

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

MONSANTO COMPANY,	)	
	)	
Plaintiff,	)	
	)	Cause No. 649249
vs.	)	
	)	
GOULD ELECTRONICS, INC.,	)	
	)	
Defendant.	)	

DEPOSITION OF THOMAS MICHAEL BISTLINE
On behalf of Defendant
August 14, 1996

GATEWAY REPORTING ASSOCIATES, INC.
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	)	
Defendant.	)	

DEPOSITION OF THOMAS MICHAEL BISTLINE,
produced, sworn and examined on behalf of the Defendant,
August 14, 1996, between the hours of eight o'clock in
the forenoon and five o'clock in the afternoon of that
day, at the offices of Husch & Eppenberger, 100 North
Broadway, St. Louis, MO, before PEGGY A. DEAN, a
Certified Court Reporter and a Notary Public within and
for the State of Missouri.

A P P E A R A N C E S

The Plaintiff was represented by
Mr. Thomas M. Carney of the law firm of Husch &
Eppenberger, 100 North Broadway, St. Louis, MO 63102.

The Defendant was represented by Mr. James
Harfst of the law firm of Brown & James, 705 Olive, St.
Louis, MO 63101.

1
2 IT IS HEREBY STIPULATED AND AGREED by and
3 between counsel for the plaintiff and counsel for the
4 defendant, that this deposition may be taken in
5 shorthand by PEGGY A. DEAN, a Certified Court Reporter
6 and Notary Public, and afterwards transcribed into
7 typewriting, and the deposition is to be read and signed
8 by the witness.

9 o-O-o

10 THOMAS MICHAEL BISTLINE
11 of lawful age, being produced, sworn, and examined on
12 the part of the Defendant, deposes and says:

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. HARFST:

15 Q. Sir, we were introduced before the
16 deposition. My name's Jim Harfst. I represent the
17 defendant in this litigation.

18 Could you please state your name for the
19 record?

20 A. Yes. My name is Thomas Michael Bistline.

21 Q. B-i-s-t-l-i-n-e?

22 A. That's correct.

23 Q. What is your current address?

24 A. 15182 Isleview, one word, I-s-l-e-v-i-e-w
25 in Chesterfield.

1 Q. That's in Missouri?

2 A. Yes.

3 Q. St. Louis County?

4 A. 63017.

5 Q. What is your birth date?

6 A. November 5, 1948.

7 Q. And are you currently employed?

8 A. Yes, I am.

9 Q. By what company?

10 A. Monsanto Company.

11 Q. What is your position with Monsanto
12 Company?

13 A. I'm Assistant General Counsel - Litigation
14 at Monsanto.

15 Q. In general could you tell me what the
16 general duties of the Assistant General Counsel -
17 Litigation is at Monsanto?

18 A. Yes. In general I am responsible for
19 supervising the defense of Monsanto's obligations
20 pending around the country. I have certainly
21 administrative duties in the Law Department as a result
22 of my advanced age.

23 Q. Is there only one Assistant General Counsel
24 in litigation?

25 A. In litigation, yes, only one.

1 Q. How many assistant general counsel are
2 there for Monsanto Company?

3 A. Four.

4 Q. And I assume that your immediate
5 supervisor's the General Counsel.

6 A. No. Monsanto does not have a general
7 counsel at present.

8 Q. Who is your immediate supervisor?

9 A. My immediate supervisor is Richard Kleine,
10 K-l-e-i-n-e, also an Associate General Counsel and head
11 of the St. Louis law group.

12 Q. How many associate general counsel are
13 there for Monsanto?

14 A. I believe there are three.

15 Q. And do they all work in St. Louis?

16 A. No.

17 Q. They're spread around the world?

18 A. No. Two work in St. Louis and one in
19 Chicago.

20 Q. And are associate general counsels ahead in
21 the organizational chart of assistant counsels?

22 A. Yes.

23 Q. Is there a reason that there is no General
24 Counsel at present?

25 A. I assume the reason is because they haven't

1 found the person who is right for the job.

2 Q. So there is an opening for a general
3 counsel?

4 A. Yes.

5 Q. And as far as you know, that position will
6 be filled?

7 A. As far as I know yes.

8 Q. How long have you been Assistant General
9 Counsel at Monsanto?

10 A. About six years.

11 Q. And what was your position before that?

12 A. Before that my position was Litigation
13 Counsel.

14 Q. Also at Monsanto?

15 A. Yes, at Monsanto.

16 Q. How long were you Litigation Counsel at
17 Monsanto?

18 A. What was it -- four years.

19 Q. And what was your position before you
20 became Litigation Counsel?

21 A. Assistant Litigation Counsel.

22 Q. Also at Monsanto?

23 A. Also at Monsanto.

24 Q. How long were you Assistant Litigation
25 Counsel?

1 A. Three years.

2 Q. What was your position before you were
3 Assistant Litigation Counsel?

4 A. Litigation Attorney.

5 Q. How long -- was that also at Monsanto?

6 A. Also at Monsanto.

7 Q. How long were you a litigation attorney?
8 At Monsanto?

9 A. A year approximately.

10 Q. Was that your first position of employment
11 with Monsanto?

12 A. Yes, it was.

13 Q. Where were you employed prior to going go
14 Monsanto?

15 A. Prior to Monsanto, I was an associate at
16 the New York law firm of Simpson, Thatcher and Bartlett.

17 Q. How long were you at Simpson, Thatcher and
18 Bartlett?

19 A. From my graduation from law school in 1974
20 until December of 1981, with the exception of one three-
21 month period when I was associated with a small firm in
22 New Jersey.

23 Q. Are you a member of the bar of any states?

24 A. Yes.

25 Q. What states?

1 A. The New York and Missouri.

2 Q. Any other states?

3 A. No.

4 Q. What law school did you graduate from?

5 A. Columbia University School of Law in New
6 York City.

7 Q. And what college did you graduate from
8 prior to law school?

9 A. Columbia College. Also in New York.

10 Q. Was Monsanto Company a client of Smith
11 Thatcher?

12 A. Simpson Thatcher.

13 Q. Excuse me.

14 A. No, it was not.

15 Q. Do you presently have any financial
16 interest in Monsanto Company?

17 A. I'm an employee. I'm a shareholder. I
18 have a small number of shares of common stock. And the
19 company has a 401-K plan. I'm an investor in that. I
20 have certain accrued pension rights.

21 Q. I'm going to be asking you a few questions
22 today.

23 (Whereupon, an off the record discussion was held.)

24 Q. As I started to say, I'm going to be asking
25 you a few questions about a lawsuit filed here in St.

1 Louis titled Monsanto versus Gould. Are you familiar
2 with that case?

3 A. Yes, I am.

4 Q. If at any time during this deposition I ask
5 a question and you don't understand my question or don't
6 hear me, would you agree to let me know that?

7 A. Certainly.

8 Q. So if you answer a question, I'll assume
9 that you understood my question and have heard my
10 question. Is that okay?

11 A. Fine.

12 Q. What is a PCB?

13 A. PCB is an acronym for a classification or
14 group of compounds known as polychlorinated biphenyls.

15 Q. Are PCB's manufactured by Monsanto Company?

16 A. They are not now.

17 Q. Were they manufactured by Monsanto Company?

18 A. Yes, they were.

19 Q. Was Monsanto the only domestic producer of
20 those chemicals?

21 A. I'm not sure the only domestic. We are
22 certainly by far the largest.

23 Q. How many times has Monsanto been sued for
24 alleged personal injuries or illness resulting from
25 alleged exposure to PCB's?

1 A. Not sure I know the exact number.

2 Q. According to the interrogatory answers
3 filed in this case in July of 1996 there were 452
4 separate cases. Does that sound about right?

5 A. That sounds about right.

6 Q. Do you know if there have been any
7 additional lawsuits filed under those circumstances
8 since July of 1996?

9 A. Since July of 1996?

10 Q. Yes.

11 A. No. We have not gotten any new PCB
12 lawsuits since then.

13 Q. Do you remember when the first PCB lawsuit
14 was filed against Monsanto?

15 A. I'm not sure when the first one was. I am
16 familiar with cases filed since 1971.

17 Q. Which is when you actually -- you began
18 employment in 1981 at Monsanto?

19 A. '81, yes.

20 Q. Were there PCB cases pending against
21 Monsanto at the time you started at Monsanto?

22 A. Yes.

23 Q. Do you have any estimate as to how many
24 times Monsanto has been sued for PCB's prior to April of
25 '88?

1 A. Before April of 1988 I really couldn't give
2 you a number offhand.

3 Q. Do you know if it would be in the hundreds?

4 A. Would be in the hundreds, but two or three
5 hundred, I couldn't tell you.

6 Q. By 1988 had Monsanto developed an internal
7 plan or procedure for reacting to the filing of a PCB
8 case?

9 A. Yes.

10 Q. Could you describe that reaction procedure
11 for me?

12 A. Well, it's similar to the reaction or
13 procedure that we follow in most cases that are filed
14 against Monsanto.

15 Typically a lawsuit is served either direct
16 on the company or its registered agent, which is the CT
17 Service. And I think we have CT as our agent for
18 service of process in most states. I'm not sure all but
19 in most.

20 If process is served on CT or directly on
21 the company, it comes to me and I make a decision as to
22 who, what lawyer at Monsanto will supervise the case.
23 And in many instances I also make a decision as to who
24 will represent the company in those cases.

25 In appropriate circumstances I send a

1 letter to Monsanto's insurance carriers to advise them
2 of the filing and pending of a lawsuit and to let the
3 insurance companies know which Monsanto attorney will be
4 their contact and who outside counsel will be.

5 And at that point then the further handling
6 of the case becomes the responsibility of the in-house
7 attorney at Monsanto.

8 Q. I'm referring to April of 1988 because that
9 involves a lawsuit that was filed in Louisiana, or a
10 series of lawsuits filed in Louisiana.

11 Would service have been directed to you in
12 1988 to serve this role of deciding who at Monsanto it
13 would be assigned to?

14 A. Yes.

15 Q. So you were in your position as Assistant
16 General Counsel in 1988?

17 A. No. I think at that point I was Litigation
18 Counsel.

19 Q. But this process was still the same, that
20 all lawsuits filed against Monsanto were directed
21 through you?

22 A. That's correct. I've had that
23 responsibility since about July of '84.

24 Q. How large an in-house counsel department
25 does Monsanto maintain?

1 A. At the present time, counting patent
2 lawyers but not counting tax lawyers, I think we have
3 about 40 lawyers, 45, somewhere in that vicinity.

4 Q. Are all of those lawyers based here in St.
5 Louis?

6 A. No.

7 Q. Are they spread evenly throughout the
8 country or in a couple of different places?

9 A. They are mostly here in St. Louis. We have
10 a smaller group in Chicago. I believe we have one or
11 two lawyers in Massachusetts. Let me take that back.
12 I'm not sure whether we still have them or not. But
13 then we have also a group of lawyers in Brussels.

