

STATE OF ALABAMA
IN THE CIRCUIT COURT OF CALHOUN COUNTY

SABRINA ABERNATHY, et al.,

Plaintiffs,

VS.

CIVIL ACTION NO.
CV-96-269

MONSANTO COMPANY, et al.,

Defendants.

DEPOSITION OF DR. ROBERT G. KALEY, II

Taken on behalf of the Plaintiffs

January 7, 1999

KRIEGSHAUSER REPORTING & VIDEO
REGISTERED PROFESSIONAL REPORTER
319 NORTH FOURTH, SUITE 322
ST. LOUIS, MISSOURI 63102
(314) 621-4408 FAX (314) 621-4533

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Deposition of DR. ROBERT G. KALEY, II,
produced, sworn, and examined on behalf of the
Plaintiffs on January 7, 1999, between the
hours of nine o'clock in the forenoon and five
o'clock in the afternoon of that day, at the
Ritz-Carlton Hotel, 100 Carondelet Plaza, St.
Louis, MO 63105, before Sheila L. Ford, a
Registered Professional Reporter and Notary
Public within and for the State of Missouri.

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A P P E A R A N C E S

The Plaintiffs were represented by
Mr. John W. Barrett of the law firm of Barrett
Law Office, P.A., P. O. Box 987, Lexington,
Mississippi 39095, and Charles L. Cunningham,
Jr., Suite 200, The Landmark Building, 304
West Liberty Street, Louisville, Kentucky
40202.

The Defendant was represented by
Mr. Harlan L. Prater, IV of the law firm of
Lightfoot, Franklin & White, L.L.C., The Clark
Building, 400 20th Street North, Birmingham,
Alabama 35203-2300, and Mr. Michael E. Kelly
of the law firm of Smith, Helms, Mulliss &
Moore, P. O. Box 21927, Greensboro, North
Carolina 27420.

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IT IS STIPULATED AND AGREED by the
parties, through their respective counsel,
that the deposition of DR. ROBERT G. KALEY,
II, may be taken before Sheila L. Ford, CSR,
RPR, as Commissioner and Notary Public in the
State of Missouri, on January 7, 1999, at 9:30
a.m.

IT IS STIPULATED AND AGREED that it shall
not be necessary for any objections to be made
by counsel to any questions except as to form
or leading questions and that counsel may make
objections and assign grounds at the time of
trial or at the time said deposition if
offered in evidence or prior thereto.

IT IS STIPULATED AND AGREED that notice
of filing by the commissioner is waived.

o-o-o

DR. ROBERT G. KALEY, II,

of lawful age, produced, sworn, and examined
on behalf of the Plaintiffs, deposes and says:

EXAMINATION BY MR. BARRETT:

Q. Would you state your name to the Court,
please?

A. Robert George Kaley, II.

Q. You hold a doctorate, do you not?

A. Yes. That's correct.

Q. Dr. Kaley, my name is Don Barrett. I
represent the plaintiffs in this case,
and I'll be asking you the questions
this morning.

A. Fine.

Q. Where do you live?

A. Chesterfield, Missouri.

Q. And Chesterfield is a suburb of St.
Louis?

A. That's correct.

Q. And you work for Solutia?

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correct copy of that affidavit. We have
got a few notes on it, but the printed
material is what I'm talking about.

A. It appears to be, yes.

Q. So you'll understand where I'm going the
next few questions, I wanted to find out
for myself how much of the information
contained in this affidavit is based on
your personal knowledge and how much of
it you gained through looking at the
record or talking to other people.
That's the purpose of my questions.

A. All right.

Q. First of all, are the facts and matters
set out in this affidavit -- which I'll
have marked as Exhibit One -- are they
all true and correct?

A. I believe so, yes.

Q. And you --

A. I signed the affidavit, yes.

Q. -- signed it, and you swore to it?

A. Yes.

Q. That it was all true?

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A. Yes. I work for Solutia, Incorporated.

Q. Prior to that, until they split off from
Monsanto, you worked for Monsanto?

A. That's correct.

Q. I understand that you have worked for
Monsanto since 1973?

A. That's correct.

Q. Did you hold any other job after you
completed your education before you went
to work for Monsanto?

A. No, I did not.

Q. So your whole professional career has
been spent working either for Monsanto
and then the spin-off company, Solutia?

A. Yes.

Q. You gave an affidavit in a case called
John and Barbara Swift, et al. v.
Monsanto Company in the Federal Court in
Alabama back in November. Do you
remember that?

A. Yes.

Q. I'm going to hand this to you and see if
this is a copy of that, a true and

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A. Yes.

