

NO. _____

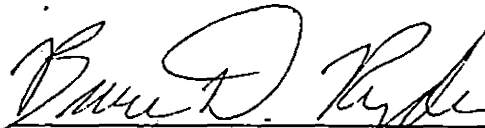
IN THE
SUPREME COURT OF ILLINOIS

FRANCES E. KEMNER, et al., and all)	
other cases consolidated for trial)	
with Cause No. 80-L-970, in the)	
Circuit Court of St. Clair County,)	
	) From the Circuit
Plaintiffs,	) Court, Twentieth
	) Judicial Circuit,
vs.	) St. Clair County,
	) No. 80-L-970
MONSANTO COMPANY,	)
	) Hon. Richard Goldenhersh,
Defendant-Petitioner,	) Presiding Judge
	)
vs.	)
	)
HONORABLE RICHARD P. GOLDENHERSH,	)
JUDGE OF THE CIRCUIT COURT OF	)
ST. CLAIR COUNTY,	)
	)
Respondent.	)

AFFIDAVIT

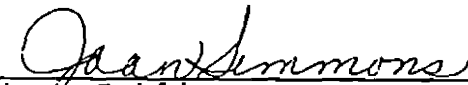
COMES NOW Bruce D. Ryder, and upon his oath deposes and states that he is one of the attorneys of record for Defendant-Petitioner Monsanto Company in the above-captioned cause; that he has prepared the supporting record attached to Monsanto's Motion for Supervisory Order herein as Exhibits A - J; that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

Further affiant sayeth not.


Bruce D. Ryder

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

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


Notary Public

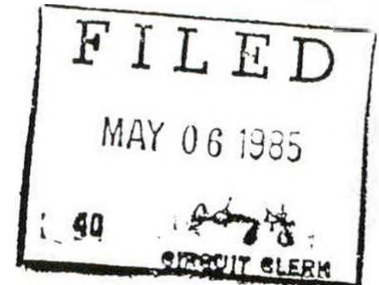
My Commission expires:

11/17/87

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

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

No. 80-L-970



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

The files of Monsanto's inhouse attorneys contain a number of documents prepared for trial in cases other than this which are nevertheless responsive to this Court's current order concerning discovery. Among these documents are a printout of a computer data base and certain "issue papers" prepared by outside consultants and the law firm of Townley & Updike of New York in preparation for the trial of In re "Agent Orange" Product Liability Litigation, Cause No. MDL 381 pending in the United States District Court for the Eastern District of New York. The facts stated in the Affidavit of Richard J. Barnes, a partner at Townley & Updike, demonstrate that these documents should be protected from discovery under the attorney work-product provisions of Supreme Court Rule 201(b)(2).

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

Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The

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

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

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

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

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

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

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

COBURN, CROFT & PUTZELL

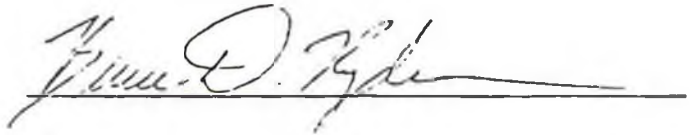
By 
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Richard S. Cornfeld
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(618) 277-1020

Attorneys for Defendant
Monsanto Company

CERTIFICATE OF SERVICE

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

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

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