

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,)
 PLAINTIFF,) CASE NO.
 VS.) BC 026 959
 MONSANTO COMPANY AND DOES)
 1 THROUGH 200, INCLUSIVE,)
 DEFENDANTS.)

DEPOSITION OF:

THOMAS M. BISTLINE

THURSDAY, SEPTEMBER 26, 1991

9:10 A.M.

OUR FILE NO. 13728DF

REPORTED BY DIANE KENDY

C.S.R. NO. 4851



DAVID FELDMAN & ASSOCIATES/USA/LTD.

400 South Beverly Drive, Suite 306
Beverly Hills, CA 90212 213-556-0232

COMPUTERIZED COURT REPORTING WORLDWIDE

WATER PCB-SD0000002606

1 DEPOSITION OF THOMAS M. BISTLINE, THE WITNESS,
2 TAKEN ON BEHALF OF THE PLAINTIFF, AT 9:10 A.M.,
3 THURSDAY, SEPTEMBER 26, 1991, AT 725 SOUTH
4 FIGUEROA STREET, LOS ANGELES, CALIFORNIA, BEFORE
5 DIANE KENDY, C.S.R. NO. 4851, PURSUANT TO NOTICE
6 AND STIPULATION.

7
8 APPEARANCES OF COUNSEL

9
10 FOR PLAINTIFF:

11 SHEARMAN & STERLING

12 BY: DANA K. WELCH, ESQ.

13 555 CALIFORNIA STREET

14 SAN FRANCISCO, CALIFORNIA 94104

15
16 FOR DEFENDANT:

17 BRONSON, BRONSON & MC KINNON

18 BY: CHARLES F. PREUSS, ESQ.

19 505 MONTGOMERY STREET

20 SAN FRANCISCO, CALIFORNIA 94111-2514

21
22 ALSO PRESENT:

23 JOSEPH M. GRANT

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I N D E X

WITNESS	EXAMINATION	PAGE
THOMAS M. BISTLINE		
	BY MS. WELCH	4
	(P.M. SESSION)	131

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2	26	BUSINESS WEEK ARTICLE
3	41	NOTICE OF DEPOSITION
4	55	RESPONSE OF MONSANTO
5	57	VERIFICATION

QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER

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1 LOS ANGELES, CALIFORNIA;

2 THURSDAY, SEPTEMBER 26, 1991, 9:10 A.M.

3
4 THOMAS M. BISTLINE,

5 HAVING BEEN FIRST DULY SWORN, WAS

6 EXAMINED AND TESTIFIED AS FOLLOWS:

7
8 EXAMINATION

9 BY MS. WELCH:

10 Q. GOOD MORNING, MR. BISTLINE. MY NAME
11 IS DANA WELCH, AND I REPRESENT THE PLAINTIFF IN
12 THIS ACTION, TRANSWESTERN PIPELINE COMPANY.

13 ARE YOU REPRESENTED BY COUNSEL HERE
14 TODAY?

15 A. YES, MA'AM, I AM.

16 Q. AND COULD YOU PLEASE IDENTIFY YOUR
17 COUNSEL.

18 A. MR. PREUSS.

19 MS. WELCH: AND MR. PREUSS, YOU ARE
20 FROM THE BRONSON, BRONSON & MC KINNON FIRM IN
21 SAN FRANCISCO.

22 MR. PREUSS: I AM.

23 MS. WELCH: ALL RIGHT.

24 Q. MR. BISTLINE, COULD YOU PLEASE, FOR
25 THE RECORD, STATE YOUR NAME.

1 A. MY NAME IS THOMAS M. BISTLINE.
2 Q. AND YOUR ADDRESS?
3 A. HOME ADDRESS?
4 Q. FIRST, BUSINESS.
5 A. MY BUSINESS ADDRESS IS 800 NORTH
6 LINDBERGH BOULEVARD, ST. LOUIS, MISSOURI.
7 Q. AND YOUR HOME ADDRESS?
8 A. IS 15182 ISLEVIEW, I-S-L-E-V-I-E-W,
9 DRIVE IN CHESTERFIELD, MISSOURI.
10 Q. AND YOUR BUSINESS PHONE NUMBER?
11 A. IS (314) 694-2989.
12 Q. HOME PHONE?
13 A. (314) 532-9264.
14 Q. WHERE DO YOU WORK, MR. BISTLINE?
15 A. MONSANTO COMPANY.
16 Q. IN ST. LOUIS?
17 A. YES.
18 Q. AND HOW LONG HAVE YOU WORKED THERE?
19 A. APPROXIMATELY NINE AND A HALF YEARS.
20 MS. WELCH: I'D LIKE TO HAVE THE
21 COURT REPORTER MARK AS EXHIBIT NO. 1 THIS AMENDED
22 NOTICE OF DEPOSITION AND PRODUCTION OF
23 DOCUMENTS.
24 (THE DOCUMENT REFERRED TO WAS
25 MARKED BY THE C.S.R. AS PLAINTIFF'S

1 EXHIBIT 1 FOR IDENTIFICATION AND
2 ATTACHED TO AND MADE A PART OF THIS
3 DEPOSITION.)

4 BY MS. WELCH:

5 Q. MR. BISTLINE, ARE YOU HERE PURSUANT
6 TO THIS NOTICE OF DEPOSITION?

7 A. YES.

8 Q. AND HAVE YOU TAKEN A LOOK AT THIS
9 NOTICE OF DEPOSITION?

10 A. I DON'T KNOW THAT I HAVE LOOKED AT
11 THIS PARTICULAR DOCUMENT, NO.

12 Q. COULD YOU PLEASE TURN TO PAGE 10 OF
13 THE AMENDED NOTICE OF DEPOSITION.

14 A. YES.

15 Q. DID YOU BRING ANY DOCUMENTS WITH YOU
16 HERE TO THIS DEPOSITION?

17 A. NO, I DID NOT.

18 Q. DID YOU REVIEW ANY DOCUMENTS IN
19 PREPARATION FOR THIS DEPOSITION?

20 A. YES, I DID.

21 Q. COULD YOU IDENTIFY THOSE DOCUMENTS.

22 A. I REVIEWED THE INITIAL NOTICE FOR
23 PRODUCTION OF DOCUMENTS THAT TRANSWESTERN SERVED
24 ON MONSANTO SOMETIME AGO, MONSANTO'S RESPONSE TO
25 THAT REQUEST, ALSO THE INTERROGATORIES AND

1 RESPONSES TO THOSE INTERROGATORIES.

2 I REVIEWED CORRESPONDENCE BETWEEN
3 MR. PREUSS AND COUNSEL FOR TRANSWESTERN IN THIS
4 CASE, AND ALSO MEMORANDUM, MEMORANDA ACTUALLY,
5 PREPARED BY COUNSEL TO ME IN THIS CASE.

6 Q. MEMORANDA PREPARED BY MR. PREUSS TO
7 YOU.

8 A. BY PERSONS IN MR. PREUSS'S OFFICE
9 AND BY OTHER COUNSEL IN THIS CASE, AS WELL.

10 Q. AND COULD YOU IDENTIFY THAT
11 MEMORANDA.

12 A. THERE WERE, IN FACT, TWO MEMORANDA.

13 Q. DESCRIBE THE FIRST ONE.

14 A. WELL, THEY WERE BOTH REALLY ON THE
15 SAME TOPIC, AND THAT WAS GENERALLY THE RESPONSE
16 OF MONSANTO TO DISCOVERY REQUESTS IN THIS MATTER,
17 HOW THOSE RESPONSES WERE FORMULATED.

18 AND I GUESS THAT BASICALLY DISCOVERS
19 IT -- OR COVERS IT, EXCUSE ME.

20 Q. DO YOU HAVE THOSE DOCUMENTS HERE
21 WITH YOU TODAY?

22 A. NO, I DON'T.

23 Q. WILL YOU BE PRODUCING THOSE
24 DOCUMENTS TO US?

25 A. NO, I WILL NOT.

1 Q. WHY NOT?

2 A. THEY ARE ATTORNEY PRODUCT AND
3 ATTORNEY-CLIENT COMMUNICATIONS.

4 BY "THOSE DOCUMENTS" I ASSUME YOU
5 MEAN THE MEMORANDA THAT I WAS REFERRING TO.

6 Q. I DO. I BELIEVE WE HAVE THE REST OF
7 THE DOCUMENTS.

8 A. RIGHT.

9 Q. I WOULD LIKE TO TALK A LITTLE BIT
10 ABOUT YOUR POSITION AT MONSANTO.

11 ARE YOU THE PERSON AT MONSANTO WHO
12 IS THE MOST KNOWLEDGEABLE ABOUT WHERE MONSANTO
13 KEEPS AND RETAINS ITS DOCUMENTS PERTAINING TO
14 PCB'S?

15 A. YES, I AM.

16 Q. IS THERE ANYONE ELSE WHO WOULD BE
17 THAT KNOWLEDGEABLE?

18 A. SEVERAL OTHER PEOPLE, YES.

19 Q. COULD YOU IDENTIFY THOSE PEOPLE.

20 A. MEMBERS OF MY STAFF AT MONSANTO, THE
21 OTHER ATTORNEY AT MONSANTO WHO, WITH ME, IS
22 RESPONSIBLE FOR PCB CASES, AND VARIOUS OUTSIDE
23 PEOPLE WHO REPRESENT MONSANTO CASES.

24 Q. STARTING WITH MEMBERS OF YOUR STAFF,
25 WOULD YOU IDENTIFY THEM BY NAME.

1 A. ALL OF THEM?

2 Q. (NODS HEAD.)

3 A. THERE ARE QUITE A FEW. I WILL

4 IDENTIFY AS MANY AS I CAN RECALL AT THIS TIME.

5 Q. PLEASE.

6 A. THERE ARE TWO LEGAL ASSISTANTS WHO

7 WORK FOR ME, MRS. JOSEPHINE NIBLOCK,

8 N-I-B-L-O-C-K, AND MRS. ANN CLARK.

9 THERE ARE A NUMBER OF CLERICAL

10 PEOPLE, ALL OF WHOSE NAMES I CAN'T RECALL AT THIS

11 TIME, MEMBERS OF MY STAFF. JOHN LEE.

12 MR. GRANT: I'M SORRY?

13 THE WITNESS: JOHN LEE.

14 THERE ARE FOUR OR FIVE CLERICAL

15 PEOPLE, ALL OF WHOSE NAMES I CAN'T RECALL.

16 BY MS. WELCH:

17 Q. THE NEXT CATEGORY YOU MENTIONED WERE

18 ATTORNEYS WHO WORKED ON PCB MATTERS AT MONSANTO.

19 A. WITH ME, YES.

20 Q. WOULD YOU IDENTIFY THEM.

21 A. MICHAEL NEWPORT.

22 Q. ANYONE ELSE?

23 A. MR. NEWPORT IS THE ONLY OTHER LAWYER

24 ON MONSANTO'S LEGAL STAFF.

25 OTHER LAWYERS ON MONSANTO'S LEGAL

1 STAFF MIGHT HAVE INCIDENTAL KNOWLEDGE ABOUT HOW
2 DOCUMENTS ARE KEPT, BUT IT WOULD NOT BE
3 NECESSARILY WITHIN THEIR SCOPE OF DUTY TO HAVE
4 THAT KNOWLEDGE.

5 Q. WHICH OUTSIDE LAW FIRMS WORK ON PCB
6 MATTERS, BESIDES BRONSON, BRONSON?

7 A. A GREAT MANY. WE HAVE LAW FIRMS
8 RETAINED IN MANY STATES WHO WORK ON PCB MATTERS
9 FOR ME. I DON'T --

10 MR. PREUSS: YOU DON'T EXPECT HIM TO
11 LIST EVERY LAW FIRM.

12 MS. WELCH: WELL, PERHAPS WE CAN
13 LIMIT IT IN TERMS OF LITIGATION THAT MONSANTO IS
14 INVOLVED IN.

15 MR. PREUSS: WE WILL PROCEED ON A
16 QUESTION-BY-QUESTION BASIS.

17 BY MS. WELCH:

18 Q. HAVE YOU EVER HAD YOUR DEPOSITION
19 TAKEN BEFORE AS A CUSTODIAN OF RECORDS?

20 A. YES, MA'AM.

21 Q. AND COULD YOU IDENTIFY THE
22 PROCEEDINGS IN WHICH YOU HAVE HAD YOUR DEPOSITION
23 TAKEN AS A CUSTODIAN OF RECORDS.

24 A. THERE HAVE BEEN APPROXIMATELY FIVE
25 OR SIX.

1 Q. PLEASE IDENTIFY EACH ONE.

2 A. I DON'T KNOW THAT I CAN RECALL ALL
3 OF THEM.

4 A CASE STYLED ANLAND VERSUS ALCOA,
5 WHICH IS PENDING IN FEDERAL COURT IN NEW JERSEY.

6 MR. GRANT: WOULD YOU SPELL THAT.

7 THE WITNESS: A-N-L-A-N-D.

8 BY MS. WELCH:

9 Q. AND WHEN WAS THAT DEPOSITION TAKEN?

10 A. I BELIEVE IN '87, BEST OF MY
11 RECOLLECTION.

12 I HAD MY DEPOSITION TAKEN IN THE
13 SUPERFUND LITIGATION INVOLVING THE NEW BEDFORD
14 HARBOR.

15 I HAD MY DEPOSITION TAKEN --

16 Q. EXCUSE ME. WHAT WAS THE NAME OF THE
17 LITIGATION?

18 A. I DON'T RECALL THE CAPTION OF THE
19 LITIGATION. MONSANTO WAS NOT A PARTY TO THAT
20 CASE, AND I DON'T, AS I SIT HERE, RECALL.

21 Q. WAS MONSANTO A PARTY TO THE ANLAND
22 VERSUS ALCOA LITIGATION?

23 A. AT THE TIME MY DEPOSITION WAS TAKEN,
24 NO. WE HAVE SINCE BEEN MADE A THIRD PARTY
25 DEFENDANT IN THIS CASE.

1 Q. WHEN WAS THE SUPERFUND LITIGATION
2 DEPOSITION TAKEN, APPROXIMATELY?

3 A. 1986, TO THE BEST OF MY
4 RECOLLECTION.

5 Q. ALL RIGHT.

6 A. AGAIN, I HAD MY DEPOSITION TAKEN IN
7 1989, IN RE PAOLI, PCB LITIGATION.

8 Q. WOULD YOU SPELL THAT, PLEASE.

9 A. P-A-O-L-I.

10 I BELIEVE THAT WAS 1989.

11 Q. AND WAS MONSANTO A PARTY TO THAT
12 CASE?

13 A. MONSANTO WAS A PARTY TO THAT CASE,
14 YES.

15 Q. AND WHAT IS THE VENUE?

16 A. VENUE IS BOTH FEDERAL COURT AND
17 STATE COURT IN PHILADELPHIA, PENNSYLVANIA.

18 AND THIS PAST SUMMER I HAD MY
19 DEPOSITION TAKEN IN A PROCEEDING VENUED IN
20 PITTSBURGH, CAPTION OF WHICH I CAN'T RECALL AT
21 THE MOMENT. BUT WE WERE NOT A PARTY TO THAT
22 CASE. I JUST DON'T RECALL THE STYLE OF THAT CASE
23 AT THIS MOMENT.

24 Q. AND THAT WAS THIS PAST SUMMER?

25 A. THAT WAS THIS PAST SUMMER, 1991.

1 THERE MAY HAVE BEEN OTHER CASES IN
2 WHICH MY DEPOSITION WAS TAKEN AS CUSTODIAN OF
3 RECORDS. THOSE ARE THE ONES I RECALL AS I SIT
4 HERE.

5 Q. ALL RIGHT. I AM GOING TO BRIEFLY
6 RUN OVER THE RULES FOR YOU, ALTHOUGH YOU ARE
7 PROBABLY FAMILIAR WITH THEM, JUST TO REFRESH YOUR
8 RECOLLECTION.

9 I AM SURE YOU ARE AWARE THAT EVEN
10 THOUGH THIS IS AN INFORMAL SETTING, YOU ARE UNDER
11 OATH AND YOU ARE OBLIGATED TO TELL THE TRUTH,
12 JUST AS IF YOU WERE TESTIFYING IN COURT.

13 A. YES, MA'AM.

14 Q. I WILL ATTEMPT TO BE AS CLEAR AND
15 CONCISE AS I CAN WITH MY QUESTIONING. BUT IF YOU
16 DO NOT UNDERSTAND ANY QUESTION, PLEASE TELL ME,
17 AND I WILL ATTEMPT TO REPHRASE IT.

18 THE COURT REPORTER CAN ONLY TAKE
19 DOWN ONE PERSON SPEAKING AT A TIME --

20 A. AS WE HAVE ALREADY FOUND OUT.

21 Q. -- AND WE WILL TRY TO HELP HER TO
22 THE EXTENT THAT WE CAN.

23 AND OF COURSE YOU WILL HAVE THE
24 OPPORTUNITY TO REVIEW YOUR TRANSCRIPT WHEN IT HAS
25 BEEN TRANSCRIBED. IF YOU NEED TO MAKE ANY

1 CHANGES, YOU MAY DO SO. BUT PLEASE REMEMBER THAT
2 YOU MAY BE ASKED ABOUT THOSE CHANGES AT THE TIME
3 OF TRIAL.

4 A. I UNDERSTAND.

5 Q. ALL RIGHT. I'D LIKE TO ASK YOU A
6 LITTLE BIT ABOUT YOUR BACKGROUND.

7 WHAT IS YOUR EXACT POSITION AT
8 MONSANTO?

9 A. MY EXACT POSITION AT MONSANTO IS
10 ASSISTANT GENERAL COUNSEL LITIGATION.

11 Q. SO YOU ARE AN ATTORNEY.

12 A. YES, MA'AM.

13 Q. HOW LONG HAVE YOU HAD THIS POSITION
14 AT MONSANTO?

15 A. THE PRECISE TITLE I HAVE HAD FOR
16 ABOUT A YEAR AND A HALF.

17 Q. AND WHAT WAS YOUR POSITION BEFORE
18 THAT?

19 A. PRIOR TO THAT MY TITLE WAS
20 LITIGATION COUNSEL.

21 Q. AND HOW LONG DID YOU HAVE THAT
22 POSITION?

23 A. ABOUT FOUR YEARS.

24 Q. AND PRIOR TO THAT?

25 A. I WAS ASSISTANT LITIGATION COUNSEL.

1 Q. AND DID THAT ACCOUNT FOR THE
2 REMAINDER OF YOUR TIME AT MONSANTO?

3 A. NO. FOR THE FIRST YEARS OF MY
4 EMPLOYMENT AT MONSANTO MY TITLE WAS LITIGATION
5 ATTORNEY.

6 Q. WHO DO YOU REPORT TO?

7 A. THE ASSOCIATE GENERAL COUNSEL FOR
8 LITIGATION, MR. ROBERT BERENDT, B-E-R-E-N-D-T.

9 Q. WHAT ARE YOUR DUTIES AS ASSISTANT
10 GENERAL COUNSEL?

11 A. BROADLY, TO MANAGE LITIGATED MATTERS
12 IN WHICH MONSANTO COMPANY IS INVOLVED.

13 Q. WHO WAS YOUR PREDECESSOR IN THIS
14 POSITION?

15 A. MR. BERENDT HAD THE TITLE SEVERAL
16 YEARS AGO.

17 BUT AS FAR AS THE PREDECESSOR GOES,
18 I AM STRUGGLING, BECAUSE I'VE BEEN DOING WHAT I
19 DO ON THE CASES THAT I AM RESPONSIBLE FOR, FOR
20 THE MOST PART, SINCE THE CASES WERE FILED AGAINST
21 MONSANTO VERY EARLY ON.

22 AND IN THAT SENSE, I GUESS I HAD NO
23 PREDECESSORS.

24 Q. ARE YOU THE PERSON WHO IS MOST
25 KNOWLEDGEABLE ABOUT CLAIMS AGAINST MONSANTO

1 ARISING OUT OF PCB'S?

2 A. AT THIS POINT, YES.

3 Q. WHEN YOU SAY "AT THIS POINT," WHO
4 WOULD HAVE BEEN MOST KNOWLEDGEABLE PRIOR TO YOUR
5 TENURE?

6 A. I SUPPOSE THE PERSON WHO WAS
7 RESPONSIBLE FOR PCB LITIGATION. THAT WOULD HAVE
8 BEEN MR. JOSEPH NASSIF.

9 Q. PLEASE SPELL HIS NAME.

10 A. N-A-S-S-I-F.

11 Q. FOR WHAT TIME PERIOD WAS HE
12 RESPONSIBLE FOR PCB LITIGATION?

13 A. APPROXIMATELY 1982 TO 1985.

14 Q. DO YOU KNOW WHO WAS RESPONSIBLE FOR
15 PCB LITIGATION BEFORE HIM?

16 A. IF I CAN REMEMBER THE FELLOW'S
17 NAME. I CAN'T RECALL HIS NAME RIGHT NOW. IT
18 WILL COME TO ME, BUT I DON'T RECALL AT THE
19 MOMENT.

20 Q. PERHAPS WE WILL ASK AGAIN A LITTLE
21 BIT LATER.

22 WHAT ARE YOUR RESPONSIBILITIES WITH
23 RESPECT TO PCB LITIGATION?

24 A. THEY ARE AS I DESCRIBED. BROADLY,
25 TO MANAGE THE DEFENSE OF MONSANTO IN THOSE CASES.

1 Q. ARE YOU RESPONSIBLE FOR ANY OTHER
2 LITIGATION AT MONSANTO?

3 A. OH, YES.

4 Q. COULD YOU BRIEFLY DESCRIBE THE OTHER
5 LITIGATION.

6 A. WELL, I AM RESPONSIBLE FOR CASES
7 INVOLVING PRODUCTS OF MONSANTO OTHER THAN PCB'S,
8 AND I AM RESPONSIBLE FOR CERTAIN LITIGATION
9 ARISING OUT OF CLAIMS OF INJURY FROM EXPOSURE TO
10 SUBSTANCES PRESENT AT HAZARDOUS WASTE SITES.

11 Q. APPROXIMATELY WHAT PERCENTAGE OF
12 YOUR TIME DOES PCB LITIGATION CONSUME?

13 A. OH, 50 TO 60 PERCENT.

14 Q. IS THERE ANY NATIONAL COORDINATING
15 CENTER OR CLEARING HOUSE FOR CLAIMS ARISING OUT
16 OF THE USE OF PCB?

17 MR. PREUSS: OBJECTION AS AMBIGUOUS.
18 BY MS. WELCH:

19 Q. YOU CAN ANSWER THE QUESTION, IF YOU
20 UNDERSTAND IT.

21 MR. PREUSS: YOU MEAN IN GENERAL OR
22 AT MONSANTO?

23 MS. WELCH: I WILL RESTATE THE
24 QUESTION.

25 Q. IS THERE ANY NATIONAL COORDINATING

1 CENTER OR CLEARING HOUSE FOR CLAIMS ARISING OUT
2 OF THE USE OF PCB?

3 A. ARE YOU RESTRICTING THIS TO MONSANTO
4 OR DO YOU JUST MEAN --

5 Q. LET'S START GENERALLY. IS THERE A
6 NATIONAL COORDINATING CENTER FOR CLAIMS ARISING
7 OUT OF THE USE OF PCB?

8 A. I AM NOT AWARE OF THAT.

9 Q. HOW ABOUT FOR MONSANTO?

10 A. I AM THE NATIONAL COORDINATING
11 CENTER FOR CLAIMS ARISING OUT OF THE USE OF PCB
12 INVOLVING MONSANTO.

13 Q. AND SO ALL CLAIMS ARISING OUT OF PCB
14 LITIGATION COME TO YOU.

15 A. IF THEY INVOLVE MONSANTO, YES.

16 Q. SINCE 1972 HAS MONSANTO EVER BEEN A
17 PARTY TO ANY OTHER LAWSUITS ARISING OUT OF THE
18 USE OF PCB?

19 A. OH, YES.

20 Q. COULD YOU PLEASE, ONE BY ONE, TO THE
21 EXTENT THAT YOU RECALL, DESCRIBE THOSE LAWSUITS.

22 MR. PREUSS: WELL, I AM GOING TO
23 OBJECT.

24 FIRST, IT'S FAR AFIELD FROM HIS
25 RESPONSIBILITY TODAY AS CUSTODIAN OF RECORDS, AS

1 TO ALL CASES.

2 FURTHERMORE, THERE ARE NUMEROUS
3 CASES OVER THE YEARS HE HAS SPENT AT MONSANTO.
4 YOU WANT HIM TO RUN OVER HIS RECOLLECTION OF ALL
5 THE CASES THAT HE MAY HAVE BEEN INVOLVED IN?

6 MS. WELCH: WELL, LET'S START WITH
7 AS MANY AS HE CAN REMEMBER.

8 MR. PREUSS: WELL, WHAT'S THE
9 REVELANCE OF ALL LITIGATION AT A CUSTODIAN OF
10 RECORDS DEPOSITION?

11 MS. WELCH: THE RELEVANCY IS THAT
12 THERE MAY BE DOCUMENTS THAT HAVE BEEN PRODUCED IN
13 THOSE LAWSUITS THAT WE MAY BE ENTITLED TO FIND.

14 MR. PREUSS: WHY DON'T YOU ASK THOSE
15 QUESTIONS.

16 MS. WELCH: I AM GOING TO START BY
17 FINDING OUT WHAT LITIGATION HE KNOWS ABOUT, AND
18 THEN ANY DOCUMENTS THAT MAY BE RELEVANT.

19 Q. SO PLEASE ANSWER THE QUESTION.
20 STARTING WITH THE PRESENT, WHAT LAWSUITS IS
21 MONSANTO CURRENTLY INVOLVED IN THAT ARISE OUT OF
22 THE USE OF PCB?

23 A. IT WOULD BE LITERALLY IMPOSSIBLE FOR
24 ME TO SIT HERE AND ENUMERATE ALL OF THOSE CASES.

25 Q. WELL, LET'S START WITH WHAT YOU

1 RECALL. IT DOESN'T NEED TO BE A COMPLETE LIST,
2 BUT LET'S START WITH WHAT YOU RECALL.

3 MR. PREUSS: WELL, I AM GOING TO
4 INSTRUCT HIM NOT TO ANSWER.

5 IF YOU WANT TO ASK HIM ABOUT
6 DOCUMENTS THAT WERE PRODUCED IN OTHER LITIGATION,
7 THAT MAY BE RELEVANT.

8 BUT I WILL NOT PERMIT YOU TO ASK HIM
9 WILLY-NILLY TO GIVE YOU A LIST OF ALL THE
10 LAWSUITS OF MONSANTO.

11 MS. WELCH: ON WHAT BASIS ARE YOU
12 INSTRUCTING HIM NOT TO ANSWER THE QUESTION?

13 MR. PREUSS: ON THE BASIS IT'S NOT
14 RELEVANT.

15 MS. WELCH: WELL, THAT'S NOT A
16 PROPER OBJECTION IN CALIFORNIA. THE ONLY PROPER
17 OBJECTION IN CALIFORNIA IS ATTORNEY-CLIENT
18 PRIVILEGE.

19 MR. PREUSS: WELL, I HAVE GIVEN THE
20 INSTRUCTION.

21 MS. WELCH: LET'S MARK THAT FOR THE
22 RECORD, PLEASE.

23 Q. CAN YOU TELL ME IN WHAT OTHER
24 LITIGATION MONSANTO HAS PRODUCED DOCUMENTS ABOUT
25 PCB.

1 A. I COULD NOT FROM MEMORY ENUMERATE
2 ALL THE CASES IN WHICH WE HAVE, NO, MA'AM. THAT
3 WOULD HAVE BEEN QUITE A FEW.

4 Q. COULD YOU GIVE ME ONE THAT YOU
5 RECALL, FOR EXAMPLE, THE CASES WHEN I ASKED YOU
6 ABOUT YOUR TESTIMONY AS CUSTODIAN OF RECORDS.

7 A. YES, MA'AM.

8 Q. ANLAND VERSUS ALCOA --

9 A. YES, MA'AM.

10 Q. -- DID YOU PRODUCE ANY MONSANTO
11 DOCUMENTS?

12 A. YES, MA'AM.

13 Q. AND WHAT PCB RELATED PRODUCT DID
14 THAT INVOLVE?

15 A. TO MY RECOLLECTION, THERE WERE TWO
16 PRODUCTS INVOLVED, TWO HYDRAULIC FLUIDS THAT
17 MONSANTO SOLD TO THE ALCOA COMPANY, PYDRAUL F-9,
18 P-Y-D-R-A-U-L, AND PYDRAUL 312.

19 Q. AND WHERE ARE THOSE DOCUMENTS
20 STORED?

21 A. WHICH DOCUMENTS?

22 Q. THE DOCUMENTS THAT WERE PRODUCED
23 PURSUANT TO ANY REQUESTS THAT WERE ISSUED IN THIS
24 LITIGATION.

25 A. WELL, RIGHT NOW THAT'S WITH OUTSIDE

1 COUNSEL.

2 Q. WHO ARE THE OUTSIDE COUNSEL IN THAT
3 CASE?

4 A. THE LAW FIRM OF PITNEY, PARTON, KITT
5 & ZUCH, IN MORRISTOWN, NEW JERSEY.

6 Q. DOES MONSANTO HAVE A SET OF THOSE
7 DOCUMENTS IN ST. LOUIS OR ANYWHERE ELSE?

8 A. I DON'T KNOW THE ANSWER TO THAT
9 WITHOUT ASKING MY STAFF WHETHER WE HAVE A SET OF
10 THOSE DOCUMENTS SEGREGATED IN A SPECIFIC PLACE IN
11 ST. LOUIS.

12 Q. WHO ON YOUR STAFF WOULD KNOW THAT?

13 A. PROBABLY MISS NIBLOCK.

14 I'D BETTER SAY "MRS." IF I SAY
15 "MISS" ON THE TRANSCRIPT, SHE OBJECTS TO THAT.

16 Q. I CAN UNDERSTAND THAT.

17 IS THAT A LAWSUIT THAT IS CURRENTLY
18 PENDING?

19 A. YES, MA'AM.

20 Q. NEXT WAS THE SUPERFUND LITIGATION,
21 TO WHICH YOU WERE NOT A PARTY. WAS THERE A
22 PRODUCTION?

23 A. THE BEDFORD HARBOR CASE?

24 Q. YES.

25 A. THOSE DOCUMENTS, I BELIEVE, ARE WITH

1 COUNSEL IN MASSACHUSETTS, THAT ARE INVOLVED IN
2 ANOTHER CASE FOR MONSANTO.

3 Q. AND WHAT IS THE OTHER CASE FOR
4 MONSANTO THAT YOU ARE INVOLVED WITH?

5 A. THE STYLE OF THE CASE IS HURLEY,
6 H-U-R-L-E-Y, VERSUS MONSANTO, I BELIEVE.

7 Q. ALL RIGHT. AND WHAT PRODUCT DOES
8 THE SUPERFUND LITIGATION INVOLVE?

9 A. THAT INVOLVED PRIMARILY A PRODUCT
10 CALLED AROCLOR, A-R-O-C-L-O-R, 1242, WHICH WAS
11 USED AS A DIELECTRIC FLUID IN THE MANUFACTURE OF
12 ELECTRICAL EQUIPMENT.

13 Q. IS THAT THE SAME PRODUCT THAT'S
14 INVOLVED IN HURLEY VERSUS MONSANTO?

15 A. AROCLOR 1242 IS INVOLVED IN THE
16 HURLEY CASE. THERE MAY BE OTHER PCB PRODUCTS
17 INVOLVED THERE, AS WELL, POSSIBLY. I'D HAVE TO
18 REVIEW THE FILE TO DETERMINE THAT.

19 Q. WHAT'S THE NAME OF THE LAW FIRM?

20 A. HALE & DOR IN MASSACHUSETTS.

21 Q. AND DOES MONSANTO RETAIN A SET OF
22 THOSE DOCUMENTS, AS WELL?

23 A. I DON'T KNOW. AGAIN, I DON'T KNOW
24 WHETHER WE HAVE A SET OF THOSE DOCUMENTS
25 SEGREGATED IN A SPECIFIC LOCATION.

1 Q. AND YOU WOULD HAVE TO ASK THE SAME
2 PERSON?

3 A. SHE WOULD BE THE ONE I'D ASK TO FIND
4 OUT. I DON'T KNOW WHETHER SHE KNOWS FROM MEMORY.

5 Q. HOW ABOUT IN RE PAOLI IN
6 PHILADELPHIA, DID YOU PRODUCE SOME DOCUMENTS IN
7 THAT LITIGATION?

8 A. YES, MA'AM.

9 Q. WHO HAS THOSE DOCUMENTS?

10 A. THOSE DOCUMENTS, I BELIEVE, WE HAVE
11 A SET OF IN ST. LOUIS.

12 Q. WHAT PRODUCT DID THAT INVOLVE?

13 A. PCB'S USED AS DIELECTRIC FLUIDS,
14 PROBABLY AROCLORS 1222, 1254, AND 1260.

15 Q. HOW ABOUT THE ONE IN PITTSBURGH
16 WHICH YOU TESTIFIED IN THIS SUMMER?

17 A. THAT WAS A HYDRAULIC FLUID CASE.
18 THE PRODUCT INVOLVED THERE, I THINK, WAS PYDRAUL
19 312.

20 Q. TO THE BEST OF YOUR RECOLLECTION,
21 WHAT WAS THE QUANTITY OF DOCUMENTS THAT WAS
22 PRODUCED IN THE ANLAND LITIGATION?

