

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
THE FIRST JUDICIAL CIRCUIT

JOHN ALLEN, et al.,)
)
Plaintiffs,)
)
) Case No. 2008 CA 001762
vs.)
) Division No. B
MONSANTO COMPANY, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF ROBERT G. KALEY
Taken on behalf of the Plaintiffs

July 19, 2011

DIANNA C. HARK, RPR, CSR
CCR MO. LICENSE NO. 1079

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Exhibits were received by the court reporter
to be returned to Mr. Stewart.
Signature was not waived.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
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JOHN ALLEN, et al.,)
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Plaintiffs,)
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) Case No. 2008 CA 001762
vs.)
) Division No. B
MONSANTO COMPANY, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF ROBERT G. KALEY, produced,
sworn, and examined on behalf of the Plaintiffs on July
19, 2011, between the hours of ten o'clock in the
forenoon and two-thirty in the afternoon of that day, at
the Law Firm of Husch Blackwell LLP, 190 Carondelet
Plaza, Suite 600, St. Louis, Missouri 63105, before
DIANNA C. HARK, a Certified Court Reporter and a Notary
Public within and for the State of Missouri.

APPEARANCES

The Plaintiffs were represented by Donald W. Stewart
of the law firm of Stewart & Stewart, PC, 1000 Quintard
Avenue, Suite 500, Anniston, Alabama 36201.

The Defendants were represented by Charles E.
Merrill of the law firm of Husch Blackwell LLP, 190
Carondelet Plaza, Suite 600, St. Louis, Missouri 63105.

Also present: Bo Kriegshauser, Video Technician

IT IS HEREBY STIPULATED AND AGREED by and between
Counsel for the Plaintiffs and Counsel for the
Defendants, that the deposition of ROBERT G. KALEY, may
be taken in shorthand by DIANNA C. HARK, Registered
Professional Reporter, Certified Court Reporter,
Certified Shorthand Reporter, and Notary Public, and
afterwards transcribed into typewriting. And the
Witness read and signed the transcript.

o-0-o

ROBERT G. KALEY,
of lawful age, being produced, sworn, and examined on
behalf of the Plaintiffs, and after responding "I do" to
the oath administered by the court reporter, deposes and
says:

THE VIDEO TECHNICIAN: We are on the record.
This is the videotaped deposition of Robert G. Kaley.
Today's date is July 19th, 2011, and the time is
10:08 a.m.

This is the case of John Allen, et al. versus
Monsanto Company, et al. The case number is 2008 CA
001762, pending in the First Judicial Circuit Court in
and for Escambia County in the state of Florida.

1 Counselors, will you please state your
2 appearance?

3 MR. STEWART: I'm Donald Stewart and one of the
4 attorneys representing the plaintiffs in this case.

5 MR. MERRILL: And I'm Charlie Merrill. I
6 represent the defendants in the case and the witness.

7 THE VIDEO TECHNICIAN: Will the court reporter
8 please administer the oath?

9 [The Witness was sworn in at this time.]

10
11 DIRECT EXAMINATION
12 QUESTIONS BY MR. STEWART:

13 Q. Would you please state your name for the
14 record?

15 **A. Yes, Robert George Kaley, II.**

16 Q. And is it Mr. Kaley or Dr. Kaley?

17 **A. It's doctor.**

18 Q. Dr. Kaley, I wanted to ask you, if you'll take
19 a look at what we've marked as Plaintiff's Exhibit 1 --

20 MR. STEWART: And I'll give you a copy,
21 Charlie.

22 Q. (By Mr. Stewart) -- and say to you this is the
23 Second Amended Notice of your deposition, and ask you if
24 you'll take a look at that.

25 **A. Yes, I've seen it.**

1 **[Plaintiff's Exhibit No. 1 was introduced.]**

2 Q. (By Mr. Stewart) And when did you see that
3 notice?

4 **A. Probably about a month ago.**

5 Q. And when you looked at the, this deposition
6 notice, were you informed that you would be a witness
7 here for us today?

8 **A. Yes, I was.**

9 Q. Okay. And do you understand that those items
10 that we asked you to be able to testify about begin on
11 page two?

12 **A. Yes, I understand.**

13 Q. Okay. And you understand, of course, that
14 you're here on behalf of Solutia; is that correct?

15 **A. I understand that, yes.**

16 Q. Now are you here on behalf of any other of the
17 entities that are involved as defendants, potential
18 defendants in this case, either Monsanto or Ascend?

19 **A. No.**

20 Q. Do you know anything about those companies?

21 **A. I know things about Monsanto. I worked there**
22 **for a number of years. But the old Monsanto, not the**
23 **new Monsanto.**

24 Q. Certainly. You worked for the old Monsanto
25 before you became an employee of Solutia; did you not?

1 **A. That's correct.**

2 Q. And you moved to Solutia when that company was
3 spun off from Monsanto?

4 **A. Yes, I did.**

5 Q. And are you familiar with the records that they
6 maintain, Monsanto maintained?

7 **A. Just generally from my days there.**

8 Q. In connection with PCBs?

9 **A. Yes.**

10 Q. Did you not serve, when you were employed at
11 Monsanto, as a steward of PCBs, or the information about
12 PCBs?

13 **A. Some of the information, yes, I did.**

14 Q. Okay. When you say "some of the information,"
15 can you tell us what that was?

16 **A. Well, primarily information related to**
17 **regulatory affairs, manufacturing, MSDS sheets, that**
18 **kind of material.**

19 Q. Now, were you familiar at the time that you
20 worked with Monsanto, and when did you go with Solutia,
21 so we can get that time frame?

22 **A. Solutia was formed September of 1997.**

23 Q. All right. So, you worked for Monsanto up
24 until you went with Solutia in, in September of '97?

25 **A. Yes, I did.**

1 Q. Now they maintain an archive or historical
2 records on PCBs, Monsanto did; did they not?

3 **A. The law department did, yes.**

4 Q. And in connection with the spin-off of Solutia,
5 did that archives, or did those records move to Solutia
6 once the spin-off occurred?

7 **A. They moved to the custody of Solutia, yes.**

8 Q. And were you familiar with those records in
9 connection with your work with Solutia?

10 **A. In general terms. I knew they existed and I**
11 **had seen a number of those documents in various**
12 **circumstances, yes.**

13 Q. When you say these were gathered by the law
14 department, is that where they were housed at Monsanto?

15 **A. I don't frankly know specifically where the**
16 **documents themselves were housed in Monsanto. I don't**
17 **remember.**

18 Q. And do you know where they were housed when
19 Solutia was spun off?

20 **A. Actually I don't.**

21 Q. Okay. Now, what, if any, connection do you
22 have with the company called Ascend?

23 **A. None.**

24 Q. Do you know anything about what happened to
25 Solutia's records once the plant in Pensacola was sold

1 by Solutia to Ascend?

2 **A. Yes, I do.**

3 Q. When did that happen? When did that sale
4 occur?

5 **A. My understanding is the sale occurred in
6 mid-2009.**

7 Q. And when I say "the records," what records are
8 you talking about? You said that this archive on PCBs,
9 or was it just the records from the Pensacola plant?

10 **A. Well, it was records associated with the
11 textiles business from Solutia that went to Ascend. Not
12 the archive that we've been speaking about particularly
13 before.**

14 Q. Okay. Once you got this notice, what, if
15 anything, did you do in connection with your preparation
16 for your testimony here today on behalf of Solutia?

17 **A. I had several meetings with counsel to discuss
18 the specifics of the, of this request. I reviewed a
19 number of records from the production sets to assure
20 myself that the records that had been produced were
21 records that I would have had, from my years of
22 experience, would have expected to see produced in a, in
23 response to the specific request.**

24 **I interviewed the librarian at Solutia to ascertain
25 how documents were transferred, or the documents in**

1 **St. Louis headquarters were transferred to Ascend.**

2 **I spoke with a paralegal at the Husch firm about the
3 specif, excuse me, the specifics of some of the
4 questions here with regard to, for instance, the indexes
5 for various data sets.**

6 Q. When you say you spoke to the librarian at
7 Solutia, who was that?

8 **A. Her name is Marsha Stoklosa.**

9 Q. Marsha?

10 **A. Stoklosa. I think it's S-T-O-K-L-O-S-A, but
11 that could be incorrect.**

12 Q. S-T-O-K-L-O-S-A?

13 **A. That's mine, that's what I think it is, yes.
14 It's close.**

15 Q. When you pronounce it "Stokolosa," is there an
16 O after the K?

17 **A. If I pronounce it that way, I didn't mean to.
18 It's Stoklosa.**

19 Q. Stoklosa, S-T-O-K-L-O-S-A?

20 **A. I believe that's correct.**

21 Q. She's the librarian for Solutia. What did you
22 discuss with her?

23 **A. The, the process by which documents were, after
24 the sale, were transferred to Ascend.**

25 Q. And what did she tell you was the process that

1 they followed --

2 **A. Well, basically --**

3 Q. -- transferring those documents?

4 **A. Well, certainly the documents that were at the
5 plant stayed at the plant and became the possession of
6 Ascend.**

7 **The documents at headquarters were, persons who
8 left, or left Solutia to go with Ascend who were based
9 in St. Louis, took their records with them to Ascend.**

10 Q. You're talking about the individual or personal
11 records that they maintained in their offices --

12 **A. -- yes, their files, yes. And then records
13 that were more, in more general repositories were
14 transferred from basically pretty close after the sale
15 to probably six or seven months later in various stages.**

16 **There were actually meetings held in late 2009 to
17 discuss the separation of some of the records and, and
18 there was a major transfer of records after that.**

19 Q. When you say "the separation of some of the
20 records," did she tell you what type of records were
21 separated and sent to Ascend --

22 **A. Well, they, a number of type of records. There
23 were environmental health and safety records, there were
24 legal records, business records, anything that was
25 directly associated with the textiles business that**

1 **Solutia had that, that Ascend purchased was transferred
2 to Ascend.**

3 Q. Would that have included environmental
4 compliance of documents, documents that were filed
5 either with the federal government or the state
6 government?

7 **A. To the extent that they were present in
8 St. Louis, that would have included those. As I said,
9 the ones, those kinds of documents typically would have
10 been held at the plant, I understand, and they would
11 have remained at the plant and transferred to Ascend.**

12 Q. All right. When you talk about other
13 documents, would monitoring documents be maintained in
14 St. Louis or in the plant in Pensacola?

15 **A. Most likely at the plant. The specific
16 monitoring documents would have been maintained at the
17 plant. I can't say there weren't some in St. Louis, but
18 most of the, the bulk of those would have been
19 maintained at the plant.**

20 Q. What about the correspondence that might have
21 been had by employees from Monsanto about problems that
22 might exist, environmental problems that might exist?
23 Where would those have been maintained?

24 **A. Well --**

25 Q. And pardon me. I said Monsanto, I meant

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Page 15

1 Solutia.

2 **A. I understand. I heard, I heard Solutia. Those**
3 **would have been maintained at the plant to the extent**
4 **they were generated by plant personnel.**

5 **If such correspondence had been undertaken by**
6 **St. Louis personnel for whatever reason, they probably**
7 **would have been in both places, the plant and in**
8 **St. Louis.**

9 Q. Before 2009, was that information available to
10 Solutia for the sale in 2009?

11 **A. I'm sure it was. I mean those documents would**
12 **have been in Solutia's possession prior to the sale,**
13 **prior to the transfer.**

14 Q. All right. Now, you talked with the librarian
15 and you talked to a paralegal here at this firm?

16 **A. Yes.**

17 Q. Talked to anybody else in connection with your
18 testimony here today on behalf of Solutia?

19 **A. Other than counsel, no.**

20 Q. I have not said so, but I assume, and I want to
21 have this understanding as we proceed through this
22 deposition, that you're speaking for Solutia and not for
23 Dr. Robert Kaley as you testify here today; do you
24 understand that?

25 **A. Yes, I do understand that.**

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1 Q. Okay. Now, what is your familiarity with the
2 documents that had been provided to us so far in this
3 case?

4 **A. I have a general understanding of the documents**
5 **that have been provided, and I have actually looked, as**
6 **I said earlier, to familiarize myself with what are in**
7 **the various sets of documents.**

8 **I have looked at selected documents not, not, by**
9 **selected I mean randomly chosen as I went, went through**
10 **the data sets to just assure myself that the kinds of**
11 **documents I would expect to see were, in fact, in there.**

12 Q. Can you tell me first what data sets that you
13 looked at as you sit here today?

14 **A. My understanding is that there, there, have**
15 **data sets with various Bates labels, Bates stamps have**
16 **been produced including a set prefixed with the letters**
17 **M-O-N-S, the MONS set; a set prefixed with the letters**
18 **D-S-W, I'm not sure what that means; a set prefixed**
19 **F-L-A dash P-C-B; and a set prefixed G-N-Z.**

20 Q. Do you know where the MONS set came from?

21 **A. Yes.**

22 Q. Where?

23 **A. Well, it came from the archive that we**
24 **mentioned earlier. It's a collection of documents**
25 **related to initially safety and health from the archive**

1 **and it was later expanded to include environmental**
2 **documents.**

3 Q. Was that the documents that you referred to
4 earlier that were maintained by Monsanto?

5 **A. By the law department, yes.**

6 Q. Did that start sometime in the late '70s, early
7 '80s?

8 **A. The archive itself or the MONS set?**

9 Q. The archive itself.

10 **A. The early 1980s.**

11 Q. Okay. And was that true for the MONS set?

12 **A. No, I think it was generated -- I'm not sure**
13 **when it was generated. Probably a decade later.**

14 Q. Sometime in the '90s?

15 **A. I believe so. I'm, I'm guessing a little bit**
16 **there but I believe so.**

17 Q. Was that set of documents related to safety and
18 health issues and environmental issues with regard to
19 PCBs?

20 **A. Yes.**

21 Q. Was it gathered for litigation --

22 **A. It was gathered, yes, it was gathered in**
23 **response to various requests, similar requests in**
24 **various litigations for that type of document.**

25 **And so the decision was made to make a thorough**

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1 **search of the archive to get all those documents and put**
2 **them in one place so they could always be produced**
3 **whenever that request came in.**

4 Q. Was that practice maintained by Solutia once
5 they took over the plants from, that they took over when
6 they were spun off from Monsanto --

7 **A. Yes --**

8 MR. MERRILL: Object to the form of the
9 question. I need to know what you meant by "practice."

10 Q. (By Mr. Stewart) Putting together documents,
11 maintaining documents and collecting over time. My
12 understanding, the archives were maintained and, and
13 collected over time, and there were additions to those
14 documents as years went on. Is that correct or
15 incorrect?

16 **A. We talking about the, the general archive?**

17 Q. Yes.

18 **A. All right. My understanding is that there was**
19 **an initial creation of that archive. There has not been**
20 **a general practice or attempt to sweep in other**
21 **documents generated after that time, although as**
22 **documents have been identified, they have been added to**
23 **that archive on an occasional basis but not necessarily**
24 **a thorough basis.**

25 Q. But let me see if I understand what you're

4 (Pages 13 to 16)

Page 17

Page 19

1 saying. Generally speaking, as documents were generated
2 after the archives was originally created, sometime
3 those were added that related to PCB?

4 **A. Yes.**

5 Q. And did they relate to safety and to health and
6 environmental issues regarding PCB?

7 **A. Some of them may have.**

8 Q. What other kind of documents were added, if you
9 know, during the time that you worked at Monsanto --

10 **A. I couldn't be specific. I would be guessing.**
11 **I don't know specifically which documents were or**
12 **weren't added.**

13 Q. Was that general practice continued once
14 Solutia was spun off?

15 **A. I don't know.**

16 Q. Who would?

17 **A. Presumably a Solutia attorney or someone**
18 **representing Solutia.**

19 Q. Would the librarian be familiar with that?

20 **A. No, she had nothing to do with the archive.**
21 **The archive was strictly a law department creation and**
22 **maintained by the law department.**

23 Q. Is that where the MONS set came from?

24 **A. The MONS set came from the archive, the PCB**
25 **litigation archive, yes.**

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1 Q. And how is it, if you know, was the MONS set of
2 documents that we have received in this case selected?

3 **A. By the process I described earlier. That it is**
4 **a, I'll use the term because I've heard it used, a shelf**
5 **set, a set of, a complete set of documents related to**
6 **those issues that are produced in response to requests**
7 **for production of documents related to the health,**
8 **safety and environmental affects of PCBs.**

9 Q. So, do you know who went to the MONS set and
10 selected those documents based on your interviews and
11 the work that you've done?

12 MR. MERRILL: I'm going to object to that. I'm
13 not going to object to it. What I'm going, I'm going to
14 note for the record that that question calls for
15 testimony beyond the matters designated in the
16 deposition notice.

17 MR. STEWART: You mean I can't ask him that
18 question here?

19 MR. MERRILL: Well, you can ask him the
20 question, it's just, I'm saying that it's not --

21 MR. STEWART: Are you instructing him not to
22 answer --

23 MR. MERRILL: No, I'm not at all. And by the
24 way, this might help, I don't know if he knows this, but
25 the entire MONS set was produced. There was no

1 selection by us.

2 MR. STEWART: You mean, are you saying --

3 MR. MERRILL: Not the entire archive, the
4 entire MONS set.

5 MR. STEWART: I was going to say, if you were
6 going to tell me it was the entire --

7 MR. MERRILL: No, no, no.

8 MR. STEWART: -- archives, Charlie --

9 MR. MERRILL: Absolutely not.

10 MR. STEWART: -- got that in the Monsanto case,
11 400,000 pages.

12 MR. MERRILL: And the MONS set is approximately
13 100,000.

14 MR. STEWART: A little over 100.

15 **A. But it's a subset of the archive. The MONS set**
16 **is a subset of the archive.**

17 Q. (By Mr. Stewart) Which pertain to what?

18 **A. Health, safety and environment.**

19 Q. Would the MONS set include any data that was
20 collected either by soil sampling, water sampling,
21 anything like that at the Pensacola plant?

22 **A. If such data were in the archive.**

23 Q. Where else would that be?

24 **A. At the plant.**

25 Q. Maintained at the plant?

Page 20

1 **A. Maintained at the plant, yes.**

2 Q. Now, what do you understand the DSW documents
3 to be?

4 **A. My understanding of the DS documents, DSW**
5 **documents is that they were initially, that set was**
6 **initially created in response to manufacturing,**
7 **marketing and sales information, request for production**
8 **of manufacturing, marketing, sales information generated**
9 **in production requests from the early Alabama**
10 **litigations.**

11 **I believe the D stands for Dyer. What the W and S**
12 **stands for, I don't know, but I think it was the Dyer**
13 **litigation. It was created for that.**

14 **Now it has been supplemented a couple of times. The**
15 **major supplement was, I believe, after your firm did a**
16 **search of documents for, at the plant or other places**
17 **for your litigation. And as those documents were**
18 **identified and produced, they were added to the DWS set,**
19 **or DSW set, I'm sorry.**

20 Q. Our litigation, you talking about this case in
21 Pensacola --

22 **A. -- talking about the Alabama litigation.**
23 **Sorry.**

24 Q. So there were additional documents added to the
25 DSW set from the litigation in Anniston?

5 (Pages 17 to 20)

Page 21

Page 23

1 **A. That's correct.**
 2 Q. What about Florida PCB? What is that?
 3 **A. All right. That is a, a collection of**
 4 **documents that was assembled by the Husch firm in**
 5 **response to the production request in this particular**
 6 **litigation from the archive.**
 7 Q. Well, that was taken, some of that information
 8 was taken from the archives, the MONS documents?
 9 **A. Well, all of the FLA-PCB set was taken from the**
 10 **archive. I believe that some of it is also in the MONS**
 11 **set.**
 12 Q. Okay. But some might not be in the MONS set;
 13 is that correct?
 14 **A. That is correct.**
 15 Q. Okay. Can you tell us which ones? Are you
 16 familiar with the way they produced it to tell us which
 17 ones or not?
 18 **A. Not specifically. But for example, and I'm**
 19 **speculating a little bit, but my guess is that the**
 20 **retention manuals, which are here in this binder which**
 21 **were requested in the notice for this deposition, are**
 22 **not necessarily health, safety and environment**
 23 **documents. My guess is that they are not in the MONS**
 24 **set, but they were produced in the FLA-PCB set.**
 25 Q. Would the insurance policies be the same?

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1 **A. I'd be guessing. I don't really know.**
 2 Q. Okay. Now, there was another set of documents
 3 that you mentioned, the GNZ documents. Do you know what
 4 those are?
 5 **A. Those are documents that were produced, those**
 6 **are documents from the plant that were produced in**
 7 **response to the request. Those are actually, I guess,**
 8 **they're documents that were transferred from Solutia to**
 9 **Ascend at the plant and then searched by Ascend**
 10 **personnel and given to, I believe, Hush for review and**
 11 **production.**
 12 Q. Who did that review?
 13 **A. My understanding it was a person named Amy**
 14 **Dyer.**
 15 Q. And did she at one time work for Solutia?
 16 **A. Yes, she did.**
 17 Q. And she now works for Ascend?
 18 **A. That's my understanding, yes.**
 19 Q. And what is her position with Ascend?
 20 **A. I'm not sure. I don't know.**
 21 Q. What was it with Solutia?
 22 **A. I think she was an environmental manager, but**
 23 **I'm not sure.**
 24 Q. At the Monsanto, at the Solutia plant in
 25 Pensacola and at the Ascend plant at Pensacola?

