

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY, PENNSYLVANIA

SAMUEL ALSTON : JANUARY TERM, 1988
VS. :
SEPTA, et al. : NO. 5475

January 4, 1990

Oral deposition of THOMAS M. BISTLINE,

held in the offices of Kohn, Savett, Klein & Graf,
P.C., 2400 One Reading Center, 1101 Market Street,
Philadelphia, Pennsylvania 19107 commencing at 10:15
a.m., on the above date, before Harvey Krauss, a
Registered Professional Reporter and a Notary Public
of the Commonwealth of Pennsylvania.

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- - -

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I N D E X

WITNESS

PAGE NO.

Thomas M. Bistline

By Mr. Kohn

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E X H I B I T S

NO.

DESCRIPTION

PAGE NO.

Exhibit 1

Document

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Exhibit 2

Document

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Exhibit 3

Document

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(It is hereby stipulated and agreed by and among counsel that sealing, filing and certification are waived; and that all objections, except as to the form of questions, be reserved until the time of trial.)

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THOMAS M. BISTLINE, after having been first duly sworn, was examined and testified as follows:

- - -

MR. MALIN: We want the deposition to be read and signed by the witness, and we will assert all objections. No objection is waived.

BY MR. KOHN:

Q. Where do you live?

A. In St. Louis, Missouri.

Q. What is your address?

A. 15182 Isleview Drive.

Q. Where do you work?

A. Monsanto Company.

Q. What position?

A. Litigation counsel.

Bistline

1 Q. How long have you held that position?

2 A. For approximately three years.

3 Q. What position did you hold before that
4 time?

5 A. Assistant litigation counsel.

6 Q. How long have you been employed by
7 Monsanto?

8 A. Almost eight years.

9 Q. You graduated from college in 1975?

10 A. 1970.

11 Q. What college did you graduate?

12 A. Columbia College.

13 Q. And when did you graduate law school?

14 A. 1974.

15 Q. From what institution?

16 A. Columbia University Law School.

17 Q. What was your course of study or degree
18 from Columbia undergraduate?

19 A. A general liberal arts degree, I got.

20 Q. What did you do after you left law
21 school?

22 A. I worked for a year. Do you want me to
23 tell you what I did after I left law school?

24 Q. Right.

Bistline

1 A. I became an associate at the law firm of
2 Simplon, Thatcher and Bartlett in New York City.

3 Q. Did you do any representation of
4 Monsanto during that time period?

5 A. No, sir.

6 Q. What did you do after you left the
7 Simpson firm?

8 A. I went to Monsanto Company.

9 Q. In the position of assistant litigation
10 counsel?

11 A. I believe my title at the time I first
12 joined Monsanto in 1982, was litigation attorney.

13 Q. When did you obtain the title of
14 assistant litigation counsel?

15 A. Approximately, one year after I joined
16 Monsanto.

17 Q. Did that represent a promotion or was
18 that simply a change of name?

19 A. It was a promotion.

20 Q. All right. Did you have any titles in
21 between assistant litigation counsel and litigation
22 counsel?

23 A. No.

24 Q. Does Monsanto have any insurance with

Bistline

1 respect to the claims that are initiated in the
2 Paoli PCB litigation?

3 MR. MALIN: Objection. This
4 deposition is being taken solely in connection with
5 your motion, and as you stated before, Judge
6 Avellino, in order to ascertain whether or not the
7 production of documents that you asked for is
8 burdensome.

9 Accordingly, this question is
10 objectionable. It's not with respect to the ambit
11 of this deposition, which is under Rule 4001 (c).
12 And, therefore, I direct the witness not to answer.

13 MR. KOHN: I know of no such
14 limitation placed on either the Notice of Deposition
15 or any ruling or order of the court. The
16 information is clearly discovery and the question
17 stands. Do you have any --

18 MR. MALIN: I instruct the witness
19 not to answer the question.

20 MR. KOHN: On what ground was that
21 instruction made?

22 MR. MALIN: I've set forth the
23 grounds.

24 BY MR. KOHN:

Bistline

1 Q. What did you do to prepare for your
2 deposition today?

3 A. Well, I came here to Philadelphia and
4 reviewed the deposition notice.

5 Q. You didn't notice any restriction in the
6 notice about the scope of the deposition, did you?

7 A. I reviewed the deposition notice.

8 Q. Did you notice any restriction about the
9 scope of the deposition?

10 A. I believe the notice will state what it
11 states.

12 MR. MALIN: Objection, the notice
13 speaks for itself.

14 MR. KOHN: I'm asking the witness his
15 recollection.

16 A. I defer to the notice for its contents.

17 Q. You have no independent recollection of
18 the contents?

19 A. I couldn't recite it to you, as I sit
20 here, sir.

21 Q. You looked at this notice when?

22 A. Yesterday afternoon.

23 Q. All right. What else did you do to
24 prepare for the deposition today?

Bistline

1 A. I reviewed certain documents that have
2 been filed by Monsanto and by the plaintiffs in
3 connection with this case.

4 Q. All right. Which documents?

5 A. I believe, sir, the motion practice
6 relating to this present deposition.

7 Q. All right. Any other papers that you
8 reviewed, other than the motion papers?

9 A. Not that I can recall, offhand.

10 Q. When did you arrive in Philadelphia in
11 connection with the preparation for the deposition?

12 A. Yesterday.

13 Q. Prior to arriving in Philadelphia, did
14 you do anything to prepare for the deposition today?

15 A. I may have reviewed some files in my
16 office. I can't recall specifically.

17 Q. Did you have any conversations with
18 anyone in connection with preparation for the
19 deposition?

20 A. I spoke to members of my staff before I
21 left my office, yes.

22 Q. Which members of your staff?

23 A. Paralegals who work with me on PCB
24 cases.

Bistline

1 Q. And what are the names of the
2 individuals that you spoke with prior to coming to
3 Philadelphia in connection with preparation for this
4 deposition?

5 A. Miss Josephine Niblock and Miss Margaret
6 Hurley.

7 Q. Any other paralegals at your office that
8 you spoke with prior to the deposition with respect
9 to preparation for the deposition?

10 A. Not that I recall.

11 Q. When did you have the conversation with
12 Miss Niblock?

13 A. Yesterday.

14 Q. And when did you have the conversation
15 with Miss Hurley?

16 A. Prior to the holidays.

17 Q. How long was your conversation with Miss
18 Niblock?

19 A. 15 to 20 minutes.

20 Q. Was anybody else present?

21 A. No.

22 Q. What did you say and what did she say?

23 MR. MALIN: Objection. It's
24 privileged, and I direct the witness not to answer.

Bistline

1 MR. KOHN: What particular privilege
2 are you purporting to assert?

3 MR. MALIN: This is work product.
4 Attorney-client privilege.

5 BY MR. KOHN:

6 Q. Is Miss Niblock your client?

7 A. Miss Niblock is a paralegal who works
8 for me in Monsanto's law department.

9 Q. How long was your conversation with Miss
10 Hurley?

11 A. Approximately the same duration.

12 Q. Was anyone else present when you spoke
13 with her?

14 A. No.

15 Q. And what did you say and what did she
16 say?

17 MR. MALIN: Objection. Direct the
18 witness not to answer on the same grounds.

19 Q. Did you review any documents when you
20 had the conversation with Miss Niblock?

21 A. No.

22 Q. Did you review any documents when you
23 had the conversation with Miss Hurley?

24 A. Yes.

Bistline

1 Q. Which documents did you review during
2 that conversation?

3 A. A memorandum that was prepared by Miss
4 Niblock and Miss Hurley relating to the
5 burdensomeness of responding to the document
6 production requests served by plaintiffs in this
7 matter.

8 Q. Do you recall the date of that
9 memorandum?

10 A. No, sir, I don't.

11 Q. How lengthy a document is it?

12 A. Approximately, two pages. I believe
13 exactly two pages, in fact.

14 Q. Did you rely on the information
15 contained in that memorandum in connection with the
16 filing of the affidavit that you filed in this case
17 with respect to the issue of burden?

18 A. I reviewed that information and
19 discussed it with Miss Niblock earlier and with Miss
20 Hurley, before the holidays.

21 And independently, I verified the
22 contents of the memorandum to satisfy myself that
23 the information was accurate.

24 Q. And did you then, in turn, rely on that

Bistline

1 information in connection with the filing of the
2 affidavit in this case?

3 A. The information, yes. I relied on that
4 information, yes.

5 MR. KOHN: I would request a copy of
6 that memorandum be provided to us at your earliest
7 convenience.

8 MR. MALIN: If you want the
9 memorandum, you'll have to file the appropriate
10 document requests.

11 BY MR. KOHN:

12 Q. All right. Other than the conversations
13 with Miss Niblock, Miss Hurley, and the review of
14 documents yesterday, did you do anything else to
15 prepare for your deposition today?

16 A. Not specifically, no.

17 Q. How about generally?

18 A. Only in the sense, sir, that my work at
19 Monsanto relating to PCB litigation would prepare me
20 for this deposition.

21 Q. How long have you been working with PCB
22 litigation at Monsanto?

23 A. Five years.

24 Q. Can you describe the circumstances under

Bistline

1 which you first became involved with PCB litigation?

2 A. I was asked by my supervisor to assume
3 responsibility for PCB litigation, the management of
4 PCB litigation in January of 1985.

5 Q. Who was your supervisor, at that time?

6 A. Mr. Robert Berendt.

7 Q. And prior to that time, what were your
8 responsibilities?

9 A. I had responsibility for supervising
10 other litigated matters in which Monsanto was
11 involved, but not PCB litigation.

12 Q. Did you receive any instruction from Mr.
13 Berendt with respect to what you were to do in
14 connection with this new responsibility?

15 MR. MALIN: I'll object to that
16 question. That's privileged. Direct the witness
17 not to answer.

18 MR. KOHN: That calls for a yes or
19 no. Did he receive any instruction. I have yet
20 asked for the content communication, if any.

21 MR. MALIN: The objection stands.
22 Internal workings of the legal department is
23 objectionable.

24 BY MR. KOHN:

Bistline

1 Q. Can you define more precisely the
2 responsibility that you have as the supervisor of
3 the PCB litigation?

4 A. It is my responsibility to supervise the
5 activities of outside counsel representing Monsanto
6 in the PCB litigation. To assure that their
7 activities are appropriately directed to defend the
8 company's interests, that they are carried out in a
9 cost effective manner.

10 And that other activities relating to
11 PCB litigation are appropriately focused.

12 Q. What do you mean by other activities
13 related to PCB litigation are appropriately focused?

14 A. I have paralegals, as I have already
15 mentioned, and clerical individuals who work for me,
16 in connection with PCB litigation, and I consult
17 with scientists, both inside and outside of
18 Monsanto, in connection with PCB litigation.

19 Q. Do you have any responsibility with
20 respect to the production of documents in PCB
21 litigation?

22 A. Yes, sir.

23 Q. What area or what responsibilities do
24 you have on that subject?

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1 A. I would describe that responsibility as
2 general supervisory responsibility to assure that
3 the documents that are produced are those that are
4 called for by document requests and that the
5 responses are provided to the demanding party in an
6 appropriate and timely fashion.

7 Q. And have you done that in this case?

8 A. I believe so, yes.

9 Q. How many documents have you given us in
10 this case?

11 MR. MALIN: The record speaks for
12 itself.

13 MR. KOHN: I'm asking the witnesses
14 for his estimate.

15 MR. MALIN: What case are you talking
16 about, Alston?

17 MR. KOHN: Alston, yes.

18 A. That, Mr. Kohn, I don't have that number
19 in precisely. I'd have to defer to Mr. Malin for
20 the precise count. The response was, in my opinion,
21 appropriate to the demand.

22 Q. Would it surprise you if I told you we
23 have received approximately three documents in the
24 Alston case?

Bistline

1 MR. MALIN: I direct you not to
2 answer that question. Objection. I direct you not
3 to answer.

4 MR. KOHN: On what grounds?

5 MR. MALIN: It's not an appropriate
6 question.

7 MR. KOHN: Why don't you just have
8 your partner handle the objections, since he seems
9 to be making all of them initially anyway. We'll
10 move a little faster.

11 BY MR. KOHN:

12 Q. When you say you generally supervised
13 the production of products, whom do you supervise?

14 A. Both outside counsel and members of my
15 staff who are involved in the effort to produce the
16 documents.

17 Q. During the period since you have assumed
18 responsibility for the PCB litigation, can you
19 identify the individuals on your staff who have been
20 involved in the production of documents?

21 A. In all cases, Mr. Kohn?

22 Q. As best you can recall.

23 MR. MALIN: All PCB litigation?

24 MR. KOHN: Yes.

Bistline

1 MR. KOHN: I would request that you
2 not confer with counsel while a question is
3 pending.

4 MR. MALIN: Well --

5 MR. KOHN: Note for the record the
6 conference between the witness and counsel.

7 (Whereupon, a discussion was held off
8 the record.)

9 MR. MALIN: I'm objecting, and I'm
10 directing the witness not to answer because of the
11 inner workings, again, of the law department. It's
12 not relevant to the issue before us in this
13 particular case and on this particular motion.

14 BY MR. KOHN:

15 Q. How many people work for you?

16 A. In overall or just with respect to PCB
17 matters?

18 Q. Let's start with overall and then we'll
19 get to PCB matters.

20 A. Approximately, 20.

21 Q. Some of those people are lawyers and
22 some are non-lawyers?

23 A. No lawyers work directly for me, in the
24 sense of being a Monsanto employee who reports to

Bistline

1 me.

2 Q. So, the 20 people that you were
3 referring to, none of them are lawyers?

4 A. That's correct.

5 Q. And, can you describe the job title or
6 positions that those 20 people hold?

7 MR. MALIN: I'm going to object to
8 that.

9 That, again, goes to the inner
10 workings of the law department and it is not
11 relevant, and can't lead to anything relevant. It
12 is not relevant to this motion. I direct the
13 witness not to answer that question.

14 BY MR. KOHN:

15 Q. Well, do any of these 20 people get
16 involved with production of documents?

17 A. Yes.

18 Q. Do some of them do nothing but work on
19 production of documents?

20 MR. MALIN: I'm going to object to
21 that question. The same objection as the last
22 objection. I direct you not to answer.

23 MR. KOHN: It's very limited.

24 MS. KRAMER: Excuse me, Mr. Kohn, why

Bistline

1 don't you direct yourself to them so that we can get
2 out of here.

3 BY MR. KOHN:

4 Q. How many of those 20 people are
5 paralegals who work on producing documents in PCB
6 litigation?

7 A. Five.

8 Q. And how many of them are clerical or
9 staff people who work on production of documents in
10 PCB cases?

11 A. Thirteen.

12 Q. All right.

13 MR. GOUTMAN: Excuse me.

14 MR. KOHN: You can note another
15 conference.

16 (Whereupon, a discussion was held off
17 the record.)

18 BY MR. KOHN:

19 Q. And do you directly supervise the five
20 paralegals who work on production of documents in
21 PCB cases, or is there an intermediate reporting
22 level between them and you?

23 A. No, they --

24 MR. MALIN: Wait. I think that goes

Bistline

1 to the inner workings of the law department. And I
2 don't think that's an appropriate question. I
3 direct you not to answer.

4 MR. KOHN: Is that the inner workings
5 privilege?

6 MR. MALIN: This is work product.
7 Attorney-client.

8 BY MR. KOHN:

9 Q. And do the 13 staff people report
10 directly to you or do they report to the paralegals
11 or some other individuals?

12 MR. MALIN: Give me a minute.

13 Objection. I direct you not to
14 answer that question.

15 MR. KOHN: And the ground for that
16 objection?

17 MR. MALIN: Same objection.

18 MR. KOHN: And instruction?

19 MR. MALIN: Same objection.

20 BY MR. KOHN:

21 Q. To whom do you currently report?

22 A. Mr. Berendt.

23 Q. And do you know to whom he reports?

24 A. Monsanto's general counsel.

Bistline

1 Q. And, what is the name of the general
2 counsel?

3 A. Mr. Richard W. Duesenberg.

4 Q. Mr. Duesenberg is a member of the board
5 of directors also?

6 A. No, sir, I don't believe he is.

7 Q. Is he considered a member of senior
8 management?

9 A. Yes.

10 MR. MALIN: Excuse me. At this point
11 I would note for the record, if there are any people
12 here who are not representing parties in this
13 litigation. If so, if they would say so for the
14 record, and let us know what their interest in this
15 litigation is or this deposition.