23 A. AT THE TIME OF MY DEPOSITION IN 1986
24 IT WAS NOT A VERY SIGNIFICANT QUANTITY, BECAUSE
25 THE DISCOVERY REQUESTS WERE FAIRLY LIMITED. I

1 WOULD SAY PERHAPS 2000 PAGES.

2 Q. TO THE BEST OF YOUR RECOLLECTION,
3 WHAT WAS THE QUANTITY OF DOCUMENTS THAT WAS
4 PRODUCED IN THE SUPERFUND LITIGATION?

5 A. THE SUPERFUND LITIGATION, I DON'T
6 RECALL HOW MANY DOCUMENTS WERE PRODUCED.

7 Q. THE IN RE PAOLI LITIGATION?

8 A. LARGE NUMBERS OF DOCUMENTS WERE
9 PRODUCED IN THAT CASE.

10 Q. APPROXIMATELY.

11 A. POSSIBLY AS MANY AS 150,000 PAGES.

12 Q. THE PITTSBURGH LITIGATION?

13 A. THAT WAS A VERY SMALL NUMBER OF
14 DOCUMENTS. AS I RECALL, FEWER THAN 200 PAGES.

15 Q. DO WE HAVE ANY OF THESE DOCUMENTS
16 THAT WERE PRODUCED IN THESE OTHER LITIGATIONS?

17 A. OFFHAND, I DON'T KNOW.

18 Q. DID YOU SEARCH THE FILES OF
19 DOCUMENTS THAT WERE PRODUCED IN THESE OTHER
20 LITIGATIONS WHEN YOU RECEIVED OUR DOCUMENT
21 REQUEST?

22 A. I DID NOT GO TO FILES SPECIFICALLY
23 SET ASIDE THAT CONTAIN DOCUMENTS PRODUCED IN
24 THESE OTHER CASES, TO LOOK FOR DOCUMENTS TO
25 RESPOND TO YOUR DEMAND, NO, MA'AM, I DID NOT.

1 Q. ALL RIGHT. WILL YOU PLEASE PRODUCE
2 THOSE DOCUMENTS TO US.

3 A. NO, MA'AM.

4 Q. ON WHAT BASIS ARE YOU WITHHOLDING
5 THOSE DOCUMENTS?

6 A. I'LL DEFER TO COUNSEL ON THAT ONE.

7 IF YOU WANT ME TO STATE MY OPINION,
8 TWO THINGS.

9 FIRST OF ALL, THE DOCUMENTS PRODUCED
10 IN THOSE CASES ARE NOT NECESSARILY RELEVANT HERE,
11 NUMBER ONE.

12 NUMBER TWO, THEY WEREN'T ASKED FOR
13 HERE. I HAD NO REASON TO SEARCH FOR THOSE
14 DOCUMENT COLLECTIONS TO DETERMINE WHAT DOCUMENTS
15 WERE APPROPRIATE TO BE PRODUCED HERE.

16 DO YOU WANT TO SAY ANYTHING ELSE?

17 MR. PREUSS: I THINK YOU SAID IT.

18 MS. WELCH: I WOULD LIKE TO HAVE
19 THIS EXHIBIT MARKED AS EXHIBIT NO. 2.

20 (THE DOCUMENT REFERRED TO WAS
21 MARKED BY THE C.S.R. AS PLAINTIFF'S
22 EXHIBIT 2 FOR IDENTIFICATION AND
23 ATTACHED TO AND MADE A PART OF THIS
24 DEPOSITION.)

25 BY MS. WELCH:

1 Q. HAVE YOU SEEN THIS ARTICLE BEFORE?

2 A. YES, I HAVE.

3 Q. IN WHAT CONTEXT DID YOU SEE THAT
4 ARTICLE?

5 A. IT WAS SENT TO ME AFTER IT APPEARED
6 IN "BUSINESS WEEK."

7 Q. HAVE YOU READ THE ARTICLE BEFORE?

8 A. YES, MA'AM.

9 Q. DO YOU NEED A FEW MINUTES TO REVIEW
10 THE ARTICLE, OR ARE YOU FAMILIAR WITH IT?

11 A. IF YOU HAVE SPECIFIC QUESTIONS.

12 Q. I DO HAVE SPECIFIC QUESTIONS.

13 A. IF YOU'LL GIVE ME A MOMENT TO READ
14 IT THEN, I WOULD APPRECIATE IT. I'D LIKE A FEW
15 MOMENTS TO SCAN THE ARTICLE.

16 MR. PREUSS: I WILL TELL YOU,
17 THOUGH, IF YOU ARE GOING TO GET THIS FAR AFIELD
18 WITH QUESTIONS THAT DON'T RELATE TO PRODUCTION IN
19 HIS ROLE AS CUSTODIAN, I AM GOING TO INSTRUCT HIM
20 NOT TO ANSWER.

21 MS. WELCH: WE ARE NOT. WE ARE
22 GOING TO STAY WITH THE CUSTODIAN OF RECORDS
23 DEPOSITION.

24 MR. PREUSS: WELL, WE WILL SEE.

25 (DISCUSSION HELD OFF THE RECORD.)

1 BY MS. WELCH:

2 Q. I AM REALLY GOING TO ASK TWO

3 QUESTIONS ABOUT IT AS THEY PERTAIN TO DOCUMENTS.

4 A. FINE.

5 Q. TURN YOUR ATTENTION TO THE SECOND

6 PAGE. IT'S NOT A FULL PARAGRAPH, BUT THE END OF

7 THE FIRST PARAGRAPH ON THE SECOND PAGE.

8 A. YES.

9 Q. THE QUOTE IS:

10 "SAYS MONSANTO ATTORNEY

11 BISTLINE: 'WE HAVE DISCLOSED WHAT

12 WE KNEW WHEN KNEW IT.'"

13 DID YOU MAKE THAT STATEMENT TO THE

14 PERSON WHO INTERVIEWED YOU FOR THIS ARTICLE?

15 A. YES, MA'AM, I DID.

16 Q. COULD YOU TELL ME WHETHER THOSE

17 DISCLOSURES INCLUDED ANY DOCUMENTS.

18 A. THAT STATEMENT WAS A GENERAL

19 STATEMENT RESPONDING TO THE QUESTION, OR TO THE

20 ALLEGATION, THAT MONSANTO HAD CONCEALED KNOWLEDGE

21 IT HAD RELATING TO THE HEALTH OR ENVIRONMENTAL

22 EFFECTS OF PCB'S.

23 MY RESPONSE WAS THAT MONSANTO HAD

24 DISCLOSED ITS KNOWLEDGE OF THOSE HEALTH AND

25 ENVIRONMENTAL EFFECTS, ASSUMING THAT WE HAD THAT

1 KNOWLEDGE.

2 THAT DISCLOSURE MAY IN SOME
3 CIRCUMSTANCES HAVE INVOLVED DOCUMENTS, BUT IT DID
4 NOT INVOLVE IT IN ALL INSTANCES.

5 Q. WERE YOU REFERRING TO ANY OTHER
6 DOCUMENTS IN WHICH THOSE DISCLOSURES WERE MADE?

7 A. NO PARTICULAR DOCUMENTS, MA'AM.

8 BUT THE CONTROVERSY RELATING TO PCB
9 AND ITS ENVIRONMENTAL AND HEALTH EFFECTS HAS BEEN
10 ONE THAT HAS BEEN CERTAINLY IN THE PUBLIC
11 ATTENTION SINCE THE EARLY 1970'S.

12 Q. AS YOU SIT HERE, DO YOU RECALL ANY
13 DOCUMENTS IN WHICH THESE DISCLOSURES WERE MADE?

14 A. I THINK A GREAT MANY OF THE KIND OF
15 DOCUMENTS, FOR EXAMPLE, LABELS WHICH WERE PLACED
16 ON MONSANTO PRODUCTS, TECHNICAL BULLETINS WHICH
17 ACCOMPANIED MONSANTO'S PRODUCTS, COOPERATION THAT
18 SCIENTISTS AND OTHERS AT MONSANTO HAD GIVEN
19 RESEARCHERS AND THE GOVERNMENT, CERTAIN REPORTS
20 THAT -- TOXICOLOGY REPORTS THAT WERE DONE AT
21 MONSANTO'S REQUEST, CORRESPONDENCE WITH CUSTOMERS
22 FROM TIME TO TIME.

23 Q. WHERE ARE THOSE DOCUMENTS LOCATED?

24 A. MOST OF THOSE DOCUMENTS ARE IN
25 ST. LOUIS, IN MY CUSTODY.

1 Q. DO YOU HAVE A STORAGE FACILITY AT
2 ST. LOUIS WHERE THESE DOCUMENTS ARE KEPT?
3 A. YES.
4 Q. AND IT'S IN YOUR BUILDING?
5 A. IT'S NOT IN MY BUILDING, BUT IT'S IN
6 THE SAME LOCATION.
7 Q. ARE THERE INDEXES THAT EXIST ABOUT
8 THESE DOCUMENTS?
9 A. NOT INDEXES AS SUCH, NO.
10 Q. WHAT CATALOGUES EXIST THAT HELP YOU
11 HAVE ACCESS TO THESE DOCUMENTS?
12 A. WELL, IT'S NOT A WRITTEN CATALOGUE,
13 MA'AM. WE HAVE A COMPUTERIZED LITIGATION SUPPORT
14 SYSTEM, WHICH PERMITS US ACCESS TO THOSE
15 DOCUMENTS.
16 Q. HAVE THOSE DOCUMENTS EVER BEEN
17 PRODUCED IN LITIGATION?
18 A. SOME OF THOSE DOCUMENTS, AS
19 APPROPRIATE.
20 Q. HAVE THEY BEEN PRODUCED TO US?
21 A. SOME OF THOSE DOCUMENTS, YES.
22 Q. WHICH ONES OF THOSE DOCUMENTS HAVE
23 BEEN PRODUCED?
24 MR. PREUSS: YOU HAVE THEM.
25 BY MS. WELCH:

1 Q. ON WHAT BASIS DID YOU WITHHOLD
2 CERTAIN OF THOSE DOCUMENTS?

3 A. IF YOU WOULD LIKE TO REFER TO A
4 SPECIFIC QUESTION.

5 Q. I WANT TO KNOW, GENERALLY, ON WHAT
6 BASIS DID YOU DECIDE TO WITHHOLD DOCUMENTS.

7 A. I WILL ANSWER THE QUESTION IN THIS
8 WAY, MA'AM. THE RESPONSE WE MADE TO THE
9 DISCOVERY REQUESTS POSED BY THE PLAINTIFF IN THIS
10 CASE WERE APPROPRIATE, AND WE WILL STAND BY THEM.

11 MR. PREUSS: WE ARE FURTHER
12 ASSERTING THAT DOCUMENTS WERE WITHHELD BASED UPON
13 THE GENERAL JACKSON LIMITATION PLACED ON THE
14 RESPONSES THEMSELVES.

15 BY MS. WELCH:

16 Q. APPROXIMATELY HOW MANY PAGES OF
17 DOCUMENTS ARE THERE IN THE DOCUMENTS THAT WE HAVE
18 BEEN REFERRING TO?

19 MR. PREUSS: COULD YOU CLARIFY WHICH
20 DOCUMENTS, THOSE THAT WERE PRODUCED HERE OR THOSE
21 THAT ARE SOME OTHER PLACE?

22 BY MS. WELCH:

23 Q. I AM QUESTIONING YOU IN TERMS OF THE
24 DOCUMENTS YOU ARE REFERRING TO IN OUR DISCUSSION
25 ABOUT DISCLOSURES, THAT ARE IN ST. LOUIS.

1 A. I AM NOT SURE I COULD QUANTIFY THAT
2 PRECISELY. THERE ARE MANY NUMBERS OF DOCUMENTS
3 WHICH WOULD BE INVOLVED IN THAT SPECIFIC TOPIC.
4
5 THEY ARE PART OF A LARGER COLLECTION
6 OF DOCUMENTS WHICH RELATE TO MONSANTO'S BUSINESS
7 OF MANUFACTURING, PRODUCING, AND SELLING PCB'S.
8
9 Q. AND APPROXIMATELY HOW MANY PAGES OF
10 DOCUMENTS DOES THAT INVOLVE?
11
12 A. THE ENTIRE COLLECTION OF DOCUMENTS?
13
14 Q. YES.
15
16 A. APPROXIMATELY ONE MILLION PAGES.
17
18 Q. AND WHAT PERCENTAGE OF PAGES ABOUT
19 DISCLOSURES DID YOU PRODUCE TO US, COMPARED TO
20 THE NUMBER OF PAGES YOU HAVE IN GENERAL? DO YOU
21 HAVE ANY IDEA?
22
23 A. I COULDN'T ESTIMATE THAT RIGHT NOW.
24
25 Q. I WOULD LIKE YOU TO GO TO ANOTHER
26 POINT IN THIS ARTICLE, PAGE 3 IN THIS ARTICLE,
27 THE PARAGRAPH THAT BEGINS WITH:
28
29 "MONSANTO WAS WORRIED ABOUT
30 SUITS AS FAR BACK AS 1972."
31
32 A. RIGHT.
33
34 Q. PLEASE READ THAT PARAGRAPH.
35
36 A. UM-HUM.
37
38 YES, MA'AM.

1 Q. ARE YOU AWARE WHETHER MONSANTO EVER
2 HAD TEXAS EASTERN SIGN A WAIVER AGREEMENT?
3 A. ONLY BY EXAMINING DOCUMENTS.
4 Q. DOES MONSANTO HAVE A DOCUMENT THAT
5 IS AN EXECUTED WAIVER AGREEMENT BY TEXAS EASTERN?
6 A. NO, MA'AM.
7 Q. DOES IT HAVE A DRAFT OF A WAIVER
8 AGREEMENT?
9 A. I DON'T RECALL WHETHER WE HAVE A
10 DRAFT OF A WAIVER AGREEMENT OR NOT.
11 Q. ARE THERE ANY DOCUMENTS THAT REFER,
12 OR REFLECT, OR RELATE TO A WAIVER AGREEMENT WITH
13 TEXAS EASTERN?
14 A. I BELIEVE THERE ARE, YES.
15 Q. DO WE HAVE THOSE DOCUMENTS?
16 A. I'D HAVE TO LOOK AT THE COLLECTION
17 OF DOCUMENTS TO BE PRODUCED. I DON'T RECALL
18 OFFHAND.
19 Q. IF WE DO NOT HAVE THOSE DOCUMENTS, I
20 WOULD LIKE TO REQUEST THAT YOU PRODUCE THEM TO
21 US.
22 A. WE WILL TAKE THAT INTO CONSIDERATION
23 AT THE APPROPRIATE TIME.
24 Q. DOES MONSANTO HAVE A DOCUMENT
25 RETENTION SYSTEM?

1 A. YES, WE DO.

2 Q. CAN YOU DESCRIBE THE SYSTEM TO ME.

3 A. IT'S A VERY COMPLICATED SYSTEM. IT,
4 IN GENERAL, PROSCRIBES THE LENGTH OF TIME FOR
5 WHICH DOCUMENTS SHOULD BE RETAINED, DEPENDING
6 UPON THE NATURE OF THE DOCUMENT AND THE BUSINESS
7 OR OTHER PURPOSE.

8 Q. LET'S FOCUS IN ON PCB-RELATED
9 DOCUMENTS, THE LENGTH OF TIME THAT A PCB-RELATED
10 DOCUMENT SHOULD BE RETAINED.

11 A. THERE IS NO RETENTION PERIOD FOR PCB
12 DOCUMENTS. THOSE DOCUMENTS HAVE BEEN TAKEN OUT
13 OF THE RECORD RETENTION SYSTEM AT MONSANTO, AND
14 THEY ARE PLACED IN MY CUSTODY.

15 MY INSTRUCTION IS THAT NO DOCUMENTS
16 RELATING TO PCB'S ARE TO BE DESTROYED.

17 Q. WHEN WAS THAT INSTRUCTION FIRST
18 GIVEN?

19 A. FIRST GIVEN?

20 Q. YES. NOT NECESSARILY BY YOU, BUT BY
21 SOMEBODY AT MONSANTO.

22 A. I UNDERSTAND THAT. I BELIEVE AROUND
23 1971.

24 Q. HOW ABOUT PRIOR TO 1971, WHAT WAS
25 THE DOCUMENT RETENTION POLICY RELATING TO PCB'S?

1 A. AGAIN, IT WOULD HAVE DEPENDED UPON
2 THE NATURE OF THE DOCUMENT INVOLVED. THERE WAS
3 NO POLICY SPECIFIC TO DOCUMENTS RELATED TO PCB'S.

4 — Q. HOW ABOUT DOCUMENTS IN GENERAL PRIOR
5 TO 1971?

6 A. AGAIN, THAT WOULD DEPEND ON THE
7 NATURE OF THE DOCUMENTS.

8 MONSANTO IS A LARGE COMPANY. WE
9 HAVE MANY FACETS TO OUR BUSINESS AND MANY
10 DIFFERENT TYPES OF DOCUMENTS THAT ARE GENERATED
11 FOR DIFFERENT PURPOSES.

12 AND DEPENDING UPON THE TYPE OF
13 DOCUMENT INVOLVED, THE DOCUMENT WOULD BE RETAINED
14 FOR AS SHORT AS ONE YEAR, OR AS LONG AS NEVER
15 HAVING A DESTRUCTION PERIOD SET FOR IT.

16 Q. LET'S START WITH DOCUMENTS THAT
17 PERTAIN TO SCIENTIFIC STUDIES, FOR INSTANCE,
18 HEALTH HAZARDS.

19 HOW LONG WOULD THOSE DOCUMENTS HAVE
20 BEEN RETAINED BEFORE 1971?

21 A. THOSE DOCUMENTS WOULD HAVE BEEN
22 RETAINED AS LONG AS THE PRODUCT WAS BEING
23 PRODUCED, AND THEREAFTER AT THE DISCRETION OF THE
24 MEDICAL DIRECTOR.

25 Q. SO YOU BELIEVE THAT MONSANTO

1 RETAINED ALL DOCUMENTS FROM THE TIME PCB PRODUCTS
2 WERE FIRST PRODUCED UNTIL 1971, AS THEY RELATE TO
3 THE HEALTH HAZARD QUESTION.

4 A. THAT WAS CERTAINLY THE INTENT.

5 NOW, WHETHER EVERY LAST DOCUMENT
6 WAS, IN FACT, RETAINED I COULDN'T TELL YOU.

7 THAT'S NOT A POLICY, BY THE WAY,
8 RESTRICTED TO PCB'S. THAT'S A GENERAL POLICY
9 WITH RESPECT TO MONSANTO PRODUCTS.

10 Q. HOW ABOUT DOCUMENTS THAT PERTAIN TO
11 THE SALE OF PRODUCTS, HOW LONG WERE THOSE
12 RETAINED PRIOR TO 1971?

13 A. THAT WOULD HAVE BEEN AGAIN VARIED,
14 DEPENDING UPON THE TYPE OF DOCUMENT INVOLVED.

15 SALES INVOICES OR SALES CONTRACTS
16 WOULD HAVE HAD A RELATIVELY SHORT LIFE SPAN, AND
17 I DON'T KNOW PRECISELY HOW LONG, MAYBE AS SHORT
18 AS TWO OR THREE YEARS.

19 OTHER DOCUMENTS REFLECTING SALES,
20 FOR EXAMPLE, SUMMER REPORTS OF THE TYPE THAT
21 BURKE PRODUCED IN THIS LITIGATION, WOULD HAVE HAD
22 A SIGNIFICANTLY LONGER LIFE SPAN, MAYBE AS MUCH
23 AS TEN OR 12 YEARS.

24 AGAIN, I AM NOT CERTAIN OF THE
25 SPECIFIC TIME, BUT DIFFERENT TYPES OF DOCUMENTS

1 HAD DIFFERENT RETENTION PERIODS.

2 Q. HOW ABOUT DOCUMENTS PERTAINING TO
3 THE DEVELOPMENT OF A PRODUCT?

4 A. DEPENDING UPON THE TYPE OF DOCUMENT,
5 THE RETENTION PERIOD FOR THOSE TYPES WOULD
6 GENERALLY BE THE LIFE OF THE PRODUCT.

7 IN THE CASE OF SCIENTIFIC RESEARCH
8 REPORTS, I BELIEVE THAT THOSE KINDS OF DOCUMENTS
9 DON'T HAVE A RETENTION PERIOD. THEY ARE TO BE
10 RETAINED FOREVER.

11 Q. SO AS YOU SIT HERE TODAY, YOU
12 BELIEVE THAT MONSANTO HAS KEPT ALL DOCUMENTS THAT
13 PERTAIN TO DEVELOPMENT OF PCB-RELATED PRODUCTS,
14 AND HAS NEVER DESTROYED THOSE DOCUMENTS.

15 A. I CAN'T REPRESENT TO YOU THAT NONE
16 OF THOSE DOCUMENTS WERE EVER DESTROYED.

17 WHAT I CAN SAY IS THAT, IN GENERAL,
18 DOCUMENTS RELATING TO THE DEVELOPMENT OF THE
19 PRODUCT ARE RETAINED DURING THE LIFE OF A
20 PRODUCT. THEREFORE, THOSE DOCUMENTS SHOULD NOT
21 HAVE BEEN DESTROYED.

22 BUT WHETHER WE HAVE EVERY PIECE OF
23 PAPER, I OBVIOUSLY COULD NOT MAKE ANY SORT OF
24 GUARANTEE ABOUT THAT.

25 Q. I WOULD LIKE TO FOCUS ON 1971, WHEN

1 YOU FIRST GAVE THE INSTRUCTIONS THAT NO
2 PCB-RELATED DOCUMENTS WERE TO BE DESTROYED.

3 WHO DID THAT INSTRUCTION GO OUT TO?

4 A. THAT WENT OUT TO THOSE INVOLVED IN
5 THE PRODUCTION AND SALE OF PCB'S, AS WELL AS THE
6 MEDICAL AND TOXICOLOGY STAFF.

7 Q. WAS THAT AN ORAL INSTRUCTION?

8 A. I'M NOT SURE WHETHER IT WAS ORAL OR
9 WRITTEN.

10 Q. ARE YOU AWARE WHETHER THERE IS A
11 WRITTEN DOCUMENT THAT STATES THAT?

12 A. I'M NOT AWARE OF WHETHER THERE IS
13 ONE DATED 1971 OR NOT.

14 Q. ARE THERE OTHERS THAT STATE THAT NO
15 PCB-RELATED DOCUMENTS ARE TO BE DESTROYED?

16 A. I BELIEVE THERE ARE, YES.

17 Q. DO WE HAVE THOSE DOCUMENTS?

18 A. I DON'T BELIEVE SO.

19 MS. WELCH: COULD WE GET THOSE
20 DOCUMENTS.

21 MR. PREUSS: MAKE A REQUEST, AND WE
22 WILL CONSIDER IT.

23 MS. WELCH: I AM MAKING THE REQUEST
24 ON THE RECORD.

25 THE WITNESS: WE WILL CONSIDER IT.

1 MR. PREUSS: WE WILL CONSIDER IT.

2 BY MS. WELCH:

3 Q. IN 1971 DID ALL PREVIOUS PCB-RELATED
4 DOCUMENTS COME TO YOUR FACILITY? I MEAN YOUR
5 OFFICE.

6 A. I'M NOT CERTAIN WHETHER THEY WERE
7 COLLECTED AND PLACED IN THE CUSTODY OF INSIDE
8 COUNSEL, OR WHETHER OUTSIDE COUNSEL TOOK CONTROL
9 OF THOSE DOCUMENTS.

10 Q. SUBSEQUENT TO THAT TIME DID ALL
11 PCB-RELATED DOCUMENTS COME TO YOUR OFFICE?

12 A. YES.

13 Q. AND IS THAT WHERE ALL PCB-RELATED
14 DOCUMENTS ARE CURRENTLY CENTERED?

15 A. YES.

16 Q. DID YOU SEARCH THERE IN RESPONSE TO
17 OUR DOCUMENT REQUEST?

18 A. MEMBERS OF MY STAFF SEARCHED, YES.

19 MS. WELCH: ANY TIME YOU WANT TO
20 TAKE A BREAK, BY THE WAY, EITHER MS. COURT
21 REPORTER OR MR. BISTLINE, PLEASE TELL ME.

22 THE WITNESS: THANK YOU.

23 (DISCUSSION HELD OFF THE RECORD.)

24 BY MS. WELCH:

25 Q. WELL, JUST ONE MORE ON DOCUMENT

1 RETENTION.

2 WHAT HAPPENS TO DOCUMENTS THAT ARE
3 PRODUCED TODAY, FOR INSTANCE ABOUT PCB'S, WHERE
4 DO THOSE DOCUMENTS GO?

5 MR. PREUSS: YOU MEAN OTHER THAN THE
6 OTHER SIDE THAT ASKS FOR THEM?

7 MS. WELCH: INTERNAL MONSANTO
8 DOCUMENTS.

9 THE WITNESS: I DON'T THINK THEY GO
10 ANYWHERE. IN SOME CASES A SET OF DOCUMENTS IS
11 RETAINED.

12 IN OTHER CASES WE WOULD RECORD WHICH
13 DOCUMENTS WERE PRODUCED AND, FOR SPACE REASONS,
14 DESTROY THE COPIES THAT REMAIN, BUT WOULD NOT
15 DESTROY AN ARCHIVE COPY OF A DOCUMENT, OBVIOUSLY.
16 BY MS. WELCH:

17 Q. DO YOU SEE ALL DOCUMENTS, OR DOES
18 YOUR OFFICE SEE ALL DOCUMENTS, THAT RELATE TO
19 PCB'S THAT ARE CREATED WITHIN MONSANTO?

20 A. DO WE SEE ALL DOCUMENTS? WE ARE IN
21 POSSESSION OF ALL OF THE DOCUMENTS THAT WE ARE
22 AWARE OF THAT RELATE TO PCB'S WITHIN MONSANTO,
23 EXCEPT FOR THOSE VERY, VERY FEW WHICH ARE
24 CURRENTLY BEING CREATED AND WHICH WE OBTAIN ON A
25 PERIODIC BASIS.

1 Q. BUT THERE ARE SOME SORT OF
2 INSTRUCTIONS AT MONSANTO FOR ANY PERSONNEL THAT
3 CREATE DOCUMENTS THAT RELATE TO PCB'S TO COME TO
4 YOUR OFFICE.

5 A. YES.

6 Q. AND IS THAT A WRITTEN INSTRUCTION?

7 A. I DON'T KNOW THAT I HAVE EVER
8 WRITTEN IT DOWN. I KNOW THE PLAYERS INVOLVED,
9 AND WE PERIODICALLY GO TO THEIR OFFICES AND
10 COLLECT THOSE DOCUMENTS, AND INCORPORATE THEM
11 INTO OUR ARCHIVE.

12 MS. WELCH: I WOULD LIKE TO
13 INTRODUCE EXHIBIT 3. THIS IS A NOTICE OF
14 DEPOSITIONS AND PRODUCTION OF DOCUMENTS. WILL
15 YOU PLEASE MARK THIS AS EXHIBIT 3.

16 (THE DOCUMENT REFERRED TO WAS
17 MARKED BY THE C.S.R. AS PLAINTIFF'S
18 EXHIBIT 3 FOR IDENTIFICATION AND
19 ATTACHED TO AND MADE A PART OF THIS
20 DEPOSITION.)

21 BY MS. WELCH:

22 Q. MR. BISTLINE, THIS IS THE ORIGINAL
23 DOCUMENT REQUEST THAT TRANSWESTERN SENT TO
24 MONSANTO, SERVED ON MONSANTO, SENT ON MAY 21,
25 1991.

1 HAVE YOU EVER SEEN THIS REQUEST
2 BEFORE?
3 A. YES, MA'AM.
4 Q. WHEN DID YOU FIRST SEE IT?
5 A. SHORTLY AFTER IT WAS SERVED ON
6 MONSANTO.
7 Q. DO YOU RECALL APPROXIMATELY WHEN
8 THAT WAS?
9 A. THE PRECISE DATE, NO, MA'AM, HOWEVER
10 LONG IT TOOK TO TRANSMIT IT.
11 Q. WHO SHOWED THIS REQUEST TO YOU?
12 A. I BELIEVE IT CAME EITHER BY FAX OR
13 THROUGH THE MAIL FROM MR. PREUSS.
14 Q. AND WERE ALL DOCUMENTS THAT WERE
15 PRODUCED BY MONSANTO DOCUMENTS THAT WERE KEPT IN
16 THE ORDINARY COURSE OF BUSINESS?
17 A. NOT ALL OF THEM, NO.
18 CERTAIN SALES SUMMARIES WERE
19 DOCUMENTS THAT WERE CREATED BY MY STAFF, SIMPLY
20 BECAUSE THE UNDERLYING REPORTS WERE DIFFICULT TO
21 INTERPRET, AND IT'S EASIER FOR US TO PREPARE THE
22 SUMMARY AND ENCLOSE THE UNDERLYING DOCUMENTS,
23 THAN IT IS TO HAVE TO EXPLAIN THEM LATER.
24 Q. WERE THE SUMMARIES PREPARED IN
25 RESPONSE TO THIS REQUEST OR PREVIOUSLY?

1 A. NO, THEY WERE PREPARED IN RESPONSE
2 TO THIS REQUEST.

3 Q. WHERE DID YOU CONDUCT THE DOCUMENT
4 SEARCH IN RESPONSE TO THIS REQUEST?

5 A. IN ST. LOUIS, IN THE DOCUMENT
6 ARCHIVE.

7 Q. DID YOU ENGAGE IN A COMPUTER SEARCH
8 OR IN AN ACTUAL HARD COPY SEARCH?

9 A. BOTH.

10 Q. DID YOU SEND OUT ANY MEMORANDUM TO
11 MONSANTO EMPLOYEES WITH RESPECT TO THIS DOCUMENT
12 REQUEST?

13 A. NOT THAT I RECALL.

14 Q. DID YOU SPEAK TO ANY MONSANTO
15 EMPLOYEES WITH RESPECT TO THE REQUEST?

16 A. I MAY HAVE. I MAY HAVE, BUT I DON'T
17 RECALL SPECIFICALLY.

18 Q. DO YOU RECALL ANY INDIVIDUALS WHO
19 YOU MAY HAVE SPOKEN TO?

20 A. YES. I MAY HAVE SPOKEN TO DR. JOHN
21 CRADDOCK, C-R-A-D-D-O-C-K, AND DR. ROBERT KALEY,
22 K-A-L-E-Y.

23 Q. WHO IS DR. CRADDOCK?

24 A. DR. CRADDOCK IS A MONSANTO
25 EMPLOYEE. HIS SPECIFIC TITLE I CAN'T RECALL AT

1 THE MOMENT.

2 I BELIEVE JOHN VERIFIED THE
3 RESPONSE, SIGNED THE CORPORATE VERIFICATION FOR
4 MONSANTO, SO HIS TITLE WOULD BE IDENTIFIED ON
5 THAT DOCUMENT.

6 Q. CAN YOU DESCRIBE TO ME WHAT THE
7 CONTENTS OF YOUR DISCUSSIONS WERE.

8 A. NO, MA'AM.

9 Q. WHY WOULD YOU HAVE SPOKEN TO
10 DR. CRADDOCK ABOUT THE DOCUMENT REQUEST?

11 A. TO OBTAIN HIS INSIGHT INTO THE
12 RELATIONSHIP OF TEXAS EASTERN WITH THE
13 ENVIRONMENTAL PROTECTION AGENCY, AND DISCUSSIONS
14 THAT HE MIGHT HAVE HAD WITH PERSONNEL AT TEXAS
15 EASTERN.

16 Q. WHY DID YOU GO TO HIM TO ASK THESE
17 QUESTIONS?

18 A. DR. CRADDOCK IS A VERY KNOWLEDGEABLE
19 PERSON ABOUT PCB'S AND THE REGULATORY PROCESSES
20 WITH RESPECT TO PCB'S.

21 HE IS A MEMBER OF A GROUP THAT IS
22 CALLED THE CONSENSUS GROUP, WHICH IS COMPOSED OF
23 REPRESENTATIVES OF THE CHEMICAL MANUFACTURERS
24 ASSOCIATION, CERTAIN ENVIRONMENTAL GROUPS WITHIN
25 THE ENVIRONMENTAL DEFENSE FUND AND ENVIRONMENTAL

1 PROTECTION AGENCY, WHO HAVE WORKED FOR QUITE A
2 LONG PERIOD OF TIME TO ESTABLISH APPROPRIATE
3 LEVELS FOR PCB CLEANUPS OR CLEANUPS OF VARIOUS
4 CONTAMINATED PCB'S.