1 **A. Yes.**
 2 Q. Now those documents came from Ms. Dyer from
 3 Ascend; is that correct?
 4 **A. That, yes.**
 5 Q. Did you have an opportunity to go through those
 6 documents?
 7 **A. I leafed through some of them. Electronically**
 8 **speaking, I leafed through some of them.**
 9 Q. Now, what we have asked you to testify about
 10 today are the corporate records --
 11 **A. Excuse me. Can I, so we don't get lost, there**
 12 **was another set of documents that, when you asked me,**
 13 **that I'd forgotten about, and those were documents that**
 14 **were prefixed URS. I don't know whether you want to**
 15 **discuss those or not?**
 16 Q. Yeah. Go ahead.
 17 **A. Okay. URS is a consulting firm that has done**
 18 **most, if not all, of the environmental work with related**
 19 **to regulatory policies and --**
 20 **[The court reporter interrupted.]**
 21 **A. RCRA. And those documents that were in**
 22 **possession of URS were also reviewed and responsive**
 23 **documents were produced. Sorry for the interruption,**
 24 **but I did want --**
 25 Q. (By Mr. Stewart) That's okay. That's okay.

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1 That's fine. Do you know who gathered those documents?
 2 **A. Not specifically, no.**
 3 Q. Let me ask you --
 4 **A. Well, maybe -- no, as I think back, I believe**
 5 **actually that they were, they were made available for**
 6 **your review, or the attorneys for the plaintiffs'**
 7 **review. Those attorneys selected those documents so**
 8 **that they would like to see, then they were provided to**
 9 **you.**
 10 Q. All right. If you'll take a look at page two,
 11 I'll start there, and I want to see what you're in a
 12 position to testify to about today on behalf of Solutia.
 13 The first one is a Corporate Records Maintenance and
 14 Retention Policy of Solutia and the Pensacola Nylon
 15 Plant at issue in this litigation.
 16 **A. Yes.**
 17 Q. Have you made yourself familiar with that --
 18 **A. Well, I was --**
 19 Q. -- enough where you can answer questions for us
 20 on that particular issue?
 21 **A. Well, I'm familiar with it from my days at**
 22 **Solutia, and I did review the Solutia retention policy**
 23 **in preparation for this deposition --**
 24 Q. So you are prepared to answer questions for
 25 Solutia on that?

6 (Pages 21 to 24)

Page 25

Page 27

A. Yes. I don't know that I know chapter and verse without referring to the document, but I'm, I'm here to answer questions.

Q. All right. And then the Electronic Data Maintenance and Retention Policy, I'll ask you about. And I assume you looked at that too in connection with your review?

A. It's the same as the paper document retention policy.

Q. Okay. And then "The existence and location of documents regarding the topography and location of buildings; water features, natural and manmade; sewers, ditches and similar controls for managing storm and process water; wells; surface impoundments and any other such improvements at the Pensacola Nylon Plant"; are you in a position to talk about that?

A. Well, those, those documents exist and they were, are at the plant. Similar documents probably existed at URS since they would have been generating reports based on some of that information.

Q. When you say "those documents do exist and are located at the plant," are you talking about all the documents that I listed under Paragraph 3?

A. To the extent the documents referencing those do exist, they would have, you know, they would be at

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the plant, yes.

Q. The next one is "The existence and location of documents regarding location, general use and maintenance of equipment and buildings that contain or once contained PCBs or PCB-containing substances including but not limited to sumps, decanters, condensers, capacitors, transformers, natural gas compressor stations and heat transfer fluid piping"?

A. To the extent those documents exist, they would be at the plant, although I know there are some documents relating to PCBs at the Pensacola plant and the litigation archive.

Q. In the litigation archive?

A. Yes.

Q. And when you say the "litigation archive," you're talking about the MONS set or the archives that were maintained on safety, health and environmental issues by Monsanto?

A. No, I'm talking about the overall archive from which the MONS set was generated.

Q. Okay. But I thought I included that, but I want to make that I get my answer to the question from you. But you're talking about the archives, you're talking about the archives include documents other than the MONS set, and that's where those documents would be

found?

A. Yes, in the archive.

Q. Okay. "The existence and location of documents regarding locations, history and time period of use, waste characterization and maintenance of all landfills located at the Pensacola Nylon Plant since 1950 which contain or which documents refer to PCBs"?

A. Well, again, to the extent that those documents exist, they would have, they would be maintained at the plant.

Q. Would those documents not exist referencing the disposable waste on the plant site?

A. I would have to check the retention manual to be sure, but since the date 1950 is specified, I think it's possible that there were documents about landfills prior, you know, to some specific date that, that may no longer exist.

I believe that the URS investigations around the RCRA permit would have uncovered information about that but I can't say that, that documents from the 1950 time frame were destroyed under normal retention policies.

Q. We'll go to the retention policy a little later, but is it your statement here today that monitoring data that was maintained for governmental agencies can be destroyed?

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A. I would have to check the specifics of the retention. I think there are long-term if not permanent requirements for some of those, but I would have to check the specifics of the document. I don't have it memorized.

Q. We'll get to it a little bit later. Tell me if you would, since you were involved in Monsanto and you were involved with Solutia, do you know whether or not any waste from any other plant was ever transferred from another plant to the Monsanto plant site PCB way?

MR. MERRILL: I would note for the record the question calls for testimony beyond the matters designated in the deposition notice.

MR. STEWART: Well, I would respectfully disagree. We're talking about the existence and locations of documents regarding locations, history and time period of use, waste characterization and maintenance, and I was just asking if he knows, as an employee formally of Monsanto and Solutia and having to do his --

Q. (By Mr. Stewart) I think you served as a steward for PCB, if you know any of the waste went from the Anniston plant or any other plant? Krummerich or any other?

MR. STEWART: The witness can certainly answer

7 (Pages 25 to 28)

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1 the question. I'm just making the note for the record
2 when there's something that I believe is outside of the
3 scope of --

4 MR. STEWART: -- that's fine, Charlie.

5 **A. I don't know.**

6 Q. (By Mr. Stewart) You don't know. Is that a
7 possibility?

8 **A. I would be speculating to, to answer.**

9 Q. You feel free to speculate, Dr. Kaley.

10 **A. Fine. I, I think if there is a possibility, it**
11 **was extremely remote. It was, I've never heard of any**
12 **policy where waste from one site within Monsanto were**
13 **transferred to another site.**

14 Q. Do you know whether or not PCBs were ever used
15 in the nylon production of nylon products at the
16 Pensacola plant?

17 MR. MERRILL: I'll note for the record the
18 question calls for testimony beyond the matters
19 designated in the deposition notice.

20 **A. I, I guess I would ask you to clarify what you**
21 **mean by used in the manufacture?**

22 Q. (By Mr. Stewart) Actually using PCs, PCBs as a
23 raw material for the manufacture and process in some
24 fashion?

25 **A. No, they would not have been.**

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1 Q. Is that your testimony here today on behalf of
2 Solutia now, Dr. Kaley?

3 **A. I would say that's more my testimony on behalf**
4 **of Dr. Kaley.**

5 Q. Who in Solutia would know whether or not the
6 product PCBs were used?

7 **A. Well, somebody familiar with the process to**
8 **know whether PCBs were a raw material for nylon.**

9 Q. And where would, not necessarily for nylon, but
10 as a part of the product that was produced?

11 **A. Well, I'm not, I guess I'm not sure what you're**
12 **asking. Certainly PCBs were used for a short time in**
13 **air compressor equipment at the plant which was**
14 **producing nylon.**

15 **But PCBs, the chemical PCBs are not a chemical part**
16 **of the process by which nylon is produced. They were**
17 **not one of the raw materials used to make nylon.**

18 Q. I understand that.

19 **A. Okay.**

20 Q. But I'm just asking if it was some product that
21 was manufactured at the Pensacola plant in which they
22 used PCB?

23 MR. MERRILL: Again, can I, as long as we're on
24 this topic, I'd like to, can I, so I don't have to
25 interrupt every question --

1 MR. STEWART: You can have a blanket objection
2 to this line of questioning --

3 MR. MERRILL: Okay.

4 MR. STEWART: That's no problem there.

5 **A. My understanding of the use of PCBs at the**
6 **Pensacola plant was, it was only in electrical**
7 **equipment, possibly heat transfer systems, and for a**
8 **short time, in air compressor systems as a lubricant.**
9 **That's my understanding of the only uses of PCBs at the**
10 **Pensacola plant for any product line.**

11 Q. (By Mr. Stewart) Where did you obtain that
12 information?

13 **A. Basically in my course of my duties as the PCB**
14 **steward as you called it for Monsanto and Solutia.**

15 Q. Give me, if you would, whether or not you'd be
16 in a position to testify about the existence and
17 location of documents memorializing communications or
18 interactions with environmental and water regulatory
19 agencies including these agencies: The Florida
20 Department of Environmental Regulation, the Florida
21 Department of Environmental Protection, United States
22 Environmental Protection Agency, or the EPA, Corps of
23 Engineers of the Northwest Florida Water Management
24 District?

25 And I'm talking about documents that are limited in

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1 scope to those referencing the Pensacola Nylon Plant.
2 This can be a river; this can be a bay or its contiguous
3 waters. Are you able to tell me anything about the
4 existence and location of documents which memorialize
5 those types of communications?

6 **A. To the extent those documents exist, they would**
7 **have been maintained at the plant. Certainly some of**
8 **those documents, especially if communications with**
9 **regulatory agencies, especially the EPA, probably would**
10 **have had copies in the St. Louis offices, which would**
11 **have been transferred to Ascend. And there are probably**
12 **some documents that meet that description in the URS**
13 **files.**

14 Q. Now that was just generally memorializing
15 communications or interactions with the environmental
16 and water regulatory agencies about any matter. Would
17 the same be true, though, for the same kind of
18 communications regarding PCBs with those agencies that I
19 mentioned?

20 **A. Yes, my answer would be the same.**

21 Q. So you're telling me that those documents would
22 be maintained both at the plant and quite possibly if it
23 had to do with EPA or DEP, it would be also in
24 St. Louis?

25 **A. There are, they certainly would be maintained**

8 (Pages 29 to 32)

1 **at the plant. There are, it is a possibility that**
 2 **copies of some of those documents were in St. Louis. I**
 3 **don't know for sure.**

4 Q. And again, what about the existence and
 5 location of documents such as reports, meeting minutes,
 6 presentations, due diligence or other documents prepared
 7 in response to or preparation for any communication with
 8 a local, state or federal environmental and water
 9 regulatory agency? And I would list the same agencies.
 10 Now that's just generally?

11 **A. Okay. My answer would be the same. I should**
 12 **add that probably URS has documents or had, has had**
 13 **documents that are, that are responsive to that request**
 14 **also.**

15 Q. Well, while you are saying that, I want to make
 16 sure that I understand that the plant itself would
 17 maintain the documents that would be responsive to what
 18 I ask you about in six and seven, and then the Paragraph
 19 8 on page three of Plaintiff's Exhibit 1, those would
 20 also be located at the plant; is that correct?

21 **A. Yes. I would, yes. The plant would have, in**
 22 **my understanding, a complete file of those documents.**
 23 **But copies of some of those documents may be in some of**
 24 **the other, the locations, St. Louis or URS.**

25 Q. At the time -- and would that be true for No.

1 employee, and I may be paraphrasing it, we'll look at
 2 that in more detail, it's my understanding you all
 3 maintain those records?

4 **A. If that's -- as I said, I can't speak to**
 5 **specifics without looking at the document. But if**
 6 **that's what it says, then that's what should have been**
 7 **done, certainly.**

8 Q. And that was to be maintained along with the
 9 report or whatever it was they were discussing on a
 10 permanent basis, as I understood the retention policy;
 11 is that your understanding?

12 **A. I would have to check to be sure on the**
 13 **specifics.**

14 Q. And then the, No. 10, "The existence and
 15 location of documents constituting, evidencing or
 16 related to environmental reports and/or laboratory
 17 testing prepared by Solutia or disseminated to Solutia
 18 which relate to PCBs in or around the Pensacola Nylon
 19 Plant, the Escambia River or the Escambia Bay."

20 Would those documents, are you in a position to
 21 testify about where those exist and can you tell us?

22 **A. Well, excuse me, certainly some of the**
 23 **documents that exist from the 1969 release are present**
 24 **in the PCB archive. They were among those documents**
 25 **collected and maintained by the law department.**

1 9, which deals, it's on page four, Paragraph No. 9,
 2 that's the same type of document, reports, minutes,
 3 meeting minutes, presentations, due diligence, other
 4 documents regarding PCBs and having to do with
 5 preparation for response or communication with the
 6 local, state or federal environmental and water
 7 regulatory agency?

8 **A. That's my understanding, yes.**

9 Q. So those two would be quite possibly at URS but
 10 also at the plant site?

11 **A. Certainly at the plant site and quite possibly**
 12 **URS, yes.**

13 Q. Now, based on your experience, Dr. Kaley, while
 14 working at Monsanto, working at Solutia, what about the
 15 maintenance in the file of notes, memorandum, e-mails,
 16 that type of communication between employees, is that
 17 maintained in the files in connection with the
 18 preparation of communication with local, state or
 19 federal environmental and water regulatory officials?

20 **A. To the extent that it comports with the**
 21 **retention policies, yes.**

22 Q. Well, I looked at the retention policy, both in
 23 preparation for this previously and then today, and it
 24 appears that if it has to do with a conversation or
 25 preparation for a conversation with a government

1 **Documents generated after that period of time, after**
 2 **the early 1980s, to the extent that they exist and were**
 3 **maintained in accordance with the retention policies**
 4 **would be at the plant, yes.**

5 Q. Well, let me ask you this. Did you limit your
 6 review, this deposition notice to the spill in '69 and
 7 beyond as it relates to PCBs and the release of PCBs
 8 from the plant site?

9 **A. Well, I don't know that I'd, I'd limit it to**
 10 **that. I'm not aware of anything before that. But**
 11 **that's the first awareness of PCBs in Pensacola that I**
 12 **have --**

13 Q. -- reference -- I'm sorry. I'm talking over
 14 you and I apologize.

15 **A. That's fine. Go ahead.**

16 Q. What I had reference to is after '69. Did you
 17 just look for documents or did you understand that
 18 documents were looked for in the '69-'70 period, '71,
 19 somewhere along in there?

20 **A. Those, documents related to that time period**
 21 **would have, would be in the PCB archive. And I mean,**
 22 **I've, I've, those were among the documents I saw in my**
 23 **quick review of production documents, so I know some of**
 24 **them were produced and my guess, my assertion would be**
 25 **that all documents related to that spill in the '69 time**

1 **frame that are in the archive would have been produced.**

2 Q. Well, I guess what I'm talking about is if
3 we're talking about a release from the plant site, is
4 that the only documents that were provided to us as far
5 as you know the documents that related to the '69 spill?

6 MR. MERRILL: I'm going to object to the
7 question as worded, because to the extent it's asking
8 about the production of documents. It's calling for
9 testimony beyond the matters designated in the
10 deposition notice. But go ahead and answer.

11 Q. (By Mr. Stewart) Well, I guess what I'm asking
12 you though is, is it your understanding that the
13 documents were produced in connection with the releases
14 or related only to the '69 release and the '70, '71?

15 **A. No, that's not my understanding. My**
16 **understanding is that the documents that were produced**
17 **were all the documents available at the plant or at URS**
18 **or in the archive related to this specific production**
19 **request that, that the plaintiffs made in this case.**

20 **So it would have been, to the extent there were any**
21 **documents about releases post 1969, they would have been**
22 **produced within one of those data sets.**

23 Q. Okay. So it's my understanding, as you sit
24 here today, that you maintained on behalf of Solutia
25 that they have produced for us those documents that are

1 related to any release, whether it's '69 or any time
2 after that, of PCBs from this plant site?

3 MR. MERRILL: I'll note for the record that
4 that question about the nature and extent of the
5 production by Solutia is not a matter that's reasonable
6 to, designated with reasonable particularity in the
7 disposition notice.

8 MR. STEWART: Well, you and I just respectfully
9 disagree. I mean, if, if you're telling me that our
10 questions about the existence and location of documents
11 related to environmental reports, which would certainly
12 include releases, we're limited to asking him just
13 general questions about that, I mean we might quit now
14 and start over again.

15 MR. MERRILL: Well, you didn't, you didn't ask
16 in your notice any questions concerning the production
17 sequence or process by our firm. Depending on those, if
18 those questions had been asked, we may or may not have
19 objected to him, but that's certainly is not the
20 designated --

21 MR. STEWART: -- I'm familiar with that process
22 and, and we'll get to that in just a minute because
23 there's some deficiencies have been raised, but I'm
24 going to be asking him about these deficiencies and what
25 the limitations were about these documents.

1 And if there are documents that we don't have,
2 that's what I'm looking for. And if we've got to ask
3 specifically about documents, Mr. Merrill, in connection
4 with this case, you know, almost by name before you all
5 will produce them to us, or you will give us a big set
6 of documents and say, We've answered your question
7 because the documents are there within this, when we ask
8 a specific question, then we may have to go somewhere
9 and get some relief. Because that's what I'm beginning
10 to hear in connection with this production process.

11 If we don't specifically say that we're going
12 to ask him when we say the existence and location of
13 documents related to environmental reports or laboratory
14 testing, what you're saying to me is I can't ask him if
15 there were documents that might have to do with the
16 release in those documents that he looked at that you
17 all produced.

18 MR. MERRILL: No, you can ask him that
19 question. My objection was to something different. You
20 asked him if we had, what we had produced.

21 MR. STEWART: Well, that's exactly right. I'm
22 asking if you've produced, if you've produced documents
23 in our document request. I'm here trying to find out if
24 there's something missing.

25 MR. MERRILL: I understand, but --

1 MR. STEWART: -- telling me that, and we will
2 start over. We'll start over with that and some other
3 things. I'm, I'm just trying to find out if we're going
4 to play hide the pea today. If we are, that'll be fine.

5 MR. MERRILL: I, I, you know, I object and
6 disagree with, you know, any comment or, or assertion
7 that there has been any hiding the pea but --

8 MR. STEWART: -- deficiencies later --

9 MR. MERRILL: -- my point is that this was not
10 a deposition notice to us to discuss the, what is and is
11 not included in our document productions. That's never,
12 that's not specified anywhere in this notice. So,
13 existence and location of documents, you can continue
14 asking him about that and --

15 MR. STEWART: Well, I guess that's what I'm
16 asking, Charlie.

17 Q. (By Mr. Stewart) I'm asking, do you know,
18 Dr. Kaley, if there are documents in here that evidence
19 or relate to environmental reports and laboratory
20 testing prepared by Solutia or disseminated to Solutia
21 which relate to the Pensacola Nylon Plant? This can be
22 a river or this can be a bay.

23 **A. To the extent those documents do exist, and**
24 **some do, they would be located at the plant.**

25 Q. And did you, in your effort to be able to

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1 answer that question, determine whether or not there was
2 anything beyond this '69 spill? Any test that was
3 performed?

4 **A. I did not --**

5 Q. -- had to do with PCB releases from this plant
6 site?

7 MR. MERRILL: Okay. Now I need to note for the
8 record again that this question calls for testimony
9 beyond the matters designated in the deposition notice.
10 Because it's not, it's not asking him about the
11 existence of documents. You asked him if there were any
12 spills --

13 MR. STEWART: -- asking him about the existence
14 of documents that relate to spills beyond the '69.
15 That's all I'm asking him about. And if he knows if
16 they exist --

17 Q. (By Mr. Stewart) -- and if so, where are they
18 located?

19 **A. I have no specific information that such**
20 **documents exist. If they did exist, they would be**
21 **located at the plant. I did not make a specific inquiry**
22 **into spills that may or may not have occurred after 1969**
23 **to pick a date --**

24 Q. -- environmental reports be related to?

25 **A. Any number of things. MPDES permits,**

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1 **discharges of air, you know, air discharges, any, you**
2 **know, violations that the State had noted for any number**
3 **of things.**

4 Q. Releases of PCBs into the river?

5 **A. If that had happened and there were reports**
6 **about that, they would exist at the plant.**

7 Q. Contaminated sites beyond impoundments that
8 were set up for the storage of PCB waste on the plant
9 site?

10 **A. I'm not sure what you're referring to.**

11 Q. What if there was sludge located in the
12 impoundment on the plant site and there were releases
13 that came from that sludge, that would be an
14 environmental incident, there'd be an environmental
15 report made, wouldn't it?