14 Q. In 1988 was it about the same size legal
15 department?

16 A. No. It was quite a bit bigger in '88.

17 Q. Do you have an estimate as to how much
18 bigger?

19 A. In that time period we probably had about
20 130 lawyers.

21 Q. Any reason for the cut back in the number
22 of lawyers since '88?

23 A. We within the last 18 months did a
24 reevaluation of the law department, redesign I think is
25 the word the consultants used. And as a result of that

1 redesign effort the number of lawyers was reduced and
2 certain functions were outsourced.

3 Q. That's just been within 1996. Correct?

4 A. Actually it started in 1995.

5 Q. So up until 1995 did Monsanto maintain the
6 legal department of 130 approximately?

7 A. Somewhere in that vicinity, yes.

8 Q. How did you select which in-house lawyer to
9 assign a particular case to back in 1988?

10 A. It would depend on the subject matter of
11 the lawsuit.

12 Q. Were lawyers in house at Monsanto given
13 specific areas which they covered?

14 A. Yes.

15 Q. Would one lawyer or more than one in-house
16 lawyer be assigned to PCB cases?

17 A. Talking 1988?

18 Q. 1988?

19 A. There were two.

20 Q. Remember who those individuals were?

21 A. I was one of them. And in 1988 I believe
22 Mr. Paul V-e-n-k-e-r Venker was also with the law
23 department and responsible for helping with PCB cases.

24 Q. In addition to assigning out cases in 1988
25 you maintained some of the cases yourself?

1 A. Oh, yes.

2 Q. In 1988 approximately how many cases did
3 you maintain for yourself in addition to billing out
4 cases to other attorneys at Monsanto?

5 A. I probably had between 100 and 150 cases
6 that I was personally responsible for.

7 Q. How did you decide whether to give a case
8 to yourself or to give it to Mr. Venker at that time?

9 A. It depended in part on where the case was.
10 And also on how busy I was at the time.

11 Q. Was it based more on case load than on the
12 size of the case?

13 A. Yes.

14 Q. How did you decide after selecting an
15 in-house person for Monsanto what outside firm to
16 involve in a particular lawsuit?

17 A. Again, that would depend upon where the
18 case was filed. Many of our cases are related to
19 matters that are already pending in a particular
20 jurisdiction or nearby, and where possible we tried not
21 to have to re-invent the wheel by having counsel in that
22 region be the people we would go to for cases in that
23 region.

24 Q. Regarding PCB's, had Monsanto retained
25 counsel in several different regions of the country back

1 in 1988?

2 A. Yes.

3 Q. Were there specific regions? Did you
4 divide the country into two or three specific regions or
5 was it just whatever region a lawsuit happened to be
6 filed in?

7 A. I'm not sure I understand.

8 Q. What I'm getting at is, did Monsanto
9 maintain a western United States firm that coordinated
10 many different cities, or did you hire a firm in San
11 Francisco to handle all of the cases that were within
12 San Francisco's area?

13 A. Okay. There was no rigid division of the
14 country into specified areas, because we didn't have
15 cases in every state or every part of the country at all
16 times.

17 Specifically in terms of PCB organization,
18 we have had since the '70s national coordinating
19 counsel. And then depending upon where cases were
20 filed, we would attempt to locate the best trial lawyer
21 available in a fairly broad area of the country,
22 recognizing that sometimes the areas would be pretty
23 small if there were quite a few cases in that area, or
24 on the other hand the area might be quite large if there
25 were fewer cases.

1 Q. Did you have one individual or firm serving
2 as national coordinating counsel in 1988?

3 A. Yes.

4 Q. Who was that?

5 A. The firm is -- I can't recall whether this
6 was their name in 1988. It's currently Smith, Helms,
7 Mullis, M-u-l-l-i-s and Moore. And Mr. David Moore of
8 that firm has acted as our coordinating counsel for,
9 well, since I've been at Monsanto.

10 Q. That firm's located in Greensboro, North
11 Carolina. Correct?

12 A. Correct.

13 Q. So when a new PCB case would come in in
14 1988, you would determine whether to put it on your work
15 load or to assign it to Mr. Venker, and then you would
16 automatically assign it to Smith, Helms, Mullis and
17 Mr. Moore as national coordinating counsel for PCB's?

18 A. It wasn't an assignment. They assisted us
19 with all PCB cases. They had certain functions that was
20 their duty to perform, and in all of the cases.

21 Q. So after you made the determination as to
22 who to assign the case to and how, is that when you
23 contacted Smith Helms?

24 A. That was all going on pretty much at the
25 same time, yes.

1 Q. What responsibilities did Smith Helms have
2 regarding a new PCB case that was filed against
3 Monsanto?

4 A. I had contact with David Moore principally
5 on the hiring of outside counsel to try the case. We
6 would, Mr. Moore and I generally would discuss the kind
7 of case, where it was located, the allegations made to
8 determine what kind of firm and counsel we thought would
9 be best equipped to handle it.

10 I mean, if you have one plaintiff, it's a
11 different kind of a case than if you have 120
12 plaintiffs. And we needed to make assessment of the
13 kind of staffing we thought the case needed.

14 In general the Smith Helms firm is
15 responsible for coordinating responses to discovery,
16 they maintain the comprehensive case files. I also do
17 but they act, I guess generally I would say as the name
18 implies, coordinating effort of Monsanto's trial counsel
19 across the country in PCB cases.

20 Q. How did you select Smith Helms to become
21 the coordinating counsel in PCB litigation?

22 A. I didn't select them.

23 Q. Do you know how they were selected?

24 A. Yes. In, I think it was about 1975, maybe
25 '76, the Travelers Insurance Company was our primary

1 insurer. And in that time period there were enough PCB
2 claims and cases pending that it was Travelers' opinion
3 that coordinating counsel was required to make sure that
4 the company's responses were consistent and truthful in
5 all regards in PCB cases.

6 I don't know how many cases there were
7 pending at that point. I do know at that time period
8 the Monsanto Law Department did not have significant
9 litigation expertise, so that the litigation know how
10 had to come from outside. And Mr. Moore and his firm
11 were selected to be coordinating counsel.

12 Q. Do you know specifically why Mr. Moore's
13 firm was selected over another firm somewhere else in
14 the country?

15 A. Yes. I'm told that Mr. Moore's firm
16 defended Monsanto in a couple of PCB cases that were
17 brought in the 1971-72 time period in North Carolina,
18 that as a result of defending Monsanto in those cases
19 the Smith Helms firm and Mr. Moore in particular
20 acquired a great deal of knowledge about Monsanto's
21 manufacture of PCB's, the uses of that product and the
22 medical and scientific literature that was there at that
23 time.

24 It made sense to go to them. Also, they
25 happen to be excellent lawyers. It simply made sense to

1 go to them and ask them to take on this duty of
2 coordinating counsel.

3 Q. When -- I'm talking back in the 1980's,
4 1988 now -- when you assigned a case to -- strike that.

5 When you contacted Smith Helms and
6 discussed who to retain in the area to represent
7 Monsanto in a particular case and you came to that
8 determination, was it you that contacted the firm in the
9 particular location where that case was or was it
10 Mr. Moore?

11 A. As a matter of first contact it would
12 probably be me. But shortly thereafter, particularly if
13 it were a new firm -- by new I mean new to Monsanto PCB
14 litigation -- we would arrange for a meeting with our
15 counsel and myself and Mr. Moore.

16 Q. At the time you first contacted a new firm,
17 did you give them any instructions as to how to handle
18 the billing on the file?

19 A. We had a letter that we circulated to
20 outside counsel at that time.

21 Q. Would this have been a form letter that
22 went to each new firm?

23 A. Yes. It would be addressed to the specific
24 lawyer, but the contents of the letter, it was a form
25 letter in that regard.

1 Q. So the billing procedures would be the same
2 across the country for Monsanto PCB cases?

3 A. Yes.

4 Q. I assume that the rates that might be
5 billed at different regions in the country would be
6 different. Is that correct?

7 A. That's correct.

8 Q. But the procedures as to how to pay that
9 and how to bill would be the same. Correct?

10 A. Approximately the same. I mean, there were
11 variations among firms. But in general we required a
12 bill to be in a certain kind of format and descriptive
13 as to the work being done and the hours charged.

14 Q. When you decided on a new firm to handle a
15 particular case and you initially contacted them, did
16 you discuss fees with them in that initial phone call?

17 A. It would have been either in that phone
18 call or in the initial meeting we had when we were
19 discussing PCB cases with new counsel.

20 Q. Did you negotiate fees with these firms?

21 A. On occasion.

22 Q. Did you have any parameters within which
23 you would allow a firm to bill?

24 A. Our standard was that we were to receive at
25 most the hourly charge which that firm charged its

1 corporate clients. We wouldn't pay a premium over their
2 standard hourly rate, although we were always happy to
3 accept a reduction.

4 Q. Do you know how often in PCB cases you were
5 given reductions in standard hourly rates?

6 A. Fairly frequently.

7 Q. Did you maintain a litigation budget for
8 each individual case that came in?

9 A. No.

10 Q. Did you maintain a litigation budget for
11 PCB cases in the 1980s?

12 A. In the sense of budgeting for in-house
13 expenses, yes. Outside counsel expenses were not
14 budgeted in that sense.

15 Rather case activity was monitored by me
16 and by Mr. Moore as well -- and Mr. Venker when he was
17 there -- on almost a daily basis for our significant
18 cases. And counsel's efforts were closely scrutinized,
19 and major projects were undertaken only with approval of
20 either me or Mr. Venker at that time. And we kept
21 control of our expenses in that fashion.

22 But a formal case budget, we really didn't
23 have anything like that.

24 Q. Have you done any formal case budgets in
25 other areas?

1 A. Occasionally. It's not a standard practice
2 with our litigation department.

3 Q. Is there a reason why you don't want to do
4 that?

5 A. I think a lot of it is a matter of personal
6 style. It's always been my opinion that expenses and
7 outcomes of cases are better managed with a lot of
8 personal involvement with counsel. If you know what's
9 going on and assessing what needs to be done in a case,
10 expenses will not be excessive.

11 Q. When you hired a new firm somewhere in the
12 country, were they to report directly to you on cases or
13 were they supposed to report to Mr. Moore or both?

14 A. If it was a case that I was personally
15 handling?

16 Q. Yes.

17 A. The instruction would be to report to me
18 and either to Mr. Moore or perhaps one of the other
19 lawyers at Smith Helms who was working on the PCB
20 litigation.