Q. What was your first job with Monsanto?

A. I was an analytical chemist in the
industrial chemical division.

Q. How long did you hold that position,
what years?

A. 1973 until approximately, I guess, 1976,
as I recall.

Q. Did you have anything to do with the
PCBs in that position?

A. Yes.

Q. What did you do?

A. I analyzed a variety of samples that
came to our laboratory for PCBs.

Q. Okay. And that was what you did, was --
You sampled what sort of materials?

A. Really, just about anything you can
imagine. We did water samples; we did
soil samples; we did tissue samples; we
did samples generated in our laboratory
to test biodegradation or other
properties of PCBs.

Q. During that period of time, did you know

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HARTOLDMON0014777

1 anything about the particulars of the
2 operation of the facility in Anniston?
3 A. Just in the most general terms. I
4 really didn't know very much about the
5 specifics of the operation.
6 Q. In other words, you knew that Monsanto
7 had a plant there?
8 A. Right. By the time I had reached
9 Monsanto, that plant had been -- PCB
10 production department at that plant had
11 been shut down and dismantled. So I was
12 not --
13 Q. That was all you knew?
14 A. Not operating. I mean -- Yes. I knew
15 they had manufactured them there and
16 that that plant had been shut down, yes.
17 Q. And we're at this period of time up
18 until, say, 1976; did you know anything
19 about any problems they had in Anniston
20 with the release or discharge of PCBs
21 from the premises?
22 A. As my career began to develop, I
23 understood that samples had been

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1 occasion to work with any PCB sampling
2 or samples from the Anniston facility or
3 its environment?
4 A. I don't recall that I specifically
5 worked with any samples from Anniston,
6 no.
7 Q. Okay. Then what happened in 1979?
8 A. In 1979 I went to a corporate analytical
9 group.
10 Q. All this was in St. Louis?
11 A. Yes.
12 Q. And you have lived in St. Louis since
13 you went to work for Monsanto and still
14 live in St. Louis?
15 A. That's correct.
16 Q. And how long did you work in this
17 corporate position that you just
18 described?
19 A. Well, basically until about 1985. I'm
20 beginning to think my timing before that
21 may be a little screwed up by a year or
22 two, but basically I was a laboratory
23 analytical chemist until about 1985.

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1 analyzed from Anniston. I knew that
2 there were -- you know, that materials
3 had been analyzed from Anniston, at some
4 point or another that materials had been
5 detected in various media but nothing in
6 very detail.
7 Q. Did you know that some of the media were
8 off-site, off-premises?
9 A. At that time I'm not sure that I knew
10 that particularly. I don't know.
11 Q. And then in 1976 what did you do?
12 A. Well, basically I got promotion to be a
13 group leader. And the division I was in
14 split into kind of a pure chemistry
15 division and an environmental division.
16 And I became a group leader in the
17 environmental division.
18 Responsibilities were -- other than I
19 had a few people reporting to me -- were
20 not greatly different.
21 Q. How long did you hold that position?
22 A. I think until about 1979.
23 Q. During that particular time did you have

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1 Q. And in this period that you have just
2 described in your new position, what did
3 you do?
4 A. Basically ran an instrument called a gas
5 chromatograph mass spectrometer,
6 analyzing a variety of samples generated
7 in the research department of Monsanto.
8 Q. And none of that had anything to do with
9 any particularity with Anniston,
10 Alabama?
11 A. No.
12 Q. What happened in 1985?
13 A. In 1985 I accepted a position in the
14 EHS, Environmental Health and Safety
15 Department, basically assisting someone
16 who had responsibility for corporate
17 stewardship for PCBs.
18 Q. And what were your job responsibilities?
19 A. Basically -- A variety of things, but
20 basically to be a resource to Monsanto
21 and outside persons on PCB issues. That
22 was the primary focus.
23 Q. So your job was to deal with Monsanto's

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HARTOLDMON0014778

1 PCB problem as they arose in various
2 places in the country?
3 A. I don't know if they would necessarily
4 limit it to PCB problems. I was a
5 resource person charged to be
6 knowledgeable about PCBs and responding
7 to both internal and external requests
8 for information about PCBs, yes.
9 Q. I see. Okay. And how long did you hold
10 that position?
11 A. With some variations that's basically
12 the position I still have. The other
13 person retired, and I basically assumed
14 those responsibilities. That's an
15 oversimplification, but that's really
16 described --
17 Q. So since 1985 you were at first working
18 under somebody who retired later. When
19 did that person retire, incidentally?
20 A. I can't remember exactly. That was
21 about probably 19 -- I'll say 1991 or
22 '92. At that point I had some
23 additional responsibilities, and there

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1 the facility and in Snow Creek.
2 Q. And when you became involved in it, did
3 you learn at the time that Monsanto had
4 actually known about this for at least
5 fifteen years? Did you know that?
6 A. About what?
7 Q. That there were PCBs being discharged
8 from the Monsanto facility in Anniston,
9 that in other words it wasn't discovered
10 for the first time by the Attorney
11 General of Alabama, that it had been
12 discovered at least fifteen years
13 earlier by Monsanto --
14 A. I understood that there had been studies
15 detecting PCBs in various of those
16 ditches and portions of Snow Creek part
17 of that time.
18 Q. Well, what was the -- What happened as a
19 result of this attorney general's
20 investigation?
21 A. We proposed to do a remediation of
22 certain of those ditches leading from
23 the plant and submit that proposal to