5 AND DR. CRADDOCK, I BELIEVE, IS ALSO
6 THE ASSOCIATE DIRECTOR FOR RESEARCH, I BELIEVE,
7 FOR THE EASTERN GAS ASSOCIATION.

8 Q. DID YOU ASK HIM WHETHER HE HAD ANY
9 DOCUMENTS THAT WERE RESPONSIVE TO THIS REQUEST?

10 A. I DON'T RECALL WHETHER I DID OR
11 NOT. IF HE HAD DOCUMENTS, THEY WOULD HAVE BEEN
12 OBTAINED FROM HIM.

13 Q. OBTAINED PREVIOUS TO THIS REQUEST?

14 A. YES.

15 Q. AND PUT IN WHATEVER YOUR FACILITY IS
16 FOR PCB-RELATED DOCUMENTS.

17 A. YES.

18 Q. YOU SPOKE TO HIM FOR SUBSTANTIVE
19 DISCUSSION.

20 A. YES, THAT'S CORRECT.

21 Q. HOW ABOUT DR. KALEY?

22 A. YES, DR. KALEY, FOR MUCH OF THE SAME
23 REASONS. HE IS VERY KNOWLEDGE ABOUT PCB'S, BUT
24 FROM MORE OF A SCIENTIFIC PERSPECTIVE.

25 DR. KALEY IS AN ANALYTICAL CHEMIST,

1 AND IS EXTREMELY KNOWLEDGEABLE ON THE SCIENTIFIC
2 LITERATURE WITH RESPECT TO PCB'S.

3 Q. AND DID YOU ASK HIM WHETHER HE HAD
4 ANY DOCUMENTS IN RESPONSE TO THIS REQUEST?

5 A. I DON'T RECALL. BUT AGAIN, IF HE
6 HAD, THEY WOULD HAVE BEEN OBTAINED BY MY STAFF.

7 Q. PREVIOUS TO THE DOCUMENT REQUEST.

8 A. PREVIOUS TO THE DOCUMENT REQUEST.

9 Q. WHO HEADED THE SEARCH FOR DOCUMENTS
10 FOR THIS REQUEST?

11 A. I'M NOT QUITE SURE WHAT YOU MEAN.

12 Q. WHO WAS IN CHARGE OF THE SEARCH?

13 A. FROM A PRACTICAL VIEWPOINT, IT WOULD
14 HAVE BEEN ONE OF MY PARALEGALS. I'M NOT SURE
15 WHETHER IT WAS MRS. NIBLOCK OR ANOTHER PARALEGAL
16 WHO RECENTLY LEFT MONSANTO'S EMPLOY,
17 MRS. HURLEY. I JUST CAN'T RECALL WHICH OF THOSE
18 TWO MAY HAVE ACTUALLY CONDUCTED THE SEARCH AND
19 SUPERVISED THE RETRIEVAL.

20 Q. DID THEY SUPERVISE IT PURSUANT TO
21 YOUR INSTRUCTION?

22 A. YES, MA'AM.

23 Q. AND HOW MANY INDIVIDUALS WERE
24 INVOLVED IN THE DOCUMENT SEARCH?

25 A. I DON'T KNOW THE ANSWER TO THAT.

1 Q. CAN YOU GIVE ME AN APPROXIMATION.
2 A. PERHAPS AS MANY AS FOUR OR FIVE.
3 Q. NORMALLY, WHEN YOU RECEIVE A
4 DOCUMENT REQUEST IN LITIGATION, HOW MANY
5 INDIVIDUALS ARE INVOLVED IN THE SEARCH?
6 A. WELL, DEPENDS UPON THE NATURE AND
7 SCOPE OF THE REQUEST. USUALLY, TWO TO TEN.
8 AGAIN, IT WOULD DEPEND ON WHAT WE WERE ASKED TO
9 PRODUCE.
10 Q. IN THE PAOLI LITIGATION DO YOU
11 RECALL HOW MANY INDIVIDUALS WERE INVOLVED?
12 A. PROBABLY JUST ABOUT EVERYBODY.
13 Q. SO YOU USE YOUR OWN PEOPLE; YOU DO
14 NOT HIRE OUTSIDE PEOPLE.
15 A. OUTSIDE COUNSEL WERE INVOLVED.
16 Q. ARE YOU REFERRING TO THE PAOLI
17 LITIGATION?
18 A. YES.
19 Q. HOW ABOUT FOR THE ANLAND LITIGATION,
20 DID OUTSIDE COUNSEL ASSIST YOU IN THE SEARCH?
21 A. IN THE REVIEW OF DOCUMENTS, YES.
22 Q. SO OUTSIDE COUNSEL CAME TO ST. LOUIS
23 AND REVIEWED THE DOCUMENTS.
24 A. THAT'S CORRECT.
25 Q. AND ALL OF THE PEOPLE WHO WERE

1 INVOLVED IN THE SEARCH, WHETHER IT BE VIA
2 COMPUTER OR HARD COPY, WERE MEMBERS OF YOUR
3 STAFF; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. HOW MANY DOCUMENTS DID
6 YOU OR YOUR SEARCHERS REVIEW?

7 A. I DON'T KNOW THE ANSWER TO THAT.

8 Q. CAN YOU GIVE ME AN APPROXIMATION.

9 A. AS FAR AS THE SEARCHERS GO, NO,
10 MA'AM, I CAN'T.

11 Q. HOW MANY BOXES OF DOCUMENTS DID YOU
12 REVIEW?

13 A. I DON'T KNOW THAT.

14 Q. WHAT WERE THEY REVIEWED IN TERMS OF?

15 A. THE BULK OF DOCUMENTS WERE REVIEWED
16 IN TERMS OF BOXES. IT'S A LITTLE DIFFICULT TO
17 DESCRIBE HOW IT'S ORGANIZED WITHOUT TRENCHING ON
18 THE WORK PRODUCT PRIVILEGE.

19 MR. PREUSS: WELL, TO THE EXTENT
20 THAT THAT CALLS FOR YOUR WORK PRODUCT OR
21 ATTORNEY-CLIENT PRIVILEGE, I WILL INSTRUCT YOU
22 NOT TO ANSWER.
23 BY MS. WELCH:

24 Q. I AM CERTAINLY NOT ASKING YOU TO
25 VIOLATE THE PRIVILEGE.

1 I JUST WANT A FACTUAL RECOUNT OF
2 WHAT YOU PHYSICALLY DID WHEN YOU GOT THE DOCUMENT
3 REQUEST. SO TO THE EXTENT YOU CAN ANSWER THAT
4 WITHOUT TELLING ME ANYTHING THAT'S PRIVILEGED,
5 PLEASE DO.

6 A. RIGHT.

7 I HAVE A QUESTION FOR COUNSEL THAT
8 I'D LIKE TO CONFER WITH HIM ON.

9 Q. GO RIGHT HEAD. IS THIS AN
10 APPROPRIATE TIME TO TAKE A BREAK?

11 A. YES, IT WOULD BE A GOOD TIME.

12 MS. WELCH: OFF THE RECORD.

13 (RECESS TAKEN.)

14 MS. WELCH: WE ARE BACK ON THE
15 RECORD.

16 Q. I BELIEVE THAT I HAD ASKED YOU TO
17 RECOUNT FOR ME HOW YOU PHYSICALLY BEGAN IN THE
18 SEARCH AFTER YOU RECEIVED THE DOCUMENT REQUEST.

19 A. THE DOCUMENTS WERE REVIEWED AFTER
20 THE COMPUTER SEARCH, BUT THE PHYSICAL MANNER IN
21 WHICH THAT WAS DONE REALLY RELATES TO HOW WE ARE
22 ORGANIZED AT MONSANTO.

23 MR. PREUSS: WE ARE GOING TO ASSERT
24 THE PRIVILEGE OF WORK PRODUCT AND
25 ATTORNEY-CLIENT.

1 THE WITNESS: I CAN ASSURE YOU THAT
2 WE CONDUCTED A THOROUGH SEARCH OF ALL OF THE
3 DOCUMENTS AVAILABLE TO US, ALL OF THE DOCUMENTS
4 THAT WE HAVE IN OUR POSSESSION, AND THAT THE
5 DOCUMENT PRODUCTION THAT WE MADE, THE PARAMETERS
6 ARE FULLY SET OUT IN OUR RESPONSE.

7 BUT PHYSICALLY HOW WE DID IT IS WORK
8 PRODUCT.

9 BY MS. WELCH:

10 Q. DID YOU FIRST GO TO THE COMPUTER
11 FILE AND SEARCH ON THE COMPUTER FILE FOR
12 DOCUMENTS THAT MIGHT BE RESPONSIVE TO OUR
13 REQUEST?

14 MR. PREUSS: I AM GOING TO INSTRUCT
15 HIM NOT TO ANSWER ON THE BASIS OF WORK PRODUCT
16 AND ATTORNEY-CLIENT.

17 BY MS. WELCH:

18 Q. HOW LONG DID THE DOCUMENT SEARCH
19 TAKE?

20 A. THE PROCESS EXTENDED OVER A PERIOD,
21 I BELIEVE, OF ABOUT TWO WEEKS.

22 Q. HOW MANY HOURS DURING THAT TWO
23 WEEKS?

24 A. I WOULD HAVE TO GO BACK AND COMPUTE
25 THAT.

1 Q. APPROXIMATELY.

2 A. I DON'T KNOW OFFHAND. I HATE TO
3 HAZARD A GUESS. I JUST -- I'D HAVE TO GO BACK
4 AND EXAMINE THE FILE. I JUST DON'T KNOW.

5 Q. I BELIEVE I ASKED THAT QUESTION
6 BEFORE, BUT I DON'T BELIEVE I RECEIVED AN ANSWER.

7 DO YOU, AS YOU SIT HERE TODAY,
8 RECALL HOW MANY BOXES OF DOCUMENTS YOU REVIEWED?

9 A. NO, MA'AM.

10 Q. DURING WHAT TIME PERIOD WAS THE
11 DOCUMENT SEARCH CONDUCTED?

12 A. IF I CAN LOOK AT OUR RESPONSE, I
13 COULD GIVE YOU A BETTER IDEA.

14 MR. PREUSS: DO YOU WANT HIM TO LOOK
15 AT IT?

16 MS. WELCH: YES, PLEASE.

17 THE WITNESS: WHAT'S THE DATE OF OUR
18 RESPONSE? IT WOULD HAVE OCCURRED, INITIAL REVIEW
19 OF THE DOCUMENTS, SHORTLY AFTER WE RECEIVED THE
20 DOCUMENT DEMAND.

21 AND THEN THE FINAL REVIEW AND
22 DETERMINATION OF WHICH DOCUMENTS WOULD BE
23 PRODUCED WAS CONDUCTED IN EARLY TO MID JUNE, I
24 BELIEVE.

25 BY MS. WELCH:

1 Q. DO YOU HAVE ANY RECOLLECTION OF WHAT
2 PERCENTAGE OF YOUR STAFF'S TIME WAS TAKEN UP
3 DURING THOSE TWO WEEKS IN SEARCHING FOR
4 DOCUMENTS?

5 A. NO, I DON'T.

6 Q. IS THERE ANYBODY WHO WOULD KNOW
7 THAT, BESIDES YOU?

8 A. WELL, IF I ASKED SOMEONE TO FIND
9 OUT, BUT I DON'T BELIEVE THAT ANYONE KNOWS THAT
10 ANSWER RIGHT NOW WITHOUT HAVING TO DO RESEARCH ON
11 IT.

12 Q. ARE THERE TIME RECORDS THAT ARE KEPT
13 IN TERMS OF WHAT TASKS PEOPLE PERFORM?

14 A. YES.

15 MS. WELCH: I'D LIKE, ON THE RECORD,
16 TO REQUEST THAT YOUR COUNSEL, IN WRITING, TELL US
17 WHAT KIND OF TIME WAS PUT INTO SEARCHING FOR
18 DOCUMENTS RESPONSIVE TO THIS REQUEST.

19 MR. PREUSS: YOUR REQUEST IS NOTED.
20 BY MS. WELCH:

21 Q. TO YOUR KNOWLEDGE, WOULD ALL
22 DOCUMENTS RESPONSIVE TO THIS REQUEST BE LOCATED
23 IN THE FACILITY THAT YOU IDENTIFIED?

24 A. TO MY KNOWLEDGE, YES.

25 Q. AND WOULD THAT BE TRUE FOR ANY

1 PCB-RELATED LITIGATION, YOU WOULD DO THE SAME
2 THING?

3 A. FOR THE MOST PART. I MEAN IT WOULD
4 DEPEND ON THE REQUEST. BUT AS LONG AS THE
5 REQUEST IS RELATED TO PCB'S, THE ANSWER WOULD BE
6 YES.

7 Q. IN TERMS OF FACILITIES THAT HAVE
8 MANUFACTURED PCB'S SINCE 1938, DO ANY OF THOSE
9 STILL HAVE PCB-RELATED DOCUMENTS?

10 A. YOU MEAN MONSANTO FACILITIES?

11 Q. YES.

12 A. THERE MAY BE PCB-RELATED DOCUMENTS,
13 BUT COPIES OF THOSE OR ORIGINALS OF THOSE WOULD
14 BE IN MY CUSTODY.

15 Q. AND YOU ARE CERTAIN OF THAT.

16 A. YES.

17 Q. HOW ARE YOU CERTAIN OF THAT?

18 A. BECAUSE WE HAVE LOOKED.

19 Q. WHEN HAVE YOU LOOKED?

20 A. SEVERAL TIMES.

21 Q. IN WHAT CONTEXT?

22 A. IN THE CONTEXT INITIALLY OF
23 RESPONDING TO DISCOVERY REQUESTS AND LITIGATION
24 THAT AROSE IN THE 1970'S.

25 Q. WHAT WAS THE FIRST LITIGATION THAT

1 AROSE, THAT YOU SEARCHED?

2 A. I DON'T RECALL THE NAME OF THE CASE
3 OR THE STYLE OF THE CASE SPECIFICALLY, BUT IT
4 INVOLVED AN INCIDENT OF FISH MEAL CONTAMINATION
5 IN 1971 IN NORTH CAROLINA.

6 Q. WAS MONSANTO A PARTY TO THAT
7 LITIGATION?

8 A. YES, MA'AM.

9 Q. AND WHAT WAS THE VENUE OF THAT
10 LITIGATION?

11 A. I DON'T KNOW WHETHER IT WAS STATE OR
12 FEDERAL COURT IN NORTH CAROLINA, BUT IT WAS A
13 COURT IN NORTH CAROLINA.

14 Q. IS THAT LITIGATION STILL PENDING?

15 A. NO.

16 Q. AND WHEN WAS IT SETTLED OR OTHERWISE
17 RESOLVED?

18 A. LONG BEFORE MY TIME AT MONSANTO.

19 Q. WHEN WAS THE FIRST TIME YOU WERE
20 INVOLVED IN SEARCHING FOR DOCUMENTS ABOUT
21 PCB-RELATED PRODUCTS?

22 A. IN 1985, WHEN I ASSUMED
23 RESPONSIBILITY FOR THE LITIGATION.

24 Q. AND AT THAT POINT HAD ALL DOCUMENTS
25 BEEN CENTRALIZED IN ST. LOUIS?

1 A. YES.

2 Q. AND YOU ARE CERTAIN OF THAT.

3 A. YES.

4 MS. WELCH: I WOULD LIKE TO
5 INTRODUCE AS EXHIBIT 4 YOUR DOCUMENT RESPONSE.
6 PLEASE MARK THIS AS EXHIBIT 4.

7 (THE DOCUMENT REFERRED TO WAS
8 MARKED BY THE C.S.R. AS PLAINTIFF'S
9 EXHIBIT 4 FOR IDENTIFICATION AND
10 ATTACHED TO AND MADE A PART OF THIS
11 DEPOSITION.)

12 BY MS. WELCH:

13 Q. BUT BEFORE WE GO TO THAT, I HAVE ONE
14 OR TWO MORE QUESTIONS ABOUT THE ACTUAL PHYSICAL
15 SEARCH.

16 YOU SAID THAT YOU LOOKED AT COMPUTER
17 ARCHIVES BEFORE YOU DID A HARD COPY SEARCH. DID
18 YOU LOOK AT ANY OTHER ELECTRONIC DATA FOR YOUR
19 SEARCH?

20 MR. PREUSS: I WILL INSTRUCT HIM NOT
21 TO ANSWER BASED ON WORK PRODUCT AND
22 ATTORNEY-CLIENT.

23 BY MS. WELCH:

24 Q. DID YOU SEARCH ANY WORD PROCESSING
25 PROGRAM?

1 MR. PREUSS: SAME INSTRUCTION.
2 BY MS. WELCH:
3 Q. DID YOU SEARCH ANY HARD OR SOFT
4 DISK?
5 MR. PREUSS: SAME INSTRUCTION.
6 BY MS. WELCH:
7 Q. LET'S TURN TO THE DOCUMENT. HAVE
8 YOU SEEN THIS RESPONSE PREVIOUSLY?
9 A. YES.
10 Q. DID YOU PARTICIPATE IN THE DRAFTING
11 OF THIS RESPONSE?
12 A. YES, MA'AM.
13 Q. WHO ELSE PARTICIPATED IN THE
14 DRAFTING OF THIS RESPONSE?
15 A. COUNSEL FOR MONSANTO.
16 Q. AND THAT'S MR. PREUSS HERE.
17 A. YES.
18 Q. ARE THERE ANY OTHER OUTSIDE COUNSEL
19 WHO PARTICIPATED?
20 A. MR. ZIMMER AT THE BRONSON FIRM.
21 PERHAPS OTHERS AT THE BRONSON FIRM, THAT I AM NOT
22 AWARE OF.
23 Q. DID YOU REVIEW THE RESPONSE BEFORE
24 IT WENT OUT?
25 A. YES.

1 Q. AND YOU BELIEVE IT TO BE ACCURATE.

2 A. YES.

3 MS. WELCH: WE ARE GOING TO RETURN
4 TO THIS EXHIBIT, BUT I JUST WANT TO INTRODUCE
5 THIS DOCUMENT FIRST. PLEASE MARK THIS, AS
6 EXHIBIT 5, I BELIEVE.

7 MR. GRANT: 4 OR 5?

8 THE REPORTER: EXHIBIT 5.

9 (THE DOCUMENT REFERRED TO WAS
10 MARKED BY THE C.S.R. AS PLAINTIFF'S
11 EXHIBIT 5 FOR IDENTIFICATION AND
12 ATTACHED TO AND MADE A PART OF THIS
13 DEPOSITION.)

14 BY MS. WELCH:

15 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

16 A. YES, MA'AM.

17 Q. AND IS DR. CRADDOCK IN A POSITION TO
18 VERIFY THE RESPONSES TO THE DOCUMENT REQUEST?

19 A. YES, HE IS AUTHORIZED TO DO THAT.

20 Q. ALL RIGHT. THE NEXT LINE OF
21 QUESTIONS REFERS TO THIS DOCUMENT RESPONSE, SO
22 PLEASE FEEL FREE TO REFER TO IT AS I ASK THE
23 QUESTIONS.

24 IN THE PROCESS OF SEARCHING FOR
25 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE DOCUMENTS

1 ON THE BASIS THAT THEY WERE PROTECTED BY THE
2 ATTORNEY-CLIENT PRIVILEGE OR WORK PRODUCT
3 PRIVILEGE?

4 A. YES.

5 Q. WHAT QUANTITY OF DOCUMENTS WERE
6 EXCLUDED ON THAT BASIS?

7 A. I BELIEVE ONLY ONE DOCUMENT WAS
8 FULLY EXCLUDED, AND PARTS OF A COUPLE OF OTHERS,
9 MAYBE TWO OR THREE OTHERS.

10 Q. AND DID YOU REDACT THOSE DOCUMENTS?

11 A. YES, WE DID.

12 Q. AND HAVE YOU PREPARED A PRIVILEGE
13 LOG?

14 MR. PREUSS: WE HAVE. AND COUNSEL,
15 I WOULD LIKE TO GIVE YOU A COPY OF THAT RIGHT
16 NOW, TRANSWESTERN PIPELINES VERSUS MONSANTO, LOG
17 OF DOCUMENTS REDACTED OR NOT PRODUCED ON THE
18 GROUNDS OF ATTORNEY-CLIENT PRIVILEGE.

19 MS. WELCH: ALL RIGHT.

20 Q. SUBJECT TO SIGNING OF A PROTECTIVE
21 ORDER, WILL YOU BE PRODUCING MORE DOCUMENTS?

22 A. IF A PROTECTIVE ORDER IS SIGNED,
23 YES, THERE ARE OTHER DOCUMENTS THAT WILL BE
24 PRODUCED.

25 Q. WHAT QUANTITY?

1 A. I'M NOT SURE PHYSICALLY HOW BIG, BUT
2 THEY ARE STANDARD MANUFACTURING PRODUCT MANUALS
3 RELATING TO THE PRODUCTS THAT WE SOLD TO TEXAS
4 EASTERN AND TRANSWESTERN.

5 Q. ANY OTHER DOCUMENTS?

6 A. I BELIEVE THOSE ARE THE ONLY
7 DOCUMENTS THAT WERE EXCLUDED ON THE BASIS OF
8 CONFIDENTIALITY.

9 OTHER DOCUMENTS WERE REDACTED ON THE
10 BASIS OF CONFIDENTIAL INFORMATION, PRINCIPALLY
11 THE NAMES OF CUSTOMERS OF MONSANTO THAT WERE
12 REVEALED ON THOSE DOCUMENTS. THAT INFORMATION
13 WAS ALSO REDACTED FROM THOSE DOCUMENTS ON THE
14 BASIS OF CONFIDENTIALITY.

15 Q. WILL WE BE SUPPLIED WITH THAT
16 INFORMATION ONCE A PROTECTIVE ORDER IS SIGNED?

17 A. IF YOU REQUEST IT, YES.

18 Q. ANY OTHER DOCUMENTS THAT WERE
19 WITHHELD BECAUSE THE PROTECTIVE ORDER HAD NOT
20 BEEN SIGNED?

21 A. I BELIEVE THAT'S ALL.

22 Q. WHEN WILL WE GET THOSE DOCUMENTS
23 AFTER THE PROTECTIVE ORDER IS SIGNED?

24 A. RELATIVELY QUICKLY. THERE IS NO
25 REASON, THAT I AM AWARE OF, THAT IT WOULD INVOLVE

1 ANY SIGNIFICANT DELAY.

2 Q. A WEEK PERHAPS?

3 MR. PREUSS: WE WILL MOVE WITH DUE

4 DISPATCH.

5 THE WITNESS: SOMETHING ON THAT

6 ORDER.

7 BY MS. WELCH:

8 Q. IN THE PROCESS OF SEARCHING FOR

9 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE DOCUMENTS

10 ON THE BASIS THAT THE DOCUMENTS WERE IN THE

11 PUBLIC DOMAIN?

12 A. YES, WE DID.

13 Q. HOW DO YOU DEFINE "PUBLIC DOMAIN"?

14 A. IN THIS CASE THOSE DOCUMENTS WOULD

15 BE ONES WHICH APPEARED IN PEER REVIEW, SCIENTIFIC

16 LITERATURE, AND DOCUMENTS WHICH ARE PUBLISHED,

17 GOVERNMENT DOCUMENTS, WHICH ARE EQUALLY

18 ACCESSIBLE TO TRANSWESTERN AS THEY ARE TO

19 MONSANTO.

20 Q. DO THOSE DOCUMENTS EXIST IN YOUR

21 STORAGE FACILITY AT ST. LOUIS?

22 A. SOME OF THEM.

23 Q. WHERE DO OTHERS EXIST?

24 A. IN THE PEER REVIEW, SCIENTIFIC

25 LITERATURE, AND IN THE FILES OF THE U.S.

1 GOVERNMENT.

2 Q. APPROXIMATELY WHAT QUANTITY OF
3 DOCUMENTS DID YOU EXCLUDE FROM THE PRODUCTION ON
4 THIS BASIS?

5 A. I DON'T KNOW THE QUANTITY.

6 IT WAS NOT A PROCESS OF SAYING, YOU
7 KNOW, WE HAVE ALL OF THESE DOCUMENTS THAT WE ARE
8 EXCLUDING ON THE BASIS OF PUBLIC DOMAIN.

9 RATHER, IT WAS A CATEGORY OF
10 DETERMINATION. IN OTHER WORDS, WE DECIDED WHICH
11 DOCUMENTS WOULD NOT BE SEARCHED FOR AND PRODUCED
12 IN RESPONSE TO THIS DOCUMENT REQUEST, SINCE THEY
13 WERE EQUALLY AVAILABLE TO TRANSWESTERN.

14 Q. ARE THERE ANY OTHER DOCUMENTS, OTHER
15 THAN THOSE YOU ENUMERATED, THAT ARE DOCUMENTS
16 WITHIN THE PUBLIC DOMAIN, THAT YOU EXCLUDED FROM
17 PRODUCTION?

18 A. THOSE ARE ALL I RECALL AT THE
19 MOMENT. I BELIEVE THAT'S ALL.

20 Q. WILL YOU PRODUCE THOSE DOCUMENTS TO
21 US NOW.

22 A. NO, MA'AM.

23 Q. IN THE PROCESS OF SEARCHING FOR
24 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE DOCUMENTS
25 OF ANY OTHER PARTY TO THIS ACTION?

1 A. NO. WE PRODUCED ALL DOCUMENTS THAT
2 RELATED TO TRANSWESTERN.

3 Q. I WOULD LIKE TO REFER TO PAGE 2, TO
4 GENERAL OBJECTION NO. 4. WILL YOU PLEASE REVIEW
5 THAT.

6 A. YES.

7 Q. I WOULD JUST LIKE TO CONFIRM THAT NO
8 DOCUMENTS HAVE BEEN WITHHELD ON THAT BASIS.

9 A. TO MY KNOWLEDGE, NO DOCUMENTS HAVE
10 BEEN WITHHELD ON THAT BASIS.

11 Q. IN THE PROCESS OF SEARCHING FOR
12 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE DOCUMENTS
13 THAT HAD BEEN CREATED AFTER 1977?

14 A. I BELIEVE SO, YES.

15 Q. DO THOSE DOCUMENTS EXIST?

16 A. DOCUMENTS CREATED AFTER 1977 DO
17 EXIST, YES.

18 Q. APPROXIMATELY WHAT IS THE QUANTITY
19 OF THOSE DOCUMENTS?

20 A. I COULD NOT ESTIMATE THAT FOR YOU AS
21 I SIT HERE.

22 Q. IS IT A LARGE PERCENTAGE OF THE
23 MILLION DOCUMENTS YOU DESCRIBED?

24 A. I DON'T KNOW WHAT YOU MEAN BY
25 "LARGE." IT'S A LARGE NUMBER OF DOCUMENTS, BUT

1 IN TERMS OF HOW MANY OUT OF A MILLION I DON'T
2 KNOW.

3 Q. ARE THOSE DOCUMENTS ALSO CENTRALIZED
4 IN ST. LOUIS AT YOUR STORAGE FACILITY?

5 A. TO THE EXTENT THAT THEY RELATE TO
6 MONSANTO'S PCB BUSINESS, YES.

7 Q. WHY DID YOU EXCLUDE THOSE DOCUMENTS?

8 A. I BELIEVE ON THE BASIS OF
9 RELEVANCE. MONSANTO CEASED ITS PRODUCTION OF
10 PCB'S IN 1977.

11 Q. BUT THERE ARE DOCUMENTS THAT EXIST,
12 THAT HAVE BEEN CREATED SINCE 1977.

13 A. YES.

14 Q. CAN YOU PLEASE CONFIRM TO ME THAT NO
15 DOCUMENTS THAT RELATED TO TRANSWESTERN WERE
16 EXCLUDED FROM PRODUCTION.

17 A. TO THE BEST OF MY KNOWLEDGE, ALL
18 DOCUMENTS THAT RELATE TO TRANSWESTERN WERE
19 PRODUCED. WE DIDN'T HAVE VERY MUCH.

20 Q. WHAT ABOUT DOCUMENTS THAT RELATED TO
21 TEXAS EASTERN, WERE ALL OF THOSE DOCUMENTS
22 PRODUCED TO US?

23 A. WE PRODUCED TO YOU ALL DOCUMENTS
24 WHICH HAD TO DO WITH OUR DEALINGS WITH TEXAS
25 EASTERN. THERE MAY HAVE BEEN DOCUMENTS IN THE

1 ARCHIVES THAT, ONE WAY OR ANOTHER, WEREN'T
2 PRODUCED.

3 Q. ON WHAT BASIS?

4 A. I WOULD HAVE TO GO BACK AND LOOK AT
5 EACH ONE TO TELL YOU SPECIFICALLY, BUT IN GENERAL
6 IT WAS BASED ON RELEVANCE.

7 Q. WERE THOSE DOCUMENTS NOT PRODUCED --
8 (WITNESS CONFERS WITH HIS COUNSEL.)

9 THE WITNESS: ALSO, THERE WERE
10 DOCUMENTS THAT -- AND I KNOW YOU ARE AWARE OF
11 THIS -- THAT ARE COVERED BY PROTECTIVE ORDER IN
12 THE TEXAS EASTERN INSURANCE LITIGATION.
13 BY MS. WELCH:

14 Q. I AM GOING TO GET TO THAT.
15 WAS THAT THE PRIMARY BASIS THAT
16 THOSE DOCUMENTS WERE WITHHELD?

17 A. THOSE FEW DOCUMENTS, YES.

18 Q. HOW MANY DOCUMENTS ARE THERE THAT
19 WERE WITHHELD, APPROXIMATELY?

20 A. TO MY RECOLLECTION, A FEW OF THEM,
21 TEN.

22 Q. IS THERE ANY OTHER BASIS THEY WERE
23 WITHHELD, OTHER THAN THEY WERE PROTECTED BY THE
24 PHILADELPHIA PROTECTIVE ORDER?

25 A. THOSE PARTICULAR DOCUMENTS, NO.

1 Q. AND ARE THERE ANY OTHER DOCUMENTS
2 THAT RELATE, REFER, OR PERTAIN TO TEXAS EASTERN
3 THAT WERE WITHHELD ON ANY OTHER BASIS, OTHER THAN
4 THEY ARE PROTECTED BY THE PROTECTIVE ORDER?

5 A. YES.

6 Q. ON WHAT BASIS?

7 A. RELEVANCE.

8 Q. ARE YOU SUGGESTING THAT WE SHOULD
9 TAKE YOUR WORD ABOUT WHAT IS RELEVANT TO THE
10 CASE?

11 MR. PREUSS: OBJECTION;
12 ARGUMENTATIVE.

13 I WILL INSTRUCT YOU NOT TO ANSWER.
14 BY MS. WELCH:

15 Q. YOU CAN GO AHEAD.

16 MR. PREUSS: I INSTRUCTED HIM NOT
17 TO.

18 MS. WELCH: AGAIN, MR. PREUSS, AS I
19 AM SURE YOU KNOW, UNDER CALIFORNIA LAW THE ONLY
20 BASIS TO INSTRUCT IS THE ATTORNEY-CLIENT
21 PRIVILEGE.

22 MR. PREUSS: JUST RESTATE THE
23 QUESTION, AND WE WILL MOVE ON.

24 BY MS. WELCH:

25 Q. HOW WERE THESE DOCUMENTS NOT

1 RELEVANT?

2 A. WELL, MISS WELCH, SIMPLY BECAUSE A
3 DOCUMENT HAD IN IT THE NAME TEXAS EASTERN DIDN'T
4 MEAN THAT IT WAS RESPONSIVE TO ANY OF THE
5 CATEGORIES OF DEMANDS THAT YOU MADE HERE.

6 Q. WELL, WHAT WENT INTO THE
7 DETERMINATION OF WHAT WAS RELEVANT AND WHAT WAS
8 NOT RELEVANT?

9 A. THAT WOULD DEPEND UPON A
10 DEMAND-BY-DEMAND EXAMINATION OF THE REQUEST.

11 Q. I AM SPECIFICALLY REFERRING TO THE
12 TEXAS EASTERN DOCUMENTS.

13 A. WHAT I AM TELLING YOU IS THAT THERE
14 WAS NO OVERALL GENERAL DETERMINATION THAT I COULD
15 STATE TO YOU WITH RESPECT TO TEXAS EASTERN
16 DOCUMENTS.

17 WE PROCEEDED TO ANSWER THIS
18 DISCOVERY REQUEST BY EXAMINING EACH REQUEST, AND
19 DETERMINING WHAT DOCUMENTS WERE RESPONSIVE WITHIN
20 THE PARAMETERS THAT WE SET.

21 AS WE STATED IN THE RESPONSE,
22 DOCUMENTS THAT DID NOT FALL WITHIN THOSE
23 PARAMETERS WERE NOT PRODUCED, BECAUSE THEY WERE
24 NOT RELEVANT.

