  
19 won't answer on that basis.
- 20 Q. If the Judge -- if it is fully explained to  
21 them by the Judge who is going to try this  
22 case, you won't have any trouble if the Judge  
23 decides they need to send you a message as --  
24 using punitive damages?
- 25 A. The Judge has the freedom to do what the

- 1 Judge wants to do.
- 2 Q. And you won't question that?
- 3 A. Look, I don't -- it doesn't matter whether I  
4 question or not. I don't have any authority  
5 to question or not question. We can appeal,  
6 and that's my -- that's my way of protesting,  
7 I guess, if that were the case; but I don't  
8 know.
- 9 Q. Other than that?
- 10 A. Other than that what?
- 11 Q. I'm just wondering about what you started off  
12 with Mr. Jamail on and why you think punitive  
13 damages are appropriate, and my next question  
14 is going to be --
- 15 A. I think they can be appropriate.
- 16 Q. -- my next question is going to be: In what  
17 instance can you think of they would be  
18 appropriate against a chemical company,  
19 any --
- 20 A. I don't have any opinion.
- 21 Q. Can you give me a single instance where you  
22 would say, "Yes, that's a chemical company  
23 that should have had punitive damages awarded  
24 against it"?
- 25 A. Well, I don't know of any cases so --

1 Q. Can you dream up one?

2 A. Oh, I can dream up anything. What would you  
3 like?

4 Q. Dream up one.

5 A. Wanton, willful, malicious, consistent,  
6 everyday violation of decent human rights.  
7 Absolutely.

8 Q. 80 superfund sites?

9 MS. COHEN: I object to the form of  
10 the question.

11 Q. Is that justification?

12 A. Do you know how many people have superfund  
13 sites?

14 Q. I imagine quite a few.

15 A. Name a corporation.

16 Q. 80 superfund sites?

17 A. Well, first of all, I don't know if it's 80.  
18 If it's 80, it's 80.

19 Q. Anything there that would suggest to you  
20 punitive damages would be appropriate?

21 A. I don't know.

22 Q. You don't know?

23 A. You've got to have the facts. Is anybody  
24 being injured? Are people behaving  
25 responsibly? Did they behave responsibly?

1 Did they meet the societal expectations at  
2 the time or --

3 Q. He has -- and by "he," I'm talking about  
4 Mr. Jamail. He has --

5 MS. COHEN: Don't interrupt him.

6 Q. I'm pointing to Mr. Jamail. He has what he  
7 contends is a mountain of data and  
8 information and opinions that children have  
9 been harmed because of involvement with these  
10 waste products at the Brio site.

11 MR. JAMAIL: I object to that. You  
12 also have access to that very same  
13 information, Mr. Ware, as does Monsanto. I  
14 didn't make it up.

15 Q. Assuming the correctness of that, would that  
16 in any way be something that you ought to  
17 weigh in the stead or take into consideration  
18 in determining whether or not --

19 A. What is that again?

20 Q. Punitive damages, is that anything you  
21 ought --

22 A. You were going back and forth there. What is  
23 it that you want me to answer?

24 Q. If you have a mountain of -- what somebody  
25 claims -- data and opinions of children

1 injured because of exposure to chemicals at  
2 the Brio superfund site, is that an instance  
3 in which you would say maybe the chemical  
4 company ought to be slapped with punitive  
5 damages?

6 A. For what?

7 Q. For injuring those kids.

8 A. If there's serious injury caused by a  
9 chemical company, I think that's a candidate,  
10 sure.

11 Q. You don't have any trouble with that?

12 A. Well, I'm giving you the definition, serious  
13 injury caused by -- under egregious -- I mean  
14 what is the definition of punitive damages?  
15 I didn't even know what the State's  
16 definition is. You're back to the law. I  
17 mean I can conjure up a case but I -- what  
18 did they do? What did they intend? When was  
19 the standard set? What was the -- what did  
20 people think of at those times when whatever  
21 was going on? I don't know. You're asking  
22 me to be a lawyer and I'm not.

23 Q. I know you're not a lawyer. What I think the  
24 public expects of you is to be a manager of a  
25 chemical company.

1 A. Uh-huh.

2 Q. And I think what the public would expect is  
3 that you, as a manager of a chemical company,  
4 would be able to identify one instance in  
5 which you would say, "Yes, that's fine. You  
6 need to award punitive damages against that  
7 chemical company for that egregious  
8 conduct." Can you think of any?

9 A. Do you know how many definitions of punitive  
10 damages are in this country?

11 Q. I know there's going to be one that's read to  
12 this Jury.

13 A. Well, I don't know what the standard is.

14 Q. Maybe you should check, if you're going to  
15 take and leave your mess down here on the  
16 Gulf Coast for all of us to live with. Do  
17 you agree with that?