16 I note the presence of Alan
17 Milstein.

18 MR. MILSTEIN: I do not represent
19 anybody in this litigations.

20 MR. MALIN: Your interest is?

21 MR. MILSTEIN: My interest is in
22 hearing what the witness has to say.

23 MR. MALIN: Anyone else?

24 MR. ROSE: Leon Rose. I'm here with

Bistline

1 Al Milstein.

2 MR. MALIN: A member of his firm?

3 MR. ROSE: Yes.

4 MR. MALIN: Sorry for the
5 interruption, but I thought it was necessary.

6 MR. KOHN: No need to apologize.

7 BY MR. KOHN:

8 Q. Have you reported to anyone, other than
9 Mr. Berendt, since you have assumed responsibility
10 over the PCB litigation?

11 A. No.

12 Q. Are there other individuals in the law
13 department that hold a position of the same level as
14 you?

15 MR. MALIN: Wait. Mr. Kohn, you're
16 not dealing with the burdensomeness issue at all.
17 It seems to me that's a very narrow issue.

18 Getting into the question of the
19 workings of the law department appears to be
20 irrelevant, and very far afield, and I'm going to
21 direct the witness not to answer, and I request that
22 you concentrate on the issues that are relevant, and
23 for which this deposition was permitted by Judge
24 Avellino.

Bistline

1 MR. KOHN: Well, I think the
2 staffing, the size, the quality of the people who
3 are involved in gathering and producing the
4 documents goes to the question of whether or not it
5 is burdensome.

6 This witness has made certain factual
7 allegations with respect to burden, and I think
8 we're allowed to probe whether or not this is a one-
9 man operation or whether it's a 100-man or 100
10 person operation. And whether they could borrow on
11 their resources and talents and efforts of other
12 people in the company. Now, that's how it's
13 relevant to burden. You chose to interject an
14 affidavit from the law department, I didn't.

15 MR. MALIN: The degree of
16 burdensomeness, I suggest is, and the number of
17 people that are able to work on it only shows how
18 burdensome it can be. It's a question of how many
19 people have to work on it. That's relevant, and,
20 therefore, I suggest that degree of relevance is
21 such and so tenuated, that the question is
22 objectionable. I direct the witness not to answer
23 it.

24 MR. KOHN: On the grounds of

Bistline

1 relevance?

2 MR. MALIN: And, of course, the inner
3 workings, work product, and attorney-client.

4 BY MR. KOHN:

5 Q. In connection with your work as the
6 supervisor of the PCB litigation, have you ever had
7 occasion to retain outside consultants or firms that
8 specialize or work on litigation support?

9 MR. MALIN: I object to that
10 question. That's utterly irrelevant to any issue
11 that's before us. It certainly has nothing to do
12 with anything that's in that affidavit. I direct
13 the witness not to answer it.

14 BY MR. KOHN:

15 Q. Have you ever used the firms or any of
16 the services of any outside computer firms in
17 connection with producing documents in PCB
18 litigation?

19 MR. MALIN: Well, don't answer the
20 question.

21 MR. KOHN: And the reason for that
22 instruction? Or are you thinking of one?

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

Bistline

1 MR. KOHN: I request that you not
2 confer with the witness during his examination,
3 specifically while a question is pending.

4 Please note the conference over our
5 objection.

6 MR. GOUTMAN: Please do not state
7 comments on the record while we're conferring,
8 because we can't listen to both at the same time.
9 It's a courtesy to us. Thank you.

10 MR. KOHN: If you continue to confer
11 with the witness while the question is pending, we
12 will make whatever comments on the record we deem
13 appropriate.

14 (Whereupon, a discussion was held off
15 the record.)

16 MR. KOHN: Could you read that back.

17 MR. MALIN: The pending question.

18 (Whereupon, the previous portion of
19 the notes of testimony was read by the court
20 reporter.)

21 MR. MALIN: I object to the question
22 on the grounds that it's privileged. It's work
23 product, attorney-client privilege. I direct the
24 witness not to answer that question.

Bistline

1 BY MR. KOHN:

2 Q. Have you ever utilized the services of
3 employees of Monsanto, whether or not employed
4 within the law department, in connection with the
5 production of documents in any PCB litigation?

6 MR. MALIN: Objection. Same
7 objection.

8 BY MR. KOHN:

9 Q. When did you first become aware of any
10 litigation involving Monsanto with respect to the
11 Paoli, Pennsylvania Railroad Yard?

12 A. I don't recall the precise date, Mr.
13 Kohn, but it was at or about the time that Monsanto
14 was served in the first of the Paoli cases.

15 My best recollection at this point is
16 that was some time in 1986, but I'm not positive.

17 Q. Did you assume the supervisory role with
18 respect to that litigation, as you had with other
19 PCB litigation?

20 A. Yes.

21 Q. And can you describe the various
22 activities that you have undertaken with respect to
23 your supervisory role of the Paoli PCB litigation?

24 MR. MALIN: I'm going to object to

Bistline

1 that question. That calls for disclosure of his
2 mental impressions, strategies, et cetera, and
3 that's attorney work product. I direct you not to
4 answer.

5 MR. KOHN: You must have
6 misunderstood the question. I wasn't asking for any
7 mental impressions or strategy. It was simply
8 asking for the functions that you have generally
9 performed with respect to your supervision of the
10 Paoli PCB litigation.

11 MR. MALIN: Well, that calls for
12 disclosure of strategy and the methods of operation
13 that have been selected for defense of our
14 litigation, and it's privileged, and I direct the
15 witness not to answer.

16 BY MR. KOHN:

17 Q. Are you able to answer that question in
18 any manner, without disclosing mental impressions,
19 and legal strategies?

20 MR. MALIN: The witness doesn't have
21 to answer that question.

22 MR. KOHN: Well, I think that will be
23 for another authority to determine whether he has to
24 or has not, if you are instructing him not to

Bistline

1 answer.

2 MR. MALIN: I am instructing him not
3 to answer that question.

4 BY MR. KOHN:

5 Q. Have you done any work with respect to
6 production of documents in connection with the Paoli
7 PCB litigation?

8 MR. MALIN: The witness may answer
9 that question.

10 A. Yes, I have.

11 Q. And do you recall when you first began
12 your work with respect to production of documents in
13 the Paoli PCB litigation?

14 A. At about the time that we received the
15 demand for production of documents from the
16 plaintiffs. I assume, Mr. Kohn, that you are
17 talking about the Alston case here, when you say the
18 Paoli litigation.

19 Q. I meant to refer more generally,
20 including the cases that were initially commenced in
21 the federal courts.

22 A. Oh, okay. Well, then, if you would
23 permit to amend the answer to this.

24 Q. Certainly.

Bistline

1 A. The work that was done to produce
2 documents for the federal cases, again, would have
3 commenced at or about the time that we received the
4 documents demanded there, and as modified by
5 Avellino's order.

6 Q. When you received the document demands
7 in the federal cases, did you or did someone at your
8 behest, attempt to identify the total quantity of
9 documents responsive to those requests?

10 MR. MALIN: My objection to that
11 question as it's phrased is, having been involved in
12 those cases myself, I'm not sure I know what you
13 mean by request. There was more than a request.
14 There were several cases.

15 Therefore, I'm not sure how the
16 witness can or even be capable of answering that
17 question.

18 If the witness has a memory that's
19 far better than mine, I would assume he can attempt
20 to do so, but I don't understand the question.

21 And, I would direct that the witness,
22 if you understand the question and understand what
23 the requests are at issue, at one point in time, you
24 can answer the question, but I am not aware of -- I

Bistline

1 mean, I can't give you any guidance, because counsel
2 has not given us any guidance as to what requests
3 are at issue.

4 A. Quite frankly, that was going to be my
5 question back to you, Mr. Kohn, because there was
6 more than one. There was more than one demand.

7 Q. Did you attempt to identify the total
8 number of documents responsive to any of the demands
9 in the federal litigation?

10 A. Yes.

11 Q. And, did you identify the total number
12 of documents responsive to all of the demands in the
13 federal litigation?

14 A. I don't recall whether we attempted to
15 scoop out the entire document demand.

16 Q. And can you recall how many documents
17 you determined were responsive to the document
18 request in the federal litigation?

19 A. No, sir.

20 MR. MALIN: Just a minute. I direct
21 the witness not to answer.

22 Q. When you received --

23 MR. MALIN: Excuse us, please.

24 MR. KOHN: Excuse me.

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1 (Whereupon, a discussion was held off
2 the record.)

3 MR. KOHN: I'm not sure if there was
4 a question pending or not. If you could read it
5 back.

6 MR. MALIN: Would you read the
7 question back, please.

8 (Whereupon, the previous portion of
9 the notes of testimony was read by the court
10 reporter.)

11 MR. MALIN: I'd like to place on the
12 record the fact that, Mr. Kohn, you have all of the
13 documents that were produced in the federal
14 litigation. Those, obviously, would be those that
15 are responsive and the witness determined were
16 responsive, and any questions beyond that, are both
17 privileged and not within the scope of this
18 deposition. You have those. Those documents are
19 relevant only to the point that you have them, and
20 you have what we say are the documents that are
21 relevant and that needed to be produced in response
22 to your current requests, and that's it, you have
23 them.

24 And, accordingly, I would suggest

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1 that you move onto other areas.

2 MR. KOHN: Well, I agree with you
3 that we have the documents you have produced. Where
4 we part company is that those documents are all the
5 documents that are responsive to the request.

6 And that is what we are endeavoring
7 to find out.

8 MR. MALIN: You are going into the
9 federal litigation, whether or not all the documents
10 are responsive in the federal litigation. I'm going
11 to instruct the witness not to answer all of those
12 questions.

13 BY MR. KOHN:

14 Q. Do you recall receiving a copy of a
15 request for production of documents in the Alston
16 case, that is, the Paoli litigation pending in the
17 Court of Common Pleas of Philadelphia County?

18 A. Yes, sir.

19 Q. And, did you do anything in response to
20 receiving that request for production of documents?

21 A. Yes.

22 Q. And what did you do?

23 A. I reviewed the request for production of
24 documents, both with Mr. Malin and with members of

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1 my staff at Monsanto.

2 Q. And, which members of your staff did you
3 review it with?

4 A. It would have been Miss Niblock,
5 initially.

6 Q. Did you do anything else in response to
7 receipt of the request?

8 A. I directed Miss Niblock to determine how
9 many documents or to estimate how many documents we
10 might have to review in order to comply with a broad
11 interpretation of the requests for production, and
12 to estimate for me how much time and expense would
13 be incurred by Monsanto in that effort.

14 Q. And did you give that instruction to
15 Miss Niblock orally or in writing?

16 MR. MALIN: I object to that. That's
17 -- hold on just a moment.

18 (Whereupon, a discussion was held off
19 the record.)

20 MR. MALIN: You can answer that
21 question.

22 A. The direction was an oral direction.

23 Q. And did she follow through with that
24 direction?

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1 A. Yes.

2 Q. Do you recall how much time she spent
3 ascertaining the information you requested her to
4 ascertain?

5 A. I could only estimate that, Mr. Kohn.
6 And my estimate would be, perhaps, a day's worth of
7 investigatory effort.

8 Q. Do you know how she went about
9 investigating that?

10 MR. MALIN: Objection. Don't answer
11 that question. That has to do with the method of
12 document selection, and that's work product and
13 privilege.

14 BY MR. KOHN:

15 Q. What leads you to believe or what
16 information do you rely on to support your estimate
17 that she spent approximately one day gathering that
18 information?

19 A. That is based on my discussions with
20 Miss Niblock and also with Miss Hurley.

21 Q. Do you know whether she utilized any
22 written indexes in gathering that information?

23 MR. MALIN: Objection. Same
24 objection as before.

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1 Work product, attorney-client. Inner
2 workings of the law department.

3 BY MR. KOHN:

4 Q. Do you know whether she utilized a
5 computer, in any way, shape or form, in connection
6 with gathering that information?

7 MR. MALIN: Same objection.

8 BY MR. KOHN:

9 Q. What was her estimate as to the number
10 of documents responsive to the document request in
11 the Alston case?

12 A. Miss Niblock's estimate was that we
13 would have to review approximately, 500,000 pages of
14 documents in order to determine which were relevant
15 and producible, pursuant to the demand.

16 Q. And, did she tell you which 500 pages of
17 documents would have to be reviewed in order to
18 determine that?

19 MR. MALIN: I assume you mean 500,000
20 pages.

21 MR. KOHN: Right.

22 A. By broad category only, yes.

23 Q. And which category of documents would
24 have to be reviewed, according to Miss Niblock?

Bistline

1 (Whereupon, a discussion was held off
2 the record.)

3 MR. MALIN: All right. I'm going to
4 object to the question as it's stated, because it
5 doesn't define with respect to the categories of
6 documents those that are in the request.

7 If you will rephrase the question,
8 I'll permit the witness to answer it.

9 BY MR. KOHN:

10 Q. Yes. Which categories of documents were
11 included in the 500,000 pages of documents that Miss
12 Niblock indicated had to be reviewed?

13 A. Those would be categories of documents
14 that are reflected in the demands that are made in
15 the requests, Mr. Kohn.

16 Q. So that she was able to determine that
17 there are 500,000 pages, approximately, of documents
18 responsive to the categories of documents in the
19 Alston document request?

20 A. I would not say responsive. I would say
21 potentially responsive. Those documents would
22 require further review in order to determine whether
23 or not they did meet the criteria set out in the
24 demands.

Bistline

1 Q. And do you have any understanding as to
2 how she defined this universe of 500,000 documents
3 to ascertain that they were potentially responsive?

4 MR. MALIN: The witness may answer
5 the question.

6 A. Yes, I know how she went about it.

7 Q. How did she go about it?

8 A. She consulted -- well, let me strike
9 that.

10 She did two basic things. First,
11 with respect to documents, which I would define as
12 litigation related, pleading related documents,
13 because of the demands, that we produce,
14 essentially, our entire litigation files for other
15 unrelated PCB cases, she consulted inventory sheets
16 and other information we have with respect to other
17 unrelated cases in which we have been involved over
18 the years; looked at several of those files to
19 determine how many documents would be required to be
20 pulled, copied and reviewed to satisfy that portion
21 of the demand, which included, as I recall, all
22 pleadings, all motions, all discovery, all
23 depositions and all expert reports.

24 With respect to the other broad

Bistline

1 category of discovery, which was sought, which I
2 would define, generally, as those relating to the
3 business conduct of Monsanto in the manufacture,
4 production and sale of PCB's, and the area of health
5 effects of PCB's, Miss Niblock consulted information
6 we have developed. When I say "we," I mean counsel
7 representing Monsanto, both inside and outside
8 Monsanto, that provides us with information relating
9 to the contents of those business related and health
10 related documents.

11 Q. And does that second category of
12 document provide information with respect to the
13 total quantity or total number of documents relating
14 to those various subjects?

15 A. Yes.

16 Q. And is that also an inventory of some
17 kind of index?

18 MR. MALIN: I'm sorry. I don't
19 really understand the question.

20 BY MR. KOHN:

21 Q. The information that Miss Niblock
22 consulted with respect to the second category, the
23 manufacture of products, et cetera, was the
24 documents she consulted an inventory or an index of

Bistline

1 some kind?

2 MR. MALIN: The witness may answer
3 that question. If he knows the answer.

4 A. I would not -- I would not call it an
5 inventory, no, sir.

6 Q. What would you call it?

7 A. There are several sources of information
8 that Miss Niblock would have consulted. One would
9 have been a description of the categories of
10 information into which those documents are
11 organized, and the other would have been a report
12 that would have been generated as a result of her
13 requests to estimate the number of documents in the
14 various categories.