16 **A. I would believe so, yes.**

17 Q. And should be, according to you as I understand
18 it, located at the plant site; is that correct?

19 **A. If there are documents related to such a**
20 **release as you alleged, then they would be, they would**
21 **be maintained at the plant site, yes.**

22 Q. Well, a release could be on plant site or off
23 plant site, couldn't it, Dr. Kaley?

24 **A. I suppose it could be, yes.**

25 Q. If you've got an impoundment area that's

1 supposed to be set up to maintain waste on a plant site,
2 then certainly you would have a release if it got out of
3 that impoundment area, wouldn't you?

4 MR. MERRILL: Okay. I note for the record the
5 question calls for testimony beyond the matters
6 designated in the deposition notice.

7 MR. STEWART: I'm just trying to get his
8 understanding, Mr. Merrill --

9 MR. MERRILL: You can answer, I'm just making
10 my record --

11 MR. STEWART: I understand what you're doing.
12 I understand what you're doing. You can have a blanket
13 objection to anything I ask him about why we came here.
14 That's fine with me.

15 MR. MERRILL: No, there, there are two
16 different sets of things and you know what the rules
17 are. There are things that are designated in the notice
18 in which he's speaking for Solutia.

19 There are other questions that you have a lot
20 of them that are not matters designated with reasonable
21 particularity in the notice, and those are for him to
22 testify on his own. And I'm just trying to distinguish
23 between --

24 MR. STEWART: -- we're not going to proceed
25 down that road. My understanding of a rule 30(b)(6)

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1 witness is he's got to determine whether or not there
2 are documents that exist and are located at this plant
3 site that relate to releases. If it has to do with an
4 environmental report, he's already said an environmental
5 report would be made about that.

6 MR. MERRILL: Your last question didn't ask
7 about records, it asked him about releases from an
8 impoundment and whether, if sludge got out of --

9 MR. STEWART: -- I was trying to do,
10 Mr. Merrill --

11 MR. MERRILL: -- to do --

12 MR. STEWART: -- was to get around the
13 objection that you're making. I won't, I think
14 Dr. Kaley knows what an environmental report is.

15 Q. (By Mr. Stewart) And an environmental report,
16 Dr. Kaley, would it not be made if there was some kind
17 of finding that PCBs had escaped from an impoundment
18 area on the plant site?

19 **A. If, if there were such a hypothetical release**
20 **and the regulations required reporting that release,**
21 **that would be, that there would be a report generated.**

22 Q. Wouldn't you do monitoring or testing about
23 that?

24 **A. I can't speak to a specific, I mean to a**
25 **hypothetical. I think it depends on the particular**

11 (Pages 41 to 44)

1 **situation.**

2 Q. Well, let's say the impoundment area was
3 designed to maintain or hold the PCB?

4 **A. Well, you seem to have a specific incident or**
5 **question or site in mind, and I'm not familiar with,**
6 **with the specifics of what your site that you're**
7 **presenting to me as a hypothetical, that doesn't really**
8 **seem to be is.**

9 **I am not aware of any such release at the Pensacola**
10 **plant, whether hypothetically or actually, and I don't,**
11 **so I have no idea whether there are documents associated**
12 **with any such hypothetical release.**

13 Q. Okay. So you're saying that there's no release
14 from any impoundment area on the plant site?

15 **A. No --**

16 MR. MERRILL: Wait a minute. I'm going to note
17 again for the record the question calls for testimony
18 beyond the matters designated in the deposition notice.

19 **A. Wait, I, I believe I'd like to answer that**
20 **question --**

21 MR. MERRILL: No, you can answer.

22 **A. If you could repeat the question, please?**

23 Q. (By Mr. Stewart) I'm just asking you if there's
24 no records related to a release from the plant, other
25 than this '69-'71 thing we keep talking about?

1 **A. I don't know the answer to whether there is,**
2 **exist a single document related to a PCB release. I**
3 **have not seen any such documents.**

4 Q. Do you know if there was any testing by
5 Monsanto in the bay?

6 **A. I don't know specifically.**

7 Q. You're not aware of any testing by Monsanto or
8 by Solutia in the bay?

9 **A. As I sit here today, I don't have any specifics**
10 **about any such testing, no.**

11 Q. In the bay?

12 **A. In the bay. That isn't to say it didn't**
13 **happen. I'm just not aware of it. I have no specific**
14 **information about that.**

15 Q. Are you speaking on behalf of Dr. Kaley there
16 or from Solutia?

17 **A. I'm speaking on behalf of myself there.**

18 MR. MERRILL: Now that, that question actually
19 was about documents.

20 MR. STEWART: Yeah.

21 MR. MERRILL: Okay. The question was about
22 documents.

23 Q. (By Mr. Stewart) I'm asking you about
24 documents. I'm asking you --

25 **A. I answered it I thought, before he, you had**

1 **your discussion. I have not seen --**

2 Q. -- you're saying, what I'm trying to clarify
3 is --

4 MR. MERRILL: I'm saying that is within the
5 matters designated in the notice. The existence of a
6 document about testing in the bay would, is within the
7 gamut of the notice.

8 Q. (By Mr. Stewart) Yeah, and I'm asking you, as a
9 representative of Solutia here today, if that record
10 does exist?

11 **A. I have not seen that, any specific record with**
12 **regard to that --**

13 Q. -- ask --

14 **A. -- review of the documents, but I am confident**
15 **that if that testing was done, those records would be**
16 **maintained at the plant and probably at URS, because URS**
17 **likely would have been involved in that testing,**
18 **certainly within recent years, and those documents would**
19 **have been produced.**

20 Q. Are there any documents there that indicate
21 that PCBs have gotten out of the impoundment area?

22 **A. Mr. Stewart, I haven't reviewed every document**
23 **that has been produced in this litigation. I don't know**
24 **the answer to that. All I'm here to say is that if such**
25 **documents existed, they would be at the plant. And they**

1 **would have been included, I'm confident, in the**
2 **production.**

3 Q. Well, I, so it's my understanding that, as you
4 sit here today, that you didn't review the documents
5 that were maintained at the plant or at the Ascend --
6 not Ascend, but Solutia offices or in the archives to
7 determine whether or not this, my question I just put to
8 you, is true or not? You just didn't look at the
9 documents so you don't know about that?

10 **A. I did not look at all of the documents that**
11 **have been produced in this case, no.**

12 Q. And that would be true if I asked you about a
13 release into any drainage area in and around the plant
14 shortly before it reaches the river, the land reaches
15 the river?

16 **A. That would be also true, yes.**

17 Q. But it's your testimony here today that all you
18 know, as you sit here today, as a 30(b)(6)
19 representative, when I ask you about those specific
20 documents is that if they do exist, it would have been
21 at the plant?

22 **A. Yes. Among possibly --**

23 Q. -- provided to us?

24 **A. Yes.**

25 Q. Would that be the same for 13, would you look

1 at 13?

2 **A. Yes, that would be the same answer, yes.**

3 Q. So you don't know whether or not those
4 documents do exist that are referred to in Paragraph 13
5 on page four of Plaintiffs' Exhibit 1?

6 **A. I, I have not seen in my review of the**
7 **documents I reviewed, any documents that are**
8 **specifically responsive to that Question 13; that is**
9 **correct. But I would again say that, that if those**
10 **records exist, those kinds of records would be**
11 **maintained at the plant.**

12 **And to the extent that they were dielectrics, they**
13 **would have been maintained or there would have been**
14 **copies in the, initially in the files at Solutia, but**
15 **those files then would have been transferred to Ascend.**

16 Q. What about the disposable PCBs and
17 PCB-containing products at the plant site? Documents
18 that authenticate that or memorialize that?

19 **A. Again, to the extent that they exist, and they**
20 **would exist for disposable PCBs after the PCB disposal**
21 **regulations went into effect in 1978, those records**
22 **would be maintained at the plant in accordance with EPA**
23 **regulations, and copies of those documents would have**
24 **existed in St. Louis, but the EPA retention policy for**
25 **those documents is very specific, that they can be**

1 **destroyed after three years.**

2 **So I don't, I don't specifically -- after three**
3 **years after the plant is PCB free. So I don't know**
4 **specifically whether those documents were maintained or**
5 **not.**

6 Q. What is meant by "PCB free"?

7 **A. There is, there is a documented absence of PCBs**
8 **in any equipment, either active equipment or equipment**
9 **for storage, or PCBs waiting disposal at the plant.**

10 Q. When you say "PCBs waiting for disposal at the
11 plant," are you telling me that after, sometime after
12 1978, the plant site was supposed to be PCB free?

13 MR. MERRILL: Wait a minute. I note for the
14 record the question calls for testimony beyond the
15 matters designated in the deposition notice.

16 Q. (By Mr. Stewart) Go ahead.

17 **A. It was PCB free under the definition of the PCB**
18 **regulations of the EPA, yes.**

19 Q. Would that allow you to have waste on the plant
20 site that contained PCBs?

21 **A. If it was properly contained, yes.**

22 Q. If what?

23 **A. If it was properly contained, yes. And if it**
24 **was not awaiting disposal off site, yes.**

25 Q. What requirement would there be for a PCB-laden

1 material to be disposed of off site?

2 MR. MERRILL: Can I have my continuing comment
3 for this line of questioning?

4 MR. STEWART: Yeah.

5 **A. Could you rephrase --**

6 Q. (By Mr. Stewart) What level of PCBs in, let's
7 just say it's in some sludge, what level can you
8 maintain on site?

9 **A. That would depend on a negotiated settlement**
10 **with the EPA on how those, how those materials were**
11 **managed.**

12 Q. Could you maintain it in an open impoundment?

13 **A. I don't know.**

14 Q. You don't have any idea? Do you know anything
15 at all about what was done in connection with the
16 disposal of that waste? What documents were there at
17 the plant site related to disposal of PCBs and
18 PCB-containing products at the Pensacola Nylon Plant?

19 **A. Again, you seem to be referring to some**
20 **specific incident and I'm --**

21 Q. No, I'm just asking you generally, do you know
22 about, anything at all about the documents that relate
23 to that --

24 **A. -- if those documents exist, they would be**
25 **maintained at the plant.**

1 Q. But you don't know, as you sit here today as a
2 representative for Solutia, as to whether or not there
3 are such documents?

4 **A. That's correct.**

5 Q. And take a look at 14. I want to ask you some
6 questions about that.

7 **A. Okay.**

8 Q. Do you know if any such documents exist that
9 are referred to, talks about the existence and locations
10 of documents memorializing internal communications or
11 interaction regarding PCBs in or around the Pensacola
12 Nylon Plant, and that includes memorandum, handwritten
13 notes, e-mails, letters, facsimile transmission reports,
14 meeting minutes, presentations, due diligence, and all
15 laboratory testing?

16 **A. Yes, I'm aware of such documents.**

17 Q. You've looked at those?

18 **A. I've seen some that are, specifically with**
19 **regard to this question, yes, I've seen such documents.**

20 Q. Okay. And how is it that you came to see those
21 documents?

22 **A. Well, a couple ways. Number one, I was**
23 **involved in some of those communications at various**
24 **times. And secondly, in my spotty, admittedly spotty**
25 **review of documents associated that have been produced**

1 in this litigation, I saw some of those types of
2 documents.

3 Q. Specifically what did you see?

4 A. Well, there were documents related to the 1969
5 spill.

6 Q. Is that all you saw?

7 A. No, there were also documents related to the
8 remediation of the, of a pond on the site in the late
9 1990s, early 2000s.

10 Q. And why was the pond, if you know, remediated?

11 MR. MERRILL: And I note for the record the
12 question calls for testimony beyond that as designated
13 in the deposition --

14 Q. (By Mr. Stewart) -- one of the documents that
15 was remediated?

16 A. Because PCBs were found to be in some of the
17 materials in those, in that pond, the sediments in the
18 pond.

19 Q. Were the documents that were related to the
20 findings that were made at that time?

21 A. Basically, what I saw were, in my review, were
22 documents related to the, the agreement with EPA under
23 which that site was remediated. Those are the specific
24 documents I recall --

25 Q. Was that placed in a landfill on site, the

1 the records that are referred to in Paragraphs 1 through
2 14 on Exhibit 1, matters upon which testimony would be
3 required?

4 MR. MERRILL: Now, I'll object to that question
5 for the reason that it's asking a question about
6 something that's beyond the requirements of a
7 corporation under a 30(b)(6) notice. There's no
8 requirement of an investigation with third parties, but
9 you can go ahead and answer.

10 A. I did not speak to anyone at the plant.

11 Q. (By Mr. Stewart) You didn't talk to anybody?

12 A. Not at the plant, no.

13 Q. So that you'd be prepared to tell me whether or
14 not any of these documents existed that are referred to
15 in Paragraphs 1 through 14?

16 A. My understanding is that documents at the plant
17 were reviewed in response to the production request and
18 response of documents were produced. But I did not
19 speak to anyone specifically about the specific content
20 of those documents.

21 Q. Tell me if you would, Dr. Kaley, if there are
22 documents that are maintained, either at the plant site
23 in Pensacola or at the St. Louis office, that were
24 reviewed which were not provided to us? Do you know
25 whether or not there were?

1 material that was in the impoundment area?

2 A. I'd have to review it to give you a specific
3 answer to that question. I believe it was placed on
4 site in a, in a, some sort of RCRA covered, I guess you
5 call it a landfill. I don't know specifically what
6 terms were used in the documentation.

7 Q. All right. But do you know where the
8 impoundment area that you're talking about is on the
9 site itself?

10 A. No, I don't.

11 Q. Okay.

12 A. Not as I sit here.

13 Q. Any other documents that you saw that were
14 related to 14?

15 A. Those are the ones that I recall.

16 Q. The spill in '69 and the 1995 impoundment area
17 that they talked about remediating?

18 A. Whenever it was. In that '90s-to-early-2000
19 time frame, yes.

20 Q. So it's my understanding that you just took a
21 spot-check of the documents that had been produced so
22 far in preparation for your testimony here today?

23 A. Yes.

24 Q. Did you talk to anybody at the plant site in
25 Pensacola and asked them about the existence of any of

1 Because of some decision that was made by somebody
2 not to provide those documents to us that were related
3 to any one of the subject matters that you've been
4 called upon to testify about here today?

5 MR. MERRILL: And I note for the record that to
6 the extent that that question is, is asking about the
7 production process from, production process in general
8 or production of Ascend documents, that it's beyond the
9 matters designated in the deposition notice. But you
10 can answer.

11 A. My understanding is that the attorneys reviewed
12 the documents for privilege, for example. So it's
13 certainly possible that there were documents that were
14 in those files --

15 Q. (By Mr. Stewart) Other than privileged, are
16 there documents that you know of that were not provided
17 to us because they weren't specifically asked for?

18 A. Not that I'm aware of.

19 Q. So if I ask about documents generally, then
20 they were provided to us?

21 A. If they were responsive to these production
22 requests, yes.

23 Q. But the lawyers made that decision?

24 A. Yes. Presumably. I don't, I don't really know
25 the answer to that but.

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1 Q. And you don't know who was involved at the
2 plant site in assisting, from Solutia, assisting in
3 gathering the documents?

4 MR. MERRILL: I'll object to the form of the
5 question.

6 **A. I don't know specifically, no.**

7 Q. (By Mr. Stewart) Did you talk to anybody at
8 Solutia in connection with this case other than the
9 woman that you mentioned previously?

10 **A. No.**

11 Q. So, in connection with your preparation of your
12 deposition here today, you did not talk to anyone other
13 than her?

14 **A. I, I personally did not talk to anyone other
15 than her.**

16 Q. Did someone on your behalf talk to anybody?

17 **A. I believe Mr. Merrill had communications with
18 Solutia personnel on some of the issues, yes.**

19 Q. Who would that be?

20 **A. I don't remember specifically. Somebody, I
21 don't remember specifically.**

22 Q. Where are Solutia's headquarters located? Are
23 you still working with them?

24 **A. No.**

25 Q. You retired?

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1 **A. Yes.**

2 Q. Are you working as a consultant for them?

3 **A. Occasionally, not very often.**

4 Q. Are you working in this case as a consultant?

5 **A. No.**

6 Q. Are you doing any work for Ascend?

7 **A. No. Excuse me, no.**

8 Q. So Solutia's offices are located here in
9 St. Louis?

10 **A. That's correct.**

11 Q. That their home office?

12 **A. Yes.**

13 Q. Is it located near the offices that are
14 maintained by Monsanto here?

15 **A. Well, I don't know what you mean by "near."
16 They're within several miles of them.**

17 Q. Not in the same building?

18 **A. No, they're not even, they're not on the same
19 site.**

20 Q. It was at one time, was it not?

21 **A. Just a very short interim period immediately
22 after the spin-off, but very quickly Solutia moved away
23 from the Monsanto site.**

24 Q. Well, you indicated earlier that Ascend
25 employees who had maintained records of their own while

1 they were at Solutia took those records with them?

2 **A. Yes.**

3 Q. Do you know how many of those employees who
4 worked for Solutia went with Ascend?

5 **A. No, I don't.**

6 Q. Was it a fair number?

7 **A. I have no idea, frankly.**

8 Q. Were there some employees -- the answer to my
9 question indicated that there were some employees who
10 left Solutia and went with Ascend?

11 **A. That's my understanding, yes.**

12 Q. Was that, I guess you call it a sale or a spin-
13 off, was that done in such a way that the people who
14 made that purchase of that plant was a separate company,
15 or was it created to purchase the nylon production
16 facility?

17 **A. I believe it was a pre-existing company that
18 bought the nylon process.**

19 Q. Ascend was?

20 **A. Yes.**

21 Q. So they just took employees who were connected
22 from Solutia connected with the nylon process; is that
23 correct?

24 **A. Some of them that they believe they needed for
25 their production, for their management of the process --**

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1 Q. -- existed prior, wasn't like a spin off of
2 Solutia --

3 **A. It was not, definitely --**

4 Q. -- former Monsanto employees?

5 **A. It was definitely not a spin-off. It was a
6 separate company that purchased the nylon facility.**

7 Q. Well, how is it --

8 **A. Nylon business, there were --**

9 Q. How is it that you all managed to produce these
10 GNZ, which is, as I understand it, are Ascend documents?

11 MR. MERRILL: And I'll note for the record the
12 question calls for testimony beyond the matters
13 designated in the deposition notice.

14 **A. I don't know specifically how that production
15 process --**

16 Q. (By Mr. Stewart) Do you know who went through
17 those matters at the Ascend plant in Pensacola and
18 provided those documents to us? Do you have any idea --

19 **A. My understanding was that it was Amy Dyer who I
20 mentioned earlier.**

21 Q. Amy did that?

22 **A. That's my understanding.**

23 Q. And she was the one who stayed with them as a
24 result of the sale?

25 **A. She was one of those, but she was already at**

15 (Pages 57 to 60)

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1 the plant. She wasn't in St. Louis.

2 [The court reporter interrupted.]

3 A. Right. She was at the Pensacola plant, she was
4 not in St. Louis.

5 MR. STEWART: We've been going for about an
6 hour and 30 minutes. You want to take a short break?

7 MR. MERRILL: All right.

8 THE VIDEO TECHNICIAN: Off the record at
9 11:20 a.m.

10 [There was a break in the record.]

11 THE VIDEO TECHNICIAN: We are back on the
12 record at 11:32 a.m.

13 Q. (By Mr. Stewart) Dr. Kaley, let's go to
14 Plaintiff's Exhibit 2, and I want you to take a look at
15 that and I want to ask you about it.

16 And this is a document entitled the Plaintiff's
17 Objections and Responses to the Plaintiff's First
18 Request for Production of Documents.

19 I'm going to withdraw that, excuse me. We may need
20 that, but I'm not going re-number it. I'll just make
21 this three. We may go back to two. We'll make this
22 three. You got Exhibit 3 in front of you now?

23 A. I do.

24 [Plaintiff's Exhibit No. 3 was introduced.]

25 Q. (By Mr. Stewart) And this is the Defendants'

1 Q. And we are referred to there in the MONS set.

2 It says MONS00001 through 100120 document collection and
3 to the DSW collection and the URS document collection.

4 Are those documents, to your knowledge, that were
5 provided to us in those three sets Bates numbered?

6 MR. MERRILL: I'm going to note for the record
7 the question calls for testimony beyond the matters
8 designated in the deposition notice.

9 Q. (By Mr. Stewart) Well, Dr. Kaley, you have
10 looked at, have you not, a set of those documents, some
11 of those documents?

12 A. Yes.

13 Q. From each of those collections?

14 A. Yes.

15 Q. And when you looked at those documents, they
16 had Bates numbers. You're familiar with what those are;
17 are you not?

18 A. Yes, the documents were numbered.

19 Q. And in looking at those documents, did you see
20 documents that fit of the question that was asked here?

21 A. I saw some documents that fit that, yes.

22 Q. Okay. And were they distinguishable from other
23 documents that you looked at?

24 A. I'm not sure what you mean by that.

25 Q. Well, some of these things had to do with

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1 Supplemental Objections and Responses to our First
2 Request for Production of Documents, and it was provided
3 to us, it's a complete document, make sure I got the
4 date here, April the 6th of 2010.

