

NO. _____

IN THE
SUPREME COURT OF ILLINOIS

FRANCES E. KEMNER, et al., and all)
other cases consolidated for trial)
with Cause No. 80-L-970, in the)
Circuit Court of St. Clair County,)

Plaintiffs,)

vs.)

MONSANTO COMPANY,)

Defendant-Petitioner,)

vs.)

HONORABLE RICHARD P. GOLDENHERSH,)
JUDGE OF THE CIRCUIT COURT OF)
ST. CLAIR COUNTY,)

Respondent.)

From the Circuit
Court, Twentieth
Judicial Circuit,
St. Clair County,
No. 80-L-970

Hon. Richard Goldenhersh,
Presiding Judge

AFFIDAVIT

COMES NOW Bruce D. Ryder, and upon his oath deposes and states that he is one of the attorneys of record for Defendant-Petitioner Monsanto Company in the above-captioned cause; that he has prepared the supporting record attached to Monsanto's Motion for Supervisory Order herein as Exhibits A - J; that said exhibits are true and correct copies of the pleadings and portions of the transcript described in said Motion; and that the facts contained in said Motion are true and correct to the best of his information, knowledge, and belief.

Further affiant sayeth not.

Bruce D. Ryder

COUNTY OF ST. CLAIR)
) SS.
STATE OF ILLINOIS)

Subscribed and sworn to before me this 5 day of
September, 1985.

Notary Public

My Commission expires:

11/17/87

FILED
MAY 06 1985
40
CIRCUIT CLERK

DEFENDANT MONSANTO COMPANY'S MEMORANDUM IN SUPPORT
OF SUBMISSION OF DOCUMENTS FOR IN CAMERA
REVIEW

Supreme Court Rule 201(b)(2) states:

EXHIBIT A

court may apportion the cost involved in originally securing the discoverable material, including where appropriate a reasonable attorney's fee, in such manner as is just.

In Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250 (1982), the Illinois Supreme Court applied that rule to reports prepared by non-attorneys. The test applied by the Court was whether the report reflected or disclosed the theories, mental impressions, or litigation plans of the attorneys or whether the report was the product of the attorneys' mental processes as communicated to the person preparing the report. Id., 432 N.E.2d at 254; see Sutherland & Deitrick, "The Attorney-Client Privilege and Work Product Doctrine in Federal and Illinois Courts," 73 Illinois Bar Journal 448, 458 (1985).

Should this Court conclude that any portion of these materials is discoverable, Monsanto requests, under the terms of Supreme Court Rule 201(b)(2), that the Court apportion the cost of preparation of these materials between Monsanto and Plaintiffs. Monsanto is presently preparing information to show the costs of producing this material, which will be filed in the event this Court concludes any of these documents should be produced. While these figures have not been completed, Monsanto estimates that the outside consultant costs for these documents is several hundred thousand dollars, in addition to the cost of over 600 hours of attorney time by Townley & Updike.

To permit Plaintiffs to have the benefit of the time and expense of preparing this information without paying a proportional share for its use would be grossly inequitable and oppressive.

Monsanto does not believe that these documents are subject to discovery; the facts demonstrate that they satisfy the tests set forth by the Supreme Court in Consolidation Coal. The computer data base, the contents of which are contained in computer printouts, documents C16689-92, was prepared by Weinberg Consulting Group Inc. after numerous meetings between Dr. Weinberg and Richard Barnes, one of Monsanto's attorneys in the Agent Orange case, in which Mr. Barnes' litigation plans and theories of the case were discussed. The format and structure of the data base were jointly designed by Mr. Barnes and Dr. Weinberg. (Barnes Aff. ¶5). In addition, the criteria for the summaries and evaluations of key literature references were jointly established by Mr. Barnes and Dr. Weinberg. (Barnes Aff. ¶6). These computer printouts are the product of the attorneys' thought processes and are therefore protected from discovery by Supreme Court Rule 201(b)(2).

The issue papers, documents C16693-C17436, are also protected from discovery. As with the computer data base, Mr. Barnes met with Dr. Weinberg and the other consultants involved in their preparation and discussed with them at length his

litigation plans, strategies, theories, and mental impressions concerning the litigation. (Barnes Aff. ¶8). In addition to this input, all of the papers were revised and edited by attorneys once they were drafted. (Barnes Aff. ¶10). Thus, the issue papers contain substantial material written by attorneys based on their mental impressions of the case which is inextricably combined with the work of the outside consultants. Each of the issue papers contains evaluations of arguments expected to be used at the trial of the Agent Orange case which clearly reflect the litigation plans and theories of Monsanto's attorneys. These documents must be protected from discovery by Supreme Court Rule 201(b) (2).

COBURN, CROFT & PUTZELL

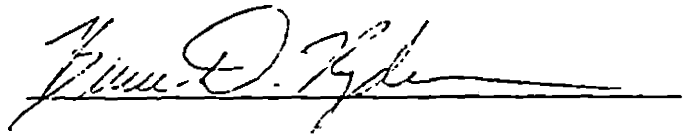
By 
Kenneth R. Heineman
Richard S. Cornfeld
Bruce D. Ryder
312 S. Illinois Street
Belleville, Illinois 62220
(618) 277-1020

Attorneys for Defendant
Monsanto Company

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 6th day of May, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221

A handwritten signature in cursive script, appearing to read "James D. Hyde", is written over a horizontal line.

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,

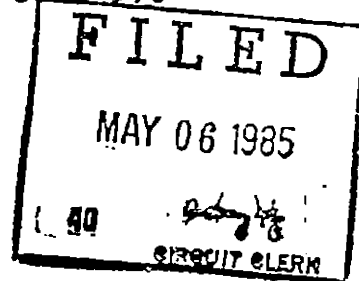
Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

No. 80-L-970



AFFIDAVIT OF RICHARD J. BARNES

COMES NOW Richard J. Barnes and upon his oath deposes
and states as follows:

1. I am an attorney licensed to practice in New York
and a partner in the law firm of Townley & Updike.

2. I am an attorney of record for Monsanto Company
in the case In re "Agent Orange" Product Liability Litigation,
Cause No. MDL 381 pending in the United States District Court
for the Eastern District of New York.

3. I am the partner in my firm who was responsible
for preparing the causation part of Monsanto's defense in the
Agent Orange case. After familiarizing myself generally with
the legal, scientific and medical issues involved in this
aspect of the case, I came to the conclusion that the attorneys
in my firm who would be handling all aspects of causation would

need the assistance of a scientific consultant to assist them and me in preparation of Monsanto's defense given the highly technical scientific and medical issues involved in the case.

4. In August of 1983, after conducting an investigation into the qualifications of several individual consultants and consulting firms, I retained on behalf of my firm Myron S. Weinberg, Ph.D. of Weinberg Consulting Group Inc. in Washington, D.C. After several meetings with Dr. Weinberg, and based on my analysis of the legal and scientific issues involved, I realized that the attorneys in my firm would need to have a command of the comprehensive literature relating to the highly technical and complex scientific issues involved. I recommended that we set up a computer data base of the extensive worldwide scientific literature relevant to the issues in the Agent Orange litigation. This recommendation was approved by the client.

5. I had numerous meetings and conference calls with Dr. Weinberg during which I outlined to Dr. Weinberg our needs, based upon our litigation plans and theories of the case, and established the format and structure of the data base and the methodology to be utilized in preparing abstracts and evaluation of the literature that would be included in the data base.

6. Attorneys in Townley & Updike played a major role in the design, preparation and utilization of the scientific

data base. For example, one associate and I played an extensive role in coming up with the list of key words that would be used for identifying and accessing the literature. In addition, working with Dr. Weinberg, I established the criteria that would be utilized by him in preparing summaries and evaluations of key literature references.

7. I also determined that our defense of the causation case would be aided by the preparation of what I called "issue papers" which would deal separately with discrete components of the causation case. With the assistance of an associate and Dr. Weinberg, I designed the content and form of the issue papers as well as the subject matters to be covered. During the fall of 1983 I had many meetings with Dr. Weinberg to discuss the preparation of these issue papers. Because of the magnitude of the task, it became necessary for Dr. Weinberg to retain several individual consultants and consulting firms to function as subcontractors on the preparation of the issue papers. I met with approximately a dozen of these scientific consultants to explain in detail to them the purpose of the issue papers and the manner in which they should be prepared.

8. During the course of the meetings I explained to Dr. Weinberg and the other consultants our litigation plans, strategies and theories, my own mental impressions with respect to several aspects of the case, discovery matters, including the anticipated depositions of both plaintiffs' and defendants'

expert witnesses, and our contemplated trial strategy. All of this was necessary so that the scientific consultants would have a better understanding of how the attorneys in my firm expected to utilize the issue papers when they were completed.

9. After defining, in consultation with Dr. Weinberg, the subject matters to be dealt with in the individual issue papers, I instructed Dr. Weinberg and the consultants to prepare draft outlines of an issue paper for each of the subject matters selected. Each of those outlines was reviewed and revised by attorneys and many meetings were held with each of the authors of the outlines to discuss and explain our revisions.

10. After the outlines were approved, seven attorneys, including myself, were given responsibility for one or more issue papers. As drafts of the issue papers were prepared by the consultants, the responsible attorney reviewed and revised them and then met with the author of the issue paper to discuss the changes. A number of the issue papers went through several drafts with the responsible attorney being intimately involved, in person and by telephone, with the author of the issue paper.

11. The purposes of the issue papers as designed by the attorneys in my firm were (a) as an educational tool for any attorney in my office who would have responsibility for a particular area of the causation case, (b) to aid the attorneys

in my office in preparing for and taking the depositions of plaintiffs' experts, (c) to aid the attorneys in my office in preparing for and taking the depositions of individual plaintiffs, e.g., on the issue of other causative agents, and (d) to enable the attorneys in my office to deal intelligently with expert witnesses retained by us.

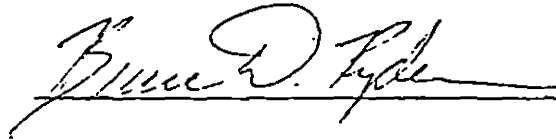
12. The seven attorneys in my firm who were involved in the creation and planning of our scientific data base or the issue papers, or both, devoted in excess of 600 hours to those tasks. In addition to numerous lengthy conference calls, I attended at least sixteen meetings in Washington or New York with Dr. Weinberg and the other consultants involved discussing the data base and the issue papers. All told there were some thirty meetings involving Dr. Weinberg and his group and attorneys in my office with respect to the data base and the issue papers.

13. These issue papers and the computer data base were prepared for the sole use of defense counsel in the Agent Orange litigation. Copies of the issue papers and the summaries and evaluations of the literature on our data base were not provided or shown to any expert witness. Because of

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 6th day of May, 1985, to the following attorneys of record:

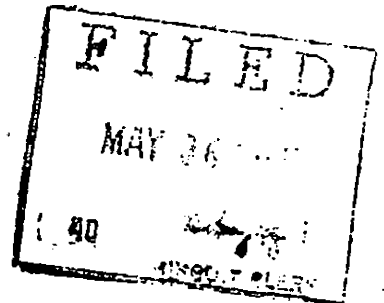
Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221



IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,)
)
 Plaintiffs,)
)
v.)
)
MONSANTO COMPANY,)
)
 Defendant.)

No. 80-L-970



DEFENDANT MONSANTO COMPANY'S MOTION FOR
PROTECTIVE ORDER

COMES NOW Defendant Monsanto Company and moves for a protective order restricting dissemination of certain materials prepared for use in other litigation, and in support hereof states as follows:

1. Monsanto has produced and will produce for in camera review by this Court certain documents prepared in connection with In re "Agent Orange" Product Liability Litigation, Cause No. MDL 381 pending in the United States District Court for the Eastern District of New York, and Adkins, et al. v. Monsanto Company, Cause No. 81-2098 pending in the United States District Court for the Southern District of West Virginia.

2. Said documents are not discoverable in those cases because it constitutes attorney work-product under the provisions of Federal Rule of Civil Procedure 26(b)(3).

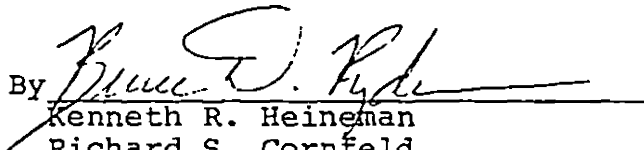
3. In the event this Court orders production of said documents or any portion thereof to Plaintiffs, disclosure of said documents to Monsanto's opposing parties or counsel in those cases would cause Monsanto unreasonable annoyance, expense,

disadvantage, and oppression, and would unduly prejudice Monsanto in its preparation and trial of those cases.

4. Entry of the proposed protective order will not prejudice Plaintiffs in the conduct of this case.

WHEREFORE, Defendant Monsanto Company prays that this Court enter a Protective Order in the form of the proposed Protective Order attached hereto.

COBURN, CROFT & PUTZELL

By 

Kenneth R. Heineman
Richard S. Cornfeld
Bruce D. Ryder
312 S. Illinois Street
Belleville, Illinois 62220
(618) 277-1020

Attorneys for Defendant
Monsanto Company

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,

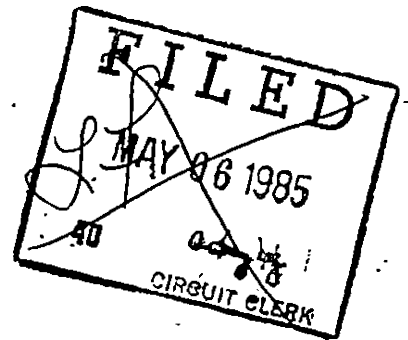
Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

No. 80-L-970



PROTECTIVE ORDER

Upon the Motion of Defendant Monsanto Company, the Court having been advised in the premises, it is hereby ORDERED as follows:

1. Whereas this Court's discovery orders in the above-entitled cause may require Monsanto Company to disclose certain documents prepared in anticipation of litigation in other cases pending against it which are not subject to discovery in those cases, the Court finds that Monsanto Company is entitled to a protective order restricting the use of such information to this litigation.