15 Q. And who generated that report pursuant
16 to her request? Who or what?

17 A. That would have been a report generated
18 by a computer.

19 Q. And where is that computer located?

20 A. At Monsanto Company.

21 Q. At the corporate headquarters in St.
22 Louis?

23 A. That's correct.

24 Q. In your department or some other

Bistline

1 department?

2 A. It's in the law department.

3 Q. And, there's a hard copy, I take it, of
4 the report that was generated at her request?

5 A. There was a hard copy. I don't know
6 whether that hard copy still exists.

7 Q. Do you have a practice with respect to
8 retention of hard copies of those types of reports?

9 A. I'm not aware of any.

10 Q. Is it your practice to throw them away?

11 A. As I said, I'm not aware of any practice
12 we have with respect to reports of this particular
13 type.

14 Q. Am I correct, that Miss Niblock or
15 someone working with her, made a request, in some
16 manner, of a computer by the description of
17 categories of documents she was looking for, and the
18 computer then gave her a report as to the quantity
19 of those documents in each category?

20 A. I think that accurately describes her
21 procedure, yes.

22 Q. Did the report provide any information
23 other than the quantity?

24 A. I can't recall at the moment, Mr. Kohn,

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1 whether it had other information on it or not. I
2 just don't recall.

3 Q. Do you know when the data was input into
4 the computer that was utilized in that report or
5 over what period of time it was input?

6 A. Well, it's -- yes, I do know, generally,
7 when it was done.

8 Q. When was it done?

9 A. 1983, and periodically updated.

10 Q. Who was involved in periodically
11 updating it, if you know?

12 A. Myself and members of my staff.

13 Q. Have you personally input data in that
14 computer?

15 A. Not directly into the computer, no.

16 Q. Have you given information to someone
17 else to input into the computer?

18 A. Yes.

19 Q. What information, other than these
20 categories and the number of documents that fall
21 into these categories, can one obtain from that
22 computer with respect to those documents?

23 MR. MALIN: Objection. That's
24 attorney work product. The selection of the

Bistline

1 documents that go into that computer is privileged
2 information, and the witness is directed not to
3 answer any questions which relate to that subject.

4 BY MR. KOHN:

5 Q. Does the computer have the capability to
6 identify the documents by the name of the author or
7 the name of the recipient of the documents?

8 MR. MALIN: Same objection.

9 MR. MALIN: Same objection.

10 BY MR. KOHN:

11 Q. Does the computer have the capability to
12 identify documents by the date of the document?

13 MR. MALIN: Same objection

14 BY MR. KOHN:

15 Q. Does it have the capability to identify
16 the document by the subject matter of the document?

17 MR. MALIN: Same objection.

18 Q. Now, the existence of this computer
19 system has been disclosed in other litigation,
20 hasn't it?

21 A. The existence of it has, yes, that's
22 correct.

23 Q. And the information that is contained in
24 the computer has also been disclosed in other

Bistline

1 litigation?

2 A. No, sir, I would not say that the
3 information contained in the computer has been
4 disclosed in other litigation.

5 Q. What is the total number of documents
6 that have been referenced, in some way, in the data
7 bank of that computer system?

8 MR. MALIN: Objection. I instruct
9 you not to answer on the same basis.

10 Q. Are there documents which pertain to
11 polychlorinated biphenyls in Monsanto's possession
12 which have not been indicated or recorded in some
13 way in that computer system?

14 MR. MALIN: I direct the witness not
15 to answer. That's attorney work product and the
16 selection process of what goes into the litigation
17 support system.

18 MR. KOHN: Well, I think we have a
19 right do probe whether -- excuse me. I apologize. I
20 don't want to speak while you're conferring with the
21 witness.

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

24 MR. MALIN: I'm going to permit the

Bistline

1 witness to answer that question.

2 A. Could I get that read back so I have it
3 clear in mind, please?

4 (Whereupon, the previous portion of
5 the notes of testimony was read by the court
6 reporter.)

7 A. Yes, there are.

8 Q. How many such documents are there?

9 A. I don't know the number, Mr. Kohn.

10 Q. Who does know the number?

11 A. I'm not sure anybody knows precisely the
12 number. My predecessor, as supervising attorney for
13 PCB litigation, may have an idea. But I'm not
14 sure.

15 Q. Do you know whether those documents
16 which were not input into the computer, are still in
17 existence?

18 A. Yes, they are.

19 Q. And where physically are those
20 documents?

21 A. They are at Monsanto Company.

22 Q. In St. Louis?

23 A. Yes.

24 Q. In the corporate headquarters or in a

Bistline

1 storage facility?

2 A. I think they're probably in the storage
3 facility.

4 Q. Do you have an estimate as to how much
5 room in the storage facility they take up?

6 A. No, sir, I don't.

7 Q. Have you ever seen those documents
8 specifically?

9 A. I have seen some of them. I have not
10 seen all of them.

11 Q. How many have you seen?

12 A. Several boxes. Perhaps, as many as 20.

13 Q. Do you know whether anyone reviewed
14 those documents as to ascertain whether any of them
15 were responsive to the request for production in the
16 Alston case?

17 MR. MALIN: Don't answer the question
18 yet. I want to think about it.

19 (Whereupon, a discussion was held off
20 the record.)

21 MR. KOHN: I would request that you
22 not confer with the witness during his examination.

23 MR. MALIN: The witness may answer
24 the question.

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1 A. Can I have the question back, please?

2 (Whereupon, the above portion of the
3 notes of testimony was read by the court reporter.)

4 A. Those documents were not reviewed
5 specifically in connection with the Alston case.

6 Q. Do you know whether those documents were
7 reviewed in connection with any of the Paoli
8 Railroad Yard PCB cases?

9 MR. MALIN: I'm going to object.
10 Those other cases are irrelevant for the reasons
11 that were stated previously. I direct the witness
12 not to answer. The documents in those cases were
13 produced and you have them.

14 MR. KOHN: I'm trying to get at
15 whether anybody looked at the 20 boxes or anything
16 else that was in storage to determine whether there
17 might be something else inside those boxes that was
18 responsive to the request.

19 Do you know whether anybody looked at
20 them?

21 MR. MALIN: That's not the reason
22 we're here for this deposition. I direct the
23 witness not to answer the question with respect to
24 whether or not they were looked at for purposes of

Bislline

1 the federal litigation.

2 BY MR. KOHN:

3 Q. Were they looked at in connection with
4 the state court litigation?

5 MR. MALIN: The witness has answered
6 that question. The question has been asked and
7 answered.

8 BY MR. KOHN:

9 Q. What are the various categories of
10 documents that are recorded on the computer system?

11 MR. MALIN: I have already objected
12 to that question. And I direct the witness not to
13 answer it. You've asked it a few times, and you're
14 starting to repeat yourself. Maybe this deposition
15 is over.

16 BY MR. KOHN:

17 Q. You can answer. What other categories?

18 MR. MALIN: Object. I instruct the
19 witness not to answer that. And I object to the
20 question. Attorney work product. Attorney-client
21 privilege.

22 BY MR. KOHN:

23 Q. Where are the hard copy of the documents
24 which are indexed on the computer system?

Bistline

1 MR. MALIN: You want to know
2 physically where they're located?

3 MR. KOHN: Right.

4 MR. MALIN: I think the witness can
5 answer that question.

6 A. At Monsanto's corporate headquarters in
7 St. Louis.

8 Q. All of them are available in that one
9 location?

10 A. Yes.

11 Q. And --

12 A. Well, let me understand what you are
13 referring to. Is this question directed
14 specifically at the documents that are comprehended
15 within the computerized litigation support system?
16 Is that the question?

17 Q. That's the question.

18 A. The answer is, yes.

19 Q. And do you know physically, how much
20 room the hard copy of those documents take up? I'm
21 talking about the ones that are just input into the
22 commuter system.

23 A. Precisely, no.

24 Q. Do you have a reasonable estimate?

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1 A. Many shelves full of boxes. I can't
2 give you an exact number. Perhaps, as many as 20.

3 Q. Twenty shelves?

4 A. Yes.

5 Q. Does every document that has been input
6 into the computer, have an identifying number?

7 MR. MALIN: I'll object to that.

8 That goes to the workings of the
9 system, and categorization. I direct the witness
10 not to answer.

11 MR. KOHN: Well, our position is that
12 it also goes to the ease or burdensomeness of
13 production. And we would request an answer to that
14 simple question, whether there is a numerical system
15 of any kind to identify the documents in the
16 computer.

17 MR. MALIN: Objection stands. There
18 are ways of getting at the questions. You haven't
19 asked any of the real questions about why it's
20 burdensome. You're asking questions which are
21 intended to find out what is on the system,
22 basically, and that's all privileged. The question
23 with respect to burdensomeness, you haven't even
24 begun to ask.

Bistline

1 MR. KOHN: Maybe you and I speak a
2 different language.

3 MR. MALIN: I think we did.

4 Q. Are the full text of the documents in
5 the computer?

6 MR. MALIN: You can answer that.

7 A. No.

8 Q. Are there portions of the text of
9 documents in the computer?

10 A. No.

11 Q. Are there summaries of the contents of
12 the documents in the computer?

13 MR. MALIN: You can answer that.

14 A. No.

15 Q. What is your understanding of how the
16 computer can identify documents by the the category
17 of the document?

18 MR. MALIN: I'm going to object to
19 that on the same basis as the others.

20 Q. Other than the reports that Miss Niblock
21 provided to you after the, approximately one day
22 that she spent, did she give you any other
23 information with respect to how many documents are
24 responsive to the request in the Alston case?

Bistline

1 A. I'm not sure I follow your question, Mr.
2 Kohn.

3 Q. You previously stated that Miss Niblock
4 provided you with certain information in response to
5 your request that she identify the number of
6 documents responsive to Alston. My question is, did
7 she provide you any other information, other than
8 that to which you've already testified?

9 A. She answered questions that I asked her
10 about the information that she provided me.

11 Q. All right. How do you go about
12 obtaining a hard copy of a particular document that
13 has been input into the computer?

14 A. I usually ask Miss Niblock for it.

15 Q. Do you know how she goes about getting
16 it?

17 A. She would -- if she does not have the
18 document in her office, she would either access the
19 computer system to determine where it is in the
20 file, locate it in that fashion, or she would direct
21 one of our clerical staff to do that.

22 Q. What information does the computer give
23 her with respect to where it is in the file?

24 A. I'd like to confer with my counsel for a

Bistline

1 moment, please.

2 (Whereupon, a discussion was held off
3 the record.)

4 MR. KOHN: I know you'd like to, but
5 we do object to that procedure.

6 THE WITNESS: Could I have the
7 question back, again, please.

8 (Whereupon, the previous portion of
9 the notes of testimony was read by the court
10 reporter.)

11 A. It gives her a document number.

12 Q. And then the documents, the hard copy of
13 the documents are organized by consecutive document
14 number?

15 A. Yes.

16 Q. And I take it, if they're stored in file
17 jackets or boxes the number of documents contained
18 in that file or boxes is noted on the outside of the
19 file or box?

20 A. You mean, the document number?

21 Q. Right. The box number one containing
22 documents 1 through 1,000, that's noted on the
23 outside of the box so you can readily see that?

24 A. That's correct.

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1 Q. What is the numbering used? Is the
2 first document number one?

3 A. No.

4 Q. Do you know what it is?

5 A. It's a six digit number. The first
6 document number is five zeros and then one.

7 Q. Is there a letter prefix Monsanto's
8 0001, some such number?

9 MR. MALIN: I object to that. That
10 gets into the categorization and that's privileged.
11 BY MR. KOHN:

12 Q. Is there a prefix then, for each of the
13 various categories and then a numbering system one
14 through --

15 MR. MALIN: Objection. Direct the
16 witness not to answer.

17 MR. KOHN: We've been here about an
18 hour. This may be a good time to take a short
19 break, and then we'll go through until lunchtime.

20 (Short recess was then taken.)

21 BY MR. KOHN:

22 Q. Back on the record. Was this computer
23 system that we've been discussing, utilized with
24 respect to the production of the documents that have

Bistline

1 been produced in the Alston case?

2 MR. MALIN: I'm going to object to
3 that question on the grounds that I don't understand
4 precisely what you are asking.

5 Therefore, the question is too
6 vague. I direct the witness not to answer unless
7 it's clarified.

8 BY MR. KOHN:

9 Q. Do you understand the question?

10 A. No.

11 Q. Monsanto has produced some documents in
12 the Alston case; correct?

13 A. Yes.

14 Q. And do you know whether or not the
15 commuter system that we've been discussing was used,
16 in any way, with respect to the production of those
17 documents?

18 MR. MALIN: Are you talking about all
19 of the documents and not those which are the subject
20 of this motion?

21 MR. KOHN: Well any.

22 MR. MALIN: Any and all documents?

23 MR. KOHN: The documents that we've
24 actually received is three pieces of paper. Was the

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1 computer used in connection with that process?

2 MR. MALIN: Hold on just a moment.

3 So, you are talking about each and
4 every request and not just the four that are at
5 issue here?

6 MR. KOHN: No. I want to know
7 whether anybody used that computer in order to
8 select, find, ascertain or, in any other fashion, to
9 provide us those few documents which we have already
10 received from Monsanto.

11 MR. MALIN: The witness may answer
12 the question, if he understands it.

13 A. I believe so, yes.

14 Q. And could you describe the process that
15 was utilized to produce those documents to us?

16 MR. MALIN: I'll object to that on
17 the grounds that that gets into categorization of
18 documents, and that is work product and work product
19 privilege. I direct the witness not to answer the
20 question.

21 BY MR. KOHN:

22 Q. Do you know whether that computerized
23 system has been utilized in connection with the
24 production of documents in other PCB cases?

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1 MR. MALIN: It's irrelevant. In
2 addition to the last objection that I made, and I
3 direct the witness not to answer it.

4 MR. KOHN: Well, we've asked for the
5 documents produced in the other litigations. That's
6 one of the issues before the judge.

7 I want to know if the computer system
8 was utilized in connection with producing the
9 documents in those other cases.

10 MR. MALIN: Not all other PCB cases.
11 The issue is narrow, at this point, as
12 burdensomeness, and the issue of what documents were
13 produced in other cases is marginly relevant, if at
14 all. I direct the witness not to answer.

15 MR. KOHN: Are you withdrawing your
16 objection to production of the documents produced in
17 other cases?

18 MR. MALIN: Of course not.

19 MR. KOHN: Well, then, I'd like to
20 know whether the computer system was utilized,
21 whether or not you determined the quantity of
22 documents to be produced in other PCB cases.

23 MR. MALIN: Hold on.

24 (Whereupon, a discussion was held off

Bistline

1 the record.)

2 MR. KOHN: Please note the huddle
3 between counsel and the witness.

4 (Whereupon, a discussion was held off
5 the record.)

6 MR. MALIN: The objection stands. I
7 instruct the witness not to answer.

8 BY MR. KOHN:

9 Q. Was the computer system utilized with
10 respect to the production of documents in the case
11 of Scott, et al. v. Monsanto?

12 MR. MALIN: Same objection.

13 BY MR. KOHN:

14 Q. Do you have any policy or practice with
15 respect to affixing consecutive document numbers on
16 documents that are produced by Monsanto to
17 plaintiffs in PCB litigation?

18 MR. MALIN: Objection. Objection.
19 That's not relevant to the issue that's before us
20 now, and is also work product.

21 MR. KOHN: Well, how can it be work
22 product when the fact of placing a number on the
23 document is disclosed to everyone who receives the
24 document?

Bistline

1 MR. MALIN: I don't have to explain
2 it. The objection stands.

3 MR. KOHN: You mean, you don't have
4 to explain it now.

5 BY MR. KOHN:

6 Q. I've placed before you a document which
7 was marked at a deposition in the case of Catherine
8 Brewer versus Monsanto Corporation, in the United
9 States District Court for the Middle District of
10 Tennessee. A letter from Papageorge, Deposition
11 Exhibit 6.

12 I don't have any extra copies of this
13 document right now, but we'll get them for counsel
14 at the break.

15 I place before you the referenced
16 exhibit. I direct your attention to the lower
17 right-hand corner of the document, which contains
18 the letters BRW and the numeral 001874.

