

1 IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
2 ST. CLAIR COUNTY, ILLINOIS
3

4 FRANCES E. KEMNER, et al.,)
5)
6 Plaintiffs,)
7)
8 vs.) No. 80-L-970
9)
10 MONSANTO COMPANY,)
11)
12 Defendant.)
13

14 REPORT OF PROCEEDINGS

15 JURY TRIAL

16 Before the HONORABLE RICHARD P. GOLDENHERSH

17 April 15, 1985

18 Afternoon Session

19 APPEARANCES:

20 MR. REX CARR and MR. JEROME SEIGFREID, Attorneys at Law
21 On Behalf of the Plaintiffs;

22 MR. JOHN R. MUSGRAVE, MR. KENNETH R. HEINEMAN and
23 MR. JOSEPH NASSIF, Attorneys at Law
24 On Behalf of the Defendant.

ERASABLE

COTTON CONTENT

DONNA F. BREWER, CSR, RPR
Official Court Reporter

I N D E X

WITNESSES CALLED ON BEHALF OF THE PLAINTIFFS:

PAGE

PHOCION PARK

Cross Examination under Section 2-1102 of
the Illinois Code of Civil Procedure by
Mr. Carr

2

E X H I B I T S

PLAINTIFFS' EXHIBITS:

MARKED

ADMITTED

No. 1298	2	3
No. 1299	13	13
No. 1300	20	21
No. 1301	24	
No. 1301A	83	

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: Monday, April 15, 1985, being one of the regular
3 judicial days of this Court, the matter as hereinbefore set
4 forth came on for hearing before the HONORABLE RICHARD P.
5 GOLDENHERSH, Circuit Judge in and for the Twentieth Judicial
6 Circuit, State of Illinois, in St. Clair County Building,
7 Belleville, St. Clair County, Illinois, and the following was
8 had of record, to-wit:

9 * * * * *

10 (The following proceedings were held in the
11 presence and hearing of the jury.)

12 (Plaintiffs' Exhibit No. 1298 was marked for
13 identification.)

14 PHOCION PARK

15 resumed the stand, having been previously duly sworn,
16 further testified as follows under Section 2-1102 of the
17 Illinois Code of Civil Procedure:

18 CROSS EXAMINATION

19 BY MR. CARR:

20 Q. Mr. Park, I will now hand you what's been marked
21 as Plaintiffs' Exhibit 1298 and ask you to look at that if
22 you would. This is a memorandum to the file relating to
23 another TSCA 8(e) signed by you, is it not, sir?

24 A. Yes.

1 Q. And it has attached to it certain notes that came
2 with the exhibit, does it not, sir?

3 A. Yes.

4 Q. And those are your handwritten notes. At least the
5 first two pages attached to that are your handwritten notes,
6 aren't they, sir?

7 A. Yes.

8 Q. And the next page is a memo that is addressed to you,
9 is it not, sir?

10 A. Yes.

11 MR. CARR: I offer that exhibit into evidence.

12 THE COURT: Okay. Any objections?

13 MR. MUSGRAVE: Yes, your Honor. Again this deals
14 with the 2, 4 Dichlorophenol.

15 THE COURT: Okay. I will incorporate your prior
16 arguments on that point and it will be admitted over objection.

17 MR. CARR: And leave to pass it to the jury?

18 THE COURT: Yes, you may. It's been admitted.

19 (Plaintiffs' Exhibit No. 1298 was received into
20 evidence and passed among the jury.)

21 MR. CARR: Q. The exhibit discusses the fact that
22 dibenzofurans had been detected in 2, 4 dichlorophenol, isn't
23 that correct, sir?

24 A. Yes.

1 Q. And the level of furans that had been detected,
2 dibenzofurans was one to two parts per million, is that correct,
3 sir?

4 A. Yes.

5 Q. And the question that you were there to discuss was
6 whether or not that level of furans in 2, 4 dichlorophenol
7 represented a substantial risk of injury to health or the
8 environment, isn't that correct, sir?

9 A. Yes.

10 Q. And your note indicates -- the third page of the
11 exhibit, your notes, someone said at that meeting and you
12 wrote it that dibenzofurans present should have toxicity not greater
13 than .01 that of 2,3,7,8 dibenzodioxin. Is that correct, sir?

14 A. That is my note, yes.

15 Q. And .01 is one percent, is it not, sir?

16 A. (No response.)

17 Q. It should have the toxicity of one -- one percent
18 of the toxicity of 2,3,7,8?

19 A. Yes, one-one-hundredth in other words.

20 Q. Yes, one one-hundredth is one percent.

21 A. Yes.

22 Q. And then to determine -- to relate the two million
23 to that one percent, you take one percent of two million and
24 you would get two hundred parts per billion of 2,3,7,8

1 equivalent toxicity, would you not, sir?

2 A. I'm sorry, Mr. Carr. I didn't follow you there.

3 Q. You have two parts per billion of tetrachlorodibenzofurans
4 in the product, do you not, sir? Two parts per million of
5 TCDF in the product, don't you, sir?

6 A. One to two, yes.

7 Q. And if you take one percent of two million, one
8 percent of two million is two hundred parts per billion, isn't
9 it, sir?

10 A. (No response.)

11 Q. It's a simple mathematical computation, Mr. Park.

12 A. This is not the way the one one-hundredth was
13 intended to apply.

14 Q. Mr. Park, I am not asking you to tell me that. I
15 am simply asking you whether or not one percent of two million
16 is four hundred parts per billion -- two hundred parts per
17 billion. One percent is one hundred. Two percent is two
18 hundred, is it not, sir?

19 A. Yeah, so that would be --

20 Q. Sir?

21 A. Excuse me just a moment. Let me use my pad here,
22 Mr. Carr. Yes, I would say that one percent of two parts
23 per million would be 20 parts per billion.

24 Q. Twenty parts per billion?

1 A. Was that your question?

2 Q. Yes. And is that your calculation, sir? Yes, that's
3 right, 20 parts per billion.

4 A. Yes.

5 Q. Correct, sir?

6 A. Yes.

7 Q. Yes. And your committee has equated the toxicity
8 of this to 20 parts per billion of 2,3,7,8 TCDD, is that correct,
9 sir?

10 A. It doesn't really say quite that, Mr. Carr. It says
11 have the toxicity not greater than, say, one one-hundredth
12 that of the 2,3,7,8.