2. Monsanto Company may designate as work product material subject to this protective order any documents prepared in anticipation of litigation in other cases. Such designation may be made by marking documents supplied to Plaintiffs with the notation "Federal Work Product - Subject to Protective Order", or

by any other means which reasonably informs the parties that the documents are subject to the terms of this Order.

3. In the event that Plaintiffs desire to dispute Monsanto Company's designation of any document as subject to this Protective Order, Plaintiffs shall abide by the terms of this Order respecting the confidentiality of same unless or until the Court finds, upon motion duly made and presented, that said document was incorrectly designated as work product information.

4. All material subject to this Order is to be given to counsel for Plaintiffs and shown or disclosed only to the individual Plaintiffs and to no other persons. Said material is to be used only for purposes of this case and for no other purpose.

5. Upon the request of Monsanto Company made at the conclusion of this action, all documents subject to this Order (including copies thereof and extracts therefrom) shall promptly be returned to Monsanto Company.

6. Nothing in this Order shall be construed to regulate the conduct of the actual trial of this case, nor to limit the right of any party to seek amendments hereto, or to seek additional protective orders pertaining to pretrial proceedings and trial.

ENTERED this _____ day of _____, 1985.

Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 6th day of May, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221

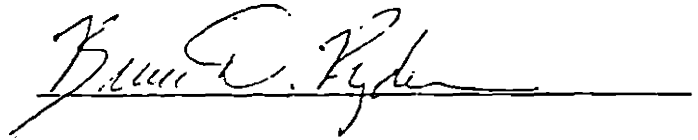
A handwritten signature in cursive script, reading "Bruce E. Kyden", is written over a horizontal line.

EXHIBIT D

Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including where appropriate a reasonable attorney's fee, in such manner as is just.

In Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250 (1982), the Illinois Supreme Court applied that rule to reports prepared by non-attorneys. The test applied by the Court was whether the report reflected or disclosed the theories, mental impressions, or litigation plans of the attorneys or whether the report was the product of the attorneys' mental processes as communicated to the person preparing the report. Id., 432 N.E.2d at 254; see Sutherland & Dietrick, "The Attorney-Client Privilege and Work Product Doctrine in Federal and Illinois Courts," 73 Illinois Bar Journal 448, 458 (1985).

Monsanto does not believe that these documents are subject to discovery; the facts demonstrate that they satisfy the tests set forth by the Supreme Court in Consolidation Coal. Mr. Love met with Dr. Weinberg and the other consultants involved in their preparation and discussed with them at length his litigation plans, strategies, theories, and mental impressions concerning the litigation. (Love Aff. ¶6). In addition to this input, drafts of all of the reports were reviewed by attorneys, whose comments were incorporated into the final reports. (Love Aff. ¶7). Thus, the reports contain the attorneys'

litigation plans and mental impressions of the case, which are inextricably combined with the work of the outside consultants. The reports also contain evaluations of arguments, expected to be used at trial in the Adkins cases, which clearly reflect the litigation plans and theories of Monsanto's attorneys. These documents must therefore be protected from discovery by Supreme Court Rule 201(b)(2).

In the event this Court decides that any portion of any of these documents should be produced, Monsanto requests that this Court enter a Protective Order in the form proposed in its Motion filed May 6, 1985. Monsanto also requests that, pursuant to Supreme Court Rule 201(b)(2), this Court apportion the cost of preparation of these materials and assess against Plaintiffs the portion of such costs corresponding to the portion of these materials produced.

COBURN, CROFT & PUTZELL

By

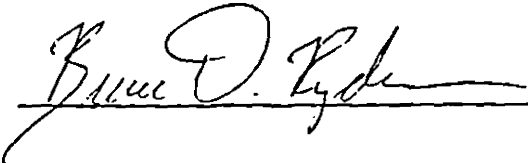

Kenneth R. Heineman
Richard S. Cornfeld
Bruce D. Ryder
312 S. Illinois Street
Belleville, Illinois 62220
(618) 277-1020

Attorneys for Defendant
Monsanto Company

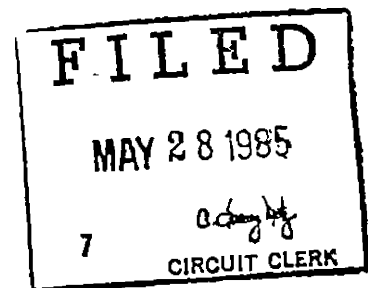
CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 29th day of May, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221



IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS



FRANCES E. KEMNER, et al.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

No. 80-L-970

AFFIDAVIT OF CHARLES M. LOVE, III

COMES NOW Charles M. Love, III, and upon his oath deposes and states as follows:

1. I am an attorney licensed to practice in West Virginia and a partner in the law firm of Bowles, McDavid, Graff & Love, 1600 Commerce Square, P. O. Box 1386, Charleston, West Virginia 25325.

2. I am an attorney of record for Monsanto Company in approximately 175 cases consolidated for discovery as Adkins, et al. v. Monsanto Company, a Delaware corporation, Civil Action No. 81-2098, pending in the United States District Court for the Southern District of West Virginia.

3. I am the partner in my firm who was in charge of preparing Monsanto's defense in the Adkins cases. After becoming acquainted with the legal, scientific and medical questions involved in these cases, I came to the conclusion that I and the other attorneys in my firm who would be addressing the causation issues in these cases would need the assistance of a scientific consultant in preparation of Monsanto's defense on these issues. In October

of 1983, with the approval of Monsanto, I retained on behalf of my firm Myron S. Weinberg, Ph.D. of Weinberg Consulting Group, Inc. in Washington, D.C.

4. I determined that our defense of the causation issues would be aided by the preparation of a series of reports which would address individually several of the scientific questions involved in the causation case. I worked with Dr. Weinberg to design the content and form of these reports and select the subject matters to be covered. During the fall and winter of 1983 I had many meetings with Dr. Weinberg to discuss the preparation of the reports. Dr. Weinberg retained several individual consultants and consulting firms as subcontractors to aid in the preparation of the reports. Attorneys from my firm and I met with all of these scientific consultants during preparation of the reports to explain in detail the purpose of the reports and the manner in which they should be prepared.

5. The purpose of the reports was to serve as an educational tool for the attorneys in my office who would have responsibility for the causation issues, to aid those attorneys in preparing for and taking the depositions of plaintiffs' experts, and to enable them to deal intelligently with expert witnesses retained by us.

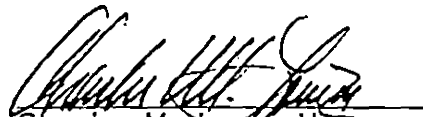
6. During our meetings, attorneys from my firm and I explained to Dr. Weinberg and the other consultants our litigation plans, strategies and theories, as well as our mental impressions with respect to several aspects of the cases, including the anticipated depositions of both plaintiffs' and defendant's expert witnesses. This was necessary so that the scientific consultants would have a better understanding of how we expected to utilize the reports when they were completed.

7. As drafts of the reports were prepared by the consultants, attorneys in my firm reviewed them and proposed to the consultant changes in

the scope and approach of the reports which were incorporated in the final reports. Four attorneys in my firm were involved in this preparation process and devoted considerable amounts of time to this project.

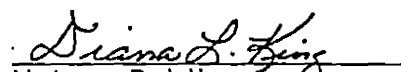
8. These reports were prepared for the sole use of defense counsel in the Adkins cases. Copies of the reports were not provided or shown to any expert witnesses. Because of the protected nature of said documents under Fed.R.Civ.P. 26(b)(2), said documents were never produced to plaintiffs' counsel in the Adkins cases.

Further affiant sayeth not.


Charles M. Love, III

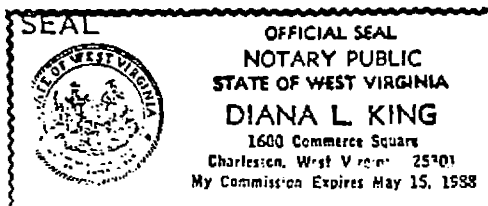
COUNTY OF KANAWHA)
) SS.
STATE OF WEST VIRGINIA)

Subscribed and sworn to before me this 24th day of May, 1985.


Notary Public

My commission expires:

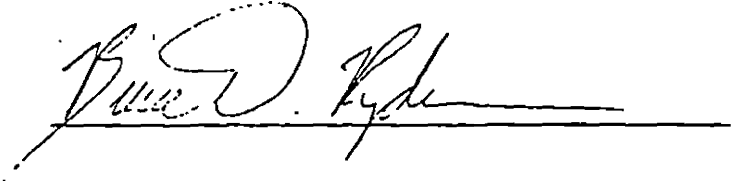
May 15, 1988



CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 28th day of May, 1985, to the following attorneys of record:

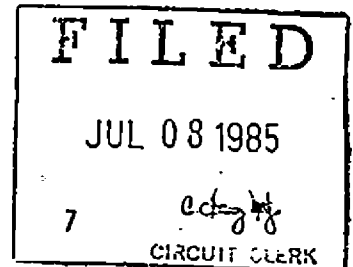
Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221

A handwritten signature in cursive script, appearing to read "Bruce D. Hyde", is written over a horizontal line.

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,)
)
 Plaintiffs,)
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vs.)
)
MONSANTO COMPANY,)
)
 Defendant.)

No. 80-L-970



DEFENDANT MONSANTO COMPANY'S MEMORANDUM IN
SUPPORT OF SUBMISSION OF DOCUMENTS FOR
IN CAMERA REVIEW

Monsanto has produced herewith for in camera review by the Court documents from the files of its inhouse attorneys relating to the subject matters specified by this Court's current order with respect to discovery, but which Monsanto believes should be protected from discovery by virtue of the attorney client privilege and/or the attorney work product privilege. For the Court's convenience in reviewing the documents, Monsanto has grouped them into nine sets, each of which will be briefly described below, together with a discussion of the reasons that that set of documents is privileged.

Monsanto is convinced that these documents, as well as the documents submitted for in camera review on May 6 and May 28, 1985, should be protected from discovery under Illinois law. In addition, the subject matter of these documents, which discuss the litigation plans of Monsanto's attorneys in

dioxin-related litigation and legal advice given by Monsanto's attorneys to the corporation, is such that Monsanto will be severely prejudiced in this and other litigation if the contents of these documents were disclosed. Monsanto therefore requests that the Court give it at least a day's advance notice of its rulings on these documents so that in the event of a turnover order it may determine whether to seek appellate review of that order and what appropriate steps to take in order to obtain such review.

GROUP I

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C22830- C22834	3/4/80	Jay R. Gentry Ortiz	Robin Bierstedt
C22835- C22836	3/4/80	Jay R. Gentry Ortiz	R.T. Berendt J.C. Sabetta
C22837- C22838	5/18/81	D.L. King	Pual N. Bowles Charles M. Love Roger W. Tomplins Phyllis M. Potterfield Gerard R. Stowers
C22839- C22880	6/19/81	Robert T. Berendt	John C. Sabetta
C22881	12/17/81	Harry S. Scott	John C. Sabetta Charles M. Love
C22882- C22891	4/5/82	F. Hileman (handwritten) note by H.S. Scott)	
C22892- C22894	3/4/82	John C. Sabetta	Robin J. Stalbow R.T. Berendt T.M. Bistline

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C22895- C22928	4/29/82	Harry S. Scott	John C. Sabetta
C22938- C22941	5/14/82	Robin J. Stalbow	Robert T. Berendt
C22942- C22946	5/27/82	Robin J. Stalbow	John C. Sabetta James E. Tyrell, Jr. H.S. Scott
C22947- C22956	6/4/82	Harry S. Scott	John C. Sabetta
C22957	6/9/82	W.R. Udell	Robin J. Stalbow
C22958- C22959	6/22/82	Harry S. Scott	John C. Sabetta
C22960- C22962	7/2/82	Harry S. Scott	John C. Sabetta
C22963- C22971	7/14/82	Thomas M. Bistline	John C. Sabetta Charles M. Love, III
C22972- C23062	7/30/82	H.C. Godt	W.B. Bennet D.L. Weber Bowles, McDavid, Graff & Love A.M. Ford H. M. Galloway J.L. Henshaw G.L. Levinskis C.P. Rader H.S. Scott Townley & Updike
C23063-	8/24/82	Robert T. Berendt	Charles M. Love John C. Sabetta
C23066- C23079	10/12/82	John C. Sabetta	Robert T. Berendt Thomas M. Bistline
C230820 C23087	10/18/82	Henry C. Godt	Charles M. Love, III
C23088- C23097	10/31/83	Thomas M. Bistline	Charles M. Love, III Philip D. Pakula

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23098- C23112	11/5/82	Robin Bierstedt Edward T. Ferguson	John C. Sabetta J.E. Tyrrell R.T. Berendt P.M. Pakula
C23113- C23114	12/22/82	Harry S. Scott	Charles M. Love, III
C23115- C23140	7/22/83	R.J. Barnes D.K. Sommerer	
C23141- C23144	9/20/83	Allan M. Ford	Diane Sommerer T.M. Bistline G.H. Griffin F.E. Kearney W.J. McCarville
C23145- C23151	10/15/83	Bowles, McDavid, Graff & Love	
C23152- C23159	11/28/83	Philip D. Pakula	Robert Berendt
C23160- C23162	12/22/83	Edward T. Ferguson, III	T. M. Bistline
C23163- C23164	12/23/83	Edward T. Ferguson, III	William R. Udell
C23165- C23166	12/23/83	Edward T. Ferguson, III	Fred D. Hileman
C23167- C23179	12/28/83	David F. Snively	R.T. Berendt T.M. Bistline P.M. Pakula
C23180	1/3/84	Charles M. Love, III	Tom Bistline
C23186- C23187	1/4/84	Fred D. Hileman	Edward T. Ferguson, III
C23188- C23189	1/11/84	Richard J. Barnes	Thomas M. Bistline
C23190- C23204	2/7/84	David F. Snively	P. Michael Pleska P.M. Potterfield G. Roush T.M. Bistline