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1 was another person doing the specific
2 PCB stuff reporting to me, and he's
3 since retired also.
4 Q. Yeah.
5 A. So, I mean, the fact is that's been
6 among my responsibilities since 1985.
7 Now it's --
8 Q. When were you first assigned
9 responsibilities for PCB problems in
10 Anniston?
11 A. The first involvement I had in Anniston
12 was about the 1985 time frame.
13 Q. And what was that involvement?
14 A. There was an investigation of -- I think
15 by the attorney general's office in
16 Alabama -- of PCB contamination, in and
17 around the Anniston area.
18 Q. I see. And what did you learn as a
19 result of those matters coming to your
20 attention?
21 A. Primarily we and others did sampling,
22 understood that there were various
23 levels of PCBs in ditches leading from

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1 the Alabama Department of Environmental
2 Management. Sometime subsequent to that
3 we received oral communication from ADEM
4 that it would be all right to undertake
5 that remediation, and that remediation
6 was undertaken.
7 Q. You did it just by word of mouth without
8 getting anything in writing from them?
9 A. That's my understanding, yes.
10 Q. At that time did you undertake to find
11 out what the extent of the PCB
12 contamination off-site was?
13 A. We had done some sampling that guided us
14 in the extent of the remediation that we
15 undertook. So to that extent, yes.
16 Q. But did you subsequently find out that
17 the remediation as far as -- I mean that
18 the PCB contamination is far more
19 widespread than what you remediated in
20 19 -- in the mid '80s?
21 A. Well, our 1985 to 1989 focus was on the
22 ditches leading from the plant and the
23 upper reaches of Snow Creek.

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HARTOLDMON0014779

1 Q. And you said that was the focus. Was
2 there anything else done? Did you go
3 into the neighbors' yards and do any
4 sampling to determine --
5 A. No.
6 Q. Why not?
7 A. We had no reason to believe, I think at
8 that time, that the materials were in
9 the people's yards. And the focus was
10 on the waterways and the streams
11 carrying -- that originally had carried
12 the plant discharge from the plant into
13 Snow Creek.
14 Q. Had you done any air sampling?
15 A. Not that I know of.
16 Q. Did you check to see?
17 A. Did I check to see if we had done any
18 air sampling? Not that I recall.
19 Q. You have done air sampling since,
20 haven't you?
21 A. There has been air sampling done.
22 Q. And the air sampling that has been done
23 has shown that --

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1 Q. And if you had done air sampling back in
2 the '80s, you probably would have found
3 the same thing?
4 A. I can't speculate on that. I don't
5 know.
6 Q. Can you think of any --
7 MR. BARRETT: Off the record.
8 [Discussion held off the
9 record.]
10 [At this point Mr. Harlan
11 Prater joined the deposition
12 proceedings.]
13 MR. BARRETT: Back on the record.
14 Q. (By Mr. Do) Barrett you know of any
15 reason why that the air samples -- any
16 reason that would make you think that
17 the air samples would not have been
18 similar, or at least as much in 1985 as
19 it was when you took --
20 A. I haven't thought about that issue. As
21 I sit here, nothing springs to mind, but
22 I really haven't thought about that
23 issue.

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1 MR. BARRETT: Off the record.
2 [Discussion held off the
3 record.]
4 Q. (By Mr. Barrett) What were the results
5 of air sampling that's been done in
6 recent times?
7 A. I don't know in great detail. I know
8 the sampling that has been done suggests
9 that some level, most of the samples in
10 fact, are within background levels for
11 what you would expect in urban areas
12 throughout the United States. There are
13 some exceptions to that. There are some
14 levels that do appear to be higher than
15 what you would see in a normal urban
16 background.
17 Q. So you have -- Your air sampling has
18 found levels -- at least some of your
19 air sampling has found levels in excess
20 of what you would expect to find in an
21 urban background?
22 A. I think that's a fair characterization,
23 yes.

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1 Q. Well, think about it now and tell me if
2 -- You're the PCB man for Monsanto.
3 Tell me if there's anything that you
4 know of that would lead an objective
5 person to believe that the PCB levels
6 would be lower in air sampling done in
7 1985 than they were when you did it
8 recently.
9 A. Well, one answer is that analytical
10 techniques have improved greatly in the
11 fifteen years between 1985 and now. So
12 the levels that are being detected at
13 this point, without going back and
14 checking literature specifically, my
15 guess would be may very well have been
16 below the detection limits for the
17 analytical methods in 1985. So there
18 may have well been a lot of non-detects.
19 That doesn't mean that the levels we're
20 detecting now weren't there, but they
21 probably may not have been there -- My
22 guess would be that they may not have
23 been detectable in 1985. To the heart

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HARTOLDMON0014780

1 of your question, as I said, as I sit
 2 here, nothing springs to mind as to any
 3 reason why the levels would be higher
 4 now than in 1985.