25 Q. AND APPROXIMATELY WHAT QUANTITY OF

1 DOCUMENTS THAT REFER, RELATE, OR PERTAIN TO TEXAS
2 EASTERN WERE WITHHELD ON THE BASIS OF YOUR
3 DETERMINATION OF RELEVANCY?

4 A. I DON'T KNOW THE NUMBER OF THOSE
5 DOCUMENTS.

6 Q. FEWER THAN FIVE?

7 A. I DON'T KNOW.

8 Q. WHO WOULD KNOW?

9 A. I DON'T THINK ANYONE AT THIS POINT
10 HAS THAT KNOWLEDGE IN HIS OR HER MIND.

11 Q. ARE THOSE DOCUMENTS SEGREGATED AT
12 THIS POINT?

13 A. NO.

14 Q. SO THOSE DOCUMENTS THAT YOU
15 DETERMINED TO EXCLUDE FROM THIS DOCUMENT REQUEST
16 PRODUCTION ARE NOT SEGREGATED ANYWHERE.

17 A. WE DETERMINED WHICH DOCUMENTS WOULD
18 BE RELEVANT WITHIN THE PAREMETER OF OUR RESPONSE,
19 AND WE EXAMINED AND PRODUCED THOSE.

20 Q. WELL, OBVIOUSLY YOU KNOW ABOUT A
21 SECRET SET OF DOCUMENTS THAT RELATE, REFER, OR
22 PERTAIN TO TEXAS EASTERN. YOU REFERRED TO TEN
23 DOCUMENTS.

24 AND I AM ASKING WHERE ARE THOSE
25 DOCUMENTS?

1 MR. PREUSS: TEN DOCUMENTS?

2 MS. WELCH: YES.

3 THE WITNESS: THOSE TEN DOCUMENTS
4 ARE IN ST. LOUIS.

5 BY MS. WELCH:

6 Q. WERE THEY PUT BACK INTO THE GENERAL
7 DOCUMENT POOL, OR ARE THEY SEGREGATED?

8 A. I THINK WE PROBABLY HAVE A FILE.
9 THOSE DOCUMENTS ARE APPENDICED TO DR. HATTON'S
10 DEPOSITION. THAT WAS THE TEXAS EASTERN INSURANCE
11 LITIGATION.

12 Q. EACH ONE OF THOSE TEN DOCUMENTS IS
13 APPENDICED TO THAT?

14 A. YES.

15 Q. LET'S TALK ABOUT OUR PROTECTIVE
16 ORDER, THAT'S COVERED BY OBJECTION NO. 12.

17 HAVE YOU SOUGHT OUT COUNSEL FOR
18 TEXAS EASTERN WITH RESPECT TO THE PROTECTIVE
19 ORDER, TO REQUEST THAT YOU BE ENABLED TO PRODUCE
20 THOSE DOCUMENTS TO US?

21 A. I DID NOT, BUT ONE OF THE LAWYERS
22 THAT WORKS WITH ME ON THE LITIGATION ACTUALLY DID
23 CALL WASHINGTON D.C., AND WAS ADVISED BY THAT
24 COUNSEL, WHOSE NAME I CAN'T RECALL AT THE MOMENT,
25 THAT TEXAS EASTERN WAS NOT WILLING TO WAIVE THE

1 PROTECTIVE ORDER TO PERMIT US TO PRODUCE THOSE
2 DOCUMENTS.

3 Q. AND IS THE QUANTITY OF DOCUMENTS ANY
4 LARGER THAN THAT GROUP OF TEN?

5 A. THE WHAT?

6 Q. WHAT IS THE QUANTITY OF DOCUMENTS?

7 A. WELL, THAT'S WHAT I AM TRYING TO
8 FIGURE OUT. I'M NOT SURE WHAT YOU ARE TALKING
9 ABOUT, WHAT GROUP OF DOCUMENTS YOU ARE REFERRING
10 TO RIGHT NOW.

11 THE TEN DOCUMENTS THAT I WAS
12 REFERRING TO ARE THE EXHIBITS WHICH WERE
13 INTRODUCED AT DR. HATTON'S DEPOSITION, AS TO
14 WHICH HE TESTIFIED.

15 THAT DEPOSITION AND THOSE EXHIBITS
16 ARE COVERED BY THE PROTECTIVE ORDER IN THE TEXAS
17 EASTERN INSURANCE LITIGATION. THOSE ARE THE ONLY
18 DOCUMENTS THAT ARE COVERED BY THAT PROTECTIVE
19 ORDER.

20 Q. THAT'S WHAT I ASKED, REFERRING TO
21 OBJECTION NO. 12.

22 A. RIGHT.

23 Q. IS THERE ANY GREATER SET OF
24 DOCUMENTS THAT THIS OBJECTION REFERS TO, OTHER
25 THAN THOSE TEN DOCUMENTS?

1 A. NO, MA'AM.

2 Q. WERE ANY OTHER DOCUMENTS PRODUCED IN

3 THAT LITIGATION, PRODUCED BY MONSANTO?

4 A. ASIDE FROM THOSE TEN DOCUMENTS?

5 Q. YES.

6 A. WELL, YES.

7 BUT THE TEN DOCUMENTS THAT I AM

8 REFERRING TO ARE NOT ALL MONSANTO DOCUMENTS.

9 SOME OF THOSE DOCUMENTS ARE TEXAS EASTERN

10 DOCUMENTS.

11 Q. I SEE. WHAT QUANTITY OF DOCUMENTS

12 WAS PRODUCED, AS A WHOLE, IN THIS LITIGATION?

13 A. I DON'T KNOW THE ANSWER TO THAT.

14 I'D HAVE TO GO BACK AND LOOK AT OUR FILE.

15 Q. DOES THE PROTECTIVE ORDER COVER

16 THOSE OTHER DOCUMENTS?

17 A. LET ME EXPLAIN IT.

18 IN THIS CASE I WOULD NOT OBJECT, ON

19 THE BASIS OF THE TEXAS EASTERN PROTECTIVE ORDER,

20 TO PRODUCING IN RESPONSE TO THIS DEMAND DOCUMENTS

21 WHICH WERE WITHIN THAT SET, BUT WHICH WERE

22 ALREADY IN MONSANTO'S POSSESSION PRIOR TO BEING

23 PRODUCED IN THAT CASE.

24 THE TEN DOCUMENTS THAT I REFER TO

25 ARE DOCUMENTS THAT I DID NOT HAVE OTHERWISE IN

1 THE MONSANTO PCB DOCUMENT ARCHIVES. THOSE
2 DOCUMENTS CAME FROM TEXAS EASTERN.

3 AND THEREFORE, I FELT THAT I COULD
4 NOT, CONSISTENT WITH MY OBLIGATION UNDER THAT
5 PROTECTIVE ORDER, PRODUCE THOSE DOCUMENTS.

6 BUT I HAVE NOT WITHHELD ANY
7 DOCUMENTS THAT OTHERWISE APPEAR IN THE MONSANTO
8 ARCHIVE.

9 Q. SO THE DOCUMENTS THAT YOU ARE
10 REFERRING TO IN THIS OBJECTION NO. 12 ARE TEXAS
11 EASTERN DOCUMENTS THAT MONSANTO ONLY HAS IN ITS
12 POSSESSION BECAUSE THEY WERE PRODUCED IN THE
13 COURSE OF LITIGATION.

14 A. MOST OF THOSE DOCUMENTS, YES.
15 THERE ARE ONE OR TWO DOCUMENTS THERE
16 WHICH ARE MONSANTO DOCUMENTS, THAT I DON'T
17 OTHERWISE HAVE, THAT I SAW FOR THE FIRST TIME --
18 THAT MONSANTO SAW FOR THE FIRST TIME IN THE
19 COURSE OF DR. HATTON'S DEPOSITION. THERE ARE ONE
20 OR TWO OF THOSE.

21 Q. WHERE DO THOSE COME FROM?

22 A. I ASSUME THEY CAME FROM TEXAS
23 EASTERN FILES.

24 Q. AND DO WE HAVE THOSE DOCUMENTS?

25 A. I DON'T KNOW. THEY WERE NOT

1 PRODUCED BY MONSANTO IN RESPONSE TO YOUR
2 DISCOVERY REQUEST.

3 Q. BECAUSE OF OBJECTION NO. 12.

4 A. BECAUSE OF OBJECTION NO. 12.

5 Q. ALL RIGHT. ARE YOU PREPARED TO
6 PRODUCE THOSE DOCUMENTS WHICH ARE MONSANTO
7 DOCUMENTS AT THIS TIME?

8 A. NOT ABSENT RELIEF FROM THE
9 PROTECTIVE ORDER. I WILL NOT PUT MONSANTO IN
10 VIOLATION OF THAT PROTECTIVE ORDER.

11 MS. WELCH: OFF THE RECORD.

12 (DISCUSSION HELD OFF THE RECORD.)

13 BY MS. WELCH:

14 Q. IN THE PROCESS OF SEARCHING FOR
15 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE DOCUMENTS
16 RELATING TO PRODUCTS THAT CONTAIN PCB'S OTHER
17 THAN MSC-153, OS-81, TURBINOL 123, OR PYDRAUL,
18 P-Y-D-R-A-U-L, AC?

19 A. LET ME MAKE SURE I UNDERSTAND YOUR
20 QUESTION. DID WE SELL PRODUCTS OTHER THAN THOSE
21 YOU ENUMERATED?

22 Q. THAT'S CORRECT.

23 A. YES, WE DID.

24 Q. COULD YOU TELL ME WHAT OTHER
25 TURBINOL PRODUCTS MONSANTO SOLD THAT CONTAIN

1 PCB'S.

2 A. WITHOUT REFERRING TO BROCHURES THAT
3 LIST THOSE DOCUMENTS --

4 Q. I ASKED YOU FOR PRODUCTS.

5 A. I'M SORRY, I MISSPOKE.

6 WITHOUT REFERRING TO BROCHURES THAT
7 LIST THOSE PRODUCTS, I COULD NOT ENUMERATE THOSE
8 PRODUCTS FROM MEMORY. I WOULD HAVE TO REFER TO
9 PRODUCT CATEGORY LISTS.

10 Q. DO WE HAVE A PRODUCT BROCHURE?

11 A. I DON'T KNOW. YOU HAVE A BROCHURE
12 FOR TURBINOL 153.

13 Q. I AM CONCERNED WITH BROCHURES THAT
14 LIST OTHER TURBINOL PRODUCTS.

15 A. AS I SIT HERE, WITHOUT LOOKING, I
16 DON'T KNOW WHETHER SUCH A BROCHURE WAS PRODUCED.

17 Q. DOES SUCH A BROCHURE EXIST?

18 A. I BELIEVE WE HAVE ONE, YES.

19 Q. COULD WE HAVE THAT DOCUMENT.

20 A. I HAVE NO PROBLEM WITH THAT. IF YOU
21 DON'T HAVE IT, I WILL MAKE IT AVAILABLE.

22 MS. WELCH: AFTER THE DEPOSITIONS
23 TODAY, PERHAPS WE CAN HAVE A MEETING AND DISCUSS
24 ANY OUTSTANDING MATTERS THAT OCCUR IN THE COURSE
25 OF EITHER DEPOSITION.

1 MR. PREUSS: SURE. WE ARE SUPPOSED
2 TO HAVE A MEETING ANYWAY.

3 MS. WELCH: YES, WE ARE.

4 Q. IS THERE A BROCHURE THAT CONTAINS A
5 LIST OF ALL PRODUCTS THAT MONSANTO SOLD THAT
6 CONTAIN PCB'S?

7 A. NO SINGLE BROCHURE.

8 Q. IS THERE A SERIES OF BROCHURES OR IS
9 THERE A NUMBER OF BROCHURES THAT CONTAIN THAT
10 INFORMATION?

11 A. THERE ARE A NUMBER OF BROCHURES
12 WHICH, IF ASSEMBLED, WOULD GIVE THAT INFORMATION.

13 Q. COULD WE HAVE THAT DOCUMENT.

14 A. I WILL TAKE THAT REQUEST UNDER
15 ADVISEMEANT.

16 Q. NOW, GOING BACK TO THE QUESTION OF
17 WHETHER YOU EXCLUDED DOCUMENTS THAT RELATE TO
18 PRODUCTS OTHER THAN THOSE WE JUST ENUMERATED, DID
19 YOU EXCLUDE ANY THAT RELATE TO OTHER PRODUCTS?

20 A. YES, MA'AM.

21 Q. AND ON WHAT BASIS DID YOU EXCLUDE
22 THOSE?

23 A. THOSE PRODUCTS WERE NOT SOLD TO
24 TEXAS EASTERN OR TRANSWESTERN.

25 Q. WILL YOU PRODUCE THOSE DOCUMENTS TO

1 US AT THIS TIME.

2 A. NO, MA'AM.

3 Q. WHAT QUANTITY OF DOCUMENTS DOES THAT

4 INVOLVE, APPROXIMATELY?

5 A. A GREAT, GREAT MANY. WE ARE TALKING

6 ABOUT HUNDREDS OF THOUSANDS OF PAGES OF DOCUMENTS

7 POTENTIALLY RESPONSIVE TO THE DEMAND THAT YOU

8 HAVE MADE HERE, WHICH ENCOMPASS ALL PCB'S

9 PRODUCTS.

10 Q. HOW ABOUT TURBINOL PRODUCTS, WHAT

11 QUANTITY OF PRODUCTS ARE WE TALKING ABOUT?

12 A. I WOULD HAVE TO ASK MY STAFF. I

13 DON'T KNOW.

14 Q. AGAIN, THAT'S SOMETHING THAT I WOULD

15 REQUEST THAT YOU ASK THE STAFF.

16 A. WE WILL CONSIDER THAT.

17 Q. IN THE SEARCH FOR DOCUMENTS, DID

18 YOUR SEARCHERS EXCLUDE DOCUMENTS BECAUSE THE

19 TERM, QUOTE, "TURBINOL OR OTHER PCB-CONTAINING

20 GAS COMPRESSOR LUBRICANTS" IS VAGUE?

21 A. NO, NOT SPECIFICALLY ON THAT

22 GROUND. QUITE FRANKLY, WE WERE A LITTLE CONFUSED

23 BY THAT.

24 WE DON'T HAVE ANY OTHER PCB PRODUCT

25 THAT WAS USED AS A GAS COMPRESSOR LUBRICANT,

1 OTHER THAN THOSE THREE.

2 Q. HOW ABOUT THE BROCHURES THAT DISCUSS
3 OTHER TURBINOL PRODUCTS, ARE THERE BROCHURES THAT
4 DISCUSS OTHER TURBINOL PRODUCTS?

5 A. I'D HAVE TO LOOK AND SEE. I DON'T
6 KNOW THE ANSWER TO THAT.

7 TURBINOL 153 IS THE ONE THAT WE ARE
8 AWARE OF, THAT WAS USED AS A GAS COMPRESSOR
9 LUBRICANT.

10 Q. WERE THERE ANY OTHER TURBINOLS THAT
11 WERE SOLD TO ANY OTHER PIPELINES, BESIDES
12 TRANSWESTERN, THAT YOU ARE AWARE OF?

13 A. WOULD YOU RESTATE THAT.

14 Q. WERE THERE ANY OTHER TURBINOLS
15 CONTAINING PCB'S THAT WERE SOLD TO PIPELINES,
16 BESIDES TRANSWESTERN?

17 A. I DON'T KNOW THE ANSWER TO THAT.

18 Q. WHO WOULD KNOW THAT?

19 A. IT COULD BE DETERMINED FROM MONSANTO
20 RECORDS.

21 Q. DO WE HAVE THOSE RECORDS?

22 A. NO, MA'AM.

23 Q. COULD WE GET THOSE RECORDS.

24 A. NOT AT PRESENT.

25 Q. WHY NOT?

1 A. WELL, I WOULD DECLINE TO PRODUCE
2 THEM TO YOU AT THIS POINT.

3 Q. ON WHAT GROUND?

4 A. ON THE GROUNDS OF RELEVANCE AND THE
5 FACT THAT SALES TO OTHER CUSTOMERS SIMPLY HAVE
6 NOTHING TO DO WITH THIS CASE.

7 Q. WELL, YOU STATED THAT YOU HAD SOME
8 CONFUSION ABOUT WHAT THE TERM "TURBINOL OR OTHER
9 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" MEANT.

10 DID YOU WITHHOLD ANY DOCUMENTS ON
11 THAT BASIS?

12 A. NO, MA'AM.

13 Q. ALL RIGHT. IN THE SEARCH FOR
14 DOCUMENTS, DID YOUR SEARCHERS EXCLUDE ANY
15 DOCUMENTS RELATING TO ANY OTHER CUSTOMERS OR
16 PERSONS, BESIDES PLAINTIFF?

17 A. AS A GENERAL MATTER, WE DID NOT
18 PRODUCE DOCUMENTS RELATING TO SALES TO OTHER
19 CUSTOMERS, THAT'S CORRECT.

20 Q. DID YOU PRODUCE DOCUMENTS RELATING
21 TO TEXAS EASTERN?

22 A. WE DID.

23 Q. ALL DOCUMENTS BESIDES THOSE THAT YOU
24 DESCRIBED.

25 A. ALL DOCUMENTS THAT WERE RELEVANT AND

1 RESPONSIVE TO THE DEMAND, YES, I DID.

2 AS I SAID BEFORE, WE DID NOT PRODUCE
3 IN RESPONSE TO DISCOVERY REQUESTS EVERY DOCUMENT
4 WITHIN OUR ARCHIVE THAT MAKES MENTION OF TEXAS
5 EASTERN.

6 Q. BUT YOU TESTIFIED EARLIER THAT THAT
7 QUANTITY WAS TEN OR LESS.

8 A. NO, MA'AM. I TESTIFIED EARLIER THAT
9 THE NUMBER OF DOCUMENTS THAT WERE WITHHELD ON THE
10 BASIS OF THE PROTECTIVE ORDER WERE TEN OR LESS,
11 AND THOSE TEN WERE THE ONLY DOCUMENTS THAT WE HAD
12 WITHHELD ON THAT BASIS.

13 Q. ON WHAT BASIS DID YOU EXCLUDE OTHER
14 DOCUMENTS THAT RELATE TO TEXAS EASTERN?

15 A. LACK OF RELEVANCE AND NOT RESPONSIVE
16 TO THE DEMAND.

17 Q. HOW DID YOU DETERMINE WHETHER A
18 DOCUMENT WAS RELEVANT OR RESPONSIVE TO A DEMAND?

19 A. AS I STATED, OUR THEN GENERAL
20 METHODS IN PRODUCING DOCUMENTS IN THE ACTION WAS
21 DETERMINED BY THE PARAMETERS FOR THE SEARCH THAT
22 WOULD BE PRODUCING DOCUMENTS POTENTIALLY
23 RESPONSIVE WITHIN THE PARAMETERS THAT WE SET FOR
24 THE SEARCH, AND RESPONSIVE DOCUMENTS WERE
25 PRODUCED.

1 WE DID NOT CONDUCT A SEARCH WHICH
2 WOULD HAVE ENCOMPASSED THE REVIEW OF EVERY SINGLE
3 DOCUMENT THAT MAY HAVE MENTIONED TEXAS EASTERN.

4 Q. ON WHAT BASIS DID YOU EXCLUDE
5 DOCUMENTS THAT RELATED TO OTHER CUSTOMERS?

6 A. PRIMARILY, LACK OF RELEVANCE.

7 Q. AND AGAIN, I WILL ASK THE QUESTION.
8 ON WHAT BASIS DID YOU DETERMINE RELEVANCE OF A
9 DOCUMENT THAT RELATED TO OTHER CUSTOMERS?

10 A. I'M NOT SURE I UNDERSTAND THE
11 QUESTION.

12 Q. WELL, IT'S A VERY SIMPLE QUESTION.
13 HOW DID YOU DETERMINE THAT DOCUMENTS THAT RELATED
14 TO OTHER CUSTOMERS WERE NOT RELEVANT TO THIS
15 DOCUMENT REQUEST?

16 A. WELL, FROM EXAMINING, FIRST OF ALL,
17 THE DOCUMENT DEMAND.

18 AND SECOND OF ALL, IT'S OUR POSITION
19 IN THIS CASE THAT THOSE DOCUMENTS ARE NOT
20 RELEVANT.

21 Q. THAT'S RESTATING A CONCLUSION.
22 ON WHAT BASIS DID YOU DETERMINE, DID
23 YOU CONTEND, THEY ARE NOT RELEVANT?

24 A. BECAUSE WHAT IS RELEVANT IS WHAT HAS
25 TO DO WITH TEXAS EASTERN, AND FROM TRANSWESTERN

1 IN THIS CASE, NOT WHAT HAS TO DO WITH MONSANTO,
2 MONSANTO'S OTHER CUSTOMERS FOR OTHER PRODUCTS.

3 Q. ALL RIGHT. DID YOU EVER CONSIDER
4 THAT WHAT WAS RELEVANT TO THIS CASE FROM THE
5 DOCUMENT REQUEST WAS DOCUMENTS THAT PERTAIN TO
6 PCB-CONTAINING PRODUCTS?

7 A. I BELIEVE THAT'S FAR TOO BROAD.

8 Q. I WANT TO TURN TO OBJECTION NO. 10.

9 A. YES.

10 Q. DID YOUR SEARCHERS EXCLUDE DOCUMENTS
11 ON THE BASIS OF OBJECTION NO. 10?

12 A. I DON'T BELIEVE SO.

13 Q. HOW ABOUT OBJECTION 11, DID YOUR
14 SEARCHERS EXCLUDE DOCUMENTS ON THE BASIS OF
15 OBJECTION NO. 11?

16 A. THAT WAS AN ADDITIONAL REASON FOR
17 EXCLUDING DOCUMENTS WHICH RELATED TO OTHER PCB
18 PRODUCTS AND OTHER CUSTOMERS OF MONSANTO FOR PCB
19 PRODUCTS.

20 AS I SAID BEFORE, THERE ARE
21 LITERALLY HUNDREDS OF THOUSANDS OF PAGES OF SUCH
22 DOCUMENTS.

23 Q. SO TWO CATEGORIES OF DOCUMENTS THAT
24 WERE WITHHELD ON THAT BASIS ARE OTHER CUSTOMERS
25 AND OTHER PRODUCTS.

1 A. PRIMARILY.

2 Q. WHAT SECONDLY?

3 A. I CAN'T THINK RIGHT NOW OF ANY OTHER
4 CATEGORIES OF DOCUMENTS THAT WOULD HAVE BEEN
5 WITHHELD ON --

6 WELL, YES, THERE IS. THERE IS THE
7 PUBLIC DOMAIN DOCUMENTS, ALSO.

8 AGAIN, THE SCIENTIFIC LITERATURE
9 RELATING TO PCB'S IS LARGE, VERY LARGE, AND IT
10 WOULD HAVE BEEN EXCEEDINGLY BURDENSOME TO REQUIRE
11 MONSANTO TO PRODUCE ALL OF THAT INFORMATION.

12 Q. SO WE HAVE CUSTOMER, PRODUCT, AND
13 SCIENTIFIC LITERATURE.

14 WAS ANYTHING ELSE WITHHELD ON THE
15 GROUND OF THIS OBJECTION?

16 A. NOT THAT I RECALL AT THE MOMENT,
17 MA'AM.

18 Q. IN YOUR SEARCH FOR DOCUMENTS, DID
19 YOUR SEARCHERS EXCLUDE ANY DOCUMENTS FOR THE
20 REASONS THAT ARE ARTICULATED IN OBJECTION NO. 13?

21 A. YES.

22 Q. WHAT WAS THAT CATEGORY OF DOCUMENTS?

23 A. THOSE DOCUMENTS WERE PRIMARILY
24 DOCUMENTS THAT WOULD HAVE BEEN IN OUR POSSESSION
25 OR IN THE POSSESSION OF OUR OUTSIDE COUNSEL AS

1 THE RESULT OF DISCOVERY IN OTHER CASES.

2 THESE WOULD NOT BE DOCUMENTS WHICH
3 RELATE TO MONSANTO'S BUSINESS OF MANUFACTURING
4 AND SELLING PCB'S, BUT WITH RESPECT TO OTHER
5 ENTITIES.

6 Q. NON-MONSANTO ENTITIES.

7 A. NON-MONSANTO ENTITIES.

8 Q. AND ARE THOSE DOCUMENTS KEPT
9 SEGREGATED IN ST. LOUIS?

10 A. VERY FEW OF THOSE DOCUMENTS ARE.

11 Q. ARE THEY KEPT AT OUTSIDE COUNSEL?

12 A. THAT'S CORRECT.

13 Q. AND ARE THEY DOCUMENTS THAT MONSANTO
14 DID NOT PRODUCE, BUT OTHER PARTIES HAVE PRODUCED?

15 A. THAT'S CORRECT.

16 MS. WELCH: WHY DON'T WE BREAK UNTIL
17 11:00 O'CLOCK.

18 (RECESS TAKEN.)

19 MS. WELCH: BACK ON THE RECORD.

20 Q. RETURNING AGAIN TO EXHIBIT 4, WHICH
21 IS THE RESPONSE OF MONSANTO COMPANY TO
22 PLAINTIFF'S DOCUMENT REQUEST.

23 A. YES.

24 Q. I WOULD LIKE YOU TO TURN TO PAGE 5
25 OF THAT RESPONSE, MR. BISTLINE.

1 A. YES.

2 Q. THE FOLLOWING SERIES OF QUESTIONS
3 RELATE TO THE RESPONSE TO QUESTION NO. 1.

4 WHERE DID YOU SEARCH FOR THESE
5 DOCUMENTS?

6 A. IN OUR PCB DOCUMENT ARCHIVE.

7 Q. DID YOU DO A SEARCH ON THE COMPUTER,
8 AND THEN A HARD SEARCH, AS WELL?

9 A. YES.

10 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
11 ON ATTORNEY-CLIENT PRIVILEGE?

12 A. NO.

13 Q. IS THERE ANYWHERE ELSE THAT
14 DOCUMENTS THAT ARE RESPONSIVE TO THIS REQUEST
15 WOULD BE, BESIDES IN YOUR ARCHIVE?

16 A. NOT THAT I AM AWARE OF.

17 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
18 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT
19 RELEVANT?

20 A. NO, WE DIDN'T WITHHOLD ANY
21 DOCUMENTS, IF YOU LOOK AT OUR RESPONSE. IF WE
22 HAD WITHHELD DOCUMENTS, IT WOULD BE NOTED.

23 Q. SO NO DOCUMENTS WERE WITHHELD THAT
24 ARE RESPONSIVE TO THIS REQUEST.

25 A. THAT'S CORRECT.

1 Q. I WOULD LIKE YOU TO TURN TO REQUEST
2 NO. 2, AND ALL OF THE FOLLOWING QUESTIONS RELATE
3 TO THAT SPECIFIC REQUEST.

4 AGAIN, I MIGHT ASK YOU WHERE DID YOU
5 SEARCH FOR DOCUMENTS THAT ARE RESPONSIVE TO
6 REQUEST NO. 2?

7 A. THE MONSANTO PCB ARCHIVE.

8 Q. AND THAT IS THE SAME AS THE EARLIER
9 RESPONSE.

10 A. THAT'S CORRECT.

11 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
12 EXIST, WHICH ARE RESPONSIVE TO THIS REQUEST, THAT
13 EXIST ANYWHERE ELSE, BESIDES THE ARCHIVE?

14 A. NO, MA'AM.

15 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
16 ON THE ATTORNEY-CLIENT PRIVILEGE IN RESPONSE TO
17 THIS REQUEST?

18 A. NOT THAT I AM AWARE OF.

19 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
20 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT
21 RELEVANT?

22 A. ONLY TO THIS EXTENT, AND THAT IS TO
23 THE EXTENT THAT IT IS OVERLY BROAD RELATING TO
24 ANY COMMUNICATION BETWEEN MONSANTO AND TEXAS
25 EASTERN, AND WOULD SEEK TO INCLUDE ANY DOCUMENT

1 IN ANY MONSANTO ARCHIVE THAT PERTAINS TO TEXAS
2 EASTERN IN ONE WAY OR ANOTHER.

3 THAT WE PRODUCED -- SEARCHED FOR AND
4 PRODUCED ALL DOCUMENTS THAT WE COULD FIND THAT
5 RELATED TO COMMUNICATIONS BETWEEN MONSANTO AND
6 TEXAS EASTERN INVOLVING PCB'S.

7 Q. WELL, INDEED, THAT IS WHAT THE
8 REQUEST CALLS FOR. IT CALLS FOR ALL
9 COMMUNICATIONS BETWEEN THESE TWO ENTITIES THAT
10 RELATE TO OR INVOLVE PCB'S IN ANY WAY, DIRECTLY
11 OR INDIRECTLY.

12 CAN YOU REPRESENT --

13 A. AND IT IS THE CONCERN WE HAVE ABOUT
14 THE PHRASE "RELATING TO OR INVOLVING" AND THE
15 PHRASE "DIRECTLY OR INDIRECTLY" THAT CAUSES MY
16 CONCERN.

17 Q. ALL RIGHT. WHAT QUANTITY OF
18 DOCUMENTS WERE WITHHELD BASED ON THAT CONCERN?

19 A. AGAIN, THIS WAS NOT APPROACHED ON
20 THE BASIS OF EXCLUDING DOCUMENTS. WE LOOKED AT
21 WHAT DOCUMENTS WE FELT WERE FAIRLY RESPONSIVE TO
22 THE DEMAND, AND PRODUCED THOSE DOCUMENTS. WE
23 DIDN'T SEEK TO EXCLUDE.

24 Q. HOW DID YOU DETERMINE WHETHER A
25 DOCUMENT THAT REPRESENTED A COMMUNICATION BETWEEN

1 MONSANTO AND TEXAS EASTERN WAS NOT RESPONSIVE TO
2 THIS REQUEST OR WAS NOT -- EXCUSE ME, LET ME
3 REPHRASE THAT -- WAS NOT RELEVANT TO THE REQUEST?

4 -- MR. PREUSS: ASSUMING HE DID. --

5 BY MS. WELCH:

6 Q. BASED ON WHAT YOU JUST TOLD ME.

7 A. THE WAY IT WAS APPROACHED WAS NOT,
8 AGAIN, EXCLUDING, BUT LOOKING AT DOCUMENTS WHICH
9 WE FELT WERE LIKELY TO BE RESPONSIVE, POTENTIALLY
10 RESPONSIVE, AND PRODUCING THOSE.

11 AGAIN, AS I SAID BEFORE, AS A BROAD
12 GENERAL MATTER, WE PRODUCED DOCUMENTS WHICH
13 REFLECTED, OR CONTAINED, OR RELATED TO
14 COMMUNICATIONS BETWEEN MONSANTO AND TEXAS EASTERN
15 RELATING TO PCB.

16 WE DID NOT ATTEMPT TO REVIEW AND
17 PRODUCE EVERY DOCUMENT THAT WE HAD IN THE
18 COLLECTION THAT MAY HAVE MENTIONED TEXAS EASTERN.

19 Q. WHAT KINDS OF OTHER DOCUMENTS EXIST
20 THAT REFLECT OR RELATE TO COMMUNICATIONS BETWEEN
21 TEXAS EASTERN AND MONSANTO, THAT WERE NOT
22 PRODUCED?

23 A. NONE THAT I AM AWARE OF.

24 Q. SO ARE WE TALKING ABOUT SOPHISTRY OR
25 ABOUT AN ACTUAL QUANTITY OF DOCUMENTS?

1 A. IT MAY BE MORE SEMANTICS THAN AN
2 ACTUAL DISPUTE, AS FAR AS I AM CONCERNED. AND AS
3 FAR AS I KNOW, ANY DOCUMENT THAT REFLECTS OR
4 RELATES TO COMMUNICATIONS ABOUT PCB'S BETWEEN
5 MONSANTO AND TEXAS EASTERN HAS BEEN PRODUCED.

6 Q. HOW ABOUT DOCUMENTS THAT REFLECT
7 PCB'S DIRECTLY OR INDIRECTLY?

8 A. I AM NOT SURE WHAT YOU MEAN BY
9 "REFLECT PCB'S DIRECTLY OR INDIRECTLY."

10 Q. WELL, FOR EXAMPLE, ARE THERE
11 COMMUNICATIONS BETWEEN TEXAS EASTERN AND MONSANTO
12 THAT HAVE NOT BEEN PRODUCED?

13 A. TO MY KNOWLEDGE, NO.

14 Q. ALL RIGHT. THEN IN OTHER WORDS, NO
15 DOCUMENTS WERE WITHHELD ON THE BASIS OF RELEVANCY
16 IN RESPONSE TO THIS REQUEST.

17 A. I AM NOT AWARE OF ANY DOCUMENT
18 REFLECTING COMMUNICATIONS BETWEEN MONSANTO AND
19 TEXAS EASTERN, THAT HAD TO DO WITH PCB'S, THAT
20 HAS BEEN WITHHELD.