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23205- C23224	3/1/84	Richard J. Barnes	Thomas M. Bistline A.M. Ford W. Hinchcliff
C23225	4/20/84	W.C. Lucas	R.J. Barnes P.D. Pakula B.M. Roth B.G. Sheffler D.K. Sommerer
C23479	5/7/84	Robert H. Waldman	Charles M. Love, III
C23480- C23484	5/23/84	R.E. Kelly	Charles M. Love, III
C23485	5/25/84	Allan M. Ford	Dave Snively, III George Roush M. Pleska D. King M. Weinberg G. Levinskas W. McCarville C. Love R. Thompkins
C23486- C23490	6/6/84	David F. Snively	Charles M. Love
C23710- C23778		Townley & Updike	Monsanto
C23779- C23781		W. R. Brooks	Dr. A. Ford M. Pleska P. Potterfield D. Snively Dr. W.J. McCarville

These documents are correspondence between Monsanto and its outside counsel for In re "Agent Orange" Product Liability Litigation, Townley & Updike, or its outside counsel for Adkins v. Monsanto Company, Bowles, McDavid, Graff & Love. Jay R. Gentry Ortiz, R. T. Berendt, T. M. Bistline, G. H. Griffin, and D. F. Snively are attorneys employed by Monsanto; John C. Sabetta, Robin

Brierstedt, Robin Stallow, James E. Tynell, Phillip D. Pakula, Diana Sommerer, Edward T. Ferguson, W. C. Lucas, Richard J. Barnes, B. M. Roth, and B. G. Sheffler are attorneys with the firm of Townley & Updike; Charles M. Love, Paul N. Bowles, Roger W. Tompkins, Phyllis M. Potterfield, Gerald R. Stowers, and P. Michael Pleska are attorneys with the firm of Bowles, McDavid, Graff & Love.

These documents are protected by the attorney work product privilege set forth in Supreme Court Rule 201(b)(2). The documents prepared by attorneys, whether outside counsel or employed directly by Monsanto, clearly contain the theories, mental impressions, and litigation plans of those attorneys with respect to these cases. The content of the documents not prepared by attorneys demonstrates that those documents were prepared at the request of the attorneys and on the basis of what the authors of the documents had been told concerning the litigation plans and theories of the attorneys. The fact that these documents were sent to Monsanto's outside counsel in those cases further demonstrates that their preparation was part of Monsanto's litigation effort in those cases; outside counsel otherwise would have had no reason to receive these documents. All of these documents are therefore protected from discovery by the attorney work product privilege. Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 103, 432 N.E.2d 250, 254 (1982).

In the event that this Court holds that any of these documents must be produced, Monsanto will be prejudiced not only in the present proceedings but also in the Agent Orange and Adkins cases if this material is made available to its opposing parties or their counsel in those cases. Monsanto therefore renews herein its Motion for Protective Order filed on May 6, 1985, in order to limit disclosure of any documents produced out of any group described in this in camera submission.

GROUP II

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23682	12/9/82	Thomas Bistline	Robert E. Soden
C23783- C23786	8/19/83	Allan M. Ford	Myron Weinberg D.R. Bishop T.M. Bistline G.H. Griffin D.S. Frazer M.C. Throdahl W.B. Papageorge R.L. Pflederer J.D. Wilson W.J. McCarville G. Roush, Jr. F.E. Kearney
C23787	9/2/83	Myron S. Weinberg	George Roush
C23789- C23791	9/7/83	Myron S. Weinberg	Dr. Allan Ford Dr. Wm. McCarville
C23792- C23794	9/13/83	Myron Weinberg	Richard Barnes Sommerer
C23795- C23798	9/20/83	Allan Ford	Dr. Myron Beinberg T.M. Bistline G.H. Griffin F.E. Kearney W.J. McCarville G. Roush, Jr.

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23799	9/29/83	Myron Weinberg	Allan Ford
C23800- C23812	10/7/83	Myron Weinberg	Richard J. Barnes Diane Sommerer Robert Berendt Fred Panciera
C23813- C23815	10/31/83	Myron Weinberg	Dr. Wm. Gaffey
C23816- C23817	11/3/83	Myron Weinberg	Al Ford Bob Golden Helene Guttman Nate Karch Martha Linet Tina Long Joe Rodericks
C23818- C23823	11/21/83	Myron Weinberg	Charles Love, III Tom Bistline
C23824- C23826	12/29/83	Wm. A. Shirley	Myron S. Weinberg A.M. Ford W. J. McCarville
C23827- C23834	2/14/84	A.M. Ford	T.M. Bistline D.F. Snively K. Johnson D. King W. J. McCarville P.M. Pleska O.S. Ratterman M.S. Weinberg J.D. Wilson
C23835	2/23/84	A.M. Ford	G.J. Levinskis T.M. Bistline F.R. Johannsen W.J. McCarville P.M. Pleska G. Roush J. H. Senger D.F. Snively M.W. Stevens M. S. Weinberg J.D. Wilson

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23836- C23849	2/24/84	Allan Ford	Myron Weinberg R.J. Barnes T.M. Bistline D.F. Snively C.M. Love, III W.J. McCarville
C23850- C23851	3/2/84	Thomas Bistline	Hans Zeisel R.T. Berendt D.F. Snively
C23852- C23853	3/6/84	Ralph Munch	Myron Weinberg T.M. Bistline W.J. McCarville A.M. Ford
C23854- C23855	3/19/84	Myron Weinberg	Charles Love, III D. Snively M. Silcox
C23856- C23857	3/20/84	Myron Weinberg	Charles Love M. Silcox D. Snively
C23858	3/20/84	Myron Weinberg	Charles Love D. Snively
C23859- C23860	3/23/84	Marcia Silcox	Charles Love
C23861- C23862	4/2/84	M. Silcox	Charles Love D. Snively M. Weinberg
C23863- C23864	4/12/84	M. Silcox	Charles Love D. Snively M. Weinberg
C23226- C23478	4/23/84	A.M. Ford H.C. Godt	R.J. Barnes T.M. Bistline W.J. McCarville P.M. Pleska G. Roush D.F. Snively M.S. Weinberg J.O. Wilson

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C13714- C13897	5/1/84	W.B. Hinchcliff K. A. Johnson	A.M. Ford H.M. Galloway C.M. Love D.F. Snively
C23865- C23868	5/4/84	W.A. Shirley	R.J. Barnes T.M. Bistline A.M. Ford H.A. Laitinen C.M. Love R.H. Munch P.M. Pleska H.S. Scott D.F. Snively H.C. Godt M.S. Weinberg A.H. Heinze T.H. Laffere W.J. McCarville
C23869- C23933	5/24/84	H.C. Godt	R.J. Barnes T.M. Bistline A.M. Ford W.J. McCarville P.M. Pleska G. Roush D.F. Snively M.S. Weinberg J.D. Wilson
C23934	5/25/84	M.S. Weinberg	Roger Tompkins Charles Love D.F. Snively W.J. McCarville
C23936- C23937	6/19/84	Allan Ford	M. Weinberg Nathan Karch W. McCarville G. Roush J. Wilson K. Johnson
C23938- C23944	7/5/84	Myron Weinberg	Roger Tompkins D.F. Snively C.M. Love W.J. McCarville R. Golden

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23497- C23689	10/1/84	Kathleen A. Johnson	A.M. Ford J.T. Garrett D.L. King C.M. Love, III W.J. McCarville G. Roush H.S. Scott D.F. Snively R.W. Thompson M.S. Weinberg J.D. Wilson
C23690- C23709	10/30/84	William A. Shirley	Dr. Frank Dost Dr. A.M. Ford Michael Pleska D.F. Snively
C23945- C23951	2/25/85	M. Weinberg	Nathan Karch Allan Ford D.F. Snively M. Silcox

These documents are communications among Monsanto, its outside counsel in the Agent Orange and Adkins cases, and outside experts or consultants retained in connection with those cases.

These documents are protected from discovery by the attorney work product privilege of Rule 201(b)(2). As stated in the affidavits of Richard J. Barnes, Charles M. Love III, and Myron Weinberg filed May 6 and 28, 1985, Dr. Weinberg and Weinberg Consulting Group Inc. were retained to assist in the preparation of Monsanto's defense in the Agent Orange and Adkins cases and considerable time was spent discussing litigation plans and theories with Dr. Weinberg. These documents consist of further discussions of such plans and

theories as well as exchanges of information intended to assist Dr. Weinberg and the other consultants in completion of the projects developed as a result of these discussions. The documents not involving Dr. Weinberg contain on their face the discussion of the attorneys' litigation plans and theories necessary to invoke the protection of the attorney work product privilege.

GROUP III

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23952- C23958	11/18/82	D.H. Rowland (Handwritten notes by T.M. Bistline)	Robert Berendt T.M. Bistline
C09617- C09627	--	Carr, Goodson & Lee, P.C.	E. Kelly G. Roush E. Tillman
C23959- C23971	--	Carr, Goodson & Lee, P.C.	
C23972- C23981	--	Carr, Goodson & Lee, P.C.	

These documents were prepared by Monsanto's insurer and its counsel in connection with the Agent Orange litigation. On their face, these documents discuss litigation strategy and theories in connection with that litigation and are therefore covered by the attorney work product privilege. In addition, Illinois law recognizes a privilege existing as to communications between a party and its insurer and the

insurer's attorney. Monier v. Chamberlain, 35 Ill.2d 351, 221 N.E.2d 410, 415 (1966); People v. Ryan, 30 Ill.2d 456, 197 N.E.2d 15 (1964). These documents thus are also protected by that insurer-insured privilege.

GROUP IV

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C23982- C23987	4/16/79	R.T. Berendt	--
C23988- C24046	10/26- 28/81	J.R.G. Ortiz	--
C22929- C22937	5/11/82	G.R. Stowers	
C24047- C24055	6/1/82	T.M. Bistline	--
C24056	7/8/82	T.M. Bistline	--
C24057- C24063	8/31/82	T.M. Bistline	--
C24064- C24066	9/13/82	T.M. Bistline	--
C24067- C24072	11/9/82	R.T. Berendt	--
C24073- C24076	12/10/82	T.M. Bistline	--
C24077- C24083	2/16 and 2/17/83	T.M. Bistline	--
C24084- C24085	4/4/83	T.M. Bistline	--
C24086- C24088	5/5/83	R.T. Berendt	--
C24089- C24090	8/4/83	R.T. Berendt	--

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C24091- C24094	10/12/83	T.M. Bistline	--
C24095- C24101	10/18/83	T.M. Bistline	--
C24102- C24107	12/5/83	R.T. Berendt	--
C24108	12/21/83	R.T. Berendt	--
C24109- C24123	1/14/83	T.M. Bistline	--
C24124- C24132	2/29/84	T.M. Bistline	--
C24133	3/1/84	R.T. Berendt	--
C24134- C24161	3/25/84	T.M. Bistline	--
C24162- C24168	4/16/84	T.M. Bistline	--
C23491- C23493	7/24/84	P.M. Potterfield	
C23494- C23496	7/24/84	P.M. Potterfield	
C24172- C24183	--	T.M. Bistline	--
C24184- C24189	--	T.M. Bistline	--
C24190- C24191	--	T.M. Bistline	--
C24200- C24202	--	T.M. Bistline	--

These documents consist of notes by Monsanto attorneys of meetings or interviews in which they have participated in connection with the Agent Orange or Adkins cases. Notes taken by an attorney necessarily reveal the attorney's mental

processes in evaluating the communications. For this reason, the Illinois Supreme Court has held that attorney notes are subject to protection by the attorney work product privilege. Consolidated Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250, 253 (1982). This privilege doubly attaches to those documents which are notes of strategy sessions among the attorneys concerning these cases. These documents, of the specific nature described as protected by the Illinois Supreme Court, are therefore privileged and not subject to production in this case.

GROUP V

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C24280- C24338 C24338	3/30/81	Karch & Assoc. Weinberg Consulting Group	Bowles, McDavid, Graff & Love
C24339- C24343	11/15/83	Karch & Assoc.	T.M. Bistline
C24344- C24489	2/2/84	Human Performance Systems	Weinberg Consult- ing Group
C24490- C24585	2/2/84	Human Performance Systems	Weinberg Consult- ing Group
C24586- C24598	4/4/84	Weinberg Consult- ing Group	--
C24599- C24623	6/21/84	M. Weinberg	Charles Love D. Snively Dr. W. McCarville M. Silcox
C24624- C24628	--	Weinberg Consulting Group	--
C24629- C24642	--	Weinberg Consulting Group	--

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C24643	--	Weinberg Consulting Group (Handwritten notes by T.M. Bistline)	--
C24645- C24650	--	Weinberg Consulting Group	--
C24651- C24676	--	Weinberg Consulting Group	--
C24677- C24698	--	Weinberg Consulting Group	--
C24699- C24703	--	Weinberg Consulting Group	--
C24704- C24708	--	Weinberg Consulting Group	--

These documents are drafts of some of the documents that were submitted to the Court for in camera review on May 6 and May 28, 1985. As discussed in the memoranda in support of those submissions and the affidavits filed therewith, these documents were created by consultants in connection with the Agent Orange and Adkins cases and were largely based upon discussions between the consultants and outside counsel for Monsanto concerning the litigation plans and theories of the outside counsel. These documents are therefore protected from production by the attorney work product privilege.

