

DIRECT EXAMINATION

QUESTIONS BY MR. KOTOSKE:

Q. What's your name?

A. Thomas Bistline.

Q. Tell me your educational background.

A. I graduated from Columbia College in New York City in 1970 and from Columbia Law School in New York City in 1974.

Q. You're an attorney?

THE COURT: They want to know how to spell your name.

MR. BISTLINE: B-i-s-t-l-i-n-e.

THE COURT: Thanks.

Q. Are you an attorney?

A. Yes, sir.

Q. You work at Monsanto?

A. Yes, sir.

Q. Used to work there?

A. Yes, sir.

Q. When did you start there?

A. February of 1981.

Q. Now, you've been described as a fellow who is most knowledgeable about these documents we got in Exhibit 11 and Exhibit 12. Are you familiar with Exhibit 11 and Exhibit 12?

1 A. I'm familiar with the exhibits, sir. I'm the
2 custodian of Monsanto's PCB documents.

3 THE COURT: I didn't hear that.

4 MR. BISTLINE: I said I am the custodian of
5 Monsanto's PCB documents. Yes, I believe that's how I
6 was described.

7 Q. Okay. Thank you. Here's 11 in evidence.
8 During examination I'm going to be referring to that.

9 MR. CARNEY: Your Honor, could we just
10 clarify? He said "in evidence," and I think that
11 misstates the record.

12 MR. KOTOSKE: Well, it's in evidence.

13 THE COURT: 11 and 12?

14 MR. CARNEY: Judge, there there's been no
15 ruling on the entire -- There have been some rulings on
16 some of the exhibits. There's some Your Honor indicated
17 in Exhibit 11 will not be --

18 THE COURT: You're right.

19 MR. CARNEY: Exhibit 11 will not be in
20 evidence.

21 THE COURT: Right. Whatever is in is in.

22 MR. CARNEY: Just so the record's clear.

23 Q. You filed an affidavit in this case. I'd
24 like you to take a look at it. I believe it's in Exhibit
25 11. And if you would take a -- turn to page 259.

1 A. Yes, I have it, Mr. Kotoske.

2 Q. The affidavit states, "The information set
3 forth in this affidavit is compiled at my direction from
4 historical sales summaries of Monsanto Company which were
5 prepared annually in the ordinary course of Monsanto's
6 company business, and the matters are true," and so forth;
7 is that right?

8 A. Yes, sir.

9 Q. And then you went through the records out
10 there to determine which one of these PCBs you felt was
11 made and sold to the Westinghouse plant in Bloomington; is
12 that right?

13 A. Members of my staff compiled that
14 information, yes, sir.

15 Q. Well, is it accurate?

16 A. Yes, sir.

17 Q. All right. And from 1957 to 1967, you sold
18 the following PCBs to the Westinghouse plant, and I'm
19 going to read this. If I read this wrong, just tell me.
20 Aroclor 1242, Aroclor 1286, Aroclor 1254. is that right?

21 A. That is correct. I do know there's a typo in
22 the affidavit, though.

23 Q. It's a mistake?

24 A. Well, the affidavit was -- There's a typo in
25 it. It should be Aroclor 1268 and not 1286.

1 (Ms. Carter replaced Ms. Olliges.)

2 Q. Just got by you?

3 A. Yes, sir.

4 Q. Thank you. Then from 1968 to 1970 you sold
5 out at that Westinghouse plant Aroclor 1242, 1232, 1254
6 and transformer Inerteen DPO; is that correct?

7 A. That's correct.

8 Q. These sales were made in the ordinary course
9 of your business?

10 A. That's my understanding, yes, sir.

11 Q. All right. Introduced into the stream of
12 commerce ordinarily (inaudible) to do?

13 MR. CARNEY: We stipulate to that, Your
14 Honor.

15 Q. (By Mr. Kotoske) All right. Then in 1971 to
16 1977 you sold to the Westinghouse plant in Bloomington
17 Aroclor 1242, 1016, Inerteen 54201-CF, 54201-A9, 54201-AJ,
18 capacitor 21 and capacitor Aroclor 1489, right?

19 A. That's correct.

20 Q. And you never sold any other kinds of PCBs to
21 the Bloomington plant?

22 A. That our records disclose; that's correct.

23 Q. Okay. Now, I want to show you Defendant's
24 Exhibit No. 122.

25 MR. CARNEY: Can you hold on just till I get

1 that?