18 MS. COHEN: I object to the form of  
19 the question. It's argumentative.

20 A. I don't know. I don't know what you're  
21 saying.

22 Q. You just don't care about that, do you?

23 A. I care a lot.

24 Q. Well, then you haven't done a lot to manifest  
25 your care, have you?

- 1 A. Who?
- 2 Q. You.
- 3 A. Me?
- 4 Q. Yes.
- 5 A. I'm doing my job.
- 6 Q. In respect to taking care of the mess in  
7 terms of the Brio superfund site --
- 8 A. By my understanding --
- 9 Q. -- what have you personally done?
- 10 A. -- it's moving according to the practice of  
11 this government. It's a regulated issue.  
12 It's being practiced according to that  
13 regulated issue. I would love to do things  
14 faster than the regulations. We're moving  
15 within the law, trying to get this thing  
16 done. The superfund law is a complex law.  
17 It doesn't let you do much voluntarily. You  
18 have to -- I mean a superfund is --
- 19 Q. I thought you said you weren't a lawyer.
- 20 A. I know something about superfunds because --
- 21 MR. WARE: Pass the witness.
- 22 MS. COHEN: You can finish your  
23 statement.
- 24 A. The superfund law doesn't let you do things  
25 ahead of the pace. If you do, you get

1           punished.  You've got to go step by step  
2           through the law, and it's a very complex,  
3           time-consuming piece of legislation.  I  
4           wouldn't have written it that way.

5                         MR. JAMAIL:  I have just a few  
6           questions.

7                         MS. COHEN:  I don't have any  
8           questions.

9

10   FURTHER EXAMINATION

11           BY MR. JAMAIL:

12    Q.    Mr. Mahoney let me clear up a couple things  
13           of what you said.  Did I understand you to  
14           say that if the law requires something, you  
15           felt -- you believed that there was an  
16           obligation on the part of the chemical  
17           company or anybody else to follow the law?

18    A.    True.

19    Q.    If the law required and requires Monsanto and  
20           anybody else to operate as an ordinary,  
21           prudent operator of a chemical company, then  
22           your duty under the law would be to follow  
23           that law, wouldn't it?

24    A.    That's right.

25    Q.    Okay.  As a chief executive officer, I am

1           aware that you have other duties other than  
2           the ones we're talking to you about here  
3           today, and I want to refresh your memory. I  
4           didn't expect you to know the exact number of  
5           superfund sites that Monsanto was involved  
6           with, but I think it's reported in the  
7           highlighted portion of your annual report.  
8           Would you look at it, please.

9    A.    It says 80. So the Wall Street Journal was  
10           correct.

11   Q.    It says 80 in which Monsanto is a PRP?

12   A.    Yes.

13   Q.    Tell me again what that means. Principal --

14                           MS. COHEN: Potentially.

15   Q.    Potentially responsible party?

16   A.    Potentially responsible party.

17   Q.    Okay.

18   A.    And there's a lot of them at these individual  
19           sites.

20   Q.    Mr. Mahoney, I'm going to take you out of  
21           your field for a minute. You were asked  
22           whether you had any criticism of the  
23           developer Farm & Home, and you stated what  
24           you had. I have others criticisms of them in  
25           evidence.

- 1                   Tell me, based on your experience  
2                   and your expertise and your knowledge and  
3                   education, whether or not you think that the  
4                   developer -- in this instance, Farm & Home --  
5                   of this site adjacent to the Brio dump -- and  
6                   that's what I'm going to call it -- Brio  
7                   site -- was a reasonably prudent choice or  
8                   selection of places to build a subdivision  
9                   where humans were going to live.
- 10        A.       Reasonably prudent? No, I don't think so.
- 11        Q.       Do you have an opinion, just based on all  
12                   your expertise, whether or not they should  
13                   have gone out and investigated what the hell  
14                   was in those pits --
- 15        A.       Well --
- 16        Q.       -- before they did that?
- 17        A.       -- I was referring to the chemical plant. I  
18                   don't know about --
- 19        Q.       Okay. I'm talking about the Brio site.  
20                   Okay? Should they have investigated, in your  
21                   opinion, what was in there?
- 22        A.       I don't know.
- 23        Q.       You don't know?
- 24        A.       If I were building one, I would; but, you  
25                   know --