GROUP VI

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C24709- C24716	11/24/81	Allan M. Ford	J.H. Senger R.T. Berendt G.J. Levinskas R.S. Nelson H.S. Scott E. Tillman
C24717- C24768	3/2/82	T.M. Bistline	George J. Levinskas R.T. Berendt H.S. Scott
C24769- C24771	4/2/82	H.S. Scott	A.M. Ford T.M. Bistline
C24772- C24775	5/27/82	S.G. Collins	R.T. Berendt T.M. Bistline J.R. Condray G.D. Ingenthron
C24776- C24783	6/2/82	H.S. Scott (handwritten notes by T.M. Bistline)	---
C24784- C24787	6/25/82	R.S. Nelson	L.J. Boesch, Jr. R.V. DeSchutter W.B. Hogeman V.T. Matteucci G. Roush, Jr. E.C. Spurrier R.T. Berendt C.F. Callis J.R. Condray J.H. Senger M.C. Throdahl
C24788- C24790	6/28/82	S.G. Collins	R.T. Berendt T.M. Bistline J.R. Condray G.D. Ingenthron
C24791	7/15/82	T.M. Bistline	Dr. George Roush R.T. Berendt

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C24792- C25020	9/22/82	W.B. Bennet D.L. Weber	J.R. Condray T.M. Bistline H.S. Scott H.C. Godt
C25021- C25023	2/22/83	Fred Hileman	J.R. Condray T. Bistline W.B. Bennet D.L. Weber
C25024- C25025	5/10/83	A.M. Ford	T.M. Bistline G.H. Griffin F.E. Kearney
C25026- C25030	6/10/83	W.R. Gaffey	T.M. Bistline P. Pakula C.M. Love A.M. Ford
C25031	7/21/83	H.M. Galloway	T.M. Bistline C.M. Love P. Park
C25032	8/12/83	T.M. Bistline	G. Roush R. T. Berendt W.J. McCarville
C25033- C25036	9/16/83	A.M. Ford	J.D. Wilson T.M. Bistline G.H. Griffin F.E. Kearney W.J. McCarville
C25037- C25038	10/4/83	T.M. Bistline (Handwritten notes by J.D. Wilson)	W.J. McCarville W.B. Papageorge J.D. Wilson R.T. Berendt D.F. Snively
C25039- C25055	10/12/83	R.T. Berendt	R.W. Duesenberg
C25056- C25058	1/25/84	H.C. Godt, Jr.	T.M. Bistline A.M. Ford O.S. Ratterman, Jr. H.S. Scott, Jr.

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25059- C25067	1/25/84	H.C. Godt, Jr.	T.M. Bistline A.M. Ford O.S. Ratterman, Jr. H.S. Scott, Jr.
C25068- C25074	2/7/84	W.R. Gaffey	T.M. Bistline
C25075- C25077	3/5/84	W.R. Gaffey	D.F. Snively
C25078- C25089	3/14/84	Dr. Ralph Munch	--
C25089- C25090	4/27/84	R.E. Kelly	D.F. Snively G. Roush E. Tillman A.M. Ford C.M. Love
C25091	6/22/84	D.E. Reid	T.M. Bistline R.T. Berendt
C24169- C24171	7/26/84	Allan Ford	W.J. McCarville
C25417- C25422	9/10/84	D.E. Reid	R.T. Berendt T.M. Bistline

These documents are memoranda concerning the preparation of Monsanto's defense of the Agent Orange and Adkins cases which were circulated among Monsanto's inhouse attorneys and the Monsanto employees assisting in that preparation. The contents of all of these documents demonstrate that they were prepared as a result of consultation with Monsanto's attorneys and at their request. As a result, the documents disclose the theories and litigation plans of those attorneys. These documents are therefore protected by the attorney work product privilege, and Monsanto should not be required to produce them herein.

GROUP VII

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25092- C25094	4/15/82	R.A. Stohr	--
C25095- C25097	8/5/80	R.A. Stohr	--
C25098	2/16/81	R.A. Stohr	--
C25099	10/25/81	R.A. Stohr	--
C25100	11/12/81	R.A. Stohr (handritten notes by P.J. Arnall)	P.J. Arnall D.P. Doherty B.M. McManis R.C. Rutter
C25101	1/14/82	R.A. Stohr	--
C25102- C25116	9/6/79	Gregory H. Wolk	Jay R. Gentry Ortiz R.T. Berendt F.A. Provorny J.M. Schifferdecker
C25117- C25125	4/11/80	J.W. Newbold	Jay R. Gentry Ortiz R.T. Berendt R.A. Stohr D.A. Samford
C25126- C25132	12/18/80	R.C. Isham	D.R. Bishop J.R.G. Ortiz R.A. Stohr
C25133- C25149	8/28/81	K.R. Heineman	J.R.G. Ortiz R.G. Dahlen P.J. Arnall
C25150- C25151	9/18/81	Paul R. Michael	K.R. Heineman
C25152	12/13/83	Edward T. Ferguson	K.R. Heineman J.C. Sabetta L.M. Frieber T.M. Bistline

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25160- C25165	12/19/83	D.F. Snively	R.T. Berendt T.M. Bistline J.G. Nassif
C25166- C25169	1/29/85	A.M. Ford	B.D. Ryder Nate Karch T.M. Bistline D.F. Snively
C25170- C25173	9/3/81	R.A. Stohr	--
C25174- C25175	12/2/81	P.J. Arnall	--
C25176	12/10/81	P.J. Arnall	B.M. McManis
C25177- C25178	8/23/82	R.A. Stohr	--
C25179- C25182	11/24/82	T.M. Bistline	--
C25183- C25190	--	T.M. Bistline	--
C25191- C25208	--	D.F. Snively	--
C25209- C25221	--	D.F. Snively	--

These documents relate directly to this lawsuit and to other litigation arising out of the spill at Sturgeon, Missouri. All of these documents relate to the attorneys' litigation plans, theories and mental impressions, concerning these cases and are therefore protected by the attorney work product privilege. The correspondence from outside counsel is also protected by the attorney-client privilege; the inhouse attorneys to whom it was addressed were persons who held such

advisory roles to top management at Monsanto that a decision as to the matters discussed would not normally be made without their advice or opinion. Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250, 258 (1982).

GROUP VIII

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25222- C25232	3/6/79	R.E. Marsh C.D. Barklay S.G. Janik	R. Ewing J. Maiurum C.D. Barclay J.D. Holschuk S. Anderson J.M. Wiles W. Fisher J.M. Alton M. Liebman
C25233- C25238	6/15/79	P.S. Park	--
C25239- C25244	1/31/80	H.M. Keating	P.S. Park
C25245- C25277	5/5/80	V.A. Haskins	D. Dill F.A. Provorny D. Roman S. Vogel M.M. Liebman
C25278	2/15/83	D.L. Coleman	J.G. Nassif
C25279- C25282	8/4/83	L.D. Plumb	T.M. Bistline F.J. Stokes J.W. Fullinwider
C25283- C25285	10/13/83	M.J. Furman	M. Liebman J.V. Insley J. Guidos
C25286- C25371	11/30/84	W.B. Bennet D.R. Dill H.C. Godt, Jr. D.K. Lynch S.H. Vogel	T.M. Bistline H.S. Scott

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25372- C25374	--	R. LaDriere	T.M. Bistline

These documents relate to other Monsanto litigation involving dioxin or chlorophenols. All of these documents are protected by the attorney work product privilege, as they were prepared by or at the direction of an attorney and reveal the attorney's litigation plans, theories, and mental impressions concerning that litigation.

GROUP IX

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25375	11/27/74	J.R. Bley, Jr.	P.G. Hammer W.C. Brandenburg J.T. Garrett L.G. Scharpf J.C. Weber
C25376- C25377	3/28/78	J.C. McPhillips	F.A. Provorny D.P. Roman R.G. Pier J.D. Wilson
C25378- C25379	8/11/78	P.S. Park	R.W. Duesenberg F.C. Rehfield
C25380- C25385	1/15/79	F.A. Provorny	--
C25386- C25394	4/3/79	J.J. Spano (handwritten notes by R.T. Berendt)	P.O. DeGarmo H.M. Keating F.C. Meyer P.S. Park D.R. Bishop W.A. Blase E.N. Brasfield H.W. Curtis M. Dmytryszya J.W. Molloy J.R. Thurrott R.T. Berendt

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25395	6/27/79	F.A. Provorny	--
C25396- C25399	5/6/80	J.D. Wilson (handwritten notes by R.A. Stohr)	T.L. Gossage E.L. Head H.W. Kilbourne J.C. McPhillips M.E. Miller R.G. Pier F.A. Provorny R.A. Stohr D.B. Edwards B.G. Hammond P.S. Park K.C. Sehmert A.F. Werner P.J. Arnall
C25400- C25402	8/11/83	T.M. Bistline	--
C25403- C25405	8/26/83	P.H. Smith	M.E. Whelan W. J. McCarville
C25406- C25411	9/15/83	L.W. Meyer	D.B. Edwards M.E. Foresman W.B. Papageorge P.H. Smith M. Whelan W.J. McCarville
C25412- C25413	9/16/83	J.G. Nassif	L.W. Meyer R.T. Berendt W.A. Blase P.H. Smith
C25414- C25416	9/22/83	L.W. Meyer	D.B. Edwards M.E. Foresman W.B. Papageorge P.H. Smith M. Whelan D.L. Coleman J.G. Nassif
C16651- C16662	9/24/84	H.D. Toy	P.H. Smith

<u>Number</u>	<u>Date</u>	<u>Author</u>	<u>Recipient</u>
C25423	11/8/84	R.T. Berendt (Handwritten notes by R.W. Duesenberg)	R.W. Duesenberg
C16666- C16678	3/6/85	T. Wasser (handwritten notes by P.H. Smith)	P.H. Smith
C16663- C16665	3/7/85	P.H. Smith	A.W. Wasser J.D. Wilson M.R. Foresman N.E. Prange J.G. Nassif P.A. Easterday

These documents were not prepared in connection with litigation, but rather consist of legal advice rendered by or requests for legal advice made to Monsanto attorneys. The persons to whom this advice was given or who requested the advice was the person who made the decision or was in such an advisory role that the decision would not be made without that person's advice or opinion. These documents are therefore privileged from discovery under Supreme Court Rule 201(a)(2) and Consolidation Coal.

COBURN, CROFT & PUTZELL

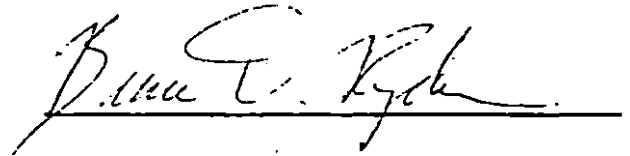
By 
 Kenneth R. Heineman
 Bruce D. Ryder
 312 South Illinois Street
 Belleville, Illinois 62220
 (618) 277-1020

Attorneys for Defendant
 Monsanto Company

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 5th day of July, 1985, to the following attorneys of record:

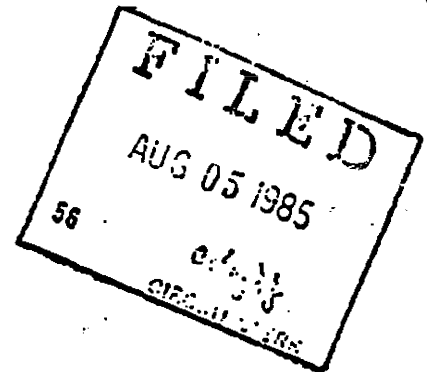
Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221

A handwritten signature in cursive script, appearing to read "Bruce E. Kyte", is written over a horizontal line.

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 MONSANTO COMPANY,)
)
 Defendant.)

No. 80-L-970



ORDER

Defendant Monsanto, pursuant to order, has submitted numerous documents to this court for in camera inspection asserting attorney-client and work product privileges.