5 Q. What were the detection limits in
 6 analytical methods used in the mid '80s?

7 A. I don't know specifically.

8 Q. You're speculating?

9 A. Yeah. I said that. That was my
 10 introduction. It may -- very well could
 11 have been.

12 Q. Okay. So anyway, in 1985 the Attorney
 13 General of Alabama raised a ruckus, and
 14 Monsanto in response to that -- to those
 15 expressions of concern did some remedial
 16 work in the ditches?

17 A. That's correct.

18 Q. And what happened to the Attorney
 19 General's complaints?

20 A. I frankly don't know.

21 Q. They just went away?

22 A. To the best of my knowledge, for some
 23 reason.

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1 property.

2 Q. Was that the first time that you did a
 3 search of the records to determine what
 4 might be buried and what PCBs may be --
 5 may have been released into the
 6 environment there at the Anniston
 7 facility?

8 A. Are you speaking of me personally?

9 Q. I'm talking about you personally, the
 10 guy responsible for PCB --

11 A. I understood that there were PCBs
 12 landfilled in various areas on our
 13 property in Anniston prior to that time.

14 Q. Okay. When did you learn that?

15 A. I really don't know. Sometime well
 16 before 1993.

17 Q. You must have learned that in --
 18 sometime after the troubles with the
 19 Attorney General in --

20 A. Certainly at that time or before. I may
 21 have known it before, but certainly at
 22 that time or before.

23 Q. Did you undertake an investigation to

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1 Q. When was that remediation completed?

2 A. I believe in 1989.

3 Q. When was the next time that you had
 4 anything to do -- that any activity
 5 occurred in Anniston with reference to
 6 PCBs?

7 A. My recollection is that sometime in 1993
 8 the Alabama Power Company notified us
 9 that they had detected PCBs on some
 10 property that we had exchanged with them
 11 at some time before that.

12 Q. And what has happened since then? What
 13 did you do in response to that?

14 A. Basically we undertook a confirming
 15 investigation in conjunction with
 16 Alabama Power Company and the Alabama
 17 Department of Environmental Management
 18 confirming the detection of PCBs on that
 19 property, undertook a re-exchange of
 20 that property. We re-acquired that
 21 property from APCO and undertook
 22 remediation of that property to
 23 re-secure the cover or the cap on that

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1 determine how much was buried out there?

2 A. Did I personally? No.

3 Q. Did Monsanto?

4 A. I don't know.

5 Q. How much is buried out there?

6 A. I don't know.

7 Q. Does Monsanto know?

8 A. I don't know.

9 Q. The fact is that there are several
 10 millions of pounds of PCBs that are
 11 buried on the Monsanto property in
 12 Anniston. Is that not true?

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

14 Q. Have you never seen any estimate of it?

15 A. Not specifically -- not specifically as
 16 I sit here this morning, I can't recall
 17 an estimate.

18 Q. How do you know how to remediate if you
 19 don't know what's there?

20 A. We understand the condition under those
 21 landfills, and we understand the best
 22 approach to containing and assuring that
 23 those materials -- to the extent there

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HARTOLDMON0014781

1 was any release, those releases have
 2 been forestalled.
 3 Q. What are other ways of remediating PCB
 4 contaminated property?
 5 A. There are a number of ways it can be
 6 removed to another landfill. I mean,
 7 that's primarily it, some, either
 8 containment in place, or removal.
 9 Q. What about incineration?
 10 A. That would be subsequent to removal.
 11 Q. Removal and incineration?
 12 A. I mean, that's possible. It's really
 13 not a very efficient way to do
 14 remediations of soils.
 15 Q. In fact, Monsanto was telling its
 16 customers back in the 1970s, early
 17 1970s, was recommending incineration of
 18 PCBs, was it not?
 19 A. For used liquid product, yes.
 20 Q. And subsequent to that time that it
 21 recommended -- Strike that.
 22 When was the material, the PCB --
 23 Over what period of time were PCBs

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1 -- associated with sedimentary materials
 2 in that storm water, yes.
 3 Q. But have you tested the sediment itself?
 4 A. I don't understand your question. There
 5 is no sediment in the landfills that I
 6 know of.
 7 Q. Is there no sediment that's come off the
 8 landfill?
 9 A. There may be soils that have come off
 10 the landfill. I wouldn't say there's
 11 sediment that has come off the landfill.
 12 Maybe we're quibbling over definitions.
 13 But, I mean, the soil that comes off the
 14 landfill may at some time become
 15 sediment.
 16 Q. Right. Okay. Has that soil that has
 17 come off the landfill been tested?
 18 A. We have undertaken an extensive
 19 investigation of sedimentary material
 20 and soil materials in the ditches
 21 leading from the landfills and leading
 22 from the plant over the past five or six
 23 years.