5 Just take a look if you would, at the Paragraph 1.
6 And if you would read that, I will ask you questions
7 about that supplemental response.

8 It has to do with permits, applications, reporting
9 forms, lab data or other documents in your possession,
10 custody and control that originated from, or purport to
11 originate from, or which were sent to, or purport to
12 have been sent to, the Florida Department of Public
13 Health, the Florida Department of Environmental
14 Protection, the Agency for Toxic Substances and Disease
15 Registry, the EPA, Federal Department of Transportation
16 or Occupational Safety and Health Administration, or any
17 other state or federal department or agency concerning
18 PCBs generally or the plant specific. Do you see that?

19 A. Yes. It says "PCXs generally." Is that a
20 typo?

21 Q. Must be, but refers to PCB.

22 A. Okay.

23 Q. They responded to that. You see the
24 supplemental response?

25 A. Yes, I see it.

1 reports, some of those agencies that I'm talking about
2 in, in Paragraph 1?

3 A. Yeah, I mean --

4 Q. Some of them were sent to those agencies, some
5 of the documents you looked at were not sent to those
6 agencies; is that correct?

7 A. Yes, there were a variety of types of
8 documents.

9 Q. And some of them fit the description of what we
10 asked for here in this Request for Production of
11 Documents?

12 A. Yes.

13 Q. And if one looked through those documents, he
14 could determine from the Bates numbering that was done
15 which of those documents were related to the question
16 that was asked here; is that right? You can distinguish
17 one from the other, couldn't you?

18 MR. MERRILL: Again, I'll note for the record
19 the question calls for testimony beyond the matters
20 designated in the deposition notice.

21 Q. (By Mr. Stewart) Go ahead, Dr. Kaley?

22 A. I didn't make that specific inquiry, but
23 presumably, you could make some decisions based on those
24 documents, yes.

25 Q. So if I asked you specifically for documents

16 (Pages 61 to 64)

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1 that dealt with reports to these agencies or
2 communications with these agencies, you could certainly
3 distinguish those types of documents from others that
4 might appear in this 100,000 pages of documents that had
5 been provided to us in the MONS set and then thousands
6 of pages of documents in the DSW and URS set? You could
7 distinguish that; could you not?

8 **A. Presumably, yes. I didn't try to do that, but**
9 **presumably you could make some decisions along those**
10 **lines --**

11 Q. -- make that distinction as to a report or
12 something that wasn't a report, couldn't you, Dr. Kaley,
13 as you sit here today?

14 **A. Yes, I guess. I mean, but again, the request**
15 **is very, I mean it's correspondence, permits,**
16 **applications, forms, data, you know, to and from**
17 **agencies. I mean that's a very broad, I would think a**
18 **very broad request. So, yeah, you could do that --**

19 Q. You can certainly distinguish the agencies and
20 the request that we made; did you not?

21 **A. I'm sorry?**

22 Q. You certainly, the question certainly
23 distinguishes the agencies that are, that is being, the
24 information being requested about --

25 **A. Yes, it does.**

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1 Q. And it talks about communications, permits,
2 applications, you know what those are; do you not?

3 **A. Yes, generally, I mean.**

4 Q. Lab data and other document --

5 **A. -- my idea what they were, but yeah.**

6 Q. And some of the documents that are referred to
7 in that question are not necessarily some of the other
8 documents that you looked at in these production? USR
9 or URS rather, DSW or the MONS doc? Some of them are
10 different kinds of documents than what we've asked for
11 here?

12 **A. Some of them, yes.**

13 Q. Okay. And is it my understanding that Solutia
14 stands on its response to this request here that the way
15 to answer this question is just to refer us to a set of
16 documents that you all provided us?

17 MR. MERRILL: I note for the record the
18 question calls for testimony beyond that matters
19 designated in the deposition notice.

20 I think probably the witness does not know the
21 answer to the question, but if he does know the answer
22 to the questions, then I'm going to instruct him not to
23 answer --

24 MR. STEWART: -- I'm going to ask you, if you
25 would, to make an objection and quit making speaking

1 objection. All I want you to do, if you've got an
2 objection, if you want to signal to him what you want
3 him to say, you know, I'll leave the room and allow you
4 to go through that.

5 MR. MERRILL: I'm going to instruct him not to
6 answer because as worded, it calls for him to disclose
7 the thoughts and impression of counsel.

8 MR. STEWART: Well, he was not involved, as I
9 understand it, in the process, Mr. Merrill. All I'm
10 asking is if there was some documents that were
11 different, and if you could designate documents. I'm
12 just asking --

13 MR. MERRILL: -- that's not your last
14 question. That wasn't your last question.

15 Q. (By Mr. Stewart) Well, let me just ask. Was
16 there a way to designate the documents that fit the
17 description I've asked? You could just pick them out,
18 couldn't you?

19 **A. I, I don't know. In general, I mean there,**
20 **certainly you could look at a document and decide**
21 **whether it fit in one of those classifications --**

22 Q. -- there are some documents that don't fit
23 those classifications in these sets of documents that
24 were provided to us; are there not, Dr. Kaley?

25 **A. I would believe there are, yes.**

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1 Q. And so as I understand it, the response here
2 just says, take a look at the documents we provided to
3 you; doesn't it say that?

4 MR. MERRILL: And again, I'm going to note for
5 the record that the --

6 MR. STEWART: He can read, Mr. Merrill.

7 MR. MERRILL: -- testimony beyond the
8 matters --

9 MR. STEWART: We're talking about the documents
10 that were provided us and the existence and location of
11 those documents, Charlie. And I'm just trying to figure
12 out what Solutia is relying on in response to our
13 questions that we asked in the interrogatories and
14 request for production of documents that we provided to
15 you. And if he can tell me that you can distinguish
16 those, I want that on the record.

17 MR. MERRILL: I didn't instruct him not to
18 answer. I'm just making my, my, my observation for the
19 record.

20 Q. (By Mr. Stewart) And, and is it fair to say
21 that the response that we got from Solutia is they just
22 said, Just look at the documents that we have provided;
23 isn't that what they're saying?

24 MR. MERRILL: I'm going to state that asking
25 the witness to characterize our responses to

17 (Pages 65 to 68)

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1 interrogatories is a matter not reasonably designated in
2 the deposition --

3 MR. STEWART: We're talking about documents,
4 Charlie, that you all are relying on. What we're trying
5 to find out is what you are relying on. And just to
6 throw a bunch of documents at somebody and say, This is
7 what we're relying on, is not quite fair --

8 MR. MERRILL: -- I disagree with what you say
9 in specifics and generally, but it's not, what you're
10 talking about and what your goals are are not the
11 questions that you're asking. You can continue with
12 your questions.

13 MR. STEWART: Well, I just want to know what
14 Solutia is relying on in connection with their response
15 to this particular question.

16 Q. (By Mr. Stewart) And is it fair to say that
17 what they're relying on, as far as you can see here, is
18 just the documents they provided to us so far?

19 A. They refer you to those document sets, yes.

20 Q. Now, are there any documents that would be
21 responsive to this request that have not been provided
22 to us; to your knowledge?

23 A. To my knowledge, no.

24 Q. Either in Pensacola, and when you say that,
25 you're speaking for Solutia; is that correct?

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1 A. Yes.

2 Q. Okay. Either in Pensacola or in St. Louis?

3 A. Yes, or at URS.

4 Q. Or at URS. Or in the DSW document?

5 A. Well, those would be in St. Louis.

6 Q. Okay. By the way, when y'all turned the
7 archives over to Solutia, did they maintain those here
8 in St. Louis?

9 A. I believe they were maintained in North
10 Carolina.

11 Q. In North Carolina? Are they still there?

12 A. No, no.

13 Q. Are they now located in St. Louis?

14 A. I believe they're in a warehouse here, yes.

15 Q. And would the additional document that were
16 added to that by Solutia during the time that they
17 maintained those archives, would that be in a warehouse
18 here?

19 A. I believe if they are part of that archive,
20 they would be in the warehouse, yes.

21 Q. Where is, do you have the particular address
22 for that?

23 A. No, I don't.

24 Q. Take a look at page four, please. Again, this
25 may be a misprint here, but can you read five, and I

1 want to ask you some questions about that.

2 A. Okay, I've read it.

3 Q. Now this asks for the presence of PCBs that
4 were collected at the Escambia River, Escambia Bay or
5 the areas surrounding those waters or at the plant site.

6 And again, we are referred to the DSW and URS and
7 MONS documents. Do you know whether or not there was
8 any testing in any of those documents that was done in
9 Escambia River, Escambia Bay or the areas that surround
10 the waters?

11 A. I didn't see any that specifically referred to
12 such sampling, no. I don't know.

13 Q. Is it your testimony here today on behalf of
14 Solutia that no such documents exist?

15 A. No.

16 Q. There may be documents that exist?

17 A. Yeah, if such testing has been done, they
18 would, the documents would certainly exist at the plant
19 and at URS, I would assume, to the extent that URS was
20 involved in such testing, if they were. I don't know
21 that they were.

22 Q. Do you know whether or not there was any
23 testing or sampling done in the area that would be
24 drainage areas on the plant site itself?

25 A. I don't know specifically if there was or not.

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1 Q. Would those documents be located at the plant
2 if that was done?

3 A. Yes, or to the extent that URS was involved,
4 URS would also have such documents.

5 Q. And do you know what the purpose would be of
6 those documents, those documents indicate the purpose of
7 that?

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

9 Q. Take a look at six.

10 A. Page six or No. 6?

11 Q. No. 6. Where would photographs and maps of the
12 plant be?

13 A. At the plant.

14 Q. Would historical photographs and maps be
15 maintained at the plant? Showing a historical layout of
16 the plant?

17 A. If they existed, they would be maintained
18 there.

19 Q. Are they generally maintained at, at, by
20 Solutia at plant site?

21 A. That's my understanding, yes.

22 Q. The historical data?

23 A. Maps and photographs? Yes.

24 Q. What's the purpose of that, Dr. Kaley?

25 A. I'm not, I don't know. Historical interest I

18 (Pages 69 to 72)

1 guess.

2 Q. Well, if there was an impoundment or a landfill
3 area, you all maintain historical maps of those so you
4 know where they're located?

5 A. Presumably, yes.

6 Q. And those would be at the plant site?

7 A. Yes.

8 Q. Why would there be any need to narrow this
9 request to provide exemplars of the layout of the
10 Pensacola Nylon Plant?

11 MR. MERRILL: Note for the record that question
12 is asking for testimony about how counsel answered an
13 interrogatory is beyond the matters designated in the
14 deposition notice.

15 Q. (By Mr. Stewart) Aren't there, aren't there
16 general maps and layouts of the plant site, historical
17 layouts of the plant site that have little or nothing to
18 do with the use of PCBs?

19 A. I don't know --

20 Q. -- at the plant site?

21 A. I don't know the answer --

22 Q. -- wouldn't there be?

23 A. I don't know.

24 Q. You don't know whether they exist or not --

25 A. I don't know, I don't know whether -- I guess

1 I'm not -- what was your question? I'm sorry. I need
2 your question repeated.

3 Q. Well, do you all generally have a layout of a
4 plant site that's related to the use of a specific
5 product, or do you have it related to just the layout of
6 the plant site itself?

7 A. It would be related to a specific process.
8 Generally, there would be layouts for specific processes
9 at the plant, not necessarily the use of a particular
10 product.

11 I mean if you're asking me is there a document that
12 says PCBs were used here, here, here and here, I don't
13 know. But frankly, I doubt it.

14 Q. Well, I would, too. So the layout of the plant
15 would have to do with the production of nylon there at
16 the plant site, wouldn't it?

17 A. Yes.

18 Q. And then if there were landfills and that type
19 stuff, those would be noted on the map or a layout of,
20 of, that might be done historically, wouldn't it?

21 A. They may or may not have been, I don't know.

22 Q. Impoundment areas would be; solid waste
23 management areas would be located --

24 A. Well, certainly after RCRA went into affect and
25 the solid waste management unit concept came into being,

1 those, those documents would have been generated, yes.

2 Q. And what would they show?

3 A. They would show the location of the various
4 solid waste management units.

5 Q. And is there any effort made to show what
6 affect they might have on, on a particular portion of
7 the property?

8 Let's just say a drainage area. Could you show the
9 effect it might have on that drainage area?

10 A. Well, in general I would say that the RCRA
11 process may or may not involve such exemplaries,
12 depending on how that solid waste management unit is
13 being managed.

14 Q. But if that unit is being managed in such a way
15 that may or may not affect the drainage area, it would
16 indicate that; would it not? The historical data would?

17 A. Well, the RCRA, what some RCRA report would. I
18 don't know what you mean by historical data necessarily.

19 I mean there are documents around RCRA
20 investigations that would discuss the various solid
21 waste management units and what, what was in them and
22 what the condition was, and if remediation was
23 necessary, what the remediation options would be.

24 Q. But if something drove remediation efforts,
25 such as a drainage area or the possibility of certain

1 substances leaving the plant site and getting into the
2 river, the reports would indicate that; would they not?

3 A. They might. Again, it just depends on the
4 specifics. I don't, I can't say that generally every
5 report about every solid waste management unit would do
6 that. But in general, if that's part of the
7 investigation, those reports would indicate that, yes.

8 Q. Take a look at No. 7.

9 A. Okay.

10 Q. Now, this talks about press releases,
11 advertisements, public pronouncements or warnings issued
12 by the Defendant pertaining to, it should be PCB
13 generally and the threat --

14 [The court reporter interrupted.]

15 Q. (By Mr. Stewart) Or the lack of a threat of
16 same to the neighbors of the plant or to Escambia River,
17 Escambia Bay and all connected waterways.

18 If you look at the supplemental response on page six
19 and seven, it talks about document collections that have
20 been made available, contain press releases and public
21 announcements issued pertaining to the temporary
22 accidental release of PCBs in 1969 from the Pensacola
23 Nylon Plant; do you see that?

24 A. I see that.

25 Q. Is it your understanding, as you sit here today

1 on behalf of Solutia, that that is the only press
2 release or public pronouncement about a threat to the
3 neighbors that exist in the documents that are located
4 at the Solutia plant, or now Ascend plant in Pensacola?

5 MR. MERRILL: I'll note for the record the
6 question calls for testimony beyond the matters
7 designated in the deposition notice which do not include
8 publicity.

9 **A. Well, I would, I don't know that any of them**
10 **deal with, particularly with the threat to the neighbors**
11 **as its phrased. But I'm not aware of other, of press**
12 **releases or public announcements associated with any**
13 **other release of PCBs from the plant, and if there was**
14 **such.**

15 Q. (By Mr. Stewart) What about any possible
16 releases?

17 **A. I'm not aware of any press releases or public**
18 **announcements on, on that subject matter.**

19 Q. You didn't see any in the documents that you
20 looked at?

21 **A. No, I don't. Nor am I aware of any.**

22 Q. Well, the only press releases that you saw from
23 Solutia in the documents that you looked at those that
24 refer to a release that took place in 1969?

25 **A. Well, honestly, in the documents I looked, I**

1 **didn't see any press releases or public announcements at**
2 **all. I saw internal documents discussing, discussing**
3 **that release, and I saw some regulatory documents, but I**
4 **didn't see any specifically press releases or public**
5 **announcements.**

6 Q. Did you do a cursory review of the MONS
7 documents and the DSW documents to see if you could find
8 anything like that, or did you just spot-check it as you
9 previously mentioned?

10 MR. MERRILL: Wait, wait, wait. Again, I note
11 for the record the question calls for testimony beyond
12 the matters designated in the deposition notice which do
13 not include press releases and publicity.

14 **A. I did. I did not do a specific search for**
15 **documents related to this question.**

16 Q. (By Mr. Stewart) In the event, Dr. Kaley, based
17 on your experience both at Monsanto and Solutia, that
18 there was contamination in Escambia Bay from PCBs that
19 quite possibly came from this plant site, and something
20 was discovered about that say in the '90s, not '69 but
21 in the '90s, would there not be some response from, from
22 Solutia, or frankly Monsanto or Solutia?

23 MR. MERRILL: I'm going to note for the record
24 the question calls for testimony beyond the matters
25 designated in the deposition notice.

1 **A. I don't know the answer. It would depend on**
2 **the specifics --**

3 Q. (By Mr. Stewart) -- need for it?

4 **A. It would depend on the specifics of the**
5 **situation.**

6 Q. Let's just say they contaminated all of
7 Escambia Bay and it needed to be cleaned up. Would
8 there not be some need to respond on the part of
9 Solutia?

10 MR. MERRILL: And may I have that continuing
11 notice to this line of questioning so I don't need to
12 interrupt you --

13 MR. STEWART: Certainly you can.

14 **A. I can't speak for how Solutia or Monsanto would**
15 **respond to that situation.**

16 Q. (By Mr. Stewart) It's been your experience in
17 the past, has it not, Dr. Kaley, that they respond
18 through the press?

19 **A. If they're asked to respond, they do.**

20 Q. To such information coming to their attention
21 about possible contamination of either a neighborhood or
22 a body of water that would be located near their plant
23 site?

24 **A. If they're asked specific questions, they**
25 **respond to those questions, yes.**

1 Q. And they have a specific methodology, do they
2 not, for responding or, or model to follow under those
3 circumstances; do they not?

4 **A. Not that I'm aware of.**

5 Q. Now, the next one asks for all bid documents,
6 correspondence, contracts, specifications, invoices or
7 other documents as they, pertaining to, in the use of
8 independent contractors to inventory, study, remove,
9 apply or dispose of toxic or hazardous substances or
10 wastes at the plant, and we were referred again to the
11 MONS documents. Did you see any of those kinds of
12 references made in the documents that we were provided
13 specifically?

14 **A. Specifically in the MONS documents?**

15 Q. In any of those sets?

16 **A. Yeah, in the URS sets, there were clearly**
17 **correspondence in the documents related to the use of**
18 **contractors.**

19 Q. In connection with the reference to the removal
20 or disposal of PCBs from the plant site?

21 **A. I don't remember PCB specifically, but the**
22 **question is disposal of toxic or hazardous substances or**
23 **wastes at the plant.**

24 **So to the more general question, I saw documents**
25 **with regard to PCBs. I don't recall seeing any specific**

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1 documents with regard to PCBs.

2 Q. But if, if Defendants' counsel was, was told
3 that it applied to independent contractors, to
4 inventory, study, remove, apply or disposal of PCBs from
5 the Pensacola plant site, is it your testimony here
6 today that you did not see any such documents in what
7 had been provided to us?

8 MR. MERRILL: Object to the form of the
9 question.

10 A. With regard to PCB specifically, or with
11 regard --

12 Q. (By Mr. Stewart) PCB specifically.

13 A. I, as, I don't recall seeing any that
14 specifically dealt with PCBs. But again, I didn't look
15 at every document, the URS production set or the
16 Pensacola production set for that matter.

17 Q. But you did see, did you not, Dr. Kaley,
18 documents in that set that could have been identified by
19 the Bates numbers that were located on the bottom of
20 those documents that related to contracts that they had
21 with outside vendors to remove or study toxic or
22 hazardous waste?

23 A. Well, the whole URS data set would have been,
24 would, I would, would basically fall within that
25 classification. I mean they were an independent

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1 contractor that was contracted to investigate those
2 various subjects at the plant.

3 Q. Is it standard operational procedure for you
4 all to hire outside contractors to remove or dispose of
5 toxic substances when a large-sized project is involved?

6 A. Within, for Solutia, yes, that's definitely the
7 case. But Solutia did not and does not have the
8 in-house capability to do those kinds of investigations.

9 Q. So in the event that Solutia did anything like
10 that, it would have been with an independent contractor?

11 A. With the oversight of Solutia, yes.

12 Q. With somebody from Solutia working with the
13 project manager to make sure it was done according to
14 what you all had asked for?

15 A. That's correct.

16 Q. And where would those documents be located?

17 A. They could be at the plant; they could be at
18 St. Louis; they could be at the contractor. Could have
19 been.

20 Q. Now generally, there is correspondence related
21 to that too; is there not?

22 A. To the formalization yes, certainly.

23 Q. And there's also internal conversations that go
24 on in connection with that; are there not?

25 A. I'm sure there are conversations, yes.

1 Q. And correspondence too, back and forth?

2 A. There may have been, I don't know. It depended
3 on the project and contractor --

4 Q. -- pretty good-sized project, would that have
5 taken place between say St. Louis and at the office here
6 on behalf of Solutia and the folks at the plant in
7 Pensacola?

8 A. It may have. I don't know that I saw any
9 specific documents of that type. But I certainly, for
10 instance, in my dealings with Anniston saw those kind of
11 documents at Anniston, yes.