After review of all submitted documents the argument and authorities in defendants' memoranda and its own research, this court rules as follows:

GROUP I

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C22830-34		X
C22835-6	C22836	C22835
C22837-8		X
C22839-80	C22846-80	C22839-45
C22881		X
C22882-91	X	
C22892-4	C22893-4	C22892

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C22895-928	X	
C22938-41		X
C22942-46		X
C22947-56		X
C22957		X
C22958-59		X
C22960-62	C22961-2	C22960
C22963-71	C22964-71	C22963
C22972-23062	X	
C23063-	C23064-5	C23063
C23066-79		X
C23080-87	X	
C23088-97	C23089-97	C23088
C23098-112		X
C23113-14	C23114	C23113
C23115-140		X
C23141-44		X
C23145-51		X
C23152-59		X
C23160-62		X
C23163-4		X
C23165-6		X
C23167-79	C23170-79	C23167-69

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C23180-85	C23181-85	C23180
C23186-87	X	
C23188-9		X
C23190-204	C23200-204	C23190-199
C23205-23224		X
C23225		X
C23479		X
C23480-84		X
C23485		X
C23486-90		X
C23710-78	X	
C23779-81		X

GROUP II

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C23682		X
C23783-86	X	
C23787	X	
C23789-91	X	
C23792-94		X
C23795	X	
C23799	X (except first paragraph)	
C23800-12		X

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C23813-15	X	
C23816-17		X
C23818-23		X
C23824-26	C23824-5	C23826
C23827-34	X	
C23835		X
C23836-49	X	
C23850-51		X
C23852-3	X	
C23854-5	produced first paragraphs	X
C23856-7	X	
C23858		X
C23859-60		X
C23861-2		X
C23863-4		X
C23226-23478	X	
C13714-13897	X	
C23865-68	C23866-8	C23865
C23869-933	X	
C23934	first 3 paragraphs	
C23936-37	X	
C23938-44		X
C23497-689	X	
C23690-709		X

GROUP III

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C23952-58		X
	X	
C09617-27	(except C09624 and first 8 lines of C0963)	
	X	
C23959-71	(except C23968 from V to end of V on C23969)	
C23972-81	X (except IV on C23980-1)	

GROUP IV

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C23982-7		X
C23988-46		X
C22929-37		X
C24047-55		X
C24056		X
C24057-63		X
C24064-66		X
C24067-72		X
C24073-76		X
C24077-83		X
C24084-85		X
C24086-88		X
C24089-90		X
C24091-94		X
C24095-101		X

GROUP IV

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C24102-107		X
C24108		X
C24109-23		X
C24124-32		X
C24133		X
C24134-61		X
C24162-68		X
C23491-93		X
C24172-83		X
C24184-89		X
C24190-91		X
C24200-202		X

GROUP V

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C24280-338	X	
C24339-43	X	
C24344-89	X	
C24490-585	X (except C24554-76)	
C24586-98		X
C24599-623		X
C24624-28	X	
C24629-42		X

GROUP V

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C24643-44	X	
C24645-50	X	
C24651-76	X	
C24677-98	X	
C24699-703	X	
C24704-8	X (except C24706 last half-6 lines of C24707)	

GROUP VI

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C24709-16		X
C24717-68	C24720-68	C24717-19
C24769-71	C2470-71	C24769
C24772-75	X	
C24776-83	X	
C24784-7		X
C24788-90	X	
C24791	X	
C24792-25020	X	
C25021-23	X	
C25024-25		X
C25026-30	C25027-30	X C25023

GROUP VI

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25031		X
C25032		X
C25033-36		X
C25037-38		X
C25039-55		X
C25056-58	C25058	C25056-7
C25059-67	C25061-67	C25059-60
C25068-74		X
C25075-7		X
C25078-89	X	
C25089-90		X
C25091		X
C24169-71		X
C25417-22		X

GROUP VII

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25092-4		X
C25095-97		X
C25098		X
C25099		X
C25100		X

GROUP VII

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25101		X
C25102-116	C25111-16	C25102-10
C25117-25		X
C25126-32	X	
C25133-49		X
C25150-51		X
C25152		X
C25160-65		X
C25166-69		X
C25170-3		X
C25174-5		X
C25176		X
C25177-78		X
C25179-82		X
C25183-90		X
C25191-208		X
C25209-21		X

GROUP VIII

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25222-32		X
C25233-38		X
C25239-44	C25241-4	C25239-40

GROUP VIII

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25245-77		X
C25278		X
C25279-82		X
C25283-85		X
C25286-71	X	
C25372-4		X

GROUP IX

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
C25375		X
C25376-7		X
C25378-9		X
C25380-5		X
C25386-94	X	
C25395		X
C25396-99	X	
C25400-02		X
C25403-5		X
C25406-11	X	
C25412-13		X
C25414-16		X
C16651-62	X	

GROUP IX

<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
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C25423		X
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C16666-78	X	
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C16663-65	X	
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C21360-C22231		X
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<u>Number</u>	<u>Produce</u>	<u>Not Produce</u>
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C24203-04		X
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C24205-09		X
-----------	--	---

C24210-32		X
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C24233-48		X
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C24249		X
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C24250-58		X
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C24259-69		X
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C24270-79		X
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The documents ruled discoverable shall be produced
instanter.



RICHARD P. GOLDENEISER
CIRCUIT JUDGE

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
3 ST. CLAIR COUNTY

4 FRANCES E. KEMNER, et al.,)
5 Plaintiffs,)
6 v.)
7 MONSANTO COMPANY,)
8 Defendant.)

CAUSE NO. 80-L-970

9
10 REPORT OF PROCEEDINGS

11 Before the HONORABLE RICHARD P. GOLDENHERSH

12 Testimony of Mr. John McPhillips

13 August 6, 1985
14

15
16 APPEARANCES:

17 MR. REX CARR, Attorney at Law, and
18 MR. JEROME SEIGFREID, Attorney at Law,
On behalf of the Plaintiffs;

19 MR. JOHN MUSGRAVE, Attorney at Law,
20 MR. JOSEPH NASSIF, Attorney at Law, and
MR. KENNETH HEINEMAN, Attorney at Law,
21 On behalf of the Defendant.
22

23 PATRICIA A. GANDY, CSR, RPR

24 Official Court Reporter

EXHIBIT H

1 (At this time Court was in recess and the
2 following proceedings were held in chambers.)

3 THE COURT: Did you bring a copy of that proposed
4 protective order and the one that's in force?

5 MR. HEINEMAN: Yes.

6 THE COURT: I wanted to look that over before we went
7 into that.

8 MR. HEINEMAN: Here is the proposed one which a motion
9 was filed on May the 5th, and here is the existing one that was
10 entered very early on in the case.

11 THE COURT: And is still in force. In paragraph 5 of
12 this proposed protective order, at the conclusion of that
13 action I would assume and I would state on the record that I am
14 assuming that that includes appeals of this action, if that's
15 not what you intend, I would insist that that be in there.

16 MR. HEINEMAN: I would think so, Judge.

17 THE COURT: Do you have any objection to this proposed
18 protective order?

19 MR. CARR: I didn't know it was going to come up
20 today. I don't have any copies with me, and I haven't thought
21 about it. I haven't seen it recently, I thought we were just
22 going to do something about the--this is the one that's in
23 effect and this is the one we want--

24 THE COURT: In addition.

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1 MR. CARR: In addition to that one. Judge, I don't agree
2 to any part of it. I see no reason to, because this would
3 effectively limit our use of this discovered material in other
4 cases that we have. It would require us to go through the same
5 work to get this material, and I don't know anything in the law
6 that says something that they have called work product is entitled
7 to any privilege. This Court has said in effect that it's not
8 entitled to any work product privilege, that it doesn't fall
9 within that category of material that's subject to the work
10 product protection, and it is ordered that it be given to us, and
11 I see absolutely no reason or justification for any document
12 that the Court says that we can have can be considered confidential.
13 As I understand it, that there is something relevant in any of
14 these documents, we, of course, can use it in the trial of this
15 case, simply because we don't consider it relevant doesn't mean
16 that it's not something that we can use. We have cooperated
17 with other lawyers who have dioxin cases. They've shared
18 information with us and we've shared with them, and I just see
19 nothing in the law, I don't know any possible law that would
20 entitle them to this kind of protection. Why should they be in
21 a different position than other parties?

22 THE COURT: Do you have anything you wish to say?

23 MR. HEINEMAN: Well, your Honor, first of all with
24 respect to there already is an order of this Court in existence

1 with respect to any information in this case that's been turned
2 over to Mr. Carr which has been stamped confidential.

3 MR. CARR: Let me interrupt one moment. That dealt
4 with trade secrets, commercial information, confidential research,
5 and anything, and that's been my understanding from the beginning
6 that that was an order to protect trade secrets. Simply because
7 you have stamped these things "Confidential", I have not
8 considered them unless something comes close to trade secret.
9 I will be frank with you, I have not considered any of these
10 things in any way confidential because you've stamped everything.
11 There isn't a document that you have given us that hasn't been
12 stamped "Confidential, subject to protective order," and by
13 your use of it, it is meaningless to me. And I will be frank,
14 I have not made the least attempt to comply with this order of
15 '83 that dealt with, and it was my understanding at the time
16 that you got the order on trade secret and confidential research
17 development and commercial information, and I have looked at
18 it only from that viewpoint, and that's been my understanding.
19 I will be frank to admit, I'm right now in contempt of this
20 order because I have not understood that I have been kept from
21 using this information and exchanging this information with
22 other attorneys, and I have. Anything that looked like it
23 might be in the nature of a trade secret or confidential
24 research, totally different. But this order that was entered

1 April of '83 was prior to the time they started supplying
2 these documents, and I wouldn't object to that kind of order
3 then because they are entitled to trade secret protection and
4 I wouldn't give it away. But, your Honor, they have stamped
5 everything "Confidential" and subject to protective order, and
6 I simply have not been obedient to this order because of that
7 reason.

8 MR. HEINEMAN: Have you turned over any documents to
9 somebody else that even appeared to you that they might relate
10 to confidential information or trade secret?

11 MR. CARR: No trade secret has been turned over to
12 anybody. I haven't seen anything that could be considered a
13 trade secret that you have given us. There hasn't been anything
14 that I have discussed with Paul Pratt on a number of occasions,
15 documents that we have that we've used and we've traded documents
16 with him. I can't tell you specifically that I gave a single
17 document as such to Paul Pratt, but I would be very surprised
18 if I have not. I know I've disclosed to him plenty of times
19 information that I have received from you, and I say every
20 single document you've given us has letters that you have sent
21 out to other people, and every document you've given us has got
22 that stamp on it. You haven't used it with any discretion at
23 all. And so for that reason, I just ignore it because it is
24 meaningless to me. I would have to sit down and analyze each

1 document, is this really a trade secret. As you know, you've
2 supplied thousands and thousands and thousands of pages of
3 documents to us, and no matter what the document, you've
4 stamped it trade secret, you've stamped it "Confidential,
5 subject to protective order," and it's been meaningless to me.

6 But to directly answer your question, I don't have any
7 specific reference in my mind that I have given a document to
8 either Pratt or to Stu Caldwell. But I know, when I went
9 on vacation I told Caldwell to come in and help himself to
10 my files that dealt with that particular aspect. He didn't
11 come in, but I'm telling you that that's the way I've used
12 your order, your stamp, because of that. And I read that to mean
13 trade secrets. And this current order you're trying to broaden
14 it to include what you now call work product, and that's--

15 THE COURT: We're getting off on a tangent. Do you
16 have any reply you want to make as to this proposed protective
17 order?

18 MR. HEINEMAN: I do, your Honor. Clearly, what is
19 discoverable in a particular case from a particular party varies
20 according to the law of the jurisdiction the one happens to be
21 in. Clearly under Federal law, and in the case in which Mr.
22 Caldwell is involved against Monsanto and in the cases in which
23 others are involved against Monsanto in the agent orange
24 litigation that is still pending in Federal courts, the standards

1 are quite different, and it is clearly unfair to Monsanto Company
2 to have people, litigants, their attorneys, be able to get
3 outside the judicial process in which they're involved information
4 that the Court which is administering that lawsuit would not
5 permit them to have. That's clearly not fair.

6 THE COURT: Okay, I've got two questions. Well, now,
7 wait a second. Doesn't that put you in the position of determining
8 what's privileged in Federal proceedings?

9 MR. HEINEMAN: No, what I am saying is that in that
10 litigation, that Court will decide through in camera proceedings
11 what is discoverable and what is not. In this situation you have
12 decided what is discoverable and what is not, all right. We
13 turn over documents in this litigation that you have determined
14 are discoverable, even though the standards for that discoverability
15 are quite different in other jurisdictions, all right?

16 THE COURT: Right.

17 MR. HEINEMAN: Now our position is we obey this Court's
18 order. We turn over the documents to this litigant for use in
19 this litigation and no other and let the other litigant and his
20 attorneys get whatever they're permitted to get in the Court in
21 which they're bringing their lawsuit. That's the patent unfairness
22 of it, and that's what we're trying to avoid.

23 MR. CARR: Well, I'm not familiar with any part of the
24 discovery rules that give you the right to make conditions on

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1 your production. When you produce it to me, unless it is a
2 trade secret, you are entitled to protection of your trade secrets,
3 but there is nothing else in any law of discovery that I have
4 seen anywhere that gives you the right to say what I can do with
5 material that you have produced to me under order of Court. I
6 have the right to decide that, not you. The Court says it is
7 not protected information. It is not protected information that
8 you have to give it to me. Now--

9 THE COURT: Okay, now, two things, I'm going to deny your
10 motion for protective order for two reasons. Number one, by the
11 order, you have this Court allowing you to determine what is
12 Federal work product and subject to a protective order. This is
13 a State circuit court. We deal with Federal substantive statutes.
14 We have no business making that kind of determination, which is
15 properly something to be done by the United States District Court.
16 There are different standards. They are different courts, they
17 are different systems, and I have no business making that kind
18 of determination. I have no business delegating to you the power
19 by your own determination to make that determination. Number two,
20 you're basically by this protective order putting yourself in
21 the position of saying we have asserted this privilege in this
22 Court. You have denied it because you have ordered, because the
23 Court has ordered that it be disclosed, you have asserted that
24 privilege in this proceeding as far as discoverability of these

1 materials in those instances where I have ordered those materials
2 be turned over, it has obviously been denied. And now this
3 protective order would allow you to relable it that way, even
4 when it has been denied as part of the order turning it over,
5 which I don't think makes any sense at all. Basically, it's
6 been denied as far as not being discoverable in the State of
7 Illinois, and I am not about to delegate to you the power to
8 make any determination or make the determination myself as to
9 whather it is or is not work product under the Federal rules.
10 Obviously I've, in my review of authorities and materials, I
11 have some witness as to what that standard is and everything, but
12 I'm not about to make that kind of determination. I don't think
13 it is proper for me to make it.

14 MR. HEINEMAN: Your Honor--

15 THE COURT: Wait a second. It is not proper for me to
16 delegate to you the power to make that kind of determination, so
17 I think because of both of those reasons I am going to deny
18 entry of the proposed protective order. I just don't think that
19 it's something that should be entered by this Court.

20 Now, you have some questions as far as--

21 MR. HEINEMAN: May I address myself to that issue a
22 little further, Judge? I'm suggesting respectfully to the Court
23 that you're misapprehending what it is that we would be able to
24 do with this order. We are not saying that another court can or

1 cannot allow discovery of this material, all we're asking this
2 Court to do is to permit that Court to exercise its jurisdiction
3 and prevent discovery in that case of something that that Court
4 deems a litigant in that case is not entitled to have.