- 1 Q. I'm just asking you about you.
- 2 A. If you're asking a hypothetical, I would,  
3 yes.
- 4 Q. You would what?
- 5 A. I would investigate it if I were in your  
6 hypothetical question.
- 7 Q. Would you like to live in that subdivision  
8 next to that Brio site, knowing what you know  
9 now?
- 10 A. Knowing what I know now --
- 11 Q. Yes.
- 12 A. -- about the Brio site?
- 13 Q. Yes.
- 14 A. I don't think there's any hazard in that  
15 subdivision based on --
- 16 Q. You still don't think so?
- 17 A. No.
- 18 Q. We have cases of leukemia, cases of children  
19 with birth defects, all attributable to  
20 this. Do you know about that?
- 21 A. I know there's some alleged cases but --
- 22 Q. They're not alleged. The doctors say the  
23 kids have got it.
- 24 A. I know they've got it. I know there are some  
25 cases of people who are injured.

- 1 Q. Are you saying they're not?
- 2 A. No, I'm not. Whatever they claim they've got  
3 I'm sure they've got, and I'm very sorry  
4 about it.
- 5 Q. Well, do you claim they didn't get it from  
6 the exposure to those chemicals?
- 7 A. That's right.
- 8 Q. How do you know that since you don't know any  
9 of the facts?
- 10 A. Because our people have told me that, and I  
11 rely on them.
- 12 Q. You said the only ones you talked to about  
13 this were your lawyers.
- 14 A. No. You're summarizing what was said.
- 15 Q. That's all you base it on?
- 16 A. That's good enough.
- 17 Q. Is that all you base it on?
- 18 A. Yes.
- 19 Q. What your lawyers told you?
- 20 A. My lawyers summarized the opinions of the  
21 people who have looked at the case and they  
22 told me that was the case, yes.
- 23 Q. Did you ever take the time or the bother to  
24 read any of the transcribed testimony of  
25 Dr. Byers?

- 1 A. No, I haven't seen his testimony.
- 2 Q. Hers.
- 3 A. Hers. I haven't seen it.
- 4 Q. Any of the doctors, Dr. Ozonoff? Did you  
5 bother to even read that?
- 6 A. I haven't read those.
- 7 Q. You were the one man in charge that could say  
8 that, "This case stops right here and we're  
9 going to make this right," aren't you?  
10 Aren't you?
- 11 A. I don't know about that.
- 12 Q. You are the man in charge, aren't you?
- 13 A. Well, there are some other defendants, I  
14 think, is what I'm saying.
- 15 Q. But as far as Monsanto is concerned --
- 16 A. Oh, yes.
- 17 Q. -- you're the one man?
- 18 A. Yes.
- 19 Q. And you haven't even taken the time or the  
20 trouble to read any of the medical testimony  
21 in this case or any of the experts' testimony  
22 that attribute these children's injuries and  
23 maladies to your chemical wastes. You  
24 haven't even taken that time, have you?
- 25 A. I haven't read those, no.

1 MR. JAMAIL: I don't have any  
2 others questions.

3 MS. COHEN: I don't have any  
4 questions.

5 MR. KRIST: We have none.

6 THE VIDEOGRAPHER: 12:40 p.m., end  
7 of deposition.

8 - - - - -  
9

10 THE STATE OF Missouri :  
11 COUNTY OF St. Louis :

12 I, RICHARD J. MAHONEY, hereby  
13 certify that I have read the foregoing  
14 transcript of my testimony given in the  
15 foregoing numbered and styled case and that  
16 same is true and correct to the best of my  
17 knowledge and belief.

18 I further certify that any and all  
19 corrections have been made on a separate page  
20 and initialed by me.

21 This the 2nd day of  
June, 1992.

22 Richard J. Mahoney  
23 RICHARD J. MAHONEY

24 SUBSCRIBED AND SWORN TO BEFORE ME,  
25 this the 2nd day of June, 1992.

26 Kathy A. Ehrhard  
27 Notary Public in and for  
28 the State of Missouri

29 My Commission Expires 10-21-95

30 Job No. 92-115

KATHY A EHRHARD  
Notary Public  
STATE OF MISSOURI Martin & Associates  
ST LOUIS COUNTY (409) 762-2222  
My Commission Expires OCT 21, 1995

1 THE STATE OF TEXAS :

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I, Jana L. Martin, Certified Court Reporter in and for the State of Texas, hereby certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn or affirmed by me.

I further certify that I am neither attorney nor counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken.

Further certification requirements, if any, pursuant to the Rules will be certified to in the Supplemental Certificate after they have occurred.

Subscribed and sworn to on this, the 26th day of May, 1992.

Jana L. Martin  
Jana L. Martin, CCR  
Certificate No. 1007  
Expires 12/31/92

My Notary Commission expires 11/17/92