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1 buried, spills or discharge on to the
 2 property, or into the property, of
 3 Monsanto at Anniston?
 4 MR. PRATER: Object to the form.
 5 A. That landfill was used -- Sections of
 6 the landfill that were used for PCB
 7 waste disposal were used up until and
 8 through the disassembly of that facility
 9 in 1979.
 10 Q. It's your testimony that you don't know
 11 -- And you don't know -- Or do you know
 12 anybody at Monsanto that knows how much
 13 of that material is out there?
 14 A. I don't know specifically. I don't know
 15 whether those records are there or not.
 16 Q. Has Monsanto ever tested the sediment
 17 that has come off that landfill, comes
 18 off the landfills that have been capped?
 19 A. Subsequent to 1993 we have undertaken
 20 several measurements of PCBs in storm
 21 water.
 22 Q. I know.
 23 A. Assuming that the PCBs -- and they are

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1 Q. Referring to your affidavit under the
 2 heading, "Monsanto's Manufacture of
 3 PCBs," you state that -- on the third
 4 page -- I'll quote this correctly.
 5 "Prior to 1971 when Monsanto ceased
 6 manufacture of PCBs at the Anniston
 7 plant, there were no Federal or state
 8 statutes or regulations concerning the
 9 manufacture, sale, distribution,
 10 disposal, or clean-up of PCBs."
 11 You did say that?
 12 A. Yes.
 13 Q. You're not saying that --
 14 MR. BARRETT: Off the record.
 15 [Discussion held off the
 16 record.]
 17 Q. (By Mr. Barrett) You aren't saying that
 18 there were no Federal or state laws
 19 governing the discharge of pollution in
 20 1971, are you?
 21 A. There were no federal or state laws
 22 governing the manufacture, discharge, or
 23 release of PCBs in '71.

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HARTOLDMON0014782

1 Q. Not PCBs specifically. But didn't, for
 2 example, the National Refuse Act --
 3 didn't you have to have a permit to
 4 discharge deleterious substances into
 5 the waters of the United States?
 6 A. I don't know that specifically.
 7 Q. You don't?
 8 A. No.
 9 Q. Are you aware that since 1947 you had to
 10 have a permit to discharge any
 11 deleterious substance, anything that
 12 pollutes the waters of the State of
 13 Alabama into Alabama waters?
 14 A. I don't have specific knowledge of that.
 15 Q. You don't have any knowledge of it, do
 16 you?
 17 A. No.
 18 Q. You don't have any knowledge about the
 19 National Refuse Act?
 20 A. I know that it exists. I don't know
 21 what the requirements or how they apply
 22 to the Anniston plant.
 23 Q. So you don't know whether these acts

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1 knowledge and best practices of the
 2 time, yes.
 3 Q. And you're saying that, and you have no
 4 idea what the law of Alabama is. You
 5 have no idea what the National Refuse
 6 Act is as it applies to PCBs, and
 7 nothing of what the 1947 Alabama act is?
 8 And yet you say -- how can you say that
 9 Monsanto is doing everything within the
 10 law?
 11 A. I said it was doing everything within
 12 the best manufacturing and best
 13 practices of that time. As I said, I
 14 don't understand necessarily what laws
 15 specifically did apply or not apply to
 16 that plant. I can't address that
 17 question. But I believe that the
 18 company was operating under appropriate
 19 manufacturing practices at that time.
 20 Q. What do you base that on; you didn't
 21 work for them in 1947?
 22 A. Just my understanding of what the
 23 situation was with regard to the

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1 would apply to discharging PCBs or not?
 2 A. No.
 3 Q. You're not saying that the common law of
 4 Alabama did not apply to the discharge
 5 of PCBs, are you?
 6 MR. PRATER: Object to the form to
 7 the extent it calls for a
 8 legal conclusion of this
 9 witness
 10 A. I don't know what the common law of
 11 Alabama says to --
 12 Q. Is? You don't know what the law of
 13 Alabama is on this subject, do you?
 14 A. That's correct.
 15 Q. You're certainly not saying, for
 16 example, that Monsanto had a right, a
 17 legal right, to dump PCBs into streams
 18 that would go off its property and on to
 19 other people's property, are you?
 20 MR. PRATER: Object to the form.
 21 Q. (By Mr. Barrett) Sir?
 22 A. I think Monsanto was operating its
 23 facility in accordance with the best

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1 knowledge about PCBs at that time and
 2 the actions that we undertook when that
 3 knowledge changed.
 4 Q. And that's your opinion, right?
 5 A. I suppose it could be characterized as
 6 that way.
 7 Q. Why was no -- Strike that.
 8 Why were the regulatory actions or
 9 remedial actions that Monsanto took
 10 since 1993, why were they not taken
 11 sooner?
 12 MR. PRATER: Object to the form.
 13 A. I don't think we -- I don't think -- We
 14 did not have an understanding of the
 15 situation at the west end landfill and
 16 didn't understand -- Plus, we were
 17 undertaking a rigorous investigation of
 18 the plant which led to some of those
 19 sampling events, and didn't have
 20 knowledge sufficient to justify or
 21 require the need for that remediation.
 22 Q. Was there anything that would have
 23 prevented Monsanto in 1970, when the

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HARTOLDMON0014783

records show that it knew that there were discharges off-site, from doing the testing necessary to determine the extent of the contamination? Was there anything to prevent you from doing that in 1970 as opposed to beginning it in 1993?