13 Q. Yes.

14 A. Dioxin. Now, whether that applies on a concentration
15 basis, I am not qualified to say.

16 Q. Well, that's what you are actually being asked to
17 discuss. And that's what you are doing. You are relating --
18 you are determining, are you not, whether or not this
19 2, 4 dichlorophenol has enough toxic substances in it that
20 you should notify the E.P.A., isn't that correct, sir?

21 A. Whether it would amount to a substantial risk of
22 injury to the health or the environment.

23 Q. Whether or not that toxicity represents such a risk
24 of health to the environment, isn't that correct, sir?

1 A. Well, specifically whether the level of the
2 tetrachlorodibenzofurans presented a substantial risk of
3 injury to the health or the environment.

4 Q. And in arriving at that, you are comparing -- and
5 these are your notes, sir. You are comparing the toxicity
6 of these furans to the toxicity of 2,3,7,8 dioxin, aren't
7 you, sir?

8 A. That is correct.

9 Q. And calculating it that way, you are equating the
10 two million -- two parts per million of TCDF to 20 parts per
11 billion of 2,3,7,8 dioxin, aren't you, sir?

12 A. We should point out this is acute toxicity --

13 Q. Excuse me. Would you answer that question first,
14 please, Mr. Park?

15 A. We are equating acute toxicity, yes.

16 Q. And it was based upon the -- and that -- now that
17 TCDF content has its own toxicity along with the content of
18 other toxic substances such as dioxin, doesn't it, sir?

19 A. (No response.)

20 Q. To put it a different way, when you consider whether
21 or not a chemical going in commerce is toxic, you consider all
22 the toxic constituents of that chemical, don't you, sir?

23 A. Yes, to the extent we have that information.

24 Q. And so you -- when you decide whether or not the

1 2, 4-di is required to have a notice to the E.P.A., you consider
2 the toxicity of the 2, 4 dichlorophenol in a pure state
3 without dioxins, don't you, sir?

4 A. Mr. Carr, I would assume we would consider the
5 product as it goes into commerce.

6 Q. And as it goes into commerce it has dioxins that has
7 toxicity associated with dioxins, total dioxins. It has
8 toxicity connected with 2,3,7,8 dioxins. And now it has
9 toxicity for the furans, doesn't it, sir?

10 A. Yes.

11 Q. And so when you consider whether or not a substance
12 presents a substantial risk to the health of the people that
13 are going to be playing on this lawn that is sprayed with
14 2,4 D, you have to consider the toxicity of the 2,3,7,8 dioxin
15 plus the toxicity of the total dioxins plus the toxicity of
16 the tetrafurans, don't you, sir?

17 A. I would not have been part of any consideration of
18 the toxicity of the product sprayed on the yard.

19 MR. CARR: Your Honor, would you direct the witness
20 to answer that question?

21 THE COURT: That's not responsive, Mr. Park. You
22 have to answer the question that is posed to you.

23 THE WITNESS: I don't know, Mr. Carr, as to what was
24 considered by the manufacturer of the herbicide sprayed on the

1 MR. CARR: Q. I am not asking you to tell me that,
2 Mr. Park. And you know I am not asking you to tell me that.
3 I am asking you to tell me, do you not have to consider
4 when you are sending the 2,4 dichlorophenol out that the
5 persons -- and when you are considering whether or not there
6 is an 8(e) section notification needed, you have to consider,
7 you have to add the toxicity of the 2,4 dichlorophenol
8 to the toxicity of the 2,3,7,8 dioxin to the toxicity of the
9 total dioxins and to the toxicity of the furans, do you not,
10 sir?

11 A. I would assume that all that toxicity would be
12 considered.

13 Q. I didn't ask you whether or not you assume that.
14 Don't you know that is your bounden duty under the law to
15 consider not just in isolation the toxicity of one of the
16 contaminants that go into your product, but the total
17 toxicity of the total contaminants that go into your product?

18 A. That's correct.

19 Q. So the 20 parts per billion, the toxicity of the
20 furans in that product must be added to the toxicity of
21 whatever 2,3,7,8 dioxin is in that product and that also must
22 be added to the toxicity of whatever the dioxins that might
23 be in that product, isn't that right, sir?

24 A. Yes?

1 Q. So you could -- if your toxicologist Nair considered
2 that 250 parts per billion of total dioxins without any
3 consideration to 2,3,7,8 being in that product sample, each
4 250 parts per billion of total dioxin would be equated,
5 according to her, to one part per billion of 2,3,7,8, isn't
6 that correct, sir?

7 A. No, it isn't, Mr. Carr.

8 Q. It isn't correct?

9 A. No, for a couple of reasons.

10 Q. Well, let me -- before we get to the couple of
11 reasons -- I didn't have yesterday the -- or we did have
12 Nair's -- we have that exhibit number. Do you have the
13 January 25th memo by Dr. Nair in front of you, sir --
14 January 14th, I'm sorry, Plaintiffs' Exhibit 1296?

15 A. No, I do not.

16 Q. Isn't Dr. Nair making an equation between 250 parts
17 per billion of total dioxins and the effect of 2,3,7,8?

18 A. Well, she is --

19 MR. MUSGRAVE: Just a second, Mr. Park. May my
20 record continue -- may the record, your Honor, continue to
21 show my continuing objection? I want to be sure this is clear
22 to this witness being required to not only interpret documents
those people that he -- documents that he did not author, but
technical documents when there hasn't been a foundation

1 laid to establish his expertise in interpreting documents
2 as to -- of this nature deal with analytical chemistry and
3 those types of things.

4 THE COURT: I have ruled on all of those points
5 before. I will note your objection as a continuing objection
6 for the record.

7 MR. MUSGRAVE: Thank you.

8 MR. CARR: Q. Now, Doctor -- I'm sorry. Mr. Park,
9 didn't we establish last Friday that this was her report and
10 it related to 250 parts per billion and that she said that
11 because it has 250 parts per billion of total dioxins and
12 no 2,3,7,8 in it in the sample that she felt it should be
13 reported to the E.P.A.? Didn't we establish that last week?

14 A. Well, she does say that, yes.

15 Q. So, should you not then if you follow this recommendation
16 of this toxicologist, should you not take the total dioxins
17 in a product and compare it whether it's greater or smaller
18 than 250 parts per billion? If this document has any validity
19 at all, Mr. Park.

20 A. Well, she is one of our toxicologists.

21 Q. I understand that, Mr. Park. But I am not asking you
22 that now. I am asking you whether or not if this document has
23 any validity at all that you should not consider that 250 parts
24 per billion of total dioxins has toxicity that should be taken

1 into consideration.