5 THE COURT: Wait a second. By denying this, I don't
6 either help or prevent it. There is absolutely nothing in
7 anything that I have done that prevents you from going into the
8 Federal District Court in Charleston or any place else that you
9 have litigation pending and asking that that Court prevent any
10 kind of discovery of anything that has been ruled discoverable
11 here. It is not within my jurisdiction to determine what either
12 the discovery rules in the State of Missouri for example, or the
13 United States District Court should or should not be. And I
14 have not, as far as you being a party in front of me under my
15 jurisdiction. I have not in any way tried to prevent you from
16 going into any of those courts and getting that kind of order.
17 What I am preventing you from doing is taking it upon yourself to
18 or giving to me the position of labeling what would or would not
19 be discoverable either in the U.S. District Court or in a sister
20 state's court. But I'm not preventing you from getting any kind
21 of order in either any of these other states or in the U.S.
22 District Court.

23 MR. HEINEMAN: But Judge, if a litigant in that Court
24 already has the document or let's say it's prohibited from his

1 discovery in that court and he comes to Mr. Carr and gets it
2 because Mr. Carr gives him a copy of it, because this Court said
3 it was discoverable and then uses it in that litigation.

4 THE COURT: You're going to have to go to that other
5 Court and either prevent them from getting it or prevent them
6 from using it. I don't think that any kind of limitation that
7 you are asking me for in that order is what you are aiming at would
8 do that effectively and it really does delegate that power to
9 make that determination to either me or to you, and neither one
10 of us should be making that. You can assert it if you want, but
11 you can't assert it in this form. You assert it somewhere else.
12 I understand what you are saying, but this is not the place in
13 which to address it. Neither one of us have the, should be in
14 the position of determining what is Federal work product in this
15 Court in the State circuit court.

16 You had some questions as far as some discovery that
17 was ordered, is that correct?

18 MR. NASSIF: We had some other issues we wanted to
19 raise.

20 MR. HEINEMAN: About discovery that was ordered?

21 MR. NASSIF: Yeah, we had, well, your Honor, we have
22 to in terms of producing this information, we have counsel in
23 agent orange and in the Nitro case, we are reviewing with them
24 the documents you've ordered us to produce, and that's going on

1 right now and, you see what I mean now?

2 MR. HEINEMAN: All right, I wasn't sure what you had in
3 mind. We are in the process of clearing these documents with
4 the attorneys in those other lawsuits. Once we do that, obviously,
5 the client has to make a decision as to what it's going to do in
6 connection with this Court's order in terms of some appellate
7 procedure or something of that sort, and therefore that's what
8 we're waiting for now, and I just wanted to inform the Court
9 that that process is going on and we're going to be told--

10 THE COURT: Well, I was given to understand that the
11 reason that this hearing in the middle of trial time was being
12 asked for now was that so these matters could be cleared up and
13 it could all be produced by four o'clock this afternoon.

14 MR. NASSIF: One of the matters that needs to be
15 cleared up, and I will address that because I discussed that with
16 you, Judge, was the getting back and informing counsel promptly
17 as to what the Court's position on the protective order was
18 going to be, which I think is going to be a fairly critical,
19 maybe, may not be, but could be a critical element in our
20 decision on that, and we're going to communicate that right now
21 so that information can be communicated back right away, and I
22 think that's why we needed to talk to you at this point so we
23 could do that, and that decision could be made consistent with
24 the four o'clock deadline.

1 THE COURT: One othe thing, I assumed that it's obvious,
2 but maybe even if it's obvious, it should be stated on the record
3 that that other protective order does apply to anything that's
4 produced under this discovery order. I think that would be
5 obvious, but it's probably best said and not left unsaid.

6 MR. HEINEMAN: The first one.

7 THE COURT: The first one that I entered.

8 MR. HEINEMAN: In 1983?

9 THE COURT: I assumed, and maybe I should have stated
10 it for the record, but everything I produced would be subject
11 to that. Now, is there anything else that has to be cleared up?

12 MR. HEINEMAN: Yes, sir, I think there is.

13 THE COURT: Oh, I would also remind you that instantar
14 in the order meant instantar.

15 MR. HEINEMAN: What we were going to do was request
16 the Court for 24 hours, I guess, in which to seek some sort of
17 appellate review of this Court's order to turn this over, if
18 it is necessary, based upon our clearing the documents with
19 the counsel in the other cases.

20 THE COURT: I'm going to deny that out of hand. These
21 materials were produced under prior orders of this Court for
22 months if not years. I mean as far as compliance with discovery
23 order of this Court, we're way past the time of giving delays.
24 The only reason that I didn't say to turn it over an hour after

1 I issued the order was because of the volume of the documents.
2 I said instantter, I meant instantter. It's all overdue as far
3 as I'm concerned, and as far as this turning it over, the volume
4 of the materials that were turned over to me should have been
5 turned over months if not a year or so before they were turned
6 over to me under the existent discovery orders of this Court.
7 I am obviously not worried about appellate review of any of my
8 decisions. I assume that everything in this case is going up
9 on appellate review and will be reviewed by the appellate courts
10 of this State. I am not going to allow your request and build
11 in further delay in this process that is months, if not years
12 overdue. So the answer is no.

13 MR. CARR: Your Honor, I'd like to make a motion with
14 respect to this order that, of April the 6th, 1983, this protective
15 order. I would like to move for permission from this Court to
16 keep in my possession any and all documents that have thus far
17 been produced to me and to be given leave to not be bound by any
18 terms of confidentiality for the reason that all of the documents
19 that have been produced to me do not in fact constitute trade
20 secrets, confidential research, development, or commercial
21 information and I want leave because of the fact that none of
22 these documents constitutes such trade secrets. I want relief
23 from this order and permission to keep the material at the
24 conclusion of this case and to have the right to disseminate

1 that information in the free exchange of information has been in
2 existance in the products liability field litigation amongst all
3 attorneys who deal in that area, so as to continue the right
4 of attorneys to obtain justice for their clients because there
5 are, there is nothing in the rules or in the law that, as I
6 understand it, to allow a litigant to have protection where the
7 material is not a trade secret or confidential, and there is
8 nothing been given to me that constitutes that.

9 Now, if Monsanto, I'll say that I will not give that
10 information to others immediately. I haven't, inasmuch as I
11 know I haven't given a physical document to anybody, although
12 I may have given the contents or the gist of the document to
13 people, but I'll not do that if Monsanto represents to me,
14 assuming the Court gives me relief from this, gives me permission
15 to do that, if there is in fact something that they've given me
16 that really does constitute a trade secret, and I am not, and
17 I haven't recognized it as such, I'll certainly be willing to
18 reargue that point or to argue that particular document with
19 counsel before the Court. But I don't see anything that's been
20 given me to date to meet the standard of trade secret or
21 commercial.

22 THE COURT: You're saying in effect under Paragraph 3
23 you're challenging all the designations of trade secret?

24 MR. CARR: I'm moving that I be allowed to keep, they're

1 saying that I have to bring up the document that I want to use
2 or to keep or to disseminate, I'm saying all the documents that
3 I have been given. I want that leave, because none of those
4 constitute trade secrets. I'm willing to argue and litigate
5 that point with counsel now so that I can be relieved of this
6 order because of their indiscriminate use.

7 THE COURT: Let me make a suggestion on that motion.
8 First of all, the way I read Paragraph 6, you're allowed to
9 keep it through the end of the appellate process, anything
10 that's been produced in this case. If Monsanto has anything
11 that they want to designate as trade secrets, any reason why,
12 and taking my suggestion really from the Supreme Court rules
13 as to consultation between clients, I would suggest between the
14 two of you that you have a meeting among yourselves as to anything
15 that Monsanto would wish to designate as trade secrets and explain
16 in a conference between the two of you off the record as to why
17 it is a trade secret for Monsanto's protection of what they wish
18 to so designate. If the two of you can work out an agreement
19 among yourselves as to any materials, I'm sure I will be
20 inclined to go along. If there is still materials in dispute,
21 we will have an argument on that on the record. But in the
22 spirit of the rules, as far as contact between counsel to
23 resolve discovery problems and for the protection of anything
24 that Monsanto upon reconsideration may consider a trade secret,

1 I'd like that to be done, and if there is still an open dispute
2 as to any or all of the materials, I would be happy to hear your
3 arguments.

4 MR. CARR: Plaintiff agrees that that would be agreeable.

5 THE COURT: Agreeable to defendants? And I will just put
6 the motion in abeyance. As to the first part, you are allowed
7 to keep it. Any problem with having that consultation before I
8 hear any more on it, so you don't have to put what you consider
9 a trade secret on the record.

10 MR. HEINEMAN: I have no problem in a consultation with
11 respect to what's trade secret and what isn't. I obviously,
12 based upon what Mr. Carr has said to this point, believe there
13 is going to be considerable disagreement among us as to what is
14 and is not. And I don't know that it's going to end up saving
15 the Court a lot of time, but hopefully it will.

16 THE COURT: I realize it may not save me an ounce of
17 time, but I'd like to have it tried that way. I think the rules
18 so indicate that that should be tried first.

19 MR. NASSIF: Your Honor, would it be possible on the
20 in camera documents for you to give us a period of time for which
21 we can go to the courts in Charleston and New York before
22 Mr. Carr shares these documents with the individuals he's
23 mentioned that he is sharing information with so we can seek
24 orders from them before the documents are in fact disclosed to

1 counsel in other cases against Monsanto Company, and in the
2 meantime give the documents to Mr. Carr so they are not held
3 and if we should proceed to go ahead and if the stopping point
4 is the other litigation, disclosure to the counsels in other
5 litigation, could you give us some period of time, even though
6 we might disclose the documents to Mr. Carr which would not
7 delay this proceeding but give us some period of time in which
8 we can go to these other jurisdictions and request some sort of
9 order on those documents?

10 MR. CARR: I would object to that, your Honor, because
11 that allows their action in another court to control what this
12 Court believes is right and proper, but I will tell this, that
13 I have no current plans, nor any current requests from anybody
14 relative to any of your documents and I don't intent to rush
15 out and give these documents to anybody. It's certainly not--and
16 there's no exigent reason to do that, and I will represent to
17 you that I will not give the documents to anyone in the near
18 future. But I certainly don't want this Court entering an
19 order dependent upon some other court's action.

20 MR. NASSIF: Your Honor, I would suggest that if you
21 are unwilling to give us just a period of time, and when Mr. Carr
22 says not give it away, if he lets somebody sit and read it,
23 that is almost as bad as giving it away.

24 MR. CARR: I won't let anybody sit and read it. I'm

1 telling you in good faith, there is no reason for me to disclose.
2 No one has ever asked me for any secret in camera documents,
3 all right, and I haven't given those in camera documents to
4 anybody. No one's seen them except Jerry and I. What I am
5 telling you is that I see no urgency about this situation, and
6 I am not, and I am representing as an officer of this Court
7 that I am not going to rush out and send to somebody this
8 document as far as I'm concerned. If you want to go to some
9 other court, you will have ample time to do so, but I will be
10 opposed to this Court entering an order on me as to what I can
11 or cannot do with this material. This Court cannot be controlled
12 by your actions in another court.

13 MR. NASSIF: Your Honor, we are not asking this Court
14 to be controlled by our actions in another court. We're simply
15 asking this Court to give us time to approach the other courts.

16 THE COURT: It sounds like you have that by agreement,
17 so--

18 MR. NASSIF: Well, can I have a definition of--

19 THE COURT: On the basis of my reasons for not entering
20 your original protective order, I would rather not enter an
21 order such as that. Apparently by agreement you are achieving
22 the same effect anyway, so--

23 MR. CARR: I will agree not to divulge any of this
24 in camera material to anyone for at least a period of 30 days,

1 and if you indicate that you are in the process of getting some
2 order in another place, I'm not going to try to skirt the affect
3 of another court. I respect all of the courts, and I am not
4 going to play dirty pool with another court. If you have an
5 order waiting there, I'm not going to rush out and give it to
6 somebody. So if 30 days is not adequate, you come back and
7 if I feel that in some way or another that I will be betraying
8 the lawyer on the other side by waiting any longer, I'll take
9 it up by this Court and tell the Court and you, hey, this is
10 dynamite stuff. Once I see it and I just in good faith cannot
11 keep this from these other lawyers, it will be condemning them
12 to some horrible fate if I do, I'll let you know if that comes
13 up. And this Court knows--

14 MR. NASSIF: After the 30 days?

15 MR. CARR: No, I'm giving you the 30 days. I agree to
16 the 30 days, but in that period of time I should find some
17 urgent reason to disclose, I will bring it up to the Court now.

18 MR. SEIGFREID: Since you have chosen to ignore me in it,
19 I assume you want me to be bound also by this?

20 MR. NASSIF: Your Honor, my request was that you bind
21 both.

22 MR. HEINEMAN: I was addressed to counsel, and I don't
23 think that's what you have done all the way through.

24 MR. CARR: Jerry, why didn't you be quiet?

1 MR. NASSIF: Your Honor, would you please extend my
2 motion to both counsel, and I assume that it is still denied?

3 THE COURT: I think the agreement gives you what you
4 want. I am not inclined to rule on this issue. I'm really not.
5 I think it's something that, again, it is the same type of thing
6 as that protective motion, and I don't think that I should be
7 making that kind of ruling.

8 You had something else?

9 MR. HEINEMAN: I have one more item that my good friend
10 and colleague James Craven has asked to bring to the Court's
11 attention. I am given to understand from Mr. Carr that either
12 today or early tomorrow he intends to rest his case.