A. We did do extensive investigation in the 1970 time frame, looking at what was being discharged from the plant and undertook a variety of activities to minimize or eliminate that discharge.

Q. Yes, sir. But you didn't do in 1970 what you did in 1993?

A. Well, it was a different issue, and there were different capabilities and different procedures known to be effective in capping those materials between that time frame. A lot of knowledge has been gained in those twenty-five years or so on how to manage and contain a variety of industrial wastes, not just PCBs.

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are experts in the field that hold that same opinion also.

Q. Yes. Do Monsanto workers -- I understand they are now Solutia workers -- but do they get medical monitoring, those that have possible exposure to hazardous substances manufactured by Monsanto, Solutia?

A. I'm not sure exactly what you mean by the term "medical monitoring." At various times there have been various policies with regard to giving people yearly or bi-yearly physicals at some given interval, if that's what you mean by medical monitoring.

Q. What's the purpose of that?

A. Primarily to see -- to understand, number one, their health status in general, and to provide base-line data to see if exposure to particular materials is having an effect on -- you know, exposure to materials in a manufacturing situation is having an

Q. But we're talking about PCBs in this case. And you understand that PCBs pose a hazard to the human health and the environment, don't you?

A. I would not necessarily agree with that statement the way it's phrased.

Q. Wouldn't?

A. No.

Q. What would you disagree with about that statement?

A. I think based on my understanding of the literature on humans exposed to PCBs, I don't believe that PCBs particularly pose a human health risk to humans. I guess that was redundant. I do not believe that PCBs pose a health risk to humans.

Q. That's your opinion?

A. Yes.

Q. And you understand that there are experts in the field who hold different opinions?

A. I understand that. I understand there

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effect on the health of the workers exposed to those materials.

Q. Have there ever been any studies done for workers -- long-term studies for workers exposed to PCBs at any of the Monsanto facilities?

A. No, not specifically targeted at PCBs. There were studies at the plants which necessarily involve the PCB workers. But the studies weren't focused on PCBs particularly. Well, that's not quite true. There was -- In the 1970s or early 1980s there was an epidemiology -- small epidemiology study undertaken at the Krummrich plant to look at those workers.

Q. But the workers in Anniston didn't get such a study, did they?

A. It wouldn't have been appropriate. The numbers just weren't sufficient to do that kind of a study at the Anniston plant. They really weren't at the Krummrich plant either.

- 1 Q. What are you trying to accomplish, or
2 what have you tried to accomplish in
3 your remediation plans -- remediation
4 that you have done since 1993? What's
5 the overall -- what are you looking to
6 do?
- 7 A. I guess you would say we are looking to
8 maintain and contain, manage and
9 contain, the materials, PCBs primarily,
10 specifically, that are on property owned
11 or that are now by Monsanto Company and
12 continuing that investigation under our
13 requirements under ADEM's administration
14 of the RCRA laws to investigate and
15 propose solutions for materials that are
16 off site as well.
- 17 Q. How many NPL sites, Super Fund Sites, in
18 the United States is Monsanto involved?
- 19 A. I don't know.
- 20 Q. Approximately how many?
- 21 A. Some. I really don't know the answer to
22 that question. It would be a rank guess
23 on my part.

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- 1 on to its neighbors?
- 2 MR. PRATER: Object to the form.
- 3 A. We're undertaking the final phase of the
4 RCRA investigation of the site. That
5 would involve additional sampling and
6 proposal of additional remedial measures
7 if appropriate. And then as I think I
8 mentioned earlier, we are involved in an
9 extensive investigation of off-site
10 PCBs.
- 11 Q. I'm not talking about the off site. I'm
12 talking about apparently -- apparently
13 it's still going -- PCBs are still
14 leaving the plant site and going onto
15 the neighbors' properties. Do you agree
16 or disagree with that?
- 17 MR. PRATER: Object to the form.
- 18 A. I would disagree with that. There have
19 been some detections of PCBs yet in
20 storm water occasionally. We are
21 continuing that sampling and trying to
22 understand what the meaning of those is.
23 But I don't know whether it's going to