2 MR. KOTOSKE: Have you got your Exhibit 122?

3 MR. CARNEY: Yes, I do.

4 MR. KOTOSKE: Now, Exhibit 122 -- I want to
5 offer Defendant's Exhibit 122 into evidence. It is
6 entitled "The (inaudible) Products Sold to Westinghouse
7 Plant Located in Bloomington, Indiana," and was prepared
8 in this case entitled Brown versus Monsanto.

9 MR. CARNEY: No objection at all, Your Honor.

10 THE COURT: It will be admitted (inaudible).

11 Q. (By Mr. Kotoske) Now, these are the actual
12 sales that you made to Monsanto in-house?

13 A. To Westinghouse.

14 Q. Thank you. It looks to me, and I've just
15 done this roughly, you sold them about 45 million pounds
16 of PCBs over the years?

17 A. If that's what the numbers add up to. I
18 haven't added them up.

19 MR. KOTOSKE: Is that in evidence, Judge,
20 that 122?

21 THE COURT: Yes.

22 Q. (By Mr. Kotoske) All right. Does Monsanto
23 still make PCBs?

24 A. No, sir.

25 Q. For any purpose?

1 A. Not to my knowledge.

2 Q. You stopped that altogether?

3 A. Yes, sir.

4 Q. Okay. All right. Do you still use IBT as a
5 testing lab?

6 MR. CARNEY: Your Honor, I'm going to object.

7 THE COURT: Sustained. Proceed.

8 Q. (By Mr. Kotoske) Now, I want you to turn in
9 Exhibit 11 to pages 250 and so forth, starting with page
10 250. I want you to tell me what this document is. And it
11 goes to page 253.

12 A. This is a material safety data sheet.

13 Q. For what?

14 A. For polychlorinated biphenyls.

15 Q. By whom? Monsanto?

16 A. Yes, it's a Monsanto material safety data
17 sheet.

18 Q. For PCBs?

19 A. Correct.

20 Q. What is the date?

21 A. September 15, 1980.

22 Q. There's a couple of warning statements on
23 this document, as well as a physiological effects summary
24 warning about (inaudible) on the second page of this
25 document; is that right?

1 A. Are you talking page 251?

2 Q. Yeah.

3 A. Yes, sir. I see the physiological effects
4 summary, yes.

5 Q. What's that all about, that section?

6 MR. CARNEY: Your Honor, could we approach
7 the bench?

8 (A bench conference was held.)

9 MR. KOTOSKE: I'm going to read from this
10 document.

11 THE COURT: We're going to do (inaudible)
12 this document after he's finished, which you have a right
13 to do, sir. You want to move on (inaudible) else?

14 MR. KOTOSKE: Oh, we're going to take him off
15 the stand?

16 THE COURT: When he's done, you can handle
17 this document.

18 Q. (By Mr. Kotoske) On to another subject
19 matter. Are you familiar with Monsanto's experts in this
20 case?

21 MR. CARNEY: Your Honor, I'm going to object.
22 I think that's beyond what we talked about to get into
23 with this witness.

24 MR. KOTOSKE: Well, they have disclosed who
25 they are.

1 THE COURT: I'm not sure what you're leading
2 up to.

3 MR. KOTOSKE: I want to know how much
4 Monsanto's paid these experts and if he has any knowledge
5 of that.

6 THE COURT: Do you want to go over or not?

7 MR. CARNEY: Well --

8 THE COURT: He can certainly ask the experts.

9 MR. CARNEY: You can ask that. I don't think
10 the witness has the knowledge. I think it's improper
11 because of the attorney-client privilege. I have no
12 problem asking the experts. I know he will ask the
13 experts.

14 THE COURT: I'm going to sustain the
15 objection (inaudible) that privilege and it's (inaudible)
16 to your lawyer. I'll sustain the objection.

17 Q. (By Mr. Kotoske) Do you know whether or not
18 any of the experts who are going to be called in this case
19 as having found anybody hurt by PCBs have been caused --
20 That's just terrible.