21 Q. They would report to both Monsanto and to
22 the coordinating counsel?

23 A. That's correct.

24 Q. And at Monsanto it would either be you or
25 Mr. Venker at that time?

1 A. In 1988, yes.

2 Q. How long did Mr. Venker stay with Monsanto?

3 A. He was with us -- I don't think it was
4 quite three years. He departed, I believe, in 1990.

5 Q. Was Mr. Venker replaced as far as PCB cases
6 go?

7 A. Yes. We did hire another lawyer to fill
8 in.

9 Q. Who was that?

10 A. That was Mr. Michael W. Newport.

11 Q. Is Mr. Newport still with Monsanto?

12 A. No, he's not.

13 Q. When did he leave Monsanto?

14 A. He left Monsanto in April of 1995.

15 Q. Was Mr. Newport replaced as far as PCB
16 cases go?

17 A. No.

18 Q. So since you arrived at Monsanto, the only
19 three individuals in house at Monsanto who would have
20 been assigned the handling of a PCB case would be
21 yourself, Mr. Venker or Newport?

22 A. No, not correct.

23 Q. Who else would would have been responsible
24 for PCB cases at Monsanto?

25 A. I assumed responsibility for PCB cases in

1 January of 1985. Prior to that, from the time I arrived
2 at Monsanto in February of 1982 until January of 1985,
3 Mr. Joseph Nassif, N-a-s-s-i-f was the in-house lawyer
4 responsible for PCB cases.

5 Q. But after you took over responsibility in
6 January of 1985 for PCB cases, from then until the
7 present, only yourself, Mr. Venker and Mr. Newport would
8 have been responsible for PCB cases. Correct?

9 A. At Monsanto?

10 Q. At Monsanto.

11 A. That's correct.

12 Q. You indicated that in appropriate cases
13 when a new suit was filed against Monsanto, you would
14 send a letter to the particular insurance company
15 involved. Correct?

16 A. That's correct.

17 Q. Are there some cases that have insurance
18 company involvement and some that do not?

19 A. There were a small number of cases back in
20 the mid to late 1980s as to which we had no insurance
21 coverage, I guess is the best way to say it. PCB's were
22 excluded from the insurance coverage.

23 Q. Other than that small number of cases, the
24 majority of PCB cases do have an insurance company
25 involved. Correct?

1 A. Historically that's correct, yes.

2 Q. And you would notify them by letter?

3 A. Yes.

4 Q. And after you notified the insurance
5 company, you retained control over those files.

6 Correct?

7 A. That's correct.

8 Q. The insurance company didn't come and have
9 the right to hire counsel or direct litigation?

10 A. I'm not sure whether I can speak to whether
11 they had the right or not. The fact is that they did
12 not attempt to control the litigation or attempt to
13 direct the hiring of counsel.

14 We worked very harmoniously, in fact, with
15 insurance carriers on these cases. But it was more in
16 the mold of myself or Mr. Venker or Mr. Newport and
17 counsel deciding on what needed to be done and how a
18 case needed to be handled, then reporting periodically
19 as necessary to the insurance carriers.

20 Q. In 1988 when a new lawsuit was filed, was
21 it part of your standard procedure to check and see if
22 there might be an agreement or contract which could
23 provide indemnity for Monsanto in those cases?

24 A. In the appropriate case, yes.

25 Q. How did you go about trying to find out if

1 there was such an agreement or not ?

2 A. Well, in the PCB litigation in particular,
3 of course, I was aware, Mr. Moore was aware of the fact
4 that potentially an indemnity situation existed with
5 certain electrical equipment manufacturers. There were
6 cases that involved a specific time period.

7 Q. Would those cases be cases that involved a
8 document entitled Special Undertaking by Purchasers of
9 Polychlorinated Biphenyls?

10 A. I believe that's the title. That's right.
11 It's a 1972 document.

12 Q. That's the document that's at issue in this
13 lawsuit here today. Do you understand that?

14 A. Yes.

15 Q. You were aware of the existence of that
16 document in 1988?

17 A. Yes. And there are just -- let me make
18 sure I complete the answer. There are other cases in
19 which indemnity situations may exist, but those are
20 specific situations typically involving contractor
21 employees.

22 Q. In 1988, were you aware of the existence of
23 the Special Undertaking, did you automatically tender
24 the defense of cases to the manufacturers of the
25 electronic products?

1 A. No.

2 Q. Why didn't you do that?

3 A. For two reasons. First of all, the
4 indemnity agreement by its terms covered only the use
5 and manufacture of PCB's that occurred after, I believe,
6 January 15, 1972, so until we had sufficient information
7 to let us make a determination that the particular
8 situation involved post 1972 sales of PCB's, the
9 indemnity would not be triggered.

10 The other reason is in fact one of
11 harmonious relations with other companies that we
12 frequently see in PCB litigation. It's our general
13 practice to work with our co-defendants in PCB cases.

14 I find that where the defendants are
15 working at cross purposes or actually fighting with each
16 other in a case, the only beneficiary is the plaintiff.
17 That does not serve Monsanto or our co-defendants in PCB
18 cases well.

19 So just as a general practice we don't make
20 a blanket assertion of the indemnity agreement.

21 Q. In cases that might involve this indemnity
22 agreement or Special Undertaking, do you immediately
23 seek to determine whether or not it involves cases of
24 PCB's sold after January 15, 1972?

25 A. That's one objective to discover, yes.

1 Q. Is that a -- strike that.

2 Is the Smith Helms firm or were they in
3 1988 responsible for the discovery that went out to
4 plaintiffs in particular cases?

5 A. They shared a responsibility for that, yes,
6 with local counsel working on the case.

7 Q. And also did Smith Helms maintain
8 responsibility for discovery on co-defendants in cases?

9 A. To the extent that we conducted such
10 discovery, yes.

11 Q. And one of their initial objectives when a
12 new case was filed was to find out when the PCB's were
13 sold?

14 A. I don't think it rose to that level. If we
15 acquired information during discovery in a case that
16 involved that the indemnity might be involved, we would
17 pursue that on a case by case basis. But in general
18 that wasn't one of the driving forces that molded our
19 case conduct.

20 Q. You didn't direct your counsel to go out
21 and find in every case whether or not it involved PCB's
22 manufactured or sold after 1972?

23 A. I didn't direct them to do that. What we
24 did when we were orienting counsel at the beginning of a
25 litigation was to make them aware of the indemnity

1 situation and review what we knew about the facts on a
2 particular case as to whether or not, whether or not it
3 was likely or unlikely or possible or not possible that
4 the indemnity agreement would be involved.

5 Q. Were there cases involving PCB's where you
6 learned that the indemnity agreement would be applicable
7 and you determined not to seek indemnity?

8 A. No.

9 Q. This general practice of working with the
10 co-defendants, that never rose to the level of not
11 seeking indemnity?

12 A. No. Whenever the indemnity agreement was
13 involved, we would assert our rights under that
14 agreement.

15 Q. Would you assert them as soon as you
16 determined that the indemnity agreement might be
17 involved?

18 A. By asserting them I'm not quite sure -- I
19 don't know if that's a word I used. But if by that you
20 have in mind making a demand, no, not -- it was our
21 view -- and again this would vary from state to state,
22 depending upon the law of the particular state.

23 But if we had a co-defendant in the case
24 who was a signatory to the indemnity agreement, that
25 defendant would be as aware of the indemnity agreement

1 as we. And it didn't seem to me to be essential to make
2 a formal assertion of rights under the indemnity
3 agreement at any particular point in the case.

4 In general it was our view that our
5 co-defendants were aware of their obligations and for
6 the most part they have stood by them.

7 Q. There was no policy, no formal policy as to
8 whether to inform the co-defendants about the agreement
9 at any particular time or not. Correct?

10 A. That's correct. Again, it was our general
11 understanding that co-defendants were aware of the
12 agreement, aware when the agreement would be triggered.

13 And while we wouldn't rush out to serve a
14 formal notice on them, at the appropriate time we would
15 raise the matter of the indemnity agreement and discuss
16 how it would applied to a particular case.

17 Q. You indicated before that when these cases
18 were going on and the co-defendants started fighting
19 among themselves over something like that Special
20 Undertaking, no one would benefit but the plaintiff. Do
21 you remember saying something of that nature?

22 A. I remember what you are talking about.
23 What I said, this was broader than just an indemnity
24 situation.

25 In general, in multi-part litigation, it

1 seems to me that that it is always in the defendants'
2 best interests to cooperate rather than fight with each
3 other. I didn't mean to restrict that only to
4 situations involving an indemnity.

5 Q. That's what, I'm meaning to do that now.
6 In these specific circumstances involving indemnity, in
7 maintaining cooperation in the lawsuit, did that cause
8 you at any time to wait until the lawsuit was over
9 before you asserted rights or informed a co-defendant
10 that you were seeking indemnity under this agreement?

11 A. I don't believe we ever waited until a
12 lawsuit was over. But again, as I said earlier, it was
13 our view that we did not need to rush out at the
14 earliest possible moment and serve a formal notice.

15 Q. Presently are any personal injury cases
16 involving about PCB's still pending?

17 A. Yes.

18 Q. Approximately how many?

19 A. I would say in the neighborhood of 100.
20 More or less.

21 Q. Are these spread generally throughout the
22 country?

23 A. They are in several locations of the
24 country. I think there is a large area of the country
25 where we don't have cases at the moment. They're

1 geographically in various parts of the country.

2 Q. They're not generally in one area or two
3 areas?

4 A. Well, we have concentrations of cases. For
5 example, the Paoli Railyard litigation in Philadelphia
6 accounting for, I think, about 30 of 100 cases.

7 Q. Is Monsanto's internal plan or procedures
8 still the same regarding reacting to the filing of new
9 PCB lawsuits?

10 A. Yes.

11 Q. In 1987 a transformer in Louisiana which
12 contained PCB's located at LSU failed, and a number of
13 people claimed they were exposed to PCB's, which brings
14 us to the litigation involved in this case.

15 When did you become aware of the occurrence
16 of that incident?

17 A. It would have been when we were first
18 served in the LSU litigation. That would have been some
19 time early in 1988, February or March, April time frame.

20 Q. You didn't become aware of the incident in
21 Louisiana until the lawsuit was filed. Correct?

22 A. I personally did not, no.

23 Q. As I understand it, there were four
24 different lawsuits with several plaintiffs filed in
25 Louisiana following that incident. Is that correct?

1 A. That's correct.

2 Q. If I refer to those lawsuits collectively
3 as the Louisiana litigation or the LSU litigation, will
4 you understand what I'm talking about?

5 A. Yes, I will.

6 Q. Were those all treated as an individual
7 cluster of cases at Monsanto? Strike that. I'm not
8 sure that I understood what that meant.

9 For billing purposes were those four cases
10 treated together at Monsanto?

11 A. Yes. For the most part. I think possibly
12 early on we might have gotten separate bills, but
13 fairly soon after the four cases came in they were
14 treated as a single unit.

15 Q. Were you the individual at Monsanto who was
16 assigned to those cases?

17 A. I assigned myself to those cases very early
18 on. When Mr. Venker came, I think in mid '88 he
19 started, he assumed responsibility for the LSU cases.