21 Q. DID YOU WITHHOLD ANY DOCUMENTS IN
22 RESPONSE TO THIS REQUEST ON THE BASIS THAT THERE
23 WAS NO PROTECTIVE ORDER?

24 A. I DON'T THINK SO.

25 Q. DO YOU KNOW? I DON'T WANT YOU TO

1 GUESS.

2 A. MY RECOLLECTION IS THAT THERE IS
3 NOT.

4 Q. DID YOU WITHHOLD ANY DOCUMENTS IN
5 RESPONSE TO THIS REQUEST BECAUSE THOSE DOCUMENTS
6 WERE IN THE PUBLIC DOMAIN?

7 A. ONCE AGAIN, IF A DOCUMENT WAS OF A
8 TYPE TO OBJECT TO, IN THE PUBLIC DOMAIN, FOR
9 EXAMPLE, PUBLISHED SCIENTIFIC LITERATURE OR A
10 GOVERNMENT DOCUMENT, WE DIDN'T NECESSARILY REVIEW
11 IT TO SEE WHETHER IT FIT WITHIN ANY PARTICULAR
12 REQUEST HERE.

13 THAT WAS A CATEGORICAL DECISION THAT
14 WAS MADE AT THE OUTSET, THAT WE WEREN'T GOING TO
15 PRODUCE THOSE DOCUMENTS BECAUSE THEY WERE EQUALLY
16 AVAILABLE TO YOU AS THEY WERE TO US.

17 Q. WHY DID YOU MAKE THE ASSUMPTION THAT
18 THEY WERE EQUALLY AVAILABLE TO US, IF YOU HAVE AN
19 ARCHIVE REPRESENTING PCB PRODUCTS?

20 A. I DON'T HAVE A COMPLETE COLLECTION
21 OF PUBLIC DOMAIN DOCUMENTS RELATING TO PCB'S.

22 Q. DO YOU HAVE SOME PUBLIC DOMAIN
23 DOCUMENTS?

24 A. THERE ARE DOCUMENTS WITHIN THAT
25 ARCHIVE THAT ARE GENERALLY AVAILABLE, YES,

1 SCIENTIFIC LITERATURE, SOME GOVERNMENT DOCUMENTS.

2 Q. DID YOU WITHHOLD THOSE DOCUMENTS ON
3 THE BASIS THAT THEY WERE EQUALLY AVAILABLE TO US?

4 A. THAT IS CORRECT.

5 Q. WHAT QUANTITY ARE WE TALKING ABOUT?

6 A. I DON'T KNOW.

7 Q. DID YOU WITHHOLD ANY DOCUMENTS,
8 AGAIN WITH REFERENCE TO REQUEST NO. 2, BECAUSE
9 THEY INVOLVED THE PRACTICES OR PROCEDURES OF
10 OTHER PARTIES TO THE ACTION?

11 A. NO, MA'AM.

12 Q. I BELIEVE THAT YOU ANSWERED IN THE
13 GENERAL OBJECTION THAT NO DOCUMENTS WERE WITHHELD
14 ON THE BASIS OF THAT OBJECTION, SO I AM JUST
15 CONFIRMING THAT AT THIS TIME.

16 A. THAT'S CORRECT.

17 Q. DID YOU WITHHOLD ANY DOCUMENTS IN
18 RESPONSE TO THIS REQUEST ON THE BASIS THAT THEY
19 WERE PRODUCED OR CREATED AFTER 1977?

20 A. NOT THAT I AM AWARE OF.

21 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
22 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
23 REQUEST?

24 A. NO.

25 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT

1 RELATED TO PRODUCTS OTHER THAN OC-81, MCS-153,
2 TURBINOL 153, OR PYDRAUL AC? AGAIN, WITH
3 REFERENCE TO REQUEST NO. 2.

4 A. NOT THAT I AM AWARE OF, NO.

5 Q. DID YOU WITHHOLD ANY DOCUMENTS,
6 AGAIN WITH RESPECT TO REQUEST NO. 2, ON THE
7 GROUND THAT THE TERM "TURBINOL OR OTHER
8 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
9 VAGUE AND AMBIGUOUS?

10 A. NO, MA'AM.

11 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
12 THE GROUND THAT THEY SEEK INFORMATION ABOUT OTHER
13 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF?

14 A. I AM NOT AWARE OF ANY DOCUMENTS THAT
15 WERE WITHHELD ON THAT GROUND.

16 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
17 THE GROUND THAT ANY PROTECTIVE ORDER PROHIBITS
18 MONSANTO FROM DISCLOSING SUCH DOCUMENTS?

19 A. I WOULD HAVE TO LOOK BACK AT THOSE
20 PARTICULAR DOCUMENTS TO DETERMINE WHETHER THOSE
21 DOCUMENTS FALL WITHIN THE SCOPE OF THIS.

22 BUT I BELIEVE THAT TWO DOCUMENTS
23 THAT ARE MONSANTO DOCUMENTS, THAT WE DIDN'T HAVE
24 PREVIOUSLY, ARE COMMUNICATIONS FROM MONSANTO TO
25 TEXAS EASTERN. BUT I'D HAVE TO CONFIRM THAT.

1 Q. AND DID YOU DETERMINE THAT THE ONLY
2 WAY THAT YOU OBTAINED THOSE DOCUMENTS WAS THROUGH
3 THAT LITIGATION?

4 A. THAT'S CORRECT.

5 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
6 THE GROUND THAT THEY WERE NOT KEPT BY MONSANTO IN
7 THE REGULAR COURSE OF BUSINESS DURING THE TIME
8 WHEN MONSANTO WAS MANUFACTURING AND SELLING
9 PRODUCTS CONTAINING PCB'S?

10 A. NOT TO MY KNOWLEDGE, NO.

11 Q. WELL, EXCEPT THOSE TWO DOCUMENTS
12 WERE DOCUMENTS THAT WERE NOT KEPT WITHIN THE
13 REGULAR COURSE OF BUSINESS. WOULDN'T THEY FALL
14 WITHIN THAT CATEGORY, AS WELL?

15 A. WELL, WE DIDN'T HAVE THEM. THOSE
16 ARE NOT DOCUMENTS THAT WE HAD IN OUR POSSESSION
17 IN THE REGULAR COURSE OF BUSINESS.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
19 THE GROUND THAT THE TERM "COMMUNICATIONS" IS
20 OVERLY BROAD?

21 A. NO.

22 Q. HOW ABOUT ON THE GROUND THAT THE
23 TERM "COMMUNICATIONS" IS VAGUE?

24 A. NOT THAT I AM AWARE OF, NO.

25 Q. HOW ABOUT THAT THE TERM

1 "COMMUNICATIONS" IS AMBIGUOUS?

2 A. I AM NOT AWARE OF ANY, NO.

3 Q. DID YOU REVIEW ANY OTHER CUSTOMER
4 FILES FOR DOCUMENTS RESPONSIVE TO THIS REQUEST,
5 OTHER THAN TEXAS EASTERN OR TRANSWESTERN?

6 MR. PREUSS: JUST FOR THE RECORD, IT
7 ASKED FOR COMMUNICATIONS BETWEEN TEXAS EASTERN,
8 AND NOT OTHER CUSTOMERS.

9 MS. WELCH: WELL, I AM REFERRING TO
10 YOUR OBJECTION HERE. THAT'S HOW I DRAFTED THIS
11 QUESTION.

12 "MONSANTO FURTHER OBJECTS TO
13 THIS REQUEST TO THE EXTENT THAT IT
14 WOULD REQUIRE MONSANTO TO REVIEW ALL
15 OF ITS FILES REGARDING OTHER
16 CUSTOMERS TO SEARCH FOR DOCUMENTS
17 RESPONSIVE TO THIS REQUEST."
18 I DID NOT UNDERSTAND THIS
19 OBJECTION.

20 Q. HOWEVER, I HAVE ASKED A QUESTION.

21 A. IT STATES THAT WE DIDN'T UNDERTAKE
22 TO REVIEW ALL OF OUR CUSTOMER FILES TO DETERMINE
23 WHETHER THERE WAS IN THAT OTHER CUSTOMER'S FILE A
24 MENTION OF TEXAS EASTERN IN SOME FASHION.

25 Q. BUT TO THE BEST OF YOUR BELIEF,

1 WOULD ALL COMMUNICATIONS BETWEEN MONSANTO AND
2 TEXAS EASTERN BE CONTAINED IN TEXAS EASTERN
3 FILES?

4 A. YES.

5 Q. TURNING TO REQUEST NO. 3, AND ALL OF
6 THE FOLLOWING QUESTIONS RELATE TO REQUEST NO. 3.

7 AGAIN, I WILL ASK YOU WHERE DID YOU
8 CONDUCT A SEARCH FOR THESE DOCUMENTS?

9 A. IN THE SAME LOCATION AS THE OTHERS.

10 Q. ARE YOU AWARE OF ANYWHERE ELSE THAT
11 THESE DOCUMENTS WOULD BE CONTAINED?

12 A. NO, MA'AM.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
14 ON THE ATTORNEY-CLIENT PRIVILEGE?

15 A. I DIDN'T WITHHOLD ANY DOCUMENTS AT
16 ALL, ON ANY BASIS, IN RESPONSE TO NO. 3. I
17 PRODUCED THE ONLY DOCUMENT THAT I HAVE.

18 Q. THERE WERE NO OTHER DOCUMENTS.

19 A. THAT'S CORRECT. THERE IS ONLY ONE
20 DOCUMENT.

21 Q. THERE WAS NO DOCUMENT THAT WAS
22 CREATED AFTER 1977.

23 A. NO, MA'AM.

24 Q. TURNING TO REQUEST NO. 4, CAN YOU
25 CONFIRM FOR ME THAT THERE ARE NO DOCUMENTS THAT

1 ARE RESPONSIVE TO REQUEST NO. 4.

2 A. THAT'S CORRECT. WE HAVE DISCOVERED
3 NONE ON THE BASIS OF OUR SEARCH.

4 Q. ALL RIGHT. TURNING TO REQUEST
5 NO. 5., CAN YOU CONFIRM FOR ME THAT YOU DID NOT
6 WITHHOLD, ON ANY BASIS, DOCUMENTS THAT ARE
7 RESPONSIVE TO THIS REQUEST.

8 A. THAT IS CORRECT.

9 Q. THERE ARE NO DOCUMENTS THAT ARE
10 RESPONSIVE TO THIS REQUEST, THAT WERE CREATED
11 AFTER 1977.

12 A. NOT THAT I AM AWARE OF.

13 Q. THERE ARE NO DOCUMENTS THAT ARE
14 RESPONSIVE TO THIS REQUEST, THAT REFER OR RELATE
15 TO OTHER CUSTOMERS.

16 A. NOT THAT I AM AWARE OF.

17 Q. THERE ARE NO DOCUMENTS THAT ARE
18 RESPONSIVE TO THIS REQUEST, THAT REFER OR RELATE
19 TO OTHER PRODUCTS.

20 A. NOT THAT I AM AWARE OF.

21 Q. TURNING TO REQUEST NO. 6, ALL OF THE
22 FOLLOWING QUESTIONS PERTAIN TO REQUEST NO. 6.

23 A. YES, MA'AM.

24 Q. AGAIN, WHERE DID YOU SEARCH?

25 A. IN THE MONSANTO PCB ARCHIVE.

1 Q. ARE YOU AWARE OF ANYWHERE ELSE, ANY
2 OTHER OFFICE, WHERE DOCUMENTS THAT ARE RESPONSIVE
3 TO THIS REQUEST WOULD BE CONTAINED?

4 A. COPIES OF DOCUMENTS POTENTIALLY
5 RESPONSIVE TO THIS REQUEST, WOULD BE CONTAINED IN
6 THE OFFICES OF INDIVIDUALS OF MONSANTO WHO DEAL
7 WITH REGULATORY AGENCIES. ANY OF THOSE
8 DOCUMENTS, HOWEVER, THAT RELATE TO PCB'S WOULD
9 ALSO BE IN MY ARCHIVE.

10 Q. DID YOU SEARCH THOSE OTHER OFFICES?

11 A. THEY HAVE BEEN THE SUBJECT OF
12 PERIODIC SEARCHES.

13 Q. IS THERE A LIST OF WHO HAS COPIES OF
14 THOSE DOCUMENTS?

15 A. OTHER THAN THERE IS A LIST OF
16 INDIVIDUALS WHOSE OFFICES WERE SEARCHED, YES.

17 Q. WE MAY WANT TO DISCUSS THIS LATER,
18 BUT WE REQUEST TO SEE ALL COPIES, SIMPLY TO
19 ASCERTAIN WHO HAS COPIES OF THESE KINDS OF
20 DOCUMENTS.

21 A. I WOULD MOST LIKELY FIND THAT
22 REQUEST OBJECTIONABLE.

23 Q. WE WILL TALK ABOUT THAT AT OUR MEET
24 AND CONFER.

25 DID YOU WITHHOLD ANY DOCUMENTS BASED

1 ON THE ATTORNEY-CLIENT PRIVILEGE IN RESPONSE TO
2 THIS REQUEST?

3 A. NONE THAT I AM AWARE OF.

4 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
5 ON THE ASSERTION THAT THEY WERE NOT RELEVANT?

6 A. IN GENERAL, WE PRODUCED ALL OF THE
7 DOCUMENTS WE HAD THAT REFLECTED COMMUNICATIONS
8 WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

9 BEYOND THAT, WE TOOK THE POSITION
10 THAT A FURTHER SEARCH FOR ANY COMMUNICATION
11 BETWEEN MONSANTO AND ANY CONCEIVABLE GOVERNMENT
12 ENTITY WAS BURDENSOME AND OPPRESSIVE, AND THE
13 REQUEST WAS OUTWEIGHED BY THAT BURDENSOMENESS.

14 Q. DO THOSE DOCUMENTS EXIST?

15 A. TO THE EXTENT THAT WE HAVE THEM.

16 Q. IN OTHER WORDS, THERE ARE DOCUMENTS
17 OR COMMUNICATIONS BETWEEN MONSONTO AND OTHER
18 AGENCIES, BESIDES THE EPA, THAT PERTAIN TO
19 PCB'S.

20 A. YES.

21 Q. AND DO THEY EXIST IN YOUR ARCHIVES?

22 A. YES.

23 Q. DID YOU SEARCH FOR THOSE DOCUMENTS
24 IN RESPONSE TO THIS REQUEST?

25 A. AS I SAID BEFORE, WE DID NOT

1 UNDERTAKE A SPECIFIC SEARCH FOR THOSE DOCUMENTS.
2 WE EXCLUDED THEM AS A CATEGORY.

3 Q. WHAT AGENCIES ARE WE TALKING ABOUT?

4 A. I COULDN'T ENUMERATE THEM FOR YOU;
5 THERE ARE SO MANY.

6 Q. COULD YOU START AND GIVE ME A FEW.

7 A. THE FOOD AND DRUG ADMINISTRATION,
8 THE OCCUPATIONAL SAFETY AND HEALTH
9 ADMINISTRATION, THE NATIONAL INSTITUTE OF
10 OCCUPATIONAL SAFETY AND HEALTH, ANY OF THE STATE
11 ENVIRONMENTAL AUTHORITIES, REGULATORY
12 AUTHORITIES.

13 HOW MANY DO YOU WANT?

14 Q. THAT'S FINE. I WOULD LIKE TO KNOW
15 HOW YOU DETERMINED TO LIMIT THIS REQUEST JUST TO
16 THE EPA.

17 A. IT WAS OUR DETERMINATION THAT THOSE
18 COMMUNICATIONS WOULD CONTAIN MOST OF THE
19 SIGNIFICANT INFORMATION THAT WE HAD WITH THE
20 GOVERNMENT ON THE SUBJECT OF PCB'S.

21 Q. DID ANY OF THE OTHER COMMUNICATIONS,
22 TO OTHER GOVERNMENT AGENCIES, CONTAIN
23 COMMUNICATIONS ABOUT THE HAZARDS OF PCB'S?

24 A. WELL, I FIND IT DIFFICULT TO RESPOND
25 TO THAT. COMMUNICATIONS WITH OTHER GOVERNMENT

1 AGENCIES, FOR EXAMPLE THE FDA, MAY HAVE RELATED
2 TO THE PRESENCE OF PCB'S IN ENVIRONMENTAL
3 SAMPLES.

4 Q. HOW DID YOU DETERMINE THAT THE EPA
5 COMMUNICATIONS WERE THE ONLY SIGNIFICANT
6 COMMUNICATIONS WITH THE GOVERNMENT?

7 LET ME REPHRASE IT. I THINK YOU
8 STATED "MOST SIGNIFICANT."

9 A. SIMPLY BECAUSE THAT'S WHAT THE FACT
10 IS.

11 Q. WHAT QUANTITY OF DOCUMENTS ARE THERE
12 IN TERMS OF COMMUNICATIONS WITH OTHER
13 GOVERNMENTAL AGENCIES?

14 A. I DON'T HAVE AN ESTIMATE ON THAT.
15 IT WOULD BE A SIGNIFICANT EFFORT TO SEARCH THE
16 ARCHIVE AND RETRIEVE THOSE DOCUMENTS.

17 Q. HAVE THOSE DOCUMENTS EVER BEEN
18 PRODUCED IN OTHER LITIGATION?

19 A. TO MY KNOWLEDGE, NO.

20 Q. HAVE THEY EVER BEEN REQUESTED TO BE
21 PRODUCED?

22 A. I BELIEVE WE HAVE HAD SIMILAR
23 REQUESTS TO THIS, AND HAVE OBJECTED ON THE SAME
24 BASIS TO EACH SUCH REQUEST.

25 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

1 THE BASIS THERE WAS NO PROTECTIVE ORDER?

2 A. NO, NOT IN RESPONSE TO THIS REQUEST.

3 Q. IN RESPONSE TO THIS REQUEST, DID YOU
4 WITHHOLD ANY DOCUMENTS BECAUSE THEY WERE IN THE
5 PUBLIC DOMAIN?

6 A. I DON'T BELIEVE SO, MISS WELCH, BUT
7 I'M NOT ALTOGETHER POSITIVE ON THAT.

8 I BELIEVE ALL DOCUMENTS THAT
9 REFLECTED COMMUNICATIONS BETWEEN MONSANTO AND THE
10 EPA HAVE BEEN PRODUCED. I AM NOT AWARE OF ANY
11 COMMUNICATION --

12 I HAVE DOCUMENTS OF THAT SORT THAT
13 HAVE BEEN WITHHELD ON PUBLIC DOMAIN GROUNDS. WE
14 HAVE OTHER EPA DOCUMENTS WITHIN THAT ARCHIVE THAT
15 WERE WITHHOLD ON PUBLIC DOMAIN GROUNDS, BUT THEY
16 ARE NOT COMMUNICATIVE DOCUMENTS.

17 Q. WHAT DOCUMENTS ARE THOSE?

18 A. EPA REPORTS OF ONE TYPE OR ANOTHER.

19 Q. CAN YOU GIVE ME SOME SAMPLES.

20 A. ONE THAT POPS TO MIND IMMEDIATELY IS
21 THE LATEST EPA DRINKING WATER CRITERIA DOCUMENT.
22 I BELIEVE IT'S A 1987 DOCUMENT, I THINK.

23 BUT IT'S DOCUMENTS OF THAT TYPE THAT
24 WE DIDN'T PRODUCE HERE.

25 Q. AND DO THOSE DOCUMENTS REFER OR

1 RELATE TO PCB'S OR PCB-RELATED HAZARDS?

2 A. THOSE DOCUMENTS RELATE TO PCB, YES.

3 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
4 THE BASIS THAT THEY WERE CREATED AFTER 1977?

5 A. NOT TO MY KNOWLEDGE, NO.

6 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
7 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
8 REQUEST?

9 A. NO, MA'AM.

10 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
11 RELATED TO PRODUCTS OTHER THAN OS-81, MCS-153,
12 TURBINOL 153, OR PYDRAUL AC?

13 A. NO, MA'AM.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE GROUND THAT THE TERM "TURBINOL OR OTHER
16 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
17 VAGUE AND AMBIGUOUS?

18 A. NO, MA'AM.

19 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
20 THE GROUND THAT IT SEEKS INFORMATION ABOUT OTHER
21 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF?

22 A. NO, MA'AM.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
24 THE GROUND THAT ANY PROTECTIVE ORDER PROHIBITS
25 MONSANTO FROM DISCLOSING THE DOCUMENT?

1 A. NO, MA'AM.

2 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
3 THE GROUND THAT THEY WERE NOT KEPT IN THE REGULAR
4 COURSE OF BUSINESS?

5 A. NO.

6 Q. TURNING TO REQUEST NO. 7, WHERE DID
7 YOU SEARCH?

8 A. IN THE SAME LOCATION, MONSANTO'S PCB
9 ARCHIVE.

10 Q. TO YOUR KNOWLEDGE, WOULD THESE
11 DOCUMENTS EXIST ANYWHERE ELSE?

12 A. NO, MA'AM.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
14 ON THE ATTORNEY-CLIENT PRIVILEGE?

15 A. NO, MA'AM.

16 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
17 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT
18 REVELANT?

19 A. NOT TO MY KNOWLEDGE, NO.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
21 THE BASIS THAT THERE WAS NO PROTECTIVE ORDER IN
22 PLACE?

23 A. NOT THAT I AM AWARE OF, NO.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS
25 BECAUSE THOSE DOCUMENTS ARE IN THE PUBLIC DOMAIN?

1 A. NO.

2 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
3 THE BASIS THAT THEY WERE PRODUCED OR CREATED
4 AFTER 1977?

5 A. NO.

6 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
7 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
8 REQUEST?

9 A. I AM AWARE OF DOCUMENTS THAT MAY
10 HAVE BEEN RESPONSIVE THAT MAY HAVE BEEN
11 DISCARDED, BUT WHEN THEY WERE I DON'T KNOW.

12 FOR EXAMPLE, WE DON'T HAVE ANYWHERE
13 NEAR A FULL COLLECTION OF SALES INVOICES, THAT
14 WOULD HAVE COVERED OR HAVE BEEN GENERATED AS A
15 RESULT OF SALES OF THESE PRODUCTS TO TEXAS
16 EASTERN OR TRANSWESTERN. AND I ASSUME THOSE WERE
17 DISCARDED IN THE NORMAL COURSE OF BUSINESS.

18 Q. AND FOR WHAT PERIOD OF TIME WOULD
19 THEY HAVE BEEN KEPT BEFORE THEY WERE DISCARDED?

20 A. I BELIEVE TWO YEARS, BUT I'M NOT
21 POSITIVE.

22 Q. AND DO WE HAVE SUMMARIES OF THOSE
23 SALES?

24 A. YES.

25 Q. SO WE HAVE AN ACCOUNTING OF ALL

1 SALES THAT OCCURRED.

2 A. TO THE BEST OF OUR RECORDS, YES.

3 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
4 RELATE TO PRODUCTS OTHER THAN THOSE THAT I HAVE
5 CONTINUALLY ENUMERATED?

6 A. THOSE ARE THE ONLY PCB-CONTAINING
7 PRODUCTS THAT MONSANTO SOLD TO TEXAS EASTERN OR
8 TRANSWESTERN.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
10 THE GROUND THAT THE TERM "TURBINOL OR OTHER
11 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
12 VAGUE AND AMBIGUOUS?

13 A. NOT THAT I AM AWARE OF.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE GROUND THAT THEY SEEK INFORMATION ABOUT OTHER
16 CUSTOMERS, OTHER THAN PLAINTIFF?

17 A. THERE MAY BE DOCUMENTS THAT MENTION
18 THE FACT THAT TEXAS EASTERN USED TURBINOL 153 AS
19 A GAS COMPRESSOR LUBRICANT, THAT REFER OR RELATE
20 TO, IN SOME SENSE, OUR SALES TO THEM, THAT HAVE
21 NOT BEEN PRODUCED.

22 BUT THOSE WOULD -- AGAIN, AS I HAVE
23 DESCRIBED TO YOU THE METHOD BY WHICH WE WENT
24 ABOUT SELECTING RELEVANT DOCUMENTS, WE WENT TO
25 THE PLACES WHERE WE BELIEVED COMMUNICATIONS AND

1 RECORDS OF SALES TO TEXAS EASTERN WOULD BE LIKELY
2 TO BE FOUND, AND PRODUCED THOSE DOCUMENTS.

3 WE DID NOT ENGAGE IN A PAGE-BY-PAGE
4 SEARCH OF THE ARCHIVE, TO SEE IF WE -- TO LOOK
5 FOR EVERY DOCUMENT THAT MIGHT HAVE THE WORDS
6 "TEXAS EASTERN" PRINTED ON THEM.

7 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY
8 OF DOCUMENTS THIS WOULD BE?

9 A. NO.

10 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
11 THE GROUND OF ANY COMPROMISING OF THE PROTECTIVE
12 ORDER?

13 A. NOT THAT I AM AWARE OF.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE GROUND THAT THEY WERE NOT KEPT BY MONSANTO IN
16 THE REGULAR COURSE OF BUSINESS?

17 A. NO.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
19 THE BASIS THAT THE PHRASE, QUOTE, "ALL DOCUMENTS
20 RELATING TO THE SALE" IS OVERLY BROAD?

21 A. YES. AND THAT WAS WHAT I REFERRED
22 TO PREVIOUSLY, THAT WE SIMPLY DID NOT UNDERTAKE A
23 PAGE-BY-PAGE REVIEW OF THE ARCHIVE, TO DETERMINE
24 WHETHER ANY OF THE DOCUMENTS THAT MIGHT MENTION
25 TEXAS EASTERN COULD BE CONSTRUED AS SOMEHOW

1 RESPONSIVE.

2 WE WENT TO THOSE PLACES WITHIN THE
3 ARCHIVE THAT CONTAIN RECORDS OF SALES TO TEXAS
4 EASTERN AND COMMUNICATIONS WITH TEXAS EASTERN,
5 AND WE PRODUCED THOSE.

6 Q. IN THE ARCHIVE IS THERE A CERTAIN
7 PHYSICAL PLACE OR A CERTAIN FILE THAT RELATES TO
8 TEXAS EASTERN?

9 A. I BELIEVE THERE IS A
10 CUSTOMER-BY-CUSTOMER FILE.

11 Q. AND THAT IS PRIMARILY WHERE YOU
12 WENT --

13 A. THAT WAS ONE LOCATION OF SEARCH,
14 YES.

15 Q. WHAT OTHER LOCATION DID YOU SEARCH?

16 A. WELL, WE SEARCHED THE SALES RECORDS,
17 WHICH ARE NOT KEPT ON A CUSTOMER BASIS. IF YOU
18 WILL LOOK AT THE DOCUMENTS WE PRODUCED, I THINK
19 THE FOLDER 1, IT HAS THE SALES-RELATED
20 INFORMATION IN IT.

21 THOSE DOCUMENTS ARE NOT PART OF A
22 CUSTOMER FILE. THAT'S A COMPENDIUM OF SALES
23 INFORMATION.

24 Q. SO YOU SEARCHED THE CUSTOMER FILE
25 AND THE SALES RECORD. IS THERE ANYWHERE ELSE

1 THAT IT WOULD HAVE BEEN CONTAINED?

2 A. NOT THAT I CAN THINK OF OFFHAND.

3 Q. DID YOU WITHHOLD ANY DOCUMENTS
4 RELATING TO THE SALES OF ANY OTHER PCB PRODUCTS,
5 OTHER THAN THOSE I HAVE ENUMERATED?

6 A. THOSE WERE THE ONLY PRODUCTS WE SOLD
7 TO TEXAS EASTERN OR TRANSWESTERN.

8 Q. DID YOU PRODUCE ALL CONTRACTS THAT
9 EXIST?

10 A. I DON'T BELIEVE WE FOUND ANY
11 CONTRACTS.

12 Q. DID YOU SEARCH FOR THOSE CONTRACTS?

13 A. WELL, WE SEARCHED FOR DOCUMENTS THAT
14 WOULD HAVE PERTAINED TO SALES OF PCB-CONTAINING
15 PRODUCTS TO TEXAS EASTERN, AND OUR CUSTOMER FILES
16 WITH TEXAS EASTERN, AND IT WASN'T THERE.

17 I WOULDN'T KNOW WHERE ELSE TO LOOK.

18 Q. HOW ABOUT ALL INVOICES?

19 A. WE SEARCHED ALL OF OUR EXISTING
20 INVOICES FOR TEXAS EASTERN OR TRANSWESTERN
21 RELATED SALES, AND WE PRODUCED WHAT WE HAD.

22 Q. WOULD THOSE HAVE BEEN IN THE
23 CUSTOMER FILE?

24 A. NO, THOSE WERE SEPARATELY KEPT.

25 Q. IN THE SALES RECORDS.

1 A. IN THE SALES RECORDS.

2 Q. HOW ABOUT THE BILLS OF SALE?

3 A. THOSE WOULD BE THE SAME PLACE.

4 Q. IN THE SALES RECORDS.

5 A. RIGHT.

6 Q. TURNING TO REQUEST NO. 8, WHERE DID

7 YOU SEARCH FOR THESE RECORDS?

8 A. WELL, WE HAVE PRODUCED NO DOCUMENTS

9 RESPONSIVE TO THIS REQUEST.

10 Q. NONE AT ALL?

11 A. NONE AT ALL.

12 Q. ON WHAT BASIS DID YOU WITHHOLD

13 DOCUMENTS?

14 A. WELL, IF YOU LOOK AT OUR RESPONSE,

15 THE BASES ARE ARTICULATED THERE.

16 Q. CAN YOU DESCRIBE, IN YOUR WORDS,

17 WHAT THE BASES ARE.

18 A. BASICALLY, ONE OF RELEVANCE TO

19 THAT. OUR SALES TO OTHER CUSTOMERS ARE NOT

20 RELEVANT TO THE CLAIMS MADE BY TRANSWESTERN IN

21 THIS MATTER.

22 IT'S BURDENSOME, AND OPPRESSIVE, AND

23 NOT RELEVANT TO ASK US TO CONDUCT THAT SEARCH AND

24 PRODUCE THOSE RECORDS.

25 Q. SO YOU ARE STATING FOR THE RECORD

1 THAT DOCUMENTS THAT RELATE TO OTHER PCB SALES,
2 OTHER PRODUCTS THAT CONTAIN PCB'S, ARE NOT
3 RELEVANT TO THIS LITIGATION.

4 A. THAT'S CORRECT.

5 Q. HOW DID YOU MAKE THAT DETERMINATION?

6 A. I'M NOT SURE I UNDERSTAND THE
7 QUESTION.

8 Q. HAD DID YOU DECIDE THAT THESE
9 DOCUMENTS WERE NOT RELEVANT?

10 A. WE LOOKED AT THE COMPLAINT, AND
11 DETERMINED WHAT WE FELT WAS REASONABLE IN
12 RESPONSE HERE AND WHAT WASN'T.

13 AND THIS DID NOT APPEAR TO BE
14 REASONABLY RELEVANT OR RESPONSIVE.

15 Q. YOU DON'T BELIEVE THAT DOCUMENTS
16 THAT RELATE TO OTHER PCB PRODUCTS WOULD LEAD TO
17 THE DISCOVERY OF ADMISSIBLE EVIDENCE?

18 A. NO, MA'AM.

19 Q. HAS THERE BEEN LITIGATION ABOUT
20 OTHER PCB PRODUCTS IN THE HISTORY OF MONSANTO?

21 A. YES.

22 Q. AND HAVE DOCUMENTS BEEN PRODUCED IN
23 THOSE LITIGATIONS?

24 A. I BELIEVE WE HAVE DISCUSSED THAT
25 PREVIOUSLY. YES.

1 Q. I WOULD LIKE YOU TO TURN TO REQUEST
2 NO. 9.

3 A. YES.

4 Q. WHERE DID YOU SEARCH FOR THOSE
5 DOCUMENTS?

6 A. IN THE PCB ARCHIVE.

7 Q. ARE THERE PARTICULAR FILES IN WHICH
8 THOSE DOCUMENTS ARE CONTAINED?

9 A. THERE ARE MANY FILES.

10 Q. CAN YOU TELL ME WHICH ONES.

11 A. I CAN'T ENUMERATE THEM ALL FOR YOU,
12 NO. THERE IS A -- THERE ARE FILES WHICH
13 GENERALLY RELATE TO TURBINOL PRODUCTS, AND THOSE
14 FILES WERE REVIEWED, AS WELL AS FILES RELATING TO
15 THE CESSATION OF SALES OF PCB PRODUCTS.

16 Q. HOW ABOUT THE TEXAS EASTERN OR
17 TRANSWESTERN CUSTOMER FILES?

18 A. TO THE EXTENT THAT ANY DOCUMENT THAT
19 WAS NOT OTHERWISE PRODUCED IN RESPONSE TO A
20 PREVIOUS DISCOVERY DEMAND WOULD HAVE BEEN
21 RELEVANT TO THIS ONE, IT WOULD HAVE BEEN
22 PRODUCED.

23 BUT I BELIEVE THAT ALL OF OUR TEXAS
24 EASTERN AND TRANSWESTERN RELATED DOCUMENTS WOULD
25 ALREADY HAVE BEEN PRODUCED.