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- 1 Q. What's your best guess?
- 2 A. My best guess -- and it's strictly a
3 guess -- is maybe a dozen, could be
4 more, could be less. I really don't
5 know.
- 6 Q. How many of them that you know of does
7 Monsanto have an ownership interest in
8 the property being remediated --
- 9 A. I don't have a clue.
- 10 Q. You don't have anything to do with that?
- 11 A. In general, no.
- 12 Q. Who's in charge of those sites, the
13 overall charge -- in charge of
14 remediation?
- 15 A. I guess Mike Foresman, I guess.
- 16 Q. But not you?
- 17 A. No.
- 18 Q. And you're not in charge of remediation
19 at the Anniston plant, or are you?
- 20 A. Certainly not.
- 21 Q. What else does Monsanto, Solutia, have
22 planned to reach its goal there at
23 Anniston to stop the discharge of PCBs

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- 1 the properties or not.
- 2 Q. (By Mr. Barrett) So you know it's in
3 the storm water; you just testified to
4 that, occasionally.
- 5 A. Occasionally at very low levels.
- 6 Q. You know it's in the air because you --
- 7 A. Occasionally there have been some
8 detections.
- 9 Q. So it's in the air, and it's in the
10 water.
- 11 A. I don't --
- 12 Q. So it ain't working, is it?
- 13 A. I don't know that the material in the
14 air is -- what the source of that
15 material is. I just don't know. And to
16 the storm water, whether that storm
17 water is getting on plaintiffs'
18 property, I don't know the answer to
19 that.
- 20 Q. Would you tell the jury that you don't
21 believe that Monsanto is the source of
22 those PCBs?
- 23 MR. PRATER: Object to the form.

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HARTOLDMON0014785

1 A. In the air?
 2 Q. (By Mr. Barrett) In the air or in the
 3 storm water.
 4 A. In the air I don't know what the source
 5 is. I think we need to do additional
 6 sampling to understand what the source
 7 of that is.
 8 Q. Dr. Kaley, you don't know what the
 9 source is, but your opinion is, you
 10 believe, that it is likely that Monsanto
 11 is the source for those PCBs?
 12 A. I think the facility is a potential
 13 source of those PCBs. I think we need
 14 to --
 15 Q. It's the probable source, isn't it?
 16 A. I said it is a potential source of those
 17 materials.
 18 Q. I know you said it's a potential source.
 19 But it is the probable source, is it
 20 not?
 21 MR. PRATER: Object to form.
 22 A. I don't agree with that
 23 characterization.

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1 find out?
 2 A. I don't know the answer to that. I
 3 don't know whether other people have
 4 that knowledge or not.
 5 MR. BARRETT: Take about a
 6 ten-minute break. We may be
 7 about to wind this up.
 8 [A break was taken.]
 9 MR. BARRETT: Back on the record.
 10 Q. (By Mr. Barrett) You testified earlier
 11 that -- or did you testify that you have
 12 accelerated now your remedial
 13 investigation for off-site
 14 contamination?
 15 A. I believe it says that in the affidavit
 16 that you're referring to, yes.
 17 Q. And why have you accelerated it?
 18 A. Well, we want to be as responsible as we
 19 can and get these matters appropriately
 20 handled.
 21 Q. Off-site contamination ought to be
 22 remediated as soon as possible?
 23 A. I think we need to understand as soon as

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1 Q. (By Mr. Barrett) You have just
 2 testified that you don't have any idea
 3 how much PCBs are buried out there on
 4 your property. Do you know where they
 5 are buried?
 6 MR. PRATER: Object to form.
 7 A. I know where the PCB landfill cell is,
 8 yes.
 9 Q. Where do you think that the PCBs are
 10 buried on the property?
 11 A. In a cell on the south landfill. And
 12 there are obviously some buried in the
 13 west end landfill.
 14 Q. So there are PCBs -- What percentage of
 15 the PCBs that are out there are buried
 16 in the west end landfill?
 17 A. I don't know.
 18 Q. You have no idea?
 19 A. No.
 20 Q. And how many PCBs poundage or tonnage of
 21 PCBs are buried in the south landfill?
 22 A. I don't know.
 23 Q. And nobody at Monsanto has ever tried to

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1 possible what the situation is off site
 2 so that we can propose appropriate
 3 remedial activity, if any.
 4 Q. It wouldn't be responsible for a company
 5 to know about off-site contamination and
 6 conceal that knowledge and do nothing?
 7 That would be irresponsible, wouldn't
 8 it?
 9 MR. PRATER: Object to form.
 10 A. I believe that a company as it develops
 11 knowledge to deal with situation needs
 12 to understand that situation and deal
 13 with it appropriately, yes.
 14 Q. (By Mr. Barrett) So your answer to my
 15 question would be yes?
 16 MR. PRATER: Same objection.
 17 Q. (By Mr. Barrett) Sir?
 18 A. My answer to your question is the answer
 19 I gave.
 20 Q. Who's the person you were working under
 21 who retired that you testified since --
 22 A. His name was John Craddock.
 23 Q. And have you ever worked with

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1 Dr. Papageorge?