20 Q. And did he maintain responsibility for the
21 LSU cases until he left Monsanto?

22 A. That's correct.

23 Q. I've seen the term control attorney. Is
24 that what Mr. Venker was to the LSU litigation?

25 A. Control attorney is a phrase we use in the

1 letters we send to our insurance carriers. Yes,
2 Mr. Venker was the control attorney for the LSU cases.

3 Q. Regarding the LSU cases, I assume you
4 undertook the initial reaction procedure that you did,
5 that you described earlier as what you did in a normal
6 case. Correct?

7 A. That's correct.

8 Q. You contacted Mr. Moore in North Carolina?

9 A. Yes.

10 Q. And discussed with him who to hire to
11 handle those cases in Louisiana?

12 A. Among other things, yes.

13 Q. Did you determine at that time what firm
14 you should hire in Louisiana?

15 A. We discussed in general what kind of firm,
16 what kind of help we needed in Shreveport, and
17 identified a firm that we thought was a likely candidate
18 to provide that help to us.

19 Q. Was that firm Blanchard, Walker, O'Quinn
20 and Roberts?

21 A. That's correct.

22 Q. You said you discussed what you needed in a
23 firm in Louisiana?

24 A. That's correct.

25 Q. What type of conversation did you have

1 regarding the firm you needed?

2 A. In general when we get a new case in that's
3 in a new area, and Shreveport was a new venue for us to
4 have PCB litigation, Mr. Moore and I attempt to assess
5 the magnitude of the case and types of claims that are
6 being made.

7 And on that basis we try to determine
8 whether we want to hire a firm in the venue which will
9 take complete responsibility for the development and
10 trial of the case, or whether this is a situation where
11 a firm that is not too far away in the region that has
12 already developed that expertise should be brought in
13 and therefore the local lawyers serve a more
14 circumscribed local counsel role.

15 Q. How did you assess the LSU litigation in
16 those terms?

17 A. We felt that this was potentially a very
18 serious litigation. We had, as I recall, more than 120
19 individual plaintiffs, as well as the City of Shreveport
20 suing us.

21 We felt that it was a matter that would
22 require a great deal of sophistication in the handling
23 of toxic tort cases, PCB cases in particular, and that
24 it probably would be beyond the experience of a law firm
25 in Shreveport.

1 Q. Because it was beyond their experience was
2 Blanchard Walker then to serve, as you described it, a
3 more circumscribed local counsel role?

4 A. That's correct.

5 Q. Who was the counsel that was going to be
6 handling the case? You said if -- strike that.

7 If you hired a firm that did not have the
8 expertise and hired that firm to serve as local counsel,
9 there would be another firm that would be responsible
10 for handling of the litigation itself. Correct?

11 A. Well, there would be a firm that had
12 already developed the scientific and technical
13 background for PCB litigation and was familiar with how
14 we wanted the cases conducted.

15 Q. For the LSU cases, what firm served that
16 role?

17 A. Well, I don't recall the name of the firm
18 right now, what it was. The lawyer that we wanted to be
19 our trial lawyer if these cases had to be tried was
20 Gaynell, G-a-y-n-e-l-l, Methvin, M-e-t-h-v-i-n. I think
21 two L's.

22 Q. I think you are correct. Methvin is an
23 attorney in Texas. Correct?

24 A. In Dallas, that's correct. I believe at
25 the time he was with the law firm of Moore and Peterson.

1 Q. Mr. Methvin had handled PCB cases previous
2 to the LSU cases for Monsanto?

3 A. That's correct.

4 Q. Do you know how many he had handled before
5 that?

6 A. I believe one.

7 Q. And had that been in Texas?

8 A. Yes, that was in -- Federal Court in
9 Dallas.

10 Q. Was the ultimate decision to hire Blanchard
11 Walker in Shreveport your decision?

12 A. Yes.

13 Q. Why did you select Blanchard Walker to
14 serve as your local counsel in Shreveport?

15 A. Well, I went to Shreveport to talk to the
16 lawyers at Blanchard Walker, in particular, as I recall,
17 Jim McMichael and one of his partners named Larry Pettit
18 (Pet'tit) or Pettit'. I can't recall how he pronounced
19 his name.

20 On the basis of our meeting with them, it
21 was apparent to me that they were good trial lawyers,
22 intelligent, and although they had virtually no
23 experience with toxic tort litigation, they were very
24 knowledgeable about trial practice in Shreveport.

25 And they appeared to be the kind of lawyers

1 who would work well in a team. Those are considerations
2 that I find important in retaining counsel.

3 Q. Had Mr. Moore referred you to that
4 particular firm?

5 A. I don't think that Mr. Moore referred us to
6 that firm. My recollection is that the recommendation
7 came from INA Insurance company, which was our primary
8 insurance carrier in 1988.

9 We had not had experience with counsel in
10 Shreveport, and my recollection is that I contacted the
11 local INA person who then got back to me with a
12 recommendation of Blanchard Walker.

13 Q. Did you look at any other firms in
14 Shreveport?

15 A. I believe I may have made a couple of
16 telephone calls to other firms. I don't have a clear
17 recollection of which ones they were.

18 Q. In any event you didn't go meet with any
19 other firm with Shreveport, did you?

20 A. No, we didn't interview another firm.

21 Q. You had had no previous experience with any
22 firm in Shreveport?

23 A. I personally had not. I don't believe the
24 company had either.

25 Q. As local counsel, what was the role that

1 Blanchard Walker was intended to serve in the
2 litigation?

3 A. We looked to Blanchard Walker for several
4 things. First was, as I said earlier, a familiarity
5 with local trial practice, including the lawyers on the
6 other side, lawyers for our co-defendants, and the
7 particular judge or judges that we would be trying the
8 case before.

9 In addition to just the kind of local
10 intelligence factor, I also expected the Blanchard
11 Walker firm to have a significant role in factual
12 investigation into the case, particularly discovering
13 the level of knowledge of the Shreveport Fire Department
14 which was a significant issue in the case.

15 Also I looked at them as most likely having
16 responsibility for taking the depositions of the
17 plaintiffs, if it came to having to depose all of the
18 plaintiffs, and making contact for us with individuals
19 who might be expert in the case on a local basis.

20 Q. Was Smith Helms -- strike that. What was
21 Smith Helms' role to be in this LSU litigation?

22 A. The Smith Helms role was the same as they
23 are in all of our PCB cases.

24 They are primarily tasked with assisting in
25 discovery, particularly in responding to discovery

1 served on Monsanto.

2 They serve as a, an invaluable assist to
3 me in keeping track of what's going on in the case, of
4 providing to our local regional counsel their expertise
5 or long years of experience in PCB litigation, in
6 particular in briefing in legal issues, in staying
7 abreast of the latest developments in tort law and how
8 cases of this type can best be handled and working with
9 me to make sure that a case stayed on target and that we
10 were getting what needed to be done.

11 Q. Would Smith Helms be responsible for any
12 particular pleadings in that case?

13 MR. CARNEY: Other than what he's already
14 mentioned?

15 Q. (By Mr. Harfst) Other than, you indicated
16 responding to discovery. Other than that?

17 A. In general it's our policy that no pleading
18 in any of our PCB cases gets filed unless it's been
19 reviewed and approved by the appropriate Smith Helms
20 attorney and typically by the Monsanto attorney in
21 house.

22 Q. Why do you have Smith Helms review every
23 pleading?

24 A. Two reasons. First of all to make sure
25 they're accurate. Second to make sure we're being

1 consistent in the positions that we take from case to
2 case.

3 Q. As I understand your previous answer, Smith
4 Helms would actually be responsible for preparing
5 discovery responses. Is that correct?

6 A. They take the first cut at it, yes.

7 Q. They also take the first cut at a
8 responsive pleading to a new case. Is that correct?

9 A. That's correct.

10 Q. Did they take the first cut at any other
11 documents or pleadings?

12 A. As a general matter, no. Other documents
13 and pleadings in the case would normally be the
14 responsibility for your trial team to prepare.

15 Now, there are occasions when Smith Helms
16 does step in and take the lead on a particular motion or
17 brief or pleading. Those situations would probably be
18 where we had had a similar motion in another case and,
19 you know, the knowledge and brief may already have been
20 developed by Smith Helms.

21 Q. If Smith Helms wanted to do that and step
22 in and take the lead on a particular pleading, would
23 they need to get approval from you before doing that?

24 A. Yes. It would be a consensus decision.
25 Let me just say me or the Monsanto attorney who was

1 managing the case.

2 Q. When you agreed with Smith Helms for them
3 to serve as national coordinating counsel for PCB
4 litigation, was it you that discussed with them how they
5 would be paid for those services?

6 A. The Smith Helms role was already defined
7 and in place when I took cases over in '85.

8 Q. I'm sorry. Are you aware of the rate or
9 rates that Monsanto agreed to pay to Smith Helms?

10 A. Yes.

11 Q. What are those? What was the payment
12 arrangement with Smith Helms at the time you worked
13 there?

14 A. Our agreement with Smith Helms is that it's
15 an hourly rate, but there is a significant discount on
16 that rate from their standard rate that they charge
17 their corporate clients.

18 Q. Is there one firm wide rate that you pay,
19 or do you pay different rates for different attorneys at
20 Smith?

21 A. We pay a different rate for different
22 attorneys, depending upon their age and skill level.

23 Q. As you sit here today, do you recall what
24 any of those rates were in the 1980s or presently?

25 A. In the 1980s I'm really not sure. Have to

1 look back at the statements to see.

2 Currently I think Mr. Moore's rate is \$185
3 an hour.

4 Q. Do you know -- know what his rate is to
5 other firms?

6 A. It's in the, I believe in the \$215 to \$225
7 an hour range.

8 Q. Do you recall what any of the other lawyers
9 that work on PCB files at Smith Helms charge?

10 A. I'd really need to consult a statement, but
11 I believe Mr. Girard Davidson, who was not significantly
12 involved in these cases, currently bills at 185.

13 There are several other lawyers that work
14 on various other projects. I can't remember their
15 hourly rates.

16 Q. When you retained Blanchard Walker in
17 Shreveport, did you come to arrangements as to the rates
18 that they would charge?

19 A. Yes.

20 Q. Do you remember what that was?

21 A. In terms of the hourly rate?

22 Q. Yes.

23 A. I don't recall specifically, but our
24 agreement with them was that it would be their standard
25 hourly rate to a corporate client.

1 Q. Were they also billing different rates for
2 different attorneys working on files?

3 A. Yes.

4 Q. With either Smith Helms or Blanchard
5 Walker, did you come to an arrangement to pay an hourly
6 rate for any non-attorneys?

7 A. Well, legal assistants, of course, are
8 billed hourly typically. Other than that, our general
9 policy is that we don't pay hourly rates for clerical
10 employees at a firm unless that individual is devoted
11 entirely to Monsanto's litigation. And in that
12 circumstance and then by special agreement we would
13 agree to pay an hourly rate for a clerical employee.

14 Q. In those special circumstances would those
15 clerical workers' job duties or the things that they did
16 for Monsanto show up on a legal bill?