12 Q. Did you see any of the kinds of documents that
13 I'm referring to, the correspondence and notes and
14 things like that between the Solutia headquarters here
15 in St. Louis and any project that might have taken place
16 just generally with regard to the disposal of hazardous
17 waste?

18 A. At Pensacola?

19 Q. Right.

20 A. No, I didn't see any specific documents that
21 would meet that characterization.

22 Q. Did you see any that were related to PCBs?

23 A. No.

24 Q. Now if RCRA or some federal agency was
25 involved, there would be correspondence, would there

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1 not, between those agencies and the plant?

2 A. Either the plant or the contractor, yes.

3 Q. And was it your experience, when you worked at
4 Solutia, that there would be documents that pertained to
5 the preparation that you all might have that were
6 memorialized what you would do prior to the time you
7 went in and met with the federal agency?

8 A. I don't have any specific recollection of any
9 documentation of that kind of stuff. I can't --

10 Q. -- meetings about it or -- as I recall, when
11 the task force met, determined what to do about PCBs in
12 Anniston, there were numerous documents that related to
13 the meetings that were held in connection with your
14 efforts to do something about that.

15 A. I, I don't remember, frankly I don't remember a
16 "task force" anyway, but I don't recall those kinds of
17 documents there. They may very well have existed, but I
18 don't, I don't have a specific recollection to that.

19 Q. Well, let's just say you determined that there
20 was some problem with PCBs at the plant site after '69.
21 You mentioned, for instance, the '95 problem, what, in
22 the '90s, early '90s dealing with an impoundment?

23 A. Yes.

24 Q. Were there not notes made by people who were
25 meeting with federal officials at that time frame that

21 (Pages 81 to 84)

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1 you saw?
 2 **A. Not that I saw.**
 3 Q. Sir?
 4 **A. Not that I saw. I don't know.**
 5 Q. So you don't recall seeing any notes?
 6 **A. No.**
 7 Q. Would there not be, if there were meetings held
 8 between employees, among employees of Solutia, would
 9 they not keep minutes of those meetings?
 10 **A. I don't know.**
 11 Q. If it dealt with a large-sized project that had
 12 to do with say the removal of a huge amount of PCB-laden
 13 waste, wouldn't there be minutes from those meetings?
 14 **A. I don't know.**
 15 Q. So there's no requirement for you all to have
 16 any kind of record made of the meetings that you have
 17 with or among yourselves at Solutia?
 18 **A. Not that I'm aware of.**
 19 Q. What about conversations that you might have
 20 with federal officials?
 21 **A. I don't think there's any requirement that**
 22 **those are memorialized.**
 23 Q. Well, are notes generally made about meetings
 24 with federal officials?
 25 **A. They could be. I don't know that they're**

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1 **"generally" made. It's possible.**
 2 Q. Sir?
 3 **A. I'm sorry? I said they could be made, I don't**
 4 **know that they are "generally" made.**
 5 Q. What is the retention policy in connection with
 6 those notes that are made in connection with
 7 conversations that you might have with federal officials
 8 or state officials?
 9 **A. I'd have to refer to the documents. I'd be**
 10 **happy to do that.**
 11 Q. Can you do that?
 12 **A. Sure. You're referring to Solutia? Because**
 13 **that's why I'm here obviously.**
 14 Q. Yeah. By the way, before you get started on
 15 that, this may be the same, but I've got Solutia
 16 Incorporated Records Retention Manual dated May of 2002.
 17 And then I have Solutia Incorporated Records Retention
 18 Manual dated June of 2004. Was it revised in June of
 19 2004?
 20 **A. It was re-issued. I'm not sure it was revised**
 21 **in any significant manner.**
 22 Q. It would be the same?
 23 **A. In general outline, yes. I don't, I don't, I**
 24 **didn't, again, go page by page, but I don't recall there**
 25 **being any specific --**

1 Q. -- differences --
 2 **A. -- differences.**
 3 Q. Which would be better to look at? The June
 4 2004 or 2002?
 5 **A. I would think the latest.**
 6 Q. Okay.
 7 **A. Later.**
 8 Q. Would you take a look then at, at, let's see if
 9 I got, is 004476 is the page number.
 10 **A. All right.**
 11 Q. I think it says at the bottom of the page down
 12 there, and you correct me if I'm wrong, but it appears
 13 that the company requires, company copy of relevant
 14 correspondence and notes of conversations, meetings with
 15 government and originating office file, and this has to
 16 do with regulatory agencies and compliance and that type
 17 stuff. Looks like that record's supposed to be kept
 18 permanently; and am I correct?
 19 **A. That's what it says, yes.**
 20 Q. So if you're dealing with a governmental agency
 21 and you have, and this was in effect, would this have
 22 been in effect in '95?
 23 **A. No, Solutia didn't exist in '95.**
 24 Q. So, did Monsanto have a similar policy?
 25 **A. They had a policy. I don't know, I, as I sit**

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1 **here, without looking I couldn't say that it's the**
 2 **same. I would think it would be similar. I don't think**
 3 **the policy changed much when Solutia was spun off.**
 4 Q. Well, can you look at the Monsanto document and
 5 tell me whether or not that --
 6 **A. I suppose I can at some point.**
 7 Q. Do you want to do that during lunch? Maybe we
 8 can do that during lunch if that's what you want to do?
 9 **A. That's fine.**
 10 MR. STEWART: And I've got 12:00, is that the
 11 same time here, Charlie?
 12 MR. MERRILL: Yeah, same thing
 13 MR. STEWART: What do you all want to do for
 14 lunch? We can stop right here if you want to.
 15 THE VIDEO TECHNICIAN: We'll go off the record
 16 at 12:11 p.m.
 17 [There was a break in the record.]
 18 THE VIDEO TECHNICIAN: We are back on the
 19 record at 12:54 p.m.
 20 Q. (By Mr. Stewart) Dr. Kaley, let's go back to
 21 Plaintiff's Exhibit 1 if we could, and that's the Second
 22 Amended Notice of the Video Deposition.
 23 **A. I have it.**
 24 Q. And did you understand that you were to be
 25 designated today, let's take a look at Paragraph 3 on

22 (Pages 85 to 88)

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1 page two. Did you understand that you would be
2 designated today to discuss the existence and location
3 of documents regarding those topics that are listed in
4 Paragraph 3?

5 **A. Yes.**

6 Q. And is it my understanding from your testimony
7 previously that you cannot tell me that, let's just take
8 the first word after "the," of the existence of
9 documents that are related to those matters that are
10 discussed in Paragraph 3, other than just generally
11 reciting for me that they're probably located either at
12 the offices of Solutia in St. Louis, or Ascend, or maybe
13 in these documents that had been provided to us, or
14 maybe at the plant site, is it just a maybe, Dr. Kaley?

15 **A. Well, no, to the extent they exist, they exist**
16 **today at Ascend, at the plant site, and probably at,**
17 **they're probably at URS. I assume that many of these**
18 **features that are discussed in this paragraph would be**
19 **features that would be involved in outside contractor**
20 **investigations at the plant.**

21 Q. Well, I guess what I'm saying is, can you, when
22 I talk about the existence of those documents, do you
23 understand that to mean, Dr. Kaley, that I'm asking you
24 about specific documents? Let's just take one out of
25 that list, and can you tell me where I would find those

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1 documents that regard to topography of water features,
2 are natural and manmade? Where would I find that?

3 **A. At the plant or in the URS files to the extent**
4 **they exist. I mean those kinds of, that kind of**
5 **information is available in the kinds of investigations**
6 **that URS does --**

7 Q. -- I'm just asking you really if they exist.
8 Because the first portion of this question, and I got
9 sort of thrown off this morning, but the first portion
10 of this morning is, if such documents exist?

11 **A. I'm sure in this particular case, such**
12 **documents do exist --**

13 Q. Do you actually, do you actually know that they
14 exist?

15 **A. I have not seen those document, no. I've not**
16 **seen such documents --**

17 Q. You've made no effort to determine whether or
18 not those documents did exist and where they were
19 located?

20 **A. Not specifically, no.**

21 Q. Well, what did you understand your role to be
22 as a 30(b)(6) representative of Solutia at this time?

23 **A. My role was to address the questions that are**
24 **addressed in your deposition, or your notice of**
25 **deposition to this --**

1 Q. Well, that talks about the existence of such
2 documents which means, do they actually exist or are
3 they, are there such documents, doesn't it?

4 **A. Yes.**

5 Q. Okay. But you don't know that, do you, as you
6 sit here today?

7 **A. I believe, I don't know, I have not seen a**
8 **document that specifically addresses the topography of**
9 **the plant. However, I have seen documents, not**
10 **necessarily from Pensacola but from other places, where**
11 **RCRA investigations and other types of investigations do**
12 **investigate the topography, and I am making assumptions**
13 **that those kinds of documents exist in the URS files**
14 **because they have done those kinds of investigations.**

15 Q. Well, don't you understand, didn't you
16 understand, as you came here today, that we were talking
17 about the Pensacola Nylon Plant? That that's what this
18 suit was about?

19 **A. Yes.**

20 Q. And that that was the plant that was located at
21 3000 Old Chemstrand Road in Cantonment, Florida, did you
22 understand that?

23 **A. Yes.**

24 Q. And didn't you understand your responsibility
25 was to be able to tell me whether or not such documents

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1 as this existed and where we would find it?

2 **A. I did not review every document that has been**
3 **produced in this case.**

4 Q. No, sir. I didn't ask you that. My question
5 was, did you not understand that you were to determine
6 if such documents existed, as a 30(b)(6) representative
7 of Solutia, and the location of those documents?

8 **A. Not specifically --**

9 Q. -- responsibility?

10 **A. Not specifically to determine if the document,**
11 **every document addressed in here exists, no. My, I**
12 **understood my responsibility to address the question**
13 **that if documents to those, if those documents of that**
14 **kind do exist, where would they be and would they have**
15 **been included in the production.**

16 Q. Who told you that?

17 **A. That was my understanding from Counsel.**

18 Q. So when I ask, and Counsel said earlier for
19 Solutia, matters upon which testimony would be required,
20 you were told you really didn't have to determine if
21 such documents existed?

22 MR. MERRILL: I'm going to object to the
23 question as worded and then instruct the witness not to
24 answer.

25 MR. STEWART: Now --

23 (Pages 89 to 92)

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1 MR. MERRILL: Attorney-client privilege --
 2 MR. STEWART: I understand that, Charlie, but
 3 this is a 30(b)(6) representative and you've designated
 4 him as a representative for Solutia, and I've traveled
 5 up here and hired these folks to take this deposition,
 6 and you know darn good and well that the existence of
 7 documents mean, do these documents actually exist?
 8 That's all it could mean.

9 MR. MERRILL: Right.

10 MR. STEWART: It's just the English language.

11 MR. MERRILL: I understand.

12 MR. STEWART: But I'm talking about documents
 13 regarding the topography and location of the buildings.
 14 It's obvious this witness doesn't really know that.

15 He says it might be, and it might be in the URS
 16 document. It's obvious that he hasn't done what he's
 17 supposed to do --

18 MR. MERRILL: -- as I noted earlier, this
 19 witness does not have the responsibility for Solutia of
 20 going out to a third party company to finding answers to
 21 these questions. Solutia doesn't have these documents
 22 anymore.

23 MR. STEWART: Oh, so we're going to play who
 24 dropped the pea, the existence, location -- well,
 25 Solutia had these documents and gave them to them.

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1 MR. MERRILL: Yeah. Yes. They've owned them.
 2 Ascend bought them. Ascend bought these, became the
 3 owner of these documents in --

4 MR. STEWART: -- Charlie?

5 MR. MERRILL: I do. And you didn't serve
 6 discovery on them until a month ago. You waited two
 7 years after their formation to serve discovery on them.

8 MR. STEWART: He's supposed to be -- why in the
 9 world did you find these documents with Ascend? Why did
 10 you do that?

11 MR. MERRILL: I'm not here, I'm not the
 12 deponent today.

13 MR. STEWART: Well, I know you're not the
 14 deponent, but you certainly provided me with documents
 15 from Ascend, so let's let the record --

16 MR. MERRILL: -- good thing I did or you still
 17 wouldn't have them. Because you just, you just served a
 18 discovery request on Ascend last month after they've
 19 been in business two years and they've been in the
 20 lawsuit for a year and a half.

21 MR. STEWART: Well, you're such a good guy. I
 22 really appreciate that.

23 MR. MERRILL: Apparently not.

24 MR. STEWART: No, I don't appreciate that. I
 25 don't appreciate the way you've hidden the pea.

1 MR. MERRILL: I've not hidden any pea. I
 2 disagree with that.

3 MR. STEWART: Well, I don't.

4 Q. (By Mr. Stewart) Let's take a look at four on
 5 the next page, Dr. Kaley. Before we leave three, are
 6 you telling me that Solutia doesn't maintain any
 7 documents that would be relevant to this question?

8 Every single document has to do with the topography,
 9 location of buildings, water features, natural and
 10 manmade, all those items that I mentioned there, all
 11 went to Ascend?

12 A. Yes.

13 Q. Every single one of them?

14 A. To the best of my ability to answer that
 15 question, yes.

16 Q. Well now, how did we get the URS documents?
 17 Just, you all told us that's where they existed?

18 A. Yes.

19 Q. Well, how did we get the MONS documents?

20 A. That was in response to production request
 21 from.

22 Q. Solutia?

23 A. From, of my understanding, of all three
 24 defendants, Solutia, Pharmacia and Monsanto.

25 Q. Are you telling me that there's no documents

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1 regarding the topography, location of buildings and
 2 water features, natural and manmade, sewers and ditches
 3 and similar controls for managing storm and process
 4 waters, wells, impoundments and any other such
 5 improvements at the Pensacola Nylon Plant in the
 6 possession of Solutia at all?

7 A. Today, there should not be, no.

8 Q. Every single document is with Ascend?

9 A. Should be, yes.

10 Q. In connection with any of the topics that I've
 11 mention here?

12 A. Well, I think some of the, some of the topics
 13 have documents that relate back to historical situations
 14 that are in the Monsanto litigation archive.

15 Q. Where, which ones are those?

16 A. Well, we've talked about a number of them.

17 Q. Let's talk about them again.

18 A. But they probably also, Solutia doesn't have
 19 any of them. I mean that's the simple answer. Solutia
 20 doesn't have any of the documents. They do not have the
 21 Monsanto litigation archive; they don't have the MONS
 22 set; they don't have the DSW set; they don't have any of
 23 these sets. They don't have any of these documents.

24 Q. Who would have those?

25 A. Well, Monsanto has the litigation archive and

24 (Pages 93 to 96)

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1 the document sets derived from that which would be MONS
2 and DSW. Pensacola plant, Ascend has the GNZ documents,
3 URS and their now-employer Ascend has the URS documents.

4 Q. So, none of the documents that we're talking
5 about in this deposition, I mean this 30(b)(6) notice
6 were the property of Solutia?

7 A. Now you've switched from "were" to "are," or
8 from "are" to "were." You were asking me today, does
9 Solutia have any of these documents? The answer is no.
10 Did Solutia at one time have some or all of these
11 documents? The answer is yes.

12 Q. -- did you look at in, in preparing for this
13 deposition?

14 A. The documents that were produced in response to
15 your request.

16 Q. Well, weren't some of those documents produced
17 to us by Monsanto and by Solutia?

18 A. They were produced, my understanding is they
19 were produced by Monsanto, Solutia and Pharmacia in
20 response to a joint request. Or a request to those
21 companies jointly.

22 Q. Can you tell us which one of these topics are
23 covered in those? Because we've been referred to the
24 MONS documents, the DSW documents, and the Florida-PCB
25 documents.

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1 A. All of them. I mean there are documents in
2 those data sets that respond to every one of these.

3 Q. Okay. And do you know if those are the total
4 number of documents, let's just say for this first
5 topic, that exists as far as Monsanto and Solutia are
6 concerned?

7 MR. MERRILL: And I'm going to note for the
8 record, the question calls for testimony beyond the
9 matters designated in the deposition notice to the
10 extent it refers to Monsanto --

11 Q. (By Mr. Stewart) I'm asking you if, if Solutia
12 is the person -- well, didn't you all inherit, as I
13 understood it, you all inherited this Solutia document,
14 I mean the Monsanto documents related to PCB, didn't
15 you?

16 A. At one point. Well, I don't know about all.
17 We certainty at one point --

18 Q. -- I thought that was previous testimony. We
19 can go back over it, but I thought that was your
20 previous testimony. I'm just trying to find the pea,
21 Dr. Kaley.

22 And my understanding is, from your previous
23 testimony, I'm getting a little older but not quite that
24 old, that you told me that you all inherited those from
25 Monsanto when you all were spun off in '96?

1 A. And then when Solutia entered bankruptcy, they
2 were all given back to Monsanto.

3 Q. When they did what now?

4 A. When Solutia went into bankruptcy, the PCB
5 archive was given back to Monsanto.

6 Q. And where are they today?

7 A. In a warehouse somewhere in the St. Louis area.

8 Q. Well, then where were the documents provided to
9 us by Solutia? Where did that come from?

10 A. The documents provided --

11 Q. The MONS documents and the DSW documents, how
12 in the world did that happen? How in the world did you
13 all happen to get those?

14 A. The, my understanding is the discovery request
15 was propounded to all three defendants, Monsanto,
16 Solutia and Pharmacia.

17 Q. I understand that, but what I'm asking you,
18 Dr. Kaley, is do you have access to the documents that
19 we're asking you about in three, four, five, six, seven,
20 eight, nine, ten, 11, 12, 13, and 14?

21 Those are the documents that talk about the
22 existence and location of documents that, that have to
23 do with particular topics. Do you all have access as
24 Solutia to those documents?

25 A. I, I don't know the answer but I doubt very

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1 sincerely if Solutia has access to the Ascend --

2 Q. -- 30(b)(6) representative, and you don't know
3 whether they have those, access to --

4 A. I don't know, I don't know the details of the
5 sale agreement as to whether Solutia has access to, you
6 know, documents that have been transferred to Ascend or
7 not. I would have to look at the terms of the sale. I
8 doubt it but it's possible.

9 Q. -- Ascend didn't get the archives, did they?

10 A. No, Monsanto has the archive.

11 Q. Okay. And Ascend didn't get the MONS
12 documents, did they?

13 A. They were part of the archives, no.

14 Q. Okay. And the DSW documents they didn't get,
15 did they?

16 A. Part of the archive, no.

17 Q. So, are you all out of bankruptcy now?

18 A. Am I out? I'm not. I don't work for
19 Solutia --

20 Q. No, Solutia --

21 A. -- Solutia is out of bankruptcy, yes.

22 Q. Okay. Did they not get the archives and
23 documents back?

24 A. No.

25 Q. Those remain with Monsanto and Pharmacia?

25 (Pages 97 to 100)

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A. Yes. I believe they have access to them, but I don't know, I don't even know that for sure.

Q. Now, Dr. Kaley, haven't you testified in cases dealing with, dealing with PCB?

A. Yes.

Q. Recently?

A. Recently? How recently?

Q. Well, more recently than 1996, let's put it that way.

A. Certainly.

Q. What are some of the cases you've testified in?

A. Well, I've testified in a number of the Anniston cases.

Q. Have you ever testified in a case in the Southern District of Illinois?

A. I may have.

Q. Involving a Krutsinger versus Pharmacia Corporation?

A. Yes, I did testify in that.

Q. And were you involved in the gathering of documents in that case?

A. No.

Q. Were you involved in the review of documents in connection with that case?

A. I reviewed documents from that case but not in

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the terms of, was I involved in attorney review for privileged log or anything like that, no. I wasn't involved in a review to decide what to produce.

Q. And who were you working for at that time?

A. Who was I working for at that time?

Q. Yes, sir.

A. What was the date?

Q. Well, the date, I don't see a date on here. I just have an affidavit from that case. But --

A. Well.

Q. -- affidavit involving a case against Pharmacia, it was certainly after Pharmacia was formed?

A. I believe I was working for myself. I believe I was retired and self-employed at the time of the Krutsinger file, I'm almost sure I was. If it was after 2003, I was self-employed.

Q. Who owned the plant that was the subject of this, the St. Clair facility in St. Clair County, Illinois?

A. At what point in time?

Q. At the time of that case.

A. Well, I don't know, I don't recall what the time of that case was. It was one of the plants transferred to Solutia at the time of the spin --

Q. Well, it was a St. Clair County, Illinois

case. Is that plant one of the plants that was transferred to Solutia?

A. Well, the plant, there was no plant involved in the Krutsinger case. She was an employee of Illinois Power.

Q. Okay. But --

A. It did not involve a plant at all --

Q. Who owned the St. Clair County facility?

A. Today? Solutia owns it today, but that litigation had nothing --

Q. -- was that one of the plants that was transferred to, to them?

A. Yes.

Q. Okay. And you made an affidavit in that case in connection with a woman who was injured as a result of a blown-up transformer; is that what happened?

A. She claims she was injured as a result of that.

Q. I understand that. I understand that.

MR. MERRILL: And by the way, I note for the record that all of this is beyond the matters stated in the deposition notice.