13 MR. CARR: It won't be today, that's for usre.

14 MR. HEINEMAN: I apologize, Jerry, I really don't mean
15 to do that, I really don't, and I apologize. I understand that
16 both counsel for the Plaintiffs intend to rest their case
17 within the very near future. Mr. Craven is presently along with
18 other attorneys in our office working on our motion for a
19 directed verdict at the close of the Plaintiff's case. We
20 intend that to be a very serious presentation with a good deal
21 of case law related to it. I have been requested by Judge
22 Craven to ask the Court for a couple of days off between the
23 ending of Mr. Carr's case and the beginning of ours for the
24 purpose of presentation of our motion for directed verdict and

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Circuit Clerk

permit Plaintiffs to disclose said documents to any person for use in connection with any pending or future litigation against Monsanto, without permitting Monsanto to assert its privileges in the court in which such litigation is or will be pending.

4. No Federal court or other state court can determine the existence of any privilege with respect to said documents at this time, as a motion to determine such privilege in the absence of an outstanding request for production covering the subject matter of said documents would seek an advisory opinion, which is forbidden by the United States Constitution, Article III.

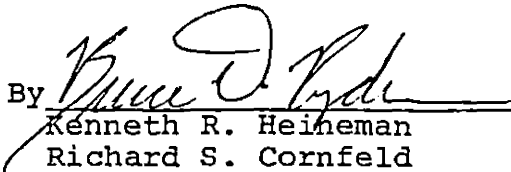
5. Supreme Court Rule 201(c) authorizes protective orders limiting, conditioning, or regulating discovery whenever appropriate to prevent unreasonable disadvantage or oppression.

6. Monsanto respectfully suggests that the only way to accomplish the Court's stated objectives of permitting the Federal courts to determine the application of any Federal privileges to said documents is to enter a protective order in the form attached hereto so that, in the event Monsanto receives a request for production in another case covering the subject matter of any of said documents, Monsanto may assert such privileges for determination by the court before which that case is pending.

WHEREFORE, Defendant Monsanto Company prays that this Court reconsider Monsanto's Motion for Protective Order and, after reconsideration, enter a Protective Order in the form attached hereto.

COBURN, CROFT & PUTZELL

By

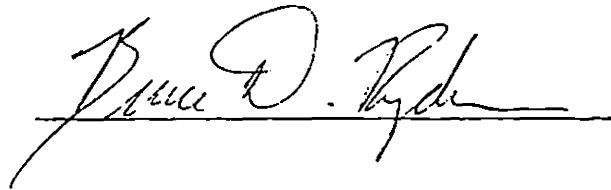

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Attorneys for Defendant
Monsanto Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was hand-delivered this 21st day of August, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62220



IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 80-L-970
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER

Upon the Motion of Defendant Monsanto Company, the Court having been advised in the premises, it is hereby ORDERED as follows:

1. Whereas this Court's discovery orders in the above-entitled cause have required Monsanto Company to disclose certain documents prepared in anticipation of litigation in other cases pending against it which may not be subject to discovery in those cases, the Court finds that Monsanto Company is entitled to a protective order restricting the use of such information to this litigation.

2. Monsanto Company may designate as work product material subject to this protective order any document produced to Plaintiffs on August 6, 1985, or any other document which this Court may require to be produced which was prepared in anticipation of litigation in other cases. Such designation may be made by identifying such documents by number in a memorandum filed in this case and served on Plaintiffs, marking documents supplied to

Plaintiffs with the notation "Work Product - Subject to Protective Order", or by any other means which reasonably informs Plaintiffs that the documents are subject to the terms of this Order.

3. All material subject to this Order is to be given to counsel for Plaintiffs, and the contents thereof shall be shown or disclosed only to the individual Plaintiffs and to no other persons. Said material is to be used only for purposes of this case and for no other purpose.

4. Upon the request of Monsanto Company made at the conclusion of this action, all documents subject to this Order, (including copies thereof and extracts therefrom) shall promptly be returned to Monsanto Company.

5. In the event that Plaintiffs desire to dispute Monsanto Company's designation of any document as subject to this Protective Order, Plaintiffs shall abide by the terms of this Order respecting the confidentiality of same unless or until the Court finds, upon motion duly made and presented, that said document was incorrectly designated as work product information.

ENTERED this _____ day of _____, 1985.

Judge

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

2 ST. CLAIR COUNTY, ILLINOIS

3 FRANCES E. KEMNER, ET AL.,)

4 Plaintiffs,)

5 vs.)

Case No. 80-L-970

6 MONSANTO COMPANY,)

7 Defendant.)

8
9
10 REPORT OF PROCEEDINGS

11 August 21, 1985

12
13 Before the HONORABLE RICHARD P. GOLDENHERSH, Circuit Judge

14
15 APPEARANCES:

16 MR. REX CARR and MR. JEROME SEIGFREID, Attorneys at
17 Law, on Behalf of the Plaintiffs; and

18 MR. K. HEINEMAN and MR. JOSEPH MASSIF, Attorneys at
19 Law, on Behalf of the Defendant Monsanto.

20
21 Kathleen Watson Brunsmann, RPR, CSR
22 Official Court Reporter

23
24 EXHIBIT J

1 to do. I'm not going to rule now. All right. Okay.

2 MR. CRAVEN: Now may I go to the protective order?

3 THE COURT: Sure. Sure. Okay.

4 MR. CRAVEN: As I read the transcript of August 6
5 hearing with reference to the protective order, I think it
6 can be fairly summarized to say this, that there was conver-
7 ation about the protective order, and this was soon after you
8 turned over some of the documents you had examined in camera.

9 THE COURT: I ordered that they be turned over.

10 MR. CRAVEN: You ordered that they be turned over.
11 Then there was an order for the protective order. There was
12 some discussion. You indicated on the record that you were
13 going to deny the motion for the protective order.

14 THE COURT: I did.

15 MR. CRAVEN: Later in the transcript Mr. Carr --
16 there was a lot of discussion, and then Mr. Carr indicated
17 that he would impose upon himself voluntarily a protective
18 order for a period of 30 days where upon you indicated in
19 view of that there was no necessity for you to rule.

20 THE COURT: No, no, no, no, no. That's not right.
21 I ruled that I was denying the protective order. If I said
22 anything about ruling, it was about further requests above
23 and beyond the particular protective order that had been
24 submitted to me, because I definitely ruled and did not vacate

1 my ruling that I was not going to sign that protective order.
2 If there was an indication from me that I wasn't ruling on
3 something, it was on something else.

4 MR. CRAVEN: I may be misreading the transcript.
5 But at page 150 of the transcript, and I think it relates
6 to the protective order, preceding it was the discussion of
7 the voluntary non-distribution. There's some business going
8 on about whether it would be applicable to Jerry, and Mr.
9 Carr told him he should have kept quiet, it was only going
10 to be Mr. Carr. I don't know whether you remember that
11 colloquy or not. Jerry was feeling left out and Rex was
12 mad at him for getting -- moving in.

13 MR. CARR: That will be the day.

14 MR. CRAVEN: And then Mr. Nassif said the protective
15 order, you wanted to extend it to both counsel, and the volun-
16 tary agreement, and the court says this, this is where --
17 if there's any ambiguity, it's in this language. I think the
18 agreement gives you what you want. I am not inclined to rule
19 on this issue.

20 THE COURT: Okay. I think there is some ambiguity
21 there, and what I was referring to was they wanted in effect
22 an order for 30 days or some period of time until they could
23 decide what to do about it.

24 MR. CARR: That was my understanding.

1 THE COURT: I was denying the protective order
2 per se. Orally they asked for some emergency or temporary
3 type of protective order. It was basically agreed to.

4 MR. NASSIF: I asked the judge if he would issue
5 a temporary order until we could go forward and seek protection
6 and the Judge--

7 THE COURT: That's what it was.

8 MR. NASSIF: That's when Rex piped up and said
9 "you don't have to do that, I'll give that to you." What
10 the Judge did not rule on was my request for a temporary
11 restriction, Jim.

12 MR. CARR: That's correct.

13 THE COURT: Thank you. I remember that now.that
14 you said it. Thank you.

15 MR. CRAVEN: There's no question that earlier on
16 in the transcript you deny the motion for protective order.

17 THE COURT: Yes, sir, I did.

18 MR. CRAVEN: But: just a person reading this,
19 I couldn't say that it had been allowed or denied.

20 THE COURT: Sure. I can see where that ambiguity
21 came about.

22 MR. CRAVEN: Assuming now that it is a denial of
23 the protective order. We are now here again on a Motion
24 again to reconsider that. Also in reading this, and I guess 166

1 reading a record is, you don't get the body language, and
2 everything that goes on, but I think there's a misapprehension
3 here, maybe, maybe not. What we want, and what we think we're
4 entitled to, we have litigation going in the federal courts
5 in other jurisdictions, and whether the material that the
6 Court has turned over to Mr. Carr is or is not discoverable
7 in that litigation by counsel in that case, those cases,
8 should be a matter to be determined by the law of the forum,
9 and the Courts there. Clearly, we're entitled to that.

10 If it's privileged in New York, it should be not usable against
11 us in New York, and Mr. Carr should not be able to give it
12 to counsel in New York, because that would effectively be
13 this Court making a decision for the New York Court, which
14 I'm sure the Court doesn't want to do. Now this Court has
15 decided that Mr. Carr can have the material for this case, and
16 we complied. But the only other -- the only thing to do was
17 to stand in contempt or comply. That's the Illinois system.
18 So we've turned it over. Now it shouldn't be a judgment as
19 to whether it goes to counsel in West Virginia and New York
20 in federal courts there, and Mr. Carr has with commendable
21 candor indicated he's willing to use it and give it to those
22 people, but he has given us a 30 day period. We're saying
23 he's not entitled to do that. We are saying that this Court
24 shouldn't make a decision for the federal courts of New York

1 and West Virginia. Judge, we had this kind of a question in
2 reverse in the Clark v. Monsanto thing where there were
3 protective orders running around and so forth. Each court
4 and each question of privilege, unfortunately the law is
5 different, and Illinois is really very peculiar --

6 THE COURT: Let me interrupt for a minute. What
7 did you have in Clark?

8 MR. CRAVEN: Well, in Clark there was protective
9 orders in West Virginia and some turn over orders in Madison
10 County, who was supposed to do what and where, and which
11 set of lawyers could get it. It was the same kind of issue.
12 It never got to a resolution because there was so many other --

13 THE COURT: Okay. I wasn't exactly clear what you
14 were referring to.

15 MR. CRAVEN: It was running around there. In this
16 case Mr. Carr has this material. We will debate on appeal
17 the question of whether it was or was not properly turned
18 over. It's a debatable issue. But we're entitled also
19 to debate in the federal court whether it is or is not
20 discoverable, and Mr. Carr is not entitled to moot that issue
21 by going up there and bartering this material with other
22 counsel. We are asking this Court for a protective order,
23 enjoining Mr. Carr from making that kind of use of it. Now
24 we are not asking that you exercise extra-territorial jurisdic-

1 tion. We can't get an order from the federal court in New
2 York enjoining Mr. Carr from breaching a protective order
3 there if there is one. We shouldn't be put on that burden.

4 THE COURT: Well, can't you get an order in New
5 York barring counsel there from getting it from Carr?

6 MR. CRAVEN: No, sir.

7 THE COURT: You can't?

8 MR. CRAVEN: We go in there and find that the
9 material is protected there and that court would have
10 jurisdiction only to not require us to turn it over to
11 counsel. If counsel goes out and gets it someplace else,
12 that doesn't offend the protective order of the New York
13 Court. Mr. Carr has got it now, and if he said he wanted it
14 for this litigation, he's got it. He can use it in this
15 litigation. Now let New York and West Virginia decide it
16 on the basis of the New York and West Virginia law, or the
17 federal rules, and we have an additional problem, Judge.
18 Some of the material that you ordered turned over was for all
19 practical purposes in our view the same with reference to the
20 scope of privilege as some of the material you denied a
21 turn over. We see no discernible difference in the material.
22 We think the rulings are inconsistent. I'm not trying to
23 open up and suggest that you now change your mind and give
24 them something that you didn't give them. I'm just saying

1 what motive does Mr. Carr want to use this material to moot
2 questions that are going to be in courts in New York and
3 West Virginia? Now, I don't believe that's cricket. We're
4 not playing cricket. But we're using discovery not for cat
5 and mouse games. I believe that we're entitled to that kind
6 of protection, and we are adamant that we are entitled to
7 that kind of protection. I suppose had we known, I don't
8 know what we would have done. Hind sight isn't even getting
9 very good anymore. But nevertheless, we want the protective
10 order, and in the absense -- I mean Mr. Carr has already
11 said 30 days. I don't question that he's abided by his own
12 30 day limitation.

13 THE COURT: Sure.

14 MR. CRAVEN: I suppose the Supreme Court is getting
15 tired of hearing about this case, or reading about the case,
16 as I understand it the Law Bulletin is getting ready to do
17 whatever they do. But anyway, we need time to get a super-
18 visory order because we think just very clearly in the
19 absense of a further agreement by Mr. Carr or protective
20 order here that the Illinois Supreme Court will say that the
21 New York and the West Virginia courts can decide their own
22 scope of discovery and we won't do it for them and moot the
23 issue.

24 THE COURT: You're telling me that a New York or

1 West Virginia or federal court cannot tell one of the counsel
2 that appears in front of it in a case at issue that they are
3 not allowed to get by other means what that court has said
4 they are not entitled to have in their particular litigation?