2 A. Mr. Carr, may I just say that there are two problems
3 in that.

4 Q. What you can do, Mr. Park, you can say, no, you shouldn't
5 consider that, that it's not an element to consider. Or you
6 can say, yes, you should consider it. And I tell you again,
7 Mr. Musgrave will have ample opportunity. When he asks you
8 questions, you can sit here for 30 minutes and say what you
9 want to say in response to his question. But the questioner
10 is entitled to have you respond to the question. Otherwise,
11 we will never get out the points that we want to get out
12 if you get to say anything you want to say. Now, my question
13 is, does not -- if Dr. Nair's document has any validity that
14 you must consider the toxicity of 250 parts per billion of
15 total dioxins in the products.

16 A. I would say yes to that question.

17 Q. And you consider that along with the toxicity of the
18 furans and along with the toxicity of the 2,3,7,8 dioxin,
19 don't you, sir, if you are doing your job on this committee
20 properly?

21 A. Yes.

22 MR. CARR: Your Honor, we had not had offered into
23 evidence -- we had referred to it, but I only had the one copy,
24 the memo of Dr. Levinskas of January 16, 1985. I would now

1 like to have it marked.

2 (Plaintiffs' Exhibit No. 1299 was marked for
3 identification.)

4 THE COURT: January 16, 1985?

5 MR. CARR: That's correct, your Honor.

6 Q. I am handing you now what's been marked
7 Plaintiffs' Exhibit 1299. You recognize that as Dr. Levinskas'
8 memo directed to Dr. Roush and you got a copy along with
9 attachments?

10 A. Yes.

11 MR. CARR: And offer that into evidence, please.

12 MR. MUSGRAVE: Same objection that would apply to
13 the other documents in connection with that January, 1985,
14 meeting that I believe I made, your Honor, with regard to
15 Plaintiffs' Exhibit 1297 --

16 THE COURT: Okay. I will incorporate those.

17 MR. MUSGRAVE: Incorporate all of those, yes.

18 THE COURT: It's admitted over objection. Your
19 arguments are incorporated.

20 MR. CARR: And leave to pass that exhibit to the
21 jury?

22 THE COURT: Yes, you may.

23 (Plaintiffs' Exhibit No. 1299 was received into
24 evidence and passed among the jury.)

1 MR. CARR: Q. We have discussed this 1299 last
2 Friday. And I won't get into it in detail other than to
3 ask you as a fact that Dr. Levinskas made his comments relative
4 to the report of Dr. Nair which was attached in its original
5 form at least to the memo of January 16, 1985. And apparently
6 something else was attached to it, isn't that correct, sir?

7 A. Yes.

8 Q. And whether you believe that Dr. Nair exaggerated
9 the risk, in any event, you must give as we have demonstrated
10 some level of toxicity value to the total dioxins, do you not,
11 sir?

12 A. Whatever would be appropriate, yes.

13 Q. And what you have as appropriate -- what you had at
14 that time in January, '85, was the mathematical computations
15 by Dr. Nair in the January 14, 1985, memo and her conclusions
16 drawn from those mathematical computations, isn't that correct,
17 sir?

18 MR. MUSGRAVE: I object to the question as being
19 multiple questions. I believe it's got two or three questions
20 in there. He is characterizing the document in part of the
21 question. And I think it's unfairly stated.

22 THE COURT: Overruled.

23 THE WITNESS: That was one of the items for
24 consideration.

1 MR. CARR: Q. And you did consider that, didn't you,
2 sir?

3 A. Yes.

4 Q. Now, at the time of considering these toxicities of
5 these various substances, you also had Plaintiffs' Exhibit 1289.
6 And do you have that exhibit in front of you? It is the memo
7 dealing with the toxicity of furans, the handwritten memo.
8 You are getting so many exhibits now. That's the 1290. Well,
9 I have another copy of it. So I will just hand that one to you.
10 Now, Plaintiffs' Exhibit 1289, handwritten notes, discusses
11 the subject matter that was raised in the memo of December 14,
12 1981; that is, the furans, doesn't it, sir?

13 A. Mr. Carr, this is that memorandum that is neither
14 dated nor authored.

15 Q. Mr. Park, my question is --

16 A. I don't know. I don't know.

17 Q. All right. If you look at December 14, '81, memo, you
18 will see that it discusses 2,4-dichlorophenol 93 percent,
19 doesn't it, sir?

20 A. Yes.

21 Q. And it talks about two parts per million of the furans,
22 doesn't it, sir?

23 A. Yes.

24 Q. And Plaintiffs' Exhibit 1289 also talks about 93 percent

1 dichlorophenol, doesn't it, sir?

2 A. Yes.

3 Q. 93 percent 2,4-dichlorophenol.

4 A. Yes.

5 Q. And it also says that it has a consistent one to two
6 parts per million total of chlorodibenzofurans, doesn't it,
7 sir?

8 A. Yes.

9 Q. So whether they are contemporaneous or not, they are
10 discussing exactly the same subject, aren't they, sir?

11 A. It would appear to, yes.

12 Q. And this document then, this 1289 document, goes on
13 to pose the question whether or not the two parts per million
14 constituted imminent hazard and goes on to answer that
15 particular question, doesn't it, sir?

16 A. Let me read it here, Mr. Carr. Are you referring to
17 this item No. 4 of these notes?

18 Q. All four items are dealing with dibenzofurans and the
19 toxicity of dibenzofurans.

20 A. Well, item No. 3 says, "No toxicological data are
21 available for these chemicals."

22 Q. Yes. And item 4 then considers the toxicity by
23 analogy, doesn't it, sir?

24 A. Yes, it does appear to.

1 Q. And it states that the structure-activity relations
2 among the chlorodibenzodioxins suggest that these furans that
3 are identified here are ten to one hundred times less toxic
4 than 2,3,7,8 tetrachlorodibenzofuran, isn't that correct, sir,
5 TCDF?

6 A. Yes.

7 Q. Now, you do know or you are familiar with the fact
8 that the furans have been identified in this case as having
9 the 2,3,7,8 TCDF as toxicity very near or percentage of at
10 least, if not near, the toxicity of 2,3,7,8 TCDD. You know
11 that, don't you, sir?