17 A. They may, yes.

18 Q. Are you aware of any such agreements to pay
19 for clerical work in the LSU litigation?

20 A. Not specific to the LSU litigation, no.

21 Q. Are you aware of any agreement with
22 Blanchard Walker in Shreveport to pay for clerical
23 workers on an hourly basis?

24 A. No.

25 Q. Are you aware of any special arrangement

1 with Smith Helms to pay for clerical workers on an
2 hourly basis?

3 A. I mean, we do have the -- I don't want to
4 call her a file clerk; she does much more than that --
5 the person chiefly responsible for maintenance of
6 Monsanto's litigation files at Smith Helms. And my
7 understanding is that is her sole duty at Smith Helms.

8 Q. Do you know that person's name?

9 A. I believe her name is Charlotte Belvin,
10 B-e-l-v-i-n. Whether she was working with Smith Helms
11 back in 1988 I just don't recall.

12 Q. You indicated in general that it's not
13 Monsanto's practice to immediately make a formal demand
14 on cases when you discover that the Special Undertaking
15 might be involved. Correct?

16 A. That's correct.

17 Q. In the LSU litigation did you ever come to
18 a determination as to whether or not the Special
19 Undertaking would be involved with that case?

20 A. Yes, we did.

21 Q. When did you come to that determination?

22 A. I can't recall as I sit here the precise
23 date. I believe it was some time in 1990.

24 Q. Do you recall ever having made a formal
25 demand or anyone on behalf of Monsanto ever having made

1 a formal demand to anyone regarding the Special
2 Undertaking in the LSU litigation?

3 A. Yes. I believe we did correspond with
4 counsel for LSU on that.

5 Q. Counsel for?

6 A. I'm sorry. For Gould. I misspoke.

7 Q. There are several companies that have been
8 involved in tracing the Special Undertaking up to Gould
9 who is a present defendant in this case. Are you aware
10 of that situation?

11 A. Yes.

12 Q. If we refer to ITE or Gould, they basically
13 stand in the same shoes in this litigation. Correct?

14 A. That's my understanding yes,

15 Q. Was the -- was it you personally who made
16 formal demand upon counsel for Gould in 1990?

17 A. No, it was not I.

18 Q. Was it -- do you know who it was?

19 A. I believe Mr. Newport.

20 Q. Do you know how he went about making that
21 formal demand?

22 A. I'm not sure whether he talked to counsel
23 for Gould initially or whether he sent a letter.

24 Q. Was the litigation still going on in the
25 LSU cases at that time?

1 A. Oh, very definitely.

2 Q. Why did you determine at that time to make
3 a formal demand on Gould?

4 A. I'm not sure that the particular time had
5 as much to do with it as that it seemed appropriate to
6 advise Gould of the applicability, in our view, of the
7 indemnity agreement.

8 Q. Was there any specific set of circumstances
9 that led you to believe that it seemed appropriate to
10 notify them at that time?

11 A. Nothing specific that I can recall.

12 Q. Didn't making the formal demand at that
13 time run the risk of having the co-defendants fighting
14 with each other that we discussed earlier?

15 A. There's always that risk. It was our
16 determination at that point, however, that our relations
17 with Gould's counsel were reasonably good and we felt
18 this could be discussed on a professional basis.

19 Q. You felt though that you had no duty to
20 inform Gould of that agreement at that time?

21 A. It's my belief that Gould was aware of the
22 indemnity agreement, of its obligations.

23 Q. Were you involved in the decision to make a
24 formal demand on Gould at that time?

25 A. I recall discussing it with Mr. Newport,

1 yes.

2 Q. Was it your decision to do that or
3 Mr. Newport's?

4 A. Well, I certainly supported the decision.
5 I think we probably reviewed the situation with my boss,
6 Bob Berendt, and the decision was a collective one.

7 Q. Were you Mr. Newport's superior?

8 A. Functionally I was his supervisor, yes.

9 Q. And he reported to you and you reported
10 to -- I'm sorry. I didn't --

11 A. Bob B-e-r-e-n-d-t. Again, functionally,
12 yes, although I think in terms of organization chart we
13 both reported to Mr. Berendt.

14 Q. Do you recall whether or not you were
15 involved in drafting any formal demand letter?

16 A. I can't recall specifically, although it
17 would be our normal practice that I would review such a
18 letter before it was sent.

19 Q. Would that be the practice even if the
20 formal demand came from one of the law firms that you
21 had hired?

22 A. That's correct.

23 Q. So it would all be passed through you?

24 A. A letter of that type, yes, it would.

25 Q. The Smith Helms and Blanchard Walker firms

1 were not the only firms that became involved in the
2 Louisiana litigation, were they?

3 A. That's correct.

4 Q. Do you recall what the -- well, we have
5 already discussed Moore and Peterson in Dallas that
6 became involved.

7 A. Right.

8 Q. Mr. Methvin's firm. Correct?

9 A. Correct.

10 Q. They were hired, I assume, shortly after
11 you had hired the initial two firms. Correct?

12 A. That's correct -- well, the Smith Helms
13 firm wasn't hired specifically for LSU. They had an
14 ongoing coordination role.

15 Q. Do you recall when the Moore Peterson firm
16 was hired?

17 A. It wasn't too long after the Blanchard
18 firm. I would say matter of weeks .

19 Q. You hired Mr. Methvin to be trial lawyer?

20 A. I looked to him to be our chief trial
21 counsel, yes.

22 Q. Was the firm of Moore and Peterson to
23 conduct any other roles other than chief trial counsel?

24 A. Well, as chief trial counsel it was their
25 role really to take the lead in the defense of Monsanto.

1 They're the ones that would be formulating
2 our discovery on plaintiffs, developing a trial plan,
3 assessing need for experts and working with us on trying
4 to find those experts, assessing the plaintiffs' case,
5 their experts, just the whole range of things that needs
6 to be done in defending a very large and potentially
7 dangerous lawsuit.

8 Q. The Moore Peterson firm then was basically
9 in charge of the defense of this particular set of cases
10 in Louisiana?

11 A. That's correct.

12 Q. You mentioned that they were the ones who
13 would take the lead in formulating discovery. It was my
14 understanding that Smith Helms was involved in that.

15 A. The Smith Helms firm is involved, yes.
16 Smith Helms has the, I would say the lead in responding
17 to discovery served on Monsanto.

18 In terms of discovery that Monsanto would
19 serve on plaintiffs, it would be a collaborative effort.
20 Obviously we have a lot of material that we have used in
21 discovery demands of the type that we make in personal
22 injury cases. The Smith Helms firm has that file. They
23 would provide that information to our trial counsel.

24 But in terms of actually formulating the
25 demands to be served on plaintiffs, it would be trial

1 counsel that took the lead role in that.

2 Q. You also mentioned that it would be trial
3 counsel's role to develop a trial plan.

4 By that do you mean a formal document known
5 as a trial plan or just in general a plan of how to
6 attack this litigation?

7 A. Would be more general. I don't recall
8 whether Mr. Methvin had a written trial plan or not. We
9 discussed how the case needed to be developed frequently
10 with him.

11 And, you know, there certainly was, if not
12 written, certainly in the contemplation of all the
13 counsel working for Monsanto a plan on how we wanted to
14 develop the case and have it tried.

15 Q. Monsanto didn't require a specific written
16 document called a trial plan to be submitted to you or
17 to Mr. Newport?

18 A. That's correct.

19 MR. CARNEY: Object to the form of the
20 question. I think it's vague.

21 Q. (By Mr. Harfst) Okay. Let me just clear
22 that up. Did Monsanto specifically require a written
23 trial plan to be prepared and submitted to the company?

24 MR. CARNEY: Object. I don't know what you
25 mean by require. I mean, there were memos of trial, of

1 strategies developed. I don't know if you're talking
2 about those or talking about something called a trial
3 plan by name.

4 So I'm unclear as to what you mean by trial
5 plan. There's lots of documents with strategies and
6 plans and tasks. I don't know if you are including
7 those.

8 MR. HARFST: What I'm asking about --

9 MR. CARNEY: I don't know what you mean by
10 require either because is it in a formal procedure where
11 you have to do this, or is it a suggestion? I think it
12 still suffers from ambiguity.

13 Q. (By Mr. Harfst) What I'm asking,
14 Mr. Bistline indicated one of the roles of the trial
15 counsel was to prepare a trial plan. And my inquiry is
16 directed to you to find out what you meant by saying
17 that the trial counsel was directed or one of their
18 roles was to prepare a trial plan.

19 If by that you mean something in general,
20 as far as the direction that you wanted the case to
21 take, that's what I want to know. And if you mean they
22 were directed to prepare any particular formal document
23 or documents and that makes up the trial plan that you
24 mentioned, that's what I want to know.

25 Do you understand my question?

1 MR. CARNEY: Well, I'm not sure I do.

2 MR. HARFST: I'm just asking what he knows.

3 MR. CARNEY: I still want to make an
4 objection on the grounds I think it's a vague question.
5 I assume by asking this question you are not asking him
6 to repeat what he already said.

7 MR. HARFST: That's correct, unless that's
8 what he needs to do to answer the question.

9 Q. (By Mr. Harfst) You have told me that it
10 was something more general than a specific document.
11 Correct?

12 A. Yes, that's correct.

13 Q. When you retained Moore and Peterson to
14 serve as trial counsel in this LSU litigation, did you
15 come to an agreement regarding legal fees to be charged
16 by Moore and Peterson?

17 A. I don't think we had a specific agreement
18 for LSU. We had an understanding, I guess I'd call it,
19 with Mr. Methvin that he would charge and we would pay
20 his standard hourly rate for corporate clients.

21 Q. Was this the same billing arrangement that
22 you had in the previous case that Mr. Methvin had
23 handled?

24 A. That's correct.

25 Q. Do you recall at the time of this LSU

1 litigation what that rate was?

2 A. I don't recall the specific rate, no.

3 Q. Were there multiple rates charged by
4 multiple lawyers at Moore Peterson?

5 A. It would be the same as with other law
6 firms, that the hourly rate would reflect the age,
7 experience and skill of the particular lawyer.

8 Q. Was it Monsanto's practice to inquire into
9 the age and skill of particular attorneys who would work
10 on Monsanto's PCB files?

11 A. Yes. I wanted to know who the lawyers
12 would be that would be handling the case and that the
13 lawyer was competent and qualified to do what needed to
14 be done.

15 Q. How would that information be presented to
16 you?

17 A. In a couple of ways. Typically what we
18 would ask counsel to do at the outset of the case would
19 to be to identify the individuals who he or she wanted
20 to work on the case, that at some point early on in the
21 case I would meet the individuals that were proposed to
22 work on the Monsanto case and, you know, have a chance
23 to get to know the person and make a judgment myself
24 whether it was an appropriate thing for that lawyer to
25 work on the case.