MR. STEWART: It may not be. It may not be.

Q. (By Mr. Stewart) Certainly after that plant was spun off to St. Clair, I mean it spun off to Solutia, you were an employee of Solutia; were you not?

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A. For some period of time after the transfer, yes.

Q. How long did you work for them?

A. About six years.

Q. Okay. And the suit was against Pharmacia and not against Solutia? Was Solutia involved in the suit?

A. I don't recall.

Q. You said you worked as a consultant for them?

A. I have worked as a consultant. I believe in that litigation, you won't tell me what the date was, so I don't know.

Q. Well frankly, I don't have it on the document that was provided to me.

A. I believe I was, I believe it was after 2003, and I believe I was consulting with counsel for Monsanto in that litigation.

Q. For Monsanto?

A. Used generically, yes.

Q. When you say -- because I ran into this last time we had to try to figure out which hat fit. But in any event, what I'm trying to find out is, were you testifying not only for Pharmacia or Monsanto, as you say using it generically, but was Solutia also involved? That's all I'm asking.

A. I don't know. I don't know if they were a

26 (Pages 101 to 104)

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1 defendant or not.

2 Q. Not aware of it. Which law firm represented
3 them at that time?

4 A. The Husch firm. Well, hold it. Represented
5 Solutia? I don't know the answer to that. The firm
6 representing the defendants in the Krutsinger case was
7 the Husch firm.

8 Q. Do you know the plaintiff's lawyer involved in
9 that?

10 A. I've met him. Given enough time, I might be
11 able to come up with his name.

12 Q. Is he from here? Is he from Illinois --

13 A. He's from Illinois.

14 Q. Okay. And was that suit filed in Illinois?

15 A. If that's, yeah, I believe, yes. I mean it was
16 tried in Illinois, so I suppose --

17 Q. -- deposed?

18 A. Yes.

19 Q. Were you deposed with reference to documents
20 that were introduced in the file?

21 A. No.

22 Q. What, what were you deposed about in that case?

23 A. Generally Monsanto's history with the
24 manufacturing and sale of PCBs, properties of PCBs,
25 chemical properties.

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1 Q. So basically just technical information about
2 the properties of PCBs and the sales of PCB?

3 A. Totally.

4 Q. So the issue you were testifying about is
5 whether or not there were PCBs in the transformer that
6 blew up and injured her?

7 A. No, I was testifying about Monsanto's
8 historical involvement in PCB issues, not anything
9 specific about that transformer.

10 Q. Well, the affidavit referred to it, that's the
11 only reason I asked.

12 A. Well, I mean, the PCBs in that transformer were
13 measured by someone, not us, and I was aware of those
14 measurements, but that wasn't the crux of my testimony.
15 I'm not even sure I mentioned that transformer in my
16 testimony.

17 Q. The affidavit did --

18 A. Well, you haven't shown me the affidavit and I
19 don't recall it, so I can't really address what's in it
20 or not.

21 Q. So it's your testimony here today that none of
22 these documents that have been provided to us so far
23 came from Solutia?

24 A. None of the, my understanding is that none of
25 the documents that we have discussed today are presently

1 in the possession of Solutia; that is correct.

2 Q. And that has been true since the sale to Ascend
3 or the bankruptcy of Solutia?

4 A. Well, the documents, the transfer of documents
5 from Solutia to Ascend took place over a period of
6 months after the actual date of the sale.

7 Q. The date of that sale was September of 2009?

8 A. I'm thinking it was June, but it doesn't
9 really, somewhere in that time frame.

10 Q. -- 2009?

11 A. Yes.

12 Q. And so for months after that, the transfer of
13 documents took place?

14 A. For a period of about six months is my
15 understanding, yes.

16 Q. Six months? And so what other documents that
17 are, have been looked through and provided to us, the
18 MONS and DSW, and there's some documents with MCL Bates
19 stamp prefix and Florida-PCB, all of those came from
20 either Ascend, well, really from either Monsanto or
21 Pharmacia? None of them came from Solutia?

22 A. Well, my understanding is Solutia has "access"
23 to those documents. So to the extent that Solutia has a
24 responsibility to respond to discovery in these cases
25 that involves those databases, they have access to them

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1 but they don't have possession of them. That's my
2 understanding.

3 Q. Well, tell me what you mean by that?

4 A. I mean in a case like this, if Solutia's a
5 defendant and there are questions that, for production
6 that require production of documents that come from the
7 PCB archive, that Solutia can produce documents from
8 that archive in response to those production requests.

9 Q. So, in fact, if there was some MONS documents
10 that were responsive to, let's say Paragraph 3, that had
11 to do with topography of some of the areas that we
12 mentioned today, Solutia has the capability to take a
13 look at the records that were maintained by Pharmacia
14 and Monsanto and produce those to us?

15 A. If that were the case. But with regard to
16 MONS, I don't think any documents responsive to three
17 would be in MONS, but that may be a technicality. I
18 mean MONS is health and safety and environmental.

19 Q. Well, if there was some questions having to do
20 with that, such as six, take a look at six on page
21 three, the existence and location of documents
22 memorializing communications or interactions with
23 environmental and water regulatory agencies including
24 but not limited to, and it lists a number of agencies,
25 both state and federal, there would be documents such as

27 (Pages 105 to 108)

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1 that in the archives; would there not?

2 **A. There could be.**

3 Q. And are you telling me as you sit here today as
4 a 30(b)(6) representative from Solutia that they had
5 access to those documents?

6 **A. I believe Counsel for Solutia had access, would
7 have access to those documents.**

8 Q. Is that based on an agreement that you all had
9 with Monsanto and Pharmacia when those documents were
10 turned over to them when Solutia filed for bankruptcy?

11 **A. That would be my understanding, but I don't
12 know that specifically. I don't know the terms of that
13 agreement. But that's, as I sit here as Bob Kaley,
14 that's my understanding.**

15 Q. Well, Solutia would have that understanding too
16 because it was a written agreement that was entered into
17 by Monsanto and Solutia; was it not?

18 **A. But I don't know the details of that agreement,
19 so I don't want to, I can't testify as to what it says
20 or doesn't say specifically.**

21 Q. Well, wouldn't that be necessary for you to
22 take a look at that document in order to determine
23 whether or not you have the right to make a
24 determination on behalf of Solutia about the existence
25 and location of documents that respond to Question 6?

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1 MR. MERRILL: I'll object to the form of the
2 question, and note that in part, it calls for testimony
3 beyond the matters designated in the deposition notice.

4 **A. It's not something I determine I should review,
5 no.**

6 Q. (By Mr. Stewart) But if you had access, or
7 Solutia had access and you were a 30(b)(6)
8 representative of Solutia, then you could determine
9 whether or not the documents that I ask about in
10 Paragraph 6 would exist, wouldn't you?

11 MR. MERRILL: I'm going to object, I'm going to
12 note for the record that the topic that's being
13 acquired, inquired upon, which is whether specific
14 documents exist within a specific document set, is not a
15 matter of this designated with reasonable particularity
16 in the deposition notice.

17 Q. (By Mr. Stewart) You know, it asks for specific
18 documents that memorialize communications, whether or
19 not they exist, or interactions with environmental water
20 regulatory agencies, that's what I was asking about.

21 **A. Well, those, those documents do exist. Largely
22 at the plant and not in the, the archive.**

23 Q. Well, they very well could be some of those
24 historical documents that were located in the archive;
25 could they not?

1 **A. They could be.**

2 Q. And very well would be; wouldn't they,
3 Dr. Kaley?

4 **A. Yes.**

5 Q. And you didn't see it as your responsibility to
6 make a determination as to whether or not they did exist
7 as a 30(b)(6) representative for Solutia?

8 **A. I saw, I saw documents in the production sets
9 that were responsive to that.**

10 Q. No, sir. I'm talking about to make a
11 determination as to the existence of those, and then
12 where they came from? Says existence and location,
13 Dr. Kaley.

14 **A. All right. So the documents exists, the ones I
15 saw came from the archive.**

16 Q. So, they were produced by Solutia?

17 **A. And Pharmacia and Monsanto.**

18 Q. And you didn't see, as I understand it, all of
19 the documents that were referred to in six, did you?

20 **A. Well, I don't know that all those documents
21 even exist. That's the point. I, I don't know whether
22 there's, you know, I did not see any document between
23 Solutia or anyone in the United States, I guess that's
24 supposed to be states, States Army Corps of Engineers.
25 If those documents exist, they would have been at**

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1 **the plant, they would have been transferred to Ascend.
2 Whether I, but whether there is a actual document
3 memorializing communication with the United States Army
4 Corps of Engineers, as I sit here today, I don't know.
5 I have not seen such a document.**

6 Q. Well, the next one is the existence and
7 location of documents that memorialize communications or
8 interaction regarding PCBs with all of those agencies,
9 environmental and water regulatory agencies.

10 And what I'm asking you is, are you telling me that
11 those were deleted as far as a nylon plant in Pensacola
12 from the archives and provided to Ascend at the time
13 Solutia sold that plant to Ascend?

14 **A. No. They were, nothing has ever been deleted
15 from the archive.**

16 Q. Well, then I thought you earlier told me that
17 you all maintained in the archives those things that had
18 to do with health and safety issues and environmental
19 issues?

20 **A. If, by "you all" you mean Solutia, Solutia does
21 not own that database, that archive --**

22 Q. I understand --

23 **A. -- do not maintain it.**

24 Q. No. I understand, but at the time Solutia
25 existed?

28 (Pages 109 to 112)

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A. Okay. Solutia still exists, but okay.

Q. But had the archive and worked with the archive, they provided documents on a regular basis as Monsanto did to that archive. That's what you previously told us.

A. No. I would, I would not, I did not say they regularly provided, presented or added documents to that archive. I said there were occasions when documents had been added to that archive that were discovered, for instance, in your sweep of the documents during the Anniston litigation.

But it's not a regular process. There's no regular schedule. There's not a process to do that.

Q. But from time to time, they were added by Solutia --

A. That's my understanding. Well, I guess during the dependency of the Anniston litigation, if Solutia was still in existence at that particular time, it would have been by Solutia, yes.

Q. And those were historical documents that had to do with the interaction, let's just say you sold the plant to Ascend in 2000, was it 2004?

A. Sold the plant to Ascend in 2009.

Q. 2009. So if there was some interaction with these folks in 2004, Solutia would have had a copy of

the archive.

Q. And what would they be, how would they be Bates numbered; do you know?

A. How would what be Bates numbered?

Q. Those documents?

A. That aren't in the archive?

Q. They are in the archive --

A. No, I just said they -- documents related to environmental incidents in the 2004 time frame, I'm almost sure would not be in the archive. They would have been maintained at the plant, or in the URS files, or possibly in the Solutia files. Headquarters' files.

Q. In what now?

A. What now what? I'm sorry.

Q. I'm just trying to find out where we would find these things. That's what I'm --

A. The 2004 documents?

Q. Yeah. If something was done in 2004, where would we find that?

A. It would either be, my understanding, in the GNZ data set or in the URS data set.

Q. Okay. And there wouldn't be any from Solutia?

A. From Solutia specifically? Not, not as of today, no.

Q. I'm talking about there wouldn't be any

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it, wouldn't it? Let's just say with one of these environmental agencies.

A. Well, the plant would have, yes.

Q. Well, not only that, but if it was a report that was provided to RCRA or EPA, copy of that would have gone in the archives, wouldn't it?

A. No, probably not. No.

Q. Are you telling me that there are no, we wouldn't find any documents that were related to the, to the environmental issues at the plant in Pensacola that would come from the archives that were, were placed in those archives prior to the time that you all sold that plant down there to Ascend?

A. Your time references are getting very confusing. What I am saying is that there are certainly documents in the archive related to environmental issues at the Pensacola plant from some period of time, certainly those related before the time of the creation of the archives in the early 1980s.

Documents have been added to that archive on a as-needed or as-appropriate or as-decided basis since that time. But I am telling you that I would be surprised if there are any documents from the 2004 time frame, which is where this discussion started, that are from the Pensacola plant that have made their way into

provided from Solutia in this case? That's what I'm talking about.

MR. MERRILL: Again, I'm going to note for the record that all of these questions about production are beyond the matters designated in the deposition notice.

A. Well, my understanding is that the documents that have been provided in this case, all of those we have discussed, have been provided on behalf of Solutia, Pharmacia and Monsanto. To the extent my understanding is correct, yes, Solutia has provided documents in this litigation.

THE VIDEO TECHNICIAN: Excuse me, Mr. Stewart, you're putting papers on your microphone.

MR. STEWART: I am sorry. I didn't mean to put papers on my microphone.

Q. (By Mr. Stewart) So the rest of them would come from Ascend?

A. Yes.

Q. All right. I want to go through the rest of these so that I'm sure that you may have solved my problem for me and we may have to talk to Ms. Dyer I guess.

But are you telling me that historical documents that dealt with matters that, such as, take a look at Paragraph 8, where there was information related to

29 (Pages 113 to 116)

1 communication with local, state or federal environment,
2 environmental and water regulatory agency folks
3 regarding PCBs, and that would frankly be nine, you all
4 did not maintain those historical records as it relates
5 to this particular plant after you sold to Ascend? You
6 all gave all of those to Ascend?

7 **A. That is correct. Except for the early**
8 **documents that are contained in the archive.**

9 Q. Yeah.

10 **A. Yes, that is correct.**

11 Q. So if there was some kind of problem that
12 existed say, Mr. Kaley, in 2001, you all would not have
13 provided that to the archives?

14 **A. Probably not on a plant issue. Probably, I**
15 **can't say that something didn't get in there --**

16 Q. I just want to know for informational
17 purposes --

18 **A. -- I would think that such documents would not**
19 **have gotten to the archive, that is correct.**

20 Q. They would have been maintained at the plant?

21 **A. Or at headquarters, yes. In the remediation**
22 **group or law department or whoever, but they would not**
23 **have gotten into the PCB litigation archive because they**
24 **were not, at that time, subject to PCB litigation.**

25 Q. So what I'm trying to find out is where those

1 documents got deposited once you sold in 2009 to Ascend?

2 **A. They got deposited at Ascend.**

3 Q. So all of those documents were maintained by
4 Solutia, and when you went into bankruptcy, you didn't
5 provide those documents to Monsanto or Pharmacia, did
6 you?

7 **A. No, just the archive. No.**

8 Q. And that would be the same for documents that
9 related to environmental reports and laboratory testing?

10 **A. That's correct.**

11 Q. Same thing that relates to testing that was
12 done in Escambia River or Escambia Bay?

13 **A. That's correct.**

14 Q. Under 11?

15 **A. That's correct.**

16 Q. So all of those would have been maintained by
17 you at Solutia?

18 **A. At the time of the bankruptcy, yes.**

19 Q. But then even after the bankruptcy --

20 **A. Until the time of the sale, yes.**

21 Q. In 2009?

22 **A. Yes.**

23 Q. Okay. Now you were going to tell me about,
24 before I got off on this, how you, about the retention
25 policy, about conversations under Monsanto?

1 **A. Yes. It's, I looked it up and it's, just for**
2 **reference FLA-PCB-004348.**

3 Q. What is it now?

4 **A. FLA-PCB-004348. It's the 1994 Monsanto records**
5 **retention policy, and it's the section corresponding to**
6 **the section we were looking at in Solutia. And based on**
7 **cursory review, it's the same.**

8 Q. So they have to be maintained on a permanent
9 basis?

10 **A. If they exist.**

11 Q. Well, oh, I see what you're saying. If the
12 conversation was --

13 **A. Memorialized.**

14 Q. -- memorialized or a memorandum made?

15 **A. Then under the policy, should have been**
16 **retained permanently.**

17 Q. And I don't want to call anybody anal retentive
18 because I'm probably that way myself, but it was my
19 experience with Monsanto, and frankly even with Solutia,
20 that if you all had a meeting you memorialized it?
21 Somebody took some minutes and wrote it down?

22 **A. I, I can't speak to that. I don't know.**

23 Q. Sir?

24 **A. I can't speak to that. I don't know.**

25 Q. Well --

1 **A. I mean I was certainly at a lot of meetings**
2 **where nothing was written down, so.**

3 Q. Well, there were also a lot of meetings, you'll
4 agree with, Dr. Kaley, that were recorded --

5 **A. Certainly.**

6 Q. -- in connection with that case and in
7 connection with the kind of problem that existed at the
8 Pensacola plant?

9 **A. That would be a presumption on my part, but I**
10 **would assume that some of those meetings with regard to**
11 **Pensacola were memorialized in some form or another,**
12 **yes.**

13 Q. And so for ten and 11, there were some problems
14 that existed, were there not, Dr. Kaley, with the
15 presence of PCBs on the Pensacola plant site while
16 Solutia owned that plant?

17 MR. MERRILL: And I'll note for the record the
18 question calls for testimony beyond the matters
19 designated in the deposition notice.

20 **A. I just want to read this, make sure I'm**
21 **answering.**

22 Q. (By Mr. Stewart) Sir?

23 **A. I want, just want to read these to be sure I'm**
24 **answering the question. Yes, certainly with regard to**
25 **the plant itself, the plant site itself, there would be**

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1 documents associated with that investigation. I don't,
2 as I said before, I don't know whether there were any
3 documents, I don't know whether there was any sampling
4 or testing done --

5 Q. -- documents that indicate that there was
6 testing done on the plant site in 2001 and 2004?

7 A. Right.

8 Q. There's some remediation work started in that
9 time frame?

10 A. Correct.

11 Q. And so, the existence and location of those
12 documents and anything related to those documents,
13 whether they exist or not, if any do, would be at Ascend
14 now?

15 A. Yes.

16 Q. All I want to do is nail that down.

17 A. That's correct.

18 Q. And the person who would know where those are
19 and would be able to tell me whether we had everything
20 would be Ms. Dyer; is that?

21 A. My understanding is that she's selected
22 documents. I don't know whether she's the appropriate
23 person to ask those questions --

24 Q. -- you talked to?

25 A. I did not talk to her. I was given that

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1 information by counsel.

2 Q. Okay. Okay. Pardon me. You talked to the
3 lady at Monsanto, where the archive, the librarian?

4 A. No, I talked to the librarian at Solutia.

5 Q. Solutia, pardon me. It just piques my
6 curiosity. Why in the world would you talk to the
7 librarian at Solutia if you all don't have anything to
8 do with those archives?

9 A. Because she was the person who oversaw the
10 transfer of documents from St. Louis Solutia offices to
11 Ascend.

12 Q. Okay. I see what you're talking about. She
13 should handle those documents?

14 A. Yes.

15 Q. Would she also be the same person who would be
16 familiar with your all's access to the archives?

17 A. No.

18 Q. Who would that person be?

19 A. At Solutia?

20 Q. Right.

21 A. Presumably one of the attorneys. I don't know
22 specifically.

23 Q. Well, is there somebody there who is not an
24 attorney who would be familiar with the agreement that
25 you all made?

1 A. With regard to --

2 Q. -- Pharmacia and Monsanto about access to the
3 archives after the, that written document?

4 A. Not that I would know, and I would be surprised
5 if there is anybody.

6 Q. Who maintains written documents such as that in
7 Solutia? If we wanted to ask for that document, who
8 would we ask for that document?

9 A. The, the agreement between Solutia and Monsanto
10 with regard to access to the archive?

11 Q. Right.

12 A. An attorney. I have no idea which one. I
13 don't even know who's there anymore.

14 Q. That's maintained in the law department?

15 A. I would presume so, yes.

16 Q. To your knowledge, it is a written agreement?

17 A. I, well, there certainly is a, I, I assume, I
18 don't know. I have not seen that agreement. I can't
19 sit here and tell you there is a written agreement.
20 That is my understanding.

21 Q. Your understanding is that there's an agreement
22 between Monsanto and Pharmacia, that if you all were
23 called upon to produce documents in a case similar to
24 this, that you have a right to access the archives?

25 A. You're getting way beyond what I'm all that

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1 confident of, but that's my understanding.

2 Q. Well, you would have to know something like
3 that if you were called upon as a 30(b)(6) witness for
4 Solutia in this case --

5 A. Well, I know --

6 Q. -- talk about the existence and location of
7 these documents? If Solutia has any of them at all,
8 they have them in those archives; do they not? Or in
9 the MONS set or in the DSW set?

10 A. Solutia does not have, physically have any of
11 those documents.

12 Q. But what I'm saying to you, though, is they
13 have access to it?

14 A. That's my understanding based on the fact that
15 the production in this case, specifically was propounded
16 to the three defendants and was given to you on the
17 basis of all three defendants.

18 So to the extent that that, my understanding of how
19 that process would work, I assume they or their counsel
20 have access to those documents.

21 Q. Well, how, since Solutia was the last entity
22 that was connected with Pharmacia or Monsanto, new
23 Monsanto, old Monsanto, that outfit, how is it that the
24 process worked for the gathering of these documents?
25 Did Solutia take the lead and the responsibility of

31 (Pages 121 to 124)

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1 gathering those documents to provide to us in connection
2 with this case?