2 A. Not with him. I know Bill, but I have

3 not worked with him.

4 Q. Let me go back to -- We had a discussion

5 about whether or not you tested

6 sediment. And we -- I don't think we

7 ever quite got an answer because we

8 couldn't agree on what sediment was.

9 But let me ask the question -- approach

10 the issue this way: Haven't you --

11 Monsanto -- Has not Monsanto built a

12 settlement basin there on its property

13 right over beyond the Mars Hill Church?

14 A. There's a retention basis there, yes,

15 for storm water control, yes.

16 Q. And the purpose of that basin is so that

17 if there are PCB laden soils in the

18 storm water, that they will settle out

19 there in this basin as opposed to

20 running off in the storm water. Is that

21 not the purpose of that?

22 A. No.

23 Q. It's not?

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1 down the volume of flow into the

2 drainage basin, then that's what it

3 accomplishes.

4 Q. So what would happen in the event of a

5 large rain or in the event of a storm,

6 the storm water would rush in there, be

7 detained, and let out at a rate to

8 prevent or hopefully to minimize

9 flooding downstream?

10 A. Basically, yes.

11 Q. So the water then temporarily backs out

12 and backs over the area of this

13 settlement basin?

14 A. Detention basin, yes.

15 Q. Detention basin?

16 A. Yes.

17 Q. And the rest of the time there would be

18 areas of that detention basin that are

19 -- that's not under water?

20 A. Most of the time. My understanding is

21 that most of the time that detention

22 basin is dry. That's my understanding.

23 Q. And has the soil in that area of the

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1 A. No.

2 Q. What's the purpose of the settlement

3 basis?

4 A. The purpose -- It is not a settlement

5 basin. It's a retention basin, or

6 detention basin. The purpose of that

7 basin is to collect storm water so that

8 the discharge of that storm water can be

9 managed to cut down flows into the

10 ditches and into Snow Creek.

11 Q. I got you. So what happens to the water

12 when it goes into that retention basin?

13 A. It sits there until it's discharged at a

14 more manageable rate that the system can

15 handle, Snow Creek drainage system can

16 handle, to the extent it collects there

17 at all.

18 Q. I don't understand what you meant.

19 A. Well, the water that's flowing into

20 there, unless there's a huge storm, it's

21 basically going to flow through that

22 basin. If there's a huge storm where

23 that water needs to be detained to cut

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1 detention basin been tested to see what

2 PCBs are in it?

3 A. I don't know whether it has or not. At

4 some point I'm sure it will be. If we

5 ever need to dispose of materials in it,

6 it would clearly be tested.

7 Q. When that soil dries out and the wind

8 blows, it's being disposed of every day,

9 isn't it, by the wind blowing it off as

10 dust?

11 A. That basin to my knowledge is grassed.

12 I don't know whether there's dust

13 discharge off that or not. I don't

14 know.

15 Q. You don't know?

16 A. No. And if there's -- That's all.

17 Q. And you have never thought -- Who would

18 make the decision as to whether it ought

19 to be tested or not, not you?

20 A. Presumably Mr. Faust.

21 MR. BARRETT: That's all the

22 questions I have. Thank you.

23 [Plaintiffs' Exhibit Number

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One was marked.]

(AND FURTHER DEPONENT SAITH NOT.)

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SIGNATURE PAGE

ROBERT G. KALEY, II

Subscribed and sworn before me on this
_____ day of _____, 1998

My commission expires: _____.

[NOTARY PUBLIC]

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January 21, 1999

Dr. Robert G. Kaley, II
C/O Harlan I. Prater, IV, Esq.
Lightfoot, Franklin & White
The Clark Building
505 North 20th Street
Birmingham, Alabama 35203

Dear Dr. Kaley:

This page is incorporated as page 49 of your deposition. Your deposition transcript has been completed, and as per requested, is ready for you to read over. Please do not write on the transcript but make any changes you wish on the errata sheet provided. If there are no corrections, write across page "no corrections." Please sign the signature page before a notary, and then return errata and signature page.

Under the Rules of Civil Procedure you have thirty days to read and sign your deposition transcript.

If you have any questions, please feel free to call me at (314) 729-0575 and I'll be glad to help in any way I can.

Sincerely,

Sheila L. Ford, RPR, CSR

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cc: John Barrett, Esq.

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NOTARIAL CERTIFICATE

I, SHEILA L. FORD, a Registered Professional Reporter and duly commissioned Notary Public within and for the State of Missouri, do hereby certify that there came before me the Ritz-Carlton Hotel, 100 Carondelet Plaza, St. Louis, MO 63105,

ROBERT G. KALEY, II,

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 carefully examined under oath and said examination was reduced to writing by me; and that the signature of the witness was not waived by agreement of witness and 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 this the 21st day of January, 1999.

My commission expires: March 13, 2002

Sheila L. Ford
Notary Public

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