1 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
2 ON THE ATTORNEY-CLIENT PRIVILEGE?

3 A. I AM NOT AWARE OF ANY. THERE MAY
4 HAVE BEEN INFORMATION REDACTED FROM A DOCUMENT
5 THAT WAS OTHERWISE PRODUCED ON THE BASIS OF
6 ATTORNEY-CLIENT PRIVILEGE.

7 MS. WELCH: AND IS THAT REFLECTED IN
8 THE PRIVILEGE LOG?

9 MR. PREUSS: YES.

10 THE WITNESS: ANYTHING THAT WE
11 WITHHELD ON THAT BASIS WOULD BE REFLECTED IN THAT
12 LOG.

13 BY MS. WELCH:

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE BASIS THAT THEY WERE NOT RELEVANT TO THIS
16 LITIGATION?

17 A. WE PRODUCED, IN RESPONSE TO THE
18 DEMAND, ALL DOCUMENTS THAT WE HAD THAT SPOKE TO
19 THE CESSATION OF SALES OF TURBINOL 153, OR
20 MCS-153, OR OS-81. ALL THOSE PRODUCTS WERE NO
21 LONGER BEING SOLD WHEN THE DECISION TO WITHDRAW
22 THESE PRODUCTS FROM THE MARKET WAS MADE.

23 Q. SO THERE IS --

24 (WITNESS CONFERS WITH HIS COUNSEL.)

25 THE WITNESS: OR DOCUMENTS THAT

1 REFLECT COMMUNICATIONS BETWEEN TEXAS EASTERN AND
2 FROM TRANSWESTERN AND MONSANTO, THAT RELATE TO
3 THE CESSATION OF SALES.

4 BY MS. WELCH:

5 Q. SO AGAIN, THE QUESTION IS DID YOU
6 WITHHOLD ANY DOCUMENTS ON THE BASIS OF
7 RELEVANCE.

8 A. IN RESPONSE TO THIS DEMAND, NO.

9 Q. THERE ARE NO OTHER DOCUMENTS THAT
10 RELATE TO THE CESSATION OF SALES OF TURBINOLS OR
11 OTHER PCB'S, OTHER THAN WHAT YOU PRODUCED TO US.

12 A. AS SUCH, NO.

13 THERE ARE DOCUMENTS WHICH RELATE
14 GENERALLY TO THE CESSATION OF SALES OF PCB
15 HYDRAULIC FLUIDS, OR PCB HEAT TRANSFER FLUIDS, OR
16 PRODUCTS OF THAT NATURE, THAT HAVE NOT BEEN
17 PRODUCED HERE.

18 Q. EARLIER YOU REFERRED TO A BROCHURE
19 THAT CONTAINED A LIST OR AN ENUMERATION OF THE
20 VARIOUS TURBINOL LUBRICANTS.

21 A. THERE IS A BROCHURE THAT WOULD
22 DESCRIBE THOSE, YES.

23 Q. ARE THERE ANY OTHER PCB PRODUCTS
24 DESCRIBED IN THERE, OTHER THAN THE PRODUCTS THAT
25 WERE SOLD TO TRANSWESTERN?

1 A. I DON'T KNOW THE ANSWER TO THAT. I
2 WOULD HAVE TO REFER BACK TO THE PRODUCT
3 LITERATURE TO ANSWER THAT QUESTION.

4 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
5 THE BASIS THAT THERE IS NO PROTECTIVE ORDER?

6 A. NO.

7 Q. DID YOU WITHHOLD ANY DOCUMENTS
8 BECAUSE THOSE DOCUMENTS WERE IN THE PUBLIC
9 DOMAIN?

10 A. NO.

11 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
12 THE BASIS THEY WERE PRODUCED OR CREATED AFTER
13 1977?

14 A. NO.

15 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
16 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
17 REQUEST?

18 A. NO, MA'AM, I AM NOT.

19 Q. I THINK YOU ANSWERED THE QUESTION
20 THAT I ASKED. THE QUESTION I JUST ASKED WAS DID
21 THAT RELATE TO PRODUCTS OTHER THAN OS-81,
22 MCS-153, TURBINOL 153, OR PYDRAUL AC.

23 DID YOU WITHHOLD ANY OF THOSE
24 DOCUMENTS?

25 A. YES.

1 Q. CAN YOU TELL ME WHAT PRODUCTS THOSE
2 RELATED TO.

3 A. THERE ARE A GREAT NUMBER OF PRODUCTS
4 THAT THOSE RELATED TO.

5 Q. WOULD THEY COME WITHIN THIS
6 DESCRIPTION OF TURBINOLS OR OTHER PCB-CONTAINING
7 GAS COMPRESSOR LUBRICANTS?

8 A. NO. THERE ARE NO PRODUCTS OTHER
9 THAN TURBINOL 153, THAT WE ARE AWARE OF, THAT WAS
10 USED AS A GAS COMPRESSOR LUBRICANT.

11 MY STATEMENT IS THAT DOCUMENTS HAVE
12 NOT BEEN PRODUCED IN RESPONSE TO NO. 9 THAT
13 RELATE TO OTHER PCB-CONTAINING PRODUCTS.

14 Q. BUT THIS ASKED FOR DOCUMENTS
15 RELATING TO THE CESSATION OF SALES OF TURBINOL OR
16 OTHER PCB-CONTAINING GAS COMPRESSOR LUBRICANTS.

17 A. THAT IS CORRECT.

18 Q. THAT'S WHAT I AM TRYING TO
19 UNDERSTAND, WHETHER IN FACT YOU ARE TALKING ABOUT
20 PRODUCTS THAT ARE TURBINOL OR OTHER
21 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS.

22 A. MY RESPONSE IS THAT DOCUMENTS THAT
23 RELATE TO OTHER PRODUCTS HAVE NOT BEEN PRODUCED
24 HERE, BUT DOCUMENTS WHICH RELATE TO TURBINOL 153
25 AND GAS COMPRESSOR LUBRICANTS, WHICH WE DIDN'T

1 MAKE ANY OTHERS, AS FAR AS I AM AWARE OF, HAVE
2 NOT.

3 Q. I REALLY WANT TO PIN THIS DOWN,
4 BECAUSE IT'S MY CONFUSION.

5 IS YOUR TESTIMONY THAT THE ONLY
6 TURBINOL OR OTHER PCB-CONTAINING GAS COMPRESSOR
7 LUBRICANTS ARE CONTAINED IN THE FOLLOWING LIST OF
8 PRODUCTS: OS-81, MCS-153, TURBINOL 153, AND
9 PYDRAUL AC?

10 A. THAT'S NOT QUITE RIGHT. OS-81,
11 MCS-153, AND TURBINOL 153 ARE GAS COMPRESSOR
12 LUBRICANTS.

13 PYDRAUL AC IS A COMPRESSOR
14 LUBRICANT. BUT TO MY KNOWLEDGE, AND TO THE
15 EXTENT WE HAVE INFORMATION, AND I HAVE REVIEWED,
16 PYDRAUL AC WAS NOT DESIGNED NOR, TO OUR
17 KNOWLEDGE, WAS IT USED AS A GAS COMPRESSOR
18 LUBRICANT.

19 Q. PUTTING ASIDE --

20 A. BUT BECAUSE IT WAS SOLD TO TEXAS
21 EASTERN, WE INCLUDED IT IN THIS GROUP OF
22 DOCUMENTS.

23 Q. ARE THERE ANY OTHER PRODUCTS THAT
24 YOU CALL A "GAS COMPRESSOR LUBRICANT," OTHER THAN
25 IN THE ABOVE ENUMERATED LIST?

1 A. NO.

2 Q. ARE THERE ANY OTHER PRODUCTS THAT
3 YOU WOULD CALL A "TURBINOL," OTHER THAN THIS
4 LIST?

5 A. I DON'T KNOW THE ANSWER TO THAT. I
6 WOULD HAVE TO LOOK AT THE PRODUCT LITERATURE TO
7 DETERMINE WHETHER THERE ARE TURBINOL PRODUCTS. I
8 BELIEVE THERE WERE; I AM NOT CERTAIN.

9 Q. AND YOU EXCLUDED THOSE DOCUMENTS
10 FROM THIS PRODUCTION, THAT IS RESPONSIVE TO THIS
11 REQUEST.

12 A. THAT IS CORRECT.

13 Q. ON WHAT BASIS DID YOU MAKE THAT
14 DETERMINATION?

15 A. WELL, FIRST OF ALL, RELEVANCE.
16 AND MY READING OF THE DEMAND IS THAT
17 THEY ARE NOT COMPREHENDED WITHIN THE DEMAND.

18 Q. THE DEMAND ACTUALLY ASKED FOR ALL
19 DOCUMENTS RELATING TO THE CESSATION OF SALE OF
20 TURBINOLS.

21 A. WELL, THE DEMAND IS FOR TURBINOL OR
22 OTHER PCB-CONTAINING GAS COMPRESSOR LUBRICANTS.

23 TAKING THOSE TWO TERMS TOGETHER, I
24 DETERMINED THAT IT WAS MY INTERPRETION THAT THIS
25 DEMAND -- THAT I WAS REQUESTED TO PRODUCE

1 TURBINOL 153 OR OTHER PCB-CONTAINING GAS
2 COMPRESSOR LUBRICANTS.

3 MS. WELCH: I MIGHT NOTE FOR THE
4 RECORD THAT THE WORD "OR" IS DISJUNCTIVE. IT
5 DOESN'T MEAN TO BE TAKEN TOGETHER. THE REQUEST
6 IS SPECIFICALLY FOR TURBINOL OR OTHER
7 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS.

8 MR. PREUSS: THAT'S NOT A QUESTION.
9 BY MS. WELCH:

10 Q. SO YOUR RESPONSE, FOR THE RECORD, IS
11 THAT DOCUMENTS WERE WITHHELD THAT RELATED TO THE
12 CESSATION OF SALE OF TURBINOL OR OTHER
13 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS.

14 A. WE DID NOT PRODUCE DOCUMENTS OTHER
15 THAN THOSE RELATING TO TURBINOL 153, OTHER THAN
16 THOSE RELATING TO CESSATION OF SALE OF THAT
17 PRODUCT.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
19 THE GROUND THAT THE TERM "TURBINOL OR OTHER
20 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
21 VAGUE AND AMBIGUOUS?

22 A. NO.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
24 THE GROUND THAT IT SEEKS INFORMATION ABOUT OTHER
25 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF?

1 A. MY RECOLLECTION IS THAT WE DID NOT
2 WITHHOLD DOCUMENTS ON THAT BASIS. WE MAY HAVE
3 REDACTED INFORMATION FROM SOME DOCUMENTS WHICH
4 RELATED TO OTHER CUSTOMERS.

5 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
6 THE GROUND THAT ANY PROTECTIVE ORDER PROHIBITED
7 DISCLOSURE?

8 A. NO.

9 MR. PREUSS: JUST A MINUTE.

10 (WITNESS CONFERS WITH HIS COUNSEL.)

11 MS. WELCH: LET THE RECORD REFLECT
12 THAT THERE WAS A DISCUSSION BETWEEN MR. BISTLINE
13 AND HIS ATTORNEY.

14 MR. PREUSS: CERTAINLY.

15 THE WITNESS: WE WILL DO THAT
16 WHENEVER WE FEEL WE ARE REQUIRED TO.

17 MS. WELCH: ABSOLUTELY, AND I WILL
18 NOTE IT FOR THE RECORD.

19 THE WITNESS: I AM REMINDED THAT, IN
20 ADDITION, MONSANTO DID NOT PRODUCE IN RESPONSE TO
21 THIS DEMAND LETTERS TO OTHER CUSTOMERS RELATING
22 TO PYDRAUL AC, AND THERE WERE OTHER CUSTOMERS FOR
23 PYDRAUL AC, OTHER THAN TEXAS EASTERN.

24 HOWEVER, I WOULD NOTE THAT I WOULD
25 NOT CONSIDER PYDRAUL AC TO BE COMPREHENDED WITHIN

1 9, TO OUR KNOWLEDGE, AS A GAS COMPRESSOR
2 LUBRICANT OR TURBINOL.

3 (WITNESS CONFERS WITH HIS COUNSEL.)

4 THE WITNESS: AND MOREOVER, IT WAS
5 IN THE SAME LETTER THAT WAS SENT TO TEXAS
6 EASTERN. ONLY THE ADDRESSEE WOULD HAVE BEEN
7 DIFFERENT.
8 BY MS. WELCH:

9 Q. SO THERE WERE OTHER CUSTOMERS FOR
10 PYDRAUL AC.

11 A. YES, MA'AM.

12 Q. AS WELL AS FOR OTHER TURBINOLS.

13 A. THAN TEXAS EASTERN, YES.

14 Q. WERE THE PRODUCTS OS-81, MCS-153,
15 AND TURBINOL 153 JUST SOLD TO TEXAS EASTERN?

16 A. NO. THERE WERE OTHER CUSTOMERS FOR
17 TURBINOL 153. I'M NOT SURE ABOUT OS-81 OR
18 MCS-153.

19 Q. DID YOU PRODUCE DOCUMENTS THAT
20 RELATED TO OTHER CUSTOMERS' PURCHASE OF TURBINOL
21 153?

22 A. NO, MA'AM.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
24 THE GROUND THAT THEY WERE NOT KEPT IN THE REGULAR
25 COURSE OF BUSINESS?

1 A. NO, MA'AM.

2 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

3 THE GROUND THAT THE PHRASE "CESSATION OF SALE" IS

4 OVERLY BROAD?

5 A. NOT THAT I AM AWARE OF.

6 Q. HOW ABOUT THAT THE PHRASE "CESSATION

7 OF SALE" IS VAGUE?

8 A. I'M NOT AWARE OF ANY DOCUMENTS

9 WITHHELD ON THAT BASIS.

10 Q. ON THE BASIS THAT THE TERM IS

11 AMBIGUOUS?

12 A. AGAIN, I AM NOT AWARE OF ANY

13 DOCUMENTS THAT WERE WITHHELD ON THAT BASIS.

14 Q. ON THE BASIS THAT THE TERM IS

15 UNDEFINED?

16 A. I AM NOT AWARE OF ANY DOCUMENTS THAT

17 WERE WITHHELD ON THAT BASIS.

18 Q. ALL RIGHT. DID YOU WITHHOLD ANY

19 DOCUMENTS ON THE GROUND THAT THE PHRASE "TURBINOL

20 OR OTHER PCB-CONTAINING GAS COMPRESSOR

21 LUBRICANTS" IS VAGUE?

22 A. NOT THAT I AM AWARE OF, NO.

23 Q. TURNING TO REQUEST NO. 10, THE

24 FOLLOWING QUESTIONS ALL PERTAIN TO REQUEST

25 NO. 10.

1 WHERE DID YOU SEARCH FOR THOSE
2 DOCUMENTS?

3 A. SAME LOCATION AS WE SEARCHED FOR THE
4 OTHERS, THE MONSANTO PCB ARCHIVE.

5 Q. ARE THERE ANY OTHER PARTICULAR FILES
6 THAT THESE DOCUMENTS WOULD BE CONTAINED IN?

7 A. IN GENERAL, THERE WOULD HAVE BEEN A
8 PRODUCT FILE THAT WOULD CONTAIN INFORMATION ON
9 THE MANUFACTURE OF TURBINOL, THAT WOULD BE LIKE
10 MANUFACTURING INFORMATION, THAT WOULD HAVE BEEN
11 RESEARCH TYPE REPORTS, THAT WOULD HAVE BEEN
12 GENERATED RELEVANT TO THIS PRODUCT.

13 SO THOSE ARE THE GENERAL AREAS THAT
14 WOULD HAVE BEEN SEARCHED.

15 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
16 ON THE ATTORNEY-CLIENT PRIVILEGE?

17 A. NO, MA'AM, NOT THAT I AM AWARE OF.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
19 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT
20 RELEVANT?

21 A. AGAIN, I DON'T THINK THAT QUITE
22 COMPORTS WITH HOW WE WENT ABOUT THIS.

23 WE DETERMINED WHAT WE BELIEVED TO BE
24 THE TYPES OF DOCUMENTS AND THE AREAS THAT WOULD
25 YIELD RESPONSIVE INFORMATION. WE SEARCHED THOSE

1 AND PRODUCED WHAT WE FOUND, THAT WAS RESPONSIVE
2 TO THE DEMAND.

3 Q. DID YOU FIND DOCUMENTS THAT WERE
4 RESPONSIVE, AND THEN DETERMINED THEY WERE NOT
5 RELEVANT?

6 A. THAT MAY HAVE BEEN DONE; I DON'T
7 KNOW.

8 IT WAS MY STAFF THAT SEARCHED FOR
9 IT. AND IF THEY FOUND A DOCUMENT, I DIDN'T SAY,
10 "LET ME SEE, IS THAT RESPONSIVE BUT NOT
11 RELEVANT?"

12 NO, I DON'T BELIEVE WE WOULD HAVE
13 EXCLUDED DOCUMENTS ON THAT BASIS.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE BASIS THAT THERE WAS NO PROTECTIVE ORDER?

16 A. NO, MA'AM.

17 Q. DID YOU WITHHOLD --

18 A. OH, WAIT A MINUTE. YES, NO
19 PROTECTIVE ORDER. THE SMP'S, THE STANDARD
20 MANUFACTURING PROCESS MANUALS.

21 Q. AND ARE YOU PREPARED TO PRODUCE
22 THOSE ONCE THERE IS A PROTECTIVE ORDER?

23 A. YES, MA'AM.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS
25 BECAUSE THOSE DOCUMENTS ARE IN THE PUBLIC DOMAIN?

1 A. NO, MA'AM.

2 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
3 THE BASIS THAT THOSE DOCUMENTS WERE PRODUCED OR
4 CREATED AFTER 1977?

5 A. NO, MA'AM.

6 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
7 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
8 REQUEST?

9 A. NO, MA'AM.

10 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
11 RELATED TO PRODUCTS OTHER THAN OS-81, MCS-153,
12 TURBINOL 153, OR PYDRAUL AC?

13 A. NO, THOSE ARE THE ONLY --

14 WELL, AGAIN, WE RESTRICTED OUR
15 PRODUCTION TO TURBINOL 153, AND OS-81, AND
16 MCS-153, BECAUSE THOSE ARE THE ONLY GAS
17 COMPRESSOR LUBRICANTS THAT WE ARE AWARE OF.

18 AND WE PRODUCED PYDRAUL AC, BECAUSE
19 IT WAS SOLD TO TEXAS EASTERN.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
21 RELATED TO THE DESIGN, TESTING, AND MANUFACTURE
22 OF TURBINOLS?

23 A. TO THE EXTENT THAT THERE WERE
24 DOCUMENTS RELATING TO OTHER TURBINOLS, YES.

25 Q. AND THOSE DOCUMENTS DO EXIST.

1 A. AGAIN, AS I SAID, IF THERE ARE OTHER
2 TURBINOL PRODUCTS, THEN THEY PRESUMABLY HAD
3 DESIGN, TESTING, AND MANUFACTURE DOCUMENTS
4 ASSOCIATED WITH THEM.

5 THOSE ARE NOT PRODUCED IF THEY DID
6 NOT RELATE TO TURBINOL 153.

7 Q. DID THOSE PRODUCTS THAT WE CALLED
8 "TURBINOLS" CONTAIN PCB?

9 A. THEY MAY HAVE. AGAIN, I'D HAVE TO
10 LOOK AT THE PRODUCT LITERATURE.

11 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
12 THE GROUND THAT THE TERM "TURBINOL OR OTHER
13 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
14 VAGUE AND AMBIGUOUS?

15 A. NOT THAT I AM AWARE OF.

16 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
17 THE GROUND THAT THEY SEEK INFORMATION ABOUT OTHER
18 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF?

19 A. WE DID NOT PRODUCE DOCUMENTS FROM
20 OTHER CUSTOMER FILES, THAT MAY HAVE RELATED TO
21 OTHER CUSTOMERS' USE OF THIS PRODUCT OF TURBINOL
22 153.

23 I BELIEVE THAT WAS THE ONLY -- OR
24 MCS-153, OR OS-81, OR PYRDAUL AC, BUT THAT'S NOT
25 A GAS COMPRESSOR LUBRICANT.

1 Q. BUT YOU TESTIFIED EARLIER THAT --
2 MR. PREUSS: EXCUSE ME.
3 (WITNESS CONFERS WITH HIS COUNSEL.)
4 MS. WELCH: LET THE RECORD REFLECT
5 THAT THERE HAS BEEN A CONFERENCE BETWEEN THE
6 ATTORNEY AND THE CLIENT.
7 THE WITNESS: LET ME JUST ADD TO
8 THAT RESPONSE THAT I DON'T BELIEVE WE PRODUCED
9 DOCUMENTS OF THIS TYPE RELATING TO PYDRAUL AC,
10 BECAUSE IT IS NOT A TURBINOL GAS COMPRESSOR
11 LUBRICANT.
12 WE PRODUCED OTHER INFORMATION,
13 BECAUSE IT WAS A PRODUCT THAT WAS SOLD TO TEXAS
14 EASTERN.
15 BY MS. WELCH:
16 Q. I AM A LITTLE CONFUSED. YOU BELIEVE
17 TURBINOL 153 WAS SOLD TO OTHER CUSTOMERS?
18 A. CORRECT.
19 Q. BUT THAT THE OTHER PRODUCTS WERE
20 NOT, TO THE BEST OF YOUR KNOWLEDGE.
21 A. I BELIEVE THAT'S CORRECT.
22 Q. SO IT WOULD SEEM THAT THERE WOULD BE
23 DOCUMENTS.
24 MR. PREUSS: EXCUSE ME, WITH THE
25 EXCEPTION OF PYDRAUL AC.

1 MS. WELCH: THAT'S RIGHT.

2 Q. WHAT YOU ARE TELLING ME IS THAT YOU

3 DID NOT PRODUCE DOCUMENTS THAT RELATE TO

4 PYDRAUL AC.

5 A. CORRECT.

6 Q. YOU PRODUCED DOCUMENTS THAT RELATE

7 THAT TURBINOL 153 ONLY TO THE EXTENT THAT IT

8 RELATED TO TEXAS EASTERN.

9 A. NO, MA'AM.

10 Q. WHY DON'T YOU CHARACTERIZE IT FOR

11 ME.

12 A. WHAT I SAID IS THAT WE PRODUCED

13 DOCUMENTS WHICH RELATED TO THE DESIGN, TESTING,

14 AND MANUFACTURE OF TURBINOL 153, AS WE SET FORTH

15 HERE, AS WE INTERPRETED THE TERM "DESIGN,

16 TESTING, AND MANUFACTURING," AND AS SET FORTH IN

17 THE RESPONSE.

18 WE DID NOT RESTRICT THAT ONLY TO

19 DOCUMENTS THAT RELATED ALSO TO TEXAS EASTERN.

20 WE PRODUCED DOCUMENTS THAT

21 REASONABLY REFLECT THE DESIGN, TESTING, AND

22 MANUFACTURE OF TURBINOL 53.

23 WHAT WE DID NOT DO WAS CONDUCT A

24 SEARCH OF FILES OF ALL CUSTOMERS OTHER THAN TEXAS

25 EASTERN WHO MAY HAVE PURCHASED THE PRODUCT, TO

1 DETERMINE WHETHER THERE WERE ANY SPECIFIC
2 DOCUMENTS RELATED TO THOSE CUSTOMERS THAT MAY
3 FALL WITHIN A BROAD READING OF NO. 10.

4 Q. DID YOU DISCOVER ANY DOCUMENTS THAT
5 RELATED TO THE DESIGN, TESTING, AND MANUFACTURE
6 OF THOSE PRODUCTS IN TEXAS EASTERN'S FILES?

7 A. I BELIEVE THERE MAY --

8 I AM GOING TO HAVE TO PASS ON THAT
9 ONE, AND JUST SAY I DON'T KNOW WITHOUT GOING BACK
10 AND EXAMINING THE TEXAS EASTERN RELATED
11 DOCUMENTS. I JUST DON'T HAVE AN ANSWER TO THAT
12 RIGHT NOW.

13 SOME OF THEM MAY BE CONSTRUED AS
14 RELATING TO PRODUCT DEVELOPMENT.

15 Q. THE PURPOSE OF MY QUESTION IS I AM
16 WONDERING WHETHER, IF THOSE DOCUMENTS EXIST IN
17 OTHER CUSTOMER FILES, WHETHER THEY ARE SEGREGATED
18 INTO DESIGN, TESTING, OR MANUFACTURING FILES.

19 A. I DON'T BELIEVE THAT THERE ARE MANY,
20 IF ANY, FOR THIS REASON: AND THAT IS THAT THIS
21 IS A PRODUCT THAT WAS DEVELOPED AS MUCH BY TEXAS
22 EASTERN AS BY MONSANTO. THE EARLY PHASES OF THE
23 DEVELOPMENT OF THIS PRODUCT ARE THE RESULT OF
24 COLLABORATION BETWEEN THOSE TWO COMPANIES.

25 AND IT IS MY BEST INFORMATION AT

1 THIS POINT THAT IN THE DESIGN, DEVELOPMENT, AND
2 EARLY MANUFACTURE STAGES OF THIS PRODUCT IT WAS A
3 ONE-CUSTOMER PRODUCT, AND IT WAS ONLY AFTER ITS
4 USE HAD BEEN WELL IMPLEMENTED AND PROVEN BY TEXAS
5 EASTERN THAT OTHER CUSTOMERS PURCHASED THE
6 PRODUCT.

7 FURTHERMORE, SALES FOR OTHER
8 CUSTOMERS WERE NOT VERY GREAT, AS HIGH AS TEXAS
9 EASTERN WERE.

10 Q. YOU ARE REFERRING TO TURBINOL 153
11 HERE.

12 A. THAT'S CORRECT. BUT OS-81 AND
13 MCS-153 ARE REALLY PREDECESSOR TO TURBINOL 153.

14 Q. BUT WE SPOKE EARLIER OF OTHER
15 TURBINOLS, THAT ARE SEPARATE FROM TURBINOL 153.

16 A. THAT'S CORRECT.

17 Q. AND YOU HAVE NOT PRODUCED DOCUMENTS
18 ABOUT THE DESIGN, TESTING, OR MANUFACTURING OF
19 THOSE PRODUCTS.

20 A. THAT'S CORRECT. OTHER TURBINOLS ARE
21 NOT GAS COMPRESSOR LUBRICANTS.

22 AGAIN, THAT GOES BACK TO THE
23 CONSTRUCTION OF THIS PHRASE, "DESIGN, TESTING,
24 AND MANUFACTURE OF TURBINOL OR OTHER
25 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS." WE

1 ARE RESTRICTING IT ONLY TO PCB GAS COMPRESSOR
2 LUBRICANTS.

3 Q. WE CONTEND THAT THE REQUEST FAIRLY
4 ASKS FOR TURBINOL OR OTHER PCB-CONTAINING GAS
5 COMPRESSOR LUBRICANTS.

6 BUT I THINK THAT MAY BE A MATTER FOR
7 THE COURT TO DECIDE AT A MOTION TO COMPEL.

8 A. FINE.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
10 THE GROUND THEY WERE NOT KEPT BY MONSANTO IN THE
11 REGULAR COURSE OF BUSINESS?

12 A. NOT THAT I AM AWARE OF, NO.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
14 THE GROUND THAT ANY PROTECTIVE ORDER PROHIBITS
15 MONSANTO FROM PRODUCING THOSE DOCUMENTS?

16 A. I WOULD HAVE TO EXAMINE THE EXHIBITS
17 TO DR. HATTON'S DEPOSITION, BUT I THINK THAT THE
18 POSSIBILITY EXISTS THAT INFORMATION IN THOSE
19 DOCUMENTS MAY RELATE TO THESE TOPICS.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
21 ON THE OBJECTION THAT THE TERM "DESIGN" IS OVERLY
22 BROAD, AMBIGUOUS, UNDEFINED, OR CAPABLE OF
23 VARIOUS INTERPRETATIONS?

24 A. NOT THAT I AM AWARE OF.

25 Q. THE SAME QUESTION IN TERMS OF THE

1 TERM "TESTING." DID YOU UNDERSTAND THE TERM?

2 A. NOT THAT WE DIDN'T UNDERSTAND THE
3 TERM "TESTING," NO. WE PRODUCED THE DOCUMENTS AS
4 WE DEFINE THE TERM "TESTING."

5 Q. AND HOW DID YOU DEFINE THE TERM
6 "TESTING"?

7 A. AS SET FORTH IN OUR RESPONSE.

8 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
9 ON THE OBJECTION THAT THE TERM "MANUFACTURE" IS
10 OVERLY BROAD, AMBIGUOUS, UNDEFINED, OR CAPABLE OF
11 VARIOUS INTERPRETATIONS?

12 A. NOT THAT I AM AWARE OF.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
14 THE GROUND THAT THE TERM "TURBINOL OR OTHER
15 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
16 VAGUE?

17 A. NO, MA'AM.

18 Q. THAT IT'S UNDEFINABLE?

19 A. NO.

20 Q. AND AGAIN, JUST TO CONFIRM THAT YOU
21 WILL, ONCE THERE IS A PROTECTIVE ORDER ENTERED,
22 PRODUCE DOCUMENTS THAT RELATE TO THE STANDARD
23 MANUFACTURING PROCESS.

24 A. YES.

25 MS. WELCH: I WOULD LIKE TO TAKE A

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LUNCH BREAK NOW, SO WE ARE OFF THE RECORD.

(AT 12:05 P.M., THE
DEPOSITION OF THOMAS M. BISTLINE
WAS ADJOURNED FOR NOON RECESS.)

///

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1 (AT 1:20 P.M., THE
2 DEPOSITION OF THOMAS M. BISTLINE
3 WAS RECONVENED.)
4
5 MS. WELCH: BACK ON THE RECORD.
6 GOOD AFTERNOON. THIS IS THE
7 RESUMPTION OF THE DEPOSITION AFTER LUNCH.
8
9 EXAMINATION (CONTINUED)
10 BY MS. WELCH:
11 Q. AND OF COURSE, MR. BISTLINE, I DON'T
12 NEED TO REMIND YOU THAT YOU ARE UNDER OATH,
13 SUBJECT TO THE VARIOUS INSTRUCTIONS WE TALKED
14 ABOUT AT THE BEGINNING OF THE DEPOSITION.
15 I WOULD LIKE YOU TO TURN AGAIN TO
16 EXHIBIT 4, AND IN PARTICULAR, ON PAGE 11, TO
17 DOCUMENT REQUEST NO. 11, AND TURN YOUR ATTENTION
18 TO THAT.
19 A. YES.
20 Q. WHERE DID YOU SEARCH FOR THESE
21 DOCUMENTS?
22 A. THE SAME PLACE THAT WE SEARCHED FOR
23 THE OTHER DOCUMENTS, OUR PCB ARCHIVES.
24 Q. ARE THERE PARTICULAR FILES THAT
25 CONTAIN THESE DOCUMENTS?

1 A. THE ONE REQUESTED IN NO. 11?

2 Q. YES.

3 A. WE HAVE FILES THAT CONTAIN
4 PROMOTIONAL, ADVERTISING LITERATURE, MARKETING
5 PLANS, AND LIKE INFORMATION, YES.

6 Q. DID YOU EXCLUDE DOCUMENTS ABOUT THE
7 SALE OF TURBINOL TO OTHER CUSTOMERS?

8 A. YES.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
10 ON ATTORNEY-CLIENT PRIVILEGE?

11 A. NOT THAT I AM AWARE OF, MISS WELCH.

12 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
13 ON THE ASSERTION THEY WERE NOT RELEVANT, OTHER
14 THAN SALES TO OTHER CUSTOMERS?

15 A. AGAIN, OUR PRODUCTION WAS GEARED TO
16 THE PRODUCTS NAMED IN THE RESPONSE, THAT IS,
17 OS-81, MCS-153, TURBINOL 153, AND PYDRAUL AC. IT
18 IS THOSE DOCUMENTS THAT WERE PRODUCED.

19 SO TO THE EXTENT OF OTHER TURBINOL
20 PRODUCTS, YES, THEY ARE EXCLUDED, AS WELL.

21 Q. HOW ABOUT TURBINOL 153 AS THEY WERE
22 SOLD TO OTHER CUSTOMERS, WERE THOSE ALSO
23 EXCLUDED?

24 A. INFORMATION RELATING TO SALES OF
25 THAT PRODUCT TO OTHER CUSTOMERS WAS EXCLUDED,

1 YES.

2 Q. HOW ABOUT PYDRAUL AC?

3 A. YES, THAT WAS ALSO EXCLUDED.

4 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
5 THE BASIS THAT THERE WAS NO PROTECTIVE ORDER?

6 A. THERE WAS NOT IN RESPONSE TO THIS
7 REQUEST -- WELL, LET ME TAKE THAT BACK.

8 SUBJECT -- AGAIN, LOOKING AT THOSE
9 DOCUMENTS THAT ARE COVERED BY THE TEXAS DISTRICT
10 LITIGATION PROTECTIVE ORDER, I DON'T CLEARLY
11 CONTEND ALL DOCUMENTS.