3 MR. MERRILL: I'll note for the record that
4 that question calls for testimony beyond the matters
5 designated in the deposition notice.

6 **A. I don't know.**

7 Q. (By Mr. Stewart) Well, who does this lady work
8 for that you said you talked to that had given those
9 records to Ascend?

10 **A. Marsha Stoklosa? She works for Solutia.**

11 Q. And who did the lady work for that you talked
12 to who now works for Ascend?

13 **A. I didn't talk to anybody that now --**

14 Q. Or that you were told about who handles the
15 transfer --

16 **A. What was the question? She worked for Solutia
17 at the time of the sale, she became an employee of
18 Ascend.**

19 Q. Is it fair to say then that, Dr. Kaley, that
20 the only people that you talked to in connection with
21 these documents were people who were employees of
22 Solutia, or former employees of Solutia?

23 **A. Well, the only person other than counsel and
24 representatives of counsel that I talked to was Marsha
25 Stoklosa at Solutia.**

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1 Q. And the only person you knew that they had
2 talked to about the documents that were provided to
3 Ascend was the former Solutia employee?

4 **A. The only one I'm aware of, yes.**

5 Q. Can we deduce from that that the person that
6 they went to to gather up the documents would have been
7 Solutia employees?

8 MR. MERRILL: I'll note for the record the
9 question calls for testimony beyond the matters
10 designated in the deposition notice.

11 MR. STEWART: Frankly, I think that has to do
12 with the existence and location of the documents,
13 Mr. Merrill. It may be embarrassing, but it has to do
14 with that.

15 MR. MERRILL: No, I think it has to do with
16 what you said it had to do with, which is, who gathered
17 documents.

18 MR. STEWART: Well, that --

19 MR. MERRILL: We'll disagree on this. I just
20 made my record. He can answer the question.

21 MR. STEWART: You keep making speaking
22 objections. Why don't you just get over there and, move
23 over there, Dr. Kaley --

24 MR. MERRILL: -- speaking objection. In fact,
25 it's not an objection at all. It's just a notation for

1 the record when I think we've moved beyond 30(b)(6),
2 because it's not reasonably designated. That's, that's
3 the whole purpose of it.

4 **A. I'm sorry. Could you repeat your question?**

5 MR. STEWART: If you just object, it goes
6 beyond the record --

7 MR. MERRILL: It's not an objection. Oh, you
8 want me, you want me to shorten it? I'll shorten it. I
9 can say "goes beyond the designation" --

10 MR. STEWART: -- that's all I want you to do.
11 You know better than that.

12 MR. MERRILL: I don't know better than that.
13 In fact, I know that I have to preserve a record when
14 you decide to go beyond the 30(b)(6) designation, which
15 you can, but I need to note that on the record so we
16 know whether we're in the 30(b)(6) mode or not.

17 MR. STEWART: I frankly think we are, but that
18 will be decided by people who are a lot better than you
19 and me.

20 Q. (By Mr. Stewart) Dr. Kaley, I'm just deducing
21 from the fact that the people you talked to, or the
22 people who were involved in it, talking about the Ascend
23 records and the person who got those together from
24 Solutia to give to Ascend, that Solutia was the one who
25 gathered up these records for Pharmacia and Monsanto.

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1 Because Monsanto didn't own that plant at the time some
2 of these problems took place, did they? That plant was
3 spun off in 19, what '97?

4 **A. Yes, '97.**

5 Q. And so the records would have been until it was
6 sold to Ascend, Solutia's records; is that correct?

7 **A. That's correct.**

8 Q. So it, and natural deduction, I just want to
9 make sure I'm clear about this because I don't know of
10 a, can you think of a Monsanto, new or old, or a
11 Pharmacia employee that you talked about in preparation
12 for your testimony here today?

13 **A. No, but I talked to persons representing those
14 entities.**

15 Q. You talking about counsel?

16 **A. Yes.**

17 Q. Okay. Well, I understand that. I understand
18 that. To your knowledge, did anybody from any of those
19 entities, Monsanto, Pharmacia, or old or new Monsanto,
20 or Pharmacia, participate in the gathering of these
21 documents?

22 **A. Well, sure. I mean because most of the
23 production, the DSW set, the MONS set, and the Florida-
24 PCB set were selected from the PCB litigation archive
25 which was created by old Monsanto.**

32 (Pages 125 to 128)

1 Q. Well, wouldn't Solutia have an archive, I mean
2 an index of that archive?

3 **A. I don't know that there's an index of that**
4 **archive that exists.**

5 Q. Well, we were --

6 **A. -- Solutia doesn't have it. Solutia has**
7 **nothing to do with that archive as of the day other than**
8 **possibly access to it to respond to litigation**
9 **production --**

10 Q. -- do they have access to it?

11 **A. Through counsel, I assume. I don't know the**
12 **answer --**

13 Q. No, what I'm saying, how do they have access to
14 it? Do they actually go to the archives, or do they
15 have it on some kind of computerized disk? Do they have
16 it that way?

17 **A. There are, there is a, a computerized system to**
18 **retrieve documents from it.**

19 Q. All right. Let's go to the retention policy
20 for e-mails for Solutia.

21 **A. Okay.**

22 Q. What was that retention policy?

23 **A. It's the same as the retention policy for**
24 **documents, for paper documents.**

25 Q. All right. Can I understand with you, can we

1 have this understanding then that if there was a e-mail
2 that had to do with an environmental and safety and
3 health matter that dealt with conversations, for
4 instance which we talked about earlier, the government
5 officials, would that need to be maintained?

6 **A. Should have been, yes.**

7 Q. Now, I don't use a computer, so getting into
8 water that's a little deep for me, but I noticed in the
9 retention policies that after a certain period of time,
10 you could wipe it off, so to speak, delete it, an
11 e-mail.

12 But if it had to do with something like minutes from
13 a meeting with a governmental agency or conversations
14 with a governmental agency, don't you have to maintain
15 those on microfiche under the policy?

16 **A. Oh, I don't think they would be maintained on**
17 **microfiche. They would be maintained, they should be**
18 **maintained on some format.**

19 Q. Might be a, I just noticed that in the record,
20 retention policy, it talked about microfiche. Even 2002
21 and 2004.

22 **A. Yeah, I'd, I'd have to go review. I don't know**
23 **whether they still use microfiche or not. I would**
24 **think --**

25 Q. -- better technology today?

1 **A. I would think it would be retained**
2 **electronically, but I don't know that for sure.**

3 Q. Okay. But that's what I'm trying to find out.

4 In the event that it is a permanent record that you had
5 to have, then Solutia has a policy where that had to be
6 maintained, and some of these things have to do with a
7 retention time that goes beyond the time that the plants
8 is terminated?

9 **A. I believe that's correct.**

10 Q. Which ones are those, Dr. Kaley?

11 **A. I would have to go back and look.**

12 Q. You'd have to go back and look?

13 **A. Yeah --**

14 Q. -- make the determination?

15 **A. -- I don't know specifically what.**

16 Q. Well, you understand you were going to be asked
17 about the retention policies, so you --

18 **A. Well, I didn't memorize it, no.**

19 Q. Can you tell me about what documents have to be
20 maintained in connection with, with closure of the
21 plants sites on a permanent basis? Years past that?

22 **A. If I go back and review the document, I can.**
23 **But I don't, but I believe the closure of the plant site**
24 **is not a sale of the plant site.**

25 **The Pensacola plant, presuming that's what we're**

1 **talking about, was not closed. It was sold to Ascend,**
2 **and Ascend would then take control of all those**
3 **documents. They would no longer be Solutia documents to**
4 **be retained. They would be Ascend documents.**

5 Q. So you're saying that a termination of the
6 plant site would not include a sale of the plant site?

7 **A. That's my understanding.**

8 Q. What happens to it on a sale of a plant site?
9 Is there some specific provision that distinguishes the
10 two in the retention policy?

11 **A. Not in the retention policy, but there would be**
12 **a, part of the contract of the sale I'm sure would**
13 **address the transfer of records.**

14 Q. Will you look at 04476? 004476?

15 **A. Yes, I'm there.**

16 Q. Am I correct that if there is a compliance
17 record and supporting data indicating compliance with a
18 regulatory agency, federal, state, county and municipal,
19 you all have to maintain that on a permanent basis?

20 **A. I'm sorry, where you looking? Okay. I see**
21 **it. I see it now. Yes, if there's a, if there's a**
22 **compliance or other record, a company copy of**
23 **non-compliance or other records supporting data in**
24 **original file office, that needs to be retained**
25 **permanently in the original file office.**

1 Q. And if there's monitoring required, which would
2 be a part of the supporting data, then that would have
3 to be maintained on a permanent basis; would it not?

4 **A. As I read this today, yes.**

5 Q. And surveys and audits, which would include I
6 would assume environmental audits on page 004477, those
7 would have to be maintained on a permanent basis; would
8 they not?

9 **A. I'm sorry. Let me go back to the previous**
10 **question. I want to make sure I'm reading this**
11 **correctly.**

12 **Okay. With regard to your previous question, with**
13 **regard to discharge monitoring reports, as I read this,**
14 **they only have to be maintained if there's a**
15 **non-compliance.**

16 **So it says, "Company copy of non-compliance and**
17 **other records supporting data in originating file**
18 **office." It doesn't say that if they're routine**
19 **monitoring and there's no non-compliance, that they**
20 **would have to be retained permanently. That's the way I**
21 **read it.**

22 Q. So, if there's a company copy of non-compliance
23 and other records supporting data in the originating
24 office file, you got to keep that on a permanent basis
25 if it's non-compliant?

1 **A. If it's non-compliant.**

2 Q. If it's in compliance, you don't have keep it?

3 **A. That's the way I read it. Other than as**
4 **specified by law or regulation in the above paragraph.**
5 **"Copy of compliance record and supporting data in**
6 **originating office, retention time is as specified by**
7 **law or regulation."**

8 Q. Well, doesn't law and regulation require you
9 all to keep those on a permanent basis? Let's just say
10 it's permits and things like that --

11 MR. MERRILL: I'm going to note for the record
12 that that's calling for testimony beyond the matters
13 designated in the deposition notice and possibly calling
14 for a legal conclusion. Go ahead.

15 **A. Okay. Let me give a specific example, we**
16 **talked about it earlier this morning. The EPA and their**
17 **PCB regulation required a PCB report from every**
18 **operating facility as long as they had PCBs on the**
19 **facility.**

20 **But that record only had to be maintained for three**
21 **years after the site was specified to be PCB free. So**
22 **in that particular case, those PCB records could be**
23 **destroyed after three years.**

24 Q. (By Mr. Stewart) Does that include waste?

25 **A. It includes waste stored for, waste stored for**

1 **disposal, yes.**

2 Q. Well, if, I know, in other words, if the waste
3 had PCBs in it, you still had to report it, didn't you?

4 MR. MERRILL: I'm going to object to the
5 question as calling for a legal conclusion. We're
6 getting into the legal requirements of the TSCA disposal
7 regulations now.

8 **A. If it is waste that is subject to the TSCA**
9 **regulations, then it has to be reported. If you're**
10 **alluding to waste in a RCRA-closed landfill, no, it**
11 **would not have to be reported because those are not**
12 **waste stored for disposal. They are waste that have**
13 **been disposed of in an EPA-approved landfill.**

14 Q. (By Mr. Stewart) Right. But if, if you were,
15 let's say you did that sometime in the '70s, and then
16 all of a sudden you decided you were going to dispose of
17 it in some way, either on site or off site, other than
18 what you had, would you have to report that?

19 **A. Only off site.**

20 Q. Only off site. So if you're doing something on
21 site, you don't have to report that?

22 **A. Well, you don't have to report it under the**
23 **TSCA regulations that, that specify how to, we were**
24 **talking about the PCB reports that are specified by**
25 **TSCA. They are very specific categories that you have**

1 **to maintain records on and keep in the PCB file at your**
2 **plant site.**

3 **PCBs in a landfill would not be subject to that**
4 **regulation. I was just giving you an example of where**
5 **something specified by law or regulation might be less**
6 **than permanent.**

7 Q. What about documents that pertain to permits,
8 petitions, variances, waivers, orders that you would
9 file with the government? Data that would be supporting
10 of those?

11 **A. Are we over in the next page now? I'm not**
12 **sure --**

13 Q. -- top of the page.

14 **A. Those, according to the policy, would have to**
15 **be maintained permanently.**

16 Q. Okay. So if you're making a change in the
17 impoundment that we talked about earlier, you would have
18 to maintain that on a permanent basis?

19 **A. If it was done under permit with a regulatory**
20 **agency, yes.**

21 Q. And at the time of the sale, would that have to
22 be maintained by Ascend?

23 **A. That's my understanding, yes. That would be**
24 **part of the transfer --**

25 Q. -- responsibility --

A. -- transfer to Ascend, that's my understanding yes.

Q. Okay. And so to complete the circle, if we had conversations, or if they had conversations, if you all had conversations with governmental regulators during that time frame that were recorded or memorialized, those would have to be maintained, too, on a permanent?

A. That's my understanding --

Q. -- data generated in connection with that particular matter would have to be maintained on a permanent basis, wouldn't it?

A. Yes, I believe that's my reading, yes.

Q. So let's just say there was some test done on the plant site around an impoundment area that you all were seeking a permit for to make changes to. Then that data has to be there at the plant site even after it's sold to Ascend, right?

A. That's my understanding, yes.

Q. What about engineering drawings in connection with a particular project like that? How long do they have to be maintained? Will you look at 004474 --

A. Thank you.

Q. -- looking at the wrong thing --

A. Well, my problem is is that there's an index at the front of this document with page numbers, but there

are no page numbers on the pages that I can see.

MR. MERRILL: Yeah, I noticed that myself.

A. All right. So your question is in regard to facility engineering drawings?

Q. (By Mr. Stewart) Yeah. Let's just say you had a project designed for solving the problem. How long do those have to be maintained?

A. Ten years after the termination of the facility. I mean, I'm reading at the top of the page. If you're further down.

Q. I'm looking, project, well actually, facility engineering drawings. Does that have to do with product or does that have to do with the project? That's the reason I ask.

A. Well, okay. Because there's facility and then there's, again, I'm not an engineer. I don't know the specifics of these, of what's characterized here.

The retention times are the same so maybe it doesn't matter so much. But my understanding is the facility engineer drawings would be the layout of the facility where the buildings are located --

Q. -- trying to find --

A. -- product engineering would be the specific designs for the process itself, for the individual processes. Where the reactors are.

Q. What I was trying to find out, if there was engineering or technical reports that were done in connection with a project that had to do with waste disposal or remediation, that type of stuff, how long do you have to keep those at the plant?

A. As I sit here now, I'm not sure whether they would fall under the ten-year requirement or the permanent requirement. I would have to either think about it and read these better or talk to an attorney.

Q. One or two? One of the two?

A. One of the two, yes.

Q. The project was started then in 2004, then certainly it should still be on, on site, shouldn't it? The engineering plans for that project? That would be the least time that it would be required, wouldn't it?

A. Well, yes.

Q. Would you take a look at 004475, and it says "Engineering Technical Reports." Does that have to do with processes or does that have to do with technical reports that were related to waste disposal or any of the above? It says the year originated in '35 --

A. No, I understand. I'm, I frankly am not sure what falls under the classification of an engineering technical report. I would think that would not be plans. It sounds to me more like a write-up of a

particular project. But I don't really, as I sit here today, I don't know what would fall under that categorization.

But whatever it is, it is your originated plus 35 in the, well, this is obviously outdated because I don't think the Webster Groves Technical Center files exist anymore. They've been moved back to headquarters I believe. But, but they either have to be in the central file, the plant file, or some file storage facility for 35 years, yes.

Q. When you're talking about that, are you talking about what I was discussing --

A. Yes.

Q. -- Dr. Kaley?

A. Yes, it's D1. The engineering technical reports.

Q. Okay. Now you talking about something that might apply to waste disposal or something to do with the remediation of a particular area on the plant site because of a release of some toxic substance?

A. I doubt it.

Q. What would you be talking about again? Just something to do --

A. -- engineering projects, yes.

Q. Well, on 004474, it says "project files." And

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1 it talks about closed project files prepared in
2 accordance with Procedure 106, and it says "retention
3 time up to ten years after completion of the project"?

4 **A. Yes.**

5 Q. What does that refer to?

6 **A. I don't know.**

7 Q. Would that be a project similar to what I was
8 talking about?

9 **A. I don't know what's, I mean this is, this is
10 for Monsanto's engineering department, central
11 engineering, so --**

12 Q. -- this is Solutia we're talking --

13 **A. Solutia. Okay. I'm sorry. I do the same
14 thing. I use them interchangeably. I apologize. For
15 Solutia's engineering department --**

16 MR. STEWART: You want to mark that in the
17 record? That he uses that interchangeably?

18 **A. I do, when I'm careless. The, so I'm not sure
19 exactly what this refers to. Most of the engineering
20 drawings for the project, which I assume you're
21 referring to, would be in the URS files. And I assume
22 that the retention policy applies to our contractors,
23 but again, I don't know that for sure.**

24 Q. (By Mr. Stewart) Well, they provide you with
25 documents; do they not --

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1 **A. That's true. You're correct.**

2 Q. -- it's your document --

3 **A. You're correct. You're absolutely correct.**

4 Q. Okay. And then documents on page 4477, we've
5 cleared up that documents pertain to permits,
6 registrations, which would include, I would assume,
7 supporting data which could be testing by anybody, your
8 company or URS, whoever did the testing, that has to be
9 maintained on a permanent basis, doesn't it?

10 **A. I would read it that way, yes. But again, not
11 necessarily permanently by Solutia because those kinds
12 of documents would be transferred to the purchaser of a
13 facility.**

14 Q. But they would have to maintain it on a
15 permanent basis, wouldn't they?

16 **A. I think it would then fall under their, their
17 document retention policy and I, as I sit here, don't
18 know Ascend's document retention policy.**

19 Q. On page 004460, let's take a look at some of
20 those things there dealing with e-mails. If an e-mail
21 dealt with some of the issues that we mentioned earlier
22 that had to be maintained on a permanent basis, in other
23 words, there were conversations that were recorded by
24 way of e-mail that had to do with conversations with
25 government officials or agencies, preparation for that,

1 they would have to be maintained on a permanent basis,
2 so the e-mail would be, too, wouldn't it?

3 **A. That's what this policy says, yes.**

4 Q. But if you delete it, and I saw the policy
5 earlier and I can't go to it right now, but if you
6 delete it within 60 days, it's my understanding from
7 previous conversation with you that that document has to
8 be stored in some way on a permanent basis?

9 **A. Yes. I mean it says that specifically here.**

10 **It says, "It is the individual user's responsibility to
11 determine the applicable retention period and whether to
12 maintain the e-mail in printed format, in appropriate
13 hard copy files, or on the user's hard drive, or a
14 network server, or to some other storage media."**

15 **So then it would be out of the documents that were
16 being routinely deleted by the information technology
17 department.**

18 Q. Now did Solutia maintain back-up tapes?

19 **A. It says it does.**

20 Q. And were those back-up tapes turned over to
21 Ascend?

22 **A. Well, based on this policy, the back-up tapes
23 are not, you know, they are not to be used to maintain
24 the kinds of records we've been talking about.**

25 Q. But were they retained --

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1 **A. I have no, I don't know the answer to that.**

2 Q. Who would know the answer to that?

3 **A. Someone in the Solutia IT department I assume,
4 or someone at Ascend.**

5 Q. Do you know who that person might be?

6 **A. I have no idea.**

7 Q. And if you look at 004461, I want you to know
8 that I wasn't crazy when I said what I did. There's a
9 paragraph down there that says, "After microfilming,
10 once the paper's been microfilmed" --

11 **A. -- I wasn't questioning --**

12 Q. I just want you to know that I didn't make it
13 up. That it was on microfiche, but my understanding.
14 Now was there a policy at the time that you worked for
15 Solutia up until 2003 about what was retained in
16 connection with the litigation that was ongoing?

17 **A. My understanding was that anything contained,
18 pertaining to ongoing litigation was to be retained.**

19 Q. Until the litigation was completed?

20 **A. Yes.**

21 Q. And is that not covered in this Record
22 Retention Policy Manual?

23 **A. I believe, I thought it was actually.**

24 Q. That was my understanding.

25 **A. When I reviewed, I thought I read something to**

36 (Pages 141 to 144)

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Page 147

1 that.

2 Q. Let's take a look at 004465.

3 A. Okay.

4 Q. And dealing with photographs and videotapes and
5 film, if there were photographs taken or videotapes or
6 film taken in connection with a permit application, is
7 that your understanding that it, that was used in
8 connection with a permit, it would have to be maintained
9 on a permanent basis?

10 A. Yes, that's what it says.

11 Q. Would that be true for mapping?

12 A. If it were, yes. I mean I says "maintain and
13 record in accordance with retention period for the
14 record category." So if it pertained to one of those
15 record categories, that that was permanent, yes, it
16 would be.