1 Q. This would include both partners and
2 associates?

3 A. In general anybody who had a significant
4 involvement in the case. Obviously if we had a legal
5 issue that needed to be briefed and the decision was
6 made to give it to a young lawyer just out of law
7 school, for that particular issue I wouldn't necessarily
8 try to meet that person before the memo was written.

9 But anyone who would have a significant
10 role, I wanted to get to know.

11 Q. After you got to know these people, is that
12 when their hourly rates would be presented?

13 A. No. I would usually know of the hourly
14 rate before I would interview or talk to the individual.

15 Q. During the course of your employment at
16 Monsanto, have you ever met with attorneys at a
17 particular firm and said those people were not
18 appropriate to work on a Monsanto file?

19 A. I think there have been instances, yes.

20 Q. Did you have any of those type of meetings,
21 meeting people who would be working on the LSU
22 litigation, or would that have been in Mr. Venker's job
23 description?

24 A. I'm not sure I'm quite following the
25 question.

1 Q. When it came to determining who at the
2 firms, who became involved in the LSU litigation, would
3 work on that litigation at that firm, did you go down to
4 meet all of those lawyers?

5 A. I did at that time, yes, because my
6 recollection is that that's before Mr. Venker started.
7 I was the only attorney at Monsanto working on PCB
8 cases.

9 Q. Before those meetings or somewhere around
10 the time of those meetings, you would be presented with
11 the hourly rates of those individuals?

12 A. I would learn of those rates, yes.

13 Q. If any of those persons' hourly rates were
14 increased at any time during the course of litigation,
15 would that have to be approved by you or Mr. Venker?

16 A. Yes, there would be no increases --

17 MR. CARNEY: Talking about partners or an
18 associate that might be moving up in experience?

19 Q. (By Mr. Harfst) Either one.

20 A. There's a distinction. Partners' rates
21 could not be raised. We simply wouldn't pay an
22 increased rate unless there was prior approval by the
23 Monsanto control attorney.

24 On associates' rates, we wanted also to be
25 notified about that, but if the rate was simply the

1 typical progression of associates' rates based upon
2 years out of law school, that was, that was a generally
3 permissible increase.

4 Q. But you still needed to be notified of
5 those increases in advance?

6 A. Yeah. I mean, it wasn't an ironclad rule
7 like partners' rates, but I wanted to know, and so did
8 Mr. Venker and Mr. Newport when an associate's rate was
9 proposed to be increased.

10 Q. You would either say yes or no that it was
11 allowable to do that increase?

12 A. My recollection is that, again with
13 specific reference to associates' rates, that that was
14 almost always -- I can't recall ever in fact declining
15 an increase for associates based on the normal
16 progression of rates at that firm .

17 Q. When you initially hired these three firms,
18 including the one that had been hired long ago to handle
19 these cases in North Carolina, including Smith Helms,
20 and you hired the firm in Dallas and the firm in
21 Shreveport, was it your belief at that time that those
22 would be all the firms that were necessary to handle the
23 LSU litigation?

24 A. Well, I didn't have a crystal ball so I
25 couldn't predict with certainty what was going to

1 happen. But certainly I expected those firms to be
2 doing the bulk of the work.

3 Q. They weren't the only firms that eventually
4 did become involved in the LSU litigation. Correct?

5 A. That's correct.

6 Q. Do you know what the next firm that was
7 hired in that litigation was?

8 A. I don't know specifically. I know that
9 there -- we did have occasion to hire the Bronson,
10 Bronson McKinnon firm in California.

11 Q. Recall when you hired that firm in
12 California?

13 A. The Bronson firm was a firm that was
14 already handling cases for us, handling PCB cases for us
15 in California.

16 And I'm not sure of the date, but the
17 situation arose in which we needed to take some
18 significant discovery of some plaintiffs' expert
19 witnesses in California, and California procedure is
20 peculiar to California.

21 We determined that it would be cost
22 effective to have a California firm help us,
23 particularly in this instance because of the nature of
24 the experts and the extraordinary lengths that counsel
25 for those experts went to to frustrate our discovery

1 attempt.

2 Q. The first bill that I noticed was in
3 December of 1988 from Bronson, Bronson and McKinnon.
4 Does that sound about the right time period?

5 A. December, 1988? If that's when it was,
6 that's when it was, yeah.

7 Q. You don't have any recollection of what
8 time period they would have been retained in the LSU
9 cases?

10 A. I would not be surprised if we had
11 consulted with the Bronson firm in December of 1988.

12 Q. In December of 1988 had Mr. Newport --
13 excuse me -- Mr. Venker started at Monsanto?

14 A. I believe he had. I believe he started
15 some time in the late spring or early summer of 1988?

16 Q. So would it have been his decision to use
17 Bronson, Bronson and McKinnon in this LSU litigation?

18 A. I really can't tell you. It's been long
19 enough ago I can't remember the precise pattern, but
20 Mr. Venker certainly would have been involved.

21 Q. On decisions like that to retain a new
22 counsel or to use another counsel in a particular case,
23 would that be a decision that involved both you and
24 Mr. Venker, or since this file was assigned to
25 Mr. Venker would he consult with the other lawyers and

1 make that determination on his own?

2 A. I think in general that would have been
3 something that he would have discussed with me. Whether
4 he would do that before he talked to somebody else about
5 it, I can't tell you. But I know I would expect to at
6 least to be advised of what was going on.

7 Q. Were you involved at all in the decision to
8 hire Bronson, Bronson and McKinnon to work on this LSU
9 litigation?

10 A. My recollection is that I was involved in
11 the decision to ask them to do certain things for us.

12 Q. These things you asked them to do are what
13 you previously discussed, to be involved in the
14 discovery of plaintiffs' expert witnesses in California?

15 A. Right. We had asked -- as I recall we had
16 asked the Bronson firm first to find out a little bit
17 about the specific experts that were involved, because
18 these experts were out in California.

19 And then we asked the Bronson firm to help
20 us with the specific discovery, as I mentioned, in part
21 because of the extraordinary lengths that those
22 witnesses' counsel went to to frustrate our attempts.

23 Q. Was there a specific attorney at Bronson,
24 Bronson and McKinnon who was involved in this matter
25 that you can recall ?

1 A. I think probably Chris Lorange eventually.
2 I'm not sure whether he was from the outset, but I know
3 eventually Chris took hold of the issue of discovery on
4 these particular witnesses.

5 Q. And when you retained the Bronson firm, was
6 part of their responsibility going to be to take
7 depositions of these experts, or were they just
8 coordinating the discovery efforts and Mr. Methvin or
9 someone from his firm would be involved in doing the
10 depositions?

11 A. We looked to the Bronson firm for the
12 technical help on getting the discovery papers and
13 motions, that sort of thing right.

14 The depositions were to be conducted by
15 Mr. Methvin or Mr. McMichael or other counsel for the
16 parties in the LSU litigation.

17 Q. At the time that Bronson, Bronson and
18 McKinnon was added to the Louisiana litigation, I assume
19 there had already been in place a billing mechanism or
20 billing understanding between that firm and Monsanto.

21 A. Yes. They had worked on PCB cases for us
22 in the past. Before 1988.

23 Q. So the billing rates and billing
24 arrangements on the previous cases would be the same as
25 the billing rates and billing arrangements used in this

1 LSU litigation for the Bronson firm?

2 A. That's correct.

3 Q. When those billing rates and procedures
4 were set up with the Bronson firm, was it you who came
5 to those billing agreements with them?

6 A. No. Bronson, Bronson and McKinnon was
7 representing Monsanto in PCB cases before I took them
8 over.

9 Q. Were they also billing an hourly rate to
10 Monsanto?

11 A. Yes.

12 Q. Do you know if it was their standard rate
13 or was it discounted or premiumed?

14 A. It certainly was not premiumed.
15 Discounted, I don't remember. It may have been a small
16 discount .

17 Q. Do you recall what any of the particular
18 rates were at the Bronson firm at the time of this
19 litigation in Louisiana?

20 A. No, I don't.

21 Q. Those four firms that we have discussed
22 already were not the only firms that were involved in
23 this litigation for Monsanto. Correct?

24 A. I think there may have been small tasks
25 done by other firms.

1 Q. Looks from the documents produced in this
2 case like the next firm to become involved was called
3 Johnson and Swanson, which later on became Johnson and
4 Gibbs.

5 A. That was the law firm Mr. Methvin went to
6 when he left the Moore and Peterson firm. And I don't
7 regard that really as involving a new law firm because
8 we stayed with Mr. Methvin who was our chief trial
9 counsel.

10 Q. Mr. Methvin left one firm, went to another
11 and these files went with him?

12 A. I'm not -- that's correct. I'm just trying
13 to recall the reason why he left. I believe the Moore
14 Peterson firm may have been dissolving.

15 Q. Did Mr. Methvin's role change at all during
16 this time period where there was a switch of firms?

17 A. No.

18 Q. There was also a firm here in St. Louis,
19 Coburn, Croft and Putzell at the time --

20 A. Putzell, yes.

21 Q. -- that became involved in this litigation.
22 Recall that?

23 A. They did some very circumscribed work for
24 us.

25 Q. Do you recall what that work was that they

1 were hired to do?

2 A. My recollection is that we asked one of the
3 attorneys at Coburn and Croft to provide us assistance
4 in getting material on, and I think maybe even serving a
5 subpoena on one of the prospective plaintiffs'
6 witnesses.

7 That particular witness -- I believe it was
8 Dr. Zoltowski -- is one that we had seen in litigation
9 that the Coburn Croft firm had handled for us in the
10 past, and as to which they developed significant
11 expertise .

12 Q. Is Dr. Zoltowski located here in St. Louis?

13 A. No. I think he's in Illinois. Might have
14 been at SIU Edwardsville.

15 Q. Was that the only role that Coburn and
16 Croft or Coburn, Croft and Putzell was intended to serve
17 in the LSU litigation?

18 A. There may have been other, as I say,
19 circumscribed tasks that we asked them to perform, but
20 that's the main one that I recall.

21 Q. You don't recall any other specific tasks
22 at this time?

23 A. Not specifically.

24 Q. Did you agree to pay the same rates that
25 Coburn Croft had charged in the past?

1 A. Yes. They were currently working for us on
2 other matters. It was the same fee arrangement we had
3 in other cases.

4 Q. Do you know if that was their standard rate
5 or discount?

6 A. That was a discounted rate.

7 Q. Recall what that discounted rate was?

8 A. Back in 1988 I couldn't tell you, no, but
9 it was below their standard hourly rate.

10 Q. Husch and Eppenberger also became involved
11 in the LSU litigation. Is that correct?

12 A. I believe they had a minor role.

13 Q. I believe out of their Decatur, Illinois
14 office. Is that correct?

15 A. That's probably right. I don't recall
16 specifically.

17 Q. Do you remember what the purpose of Husch
18 Eppenberger's involvement in the litigation was?

19 A. No, I don't. Again, my recollection is it
20 was a fairly circumscribed task, but what it was I just
21 don't recall.