5 MR. CRAVEN: I don't know. I know this, I know
6 that this Court has jurisdiction to tell Mr. Carr that you
7 gave it to him to use in this litigation, and you didn't give
8 it to him to barter with other counsel in other cases, and
9 that that was an improper use of discovery. We don't have
10 to worry about what New York might or might not do. We're
11 here, we have Mr. Carr here, and I don't doubt that he would
12 abide by this Court's decision and this Court's order, and
13 I don't believe that this court said -- that if this court
14 said give it to Mr. Carr to barter -- I don't believe that
15 this court gave it to Mr. Carr to barter with. You gave it
16 to Mr. Carr to give him a chance in what he said was a fair
17 trial. He wanted to see it. Judge, we have, on this
18 question of discovery, I've been digging and looking and I've
19 got stacks of material as to what the scope of discovery in
20 this case is, over 700,000 documents, hundreds of thousands
21 of dollars of just divulging material, under precedent as far
22 as I can tell, with maybe MCIATT exception. If we have to
23 go through all of this kind of stuff, and then he takes it
24 and barter and makes whatever kind of use, when it's given
for a limited purpose and then when the Court recognizes that

1 there is a debatable issue as to whether or not it's privileged.
2 As I said, I think there's some inconsistency in the rulings.
3 In some instances it was turned over, others it wasn't.
4 There's a difference in format and so forth. But we think
5 work product was offended by the ruling. But where are we in
6 protecting ourselves in other litigation if work product is
7 in fact turned over? Where are we if under federal law it's
8 not discoverable, under Illinois law it is, and Mr. Carr has
9 given it to New York counsel? That's like telling the
10 jury to disregard something. If counsel has it and the
11 Court says you can't use it, how do you determine whether
12 they used it or not? The instruction to tell -- to admonish
13 the jury to disregard the fact that Counsel hit somebody in
14 the nose, you know it's just something that's there, everybody
15 saw it, and you tell them to move it out of their mind.
16 That's unfair to give us that burden. We would like the
17 Court to issue a protective order, and in the absence of
18 that protective -- permanent protective order, or at least
19 until the final conclusion of this litigation, to give us
20 time to go in for a supervisory order.

21 THE COURT: So in other words, you're asking me
22 to extend what was agreed upon the other day?

23 MR. CRAVEN: I'm perfectly content if Mr. Carr will
24 extend it. Judge, we're asking you to reconsider the whole

1 thing.

2 THE COURT: I understand that.

3 MR. CRAVEN: To give us a protective order.

4 THE COURT: I understand that.

5 MR. CRAVEN: But in the absence of a protective
6 order, then we will go to the court and try to get a protec-
7 tive order.

8 MR. CARR: Are you through?

9 MR. CRAVEN: Yes.

10 MR. CARR: Your Honor, this Court has interpreted
11 Illinois rules and case law relating to discovery, and it has
12 held that material A is not privileged as work product under
13 Illinois law, that it is not work product. Now Counsel
14 is asking the Court to say, to interpret the federal court
15 rules and say that this same material under federal court
16 rules is privileged by federal rules called work product.
17 This Court and the attorneys in this case have a difficult
18 enough time knowing what the law is in Illinois that applies
19 to discovery, without the same time going in and researching
20 and arguing point whether this is or is not work product
21 under federal court rules. I could quarrel and debate whether
22 or not this is work product under any number of federal court
23 cases. The work product rule is not simply apply when
24 Counsel for the other side says this is work product. The

1 Court goes in on an ad hoc basis and looks at document by
2 document as this Court has done, to determine whether it is
3 or is not work product under federal court rules. To require
4 this Court then to say that everything that they're calling
5 work product is, in fact, work product under federal court
6 rules is actually putting a burden on this Court that this
7 Court is not -- should not accept. As an officer of this
8 court, and as attorney of my clients, I have the right to use
9 the material that is given to me in any way permissible under
10 Illinois law. I don't have the right to divulge knowledge,
11 trade secrets and work secrets insofar as the process is
12 concerned, and the Court has issued an order that protects
13 them for things that are truly trade secrets. But I know of
14 no precedent, I know of no case, and Counsel doesn't cite
15 any case, that suggests this Court can prevent me from the
16 free exchange of information with other counsel in other
17 jurisdictions about the material that I've been given. I'm
18 not representing to this court, that I'm going to run out
19 tomorrow and give out what they call work product. But I
20 certainly don't believe that this Court has the right at
21 Counsel's request to put a burden on me, if I want to give
22 a piece of material to counsel some place, to put a burden
23 on me to say I've got to go into that federal court and
24 dispute whether or not this is or is not work product, or if

1 I give up some material that I'm going to be in contempt of
2 this Court, when in fact it's freely discoverable under
3 Illinois law, then what we would do then, if the Court could
4 then say well, we've got a lawsuit going on in West Virginia,
5 or we've got a lawsuit going on in Iowa, or we've got a law-
6 suit going on in Missouri, is this material useable in Missouri?
7 Either in the federal or the state court, or in Iowa, This
8 Court would be called upon to interpret the laws of 48 states
9 and of the 9 circuits to decide what is work product and
10 protection in those particular cases. No, I think it's a
11 burden that they're trying to put on this court by saying
12 everything that is -- they've assigned the label work product
13 is privileged from discovery in all the 50 states, in all
14 the federal jurisdictions. I insist this Court should not
15 put that burden on me. If they want to go to the Supreme
16 Court of Illinois to define my obligation, if I am obligated
17 to not give up this work product to some other lawyer some
18 other place, then I'm obligated to do it on my own as an
19 officer of this court, and because the ethics of the profession
20 so say that I should not do it. I certainly -- this Court
21 should not say that I'm engaging in unethical conduct or
22 attempting to prelimit what I can or cannot do. I know what
23 my obligations are and I don't know of any law anywhere that
24 says because one court may call something work product that

1 I may not use that in any way that I see fit in some other
2 jurisdiction. I think the Court is exactly right. If you
3 learn in this case that I was attempting to avoid an order
4 that you put on me as far as getting information was concerned,
5 I'm under the jurisdiction of this court, and if I tried to
6 avoid it. If you told me that I could not get X material,
7 that it is privileged and that I may not discover it, then if
8 I violate that order, or if they bring up information that
9 I'm violating the order, I'm subject to your jurisdiction.
10 To me it's ludicrous for Counsel to suggest that those
11 lawyers that are subject to the power and the jurisdiction
12 of the federal courts in New York, or West Virginia, or
13 Timbuktu cannot apply to those courts for protection orders
14 upon counsel of record, just as I am subject to the orders
15 of this court, those lawyers are subject there. And if they
16 want to prevent this material from falling into certain
17 hands, and if they can prevent it that way, they have the
18 right to do so. But they certainly should not be allowed
19 to circumscribe or limit my rights. I don't intent to use
20 this as counsel says, to barter. But I intend to use this
21 for the purpose of arriving at the truth wherever, and to help
22 others arrive at the truth. I know that in -- I have a case
23 pending in this court right now, the Ramiere case, the product
24 was manufactured in Iowa. Under the discovery rules of Iowa 176

1 I could not get certain material in Iowa. It's privileged
2 up in Iowa. But it's clearly discoverable in Illinois. They
3 tried to argue here that they didn't have to produce that
4 material because it's not discoverable in Iowa. It was
5 discoverable here. I got it here. Counsel in Iowa had given
6 me information, and I was told in advance -- and I told in
7 advance that I'm going to give information to Counsel in Iowa.
8 If you can go to Iowa courts and prevent me from giving that
9 information to Iowa attorney, I'll certainly oblige. I'm
10 not going to do that without order of court. Neither the
11 Iowa court or this court entered any order upon me not to
12 give this information to Iowa counsel. That's the only
13 practical experience I've had with jurisdictions that had
14 different rules relating to discovery and privilege. Based
15 upon that experience I would say if you can get the federal
16 court in New York, which has jurisdiction of those parties
17 and counsel to order them not to get it from me, then they'd
18 never have -- I am not going to broadcast it. I'm not going
19 to announce to the world, although I have a right to do so.
20 I see nothing in the material that the court gave me that
21 could even be remotely called something that could prejudice
22 Monsanto if it's sent elsewhere. I see nothing in it that
23 is not discoverable. I see nothing in it that could be called
24 work product and labeled, and thusly prevented from discovery 177

1 either here or elsewhere.

2 MR. CRAVEN: If I may.

3 THE COURT: Sure.

4 MR. CARR: I will, if counsel advises me that they
5 want to present this to the Supreme Court, I'm more than
6 willing to not divulge it to anybody else, to give you a
7 chance to file pleadings.

8 MR. CRAVEN: We shouldn't have to go to the
9 Supreme Court. ~~Wrong~~

10 MR. CARR: What I'm saying is if you want to go
11 for the supervisory order, I'm certainly willing to wait --
12 I'll wait 30 more days and give you another chance to file in
13 the Supreme Court. If you want that time.

14 MR. CRAVEN: Let me address the question. We
15 shouldn't have to go to the Supreme Court. Rex misapprehends
16 the issue.

17 MR. CARR: One of the two of us.

18 MR. CRAVEN: And is mixing it up. Protective
19 orders are not strangers to the law. They're entered all the
20 time.

21 THE COURT: Sure.

22 MR. CRAVEN: We are not talking about materials
23 that are discovered, and that there's no debate about. I
24 know there are pools of information in product's liability

1 cases, Pento cases, these kinds of things. Everybody gets into
2 the thing that they contribute. I know that. I'm talking
3 about information that he has, and we're not talking about
4 all things that he discovered, we're talking about those
5 things that were submitted for in camera inspection that we
6 debate as to whether they are or are not discoverable. That's
7 why they were in camera. That's all we want is a protective
8 order there. Rex knows very well that we can't go out to
9 New York and get an order that all New York lawyers can't go
10 down and get this little secret cash from Rex Carr. That's
11 just not -- that's just unreal.

12 MR. CARR: Hold it. Let me interrupt. You're
13 talking about cases pending in New York in a federal court.
14 You're saying you can't go to that court and get an order?

15 MR. CRAVEN: No, we can't go to that court and
16 say that New York lawyers generally couldn't -

17 MR. CARR: Not generally. You're talking about a
18 case in court.

19 MR. CRAVEN: He's really saying for some reason he's
20 trying to switch the whole forum. New York will decide itself
21 the question of what's privileged. He is not entitled to moot
22 it by giving the stuff away. He's entitled to use it in
23 this litigation, but that's all. That's why this court gave
24 it to him. Now West Virginia will decide, and I know that you

1 can have diverse rulings by diverse courts on the same subject
2 matter and so forth. But, Judge, not the general discovery --

3 THE COURT: I realize you're limiting it to the
4 in camera, the incamera stuff.

5 MR. CRAVEN: What happens if the Supreme Court when
6 this case, and if it ever concludes and gets there, and they
7 look at it and say Judge Goldenhersh was in error when he
8 ordered this turned over? It's clearly work product. It's
9 clearly protected. It's clearly privileged. Well, the genie
10 is out of the bottle because Mr. Carr has traded it off for
11 some purpose. It precludes us from having a fair examination
12 of that question. It moots the issue on appeal. That's not
13 fair. We're entitled to some reasonable protection. That's
14 all we're asking.

15 THE COURT: Okay. After hearing all this argument,
16 I think that my original decision was correct, in effect
17 you're telling me you are suggesting that I decide what is
18 proper in New York and or a Missouri court, or a United
19 States District Court, wherever that's operating under the
20 federal rules. You are ineffect, and you're also telling
21 me now in this argument for reconsideration, not only that,
22 but that those particular courts, either state or federal,
23 do not have the power over their own attorneys representing
24 the litigants in front of those courts to prevent them from

1 either seeking or receiving what that court in its wisdom
2 has decided under its own applicable rules is privileged
3 for whatever privilege basis. That's not for me to decide.
4 Now the parties in this case are under restrictions as far
5 as trade secrets and proprietary matters like that, and I
6 think that is a reasonable, contemplateable type of restric-
7 tion, as far as dissemination of information. But I don't
8 think with the kind of restriction that you're asking for is.
9 I think that my original ruling was correct. I understand --
10 I understood then that it wasn't explicitly noted in the
11 record, it is explicitly now that we're talking about the
12 in camera materials. But that protective order as far as
13 trace secrets and whatever applies to that as well as to the
14 other, of course. But I think my ruling was correct. I
15 don't think that this court has any business doing what
16 you're asking it to do. I also note that we end on another
17 agreement to wait a few days, which this court, that's fine
18 with me. But as far as entering the protective order that
19 was suggested to this court earlier in the month, August 6
20 I suppose, I think my decision at that time was correct. I
21 think it was appropriate as to what this court should do.
22 It's done with the realization, having done a substantial
23 amount of research in order to determine what was discoverable
24 and not discoverable here, that there are differences at least

1 between Illinois and the federal courts, that it's not
2 appropriate for this court to take on this function of decid-
3 ing what's appropriate there or delegating it to either of
4 the parties. And under the circumstances, your Motion to
5 Reconsider the Motion for Protective Order is denied.

6 MR. CRAVEN: For the record, Rex, you said 30 days.
7 Now what kind of time limit are we talking about now? Thirty
8 days from when?

9 MR. CARR: Whenever you want, Jim. There is nothing
10 pressing me to pass this out to anybody. Nobody has asked
11 for it. There's no on going cases of which I'm aware that
12 are bine tried or anybody has asked me for it. If you want
13 to go to the Illinois Supreme Court, you tell me how much
14 time you need and I'll agree to it.

15 MR. CRAVEN: 45 days.

16 MR. CARR: Sure.

17 MR. CRAVEN: So for 45 days you're under a voluntary
18 so called --

19 MR. CARR: Absolutely.

20 MR. CRAVEN: Fine.

21 THE COURT: I have no objection to any arrangement
22 you gentlemen want to make among yourselves like that.

23 MR. SEIGFRED: I'll be under it too, Jim, just in
24 case.