12 SOME MAY RELATE TO, IN A BROAD
13 SENSE, MARKETING, TO THE EXTENT THAT THAT WOULD
14 ENCOMPASS DISCUSSIONS BETWEEN TEXAS EASTERN AND
15 MONSANTO WITH RESPECT TO TURBINOL 153.

16 Q. ANY OTHER DOCUMENTS THAT WOULD HAVE
17 BEEN WITHHELD BECAUSE OF THE PROTECTIVE ORDER?

18 A. NOT THAT I AM AWARE OF, NO.

19 Q. I THINK WHAT I WAS REFERRING TO IN
20 MY QUESTION IS A PROTECTIVE ORDER THAT MIGHT BE
21 ENTERED IN THIS CASE.

22 DID YOU WITHHOLD ANY DOCUMENTS ON
23 THAT BASIS?

24 A. I DON'T THINK. MY RECOLLECTION IS
25 THAT THERE WERE NO COMMERCIALY SENSITIVE

1 DOCUMENTS OR PROPRIETORY DOCUMENTS THAT WE WISHED
2 TO HAVE A PROTECTIVE ORDER FOR.

3 Q. DID YOU WITHHOLD ANY DOCUMENTS
4 RESPONSIVE TO THE REQUEST BECAUSE THEY WERE IN
5 THE PUBLIC DOMAIN?

6 A. NO.

7 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
8 THE BASIS THEY WERE CREATED AFTER 1977?

9 A. NO.

10 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
11 MIGHT HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO
12 THIS REQUEST?

13 A. NO, I AM NOT.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
15 RELATED TO PRODUCTS OTHER THAN OS-81, MCS-153,
16 TURBINOL 153, OR PYDRAUL AC?

17 A. I THINK I RELATED TO YOU THAT WE DID
18 NOT PRODUCE DOCUMENTS FOR TURBINOL PRODUCTS OTHER
19 THAN TURBINOL 153.

20 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY?

21 A. NO, MA'AM.

22 Q. HAVE THOSE DOCUMENTS BEEN PRODUCED
23 IN OTHER LITIGATION PERTAINING TO OTHER
24 TURBINOLS?

25 A. THEY MAY HAVE BEEN. I'D HAVE TO

1 REVIEW, LOOK BACK AT THAT FILE.

2 Q. DO YOU HAVE A SPECIFIC RECOLLECTION
3 OF WHAT LITIGATION?

4 A. POSSIBLY THE PAOLI LITIGATION.

5 Q. ANY OTHER LITIGATION?

6 A. I'D HAVE TO CHECK MY FILE AND BE
7 SURE.

8 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
9 THE GROUND THAT THE TERM "TURBINOL OR OTHER
10 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
11 VAGUE AND AMBIGUOUS?

12 A. NO.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
14 THE GROUND THAT THEY SEEK INFORMATION ABOUT OTHER
15 CUSTOMERS?

16 A. WE DID NOT PRODUCE DOCUMENTS
17 RELATING TO SALES OF ANY OF THESE PRODUCTS TO
18 OTHER CUSTOMERS, OTHER THAN TEXAS EASTERN AND
19 TRANSWESTERN.

20 AND WE PRODUCED EVERYTHING WE HAD ON
21 THE OTHER -- TO THE OTHER ENTITIES WHICH WERE
22 NAMED IN THESE DISCOVERY REQUESTS, SO I DON'T
23 BELIEVE WE WITHHELD ANY INFORMATION.

24 Q. BY "ENTITIES" ARE YOU REFERRING TO
25 INFORMATION RELATING TO THOSE ENTITIES?

1 A. IF I MAY LOOK BACK.
2 SOUTHERN CALIFORNIA GAS, PACIFIC
3 LIGHTING AND GAS SUPPLY COMPANY, PACIFIC LIGHT
4 AND SERVICE COMPANY. TO THE EXTENT THAT WE HAD
5 INFORMATION WITH RESPECT TO THOSE ENTITIES, IT
6 HAS BEEN PRODUCED.
7 Q. AND DID YOU WITHHOLD THE DOCUMENTS
8 THAT RELATED TO OTHER CUSTOMERS ON THE GROUND OF
9 RELEVANCY?
10 A. YES, MA'AM.
11 Q. AND WHAT WAS YOUR DETERMINATION
12 ABOUT THEIR RELEVANCY?
13 A. THAT THEY WERE NOT RELEVANT.
14 Q. WHY WERE THEY NOT RELEVANT?
15 A. BECAUSE THIS MATTER INVOLVES SALES
16 OF PRODUCTS TO TEXAS EASTERN, NOT THOSE OTHER
17 CUSTOMERS.
18 Q. DID YOU MAKE THAT DETERMINATION?
19 A. YES.
20 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
21 THE GROUND THAT THEY WERE NOT KEPT BY MONSANTO IN
22 THE REGULAR COURSE OF BUSINESS?
23 A. NOT THAT I RECALL.
24 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
25 ON THE OBJECTION THAT THE TERM "DESIGN" IS OVERLY

1 BROAD, AMBIGUOUS, UNDEFINED, OR VAGUE?

2 A. I DON'T SEE THE "TERM" DESIGN IN
3 HERE AT ALL.

4 Q. EXCUSE ME. I'M SORRY, YOU'RE
5 CORRECT.

6 I WOULD LIKE YOU TO TURN TO DOCUMENT
7 REQUEST NO. 12.

8 A. YES, MA'AM.

9 Q. WHERE DID YOU SEARCH FOR THESE
10 DOCUMENTS?

11 A. IN THE SAME LOCATION AS ALL THE
12 OTHER REQUESTS.

13 Q. ARE THEY ISOLATED OR SEGREGATED IN
14 ANY PARTICULAR FILES?

15 A. CERTAIN ASPECTS OF THAT WOULD BE.
16 OTHERS WOULD BE SPREAD THROUGHOUT CUSTOMER FILES.

17 Q. AND WHICH CUSTOMER FILES DID YOU
18 LOOK IN?

19 A. WE LOOKED IN CUSTOMER FILES RELATING
20 TO TEXAS EASTERN, TRANSWESTERN.

21 AND AS I SAID BEFORE, ALL OF THE
22 INFORMATION ON THE THREE ENTITIES THAT I RECITED
23 EARLIER, ALL THAT INFORMATION HAS BEEN PRODUCED.

24 Q. DID YOU EXCLUDE SPECIFICALLY
25 TURBINOLS OTHER THAN TURBINOL 153 FROM THIS

1 RESPONSE?

2 A. THAT'S CORRECT.

3 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY

4 OF DOCUMENTS WERE EXCLUDED ON THAT BASIS?

5 A. NO, MA'AM, I DON'T.

6 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED

7 ON THE ATTORNEY-CLIENT PRIVILEGE?

8 A. NO, NOT ON THIS DEMAND.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED

10 ON THE ASSERTION THEY WERE NOT RELEVANT, OTHER

11 THAN AS THEY PERTAIN TO OTHER PRODUCTS OR OTHER

12 CUSTOMERS?

13 A. NO, I THINK THAT COVERS THAT BASIS.

14 Q. SO THE ASSERTION OF IRRELEVANCY,

15 THAT HAS TO DO WITH OTHER CUSTOMERS AND OTHER

16 PRODUCTS.

17 A. YES.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

19 THE BASIS THAT THERE IS NO PROTECTIVE ORDER IN

20 THIS CASE?

21 A. I DON'T BELIEVE SO, NOT ON THIS ONE.

22 Q. DID YOU WITHHOLD ANY DOCUMENTS

23 BECAUSE THEY ARE IN THE PUBLIC DOMAIN?

24 A. NO, MA'AM, NOT ON THIS ONE.

25 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

1 THE BASIS THAT THEY WERE PRODUCED OR CREATED
2 AFTER 1977?

3 A. NO, MA'AM.

4 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
5 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
6 REQUEST?

7 A. NO, MA'AM, I'M NOT.

8 Q. AND JUST TO CONFIRM THAT, YOU DID
9 WITHHOLD DOCUMENTS THAT RELATED TO PRODUCTS OTHER
10 THAN OS-81, MCS-153, TURBINOL 153, OR PYDRAUL
11 AC.

12 A. YES, TO THE EXTENT THAT YOU ARE
13 SEEKING DOCUMENTS RELATED TO OTHER TURBINOLS,
14 THAT'S CORRECT.

15 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
16 THE GROUND THAT THE TERM "TURBINOL OR OTHER
17 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
18 VAGUE AND AMBIGUOUS?

19 A. NO, MA'AM, I DON'T BELIEVE SO.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS IN
21 RESPONSE TO THIS REQUEST ON THE GROUND THAT THEY
22 SEEK INFORMATION ABOUT OTHER CUSTOMERS OR
23 PERSONS, OTHER THAN PLAINTIFF?

24 A. YES.

25 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY

1 OF DOCUMENTS THAT INVOLVES?

2 A. NO, MA'AM, I DON'T, NOT
3 SPECIFICALLY.

4 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
5 THE GROUND THAT IS ASSERTED IN GENERAL OBJECTION
6 NO. 12, WHICH IS THE PROTECTIVE ORDER IN
7 PHILADELPHIA?

8 A. THOSE DOCUMENTS THAT DID NOT RELATE
9 TO TEXAS EASTERN'S USE OF TURBINOL 153, OR
10 MCS-153, OR OS-81.

11 Q. THOSE DOCUMENTS WERE WITHHELD.

12 A. YES. I WAS PREVENTED BY THE
13 PROTECTIVE ORDER FROM PRODUCING THOSE DOCUMENTS.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
15 THE GROUND THAT THOSE WERE NOT KEPT BY MONSANTO
16 IN THE REGULAR COURSE OF BUSINESS?

17 A. NOT THAT I AM AWARE OF.

18 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
19 ON THE OBJECTION THAT THE TERM "USE" IS OVERLY
20 BROAD?

21 A. NO, NOT THAT I AM AWARE OF.

22 AGAIN, WE DEFINED WHAT WE BELIEVED
23 WAS A REASONABLE CONSTITUENT, OUR INTERPRETATION
24 OF THE WORD "USE," AND USED THAT TO DEFINE THE
25 PARAMETERS OF RESPONSIVE DOCUMENTS.

1 Q. AND I SEE BY YOUR DEFINITION THAT
2 YOU EXCLUDED PRODUCTS OTHER THAN OS-81, MCS-153,
3 AND TURBINOL 153 IN YOUR DEFINITION OF "USE"; IS
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
7 THE GROUND THAT THE TERM "TURBINOL OR OTHER
8 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
9 VAGUE?

10 A. I THINK I ALREADY ANSWERED THAT, I
11 BELIEVE. NO.

12 Q. I DON'T THINK YOU ANSWERED IN
13 RESPONSE TO THIS.

14 AND YOU DID WITHHOLD DOCUMENTS
15 RELATING TO OTHER TURBINOLS; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. IN RESPONSE TO THIS.

18 A. THAT'S CORRECT.

19 Q. I WOULD LIKE YOU TO TURN TO DOCUMENT
20 REQUEST NO. 13.

21 A. YES.

22 Q. ALL OF THE FOLLOWING QUESTIONS
23 PERTAIN TO DOCUMENT REQUEST NO. 13.

24 WHERE DID YOU SEARCH FOR THOSE
25 DOCUMENTS?

1 A. MONSANTO PCB DOCUMENT ARCHIVE.

2 Q. AND ARE THERE FILES THAT ARE

3 SEGREGATED, THAT RELATE TO THIS REQUEST?

4 A. THERE ARE FILES WITHIN THE ARCHIVE

5 THAT RELATE TO THIS, YES.

6 Q. CAN YOU JUST TELL ME WHAT THE TITLES

7 OF THOSE FILES WOULD BE.

8 A. I COULD NOT NAME THEM ALL FOR YOU.

9 Q. ARE THERE CUSTOMER FILES?

10 A. THERE MAY BE DOCUMENTS IN SPECIFIC

11 CUSTOMER FILES THAT RELATE TO THIS, YES.

12 Q. ARE THERE FILES THAT ARE LABELED

13 "DISCLOSURES" OR "HAZARDS"?

14 A. I'M NOT SURE WHAT THE LABELS ON THE

15 FILES ARE.

16 Q. ARE THERE FILES THAT ARE SEGREGATED,

17 THAT ARE ACTUALLY RESPONSIVE TO THIS REQUEST? IN

18 OTHER WORDS, THEY JUST CONTAIN DOCUMENTS THAT ARE

19 RESPONSIVE TO THIS REQUEST.

20 A. I DON'T KNOW, I DON'T KNOW THE

21 ANSWER TO THAT.

22 Q. SO WHAT PARTICULAR FILES DID YOU

23 SEARCH FOR THIS REQUEST?

24 A. WE SEARCHED FILES RELATING TO

25 CUSTOMER NOTIFICATIONS, AND PRODUCT LABELING,

1 PRODUCT FILES.

2 Q. AND YOU PRODUCED ALL THOSE
3 DOCUMENTS.

4 A. WE PRODUCED DOCUMENTS THAT WERE
5 RESPONSIVE TO THIS REQUEST.

6 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
7 ON ATTORNEY-CLIENT PRIVILEGE?

8 A. NO, I DON'T BELIEVE SO.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
10 ON THE ASSERTION THEY WERE NOT RELEVANT?

11 A. WE WITHHELD DOCUMENTS WHICH WERE NOT
12 RELATED TO OS-81, MCS-153, AND TURBINOL 153.

13 Q. HOW ABOUT DOCUMENTS --

14 A. AND DOCUMENTS RELATED TO OTHER
15 CUSTOMERS.

16 Q. EVEN IF THEY BOUGHT THOSE PRODUCTS.

17 A. THAT'S CORRECT.

18 Q. AND HOW ABOUT OTHER TURBINOLS, DID
19 YOU WITHHOLD DOCUMENTS ABOUT THOSE?

20 A. I JUST SAID WE WITHHELD DOCUMENTS
21 THAT DID NOT RELATE TO THE THREE PRODUCTS, THAT
22 BEING --

23 Q. YOU MEAN THE ONES YOU ENUMERATED.

24 A. YES.

25 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY

1 OF DOCUMENTS ARE RESPONSIVE TO THIS RESPONSE,
2 THAT YOU WITHHELD?

3 A. AS WE DEFINED THE REQUEST, WE
4 PRODUCED ALL RESPONSIVE DOCUMENTS.

5 Q. THE REQUEST IS FOR DOCUMENTS
6 RELATING TO MONSANTO'S DECISION TO NOTIFY ITS
7 CUSTOMERS IN ABOUT 1972 AND 1972 OF, AND I
8 EMPHASIZE, CERTAIN HAZARDOUS TURBINOLS AND PCB'S.

9 SO THE REQUEST IS NOT DEFINED AS THE
10 WAY YOU DEFINE IT.

11 A. WELL, AS I SAID, AS I DEFINE THE
12 REQUEST, I PRODUCED THE DOCUMENTS THAT WERE
13 RESPONSIVE.

14 Q. BUT YOU EXCLUDED PRODUCTS OTHER THAN
15 THOSE THAT YOU ENUMERATED.

16 A. OTHER THAN THOSE, THAT'S CORRECT.

17 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
18 THE BASIS THAT THERE WAS NO PROTECTIVE ORDER?

19 A. I DON'T BELIEVE SO. ON THIS ONE,
20 NO.

21 Q. DID YOU WITHHOLD ANY DOCUMENTS
22 BECAUSE THEY WERE IN THE PUBLIC DOMAIN?

23 A. NO.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
25 THE BASIS THAT THEY WERE PRODUCED OR CREATED

1 AFTER 1977?

2 A. NO.

3 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
4 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
5 REQUEST?

6 A. NOT THAT I AM AWARE OF, NO, MA'AM.

7 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
8 THE GROUND THAT THE TERM "TURBINOL OR OTHER
9 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
10 VAGUE AND AMBIGUOUS?

11 A. NO, MA'AM.

12 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
13 THE BASIS OF THE PHILADELPHIA PROTECTIVE ORDER?

14 A. TO THE EXTENT THAT THOSE DOCUMENTS
15 REFLECT COMMUNICATIONS BETWEEN MONSANTO AND TEXAS
16 EASTERN ON THE REASONS WHY MONSANTO WAS
17 WITHDRAWING THIS PRODUCT FROM THE MARKET, THEY
18 MAY BE RESPONSIVE AND WOULD HAVE BEEN WITHHELD
19 FROM PRODUCTION BECAUSE OF THAT PROTECTIVE ORDER.

20 Q. AND AGAIN, THOSE RELATE TO THE
21 EXHIBITS TO THE DEPOSITION OF DR. HATTON.

22 A. THAT'S CORRECT.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS OTHER
24 THAN THOSE ON THE GROUND THAT THEY WERE NOT KEPT
25 BY MONSANTO IN THE REGULAR COURSE OF BUSINESS?

1 A. NOT THAT I AM AWARE OF.

2 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
3 ON THE OBJECTION THAT THE TERM "CERTAIN HAZARDS"
4 IS ARGUMENTATIVE?

5 A. NO, MA'AM.

6 Q. THAT THE TERM IS VAGUE?

7 A. I DON'T RECALL ANY DOCUMENTS THAT
8 WERE EXCLUDED ON THAT BASIS.

9 Q. ON ANY BASIS OF CONFUSION ABOUT THE
10 WORDS "CERTAIN HAZARDS."

11 A. NO, NOT THE WAY WE HAVE DEFINED OUR
12 RESPONSE.

13 Q. I WOULD LIKE YOU TO TURN TO REQUEST
14 NO. 14.

15 A. YES, MA'AM.

16 Q. WHERE DID YOU SEARCH FOR THOSE
17 DOCUMENTS?

18 A. IN THE SAME PLACE, THE MONSANTO PCB
19 ARCHIVE.

20 Q. ARE THERE CERTAIN FILES WITHIN THOSE
21 ARCHIVES THAT PARTICULARLY HOLD DOCUMENTS THAT
22 ARE RESPONSIVE TO THIS REQUEST?

23 A. I WOULD LOOK IN THE FILES RELATING
24 ~~TO~~ TOXICOLOGY, INDUSTRIAL HYGIENE, ANY FILES OF
25 COMPLAINTS OR QUESTIONS FROM CUSTOMERS.

1 Q. ANY OTHER FILES?

2 A. RESEARCH FILES, POSSIBLY THE SPM'S

3 CONTAIN SOME INFORMATION ON TOXICITY AND SAFELY

4 HANDLING.

5 Q. AND THAT'S THE STANDARD PROCESS

6 MANUAL.

7 A. OF COURSE THE LABELS, BULLETINS, AND

8 BROCHURES, PRODUCT LITERATURE CONTAIN INFORMATION

9 ON THIS, AS WELL.

10 Q. DO WE HAVE THOSE DOCUMENTS?

11 A. YOU HAVE LABELS, BULLETINS AND

12 BROCHURES RELATING TO PRODUCTS THAT WERE SOLD TO

13 TEXAS EASTERN.

14 Q. AND THAT'S HOW YOU LIMITED THIS

15 REQUEST, JUST BY THE PRODUCTS THAT WERE SOLD TO

16 TEXAS EASTERN.

17 MR. PREUSS: AND TRANSWESTERN.

18 THE WITNESS: AND TRANSWESTERN.

19 BY MS. WELCH:

20 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED

21 ON THE ATTORNEY-CLIENT PRIVILEGE?

22 A. NO, MA'AM.

23 Q. SO YOU WITHHELD DOCUMENTS BASED ON

24 THE ASSERTION THE DOCUMENTS WERE NOT RELEVANT.

25 A. THAT'S CORRECT.

1 Q. IF THEY PERTAIN TO PCB-CONTAINING
2 PRODUCTS THAT REFLECT ON HUMAN, ANIMAL, OR
3 AQUATIC HEALTH HAZARDS, BUT NOT PRODUCTS THAT
4 WERE SOLD TO TRANSWESTERN.

5 A. WELL, I WOULD ARGUE WITH THE WORD
6 "HAZARDS."

7 BUT GENERALLY, INFORMATION RELATING
8 TO TOXICITY, AND SAFELY HANDLING, AND THINGS OF
9 THAT NATURE, WITH RESPECT TO OTHER PCB PRODUCTS,
10 WERE NOT PRODUCED.

11 Q. AND THE GROUND WAS THEY ARE JUST NOT
12 RELEVANT TO THIS LITIGATION.

13 A. THAT'S CORRECT, BECAUSE PCB'S ARE
14 NOT ALL ONE SUBSTANCE. THEY ARE A FAMILY OF
15 PRODUCTS -- OF SUBSTANCES AND OF PRODUCTS.

16 THIS IS A DIFFERENT
17 CHARACTERIZATION, AND WE PRODUCED WHAT WAS
18 RELEVANT TO THE PRODUCTS THAT WE SOLD TO TEXAS
19 EASTERN AND TRANSWESTERN.

20 Q. AND YOU MAINTAIN THAT THOSE
21 DOCUMENTS ABOUT RESEARCH INTO HAZARDS TO HUMAN,
22 ANIMAL, OR AQUATIC HEALTH THAT ARE ASSOCIATED
23 WITH PCB'S --

24 A. OTHER THAN WHAT WAS SOLD TO TEXAS
25 EASTERN AND TRANSWESTERN.

1 Q. -- ARE SIMPLY NOT RELEVANT.

2 A. THAT'S CORRECT.

3 Q. DO YOU HAVE ANY IDEA WHAT QUANTITY

4 OF DOCUMENTS WE ARE TALKING ABOUT?

5 A. A LARGE QUANTITY, POTENTIALLY

6 HUNDREDS OF THOUSANDS OF PAGES.

7 Q. AND WHAT ARE THE DATES OF THOSE

8 DOCUMENTS?

9 A. IT WOULD BE IMPOSSIBLE FOR ME TO

10 RECALL THOSE DATES FOR YOU.

11 Q. DO YOU HAVE ANY IDEA WHAT THE

12 EARLIEST DATES OF THE DOCUMENTS ARE?

13 A. THERE MAY BE SOME DOCUMENTS THAT

14 DATE FROM THE 1930'S. WE HAD INFORMATION

15 RELATING TO PCB PRODUCTS, THE TOXICITY AND SAFELY

16 HANDLING OF PCB PRODUCTS, FROM THE TIME WE BEGAN

17 SELLING THEM IN THE 1930'S.

18 Q. AND WHAT WOULD BE THE MOST RECENT

19 DATE?

20 A. I DON'T KNOW, I DON'T KNOW.

21 Q. ARE THERE DOCUMENTS THAT WERE

22 CREATED AFTER 1977 IN EXISTENCE?

23 A. POSSIBLY.

24 Q. AND DID YOU WITHHOLD ANY DOCUMENTS

25 ON THE BASIS THAT THEY WERE CREATED AFTER 1977?

1 A. NOT IF THEY RELATE TO ONE OF THE
2 PRODUCTS THAT WERE ENUMERATED HERE.

3 Q. THAT WAS MY QUESTION. DID YOU
4 WITHHOLD ANY DOCUMENTS THAT WERE CREATED AFTER
5 1977, IRRESPECTIVE OF PRODUCT.

6 A. I'M AFRAID I DON'T UNDERSTAND YOU.
7 LET ME SAY IT THIS WAY: IF A
8 DOCUMENT RELATED TO OS-81, OR MCS-153, OR
9 TURBINOL 153, OR PYDRAUL AC, THE DOCUMENT WAS
10 PRODUCED, REGARDLESS OF ITS DATE.

11 OTHER DOCUMENTS MAY NOT HAVE BEEN,
12 BECAUSE THEY RELATE TO OTHER PRODUCTS.

13 Q. SO THAT WAS YOUR FIRST CUT.

14 A. THAT'S CORRECT.

15 Q. ONE OF THE GENERAL OBJECTIONS IS
16 THAT YOU WOULD NOT PRODUCE DOCUMENTS THAT WERE
17 CREATED SUBSEQUENT TO 1977; THAT'S WHY I ASKED
18 THAT QUESTION.

19 A. I UNDERSTAND.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
21 THE BASIS THAT THERE WAS NO PROTECTIVE ORDER?

22 A. NO.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS
24 RESPONSIVE TO THIS REQUEST BECAUSE THEY WERE IN
25 THE PUBLIC DOMAIN?

1 A. ALL OF THE SCIENTIFIC PUBLISHED
2 LITERATURE THAT'S RELEVANT TO THESE PRODUCTS AND
3 THEIR COMPONENTS IN THE PUBLIC DOMAIN WAS NOT
4 PRODUCED.

5 Q. DOES MONSANTO HAVE READY ACCESS TO
6 THOSE DOCUMENTS IN ITS ARCHIVES?

7 A. SOME OF THOSE DOCUMENTS PROBABLY.

8 Q. ARE THEY CATALOGUED?

9 A. I DON'T KNOW WHAT YOU MEAN BY
10 "CATALOGUED".

11 Q. ARE THEY ON ANY KIND OF COMPUTER
12 SYSTEM, CATALOGUE, OR INDEX?

13 A. WELL, THEY ARE. IF THEY WERE WITHIN
14 THE ARCHIVE, INFORMATION CONCERNING THOSE
15 DOCUMENTS IS AVAILABLE IN OUR COMPUTER LITIGATION
16 SUPPORT SYSTEM.

17 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
18 WERE DISCARDED, THAT ARE RESPONSIVE TO THIS
19 REQUEST?

20 A. NO, I AM NOT.

21 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
22 THE BASIS THAT THE TERM "TURBINOL OR OTHER
23 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
24 VAGUE AND AMBIGUOUS?

25 A. NO, MA'AM.

1 Q. AND YOU DID WITHHOLD DOCUMENTS ON
2 THE GROUND THAT THEY SEEK INFORMATION ABOUT
3 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF.

4 A. THAT'S CORRECT.

5 Q. DO ANY OF THESE DOCUMENTS RELATE TO
6 THE PROTECTIVE ORDER THAT WAS ENTERED IN
7 PHILADELPHIA?

8 A. I DON'T BELIEVE SO.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
10 WEREN'T KEPT BY MONSANTO IN THE REGULAR COURSE OF
11 BUSINESS?

12 A. NO.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
14 ARE RESPONSIVE TO THIS REQUEST ON THE GROUND THAT
15 THE REQUEST IS OVERBROAD?

16 A. YES.

17 Q. WHAT IS THE OVERBREADTH OF THIS
18 REQUEST?

19 A. AS I STATED BEFORE, IN THAT IT SEEKS
20 INFORMATION RELATING TO PRODUCTS OTHER THAN WERE
21 SOLD TO TEXAS EASTERN AND TRANSWESTERN, IT IS, IN
22 MY OPINION, OVERBROAD.

23 Q. HOW IS THE INFORMATION IRRELEVANT?

24 A. AS I STATED BEFORE, PCB'S ARE NOT
25 ONE SUBSTANCE. THEY ARE A FAMILY OF SUBSTANCES

1 AND PRODUCTS WITH DIFFERENT CHARACTERISTICS.

2 Q. HOW IS THIS REQUEST NOT REASONABLY
3 CALCULATED TO LEAD TO DISCOVERABLE EVIDENCE?

4 A. FOR THE SAME REASONS THAT I HAVE
5 ALREADY STATED.

6 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
7 THE GROUND THAT THE TERM "HAZARDS" IS OVERLY
8 BROAD, VAGUE, AMBIGUOUS, UNDEFINED, AND CAPABLE
9 OF VARIOUS INTERPRETATIONS?

10 A. NOT THAT I AM AWARE OF.

11 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
12 THE GROUND THAT THE TERM "AQUATIC HEALTH" IS
13 OVERLY BROAD, VAGUE, AMBIGUOUS, UNDEFINED, AND
14 CAPABLE OF VARIOUS INTERPRETATIONS?

15 A. NO, MA'AM, NOT THAT I AM AWARE OF.

16 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
17 THE GROUND THAT THE TERM "HAZARDS" IS
18 ARGUMENTATIVE?

19 A. NO.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
21 THE GROUND THAT DOCUMENTS RELATED TO HUMAN,
22 ANIMAL, AND/OR AQUATIC HEALTH ARE NOT RELEVANT?

23 A. NOT ON THAT BASIS, NO.

24 Q. ON WHAT BASIS THEN?

25 A. I'M SORRY?

1 Q. SO IN OTHER WORDS, YOU ARE TELLING
2 ME THAT YOU PRODUCED ALL DOCUMENTS THAT RELATED
3 TO HUMAN, ANIMAL, AND/OR AQUATIC HEALTH.

4 A. NO. I HAVE PRODUCED DOCUMENTS
5 RELATED TO HUMAN, ANIMAL, AND/OR AQUATIC HEALTH
6 WITH RESPECT TO THE THREE PRODUCTS.

7 Q. ONLY WITH RESPECT TO THE THREE
8 PRODUCTS, BUT NOT --

9 A. I HAVE ALREADY TOLD YOU THAT.

10 Q. LET'S TURN TO REQUEST NO. 15, AND
11 ALL OF MY QUESTIONS RELATE TO THIS REQUEST.

12 WHERE DID YOU SEARCH FOR THESE
13 DOCUMENTS?

14 A. WITHIN THOSE FILES THAT CONTAIN THE
15 STUDIES CONDUCTED BY OR FOR MONSANTO.

16 Q. SO THERE ARE SPECIFIC SEGREGATED
17 FILES WITH STUDIES.

18 A. THAT CONTAIN MONSANTO SPONSORED
19 TOXICOLOGY STUDIES, YES.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
21 ON THE ATTORNEY-CLIENT PRIVILEGE?

22 A. NO, NOT IN RESPONSE TO THIS DEMAND,
23 NO.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
25 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT

1 RELEVANT?

2 A. YES.

3 ONCE AGAIN, I PRODUCED COPIES OF

4 REPORTS OF TOXICOLOGICAL STUDIES CONDUCTED FOR

5 MONSANTO ON THREE PRODUCTS, TURBINOL 153, PYDRAUL

6 AC, AND THE AROCLORS WHICH ARE THE PCB

7 CONSTITUENTS OF THOSE PRODUCTS.

8 Q. ARE THERE TOXICOLOGICAL STUDIES THAT

9 RELATE TO OTHER PCB PRODUCTS, THAT YOU WITHHELD?

10 A. YES, MA'AM.

11 Q. AND WHAT IS THE QUANTITY OF THOSE

12 DOCUMENTS?

13 A. SEVERAL THOUSAND PAGES.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

15 THE BASIS THAT THERE IS NO PROTECTIVE ORDER?

16 A. NO.

17 Q. DID YOU WITHHOLD ANY DOCUMENTS

18 BECAUSE THEY ARE IN THE PUBLIC DOMAIN?

19 A. NO, NO.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

21 THE BASIS THAT THEY WERE PRODUCED OR CREATED

22 AFTER 1977?

23 A. NO.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS ON

25 THE GROUND THAT THE TERM "TURBINOL OR OTHER

1 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
2 VAGUE AND AMBIGUOUS?

3 A. NO.

4 Q. AND YOU DID RESTRICT THE PRODUCTION
5 TO THE PRODUCTS THAT YOU HAVE MENTIONED; IS THAT
6 CORRECT?

7 A. THAT IS CORRECT.

8 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
9 SEEK INFORMATION ABOUT OTHER CUSTOMERS OR
10 PERSONS, OTHER THAN PLAINTIFF?

11 A. I DON'T UNDERSTAND THAT.

12 MR. PREUSS: OTHER THAN TEXAS
13 EASTERN?

14 MS. WELCH: THAT'S RIGHT, AND
15 TRANSWESTERN.

16 THE WITNESS: I DID NOT CONDUCT A
17 SEARCH OF FILES RELATING TO CUSTOMERS OTHER THAN
18 TEXAS EASTERN, OR TRANSWESTERN, OR THE OTHER
19 ENTITIES THAT WERE EARLIER NAMED.

20 I DID PRODUCE ALL INFORMATION
21 CONCERNING THE THREE PRODUCTS THAT I MENTIONED,
22 IRRESPECTIVE OF THE CUSTOMER SOURCE OF THE
23 INFORMATION.

24 — IF ANOTHER CUSTOMER WAS MENTIONED,
25 THE NAME OF THAT CUSTOMER WAS REDACTED.

1 BY MS. WELCH:

2 Q. AS LONG AS IT WAS IN THE FILES THAT
3 WE TALKED ABOUT, THE TOXICOLOGY FILES.

4 A. WELL, ANY HEALTH INFORMATION, HEALTH
5 RELATED INFORMATION, ON ANY OF THESE PRODUCTS
6 WOULD HAVE BEEN CONTAINED WITHIN THE PRODUCT
7 FILES, REGARDLESS OF CUSTOMER ORIGIN OF THE
8 INFORMATION.

9 THAT INFORMATION ON THESE PRODUCTS
10 WAS PRODUCED, IF WE HAD IT.

11 Q. DO YOU HAVE FILES IN THE ARCHIVES OF
12 TURBINOL PRODUCTS, OR ARE THEY ISOLATED BY THE
13 SPECIFIC TURBINOL PRODUCT?