19 Do you recognize those numerals and
20 the prefix as having been placed on the document by
21 Monsanto prior to its production in that case?

22 MR. MALIN: You can answer that
23 question.

24 A. Yes.

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1 Q. And is it the practice or policy of
2 Monsanto to place similar numbers and letters on
3 documents produced to plaintiffs in PCB litigation?

4 MR. MALIN: Same objection.

5 Q. Do the letters BRW affixed to this
6 Deposition Exhibit 6, in the Brewer case stand for
7 Brewer, to your knowledge?

8 A. I believe that's correct, yes.

9 Q. Are there different letter prefixes
10 attached to documents produced by Monsanto in other
11 litigation? For example, Paoli.

12 A. The answer is, yes. Do the documents
13 produced in each such litigation receive an
14 individual letter prefix?

15 A. That's correct, yes.

16 Q. And are the documents produced in those
17 litigations then numbered beginning with the numbers
18 five zeros and one?

19 A. I believe that's correct, yes.

20 Q. And, do you -- by you, I mean Monsanto,
21 does Monsanto retain a list or schedule by the
22 prefix and document number provided in any
23 particular case, of the documents provided to the
24 plaintiffs in those cases?

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1 MR. MALIN: Don't answer yet.

2 (Whereupon, a discussion was held off
3 the record.)

4 MR. MALIN: I'm directing the witness
5 not to answer that question on the grounds of
6 attorney work product. It goes directly into the
7 thought process selection.

8 MR. KOHN: No, I'm not asking how the
9 documents were collected. I'm simply asking him
10 whether he keeps a record of the number of documents
11 produced in any given case.

12 MR. MALIN: Same objection.

13 BY MR. KOHN:

14 Q. Do you know of any data being input into
15 the computer with respect to whether or not any
16 particular document has or has not been produced in
17 any particular litigation?

18 MR. MALIN: Objection. Same
19 objection.

20 BY MR. KOHN:

21 Q. In other words, could somebody go to
22 that computer and, say, for document number one in
23 the universe of documents, determine in which cases
24 that document had been turned over to the

Bistline

1 plaintiff's counsel?

2 MR. MALIN: Objection. Same
3 objection.

4 Don't answer the question.

5 BY MR. KOHN:

6 Q. Is there any sort of computerized record
7 of documents generated in litigation, that is, the
8 pleadings, motions and briefs that are generated in
9 PCB litigation?

10 A. The answer is, no.

11 Q. There are, though, certain schedules or
12 inventories of such documents; is that correct.

13 (Whereupon, a discussion was held off
14 the record.)

15 MR. KOHN: I continue to object to
16 this practice of the witness conferring with his
17 counsel while the question is pending.

18 MR. GOUTMAN: We understand your
19 position on that.

20 MR. KOHN: It's patently improper.
21 If you would stop doing it, we won't have to note it
22 every time it occurs.

23 THE WITNESS: Could I get that
24 question back please.

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1 (Whereupon, the above portion of the
2 notes of testimony was read by the court reporter.)

3 A. I believe, Mr. Kohn, you're referring to
4 the testimony that I previously gave about documents
5 or information that Miss Niblock consulted, and the
6 inventories and schedules that I referred to, are
7 not specific to the document. They are lists of
8 files, in the sense of case files that have been
9 removed from the active cases in litigation to
10 storage.

11 Those inventories don't enumerate the
12 contents of each file beyond noting that case X is
13 contained in a particular location in the
14 warehouse.

15 Q. All right. The materials that are in
16 the warehouse, are there any kind of listings or
17 inventories that are kept, a docket sheet, if you
18 will, of the pleadings and motions and briefs in a
19 particular case?

20 A. Only those contained internal to the
21 file. There's no external master control list of
22 the type that I believe you are inquiring about.

23 Q. Does your office utilize word processing
24 equipment of any kind with respect to the

Bistline

1 preparation of those docket sheets in the individual
2 files?

3 MR. MALIN: Object. He hasn't
4 testified there are any document sheets in
5 individual files that are prepared. So, I object to
6 the question.

7 MR. KOHN: Could you read back two
8 questions ago and the answer.

9 (Whereupon, the above portion of the
10 notes of testimony was read by the court reporter.)

11 BY MR. KOHN:

12 Q. My question is as to those documents
13 which you stated were internal to the file. Were
14 those documents typewritten documents?

15 A. Yes.

16 Q. And were they typed on a word processing
17 machine of some kind?

18 A. That would depend, Mr. Kohn, on when the
19 index was created.

20 Q. When is the tip point when they were on
21 word processing and when would they ever not have
22 been on word processing?

23 A. I'm not sure I know the answer to that.

24 Q. Do you know if Monsanto had word

Bistline

1 processing equipment throughout the 1980s?

2 A. I can only speak to the time that I was
3 employed. And as of 1982, word processing equipment
4 was used, yes.

5 Q. And do you know whether the disks which
6 contained these internal inventory sheets are still
7 in existence?

8 MR. MALIN: He hasn't testified there
9 are such disks. I object to the question as such.
10 I direct him not to answer.

11 BY MR. KOHN:

12 Q. Do you know whether there are any disks
13 on your word processing equipment?

14 A. Unfortunately, I'm not that
15 sophisticated in the workings of electronic word
16 processing.

17 Q. You do know what a floppy disk is, do
18 you?

19 A. I do know what a floppy disk is. To the
20 best of my information and understanding -- I'm out
21 of my area here -- is that there are no disks that
22 contain that information that goes back any length,
23 historically.

24 Q. What historical length are the disks in

Bistline

1 existence for?

2 A. Only for very recent years.

3 Q. Which years? Can you be any more
4 specific?

5 A. Since, probably, early 1987.

6 Q. And do you have in your possession any
7 hard copies of the inventories with respect to
8 litigation since 1987?

9 A. I'm not quite sure I understand what you
10 mean by inventories with respect to litigation.

11 Q. I mean, the inventories of the
12 particular pleadings, motions, briefs in the cases.

13 A. I assume what you are talking about is a
14 docket sheet, and those are contained in litigation
15 files, yes.

16 Q. Okay. In addition to being contained in
17 the individual litigation file, do you have
18 collected for your own reference, the docket sheets
19 from some group of litigation?

20 A. No.

21 Q. Do you know whether anyone else at
22 Monsanto has such a collection?

23 A. I'm not aware of any.

24 Q. Have you ever been asked to provide

Bistline

1 copies of all of the document sheets in the cases
2 where docket sheets are available in connection with
3 the Alston case?

4 A. You're going to have to repeat that one
5 because you lost me.

6 MR. MALIN: Yes, I'm lost.

7 Q. Has anyone ever requested that you
8 provide copies of the document sheets from the
9 various litigations in connection with the Alston
10 litigation in Philadelphia?

11 A. Are you asking me, sir, whether your
12 document demand contains a request for litigation
13 document sheets; is that the question?

14 Q. Well, you can start with that. Does our
15 request for documents contain such a request?

16 MR. MALIN: I object to that. You
17 know what it contains. It speaks for itself. Don't
18 answer that question.

19 BY MR. KOHN:

20 Q. Have you made any effort to obtain those
21 docket sheets in response to the request for
22 production of documents?

23 MR. MALIN: Hold on.

24 (Whereupon, a discussion was held off

Bistline

1 the record.)

2 A. My understanding, Mr. Kohn, is that we
3 have objected to that request.

4 Q. Right. So, you have made no effort to
5 obtain those documents?

6 A. I don't understand what you mean by no
7 effort. We are declining to provide them to the
8 plaintiffs in this case, if that's the intent of
9 your question.

10 Q. Do you have any idea how long it would
11 take you to obtain copies of those documents and
12 drop them in the mail to us?

13 A. That would take a --

14 MR. MALIN: Hold on.

15 I'm going to object to that question
16 on the grounds it's vague. I'd like you to specify
17 precisely what documents you're talking about that
18 you want copied and dropped in the mail.

19 MR. KOHN: The docket sheets for the
20 cases that are still on the disks of the word
21 processing equipment, which I understand is the
22 docket sheets since 1987.

23 MR. MALIN: I object to the question,
24 insofar as it says that we are willing to produce

Bistline

1 them and drop them in the mail. We've objected to
2 them on the grounds they are not relevant.

3 MR. KOHN: There is not a burdensome
4 objection to that, or are you withdrawing it?

5 MR. MALIN: Also work product
6 objection.

7 MR. KOHN: The question is --

8 MR. MALIN: I object.

9 MR. KOHN: -- how long it's going to
10 take for somebody to make copies of that.

11 MR. MALIN: Well --

12 A. I could only guess.

13 MR. MALIN: You can answer that.

14 MR. KOHN: He's indicated, he can
15 only guess.

16 MR. KOHN: Just for the record, we'd
17 like to mark this as Bistline Exhibit Number 1, the
18 document we previously referred to from the Brewer
19 litigation, which had been Papageorge Exhibit 6 in
20 that case.

21 (Marked as Exhibit Number 1 for
22 identification.)

23 BY MR. KOHN:

24 Q. In addition to the maintenance of the

Bistline

1 docket sheets and the disks since '87, do you know
2 whether or not any of those docket sheets are
3 maintained on the hard drive of the computer?

4 MR. MALIN: Objection. That has to
5 do with the selection process, work product and the
6 witness is directed not to answer the question.

7 MR. KOHN: These are documents which
8 have already been identified. I'm just asking where
9 they are stored on the computer.

10 MR. MALIN: My objection stands. The
11 objection stands, that's all.

12 BY MR. KOHN:

13 Q. Do you know whether any of the
14 inventories generated prior to 1987, are retained or
15 maintained on the hard drive of any computers at
16 Monsanto?

17 MR. MALIN: Same objection.

18 Work product, attorney-client
19 privilege. I direct the witness not to answer the
20 question.

21 BY MR. KOHN:

22 Q. Can you fix any more precisely the date
23 that the inputting of the information with respect
24 to the documents in this computer system began?

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1 MR. MALIN: Well, you've already
2 asked that question. That question has been asked
3 and answered. He's given you his best
4 recollection.

5 I'm going to permit the witness to
6 attempt to try. However, I think that's as far as
7 we're going to go with this.

8 BY MR. KOHN:

9 Q. Do you ever the ability to fix more
10 precisely the date, Mr. Bistline?

11 A. My recollection is that it was some time
12 in 1983. And, I believe, it was in the beginning of
13 March, in and around March 1st, that the process
14 began.

15 MR. GOUTMAN: May I have the last
16 question read back.

17 (Whereupon, the previous portion of
18 the notes of testimony was read by the court
19 reporter.)

20 MR. MALIN: Is that answer right?

21 THE WITNESS: No. I guess I would
22 have to ask you, then, for a clarification, Mr.
23 Kohn, which computer system you're talking about.

24 Q. I was talking about the computer system

Bistline

1 we were talking about earlier today that Miss
2 Niblock consulted in connection with the direction
3 you gave her in this litigation.

4 A. I assume you mean the computer system
5 which I described, generally, as containing
6 Monsanto's business documents, business-related
7 documents.

8 Q. Right.

9 A. And the answer that I gave you was
10 accurate as to those documents.

11 Q. March 1, 1983, approximately?

12 A. Approximately, yes.

13 Q. Other than those disks in connection
14 with the word processing we were talking about, is
15 there any other computer system that records or
16 reflects or maintains any documents relating to PCBs
17 at Monsanto?

18 MR. MALIN: Hold on.

19 (Whereupon, a discussion was held off
20 the record.)

21 MR. MALIN: I'm going to object to
22 the question on the grounds that it is vague, and
23 irrelevant to any issue that's before the Court
24 here.

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1 Not having to do with the documents
2 that were requested to be produced.

3 I direct the witness not to answer
4 the question.

5 BY MR. KOHN:

6 Q. Is it your understanding that all of the
7 documents which are within the scope of the document
8 requests in the Alston case, are recorded in some
9 manner, in the computer that Miss Niblock consulted?

10 MR. MALIN: I'm going to object on
11 the grounds that this deposition is limited to those
12 documents which are the subject of your motion to
13 compel.

14 MR. KOHN: Do you want him to come
15 back?

16 MR. MALIN: I direct him not not to
17 answer.

18 MR. KOHN: Do you want him to come
19 back when we raise the other objection that you have
20 filed, or would you rather cover it all now?

21 MR. MALIN: If you do. You may not.

22 Apparently, Mr. Kohn, you've
23 exhausted all of the questions on your questioning
24 on this issue, and unless you intend to go ahead

Bistline

1 with questions on the burdensomeness issue, which is
2 before the court, and which is now being briefed, I
3 think we should conclude this deposition.

4 Unless, of course, Mr. Milstein has
5 any more questions.

6 MR. KOHN: We'll proceed the way we
7 deem fit, and I assume you'll take whatever action
8 you deem fit. One of the matters discussed with
9 Judge Avellino the last time we were before him when
10 he denied your motion for a protective order, was
11 whether or not this type of deposition could
12 facilitate the narrowing of the remaining objections
13 to the discovery which were then not the subject of
14 the motion.

15 So, I'm trying to ascertain whether
16 all of the documents we requested have been recorded
17 in that computer system or whether there is some
18 other computer system or some other method of
19 identifying and locating those documents.

20 MR. MALIN: Now, are you limiting
21 your questions to whether or not there are other
22 methods of identification and locating the documents
23 that are the subject of the current motion? If that
24 is your question, I will permit the witness to

Eistline

1 answer it.

2 MR. KOHN: My question is as I stated
3 it. Would like an answer to it?

4 MR. MALIN: Then there is the same
5 objection. I'm directing the witness not to answer
6 the question.

7 BY MR. KOHN:

8 Q. Do you know when the process that began
9 approximately March 1 1983, was initially completed?

10 MR. MALIN: I'll object to that as a
11 question asked and answered, because the witness has
12 stated there are periodic updates of everything
13 that's done. You've already asked that question and
14 it's been answered.

15 MR. KOHN: When the first update --

16 MR. MALIN: Excuse me.

17 (Whereupon, a discussion was held off
18 the record.)

19 MR. MALIN: I am directing the
20 witness not to answer the question.

21 BY MR. KOHN:

22 Q. When was the most recent update?

23 MR. MALIN: I'm going to object.

24 These questions are irrelevant to the issue before

Bistline

1 the court. And I think, you're now harassing the
2 witness, and I'm going to direct him not to answer
3 the question.

4 BY MR. KOHN:

5 Q. You agree that there was no litigation
6 with respect to Monsanto's activities or involvement
7 in the Paoli Railroad Yard, as of 1983?

8 A. I can't answer that question, Mr. Kohn,
9 since I wasn't involved with PCB cases in 1983.

10 Q. Do you know, and I realize as you
11 indicated earlier, that this is not your area of
12 expertise, and it's not mine either, what the
13 software system is that this computer that Miss
14 Niblock consulted, utilizes?

15 (Whereupon, a discussion was held off
16 the record.)

17 MR. MALIN: The selection of the
18 software system is work product and clearly
19 privileged, because that discloses categories of
20 documents et cetera and the selection process. For
21 those documents, therefore, it's privileged
22 information and work product, and I direct the
23 witness not to answer the question.

24 MR. KOHN: Isn't it waived, if there

Bistline

1 ever was a privilege, when you tell the outsiders at
2 the computer company what software you want?

3 MR. MALIN: Well, you can argue that,
4 if you wish. It's your privilege.

5 BY MR. KOHN:

6 Q. Do you know what the hardware is on this
7 computer that Miss Niblock consulted?

8 MR. MALIN: Go ahead answer that.

9 A. Do I know?

10 Q. What the machine is.

11 A. Yes.

12 Q. What kind of a machine is it?

13 A. It's an IBM computer.

14 Q. Do you know what the memory capacity of
15 that computer is?

16 A. No.

17 Q. Does Monsanto have computers or
18 machinery with the capability to scan documents?

19 MR. MALIN: I object to that, on the
20 grounds that it's neither relevant and it's too
21 vague, and too broad.

22 I see no connection with the current
23 matter before the Court.

24 Unless you can clarify that question

Bistline

1 and make it relevant, I'm going to direct the
2 witness not to answer it.