12 A. I do not know that, Mr. Carr.

13 Q. All right.

14 MR. MUSGRAVE: I object to counsel's use of the term
15 "very near." I think the testimony speaks for itself as to
16 what it has been. And that may be his interpretation --

17 THE COURT: Overruled.

18 MR. CARR: Q. This document itself states that these
19 furans that are identified as being in 2,4-dichlorophenol -- the
20 analogy implies that they have "1/50 to 1/1000 the activity of
21 2,3,7,8 TCDD," isn't that correct, sir?

22 A. Right. There is the implication there, yes.

23 Q. And 1/50 of two million parts per -- two parts per
24 million would end up with a factor of 40 parts per billion,

1 would it not, sir, rather than 1/100?

2 A. Mr. Carr, I'm sorry. I didn't follow that last
3 equation of yours.

4 Q. In your notes you had that the TCDF in question is
5 1/100, that is one percent, of the toxicity of the 2,3,7,8,
6 didn't you, sir?

7 A. Mr. Carr --

8 Q. Sir?

9 A. Not greater than 1/100 based on acute toxicity. That
10 is not chronic toxicity which I assume is being spoken of in
11 these handwritten notes. It's two entirely different things.

12 Q. Mr. Park, you are digressing from the question that
13 I am asking you. Your notes related the toxicity of 2,3,7,8 TCDD
14 and the furans, did they not, sir?

15 A. But it expressly says acute toxicity.

16 Q. I am not quarreling and I don't care whether it's
17 acute or chronic at this point in time. Because you don't
18 care. You are going to report to the E.P.A. based upon the
19 toxicity whether it's acute or chronic. You want to report
20 the toxicity. That's your obligation, isn't that correct?

21 A. Whatever is appropriate.

22 Q. You are not obligated to report just acute toxic
23 substances as opposed to chronic toxic substances or chronic
24 as opposed to acute, are you, sir? You are obligated to report

1 toxic substances whether they have acute effects or chronic
2 effects or both, isn't that correct, sir?

3 A. If reporting is required in a given situation.

4 Q. Isn't that correct?

5 A. Yes. If the reporting is required.

6 Q. So the point you are bringing up for acute toxicity,
7 as I suggested to you, is irrelevant. And could you direct your
8 attention to the question I asked?

9 A. All right. It is not at all irrelevant, Mr. Carr.

10 Q. Mr. Park, did not your memo point out that the content
11 in the 2,4-dichlorophenol of furans should be equated with the
12 toxicity of one percent 2,3,7,8 TCDD? If you refer to the
13 Exhibit 1298 again, third page of that exhibit, "Dibenzofurans
14 present should have toxicity not greater than .01 that of
15 2,3,7,8 dibenzodioxin (based on acute toxicity)." Didn't you
16 say that, sir?

17 A. Yes.

18 Q. And you also point out there that Canada has established
19 a limit of ten parts per billion of total dioxins, don't you,
20 sir? In 2,4-dichlorophenol.

21 A. It looks like there is a blank here. And at this
22 moment I can't recall if there was something else. I don't
23 know what the, frankly looking at these notes, ten parts per
24 billion Canadian limit would apply to.

1 Q. And you don't recall discussing with Diamond Shamrock
2 the fact that they are going to sell their 2,4-D in Canada
3 and they have to comply with the Canadian limit and they had a
4 number of discussions with you, Mr. Park, and your company
5 about whether or not you can get your 2,4-dichlorophenol
6 down to total dioxin content of ten parts per billion?

7 MR. MUSGRAVE: Object. That is an improper
8 characterization of the evidence. It hasn't even been put
9 into evidence yet.

10 MR. CARR: Q. Well, the evidence is it's down to
11 one part per billion. I will be glad to put that in now if
12 the witness doesn't have any memory of it at this time. I
13 was saving this for Ms. Wente because this witness's name
14 is not on it. But there is a lot of other people on it. And
15 I will be glad to put it in. Would you mark that, please?

16 (Plaintiffs' Exhibit No. 1300 was marked for
17 identification.)

18 MR. CARR: Q. I am handing you now what has been
19 marked as Plaintiffs' Exhibit 1300. I ask you to look at that,
20 please, sir. You recognize the names of the various persons to
21 whom this memo was sent, don't you, sir, and the signature,
22 the initials J.D.W. being J. D. Wilson?

23 A. I recognize the name James D. Wilson. I recognize a
24 few of the other names, but not all.

1 MR. CARR: I offer this Exhibit 1300 into evidence
2 if it please the Court?

3 MR. MUSGRAVE: May I have a moment, your Honor?

4 THE COURT: Sure.

5 MR. MUSGRAVE: We would object because it does deal
6 with 2,4-dichlorophenol, same basis we have previously objected
7 to, the documents that deal with products other than
8 orthochlorophenol or orthochlorophenol crude.

9 THE COURT: Fine. It's admitted over objection.

10 MR. CARR: And leave to pass it to the jury.

11 THE COURT: Yes, you may.

12 (Plaintiffs' Exhibit No. 1300 was received into
13 evidence and passed among the jury.)

14 MR. CARR: I found the original of that document,
15 your Honor.

16 THE COURT: Okay.

17 MR. CARR: Q. Mr. Park, this memo of Mr. Wilson's
18 refers to a conversation that he had with a customer that called
19 wanting to know about the dioxin content of 2,4-dichlorophenol
20 produced by Monsanto, isn't that correct, sir?

21 A. Mr. Carr, I know nothing of this conversation or this
22 incident. I am really not --

23 Q. Mr. Park, you can read, can you not, sir?

24 A. It does say in here --

1 Q. And isn't the subject of this memo that a Harwell
2 from Diamond-Shamrock called wanting information on dioxin?

3 A. Yes.

4 Q. Now, up to the time that you -- from 1979 up to the
5 point in time that this customer called wanting this
6 information, do you have any knowledge as to whether or not
7 Monsanto passed dioxin information on to any customer from
8 January 10, 1979, or -- yeah, to any customer from that date
9 up to September 17, 1981?

10 A. I guess I cannot recall specifics of customer
11 contacts. But I am not normally involved in that, Mr. Carr.

12 Q. I understand that, Mr. Park. You said that before.
13 But you don't know of any of your own knowledge, do you?

14 A. No, I do not.

15 Q. Now, this discusses the fact that Diamond-Shamrock --
16 well, it points out that Canada is going to require a one
17 part per billion of dioxins in 2,4-D sold there after 1982,
18 correct, sir?