22 Q. Would Husch and Eppenberger have charged
23 you their standard rate or discounted rate at that time?

24 A. It was a discounted rate.

25 Q. Had Husch and Eppenberger worked for

1 Monsanto prior to their involvement in the LSU
2 litigation?

3 A. Yes. They were currently handling in fact
4 several PCB cases for us.

5 Q. Do you recall any other firms being
6 involved in the defense of the LSU litigation on behalf
7 of Monsanto?

8 A. Law firms?

9 Q. Yes.

10 A. I don't recall any other law firm having a
11 substantive role in this case. There may have been -- I
12 mean, from time to time we would contact firms that
13 might have information on a particular expert or
14 particular topic and ask them if there is material they
15 can provide.

16 But the firms that you have just mentioned
17 are the only law firms that I recall having anything
18 like a substantive role in the case.

19 Q. Are they the only firms that submitted
20 legal bills to Monsanto in the case?

21 A. I don't know.

22 Q. You can't think of anyone else as you sit
23 here today?

24 A. That's correct.

25 Q. Whose job was it to evaluate the potential

1 of these cases in Louisiana as far as trial potential,
2 verdict potential, that type thing?

3 A. That was a collaborative effort.

4 Q. Were you ever given an evaluation by any
5 firm of the potential verdicts in the Louisiana
6 litigation?

7 A. Not a specific dollar amount, no.

8 Q. What were you told about the potential
9 verdicts?

10 A. The general conversation was along the
11 lines of Louisiana being a very dangerous state. By
12 dangerous I mean it's not defendant friendly,
13 particularly for large companies like Monsanto.

14 In the particular circumstances of this
15 case there was a great deal of publicity of injury
16 reports because of the involvement of the fire
17 department which is, you know, a very well regarded
18 institution in Shreveport;

19 That the publicity was very adverse to our
20 interests in the case and that the plaintiffs' counsel
21 involved, while perhaps not experienced in toxic tort
22 cases, were, at least one of them was a very capable
23 trial lawyer who had obtained large verdicts in the
24 past, and that we anticipated he would make a serious
25 effort to get a large sum of money in this case as well.

1 In addition to that there was the
2 involvement of a couple of experts who were then in the
3 process of publishing or attempting to have published
4 some scientific articles that purported to find health
5 effects associated with exposure to PCB's. We regarded
6 those experts as not being good scientists, junk
7 scientists. As a matter of fact one of them was
8 connected with the Church of Scientology in Los Angeles.

9 Q. Who was that doctor?

10 A. The individual was Dr. Megan Shields. As I
11 recall she may have had other -- Health Med was her
12 firm.

13 They had been involved in providing
14 "treatment," in quotes, for the LSU firemen and making
15 some public pronouncements about the impact on the
16 health of the firemen that could be expected to result
17 from their exposure at LSU.

18 All of this created what we regarded as a
19 very, very dangerous atmosphere down there, one in which
20 if the case were not handled with great care, there
21 would, it could be a serious loss.

22 Take a break?

23 Q. Certainly.

24 (Whereupon, a short break was taken.)

25 Q. Sir, I think you said before, but I just

1 want to make sure. You were never given a specific
2 dollar amount as to the evaluation of the potential
3 verdicts in the LSU litigation, were you?

4 A. That's correct.

5 Q. You said that you considered it a serious
6 potential loss. What dollar amount do you mean would be
7 a serious potential loss to Monsanto?

8 A. Well, I don't want to characterize it a
9 serious loss to Monsanto. But I would say the verdict
10 potential in this case seemed to me to be at worst
11 certainly several millions of dollars.

12 Q. I just want to deal with what you meant a
13 little bit. When you said it was not a potential loss
14 to Monsanto, a serious potential loss to Monsanto, was
15 it a serious potential loss to someone else?

16 A. That isn't what I meant to say. Your
17 question was, or I heard it being, what would be a
18 serious potential loss to Monsanto.

19 My answer was declining to characterize it
20 in those terms but to give you my impression as to what
21 the dollar amount of the verdicts might be.

22 Q. And those verdicts we're talking about
23 would be verdicts rendered in the LSU litigation against
24 Monsanto?

25 A. Yes, and others in the case.

1 Q. Were you ever given an evaluation by any
2 firm of the potential settlement range for the Louisiana
3 litigation?

4 A. I know we had discussions about that. I
5 can't remember any specifics though. And Mr. Newport
6 was on point at that time. I know we discussed it. I
7 just can't recall the specifics.

8 Q. But you do recall discussing, participating
9 in a settlement of those cases?

10 A. What I recall in general is discussing what
11 we believed it would take to settle the case, the cases.

12 Q. Can you recall if that figure was in the
13 millions of dollars?

14 MR. CARNEY: Which point in time are you
15 talking about?

16 Q. (By Mr. Harfst) When these discussions
17 were going on. Was there more than one discussion about
18 settlement value in these cases?

19 A. Yes. Settlement is something we would
20 visit periodically.

21 Q. Do you remember at any period of time what
22 the general range of those settlement amounts was?

23 A. It varied over time. And again, I'm sorry,
24 I just can't recall specific numbers. It may have
25 been -- we didn't get specific numbers certainly early

1 on in the case, but my recollection is that it was our
2 view that the settlement or the amount it would take to
3 settle the case early on was fairly significant.

4 Q. Fairly significant meaning in the millions
5 of dollars?

6 A. At that point early on it probably would
7 have taken more than a million dollars to settle the
8 case, certainly for all 120 of the plaintiffs that were
9 involved at that point.

10 Q. Mr. Newport, however, you said was taking
11 the lead at those times in those discussions on
12 Monsanto's behalf. Right?

13 A. Mr. Newport was in day-to-day charge of the
14 case beginning in late '90 or early '91. When he came
15 aboard he would have been the one who had discussions
16 about settlement possibilities with counsel.

17 Q. It would have been Mr. Venker prior to
18 that?

19 A. If there were such discussions at that
20 time, yeah, it would have been Mr. Venker.

21 Q. Does Monsanto have a general policy of
22 never participating in paying a settlement on a PCB
23 case?

24 A. No.

25 Q. Has Monsanto paid on settlements in PCB

1 cases in the past?

2 A. Certainly we have settled PCB cases, yes.

3 Q. Had Monsanto settled PCB cases prior to the
4 LSU lawsuits being settled?

5 A. Yes.

6 Q. The LSU litigation was settled. Correct?

7 A. Yes.

8 Q. Before trial?

9 A. The case was not tried. It was settled.

10 Q. Monsanto did not participate in paying any
11 settlement money on those cases. Correct?

12 A. Correct.

13 Q. Monsanto was released from liability in
14 those cases, however?

15 A. That's my understanding.

16 Q. Do you know why that was?

17 MR. CARNEY: Let me object because that
18 might call for this witness to speculate inside the
19 minds of everybody as to why they made such an
20 agreement.

21 Q. (By Mr. Harfst) Do you know what
22 circumstances led to Monsanto being released from
23 liability in those cases, having not participated in
24 paying any settlement money?

25 A. It was my understanding that Gould settled

1 Q. Are you aware of anyone on Gould's behalf
2 having represented to Monsanto that they believed the
3 Special Undertaking was enforceable?

4 A. I am not aware of the specific terms of the
5 conversations between Gould and Monsanto
6 representatives.

7 It's my understanding that, as I said
8 before, that Gould agreed to settle these cases on its
9 behalf and on Monsanto's behalf because of the Special
10 Undertaking.

11 Q. Why do you understand that it was because
12 of the Special Undertaking that they agreed to settle on
13 behalf of Monsanto and theirselves?

14 A. As I recall, that's how it was presented to
15 me.

16 Q. Who presented it to you like that?

17 A. I had spoken to Mr. Newport about it when
18 he advised me Gould was in fact settling the cases. I
19 don't recall whether I spoke to anyone else about that
20 or anyone else brought that information to me.

21 Q. And you said earlier that you don't
22 remember Mr. Newport telling you any of the specific
23 conversations that were had between him and
24 representatives of Gould?

25 A. He may have. But as I sit here I can't

1 recall -- I just don't remember whether we did talk
2 about specifics or not. Just don't recall.

3 Q. At any time during the pendency of the LSU
4 litigation, did Monsanto tender its legal bills to ITE
5 or Gould?

6 MR. CARNEY: Object to this. I think there
7 is specific documentation on that which would speak for
8 itself.

9 A. I don't remember specifically whether that
10 occurred, whether during the pendency of the case or at
11 some other date. I wasn't a day-to-day supervisor of
12 that case at that point.

13 Q. (By Mr. Harfst) At the time that Monsanto
14 made its formal demand on Gould under the Special
15 Undertaking, did you, you being Monsanto, allow Gould or
16 its representatives to review Monsanto's bills in that
17 case?

18 MR. CARNEY: Object to the question. I
19 think it's vague as to what you mean by allow. I don't
20 know that there was any request, so it seems to me vague
21 as to what you mean by allow. So it's really
22 hypothetical as to what Monsanto would have done.

23 Q. (By Mr. Harfst) Are you aware of anyone
24 from Gould or its representatives reviewing Monsanto's
25 bills at any time during the pendency of the LSU

1 litigation?

2 A. I'm not sure again with respect to the
3 pendency of the litigation, but I know that we did
4 supply our bills or outside counsel fees and expenses to
5 Gould representatives for their examination.

6 Q. But you don't recall when that was?

7 A. I don't recall specifically, no.

8 Q. At the time that Monsanto made its formal
9 demand on Gould, did Monsanto inform Gould of what its
10 billing practices were?

11 A. I think the demand was a written demand and
12 it says what it says. I don't recall all of the
13 contents of that.

14 Q. At any time during the pendency of the LSU
15 litigation, was Gould given the opportunity to select
16 the firm or firms that would represent Monsanto?

17 A. I don't know what you mean by given the
18 opportunity. My recollection is that they, is that
19 Gould never requested to do that.

20 Q. Okay. Do you know what would have happened
21 had they requested to select counsel for Monsanto in the
22 LSU litigation?

23 MR. CARNEY: Objection. Calls for
24 speculation. It's hypothetical. Never took place.

25 A. That truly is hypothetical.

1 Q. (By Mr. Harfst) Do you know what would
2 have happened?

3 A. I can't tell you, no, because it's a
4 hypothetical question.

5 Q. Has Monsanto ever allowed another company
6 to hire counsel on its behalf under the terms of the
7 Special Undertaking?

8 MR. CARNEY: Where specific request was
9 made?

10 Q. (By Mr. Harfst) At any time have you ever
11 done that?

12 A. Yes.

13 Q. When was that?

14 A. We had a, an agreement with Westinghouse
15 regarding some California litigation in which counsel
16 for Westinghouse jointly represented Monsanto and
17 Westinghouse.

18 Q. When was that?

19 A. It was roughly in the time period that, the
20 late '80s, 1988, '89, maybe '90.

21 Q. Do you recall the name of the case or
22 cases?

23 A. I don't remember the name of all the
24 individual cases in general. It was the One Market
25 Plaza litigation in San Francisco.