17 Q. So if somebody tells me that they're going to
18 give me exemplars of something, and yet those documents
19 that I referred to, either maps or photographs, were,
20 had to be maintained permanently if it had to do with
21 disposal of waste or permitting, that type stuff, the
22 exemplar wouldn't do the trick, would it, Dr. Kaley?
23 They'd all be there if they were all related to that if
24 they were to be maintained on a permanent basis,
25 wouldn't they?

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1 MR. MERRILL: I'll object to the form of the
2 question.

3 A. I, I --

4 Q. (By Mr. Stewart) The only reason I ask that
5 question is, we've been told that they would give us
6 exemplars of layouts, exemplars. Frankly, I don't
7 understand what that means.

8 If they have to do with a plant site and solid waste
9 management units or RCRA closure, then they're to be
10 maintained on a permanent basis, aren't they?

11 A. If they're associated with one of those
12 categories, yes.

13 Q. So if there were 50 and we got three, then
14 we're missing some, aren't we?

15 A. That's your hypothetical. I don't, I don't
16 know how the decisions were made and what the basis for
17 those was.

18 Q. Neither do I. Neither do I. I believe that's
19 all I have of that retention policy for the time being.
20 I want to go back to this --

21 A. Can I go, I mean, there is a section on legal
22 and it says "court files and work papers and law
23 department file for litigation and claims," and it does
24 say until completion of litigation, so.

25 Q. That's what I thought. Where is that? What --

1 A. I'm sorry. It's on page 4493.

2 Q. Do you know what the Corlew litigation is?

3 A. I may have at one time, but as I sit here
4 today, no.

5 Q. Did the MONS documents provide us with chemical
6 safety data sheets, material safety data sheet, or was
7 that in the DWS, or DSW document?

8 A. I don't know. They should be in the MONS set.

9 Q. Did you see any metrological data in the
10 documents that were, does that exist?

11 A. I don't know whether it exists. I didn't see
12 any.

13 Q. Any document having to do with hydrology of
14 that area there? Did you see any of that?

15 A. Yeah, I believe some of the URS reports talks
16 about hydrology.

17 Q. Did you see any waste manifest, bills of
18 lading, internal memos, correspondence?

19 A. I didn't --

20 Q. Lots of other documents pertaining to waste
21 disposal at the plant?

22 A. I didn't in this review, but I know they
23 existed in the PCB compliance documents that were
24 maintained at the plant, so.

25 Q. So that would be in those Ascend documents?

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1 A. Ascend.

2 Q. Now what do you know about, or what did you see
3 in these documents about the plant or wells in the
4 vicinity of the plant that were under control of the
5 plant down there?

6 A. I didn't see anything specifically. But again,
7 that's the kind of information that would have been
8 covered thoroughly in any of the URS documents with
9 regard to the plant.

10 Q. Was there ever any criminal investigation
11 against the defendant in connection with their operation
12 of this particular plant?

13 A. I have no idea.

14 Q. Now you have provided us, I believe, with a
15 corporate organization of Monsanto, Pharmacia
16 Corporation and Solutia, Inc.; is that right?

17 A. There are a number of documents related to
18 corporate structure that have been produced, yes.

19 Q. Is Solutia connected in any way with Pharmacia
20 or Monsanto or new Monsanto?

21 MR. MERRILL: Object to the form of the
22 question. "Connected in any way," but. Could you, are
23 you talking about a legal, a formal, structural or a
24 legal --

25 Q. (By Mr. Stewart) -- part of the corporate

37 (Pages 145 to 148)

1 organization of Monsanto Company or new Monsanto --

2 **A. No.**

3 **Q. Separate company --**

4 **A. Totally separate.**

5 **Q. What about Pharmacia and Monsanto and new**
6 **Monsanto? Are they all owned by Pharmacia?**

7 **A. New Monsanto is totally separate.**

8 **Q. So new Monsanto is separate; Solutia is**
9 **separate?**

10 **A. That's correct.**

11 **Q. And the corporation Pharmacia, is that the**
12 **owner of old Monsanto or is that old Monsanto --**

13 **A. It is old Monsanto.**

14 **Q. So Pharmacia Corporation is a separate entity**
15 **from new Monsanto?**

16 **A. Totally, yes.**

17 **Q. And Solutia is a separate entity?**

18 **A. From both of those.**

19 **Q. So they're all three separate defendants; is**
20 **that correct?**

21 **A. That's my understanding, yes.**

22 **Q. When new Monsanto was created, did it assume**
23 **any of the responsibilities for the liabilities that**
24 **occurred, if you know, Dr. Kaley, at plants that were**
25 **previously owned by old Monsanto?**

1 MR. MERRILL: I'll note for the record that
2 question calls for testimony beyond the matters
3 designated in the deposition notice.

4 **A. I don't know the details of the separation**
5 **agreements. I don't know.**

6 **Q. (By Mr. Stewart) Give me just a second. Give**
7 **me a minute. Are all the environmental documents that**
8 **are related to the Pensacola plant kept off site such as**
9 **the tests for the presence of hazardous substances on**
10 **the plant site?**

11 **A. By off site, you mean off the plant site?**

12 **Q. Yeah. We were referred to URS earlier. Are**
13 **some of those kept on site in Pensacola?**

14 MR. MERRILL: I note for the record that that
15 question calls for testimony beyond matters designated
16 in the deposition to the extent it's beyond Solutia --

17 MR. STEWART: -- location of those documents
18 and that's what I'm asking about. I'm just asking are
19 the environmental documents that we referred to in our
20 questions, I can go to the specific question, but I'm
21 not going to, are they maintained on site or off site?

22 MR. MERRILL: And I'm going to object because
23 he doesn't have any obligation, as a 30(b)(6) witness
24 for Solutia to find out how Ascend runs their business.

25 MR. STEWART: I'm not talking about Ascend, I'm

1 talking about Solutia.

2 MR. MERRILL: Your, your question was not clear
3 on that. It spoke in the present tense.

4 MR. STEWART: No. I assumed that you put him
5 up to talk for Solutia. If you put him up to talk for
6 Ascend, hell, I'll be glad to start all over my
7 questions --

8 MR. MERRILL: -- did not. That's what I was
9 trying to make.

10 MR. STEWART: Well, I'm not talking to
11 Dr. Kaley about it. I'm talking about Solutia.

12 **Q. (By Mr. Stewart) Do you all keep them off site**
13 **or on the plant?**

14 **A. Probably both. I mean, I, the URS documents,**
15 **there would be a complete set at URS. There may or may**
16 **not be a complete set or have been a complete set at the**
17 **plant --**

18 **Q. -- could have been some of them at the plant?**

19 **A. Certainly.**

20 **Q. Were there some maintained in St. Louis?**

21 **A. There could have been some in St. Louis, yes.**
22 **I don't know that specifically, but I would assume that**
23 **the, that some of the environmental people in St. Louis**
24 **had access to those documents.**

25 **Whether they kept them or not and stored them, I**

1 **don't know because they wouldn't have had the**
2 **responsibility for storing them. But they probably at**
3 **least passed through St. Louis.**

4 **Q. Are those documents that are maintained, that**
5 **were maintained by Solutia off site, were they in**
6 **electronic form or were they hard copy paper?**

7 **A. At URS?**

8 **Q. Yeah.**

9 **A. I, you probably know the answer better than I,**
10 **or somebody, somebody reviewing them. I don't know. I**
11 **assume there's paper copies. There probably are both,**
12 **but I'm sure there are paper copies because they would**
13 **have had to file with the government --**

14 **Q. Are the indexes of those records that are**
15 **maintained, that were maintained by Solutia on site?**

16 **A. I don't know.**

17 **Q. Who would know that from Solutia?**

18 **A. Probably Amy Dyer who's now with Ascend, I**
19 **guess. By on site you mean at the plant?**

20 **Q. Yeah, I'm talking about. What about Solutia's**
21 **laboratory test results? Are they maintained on site?**

22 **A. For what? I mean the answer is yes. That**
23 **would be my understanding. I don't know particularly**
24 **what lab reports. You're talking about environmental**
25 **lab reports?**

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1 Q. Yeah, environmental lab reports?
 2 **A. I would, they would be at the site, or at URS**
 3 **because many of them were probably obtained by the**
 4 **contractors.**
 5 Q. How long were they kept, Dr. Kaley?
 6 **A. If they have to do with permitting and closures**
 7 **and regulatory materials, many of them would have to be**
 8 **kept permanently.**
 9 Q. Are they maintained electronically?
 10 **A. I don't know the answer to that. Whether it's**
 11 **electronic or paper or both, I don't know.**
 12 Q. Who would know that, Ms. Dyer?
 13 **A. I presume that would be my best answer, yes.**
 14 Q. Now we talked earlier, earlier about back-up --
 15 MR. STEWART: Be ashamed of yourself --
 16 Q. (By Mr. Stewart) -- back-up tapes. Are those
 17 maintained at each site?
 18 **A. I don't know.**
 19 Q. Who is, who was responsible at Solutia for
 20 organizing and keeping up with the electronic? IT
 21 person?
 22 **A. The IT person, that's all. I have no idea who**
 23 **that is.**
 24 Q. You don't know who that is?
 25 **A. No.**

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1 Q. Do you know what GNZ refers to?
 2 **A. What the letters specifically refer to?**
 3 Q. Yeah.
 4 **A. Gonzales.**
 5 Q. Just the --
 6 **A. Location of the plant.**
 7 Q. -- location of the plant? That's really
 8 original. Well, does anybody that keeps the MONS set
 9 updated today?
 10 **A. There's no specific, as far as my**
 11 **understanding, it's maintained by the law department, so**
 12 **I really don't know how it's maintained. That's the**
 13 **best answer.**
 14 Q. We've got some of the Florida-PCB documents and
 15 they have MONS numbers that are higher than the number
 16 that we have provided to us.
 17 **A. Okay. Well as I said, documents are added. I**
 18 **don't know who does that or what, you know, how that**
 19 **decision has been made. But as relevant documents are**
 20 **identified, for instance, in a search of the plant or**
 21 **something like that, then those documents are added to**
 22 **the MONS set.**
 23 Q. Who made the decision as to what to add to the
 24 MONS set at Solutia; do you know?
 25 **A. Counsel, representing, either counsel -- for**

1 **Solutia? Well, I don't know, I don't know when or how**
 2 **documents were, were added, but they would have been**
 3 **added by either in-house or outside counsel for Monsanto**
 4 **or Solutia.**
 5 Q. Who, who, other than the lawyers were
 6 participants in that decision, who would have been?
 7 **A. No one that I know of.**
 8 Q. Not the woman you mentioned that was the --
 9 **A. At Solutia? No, no. She, she probably doesn't**
 10 **even know the archive exists.**
 11 Q. Well, back to my question I was asking, some of
 12 the Florida-PCB documents have MONS numbers that are
 13 higher than 100,000 to 120. It indicates that there's a
 14 gap that exists between the documents we were provided,
 15 because they have double Bates numbers on them.
 16 There was Bates numbers for MONS and there were
 17 Bates numbers for the Florida-PCB. And we were told by
 18 counsel that they came from the MONS documents. So why
 19 is it that we're getting some documents that have Bates
 20 numbers on them, the MONS Bates numbers that are higher
 21 than that figure?
 22 **A. I don't know the answer to that.**
 23 Q. Well, could it mean that there are documents
 24 that were in between those numbers that had been
 25 selected by the lawyers? Is that what it is?

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1 **A. Could it mean that?**
 2 Q. Yeah. That's what we assume --
 3 **A. -- could mean --**
 4 Q. -- documents that were sitting out there that
 5 old Donald and Samantha haven't seen?
 6 **A. Those, the archive is maintained by counsel**
 7 **through --**
 8 Q. -- piqued my curiosity today, just got on to
 9 me, because we didn't look at documents from 2009.
 10 After 2009, they were sent to Ascend. He was good
 11 enough to tell us that.
 12 He's going to find out that Don will look at every
 13 document he's got before it's over with. So, I just
 14 want to know if there was a gap there.
 15 **A. I have no idea.**
 16 Q. I may need to fill in the gap on behalf of my
 17 client. Now there's a gentleman named Merrill who said
 18 specifically to one of my colleagues that he was
 19 confident that Solutia sent documents to Ascend after
 20 the sale, which you've confirmed for us, Dr. Kaley.
 21 And then he stated that "we're looking for
 22 responsive documents still at Solutia." So, where in
 23 the world would that be? If Mr. Merrill told one of my
 24 lawyers that there was some responsive documents still
 25 at Solutia, which is one of the reasons I'm sitting up

39 (Pages 153 to 156)

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1 here looking at you, where would that be?

2 **A. Well, if there are documents and they are at**
3 **Solutia, then they're at Solutia. I don't know that**
4 **there are documents at Solutia. And I'm, there, there**
5 **may be some files that have yet to be reviewed. I don't**
6 **know what he was representing to you.**

7 Q. Well, he also mentioned that some of these
8 documents went to off-site storage that were maintained
9 by Solutia prior to the time of the sale. Where would
10 that be?

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

12 Q. Sir?

13 **A. I don't know.**

14 Q. Well, am I to understand, I'm just trying to
15 figure this out --

16 **A. I mean they may have gone to off-site Solutia**
17 **for, to off-site sites for Ascend. Ascend may have said**
18 **"send them to this on site." I don't know. It doesn't**
19 **say that they were still in the control of Solutia. I**
20 **don't know. But I don't think it necessarily means that**
21 **they are at the control of Solutia.**

22 Q. Well, I'm, I'm just asking. I mean I'm
23 obligated in a discovery deposition to find out every
24 little bit piece of information I can. And if
25 Mr. Merrill was still looking at, for documents at

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1 Solutia, where in the world would he be looking? I want
2 to answer that question first; if you know?

3 You're the 30(b)(6) representative from Solutia
4 that's supposed to know about the existence and location
5 of documents. Mr. Merrill tells somebody he's looking
6 at Solutia. He's not looking in an empty bucket, is he,
7 Dr. Kaley? He's looking at documents, isn't he?

8 **A. No. He said he's looking for documents. I**
9 **don't, I don't know whether any have been found. I**
10 **don't necessarily know where he's looking. I would**
11 **guess he would be looking in the various, or the library**
12 **at Solutia, but I don't know the --**

13 Q. -- personnel that worked at Solutia who might
14 have had some connection with the Pensacola plant?

15 **A. Well, my understanding is that, through my**
16 **discussions with Ms. Stoklosa, that the documents have**
17 **been transferred to Ascend. That's my --**

18 Q. Well, wouldn't they have, though, similar to
19 the ones that went from Solutia to Ascend, wouldn't they
20 have the possibility of documents on their personal
21 computers or in their file that they maintained at, at
22 Solutia after they stayed there when Ascend was, was the
23 purchaser of the plant? When it purchased the plant?

24 **A. If they were documents that related only to**
25 **that process or to that business, the textiles business,**

1 **no, they should not be there. There may have been some**
2 **possibility of shared documents that may still exist**
3 **there. I don't know.**

4 Q. Wouldn't it be the possibility of some
5 documents that would be maintained there by people who
6 were in the remediation department that perhaps related
7 to the plant down there that didn't go to Ascend?

8 **A. There should not be.**

9 Q. How did that get to Ascend? Was there a sweep
10 of those documents from those peoples' personal files
11 and sent down to Ascend?

12 **A. Those people were told to give their files to**
13 **Ascend, yes.**

14 Q. So all the remediation, am I to understand your
15 testimony here today on behalf of Solutia, all the
16 people who were working in the remediation department
17 gave documents that they had in their personal files to
18 someone to deliver to Ascend?

19 **A. That's my understanding, yes.**

20 Q. Who, who handled that at Solutia?

21 **A. I would assume Ms. Stoklosa handled most of it.**
22 **I don't know the specific person who undertook those**
23 **files or it could have been, it could have been counsel**
24 **managing the transfer of documents at the sale, I don't**
25 **know. But the information I got, I got from her that**

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1 **that's, those transfers occurred.**

2 Q. So, she said she went to each person involved
3 in the remediation -- is there a law section? Went to
4 those and got those files?

5 **A. She did not say that. She said that the**
6 **documents were transferred.**

7 Q. Well, does that mean the documents that were
8 housed in some kind of central location, or the
9 documents that were housed in a central location plus
10 the documents that people might have had in their
11 personal files?

12 **A. Yes, all those documents that related to the**
13 **textiles business, whether they were in a central file**
14 **or in peoples' personal files, were transmitted to**
15 **Ascend.**

16 Q. Now, I don't want to beat anybody up, but what
17 would Mr. Merrill have meant by responsive documents
18 still at Solutia?

19 **A. I have no idea.**

20 Q. He also mentioned that some of these documents
21 went to an off-site storage of the next tenant after
22 that, and I assumed, and maybe I'm wrong about it, but
23 that would be a Solutia off-site storage.

24 To your knowledge, is there any off-site storage of
25 documents that were related to Solutia's operation and

40 (Pages 157 to 160)

1 maintenance of the plant located there in Pensacola?

2 **A. Not to my knowledge.**

3 Q. So can I be confident in saying to my
4 colleague, "Based on what Kaley tells me, there are no
5 documents that are responsive to our discovery request
6 still at Solutia"?

7 **A. No, you can say that, "According to Kaley's
8 knowledge, there are no documents that da-da-da."**

9 Q. You understand, Dr. Kaley, I'm looking at you
10 and I'm not, I'm not trying to be cute, I'm looking at
11 you as a person who knows where these responsive
12 documents are?

13 **A. I am not aware as I sit here --**

14 Q. -- chastised today for not doing my job --

15 MR. MERRILL: Object to your interrupting. He
16 was starting to answer a question.

17 MR. STEWART: And I understand. But I want to
18 get my part in and then -- Dr. Kaley and I go back a
19 long way. He knows I'll give him time to answer the
20 question.

21 Q. (By Mr. Stewart) So tell me, Dr. Kaley, am I to
22 understand that that's just you saying that, you're not
23 speaking for Solutia, as to whether or not there are any
24 responsive documents still at Solutia?

25 **A. In my role as a representative to Solutia, I am**

1 **not aware of such documents as I sit here today.**

2 Q. And you did what you needed to do in order to
3 make that determination?

4 **A. I thought I had, yes. I believe I have.**

5 Q. And that involved talking to the woman that you
6 talked to?

7 **A. Yes.**

8 Q. That you mentioned?

9 **A. Among other things.**

10 Q. And so would she be the one that we would ask
11 if she knows about an off-site storage?

12 **A. I, I believe so. I wouldn't know who else --**

13 Q. -- talk to Mr. Merrill. He's been good to give
14 us those Ascend documents. Maybe he'll just tell us,
15 "No, there ain't no documents there," and we'll take him
16 at his word. I believe that's, that's all I got of
17 Dr. Kaley.

18 MR. MERRILL: All right. So we want to review
19 the deposition and sign.

20 THE VIDEO TECHNICIAN: This concludes the
21 deposition. We will go off the record at 2:30 p.m.

22 Whereupon, signature was not waived
23 and the witness was excused.

24 o-0-o

1 NOTARIAL CERTIFICATE

2 STATE OF MISSOURI)

3)
4 COUNTY OF ST. LOUIS)

5 I, DIANNA C. HARK, a Certified Court Reporter and
6 duly commissioned Notary Public within and for the State
7 of Missouri, do hereby certify that there came before me
8 at the offices of Husch Blackwell LLP, 190 Carondelet
9 Plaza, Suite 600, St. Louis, Missouri 63105,

10 ROBERT G. KALEY,

11 who was by me first duly sworn to testify to the truth
12 and nothing but the truth of all knowledge touching and
13 concerning the matters in controversy in this cause;
14 that the Witness was thereupon carefully examined under
15 oath and said examination was reduced to writing by me;
16 and that the signature of the Witness was not waived by
17 agreement of the Witness and all parties, and that this
18 deposition is a true and correct record of the testimony
19 given by the Witness.

20 I further certify that I am neither attorney nor
21 counsel for nor related nor employed by any of the
22 parties to the action in which this deposition is taken;
23 further, that I am not a relative or employee of any
24 attorney or counsel employed by the parties hereto or
25 financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 23rd day of July, 2011.

My commission expires January 22, 2015.

NOTARY PUBLIC

1 COMES NOW THE WITNESS, ROBERT G. KALEY, and having read
2 the foregoing transcript of the deposition taken on JULY
3 19, 2011, acknowledges by signature hereto that it is a
4 true and accurate transcript of the testimony given on
5 the date hereinabove mentioned.

ROBERT G. KALEY

8
9 Subscribed to before me this _____ day of
_____, 2011.

Notary Public

11 My Commission expires: _____.

12
13 JOHN ALLEN, et al.

14 vs.

15 MONSANTO COMPANY, et al.

20 Reporter: Dianna C. Hark, RPR, CCR, CSR

21 Date taken: July 19, 2011

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