19 A. Yes.

20 Q. And that is a limit for all dioxins and it doesn't
21 refer to 2,3,7,8 TCDD, does it, sir?

22 A. No, it does not.

23 Q. Now, Mr. Park, does it suggest to you as being a
24 member of a committee that has had responsibility of reporting

1 dioxin -- or toxic substance content to the E.P.A., does it
2 suggest to you that Canada believes that dioxin at one part
3 per billion in 2,4-D would be injurious to Canadians?

4 MR. MUSGRAVE: Object to that. It is calling for
5 conclusion and speculations as to why any government set any
6 particular limit. And there is no evidence that this is, in
7 fact, a limit that was set, your Honor. It's the statement
8 of Mr. Wilson. It is not evidence that Canada did set this
9 limit or any limit.

10 THE COURT: Overruled.

11 THE WITNESS: I really don't know, Mr. Carr.

12 MR. CARR: Q. Well, now I have given you an earlier
13 memo in which it was pointed out that Canada was going to
14 set a limit of ten parts per billion. Do you recall that, sir?
15 But this talks about one part per billion. That's what got
16 us on to this memo, your own notes. Do you recall that, sir?

17 A. Yes.

18 Q. And that's the reason I gave you this memo because you
19 indeed were aware of the fact that Canada was going to make a
20 limit on dioxins, weren't you, sir?

21 A. Yes, although my note is not clear as to what the
22 ten parts per billion was to apply to.

23 Q. And I agree it is not clear. But you were talking
24 about dioxins and furans, weren't you, sir?

1 A. Yes.

2 Q. And the memo dated September 17, 1981, is talking about
3 dioxins, isn't it, sir?

4 A. Yes.

5 Q. All right. Now, Mr. Park, with that in mind, do you
6 agree, sir, that the toxicity of 2,4-dichlorophenol as it leaves
7 the plant at Monsanto should be measured by the, not just the
8 toxicity of the chemical itself, but the toxicity of the furans
9 and the various dioxins that are therein?

10 A. The entire product in other words?

11 Q. The entire product plus its contaminants.

12 A. Yes.

13 Q. And that's what you did on your committee, isn't that
14 correct, sir?

15 A. I would think so, yes.

16 Q. Now, I would like to --

17 (Plaintiffs' Exhibit No. 1301 was marked for
18 identification.)

19 MR. CARR: Q. I hand you now what's been marked as
20 Plaintiffs' Exhibit 1301. And, Mr. Park, I intend to ask you --
21 to point out certain exhibits to you and ask you whether or not
22 these exhibits show the tridioxin and the tetradioxin that is
23 described in this exhibit. And the first product, first number
24 is MB541, is that correct, sir?

1 A. Yes.

2 Q. And the exhibit shows that MB541 has no detectable
3 trichlorodibenzo-p-dioxin, no detectable tetradioxin, but
4 5000 parts per billion of the heptadioxin, isn't that correct,
5 sir?

6 A. There are no designations given here. This just says
7 five thousand --

8 Q. Here, let me help you with an exhibit. You can't
9 read that exhibit from where you are. I will hand you 1135B
10 to help you to refer to it. And you see 1135B describes
11 541 -- MB541, do you, sir?

12 A. Yes, I do.

13 Q. Well, I will represent to you that there is evidence
14 in this case that this was an orthochlorophenol crude that
15 was manufactured in February of 1978 and that it was listed as
16 batch number in Exhibit 1135 as K1128003, which would mean a
17 '77 production, been tested in February of '78. You see that,
18 sir?

19 A. No, I don't, Mr. Carr.

20 Q. You see the K1128003 under the heading Batch Number
21 on 1135?

22 A. Is that 1135?

23 Q. Yes. The date is not important, Mr. Park. So don't
24 worry about that. But it does show that this particular

1 product, this orthochlorophenol crude, had 5,250 parts per
2 billion of total dioxin, is that correct, sir?

3 A. Now, you are referring to 1301?

4 Q. And 1135B that you have in front of you, sir.

5 A. I have difficulty reading this information. Are you
6 adding it all together?

7 Q. That's correct.

8 A. I just don't know, Mr. Carr. This is something I just
9 don't do as a general rule.

10 Q. Well, if you look at Cl₁ for MB41, do you see under
11 that column you have got 200?

12 A. I have got 200, yes.

13 Q. And do you see 50 under Cl₂?

14 A. I see that.

15 Q. And do you see 5,000 under Cl₇?

16 A. Yes, I do.

17 Q. And do those three numbers add up to 5,250, Mr. Park?

18 A. Yes, I see that.

19 Q. And that is total dioxin detected in this orthochlorophenol
20 crude that was manufactured a year or so before the accident in
21 question. You recognize that, don't you, sir?

22 A. I guess that is what we can infer, Mr. Carr. I just --
23 I am at a total loss here on these documents.

24 Q. Mr. Park, all I am asking you to do is to acknowledge

1 that these exhibits show that MB541, which I am representing
2 to you is orthochlorophenol crude -- it's in evidence to that
3 effect. And it was manufactured a year or so before the
4 accident in question. I am representing that to you. You can
5 assume that to be a fact. Would you, sir?

6 A. I will assume that, yes.

7 Q. Then Exhibit 1301 accurately reflects that it has
8 in it 5,250 parts per billion of total dioxin, doesn't it,
9 sir?

10 A. I guess so.

11 Q. Do you have to guess, sir?

12 A. Mr. Carr, I am at a -- this has a number of different
13 columns. It has dates on it.

14 Q. Yes.

15 A. Product acronyms here. I am just totally unfamiliar
16 with this kind of thing.

17 Q. Well, I am representing to you that OCP stands for
18 orthochlorophenol crude.

19 A. Okay.

20 Q. Now, would that representation --

21 A. I can add up numbers for you, but if you are asking
22 me to go beyond these documents, I am simply in no position
23 to do so.

24 Q. I am not asking you to go beyond other than what I

1 A. Yes, all right.

2 Q. And before I pass on from that point, do you actually
3 think that the burden put upon you chemical companies to tell
4 the E.P.A. about the toxic substance was just for academic
5 reasons and not because the E.P.A. is obligated to do something
6 about it if they find levels of toxic substances coming into
7 the environment? Do you actually believe that, Mr. Park?

8 A. Not at all.

9 Q. Then is it possible, sir, in your judgment that if the
10 E.P.A. had been notified by Monsanto that it was shipping out
11 in 1978 orthochlorophenol that contained 5,250 parts per
12 billion of dioxin, do you think -- that is over five parts per
13 million. Even the level that you set, it's over that level.
14 Don't you think that it's possible that they would have told
15 Monsanto, "No, don't ship that out until you clean it up"?