1 Q. Was it the Bronson, Bronson and McKinnon
2 firm that represented both Westinghouse and Monsanto in
3 that litigation?

4 A. No.

5 Q. Do you remember what firm it was?

6 A. Thelen, Marrin, Johnson and Bridges.

7 Q. T-h-i-e-l-e-n?

8 A. T-h-e-l-e-n, M-a-r-r-i-n, Johnson and
9 Bridges.

10 Q. Did Monsanto originally hire counsel in the
11 One Market Plaza cases to represent Monsanto in
12 California in those cases?

13 A. Yes.

14 Q. And after that case was pending, Monsanto
15 asked Westinghouse to undertake the defense of that
16 litigation?

17 A. Yes, sir.

18 Q. And Westinghouse agreed?

19 A. Eventually.

20 Q. What happened? Was it just a period of
21 time and negotiations that happened between the time
22 Monsanto demanded that and the time that Westinghouse
23 agreed?

24 A. Yeah. The discussions and negotiations
25 took place over a period of time, after which

1 Westinghouse agreed to honor the Special Undertaking.

2 Q. Was there ever a lawsuit filed in that
3 situation?

4 A. Well, there were lawsuits pending, yes.
5 That's what gave rise to the Special Undertaking
6 obligation.

7 Q. What I'm asking about is a lawsuit between
8 Monsanto and Westinghouse regarding the Special
9 Undertaking.

10 A. No, there was no lawsuit.

11 Q. At any other time has any other party to
12 the Special Undertaking hired counsel to represent
13 Monsanto on a PCB case?

14 A. Not that I'm aware of. Not that I can
15 recall.

16 Q. So this was the only one incident that you
17 can recall?

18 A. That's the only one I can recall, yes.

19 Q. During the pendency of the Louisiana
20 litigation, did Monsanto have internal procedures as to
21 how legal bills would be paid once they were received at
22 Monsanto?

23 A. Yes.

24 Q. I think you indicated earlier that the
25 bills would go to the in-house counsel who was assigned

1 to the particular case. Is that correct?

2 A. That's correct.

3 Q. What would happen after that?

4 A. Well, when the bill is received by control
5 counsel, in-house counsel, it's reviewed. Any questions
6 that appear from review of the bill then would be
7 referred back to the law firm and resolved, if there
8 were any questions.

9 At that point the bill would be approved by
10 the in-house counsel, and depending upon the amount of
11 the bill it may be reviewed by somebody else and then
12 forwarded to our Accounts Payable group for payment.

13 Q. Do you know on the LSU litigation what the
14 amount of the bill would be that would require
15 additional approval by another attorney?

16 A. It wasn't just specific LSU. There were
17 general guidelines that we had.

18 Q. What were the guidelines that applied to
19 the LSU litigation?

20 A. In particular -- well, as I said the same
21 guidelines that applied really generally across the
22 board to all litigation bills, but that a bill from a
23 law firm in excess of \$20,000 would require approval by,
24 depending upon when, either Mr. Berendt or me.

25 Q. Were there some amounts that you could

1 approve and higher amounts Berendt had to approve?

2 A. Again, depending upon the time period. In
3 my position at Monsanto I was bound by the \$20,000 limit
4 for many years so that bills that came to me in excess
5 of 20,000, I would be required to seek Mr. Berendt's
6 approval on.

7 Q. Were there any other gradations in the
8 amounts of bills, or were there bills below \$20,000 that
9 you at that time and Mr. Venker and Mr. Newport could
10 approve, and bills over 20,000 that you after your
11 promotion and Mr. Berendt could approve, or was there
12 another 40,000 line and \$100,000 line?

13 A. As far as Mr. Berendt's approval authority
14 went, there was no limit on that. He was our chief
15 litigation lawyer and had authority to approve outside
16 counsel bills in any amount.

17 There were other approvals that were
18 required before the bill could be paid, other than just
19 Law Department approval.

20 The Accounts Payable group had a procedure
21 that it went through more to assess, I think, the
22 arithmetic accuracy of the bill.

23 Depending on the amount of the bill -- I'm
24 not sure what the dollar cut off was -- review was then
25 required by the General Counsel for the specific

1 business group at Monsanto that at that time was
2 responsible for PCB's.

3 Q. Okay. And do you currently in your
4 position at Monsanto have any level of approving bills
5 that you don't have? Do you understand that question?

6 A. I understand. I'm just trying to think
7 whether -- I've not -- I think right now my approval
8 level is what Berendt's was before he retired.

9 Q. Which was unlimited?

10 A. Yeah.

11 Q. Was advance authority required for any type
12 of expenses or fees on the LSU litigation?

13 MR. CARNEY: Well, it's a compound
14 question. I think you have covered it with regard to
15 fees so it's repetitive. I don't know if you want him
16 to repeat that.

17 I don't think you have asked him in regard
18 to expenses.

19 Q. (By Mr. Harfst) Let me repeat it with
20 regard to fees. Was advance authority required for any
21 of the fees billed on the LSU litigation?

22 A. Advance authority is always required before
23 a significant project is undertaken in any of these
24 cases. It's not necessarily a formal process.

25 But as I described earlier, we get involved

1 very closely with counsel, and we understand what goes
2 on in the case. And we agree with counsel on the
3 advisability or not advisability of undertaking a
4 specific project.

5 And whether it's a motion or, you know,
6 another significant effort undertaken in the lawsuit,
7 that's, something that is arrived at a decision to go
8 forward on, that would be one that the Monsanto lawyer
9 would be involved in.

10 Q. Is there any formal written procedure for
11 approving significant projects?

12 A. No.

13 Q. Was advance authority required in the LSU
14 litigation for payment of expenses?

15 A. Again, this is not specifically applicable
16 to LSU, but in general our policy is that the normal
17 day-to-day expenses are to be itemized on a bill and
18 submitted for payment along with counsel's fees.

19 Any expense of any significant amount --
20 and informally I usually tell counsel if it's more than
21 three or four thousand you better ask me about it. For
22 example, retaining a consultant to do a significant
23 amount of work on the case would require approval.

24 Q. During the process of reviewing the bill
25 undertaken by the control counsel, does the control

1 counsel have the duty to review every bill line by line,
2 entry by entry?

3 A. That's the expectation, yes.

4 Q. And when you did that as a control counsel
5 on some cases, did you ever refuse to pay any specific
6 items in bills?

7 A. That happens, yes. Fortunately not
8 terribly often, but it does happen.

9 Q. Did you ever do that type of review on any
10 of the bills in the LSU litigation?

11 A. I did early on.

12 Q. Until Mr. Venker --

13 A. Until he came on.

14 Q. During that time period while you were
15 performing the review of the bills on the LSU
16 litigation, do you recall having refused to pay any of
17 the items on those bills?

18 A. I don't recall ever questioning any of the
19 items, but that's been awhile ago.

20 Q. Do you know whether or not Mr. Venker or
21 Mr. Newport questioned any particular items on the bills
22 in the LSU litigation?

23 A. I know they did.

24 Q. Do you know any specific things that they
25 questioned?

1 A. Not specifically. I know in general we had
2 an ongoing dialogue with counsel about the expenses
3 being undertaken in getting the depositions in
4 California.

5 There may have been other things. There
6 was some discussion about briefing in a couple
7 instances, but again it's not real -- I don't have
8 specific recollection of specific lawyers or expenses or
9 dates or anything, other than just the general
10 recollection that those discussions took place.

11 Q. Would Mr. Venker and Mr. Newport have been
12 more involved in those discussions?

13 A. Yes.

14 Q. Did Monsanto ever undertake to have legal
15 bills audited by an outside firm?

16 A. A legal fees auditing firm?

17 Q. Sure.

18 A. No.

19 Q. They have never done that since you have
20 worked for Monsanto?

21 A. Not that I can recall.

22 Q. During the time period when you were
23 reviewing the bills in the LSU litigation, did you ever
24 request any of the work product to compare with the
25 billing entry from any particular firm?

1 MR. CARNEY: I'm sorry. Read that or maybe
2 just restate it.

3 Q. (By Mr. Harfst) At the time period when
4 you were reviewing the bills at LSU, did you ever look
5 at a bill and then request a copy of a document from the
6 law firm to compare with the bill?

7 MR. CARNEY: Where he didn't have it
8 already?

9 Q. (By Mr. Harfst) Correct.

10 A. I had it. I mean, any significant project
11 would be one that I would, was involved in. I would
12 have looked at a brief or whatever it happened to be.

13 Q. During that same time period, do you ever
14 recall specifically looking at a bill at the same time
15 that you were looking at a document that had been
16 prepared in that litigation, in order to see whether the
17 amount of time billed for the document was justified?

18 MR. CARNEY: You are talking about
19 something at the same time as opposed to looking at it
20 several weeks earlier and then --

21 Q. (By Mr. Harfst) Correct.

22 A. I don't recall having done that.

23 Q. Have you ever done that at any time while
24 working for Monsanto?

25 A. Certainly.

1 MR. HARFST: Mr. Bistline, that's all the
2 questions I have for you at this time. Mr. Carney, do
3 you want to explain signature to your client or should
4 I?

5 MR. CARNEY: We will probably read the
6 deposition.

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STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, PEGGY A. DEAN, a Certified Court Reporter and a duly commissioned Notary Public within and for the State of Missouri, do hereby certify that pursuant to agreement there came before me at the offices of Husch & Eppenberger, 100 North Broadway, St. Louis, MO,

THOMAS MICHAEL BISTLINE,

who was by me first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in controversy in this cause; that the witness was thereupon examined under oath and said examination was reduced to writing by me; that the signature of the witness was not waived by agreement of all parties; and that this deposition is a true and correct record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this deposition is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on August 17, 1996.

My commission expires February 28, 1999.

Peggy A. Dean
Notary Public within and
for the State of MO
St. Louis County

COMES NOW THE WITNESS, THOMAS MICHAEL BISTLINE, and having read the foregoing transcript of the deposition taken on the 14th day of August, 1996, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

THOMAS MICHAEL BISTLINE

Subscribed and sworn to me before this
_____ day of _____, 1996.

My Commission
expires: _____

Notary Public

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

MONSANTO COMPANY,	)	
	)	
Plaintiff,	)	
	)	Cause No. 649249
vs.	)	
	)	
GOULD ELECTRONICS, INC.,	)	
	)	
Defendant.	)	

CERTIFICATE OF REPORTER

Deposition of Thomas Bistline, taken on August 14, 1996.
Total number of pages: 92

Name and address of person having custody of the
original transcript: Brown & James

705 Olive

St. Louis, MO 63101

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St. Louis, MO

Upon delivery of transcripts, the above charges had not
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IN WITNESS WHEREOF, I have hereunto set my hand and
seal on August 17, 1996.

Notary Public

My commission expires February 28, 1999.