3 Q. Do you have the ability with machinery
4 to scan into a computer, the entire content of a
5 document.

6 (Whereupon, a discussion was held off
7 the record.)

8 MR. MALIN: The witness may answer
9 that question.

10 A. The answer is, I don't know.

11 MR. MALIN: Let the record show that
12 presently Alan Milstein, who is not a party to this
13 litigation, doesn't represent any party, is passing
14 notes for questions to Mr. Kohn.

15 BY MR. KOHN:

16 Q. That question is, what kind of IBM
17 machine is the machine that we have been talking
18 about, if you know?

19 MR. MALIN: Call this the Milstein
20 question.

21 You may answer the Milstein question.

22 MS. KRAMER: Frankly, it was my
23 question also.

24 MR. MALIN: Let's call it the

Bislline

1 Milstein-Thomas question.

2 MS. KRAMER: My name is not Thomas.

3 MR. MALIN: What is your name?

4 MS. KRAMER: The court reporter has
5 it.

6 BY MR. KOHN:

7 Q. Do you know what kind of machine it is?

8 MS. KRAMER: I'll be glad to
9 introduce myself to you.

10 A. How about somebody telling me that
11 question again.

12 Q. All right. What kind of IBM machine is
13 it?

14 A. It is an IBM main frame computer.
15 Beyond that I don't know what model or any of the
16 other technical specifications.

17 MR. MALIN: And that it works.

18 Q. It does work?

19 A. It does work.

20 Q. Getting back to the records that Miss
21 Niblock consulted with respect to the list of cases
22 that are in storage. Is that list of cases in your
23 office?

24 A. I'm not sure. Do you mean, are those

Bistline

1 documents that constitute the list, is that what you
2 mean?

3 Q. Yes. Is the list available in your
4 office?

5 A. It's not in my personal office, no.

6 Q. Is it in the legal department somewhere?

7 A. Somewhere, yes.

8 Q. As I understand it, that is a list of
9 cases which have been closed, and are in storage; is
10 that correct?

11 A. Well, it is a list, sir, of files that
12 have been sent from the law department to dead
13 storage, which contain, among other things, closed
14 PCB cases.

15 Q. Okay. And it may also, or does it also
16 contain portions of files in cases which are still
17 ongoing?

18 A. No. No.

19 Q. What things, other than the closed PCB
20 cases, are contained on this inventory list that
21 Miss Niblock consulted?

22 MR. MALIN: Don't answer that yet.

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

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1 MR. KOHN: Please note, again, that
2 the witness and counsel are conferring while the
3 question is pending.

4 MR. MALIN: The witness may answer
5 the question.

6 A. These inventory sheets, Mr. Kohn,
7 contain lists, not only of PCB cases, but of cases
8 relating to other subject matters which have been
9 closed.

10 And also files from other
11 non-litigation sections of the law department, which
12 don't relate to litigated matters at all, but which
13 are no longer active, and which have been
14 transmitted to dead storage.

15 Q. Are there any other documents or
16 materials that are reflected on that inventory that
17 relate, in any way, to PCBs other than these old PCB
18 cases?

19 A. To my knowledge, no.

20 Q. Was there any other information that
21 Miss Niblock consulted when she responded to your
22 request, to determine the number of documents
23 responsive to the Alston document request?

24 MR. MALIN: Mr. Kohn, you've asked

Bistline

1 this question about five different ways, and I think
2 that this is becoming an exercise in futility. It's
3 been asked and answered. I'll permit the witness to
4 answer it one more time, but that's going to be it.

5 A. I believe that I have given you, as best
6 I can recall at the present time, a full list of the
7 sources of information that were consulted.

8 Q. Do you recall, approximately, how many
9 documents were produced by Monsanto in the case of
10 Scott v. Monsanto?

11 MR. MALIN: Hold on.

12 (Whereupon, a discussion was held off
13 the record.)

14 A. Could I have that question back again,
15 so that I have it in mind.

16 (Whereupon, the previous portion of
17 the notes of testimony was read by the court
18 reporter.)

19 A. By that, Mr. Kohn, you don't mean the
20 medical records of the plaintiffs that the court
21 forced us to collect and then provide free of charge
22 to the plaintiffs. You're talking about documents
23 from Monsanto's files?

24 Q. You can start with those, yes.

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1 A. My best recollection is that there were
2 between 60 and 70,000 pages of documents that were
3 produced in that case.

4 Q. And were those documents that pertained
5 to PCBs in one way or another?

6 MR. MALIN: I'll object to that
7 question as vague and not related to any issue in
8 this case. I direct the witness not to answer it.
9 It's simply an unanswerable question
10 BY MR. KOHN:

11 Q. Were the 60 to 70,000 documents produced
12 in the --

13 A. Pages of documents.

14 Q. Pages of documents produced in Scott,
15 did any of those documents pertain to the chemical
16 composition of the PCBs manufactured by Monsanto?

17 (Whereupon, a discussion was held off
18 the record.)

19 MR. KOHN: Mr. Reporter, is it
20 possible just to have a standing request that you
21 note every time there is a conference.

22 MR. MALIN: That's objected to on the
23 grounds that the actual documents and the substance
24 of them are the subject to a protective order issued

Bistline

1 in the Scott case by a U.S. District Court judge,
2 and accordingly, the witness is barred from
3 testifying.

4 MR. KOHN: With respect to these
5 questions, about these particular documents, I'm
6 agreeing, and I assume all my co-counsel are
7 agreeing, to be bound by the terms of that order.

8 So we request that you answer that
9 simple question, whether any of those documents
10 pertain to the chemical makeup of PCBs.

11 MR. MALIN: I direct the witness not
12 to answer the question. He will not be bound by
13 that order, unless you are party to that order and
14 it's signed by the same judge and the same court,
15 which is not the case. I direct the witness not to
16 answer.

17 MR. KOHN: We request that you
18 provide us with a copy of that order. I assume the
19 order itself is not confidential.

20 MR. MALIN: Well, you can file your
21 document request in the normal course.

22 MR. KOHN: We have.

23 MR. MALIN: Or, you can get it from
24 the Court yourself. It's a public document. You

Bistline

1 know the case. You know the caption, you know the
2 number, you know where it is. You can obtain it.

3 BY MR. KOHN:

4 Q. How many other documents were produced
5 to the plaintiffs in the Scott case, other than the
6 60 to 70,000 pages that you previously identified?

7 MR. MALIN: You're talking about
8 Monsanto documents that were provided by court
9 order?

10 MR. KOHN: Right, and any other.

11 A. I believe, as I mentioned before, Mr.
12 Kohn, Miss Hurley records that we collected -- the
13 Court required us to provide those to the
14 plaintiffs, and as I recall, there were 20 to 25,000
15 pages of records.

16 Q. To the best of your recollection, that
17 is the sum total of documents produced by Monsanto
18 in that litigation?

19 A. The best I can recall, yes.

20 Q. Have those documents been segregated in
21 some manner by the Monsanto lawyers so that you
22 could identify or locate the documents produced by
23 Monsanto in the Scott case?

24 MR. MALIN: I'm going to object on

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1 the grounds of work product. Direct the witness not
2 to answer.

3 BY MR. KOHN:

4 Q. Is the Scott case still ongoing?

5 A. Yes.

6 Q. Is it part of your normal practice when
7 litigation is ongoing to have a system to identify
8 those documents which you have produced to the other
9 side in the litigation?

10 MR. MALIN: The question has been
11 asked and answered. Direct the witness not to
12 answer it again.

13 BY MR. KOHN:

14 Q. Have any of the documents which Monsanto
15 produced in the Scott case been produced in any
16 other litigation?

17 MR. MALIN: I object and direct the
18 witness not to answer. It's irrelevant. It's
19 irrelevant to any issue here. How is it relevant
20 that Scott may have been produced in other
21 litigation?

22 MR. KOHN: Excuse me.

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

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1 BY MR. KOHN:

2 Q. Now, in Scott, Monsanto did not produce
3 all of the documents that the plaintiffs asked for,
4 did you?

5 MR. MALIN: Wait a minute.

6 I don't understand that question.
7 First of all, that has to do with whatever rules the
8 Court may have made with respect to what documents
9 were relevant and could have been produced.

10 So, I don't know what your question
11 is. If you're trying to ask the witness whether or
12 not they didn't produce all the documents that
13 should have been produced in accordance with the
14 relevant court orders, then that question is not
15 germane or not even understandable. So I don't
16 really understand where you're going. I don't
17 understand the question. So, unless you can clarify
18 that question, I'm going to direct the witness not
19 answer it.

20 BY MR. KOHN:

21 Q. The universe of documents that the
22 plaintiffs requested in Scott was greater than the
23 documents which were ultimately produced, greater in
24 number than the number of documents that were

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1 ultimately produced by Monsanto in this case,
2 correct?

3 MR. MALIN: The witness may answer
4 that question.

5 A. My recollection is that that is
6 correct.

7 Q. And, have you, at any time, determined
8 the total number of documents in Monsanto's
9 possession which relate to PCBs?

10 MR. MALIN: I object to that question
11 as vague as it relates to be PCBs. I direct the
12 witness not to answer that question unless it can be
13 clarified.

14 BY MR. KOHN:

15 Q. Do you understand what I mean by that?

16 A. I would prefer that you clarify that
17 question, Mr. Kohn.

18 Q. Well, have you ever undertaken to
19 determine the total number of documents in the
20 possession, custody or control of Monsanto, with any
21 possible relation to polychlorinated biphenyls?

22 MR. MALIN: I take it that means, the
23 entire Monsanto Company, not just the law department
24 which he is an employee?

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1 MR. KOHN: Yes.

2 MR. MALIN: Answer that question.

3 A. I believe what you are referring to is
4 an affidavit that I submitted in the Cecil Scott
5 case, in response to a request that the plaintiffs
6 made, and we did undertake to estimate, within the
7 context of that litigation, the burden that we would
8 be forced to, or that we would have been put to, had
9 the Court compelled us to comply, literally, with
10 plaintiff's document demand.

11 In that connection I believe I did
12 make such an estimate, although, I don't have that
13 in mind. I don't have the precise numbers in mind
14 as I sit here, I see you have the affidavit, though,
15 I assume you do know that.

16 Q. Do you remember that you stated to the
17 court in that affidavit, that there were
18 approximately two million such documents?

19 A. Mr. Kohn, if that's what the affidavit
20 states, that's what it states. As I said, I don't
21 recall precisely what I said in that affidavit.

22 Q. When was the last time that you saw that
23 affidavit?

24 A. I don't remember. It's been some time

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1 ago.

2 MR. MALIN: Would you permit the
3 witness to see your copy of the affidavit while I'm
4 getting mine?

5 MR. KOHN: I don't have any questions
6 about the document itself.

7 BY MR. KOHN:

8 Q. Are all of the two million documents
9 that you referred to in your affidavit in the Scott
10 case, recorded in some way on that computer that
11 Miss Niblock consulted?

12 MR. MALIN: Hold on.

13 Go ahead.

14 (Whereupon, a discussion was held off
15 the record.)

16 MR. MALIN: Will you permit the
17 witness to see the affidavit that you have?

18 MR. KOHN: If it will make you happy,
19 we'll mark it Bistline Exhibit 2. A two-page
20 document which appears to be an affidavit of Mr.
21 Bistline in the case of Scott versus Monsanto.

22 (Marked as Exhibit 2 for
23 identification.)

24 MR. MALIN: Will the court reporter

Bistline

1 repeat the question, please.

2 (Whereupon, the above portion of the
3 notes of testimony was read by the court reporter.)

4 MR. MALIN: I'm objecting to the
5 question.

6 I direct the witness not to answer
7 it. First, it misrepresents what the affidavit
8 says.

9 The affidavit says, and I quote,
10 "This two million pages estimate relates to
11 documents found in Monsanto files. It excludes
12 documents attained from other entities in
13 litigation. Whether such documents (which amount to
14 several million pages) are properly the subject of
15 production demand is seriously questionable,
16 particularly since in many cases those documents are
17 subject of protective orders." So, obviously --

18 MR. KOHN: That's right. You have
19 even more than two million documents.

20 MR. MALIN: A good deal more than two
21 million documents.

22 MR. KOHN: I'll say.

23 BY MR. KOHN:

24 Q. Are the two million documents referred

Bistline

1 to in your affidavit, recorded on the computer?

2 MR. MALIN: I direct the witness not
3 to answer that question.

4 BY MR. KOHN:

5 Q. How long did it take you to gather the
6 information that is contained in the affidavit that
7 has been marked as Bistline Exhibit 2?

8 MR. MALIN: Hold on.

9 (Whereupon, a discussion was held off
10 the record.)

11 MR. MALIN: Mr. Kohn, would you give
12 us some indication of why you believe this question
13 is relevant to the matter that's currently before
14 the Court?

15 MR. KOHN: Yes. This would appear to
16 be, at least, one person's estimate, after, I
17 assume, a reasonable review. Otherwise, he wouldn't
18 have so verified to a federal court, of the number
19 of documents that relate to polychlorinated
20 biphenyls in Monsanto's motion. I'd like to know
21 how long it took him to gather this information,
22 where the documents are located, et cetera.

23 MR. MALIN: Paragraph 3 of that
24 affidavit, I would like to read to you, Mr. Kohn.

Bistline

1 "By its terms, the requests would
2 oblige Monsanto to search for every conceivable kind
3 and category of document in its possession, custody
4 or control with any possible relation to three
5 broadly defined categories of chemical substances:
6 Polychlorinated biphenyls ("PCBs"), polychlorinated
7 dibenzofurans ("furans") and polchlorinated
8 dibenzodioxins."

9 We're not talking about just PCBs.

10 Q. What percentage --

11 MR. MALIN: I direct him not to
12 answer the question.

13 Q. What percentage of the two million
14 relate to PCBs as opposed to those related
15 chemicals?

16 MR. MALIN: I direct him not to
17 answer the question. First of all, I think this is
18 irrelevant. It's far afield, and if this is where
19 you are going with this, I'm going to direct him not
20 to answer any further questions. I think this
21 deposition is terminated. Unless you're going to
22 ask some relevant questions that apply, this
23 deposition will be over.

24 MR. KOHN: Well, as I say, you know

Bistline

1 where the door is. Any time you think it's
2 appropriate to leave, you'll leave. We'll take
3 whatever action we think is appropriate in
4 response.

5 BY MR. KOHN:

6 Q. The affidavit states on page 2, "Based
7 upon my experience in other litigation, I estimate
8 that review for production of these documents would
9 require an excess of 1,000 paralegal days and 500
10 lawyer days of effort."

11 What other litigation were you
12 referring to.

13 MR. MALIN: I think you can answer
14 that.

15 A. I have been involved in litigation for
16 15 years, now. And, for most of that time, Mr.
17 Kohn, I've been involved with corporate litigation,
18 which normally requires the review and production of
19 large numbers of documents.

20 Q. I agree with you on that.

21 A. I have been doing this, as I said, for
22 15 years, and it is the totality of the case
23 experience that I have in that capacity, that I was
24 referring to.

Bistline

1 Q. How did you go about deriving the figure
2 1,000 paralegal days?

3 MR. MALIN: I object. I direct him
4 not to answer. This is an affidavit. It's in issue
5 in another case, not this one.

6 MR. KOHN: Well, this is the same
7 form of affidavit which has been submitted to the
8 court in this case. And I'd like to understand what
9 the formula or procedure is for coming up with this
10 number, 1,000 paralegal days.

11 How do you go about estimating?

12 MR. MALIN: You're talking about a
13 different case, different document requests.
14 Different number of plaintiffs, different issues,
15 that has nothing to do with this case. It's so far
16 afield that it is objectionable. I direct the
17 witness not to answer it.

18 MR. KOHN: Just so our position is
19 clear, in request number 11, in the Alston case, we
20 asked quote all documents produced by you in Scott
21 v. Monsanto, Civil Number B 84-1103.

22 This is an affidavit filed in that
23 case, with respect to the production of documents in
24 that case.

Bistline

1 MR. MALIN: You've made your
2 statement. I want to take a five minute recess, and
3 we're going off the record.

4 MR. KOHN: It's 12:25, do you want to
5 have lunch? I'll recess now, if you want.

6 MR. MALIN: All right.

7 (Short recess was then taken.)