21 MR. CARNEY: And before he starts again could
22 I object if he's going to ask that same question over?

23 THE COURT: I'm not sure if it's the same
24 question.

25 Q. (By Mr. Kotoske) Has any expert hired by

1 Monsanto in this case ever found that anybody has been
2 hurt by exposure to PCBs to your knowledge?

3 THE COURT: I'll sustain that objection.

4 MR. KOTOSKE: That's all I have. I'd like to
5 read this document.

6 THE COURT: Let's get this witness off the
7 stand. Any cross-examination?

8 MR. CARNEY: Just let me talk to my
9 colleagues.

10 MR. KOTOSKE: I've got one more question,
11 Judge.

12 MR. CARNEY: I don't have any questions.

13 Q. (By Mr. Kotoske) Does Monsanto still use IBT
14 as a lab?

15 MR. CARNEY: Judge --

16 THE COURT: Mr. Carney, do you have any
17 questions?

18 MR. CARNEY: No questions.

19 THE COURT: You may now proceed with this
20 document pursuant to what we talked about.

21 MR. KOTOSKE: I want to read from the
22 physiological effects summary of exposure to PCBs from
23 this document in the material safety data sheet of 1980,
24 Monsanto's data sheet. "Skin contact."

25 MR. CARNEY: Could we just have a

1 clarification from the Court as to the fact that this was
2 three years after there were any PCBs in the plant and
3 after they quit manufacturing?

4 THE COURT: I think it's proper to put it
5 into that context. It's September 15th of '80. You may
6 proceed, sir.

7 MR. KOTOSKE: It's about PCBs, Monsanto, so
8 forth. It's dated 1980. "Skin Contact: Can be absorbed
9 through intact skin. Local action on skin is similar to
10 that of the common organic solvents where contact leads to
11 removal of natural fats and oils, with subsequent drying
12 and cracking of the skin. A potential exists for the
13 contracting of chloracne. Eye contact: The liquid
14 products and their vapors are moderately irritating to the
15 eyes. Ingestion: The acute oral toxicities of the
16 undiluted compounds are," and then they describe them,
17 "slightly toxic. Inhalation: Animal" --

18 MR. CARNEY: I think you skipped a little
19 piece there.

20 THE COURT: Finish the whole thing.

21 MR. KOTOSKE: "Inhalation. Animal
22 experiments of varying duration and" --

23 MR. CARNEY: Could we have that section -- If
24 he's going to read it, Judge, I think he ought to read not
25 part of the sentence.

1 MR. KOTOSKE: What are you talking about?

2 THE COURT: What are you talking about?

3 MR. CARNEY: Maybe I was sleeping. I don't
4 know, Judge. I was talking about the ingestion section.
5 I didn't think he read all the words there. Now, maybe
6 it's late in the day.

7 THE COURT: Would you mind doing it again?

8 MR. CARNEY: If he'd do it again, I'd
9 appreciate it.

10 MR. KOTOSKE: "Ingestion: The acute oral
11 toxicities of the undiluted compounds are LD50 rats - 8.65
12 grams to the kilogram for 42 percent chlorinated, 11.9
13 grams to the kilogram for 54 percent chlorinated are
14 slightly toxic. Inhalation: Animal experiments of
15 varying duration and at different air concentrations show
16 that for similar exposure conditions, the 54 percent
17 chlorinated material produces more liver injury than the
18 42 percent chlorinated material." You know, I better
19 skip -- Do you see that section?

20 THE COURT: Keep going then.

21 MR. KOTOSKE: That's right. "The consistent
22 finding in animal studies with PCBs is that they produce
23 liver injury following prolonged and repeated exposure by
24 any route," this is in 1980, "if the exposure is of
25 sufficient degree and duration. Liver injury" --

1 THE COURT: Strike that sentence. The
2 sentence you're just starting.

3 MR. KOTOSKE: You're right. You're right.
4 "Therefore, exposure by all routes should be kept
5 sufficiently low to prevent liver injury." That's from
6 Exhibit 11, not from these Monsanto toxicology guides that
7 are in evidence. The date on this document is 19 -- --

8 MR. CARNEY: Judge, I don't mind him reading,
9 but the speeches I would appreciate limiting.

10 THE COURT: Do you have anything further?

11 MR. CARNEY: But if he wants to be sworn as a
12 witness.

13 THE COURT: I don't want to do that to either
14 one of you. Anything else?

15 MR. KOTOSKE: That's all for today, Judge.
16 I'll call my last witness on Monday.

17 THE COURT: All right. We'll stop, then, for
18 the week, ladies and gentlemen. Again, during this
19 three-day weekend do not discuss the case among yourselves
20 or with others. Do not read, view or listen to any source
21 regarding this trial. We'll start Monday at 9:30 and
22 proceed at that time. Were there any questions? Have a
23 nice weekend. Thank you.

24 (Court was recessed for the day.)
25