16 A. I don't know, Mr. Carr.

17 MR. MUSGRAVE: Objection. Same question has been
18 asked and answered previously.

19 THE COURT: Overruled.

20 MR. CARR: Q. Do you know --

21 THE COURT: I didn't hear the answer.

22 THE WITNESS: The answer was I don't know, your
23 Honor.

24 MR. CARR: Q. Do you know of any reason why Monsanto

1 could not have undertaken the elimination of caustic in making
2 its chlorinated phenols in the year 1978 rather than undertaking
3 that in the year 1979?

4 A. I don't know.

5 Q. Do you recognize and this -- the entry at the bottom
6 of the page of Exhibit 1301 is for a batch of orthochlorophenol
7 that was tested in 1983. And it shows and contrast to the
8 batch they tested four or five years before only 18 parts
9 per billion of total dioxin. You see that, don't you, sir?

10 A. I do see that.

11 Q. For the record, that is Plaintiffs' Exhibit 1192
12 that shows that. Do you know of any reason why the product
13 they manufactured in 1978 could not have been cleaned up to
14 contain less than 250 parts per billion of total dioxins?

15 A. Mr. Carr, I don't know.

16 Q. The next entry in the Exhibit 1301 I will represent
17 to you is orthochlorophenol crude that is in question in this
18 case.

19 THE COURT: Mr. Carr, before you get into that one,
20 is this a good point for a short break?

21 MR. CARR: Yes, your Honor.

22 THE COURT: Ladies and gentlemen, we will take a
23 short break at this time. The admonishments that I gave you
24 earlier will apply in this break also. Court is in recess.

1 and 65 Cl₄ and that adds up to 20,000 parts per billion, does
2 it not, sir?

3 A. Well, if you are asking me to add them, I will, Mr.
4 Carr.

5 Q. To save time, I will represent to you that I have
6 added them up and that appears to be in the ballpark, doesn't
7 it, sir?

8 A. I guess.

9 Q. Well, don't --

10 A. Well, let me add them up, Mr. Carr. I will be happy --

11 Q. When you see 7,000 and 10,000, that is 17,000 right
12 there, isn't it, sir?

13 A. That's right.

14 Q. And then you get 3,000 more for the tri- and that is
15 20,000, isn't it, sir?

16 A. Appears so, yes.

17 Q. And, of course, since you don't know the use to which --
18 or do you know the use to which Santophen is put?

19 A. I'm sorry. Not off the top of my head, no.

20 Q. Well, I'll represent to you that it's been known to
21 go into Lysol. And this is Monsanto Exhibit 847A. So you
22 know it is a Monsanto exhibit and they brought this bottle in
23 and they showed -- that they testified -- that they had their
24 witness testify that this is what Santophen goes in to make up

1 Lysol. Now, would you accept it, sir?

2 A. Yes, I will accept it.

3 Q. Now, do you know whether or not the E.P.A. was ever
4 notified that the Santophen that was being manufactured
5 in February of 1979 contained 20,000 parts per billion of
6 dioxins?

7 A. Off the top of my head, I cannot recall.

8 Q. Did you ever have a Section 8 TSCA meeting to discuss
9 whether or not you should notify the E.P.A. that the material
10 you are producing and sending out contains 20,000 parts per
11 billion? That is 20 parts per million, Mr. Park, 20 parts
12 per million of total dioxins. Did you ever have a Section 8(e)
13 meeting to discuss that?

14 A. A Section 8(e) meeting on Santophen?

15 Q. On Santophen.

16 A. Mr. Carr, I just -- we have held a number of Section 8(e)
17 meetings. And frankly, I just cannot recall.

18 Q. Well, I have never gotten one. So can we either assume
19 that you didn't have one or the attorneys from Monsanto have
20 not obeyed the rules of this Court and have not given me those?

21 A. I don't know, Mr. Carr.

22 Q. You don't know of any you held, do you, sir?

23 A. I would prefer to look at my list that I have.

24 Q. If you have a list, please look at it.

1 A. I don't have it with me now. It's back in my
2 office, Mr. Carr.

3 Q. You have a list of --

4 A. Of 8(e) meetings that have been held.

5 Q. And I represent to you again that the only ones that
6 we got dealing with chlorinated phenols were the ones you said
7 this morning, four such meetings.

8 A. Is Santophen a chlorinated phenol? I am not a chemist.
9 I am not a toxicologist, Mr. Carr.

10 Q. Mr. Park, you related that before you worked for a
11 chemical company and you had toxicologists tell you time and
12 time again, you have had chemists tell you time and time again,
13 and are you sitting here and telling us that 20 years at
14 Monsanto, or whatever the number of years, and all the meetings
15 you had dealing with their products and you don't know that
16 Monsanto makes Santophen which is a chlorinated phenol?

17 A. I know Santophen is one of our products. I do not
18 know what it is composed of.

19 Q. Have you ever had, to your knowledge, a meeting, a
20 Section 8 meeting on Santophen that is being shipped out, sent
21 into commerce by your company?

22 A. Mr. Carr, I would have to check my list. There have
23 been a number of meetings. And it's conceivable there may have
24 been one on Santophen. I am not prepared to just say yes or no.

1 Q. Well, although your attorneys say that we have got
2 them all, past experience shows that every week we get more
3 things coming in that weren't given us before. So when we
4 recess today, would you, please, go and check your files again
5 because you were asked to produce -- and I thought Mr. Nassif
6 represented to the Court here -- was it Friday or Thursday,
7 Mr. Nassif -- that you had furnished all of your files dealing
8 with dioxin and TSCA meetings dealing with chlorinated phenols.
9 But if you think that you may have more files, at the close
10 of business today I would sure like you to check, sir. Would
11 you do that?

12 A. Yes. I will certainly check.

13 Q. So as far as your present knowledge is concerned,
14 you have no present knowledge of ever having notified the
15 E.P.A. that you were sending out Santophen, sending into
16 commerce Santophen which contains 20,000 parts per billion of
17 total dioxin, isn't that correct, sir?

18 A. I cannot remember having done so, that's correct.

19 Q. Now, did you ever discuss with Dr. Paget about the --
20 what he considered an acceptable level medically speaking of
21 2,3,7,8 content of Santophen?

22 A. I can't recall, Mr. Carr.

23 Q. And would you consider a statement that one part per
24 billion is probably acceptable medically for Santophen, would

1 you consider that that one part per billion would be the limit
2 above which you should not go?