8 BY MR. KOHN:

9 Q. In Bistline Exhibit 2, page 2, there's
10 also this statement. "The cost to Monsanto for
11 production of those documents alone would
12 approximate \$1,000,000." How did you go about
13 ascertaining the \$1,000,000 figure?

14 MR. MALIN: I object to that. For
15 the same reason that the last question was objected
16 to. This is irrelevant, it has nothing to do with
17 the issue before the court in this particular case,
18 for the same reasons.

19 Mr. Kohn, if you have any questions,
20 which relate to the issue before the Court,
21 burdensomeness of the production in the Alston case,
22 the matter that's now being briefed, I ask that you
23 ask those questions. I realize I can't tell you how
24 to conduct your deposition, but if you have no other

Bislline

1 questions, I request that you terminate the
2 deposition.

3 MR. KOHN: Oh, no, in addition to
4 those questions, which we have already asked, which
5 pertain to this litigation, we have a large number
6 of other ones, which we'll try to get to as promptly
7 as possible.

8 The affidavit continues.

9 MR. MALIN: Do I understand that you
10 have questions that pertain to litigation, other
11 than the matter that's currently before the court.

12 MR. KOHN: I have questions that
13 pertain to this case. Other than that, I don't know
14 what you are talking about.

15 MR. MALIN: Let's proceed.

16 BY MR. KOHN:

17 Q. The affidavit states, "It excludes
18 documents obtained from other entities in
19 litigation. Whether such documents (which amount to
20 several million pages) are properly the subject of a
21 production demand is seriously questionable.".

22 What documents are included within
23 that several million pages? By that I mean, what
24 general groups or categories of documents?

Bistline

1 MR. MALIN: Objection. I direct the
2 witness not to answer, for the same reason as I had
3 previously given. Including work product, as well.
4 BY MR. KOHN:

5 Q. As part of your supervisory
6 responsibility in PCB litigations, particularly the
7 Alston case, is it your practice to review documents
8 to be filed with the court prior to their being
9 filed?

10 MR. MALIN: I think you can answer
11 that.

12 A. Yes.

13 Q. Is it your practice to review response
14 to discovery requests prior to the time those
15 responses are served on counsel?

16 A. Yes.

17 Q. And do you review those documents for
18 their accuracy, and truthfulness and thoroughness?

19 A. Yes.

20 Q. And, do you endeavor, as part of your
21 job responsibility, to make sure that the contents
22 of any documents, either served in discovery, in
23 response to discovery or filed with the court are
24 truthful and accurate?

Bistline

1 A. That's correct.

2 MR. KOHN: I ask the reporter to mark
3 as the next numbered exhibit the response of
4 Monsanto to plaintiff's request for production of
5 documents.

6 (Marked as Exhibit Number 3 for
7 identification.)

8 MR. KOHN: In the case of Alston
9 versus Septa, et al., and other litigation, as
10 Bistline Exhibit 3.

11 I have placed before you what the
12 reporter has marked as Bistline Exhibit 3.

13 Have you ever seen that document
14 before today?

15 A. Let me just review this.

16 Q. All right.

17 A. Yes, I've seen this document.

18 Q. Did you participate in the preparation
19 of this exhibit?

20 A. Yes.

21 Q. Did you review this document for its
22 truthfulness and accuracy before it was served in
23 this lawsuit?

24 A. Yes.

Bistline

1 MR. KOHN: Off the record for a
2 minute.

3 (Whereupon, a discussion was held off
4 the record.)

5 (Luncheon recess was taken.)

6 BY MR. KOHN:

7 Q. Do we have Exhibit 3 available?

8 If you could turn to the first page
9 after all the captions. The heading, Responses of
10 Defendant Monsanto Company, et cetera.

11 Referring to paragraph number one of
12 that document, it states, "Many of the documents
13 requested by plaintiffs in this first request for
14 production of documents were previously supplied by
15 Monsanto Company in response to plaintiff's first
16 and second request for production of documents in
17 Williams v. Monsanto Company, et al., or in response
18 to other discovery directed to Monsanto Company in
19 related litigation under the caption In Re: Paoli
20 Railroad Yard PCB Litigation, Eastern District of
21 Pennsylvania."

22 To which request in this document
23 request were documents previously provided?

24 MR. MALIN: Hold on.

Bistline

1 Mr. Kohn, can you be more specific
2 with your question? First of all, I'd like to point
3 out that you actually have the documents that were
4 provided. And, it's not necessary for this witness
5 to go down ad seriatim through all of these requests
6 to determine which were provided and/or compare them
7 with the list of that which was provided at this
8 point.

9 I think that's an improper question.

10 MR. KOHN: Does that --

11 MR. MALIN: If the witness has any
12 recollection, I'll permit him to attempt to answer
13 it, although, I have also my own objection which I
14 would suggest. I don't see the relevance of any of
15 this to the issue that's currently before the court
16 on the burdensomeness with respect to the four
17 requests, which there is a motion to compel before
18 the Court.

19 Mr. Bistline, if you have any idea at
20 this point what was produced and how it can relate,
21 you may answer the question.

22 A. Well, I'm not sure I understand what the
23 question is.

24 Are you asking which of your request

Bistline

1 documents produced in these two federal cases are
2 responsive to? Is that the request.

3 Q. Yes.

4 A. I believe, sir, that's reflected in the
5 text of each of Monsanto's response to each of your
6 responses. I defer to this document for recitation
7 of that.

8 Q. You have nothing to add, other than what
9 is set forth in the specific responses to the
10 specific requests?

11 A. Correct.

12 Q. And do you know how many documents were
13 produced in the Williams case and In Re: Paoli
14 Railroad Yard PCB litigation in the federal court by
15 Monsanto?

16 A. My best recollection, Mr. Kohn, is a
17 total in both cases combined, of some 44, 4500 pages
18 of documents.

19 MR. MALIN: Mr. Kohn, I think you're
20 well aware, there were approximately 44017 documents
21 produced. Now, an indication of the documents that
22 were produced is attached to our motion in support
23 of our objections to these Interrogatories. It is
24 exhibit, it appears to be Exhibit E.

Bistline

1 BY MR. KOHN:

2 Q. Mr. Bistline, could you place before
3 yourself the exhibit that Mr. Malin is referring to
4 Exhibit E to the brief which has been filed by
5 Monsanto in this case. Did you participate, in any
6 way, in the preparation of that exhibit?

7 A. No.

8 Q. Do you know whether any employees of
9 Monsanto participated, in any way, in the
10 preparation of that exhibit?

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

12 Q. Do you know whether, in fact, the
13 documents set forth on that exhibit are all of the
14 documents in Monsanto's possession which are
15 responsive to the request for production in the
16 Alston case?

17 MR. MALIN: Don't answer yet.

18 I'm going to object to the question.
19 I direct the witness not to answer. The response
20 speaks for itself.

21 BY MR. KOHN:

22 Q. Paragraph Number 2 of the heading,
23 general objections on Exhibit 3, states, "Monsanto
24 objects to each and every request on the grounds

Bistline

1 that they are overly broad, irrelevant, they seek
2 information not reasonably calculated to lead to the
3 discovery of admissible evidence, and they impose an
4 undue burden and expense relative to the value of
5 the information requested."

6 It is your position that each and
7 every request in this document request imposes an
8 undue burden and expense relative to the value of
9 the information requested upon Monsanto.

10 MR. MALIN: Objection. I direct the
11 witness not to answer that question.

12 MR. KOHN: On what grounds?

13 MR. MALIN: This was compiled by
14 counsel, it's a legal conclusion. It's that which
15 is being litigated by the Court, now, at least with
16 respect to four of them, and I direct the witness
17 not to answer the question. If this is going to be
18 the tender of the remainder of your questions, if
19 this is where we are going, I believe this
20 deposition is terminated.

21 MR. KOHN: Well, I'm trying to
22 ascertain whether this witness has any information
23 with respect to your contention that it would impose
24 a quote, "undue burden," close quote, on Monsanto,

Bistline

1 to reply to each request.

2 MR. MALIN: You have his affidavit.
3 He has given you the information in an affidavit.

4 MR. KOHN: He hasn't given me as to
5 each, and I have made a request. It's up to you.
6 If you want him to go home to St. Louis for the
7 weekend and come back next week, that is your
8 business. We will be here. You're not going to
9 wear us out or tire us out. We will be happy to
10 reconvene this little session next week. But now
11 we'd like to go through this and, please, if you
12 have an objection to make, make an objection. If
13 you have an instruction, make it. But keep the
14 speeches to a minimum.

15 Now, is it your --

16 MR. MALIN: I'll conduct my portion
17 of this deposition as I see fit, obviously, Mr.
18 Kohn.

19 Yes, it's our position that you have
20 the affidavit. You are not inquiring with respect
21 to the issues that are relevant in the motion.

22 And I'll permit, perhaps, a few more
23 of these questions, before this deposition is
24 terminated, and if they are of the same kind that

Bistline

1 you are asking now, this deposition is over.

2 BY MR. KOHN:

3 Q. Mr. Bistline, is it your belief that
4 response to each of the document requests,
5 separately viewed, each viewed separately, imposes
6 an undue burden upon Monsanto?

7 MR. MALIN: I object and direct the
8 witness not to answer that question.

9 BY MR. KOHN:

10 Q. Paragraph number 8 of this document on
11 page 3 states, in part, "In providing the following
12 responses to plaintiff's first request, Monsanto has
13 undertaken a reasonable effort to locate records and
14 to provide the information requested."

15 What efforts has Monsanto undertaken
16 to locate records and provide the information
17 requested.

18 MR. MALIN: You may answer that
19 question.

20 A. The efforts that were undertaken to
21 provide the information that we have provided, are,
22 in general, as I described earlier. We evaluated
23 the document demand. We made a determination with
24 counsel as to that, which we felt it was appropriate

Bistline

1 for us to respond to.

2 Those documents were gathered and
3 provided to you.

4 Q. That's the three documents that were
5 provided to us in connection with the Alston case.
6 Are those the documents you're referring to?

7 A. I believe, Mr. Kohn, that you'll find
8 that we also incorporate in this response the
9 documents we have produced in the federal
10 litigation. I consider this also part of this
11 response.

12 Q. How much time was spent with respect to
13 just the documents that were produced, the
14 additional documents produced in connection with
15 this case, not the ones that were produced
16 previously?

17 MR. MALIN: I object. That question
18 has been asked and answered over and over and over
19 again.

20 I'm going to direct the witness not
21 to answer it again.

22 BY MR. KOHN:

23 Q. The next sentence of this same paragraph
24 states, "However, various records of Monsanto have,

Bistline

1 from time to time, been discarded in the ordinary
2 course of business."

3 Were you aware of any documents which
4 pertain to PCBs which have been discarded, from time
5 to time.

6 MR. MALIN: You may answer that
7 question.

8 A. Monsanto has a record retention policy,
9 and pursuant to that policy, certain types of
10 documents are kept for varying lengths of time, and
11 the answer is yes, some documents relating to PCBs
12 have, over the regular course of business, has been
13 discarded.

14 Q. Do you know how many such documents have
15 been discarded?

16 A. No.

17 Q. The record retention policy, I take it,
18 is set forth in writing?

19 A. Yes, it is, sir.

20 MR. KOHN: Request that copies of
21 that policy be provided to us.

22 MR. MALIN: We will honor a request
23 made through the normal form of request for
24 production of documents. If it is appropriate to

Bistline

1 honor any such request.

2 BY MR. KOHN:

3 Q. To your knowledge, has there ever been
4 any directive or instruction issued to the employees
5 of Monsanto Company, to cease discarding, in the
6 ordinary course of business, documents which pertain
7 to PCBs?

8 MR. MALIN: You may answer that
9 question.

10 A. Yes.

11 Q. When was such instruction given?

12 A. There have been, to my knowledge,
13 several such instructions.

14 Q. And do you know when they were given?

15 A. During the period, essentially, 1970 to
16 '77.

17 Q. Have there been any since 1977?

18 A. There may have been. I don't know.

19 Q. Have any documents pertaining to PCBs
20 been discarded in the ordinary course of business,
21 after 1977?

22 MR. MALIN: You may answer that
23 question.

24 A. To the best of my knowledge, no.

Bistline

1 Q. Continuing on Page 4 of this exhibit.

2 Request number one. "All documents
3 which refer or relate to the effects of PCBs on
4 humans or animals."

5 And the objection, or the response,
6 rather, to request number one states, "Defendant
7 objects to request number one on the grounds that
8 the term 'effects' is unduly vague and undefined and
9 that the request is unduly burdensome and
10 overbroad," et cetera.

11 Do you know what the word "effects"
12 means?

13 MR. MALIN: I'm going to object.
14 These words are used by counsel. If you are asking
15 him how he determines the use of the word effects
16 means to him, I'll permit him to answer that
17 question.

18 But, with respect to what it means in
19 this particular document, I think it would -- as I
20 said, it's unduly vague and undefined, and those are
21 the words of counsel.

22 BY MR. KOHN:

23 Q. Do you know what "effects" means?

24 A. I have a personal or my own

Bistline

1 understanding of what the word "effects" means to
2 me.

3 Q. What is that personal understanding?

4 A. I would understand the word "effects" as
5 you were using it, to mean an observable impact upon
6 here, humans or animals. To me, it's very, very
7 broad, and and nebulous word that could mean a great
8 many things.

9 Q. Did you look it up in the dictionary
10 before you signed off on this response?

11 MR. MALIN: Objection. Don't answer
12 that question.

13 Q. Continuing with this response to request
14 number one, the fourth line from the bottom states,
15 "Furthermore, the information requested is in the
16 public domain and equally available to plaintiffs."

17 Is there any information in the
18 possession of Monsanto, that is within the scope of
19 request number one, that is not in the public
20 domain?

21 MR. MALIN: I object to your
22 question. Information available to Monsanto is what
23 you were saying on health effects which, of course,
24 he has said is vague and undefined, in this

Bistline

1 particular document. Now, you're getting into the
2 substance of this litigation, not really with
3 respect to the burdensomeness issue.

4 And, accordingly, I think that the
5 question is objectionable. The answer speaks for
6 itself.

7 And, I direct the witness not to
8 answer it.

9 MR. KOHN: We are endeavoring to try
10 to narrow some of the issues in dispute here. If it
11 is, in fact, true that all of the information within
12 the scope of request number one is in the public
13 domain, then that is one thing. If, some
14 information responsive to request number one is not
15 in the public domain, but it is in the possession of
16 Monsanto, then that's another issue entirely. I'm
17 trying to get their understanding whether or not
18 Monsanto is in possession of any of those responsive
19 to request one that's not in the public domain.

20 MR. MALIN: The response is that it's
21 in the public domain, that's the response of
22 counsel. I direct him not to answer the question.

23 MR. KOHN: So, you are telling me, as
24 an officer of the court, that all such information

Bistline

1 is in the public domain?

2 MR. MALIN: I beg your pardon?

3 MR. KOHN: Read it back to him.

4 (Whereupon, the previous portion of
5 the notes of testimony was read by the court
6 reporter.)

7 MR. MALIN: Yes. All such
8 information is in the public domain.

9 MR. KOHN: I'm sorry. All such
10 information?

11 MR. MALIN: All such information is
12 in the public domain.

13 MR. KOHN: Thank you.

14 MR. MALIN: We have no understanding
15 otherwise.

16 BY MR. KOHN:

17 Q. Continuing on page 6 of this exhibit,
18 request number 3 seeks, "All documents which refer
19 or relate to the 'background' levels of PCBs in the
20 United States."

21 The response states, in part,
22 "Moreover, the term 'background levels' standing
23 alone is vague and undefined."

24 Do you have any understanding of what

Bistline

1 the term "background levels" with respect to PCBs
2 means?

3 MR. MALIN: I'm going to object to
4 this question.

5 These responses stand on their own
6 merit or fall on their own merit.

7 Mr. Bistline is here for a very
8 limited purpose, with respect to question of
9 burdensomeness, and if this is the tenor, this
10 deposition is concluded.