14 A. I'M NOT SURE PRECISELY HOW THEY ARE
15 KEPT.

16 Q. IS THERE ANYBODY WHO WOULD KNOW
17 THAT?

18 A. WELL, WE COULD DETERMINE THAT JUST
19 BY LOOKING AT THE FILE.

20 Q. DID YOU WITHHOLD ANY DOCUMENTS UNDER
21 THE PROTECTIVE ORDER, SPECIFICALLY THE
22 PHILADELPHIA PROTECTIVE ORDER, PROHIBITING YOU
23 FROM DISCLOSING THE DOCUMENTS?

24 A. NO.

25 Q. HOW ABOUT DID YOU WITHHOLD ANY

1 DOCUMENTS THAT WERE NOT KEPT BY MONSANTO IN THE
2 REGULAR COURSE OF BUSINESS?

3 A. NO.

4 LET ME JUST SAY ONE MORE THING. I
5 SAID EARLIER THAT I DID NOT -- OR THAT WE DID NOT
6 DECLINE PRODUCTION OF DOCUMENTS ON THE BASIS OF
7 PUBLIC DOMAIN.

8 TO THE EXTENT THAT YOU INTERPRET
9 NO. 15 AS CALLING FOR SCIENTIFIC LITERATURE
10 PUBLISHED IN THE GENERALLY AVAILABLE SCIENTIFIC
11 LITERATURE, I DID NOT HAVE DOCUMENTS OF THAT TYPE
12 PRODUCED HERE.

13 I READ THIS DEMAND AS FOCUSING ON
14 STUDIES CONDUCTED BY MONSANTO OR OTHERS FOR
15 MONSANTO.

16 Q. FOR MONSANTO?

17 A. FOR MONSANTO.

18 SO IN OTHER WORDS, IF, FOR EXAMPLE,
19 A GOVERNMENT OR OTHER TOXICOLOGY LAB CONDUCTED ON
20 ITS OWN A TOXICOLOGY STUDY OF ONE OF THE
21 AROCLORS, THE COMPONENTS OF OS-81 AND MCS-153,
22 AND THAT STUDY APPEARED IN THE PUBLISHED
23 LITERATURE, IT WOULD NOT HAVE BEEN PRODUCED
24 HERE.

25 I PRODUCED HERE THE STUDIES WHICH

1 MONSANTO WAS CONNECTED WITH.

2 Q. SO YOU ARE SAYING A FAIR READING OF
3 THE REQUEST IS "ALL DOCUMENTS," ET CETERA,
4 "CONDUCTED BY MONSANTO OR OTHERS," YOU INTERPRET
5 THAT TO BE MONSANTO OR OTHERS AT MONSANTO'S
6 REQUEST.

7 A. RIGHT.

8 Q. AND DO YOU HAVE IN THE ARCHIVES IN
9 ST. LOUIS OTHER DOCUMENTS THAT ARE AVAILABLE IN
10 THE PUBLIC DOMAIN, THAT YOU DIDN'T PRODUCE IN
11 RESPONSE?

12 A. I'M NOT SURE I FOLLOW THAT.

13 IF A DOCUMENT APPEARS IN THE
14 SCIENTIFIC LITERATURE, GENERALLY AVAILABLE IN THE
15 SCIENTIFIC LITERATURE, AS A GENERAL MATTER, WE
16 DID NOT RESPOND TO ANY DEMAND HERE.

17 Q. DESPITE THE FACT THAT IT IS SITTING
18 IN THE ARCHIVES IN ST. LOUIS.

19 A. WELL, A GREAT MANY DOCUMENTS ARE
20 SITTING IN THE ARCHIVES IN ST. LOUIS, YES.

21 Q. IN OTHER WORDS, I AM NOT ASKING
22 WHETHER YOU SEARCHED THE SCIENTIFIC LITERATURE
23 THROUGHOUT THE UNITED STATES. I AM SIMPLY ASKING
24 ABOUT THOSE DOCUMENTS IN YOUR CUSTODY,
25 POSSESSION, OR CONTROL IN ST. LOUIS.

1 A. RIGHT.

2 Q. AND THE QUESTION IS, DID YOU
3 WITHHOLD DOCUMENTS THAT ARE IN ST. LOUIS ON THE
4 BASIS THAT THOSE DOCUMENTS ARE IN THE PUBLIC
5 DOMAIN.

6 A. THAT'S CORRECT.

7 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
8 ON THE OBJECTION THAT THIS REQUEST IS OVERBROAD?

9 A. YES, MA'AM.

10 Q. AND HOW IS THIS REQUEST OVERBROAD?

11 A. TO THE EXTENT THAT IT RELATES TO OR
12 SEEKS INFORMATION RELATING TO PRODUCTS OTHER THAN
13 OS-81, MCS-153, TURBINOL 153, PYDRAUL AC, AND THE
14 AROCLORS CONTAINED IN THOSE PRODUCTS, IT IS
15 OVERBROAD SINCE THOSE SUBSTANCES WERE NOT SOLD TO
16 TEXAS EASTERN OR TRANSWESTERN.

17 Q. SO AGAIN, ON THE BASIS OF LIMITING
18 IT TO CUSTOMERS AND PRODUCTS; THAT'S THE GROUND.

19 A. WELL, WE LIMITED IT TO PRODUCT.

20 IF YOU WILL RECALL, I HAVE ADVISED
21 YOU THAT WE PRODUCED INFORMATION RELATING TO
22 THESE PRODUCTS, THAT MAY HAVE HAD ITS GENESIS
23 WITH CUSTOMERS OTHER THAN TEXAS EASTERN OR
24 TRANSWESTERN, ALTHOUGH I PROBABLY DID HAVE
25 REDACTED THE NAMES OF THOSE CUSTOMERS.

1 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
2 THE GROUND THAT THE TERM "HAZARDS" IS OVERLY
3 BROAD, VAGUE, AMBIGUOUS, UNDEFINED, OR CAPABLE OF
4 VARIOUS INTERPRETATIONS?
5 A. NOT THAT I AM AWARE OF.
6 Q. HOW ABOUT THE TERM "AQUATIC HEALTH"?
7 A. I AM NOT SURE WE HAD ANY AQUATIC
8 STUDIES DONE. BUT IF WE DID, WE PRODUCED THEM.
9 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
10 THE GROUND THAT THE TERM "HAZARDS" IS
11 ARGUMENTATIVE?
12 A. NOT THAT I AM AWARE OF.
13 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
14 RELATED TO HUMAN, ANIMAL, AND/OR AQUATIC HEALTH
15 AS NOT RELEVANT?
16 A. NO, MA'AM.
17 Q. AND AGAIN, YOUR INITIAL CUT WAS ON
18 THE BASIS OF PRODUCT.
19 A. THAT'S CORRECT.
20 Q. SO THE DOCUMENTS THAT YOU PRODUCED
21 IN RESPONSE TO THIS REQUEST, AS IN YOUR RESPONSES
22 TO ALL OTHER REQUESTS, ARE LIMITED BY PRODUCT.
23 A. THAT'S CORRECT.
24 Q. AND THEN BY CUSTOMER.
25 A. AS APPROPRIATE.

1 Q. TURN TO REQUEST NO. 16, AND ALL THE
2 FOLLOWING QUESTIONS PERTAIN TO REQUEST NO. 16.

3 A. UM-HUM.

4 Q. WHERE WITHIN THE ST. LOUIS ARCHIVES
5 DID YOU SEARCH FOR THESE FILES?

6 A. WE LOOKED IN THE PRODUCT FILES FOR
7 MCS -- EXCUSE ME, FOR TURBINOL 153, OS-81, AS
8 WELL AS TEXAS EASTERN, TRANSWESTERN, AND THE
9 OTHER THREE COMPANIES WHOSE NAMES I'D HAVE TO GO
10 BACK AND READ RIGHT NOW, THE ONES EARLIER
11 REFERRED TO.

12 Q. SOCAL --

13 A. SOCALGAS, PACIFIC LIGHTING SERVICE
14 COMPANY, AND PACIFIC GAS SUPPLY COMPANY, TO THE
15 EXTENT WE HAD INFORMATION ON ANY OF THOSE.

16 Q. DO ANY OTHER DOCUMENTS EXIST THAT
17 RELATE TO THE OPERATION OF NATURAL GAS PIPELINES
18 AND NATURAL GAS COMPRESSORS, AS TO IN ANY OTHER
19 CUSTOMER?

20 A. NOT THAT I AM AWARE OF.

21 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
22 ON ATTORNEY-CLIENT PRIVILEGE?

23 A. NO, MA'AM.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
25 ON THE ASSERTION THAT THE DOCUMENTS WERE NOT

1 RELEVANT?

2 A. WELL, I DID NOT CONDUCT A SEARCH OF
3 MY ENTIRE ARCHIVE TO DETERMINE WHETHER SOMEWHERE
4 WE MIGHT HAVE SOME GAS COMPRESSOR, OTHER THAN THE
5 AREAS I HAVE ADVISED YOU.

6 Q. TO YOUR KNOWLEDGE --

7 A. THOSE WERE THE MOST LIKELY AREAS.

8 Q. TO YOUR KNOWLEDGE, ARE THERE ANY
9 OTHER AREAS WHERE THERE MIGHT BE INFORMATION
10 PERTAINING TO THIS SUBJECT?

11 A. IT IS POSSIBLE, ALTHOUGH I DON'T
12 KNOW HOW PROBABLE IT IS, BUT IT'S POSSIBLE. IT'S
13 A THEORETICAL MATTER THAT THERE MIGHT BE SOME
14 INFORMATION IN INDIVIDUAL CUSTOMER FILES.

15 Q. CAN YOU NAME WHICH CUSTOMERS THOSE
16 ARE.

17 A. NOT OFFHAND.

18 Q. ARE THERE OTHER PIPELINES CUSTOMERS?

19 A. YES.

20 Q. AND MIGHT THAT INFORMATION BE IN THE
21 OTHER PIPELINE CUSTOMER FILES?

22 A. IT'S POSSIBLE, BUT I DON'T KNOW IF
23 IT IS.

24 Q. ABOUT HOW MANY OTHER PIPELINE
25 CUSTOMERS ARE THERE?

1 A. OFFHAND, I COULDN'T TELL YOU. MORE
2 THAN ONE, BUT I DON'T KNOW HOW MANY.

3 Q. IS IT LESS THAN 15?

4 A. I DON'T KNOW.

5 Q. IS IT MORE THAN 50?

6 A. I DOUBT IT, PERSONALLY.

7 Q. SO IT'S BETWEEN ONE AND 25.

8 A. I DON'T KNOW.

9 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
10 ARE RESPONSIVE TO THIS REQUEST ON THE BASIS THAT
11 THERE IS NO PROTECTIVE ORDER?

12 A. NO.

13 Q. DID YOU WITHHOLD ANY DOCUMENTS
14 BECAUSE THOSE DOCUMENTS ARE IN THE PUBLIC DOMAIN?

15 A. NO.

16 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
17 THE BASIS THAT THEY WERE PRODUCED OR CREATED
18 AFTER 1977?

19 A. NO.

20 Q. ARE YOU AWARE OF ANY DOCUMENTS THAT
21 HAVE BEEN DISCARDED, THAT ARE RESPONSIVE TO THIS
22 REQUEST?

23 A. NO, I'M NOT.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS THAT
25 RELATE TO PRODUCTS OTHER THAN OS-81, MCS-153,

1 TURBINOL 153, OR PYDRAUL AC?

2 A. I DID NOT HAVE A SEARCH CONDUCTED OF
3 FILES RELATING TO THOSE PRODUCTS, TO DETERMINE
4 ~~WHETHER~~ INFORMATION RELATING TO THE OPERATION OF
5 NATURAL GAS PIPELINES AND GAS COMPRESSORS EXISTED
6 IN THOSE FILES.

7 IT WOULD BE VERY SURPRISING TO ME IF
8 THAT INFORMATION DID EXIST IN OTHER PRODUCT
9 FILES, HOWEVER.

10 Q. SO IN OTHER WORDS, YOU DON'T BELIEVE
11 THAT THERE ARE ANY OTHER DOCUMENTS IN OTHER
12 PRODUCT FILES RELATING TO THIS REQUEST.

13 A. I DON'T KNOW WHETHER THERE IS,
14 THAT'S CORRECT.

15 Q. I ASKED IF YOU DID NOT BELIEVE.

16 A. I DON'T BELIEVE -- I DON'T KNOW
17 WHETHER THERE IS. I DON'T BELIEVE IT'S LIKELY
18 THAT THERE IS, THAT THERE MAY BE.

19 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
20 THE GROUND THAT THE TERM "TURBINOL OR OTHER
21 PCB-CONTAINING GAS COMPRESSOR LUBRICANTS" IS
22 VAGUE AND AMBIGUOUS?

23 A. NO, I DID NOT.

24 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
25 THE GROUND THAT THEY SEEK INFORMATION ABOUT OTHER

1 CUSTOMERS OR PERSONS, OTHER THAN PLAINTIFF?

2 A. I DID NOT HAVE A SEARCH CONDUCTED OF
3 OTHER CUSTOMERS FILES, BECAUSE I BELIEVED ANY
4 INFORMATION CONTAINED IN THIS FILES WOULD NOT BE
5 RELEVANT HERE.

6 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
7 THE GROUND THAT THE PHILADELPHIA PROTECTIVE ORDER
8 GOVERNED THESE DOCUMENTS?

9 A. NO.

10 Q. DID YOU WITHHOLD ANY DOCUMENTS ON
11 THE GROUND THAT THEY WERE NOT KEPT BY MONSANTO IN
12 THE REGULAR COURSE OF BUSINESS?

13 A. NO.

14 Q. DID YOU WITHHOLD ANY DOCUMENTS BASED
15 ON THE OBJECTION THAT THIS REQUEST IS OVERBROAD?

16 A. AGAIN, THE SEARCHES WERE FOCUSED IN
17 SPECIFIC AREAS, AND NOT OTHERS.

18 AND TO THAT EXTENT, WE DID NOT
19 SEARCH OTHER CUSTOMER FILES, OTHER PRODUCT FILES
20 IN THAT AREA, BASED UPON OUR CONTENTION THAT TO
21 BE PUT TO SUCH A SEARCH WOULD BE OVERLY BROAD AND
22 UNDULY BURDENSOME.

23 Q. DID YOU WITHHOLD ANY DOCUMENTS
24 BECAUSE PLAINTIFF IS IN A BETTER POSITION TO HAVE
25 THE INFORMATION?

1 A. I'M NOT AWARE OF ANY DOCUMENTS THAT
2 WE HAVE WITHHELD ON THAT BASIS, NO.

3 Q. I WOULD LIKE YOU TO TURN TO REQUEST
4 NO. 17.

5 WHERE IN THE ST. LOUIS ARCHIVES DID
6 YOU SEARCH FOR THESE DOCUMENTS?

7 A. MY RECOLLECTION IS THAT NO SPECIFIC
8 SEARCH WAS CONDUCTED IN RESPONSE TO THIS REQUEST.

9 Q. DOES THAT MEAN THAT YOU DID NOT
10 PRODUCE ANY DOCUMENTS, SPECIFIC DOCUMENTS?

11 A. I DON'T BELIEVE THERE ARE ANY
12 DOCUMENTS. SOME OF THE DOCUMENTS PRODUCED IN
13 RESPONSE TO OTHER REQUESTS MAY CONTAIN
14 INFORMATION RESPONSIVE TO 17.

15 Q. SO IN OTHER WORDS, THERE ARE NO
16 DOCUMENTS THAT RELATE TO ANY GAS COMPRESSOR
17 LUBRICANT NOT CONTAINING PCB'S.

18 A. NO, I DIDN'T SAY THAT.

19 Q. THERE ARE NO DOCUMENTS RELATING TO
20 THE DEVELOPMENT, DESIGN, TESTING, MANUFACTURE,
21 MARKETING, ADVERTISING, DISTRIBUTION, AND SALE
22 DURING THE RELEVANT PERIOD OF ANY GAS COMPRESSOR
23 LUBRICANT NOT CONTAINING PCB'S.

24 A. I DIDN'T SAY THAT, EITHER.

25 Q. WHY DON'T YOU TELL ME WHAT YOU DID

1 SAY.

2 A. WHAT OUR RESPONSE INDICATES IS THAT
3 WE UNDERTOOK NO SPECIFIC SEARCH FOR DOCUMENTS
4 SPECIFICALLY RESPONSIVE TO THIS DEMAND.

5 HOWEVER, DOCUMENTS PRODUCED IN
6 RESPONSE TO OTHER DEMANDS MAY CONTAIN INFORMATION
7 RESPONSIVE TO 17.

8 Q. WHY DID YOU UNDERTAKE NO SPECIFIC
9 SEARCH FOR DOCUMENTS SPECIFICALLY RESPONSIVE TO
10 THIS DEMAND?

11 A. BECAUSE I FELT IT NOT TO BE
12 RELEVANT.

13 Q. ON WHAT GROUNDS IS IT NOT RELEVANT?

14 A. BECAUSE THIS LITIGATION CONCERNS
15 PRODUCTS THAT WERE SOLD BY MONSANTO TO TEXAS
16 EASTERN AND TRANSWESTERN.

17 Q. DO ANY DOCUMENTS EXIST THAT ARE
18 RESPONSIVE TO THIS REQUEST?

19 A. YES.

20 Q. AND WHAT QUANTITY OF DOCUMENTS ARE
21 THOSE?

22 A. OFFHAND, I DON'T KNOW.

23 Q. TURNING NOW FROM EXHIBIT 4, I HAVE
24 SOME GENERAL QUESTIONS TO ASK YOU. I HAVE A LIST
25 OF PEOPLE, WHO I AM INTERESTED IN FINDING OUT IF

1 THEY STILL WORK AT MONSANTO, OR IF YOU CAN GIVE
2 ME ANY IDEA WHERE THEY ARE.

3 AND IF YOU CAN INDICATE JUST IF THEY
4 STILL WORK AT MONSANTO. AND IF THEY DON'T, IF
5 YOU CAN INDICATE WHERE WE MIGHT FIND WHERE THEY
6 LIVE OR WORK. IF THERE IS ANY HUMAN RESOURCES
7 CENTER AT MONSANTO, OR PENSION PLAN, HEALTH PLAN,
8 WHATEVER.

9 JACK T. GARRETT.

10 A. MR. GARRETT IS NOT CURRENTLY A
11 MONSANTO EMPLOYEE.

12 Q. DO YOU KNOW WHERE WE CAN CONTACT
13 HIM?

14 A. WELL, I WOULD STRENUOUSLY OBJECT TO
15 ANY CONTACTS, OTHER THAN THROUGH MR. PREUSS.

16 Q. WOULD MR. PREUSS BE ABLE TO PROVIDE
17 US WITH INFORMATION ABOUT WHERE MR. GARRETT IS?

18 MR. PREUSS: WELL, LET ME JUST STATE
19 THAT THIS REALLY GOES BEYOND THE SCOPE OF A
20 CUSTODIAN DEPOSITION.

21 IF YOU HAVE SOME REASONABLE GROUND
22 FOR WANTING TO KNOW WHETHER THEY ARE OR AREN'T
23 EMPLOYEES, ET CETERA, YOU CAN GIVE ME A LIST OF
24 THE PEOPLE. IF YOU WANT TO KNOW WHERE THEY ARE,
25 WE CAN GET THAT INFORMATION FOR YOU.

1 MS. WELCH: WELL, MR. BISTLINE IS IN
2 CHARGE OF PCB-RELATED LITIGATION. ALL OF THESE
3 PEOPLE ARE PEOPLE WHO WERE INVOLVED, IN SOME
4 FACET OR IN SOME WAY, WITH THE DEVELOPMENT OR
5 RESEARCH IN TERMS OF PCB, AND HE MIGHT HAVE
6 KNOWLEDGE ABOUT THAT.

7 MR. PREUSS: WELL, HE MAY.

8 BUT THE PURPOSE OF THIS DEPOSITION
9 WAS NOT TO ANSWER THOSE KINDS OF QUESTIONS. IT
10 WAS TO RESPOND AS CUSTODIAN OF RECORDS TO
11 DOCUMENTS PRODUCED; AGREED?

12 MS. WELCH: THAT WAS THE NOTICE OF
13 DEPOSITION.

14 HOWEVER, IF HE COULD JUST INFORM ME
15 WHETHER THESE PEOPLE ARE STILL EMPLOYEES, IT
16 WOULD EXPEDITE THE PROCESS OF DISCOVERY GREATLY.

17 DO YOU HAVE ANY OBJECTION TO THAT,
18 JUST ANSWERING WHETHER THEY ARE STILL EMPLOYEES
19 OR NOT?

20 MR. PREUSS: WELL, I DON'T HAVE ANY
21 OBJECTION TO DOING THAT, PER SE, BUT WITH THE
22 CAVEAT THAT WE HAVE A STRENUOUS OBJECTION TO ANY
23 CONTACTING OF ANY EMPLOYEES.

24 MR. GRANT: THAT'S NOT GOING TO BE
25 DONE. THAT WAS JUST A MISSTATEMENT. NOBODY HERE

1 HAS ANY INTENTION OF CALLING ANYBODY AT MONSANTO
2 DIRECTLY, ANY DEPARTMENT AT MONSANTO, OR ANYBODY
3 ELSE.

4 BY MS. WELCH:

5 Q. SO MR. GARRETT NO LONGER WORKS AT
6 MONSANTO.

7 A. THAT'S CORRECT.

8 Q. ALL RIGHT.

9 HOW ABOUT W.B. PAPAGEORGE?

10 A. MR. PAPAGEORGE IS RETIRED FROM
11 MONSANTO, AS WELL.

12 Q. HOW ABOUT DR. CRADDOCK?

13 A. DR. CRADDOCK IS CURRENTLY EMPLOYED
14 AT MONSANTO.

15 Q. DR. HATTON.

16 A. DR. HATTON IS RETIRED FROM MONSANTO.

17 Q. DR. POGUE, P-O-G-U-E.

18 A. I AM UNCERTAIN. I DON'T KNOW
19 WHETHER HE IS CURRENTLY EMPLOYED OR NOT.

20 Q. C.L. BRADFORD.

21 A. I AM NOT SURE WHETHER HE'S RETIRED
22 OR NOT.

23 Q. CARL L. CLAY.

24 A. I DON'T KNOW.

25 Q. JOHN G. FREDERIKSEN.

1 A. I DON'T KNOW.

2 Q. D.W. STEGEN, S-T-E-G-E-N.

3 A. I DON'T KNOW.

4 Q. T.L. GOSSAGE, G-O-S-S-A-G-E.

5 A. MR. GOSSAGE IS NO LONGER EMPLOYED BY

6 MONSANTO.

7 Q. IS THERE ANY MEANS BY WHICH WE CAN

8 CONTACT THESE PEOPLE AND NOTICE THEM FOR

9 DEPOSITION, THAT YOU ARE AWARE OF?

10 MR. PREUSS: IF YOU HAVE A REQUEST

11 THAT YOU WOULD LIKE TO TAKE UP WITH ME, I WILL

12 MAKE A REASONABLE INQUIRY AND ADVISE YOU AS TO

13 WHETHER THEY CAN BE.

14 MS. WELCH: SOME OF THESE PEOPLE ARE

15 FORMER EMPLOYEES AND MAY NO LONGER BE WITHIN THE

16 CONTROL OF MONSANTO. THAT'S WHY I'M ASKING.

17 THE WITNESS: I ASSUME THAT IF WE

18 ARE GIVEN AN APPROPRIATE REQUEST, WE WOULD

19 PROVIDE YOU WITH LAST-KNOWN ADDRESSES. IT'S

20 STANDARD PRACTICE.

21 MS. WELCH: OFF THE RECORD FOR A

22 MINUTE.

23 (DISCUSSION HELD OFF THE RECORD.)

24 MS. WELCH: BACK ON THE RECORD.

25 Q. YOU TESTIFIED EARLIER THAT YOU WERE

1 IN CHARGE OF PCB-RELATED LITIGATION FOR MONSANTO;
2 IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. COULD YOU GENERATE A LIST OF THE
5 PCB-RELATED LAWSUITS IN WHICH MONSANTO HAS BEEN A
6 PARTY.

7 A. ARE YOU ASKING ME IS IT POSSIBLE?

8 Q. FIRST, IS IT POSSIBLE?

9 A. YES, IT IS POSSIBLE.

10 Q. AND WILL YOU DO THAT.

11 A. NO, MA'AM, NOT WILLINGLY.

12 Q. WHY WOULD YOU NOT DO THAT?

13 A. I DON'T SEE THE RELEVANCE TO THIS
14 MATTER.

15 Q. THE NEXT QUESTION, I WANTED TO REFER
16 BACK TO EXHIBIT 2, THE "BUSINESS WEEK" ARTICLE,
17 AND IN PARTICULAR THE STATEMENT THAT YOU MADE,
18 THAT WE REFERRED TO BEFORE, THAT "WE DISCLOSED
19 WHAT WE KNEW WHEN WE KNEW IT."

20 A. YES, MA'AM.

21 Q. I WOULD LIKE TO ASK YOU IN TERMS OF
22 TEXAS EASTERN OR TRANSWESTERN, WHETHER YOU WERE
23 REFERRING TO CONTACTS WITH THOSE CORPORATIONS, AS
24 WELL, IN THAT STATEMENT?

25 MR. PREUSS: AGAIN, THIS IS BEYOND

1 THE SCOPE OF THIS DEPOSITION.

2 I WILL PERMIT HIM TO ANSWER THAT
3 QUESTION.

4 THE WITNESS: IN GENERAL, MY
5 RESPONSE IS THAT MONSANTO DISCLOSED PUBLICLY IT
6 KNOWLEDGE OF THE SAFE USE OF PCB'S, THAT THERE
7 WERE CONCERNS ABOUT PCB'S, ENVIRONMENTAL CONCERNS
8 WE HAD, BOTH PUBLICLY AND PRIVATELY, IN MATERIAL
9 THAT WAS SUPPLIED WITH THE PRODUCTS, LABELS,
10 TECHNICAL BROCHURES, AND DIRECT COMMUNICATIONS
11 WITH CUSTOMERS, WITH THE GOVERNMENT, WITH ANYBODY
12 WHO ASKED US.

13 BY MS. WELCH:

14 Q. AND DO WE HAVE DOCUMENTS THAT
15 REFLECT DISCLOSURES TO TEXAS EASTERN AND
16 TRANSWESTERN?

17 A. TO THE EXTENT THAT I WAS ABLE TO
18 FIND THEM IN THE FILES THAT WE HAVE, YES.

19 Q. AND MY FINAL QUESTION: HAS MONSANTO
20 EVER, IN CONNECTION WITH ANY LITIGATION, BEEN
21 SUBJECTED TO DISCOVERY SANCTIONS?

22 MR. PREUSS: I WILL OBJECT AS
23 IRRELEVANT.

24 — INSTRUCT YOU NOT TO ANSWER.

25 MS. WELCH: YOUR INSTRUCTION IS ON

1 THE GROUND OF ATTORNEY-CLIENT PRIVILEGE?

2 MR. PREUSS: SURE.

3 MS. WELCH: HOW IS THAT

4 ATTORNEY-CLIENT PRIVILEGE, IF IT'S IN THE PUBLIC
5 DOMAIN.

6 MR. PREUSS: IT'S EASILY AVAILABLE
7 TO YOU. IT'S NOT RELEVANT TO THIS DEPOSITION.

8 MS. WELCH: WELL, YOU CAN'T INSTRUCT
9 ON RELEVANCY.

10 MR. PREUSS: WELL, I HAVE DONE IT.
11 BY MS. WELCH:

12 Q. ARE YOU FAMILIAR WITH THE CASE OF
13 SLAUGHTER VERSUS MONSANTO IN THE TEXAS DISTRICT
14 COURT?

15 A. YES, I AM.

16 Q. ARE YOU FAMILIAR WITH THE FACT THAT
17 DISCOVERY SANCTIONS WERE LEVIED AGAINST MONSANTO
18 IN THAT CASE?

19 A. YES.

20 Q. CAN YOU TELL ME WHAT THE GROUNDS FOR
21 THE DISCOVERY SANCTIONS WERE.

22 A. I WASN'T INVOLVED IN THAT CASE AT
23 THAT TIME, SO IT WOULD JUST BE HEARSAY ON MY
24 PART.

25 Q. WERE YOU IN CHARGE OF THAT

1 LITIGATION?

2 A. NOT AT THAT TIME, NO.

3 Q. IN 1989 YOU WERE NOT IN CHARGE OF
4 THAT LITIGATION?

5 A. NO, MA'AM, I WAS NOT.

6 Q. WHO WAS IN CHARGE OF THAT
7 LITIGATION?

8 A. MR. BERENDT.

9 Q. TO THE EXTENT THAT YOU KNOW, DO YOU
10 KNOW WHY DISCOVERY SANCTIONS WERE LEVIED IN THAT
11 CASE?

12 MR. PREUSS: INSTRUCT YOU NOT TO
13 ANSWER, BASED ON ANY INFORMATION THAT YOU
14 OBTAINED THROUGH ATTORNEY DISCUSSIONS.
15 BY MS. WELCH:

16 Q. ARE YOU AWARE WHETHER IT WAS BECAUSE
17 OF REFUSAL TO PRODUCE RELEVANT INFORMATION,
18 NAMES, OR DOCUMENTS?

19 A. MY UNDERSTANDING IS THAT IT WAS NOT
20 ON THAT BASIS.

21 Q. WHAT IS YOUR UNDERSTANDING?

22 A. MY UNDERSTANDING IS THAT IT WAS
23 BASED UPON CLAIMS THAT THOSE DOCUMENTS WERE NOT
24 PRODUCED; NOT THAT WE REFUSED TO PRODUCE THEM.

25 Q. WHAT IS THE DISTINCTION?

1 A. IN MY MIND, THE DISTINCTION IS THAT
2 WE DIDN'T KNOW ABOUT THOSE DOCUMENTS AT THE TIME
3 THAT THE DISCLOSURE REQUEST WAS MADE. BUT HAD WE
4 KNOWN, WE WOULD HAVE PRODUCED THEM.

5 WHEN WE DISCOVERED THE DOCUMENTS, WE
6 DID PRODUCE THEM.

7 Q. THEN WHY WERE SANCTIONS LEVIED, IF
8 IT WAS AN HONEST ERROR?

9 MR. PREUSS: WELL, OBJECTION. CALLS
10 FOR SPECULATION AS TO WHAT WAS IN THE JUDGE'S
11 MIND THAT ISSUED THE SANCTIONS.
12 BY MS. WELCH:

13 Q. WELL, YOU CAN ANSWER.

14 A. OUR POSITION WAS THAT THE SANCTIONS
15 WERE IMPROPERLY IMPOSED.

16 MS. WELCH: IF WE CAN GO OFF THE
17 RECORD FOR JUST A SECOND.

18 (DISCUSSION HELD OFF THE RECORD.)

19 MS. WELCH: BACK ON THE RECORD.

20 I BELIEVE THAT COMPLETES THE
21 DEPOSITION OF THE CUSTODIAN OF RECORDS.

22 OF COURSE WE RESERVE THE RIGHT TO
23 CONDUCT ANOTHER DEPOSITION AT ANOTHER TIME OF
24 MR. BISTLINE IN ANOTHER CAPACITY.

25 AND THE DEPOSITION IS COMPLETED.

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(WHEREUPON, AT 2:15 P.M.,
THE DEPOSITION OF THOMAS M. BISTLINE
WAS ADJOURNED.)

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I, THOMAS M. BISTLINE, HEREBY
CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS
OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED THIS _____ DAY OF
_____, 1991, AT
_____, CALIFORNIA.

THOMAS M. BISTLINE

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

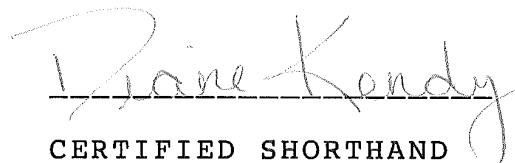
I, DIANE KENDY, C.S.R. NO. 4851, IN AND FOR
THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT, PRIOR TO BEING EXAMINED, THE WITNESS
NAMED IN THE FOREGOING DEPOSITION, TO WIT, THOMAS
M. BISTLINE, WAS BY ME DULY SWORN TO TESTIFY THE
TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH;

THAT SAID DEPOSITION WAS TAKEN DOWN BY ME
IN SHORTHAND AT THE TIME AND PLACE THEREIN NAMED,
AND THEREAFTER REDUCED TO TYPEWRITING UNDER MY
DIRECTION, AND THE SAME IS A TRUE, CORRECT AND
COMPLETE TRANSCRIPT OF SAID PROCEEDINGS;

I FURTHER CERTIFY THAT I AM NOT INTERESTED
IN THE EVENT OF THE ACTION.

WITNESS MY HAND THIS 30 DAY OF
SEPT, 1991.



CERTIFIED SHORTHAND
REPORTER FOR THE
STATE OF CALIFORNIA

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