3 MR. MUSGRAVE: Object. It calls for the witness to
4 state conclusions as to the state of mind of the speaker of
5 that. And also it is again Dr. Wilson saying what Dr. Pagett
6 said. And now he is asking him to take what Dr. Wilson said
7 as what Dr. Pagett said and to speculate as to what the
8 original speaker had in mind when he said whatever he said.
9 I object to it.

10 THE COURT: Overruled.

11 THE WITNESS: Mr. Carr, I just don't feel I am
12 qualified. I don't know.

13 MR. CARR: Q. Well, I am asking you as a lawyer
14 who is trained in the use of words and to understand what words
15 mean and precisely what words mean and to read documents
16 and discover the meaning that might be hidden in those documents
17 through the use of the English language to tell me whether or
18 not you would agree that this document states that one part
19 per billion of 2,3,7,8 TCDD is the level above which you should
20 not go for that content in Santophen.

21 MR. MUSGRAVE: Same objection.

22 THE COURT: Same ruling.

23 THE WITNESS: I don't see that statement in there.

24 MR. CARR: Q. You see that it says that he estimates

1 that one part per billion is probably acceptable?

2 A. Yes.

3 Q. And you don't have any quarrel with the word "probably."
4 You know what probably means, don't you, sir?

5 A. Yes.

6 Q. It means that it may be, it may not be, correct, sir?

7 A. Yes.

8 Q. And "acceptable," you know what "acceptable" means?

9 A. Yes.

10 Q. And you know what "medically" means, don't you, sir?

11 A. I think so.

12 Q. Medically means it has to do with health effects.

13 You understand that, don't you?

14 A. Right.

15 Q. And if one part per billion is probably acceptable
16 medically, the -- that statement isn't all together sure that
17 that is acceptable, isn't that correct, sir?

18 MR. MUSGRAVE: May my objection run to this entire
19 line of questioning about what Dr. Paget may have had in mind,
20 with regard to what Dr. Paget may or may not have said?

21 THE COURT: My ruling is the same. It doesn't call
22 for that. I will note your objection as a continuing objection
23 to this line of questioning.

24 MR. MUSGRAVE: Thank you.

1 THE WITNESS: I don't have deep familiarity with
2 Dr. Paget's vocabulary. I have no idea what he meant other
3 than what is just quoted apparently or stated by Jim Wilson
4 here. It could well have been that Dr. Paget would have said five
5 parts per billion, ten, twenty or anything was medically
6 acceptable. I don't know.

7 MR. CARR: Q. Well, but did he say that according
8 to this memo?

9 A. It says, "One part per billion is probably acceptable."

10 Q. And do you get from that that 20,000 parts per
11 billion of total dioxin is acceptable?

12 A. It doesn't say that.

13 Q. It doesn't, does it? And do you get from that that
14 65 parts per billion of tetra is medically acceptable?

15 A. It doesn't say that it would not be acceptable.

16 It doesn't say that it would be.

17 Q. Why do you conceive that Dr. Wilson asks Dr. Paget
18 whether or not one part per billion would be acceptable or
19 what was medically acceptable?

20 A. I don't know.

21 MR. MUSGRAVE: Just a moment. I object now to a
22 witness testifying and being called to speculate and pass
23 conjecture as to why he might conceive that Dr. Wilson might
24 have asked Dr. Paget a question. Again, it's just sheer

1 speculation and conjecture and conclusions as to the state of
2 mind of others and totally improper. And I object.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know, Mr. Carr.

5 MR. CARR: Q. Well, wasn't Dr. Pagett and Dr. Wilson
6 both on your committee meeting in June of 1979 when you were
7 discussing toxic substances?

8 A. I would have to check. But, Mr. Carr, they have both
9 been here to testify. They would be better sources of that
10 information.

11 Q. Well, we have asked them already, Mr. Park. But now
12 I am asking you because you have to evaluate what they tell
13 you. You are sitting on this committee in June of 1979.
14 And you are not a toxicologist and you are not a chemist and
15 you are not an M.D. You are, however, charged with the one
16 to preparing the memo to interpret what they say and put it
17 down on paper to accurately reflect what they say, isn't that
18 correct, sir?

19 A. That's correct.

20 Q. And you, therefore, have to know what they mean when
21 they use words, don't you, sir?

22 A. When they use them before me when I can ask them what
23 they mean if it's unclear to me.

24 Q. And you have to know what Dr. Pagett says. He gave you

1 a memo as of what he said about this 2,4,6 trichlorophenol,
2 didn't he, sir?

3 A. What number is that, Mr. Carr?

4 Q. Exhibit 1275, Plaintiffs' Exhibit 1275 dated June 6,
5 1979.

6 A. I'm sorry. I don't seem to see it here.

7 Q. Well, I will give you another copy.

8 A. Wait a minute. Here is 1275.

9 Q. It's a direct quote from Dr. Pagett there, isn't
10 there, sir?

11 A. Yes, there is.

12 Q. And it's at the same subject that we had the notes of
13 somebody at that meeting that equated the carcinogenicity
14 of 2,4,6 trichlorophenol to one part per billion of 2,3,7,8,
15 isn't that correct, sir?

16 MR. MUSGRAVE: Same objection as before as to the
17 interpretation of what that means, your Honor, and object
18 to this as being repetitious. We have been through this now
19 I think Friday several times. And we are back to it again.
20 I think we even touched on it again this morning. Object to
21 the repetitive nature of these questions.

22 THE COURT: Different context. Overruled.

23 MR. CARR: Q. Could you answer that question?

24 A. I'm sorry.

1 Q. At that meeting on May 22, 1979, this memo 1290
2 equates one part per billion of TCDD with the carcinogenicity
3 of the 2,4,6 trichlorophenol, does it not, sir?

4 MR. MUSGRAVE: Object. That is mischaracterization.
5 even with the clear language would it seem to say.

6 THE COURT: Overruled.

7 THE WITNESS: Mr. Carr, are you asking me about what
8 the second line in Item No. 2 of these handwritten notes?

9 MR. CARR: Q. That's correct.

10 A. It says, "One ppb 2,3,7,8 TCDD in 2,4,6 TCP would
11 cause effects described."

12 Q. And we went through it. Effects described was these
13 cancers. You recall that, sir, to the best of your recollection?