11 You are not dealing with any of the
12 issues that this deposition was noticed for and was
13 permitted for.

14 And if you have any more questions, I
15 would request that you tender those questions now,
16 because otherwise this deposition is concluded.

17 BY MR. KOHN:

18 Q. Continuing on page 6, request number 4.
19 Do you have that before you? The response to
20 request 4 states, "Monsanto objects to our request
21 number 4, on the grounds that it's unduly
22 burdensome."

23 And it continues, close quote.

24 How many documents are responsive to

Bistline

1 request number 4.

2 MR. MALIN: Objection. Don't answer
3 the question. This deposition is concluded.

4 Q. Why is responding to request number 4
5 unduly burdensome?

6 MR. MALIN: Wait a minute. Hold on.
7 Let me see.

8 Q. As alleged in the response which you
9 signed off on.

10 MR. MALIN: The request speaks for
11 itself.

12 I stand, then, on my statement, and
13 this deposition is concluded. Mr. Bistline.

14 MR. KOHN: Mr. Bistline, it was nice
15 to meet you, and hope I do not have to inconvenience
16 you unduly to call you back to conclude this
17 deposition. Thank you for your time.

18 - - -

19 (Deposition ended at 2:05 p.m.)

20

21

22

23

24

1 C E R T I F I C A T E

2 I hereby certify that the proceedings and
3 evidence noted are contained fully and accurately in
4 the notes taken by me on the deposition of the above
5 matter, and that this is a correct transcript of the
6 same.

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16 (The foregoing certification of this

17 transcript does not apply to any reproduction of the

18 same by any means, unless under the direct control

19 and/or supervision of the certifying reporter.)

20

21

22

23

24

ACKNOWLEDGEMENT OF DEPONENT

I, _____, do hereby certify
 that I have read the foregoing pages, _____
 and that the same is a correct transcription of the
 answers given by me to the questions therein
 propounded, except for the corrections or changes in
 form or substance, if any, noted in the attached
 Errata Sheet.

 DATE

- - - - -

E R R A T A

- - - - -

PAGE	LINE	CHANGE
_____	_____	_____
_____	_____	_____
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_____	_____	_____

Subscribed and sworn to before me this _____ day
 of _____, 198 ____.

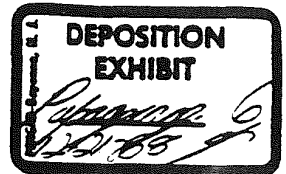
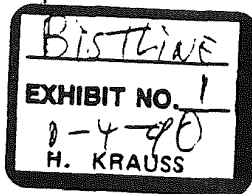
My commission expires: _____

Notary Public

LAWYER'S NOTES

[illegible]

BCC: P. G. BENIGNUS
D. A. OLSON



July 7, 1970

Mr. Gene Lewis
P. R. Mallory Company
Waynesboro, Tennessee

Dear Gene:

I apologize for the delay, but after further travel and a long holiday weekend I am finally sending you my comments regarding the control and disposal of Aroclors.

I appreciated the time you and your colleagues were able to spend with Randy Graham and me and I was pleased I had the opportunity to tour your plant, since this gave me a better understanding of your overall problem.

Gene, of all the plants I personally toured, yours had the biggest challenge to reach the objectives we are striving for. I tell you this not to embarrass you but, hopefully, to give you some feel for the magnitude of the problem.

First, let us consider the welfare of your employees. Aroclors, being chlorinated hydrocarbons, should not be permitted to exceed 0.5 to 1.0 milligram per cubic foot of air in the work area. In your operation, in spite of an operating ventilation system, the presence of Aroclor was noticeable by the blue haze present and insensitive as I have become, the amount was high enough to cause eye irritation which persisted for several hours after the exposure.

Another area of employee exposure is direct skin contact with the liquid Aroclor. Contact should be eliminated by operating changes or by providing protective gloves and clothing.

BRW 001874

To prevent the escape of PCB's to the environment calls for a level of control and housekeeping many of us have never been asked to achieve in the past. Every effort must be made to prevent leakage and spillage. Maintenance must be kept at a very high standard. For those areas where leakage and spills will occasionally occur, catch pans must be provided. These pans must drain to a collecting basin or be emptied by responsible employees on a scheduled basis.

Mixing of Aroclors with waste water streams should be avoided since separation of PCB's from water can be costly. If mixing cannot be avoided, a catch basin and settling pond should be provided to separate the heavy Aroclor from the water.

Unusable contaminated Aroclor should be disposed by incineration which assures complete destruction to CO_2 , H_2O , and HCl . Any incineration below $800^\circ C$ will result in vaporization which will contaminate the atmosphere or in partial oxidation which may yield materials which are highly toxic.

To help our customers with their liquid disposal problems, we have offered to accept for future incineration scrap liquid Aroclors shipped to Monsanto Company, W. G. Krumrich Plant, Sauget, Illinois, Attention: Supervisor, Department 246. The charge for this disposal is 3¢ per pound of material. This charge is tentative pending a complete evaluation of incineration costs and does not include freight or container costs.

Contamination of the atmosphere must also be eliminated. All handling systems must be closed wherever possible. Fumes exhausted from a tank, vessel, or working area must be trapped and collected using condensers and entrainment separators.

Solids contaminated with PCB's pose a greater challenge. Until a proper incinerator is designed, we are suggesting that disposal be made in an authorized, properly operated land fill away from any water systems. These solids include treatment clays, absorbing materials used to contain spills, rags, windings and containers.

In summary, control of PCB's can be achieved with equipment engineered to prevent losses and maintained properly coupled with good manufacturing practices which result in a high standard of housekeeping.

BRW 001875

from the interest and concern which you have expressed, I am certain that you will do all you can to reduce the escape of PCB's from your operation. When all of us succeed in this objective, I am confident that no regulatory agency will be compelled to take precipitous action regarding the use of PCB's in vital applications.

Sincerely,

W. B. Papageorge
Manager
Environmental Control

cc:

cc: Mr. H. B. Vnught
P. R. Mallory Company

Mr. Cecil Harrod
P. R. Mallory Company

G. R. Graham

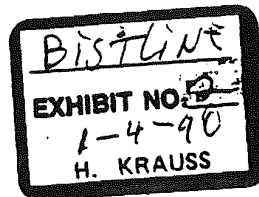
BRW 001876

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Cecil Scott, et al,)
)
 Plaintiffs)
)
vs.)
)
Monsanto Company, et al,)
)
)
 Defendants.)

No. B-84-1103-CA

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



THOMAS M. BISTLINE, being duly sworn, deposes and says:

1. I am Assistant Litigation Counsel for defendant Monsanto Company ("Monsanto") and I am familiar from personal knowledge with matters set forth herein. I submit this affidavit in support of Monsanto's Motion for a Protective Order relating to a Request for Production of Documents served by plaintiffs in this action on February 17, 1985 (hereafter "the Request") and plaintiffs' Notice of Intent To Take Oral Depositions served by plaintiffs on or about March 6, 1986.

2. As Assistant Litigation Counsel for Monsanto, it is my responsibility, inter alia, to supervise the gathering of documents and information for a variety of litigated matters, including the present action. I am familiar with the manner in which records and information are kept at Monsanto, and with the scope and nature of the effort which would be required to conduct a good faith search, consistent with Monsanto's obligations under the rules of this Court, in response to the Request.

3. By its terms, the request would oblige Monsanto to search for every conceivable kind and category of document in its possession, custody or control with any possible relation to three broadly defined categories of chemical substances: polychlorinated biphenyls ("PCBs"), polychlorinated

EXHIBIT " B "

3462

dibenzofurans ("furans") and polychlorinated dibenzodioxins. Such a search would require a review for possible production of literally millions of pages of documents. Material which has been gathered from Monsanto's files for other cases and which generally relates to these three broad categories of chemical substances constitutes nearly 2 million pages of documents. Based upon my experience in other litigation, I estimate that review for production of these documents would require in excess of 1,000 paralegal days and 500 lawyer days of effort. The cost to Monsanto for production of those documents alone, would approximate \$1,000,000. This 2,000,000 page estimate relates to documents found in Monsanto files. It excludes documents obtained from other entities in litigation. Whether such documents (which amount to several million pages) are properly the subject of a production demand is seriously questionable, particularly since in many cases those documents are the subject of protective orders.

4. A full and complete response to Mr. Musselwhite's demand may require the collection of documents not already available as the result of previous searches. The files of many employees in various divisions of the company would have to be reviewed, and the documents so collected screened for production. The cost of this additional effort is difficult to predict, but would certainly amount to several hundred thousand dollars.

Further affiant sayeth not.

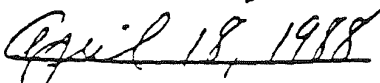


Thomas M. Bistline

Sworn to before me this
11th day of March, 1986.


Notary Public

My commission expires:



PAULINE J. ARSIAT, NOTARY PUBLIC
County of St. Louis, State of Missouri
My Commission Expires April 18, 1988



WHITE AND WILLIAMS

By: James D. Shomper/Michael H. Malin Attorneys for Defendant,
I.D. Nos. 33305/04753 Monsanto Company
1234 Market Street, 16th Floor
Philadelphia, PA 19107
(215) 854-7034 & 8636

✓ SAMUEL ALSTON

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1988

NO. 5475

HARRY ALDINGER

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1988

NO. 5350

K. LOUIS JONES

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1988

NO. 5318

LOUIS BORQUIN

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989

NO. 5347

MICHAEL J. O'HARA

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5344

MARGARET E. WALTMAN

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5535

RALPH A. POWERS

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5328

CHRISTOPHER DIEMER

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5329

WILLIAM COOK

v.

SEPTA, et al.

:
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: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS

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: JANUARY TERM, 1989
: NO. 5334
:

KARL RUCKER

v.

SEPTA, et al.

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: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS

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: JANUARY TERM, 1989
: NO. 5327
:

NICHOLAS DELLO

v.

SEPTA, et al.

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: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS

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: JANUARY TERM, 1989
: NO. 5330
:

EDWARD V. BARRY

v.

SEPTA, et al.

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: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS

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: JANUARY TERM, 1989
: NO. 5492
:

BILLY B. WALLACE

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5338

DAVID GASPARRO

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5342

DANIEL F. SCIOLE

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5345

CONSTANTINO IANNONE

v.

SEPTA, et al.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM, 1989
NO. 5350

v.
SEPTA, et al.

JANUARY TERM, 1989
NO. 5349

v.
SEPTA, et al.

JANUARY TERM, 1989
NO. 5348

v.
SEPTA, et al.

JANUARY TERM, 1989
NO. 5351

v.

SEPTA, et al.

JANUARY TERM, 1989
NO. 5346

v.
SEPTA, et al.

JANUARY TERM, 1989
NO. 5341

v.
SEPTA, et al.

JANUARY TERM, 1989
NO. 5336

RESPONSES OF DEFENDANT MONSANTO COMPANY
TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS ADDRESSED TO DEFENDANTS

Defendant Monsanto Company hereby responds to Plaintiffs' First Request for Production of Documents Addressed to Defendants as follows:

GENERAL OBJECTIONS AND LIMITATIONS

1. Many of the documents requested by plaintiffs in this First Request for Production of Documents were previously supplied by Monsanto Company in response to Plaintiffs' First and Second Requests for Production of Documents in Williams v. Monsanto Company, et al., E.D. Pa., C.A. No. 87-1258, or in response to other discovery directed to Monsanto Company in related litigation under the caption In Re: Paoli Railroad Yard PCB Litigation, E.D. Pa., Master File No. 86-2229. Monsanto Company objects to these document requests to the extent they seek documents already provided by Monsanto Company to plaintiffs in such related litigation.

2. Monsanto objects to each and every request on the grounds that they are overly broad, irrelevant, they seek information not reasonably calculated to lead to the discovery of admissible evidence, and they impose an undue burden and expense relative to the value of the information requested.

3. Monsanto objects to any and all requests to the extent that they seek privileged communications or attorney work product protected from disclosure under Pennsylvania Rules of Civil Procedure 4003.1 through 4003.5.

4. Monsanto objects to any and all requests to the extent that they seek confidential, financial or business information without the protection of an acceptable form of stipulation and protective order adequate to preserve the confidentiality of such information.

5. Monsanto objects to any and all requests to the extent that they relate to or require the production or identification of documents, writings, records or publications in the public domain since such information is equally available to the plaintiffs.

6. Monsanto objects to any and all requests to the extent that they seek information concerning activities, policies, practices, information or procedures of any other party to this action because those parties are best able to provide answers concerning their operations. Responses will be provided by Monsanto only and will be based upon information known and available to its officers and supervisory employees.

7. Monsanto objects to any and all requests on the grounds that they are vague, ambiguous and lacking in specificity. Plaintiffs have failed to specifically identify the transformer(s) which is/are the subject of the incident alleged in the Complaint. As a result, Monsanto is unable to respond to many of plaintiffs' requests. Notwithstanding this objection, without waiver thereof and in the spirit of discovery, Monsanto has responded to most of plaintiffs' requests on the basis that they seek information pertaining to polychlorinated biphenyls

manufactured by Monsanto for use in the electrical industry as dielectric fluids.

Monsanto further objects to any and all requests to the extent that they request information pertaining to products of Monsanto other than those products containing polychlorinated biphenyls which were manufactured for use in the electrical industry as dielectric fluids on the grounds that such requests are overbroad, vexing, annoying and harrassing; they are irrelevant to the claims stated in the Complaint; and they are not reasonably calculated to lead to the discovery of admissible, relevant or discoverable evidence. Monsanto points out that the claims in the plaintiffs' Complaint are based on their alleged exposure to transformer fluid at the Paoli railyard.

8. In providing the following responses to plaintiffs' first requests, Monsanto has undertaken a reasonable effort to locate records and to provide the information requested. However, various records of Monsanto have from time to time been discarded in the ordinary course of business. The following responses are based upon such information as is reasonably available to Monsanto and susceptible to retrieval through reasonable efforts.

9. To the extent that there are responsive documents, Monsanto Company will make each responsive document available for inspection at a mutually convenient time at the offices of White and Williams, 1234 Market Street, Philadelphia, PA 19107. At such time arrangements for photocopying may be made and all costs

for such copying will be borne by plaintiffs. Monsanto Company will produce only those documents which are requested and not otherwise objected to because of privilege or subject to other objection.

10. Monsanto objects to plaintiffs' "Definitions" and "Instructions" to the extent they seek to impose obligations or define terms beyond those set forth in Pennsylvania Rules of Civil Procedure 4001 et seq.

RESPONSES TO DOCUMENT REQUESTS

REQUEST NO. 1

All documents which refer or relate to the effects of PCBs on humans or animals.

RESPONSE TO REQUEST NO. 1

1. Defendant objects to Request No. 1 on the grounds that the term "effects" is unduly vague and undefined and that the request is unduly burdensome and overbroad because it is without limitation as to time or specific product and is not limited in any meaningful way to the issues or injuries alleged in this litigation. As such, it is not a request for designated documents as required by Pa. R.C.P. 4009 and it exceeds the scope of Pa. R.C.P. 4003.1. Furthermore, the information requested is in the public domain and equally available to plaintiffs. Monsanto further objects to producing documents which "refer or relate to the effects of PCBs on ... animals" as such documents

are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving its objections, Monsanto refers to its responses to discovery in related litigation and, in particular, the extensive expert affidavits submitted in connection with Defendants' Joint Motion for Summary Judgment on Causation filed in In Re: Paoli Railroad Yard PCB Litigation, E.D. Pa., Master File No. 86-2229, and related written briefs which discuss and address in detail the published literature on the health effects of PCBs.

REQUEST NO. 2

All documents which refer or relate to the chemical composition of PCBs.

RESPONSE TO REQUEST NO. 2

Defendant objects to Request No. 2 on the grounds that the request is overbroad and not limited as to the products allegedly at issue in this litigation. Without waiving its objections, Monsanto refers to its responses to prior discovery in related litigation, and in particular, its responses to a similar request in Williams v. Monsanto Company, et al., E.D. Pa., No. 87-1258, along with the identification of four published articles containing analyses of the various PCB congeners which were listed and made available to plaintiffs' counsel in a letter from M.H. Malin, Esquire to A.E. Cohen, Esquire dated January 4, 1988.

REQUEST NO. 3

All documents which refer or relate to the "background" levels of PCBs in the United States.

RESPONSE TO REQUEST NO. 3

Monsanto objects to this request on the grounds that it is overbroad and not limited as to geographic scope. Moreover, the term "background levels" standing alone is vague and undefined. Without waiving its objections, Monsanto refers to the scientific literature in the public domain, including the ATSDR report regarding the Paoli Railyard and surrounding areas, and to the extensive expert affidavits submitted in connection with Defendants' Joint Motion for Summary Judgment on Causation in In Re: Paoli Railyard Yard PCB Litigation, E.D. Pa., Master File No. 86-2229.

REQUEST NO. 4

All documents sent or received by you to or from any purchaser or consumer of your PCB products relating to the effects or uses of PCBs.

RESPONSE TO REQUEST NO. 4

Monsanto objects to Request No. 4 on the grounds that it is unduly burdensome, overly broad, without limitation as to specific products, geographical scope or time period and because the terms "effects" and "uses" are undefined and vague. Accordingly, the request is not a request for designated documents and exceeds the scope of Pa.R.C.P. 4009.

REQUEST NO. 5

All copies of scientific or medical literature, journals, articles or treatises which refer or relate to PCBs.

RESPONSE TO REQUEST NO. 5

Monsanto objects to Request No. 5 on the grounds that the phrase "refer or relate" is vague and undefined and because the request is overbroad, unduly burdensome and oppressive in that it is not limited to the products allegedly at issue in this litigation nor is it limited to documents pertaining to humans. Moreover, this information is in the public domain and equally available to plaintiffs.

Without waiving its objections, Monsanto refers to the wealth of scientific and medical literature in the public domain and to its prior responses to discovery in related litigation. In particular, Monsanto refers to the extensive expert affidavits submitted in connection with Defendants' Joint Motion for Summary Judgment in In re Paoli Railroad Yard PCB Litigation, E.D.Pa. Master File No. 86-2229 and related written briefs which discuss and address in detail the published literature on PCBs.

REQUEST NO. 6

All summaries, lists, compilations or schedules of litigation in which you have been a party and the use or effects of PCBs were an issue.

RESPONSE TO REQUEST NO. 6

Monsanto objects to Request No. 6 on the ground that "use" and "effects" are undefined and ambiguous and because the request is unduly burdensome, harassing and overbroad. Further, any such

documents were prepared by or under the direction of counsel for Monsanto Company for purposes of litigation and are, accordingly, protected from disclosure by the attorney-client privilege and attorney work-product rule.

Without waiving its objections, Monsanto refers plaintiffs to the list of all lawsuits regarding PCBs as a component of dielectric fluids to which Monsanto has been or is a party which it previously produced in response to Plaintiffs' First Request for Production of Documents, Request No. 10 in Williams v. Septa et al., E.D. Pa., C.A. 87-1258, Master File No. 86-2229.

REQUEST NO. 7

With respect to all litigations identified in your response to request number 6:

- (a) all docket sheets or compilations of all pleadings, motions, depositions and discovery requests filed in those cases;
- (b) all pleadings and motions filed in those cases;
- (c) all transcripts of depositions taken in those cases;
- (d) all trial transcripts in those cases;
- (e) all discovery requests filed or served in those cases;
- (f) all documents produced by you in those cases which refer or relate to the use or effects of PCBs; and
- (g) all expert reports and deposition transcripts.

RESPONSE TO REQUEST NO. 7

Monsanto incorporates by reference its objections set forth in response to Request No. 6 and further objects to this request on the grounds that much of the requested information is available in the public domain.

Moreover, discovery served in other litigation is neither relevant to the instant litigation nor reasonably calculated to lead to the discovery of admissible evidence and, as such, is beyond the scope of discovery permitted under Pa. R.C.P. 4003.1. In addition, in many if not most instances the documents requested in sub-parts e, f and g, are subject to protective orders issued by the relevant court which restrict the use and disclosure of such documents.

REQUEST NO. 8

All reports of experts, scientists or physicians rendered on behalf of any plaintiff or any defendant in any litigation concerning the use or effects of PCBs.

RESPONSE TO REQUEST NO. 8

Defendant objects to Request No. 8 on the grounds that the terms "use" and "effect" are undefined and ambiguous, and because the request is not limited to products allegedly at issue in this litigation and is unduly burdensome, harrasing and overbroad. Expert opinions in other cases are not relevant nor capable of leading to relevant evidence in the cases before the court. Moreover, such reports, if available to Monsanto, are also available in public domain or are confidential and privileged communications or work product protected from disclosure under

Pa. R.C.P. 4003.1 - 4003.5. In addition, in many if not most cases this information is subject to a protective order issued by the relevant court.

REQUEST NO. 9

Transcripts of all depositions given by William B. Papageorge, including but not limited to depositions in the following actions:

1. The City of Bloomington v. Westinghouse and Monsanto, Civ. No. IP 83-9-C.
2. U.S. v. AUX Corp.
3. U.S. v. Outboard Marine Corp. and Monsanto Co., No. 78 C 1004, N.D. Illinois.
4. Mid-State Farms Cooperative Co. v. International Proteins Corp.
5. Gary Howell and James Parsons v. Monsanto Corp. 76 601 868 NP, State of Michigan, In the Circuit Court for the County of Wayne.
6. Scott v. Monsanto, No. B-84-1103-CA E.D. of Texas
7. Whitfield et al. v. Sangamo Weston, Inc. C.A. No. 8-84-3184-14 (D.S.C.)
8. Howard Henderson and Mattie Henderson et al. v. Monsanto Co. et al., Nos. 83-330644, NP84-424230 NP (D.S.C.)
9. ESCO Mfg. Co. v. Monsanto, CA No. 3-85-2153-R (N.D. Tex.)
10. Bethlehem Mink Farm, et al. v. Jurgielewicz Duck Trucking, et al., Civil Nos. 2456, 72-148, 72-273 (D.N.H.)
11. Inter-County Farms cooperative Assn. v. Rozansky Feed Co. Inc.; Rozansky Feed Co. Inc. v. Monsanto Co. and General Host Corp.; Monsanto Co. v. Denk Baking Corp., et al., Supreme Court of the State of New York, County of Sullivan,

12. Unigard Mutual Insurance Co. v. Darrell Abbott, et al. (D. Mont.)

13. Birmingham Fire Insurance Co. v. Pacific Gas & Electric, No. 840161, Superior Court of California, City and County of San Francisco.

14. Galyon and Hickey v. General Electric Co., Moss Trucking Co., Inc. Monsanto Co. and Larry Pressley, Nos. 3-75-198, 3-75-199 (E.D. Tenn.)

15. Charles B. Wright, ex ux v. Monsanto Co., No. B-85-322 CA (E.D. Tex.)

16. Haley v. Michigan Silo Co., C & B Silo Co., Monsanto Co. and Concrete Silo, No. 77 002593 NP, State of Michigan, in the Circuit Court for the County of Huron.

RESPONSE TO REQUEST NO. 9

Monsanto objects to Request No. 9 on the grounds that it is overly broad and not limited in any reasonable manner to the issues involved in this litigation. Accordingly, the request exceeds the scope of Pa. R.C.P. 4003.1. Further, many of the documents requested are a matter of public record and are equally available to plaintiffs. Moreover, in many of the listed cases, this information is subject to a protective order issued by the relevant court.

REQUEST NO. 10

All warnings provided by you to any other defendant in this litigation or to the public concerning the use or effects of PCBs.

RESPONSE TO REQUEST NO. 10

Monsanto objects to Request No. 10 on the grounds that "warnings", "use" and "effects" are undefined and, accordingly, the Request is unduly vague and incapable of any meaningful

response. Further, the request is overbroad in that it is not limited in any reasonable manner to any specific products, geographic scope or time period.

Without waiving its objections, Monsanto refers to its responses to prior discovery in related litigation.

REQUEST NO. 11

All documents produced by you in Scott v. Monsanto, No. Civ.-B 84-1103 (E.D. Tex.)

RESPONSE TO REQUEST NO. 11

Monsanto objects to Request No. 11 on the grounds that is it improper, overbroad, unduly burdensome, oppressive and not limited in any reasonable manner to the issues involved in this litigation. Accordingly, the request exceeds the scope of Pa. R.C.P. 4003.1. Moreover, the requested documents are subject to a protective order issued by the court in that case.

REQUEST NO. 12

All studies, tests or analysis performed by you or at your request or direction concerning the use or effects of PCBs.

RESPONSE TO REQUEST NO. 12

Monsanto objects to Request No. 12 on the grounds that the phrase "studies, tests or analysis" and the terms "use" and "effects" are undefined and vague and because the request is overbroad and unduly burdensome in that it is not limited as to time or product. Accordingly, the request is beyond the scope of Pa. R.C.P. 4003.1 Furthermore, Monsanto objects to the extent that this request seeks information relating to animal studies

because such information would neither be relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 13

All affidavits, reports and prior testimony of all of the affiants who submitted affidavits in support of your motion for summary judgment in Brown, et al. v. Septa, et al. Master File No. 86-2229 (E.D. Pa).

RESPONSE TO REQUEST NO. 13

Monsanto objects to Request No. 13 on the grounds that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In addition, many of the requested documents are available in the public domain and equally accessible to plaintiffs or are confidential and privileged attorney-client communication or work product protected from disclosure under Pa. R.C.P. 4003.1 - 4003.5.

REQUEST FOR DOCUMENTS NO. 14

All documents which support your contention that PCBs do not harm humans.

RESPONSE TO REQUEST NO. 14

Monsanto objects to this request on the grounds that it is overbroad and not limited as to time or as to products allegedly at issue in this litigation. Further, plaintiffs have not yet detailed their alleged injuries so as to enable Monsanto to determine what documents would be responsive to this request. Without waiving these objections, Monsanto refers to the wealth of medical and scientific literature in the public domain and to

the Joint Affidavit and other expert affidavits and supporting documentation filed in support of Defendants' Motion for Summary Judgment in In re: Paoli Railroad Yard PCB Litigation, E.D.Pa. Master File No. 86-2229.

REQUEST NO. 15

The "world's best reference file on the PCB situation" referred to in the memorandum from Elmer Wheeler dated 8/16/71.

RESPONSE TO REQUEST NO. 15

Monsanto objects to Request No. 15 on the grounds that the file referenced in the 1971 memorandum no longer exists and Monsanto cannot now determine what comprised the file.

REQUEST NO. 16

All documents which refer or relate to the IBT investigation and trial.

RESPONSE TO REQUEST NO. 16

Monsanto objects to this request on the grounds that the phrase "refer or relate" is vague and ambiguous and because the request is overbroad, unduly burdensome and not a request for designated documents in accordance with Pa. R.C.P. 4009. Further, much of the requested information is available in the public domain and is equally accessible to plaintiffs. Inasmuch as this investigation had nothing to do with PCBs it is irrelevant and cannot lead to the discovery of admissible evidence. Moreover, Monsanto incorporates General Objection No. 3.

REQUEST NO. 17

All documents relating to clinical or physical examinations of any of your employees exposed to PCBs.

RESPONSE TO REQUEST NO. 17

Monsanto objects to Request No. 17 on the grounds that the phrase "clinical or physical examinations" and the term "exposed" are vague and ambiguous. In addition, this request seeks private health information of Monsanto employees and would invade the personal and privacy rights of those employees. For documents relating to blood samples taken from employees at the Krummrich plant possibly exposed to PCB's, Monsanto refers plaintiffs to documents previously produced in related litigation regarding blood studies of Monsanto employees by Dr. R. Emmet Kelly in the early 1970's. Monsanto will also produce documents pertaining to blood samples on six employees in 1974.

REQUEST NO. 18

Copies of any joint defense or sharing agreement in this or related litigation.

RESPONSE TO REQUEST NO. 18

Monsanto objects to Request Number 18 on the ground that "related" litigation is undefined and, accordingly, the Request is unduly vague. Additionally, Monsanto objects to this Request as such information is neither relevant to any issue conceivably involved in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, it exceeds the scope of Pa.R.C.P. 4003.1.

REQUEST NO. 19

The standard operating procedures manual and standard manufacturing procedure manual for aroclors and pyranols.

RESPONSE TO REQUEST NO. 19

Monsanto objects to this Request because such information is neither relevant to any issue conceivably involved in this litigation nor reasonably calculated to lead to the discovery of admissible evidence and therefore, exceeds the scope of F.R.C.P. 4003.1. Monsanto further objects to this Request in that it seeks production of documents which contain confidential business and proprietary information.

REQUEST NO. 20

All documents identified in any answers to interrogatories filed in this litigation.

RESPONSE TO REQUEST NO. 20

Monsanto objects to Request No. 20 in that it is overbroad and fails to request designated documents in accordance with Pa. R.C.P. 4009.

REQUEST NO. 21

All documents which refer or relate to the sale, purchase, use, discharge or clean-up of PCBs or substances containing PCBs at the Paoli Railroad Yard or in its vicinity.

RESPONSE TO REQUEST NO. 21

Monsanto objects to Request No. 21 on the grounds that it is overbroad and unduly burdensome in that it is not limited as to time or as to specific products allegedly at issue in this litigation. Moreover, much of the requested information is available in the public domain and is equally accessible to plaintiffs. Monsanto has not been a party to any cleanup suit at Paoli, and any such documents that Monsanto possesses either have been produced by other parties in discovery in In Re: Paoli Railyard PCB Litigation, E.D. Pa., Master File No. 86-2229, or have been obtained by Monsanto's counsel and, as such, are protected from disclosure as attorney work-product.

Without waiving its objections, Monsanto refers plaintiffs to the sale summary for dielectric fluid products sold by Monsanto to the named defendants in this litigation previously produced by Monsanto in its response to Plaintiffs' First Request for Production of Documents Addressed to Defendant Monsanto Company in Williams v. Septa, et al., E.D. Pa., C.A. No. 87-1258.

REQUEST NO. 22

All documents you intend to introduce in evidence or rely upon at the trial of this action.

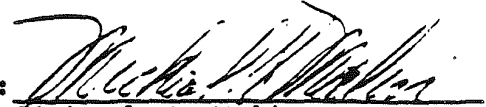
RESPONSE TO REQUEST NO. 22

Monsanto objects to this Request as it exceeds the scope of discovery under Pa. R.C.P. 4003.1 and 4009. Without waiving its objections, Monsanto states such documents will be disclosed in

its pretrial memorandum or as otherwise required by the Court in any subsequent orders.

WHITE AND WILLIAMS
Attorneys for Defendant
Monsanto Company

By:



Michael H. Malin
James D. Shomper
Jeanne Proko-Elkins

Dated:

14885.FMG

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of defendant Monsanto Company's Response to Plaintiffs' First Request for Production of Documents Addressed to all Defendants was served on the following on November 3d , 1989 by hand delivery:

Arnold E. Cohen, Esquire
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and

Harold E. Kohn, Esquire
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and on the following counsel by First Class Mail:

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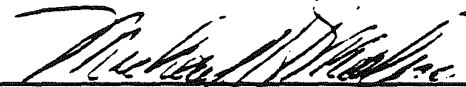
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Michael H. Malin
Attorney for Monsanto Company

14222.FMG

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

J. R. Bley being duly sworn, deposes and says that he is an assistant secretary of defendant Monsanto Company, a corporation, and is authorized to sign this Response on its behalf; that he has read the foregoing Response of Monsanto Company to Plaintiffs' First Request for Production of Documents Addressed to All Defendants and is familiar with the contents thereof; that deponent is without personal knowledge of the matters stated in the foregoing Response; that the foregoing Response has been assembled by authorized employees and counsel of Monsanto Company, who have informed deponent that the foregoing Response is true; and that to the best of the deponent's knowledge, this Response is true.

MONSANTO COMPANY

BY: J. R. Bley, Jr.
J. R. Bley
Assistant Secretary

Subscribed and sworn to before me
this 1st day of November, 1989.

Kathy A Ehrhard
Notary Public

KATHY A EHRHARD
NOTARY PUBLIC STATE OF MISSOURI

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