14 MR. MUSGRAVE: Object. It's been asked and answered
15 several times.

16 THE COURT: Overruled.

17 MR. CARR: Q. You recall that, sir?

18 A. I recall you showing me that board there, yes.

19 Q. And that's the same one part per billion of 2,3,7,8 TCDD
20 that is being mentioned here in this memo just one month and
21 a couple of weeks later again with Dr. Wilson's signature
22 July 9, 1979, isn't that correct, sir?

23 A. It appears to be.

24 Q. And you apparently had no problems understanding what

1 he was saying about one part per billion of 2,3,7,8 TCDD in
2 May of '79, were you, sir?

3 A. Mr. Carr, I don't know if this was -- I don't recall
4 if this was even mentioned.

5 Q. I am not asking if you recall it, sir, because you
6 have no recollection of the meeting. This memo that was
7 given to us by Monsanto as notes taken at the May 22, 1979,
8 meeting -- and we have been through all of this, Mr. Park --
9 does describe and does discuss the effect of one part per
10 billion of 2,3,7,8, doesn't it, sir?

11 MR. MUSGRAVE: Object to the question. It's been
12 asked and answered. And I object to counsel's stating that
13 now he is not asking that when that's, in fact, what he just
14 did ask him about whether he recalled that being discussed
15 and he said he didn't and you said you are not asking him
16 whether he recalled what was said. I object to counsel's --

17 MR. CARR: Well, if I did say that -- I think you are
18 right, counsel. And I apologize to the witness.

19 Q. And you have said that you can't recall, right, sir?

20 A. Yes.

21 Q. But his memo does discuss it, doesn't it, sir?

22 MR. MUSGRAVE: It is not a memo. It is someone's
23 handwritten notes, Mr. Carr.

24 MR. CARR: Q. The notes of Dr. Wilson does discuss

1 it, doesn't it, sir?

2 A. Well, whoever wrote these notes do mention.

3 Q. And the Exhibit 1239A does mention one part per billion
4 of 2,3,7,8, also, doesn't it, sir?

5 A. It does.

6 Q. Now, do you think, Mr. Park, or do you have any
7 reasons, do you know -- here, you have discussed in 1981,
8 January, 1981, your TSCA committee discussed the effects of --
9 and whether or not you should report a carload or a product that
10 had 9.5 parts per billion of tetra in it and -- did you not,
11 sir? You had a meeting to determine whether or not there should
12 be a Section 8(e) notice to the E.P.A. because of the presence
13 of 9.5 parts per billion of tetra in that, isn't that correct,
14 sir?

15 MR. MUSGRAVE: Object. It's been asked and answered.
16 He has been through this already, your Honor. It is just
17 repetition and the same thing.

18 THE COURT: Objection is sustained. That has been
19 asked and answered.

20 MR. CARR: Q. Mr. Park, if you discussed at that
21 time in 1981 whether or not -- and according to the memo of
22 December 30, 1980, Dr. Mieure said there was a potential
23 problem of reporting this to the E.P.A.. And all you had -- you
24 didn't even have 1,000 parts per million -- per billion of total

1 dioxins and only had 9.5 of the tetra, why wouldn't someone
2 at Monsanto have a Section 8(e) meeting when you have got a
3 Santophen product that has 20,000 parts per billion total
4 dioxin in it, 65 of which is tetra and 3,000 of which is tri-
5 which is nearly as toxic as tetra?

6 A. We hold an 8(e) meeting whenever anyone requests it.

7 Q. Then I take it what you are saying is that no one
8 requested a meeting in '79 to discuss this finding of these
9 levels of dioxin content in this Santophen, is that correct,
10 sir?

11 A. Santophen now are you talking about?

12 Q. That's what I am talking about.

13 A. Mr. Carr, we touched on this earlier. And I said I
14 frankly would have to check my file. We have had a number
15 of 8(e) meetings, total 8(e) meetings.

16 Q. Mr. Park, I am going to represent to you because we
17 can't stop this examination at this point, that your lawyers
18 have sworn under oath and they represented to this Court as
19 late as last week that we have got everything you have got
20 dealing with TSCA meetings Section 8(e) dealing with dioxins
21 or other chlorinated phenols. Now, if they have said this,
22 if they have represented this to the Court, would you accept
23 that and we can pass on?

24 A. I will accept that.

1 Q. Do you know of any reason, sir, if the presence of
2 nine and a half parts per billion of tetra in the 2,4-dichloro-
3 phenol product in 1981 -- 1980, rather, would cause this
4 Section 8(e) why 65 parts per billion and 3,000 parts per
5 billion and 20,000 parts per billion wouldn't cause a similar
6 meeting in '79?

7 A. I just don't know. I am not a toxicologist. I don't
8 know.

9 Q. And you have -- as other things being equal so far as
10 you know, Mr. Park, would it be a correct conclusion to reach
11 that if you held such a meeting in 1981 to discuss the nine
12 and a half parts per billion of tetra that a meeting surely
13 should have been held in '79 to discuss 65 parts per billion
14 of tetra?

15 MR. MUSGRAVE: Objection. The question is vague as
16 other things being equal. Again object to this witness being
17 asked questions that require him to have toxicological and
18 medical knowledge to be able to answer. And it's been
19 established and Mr. Carr has even admitted that he doesn't
20 have that knowledge and yet he continues to ask him questions.

21 MR. CARR: Your Honor, I haven't admitted that he
22 doesn't. I believe the man has the knowledge. I believe he is
23 simulating is what I believe. I believe he has the knowledge.

24 MR. MUSGRAVE: I believe the record will show --

1 THE COURT: Whether he has it or not, I don't think
2 that question calls for that kind of knowledge and to the
3 degree of expertise that you are suggesting in your objection.
4 Therefore, whether he has it or not, your objection is
5 overruled on the basis of the question that has been asked.

6 THE WITNESS: The answer is, no, I wouldn't agree
7 with that at all.

8 MR. CARR: Q. And why wouldn't you, Mr. Park?

9 A. I am not the one that calls the meetings. The meetings
10 are called by people with greater knowledge of toxicology,
11 greater familiarity of the product.

12 Q. Mr. Park, I gave you an assumption -- and you know I
13 gave you -- other things being equal, is there any reason that
14 you know of if you are going to have a Section 8(e) meeting
15 for nine and a half parts per billion of tetra in 2,4-dichloro-
16 phenol, is there any reason that you know of why you would not
17 have a meeting for the Santophen that has the content as I
18 have suggested to you it has?

19 A. Yes, Mr. Carr. From my perspective we hold a meeting
20 when someone requests it. Someone requested here for the
21 dichlorophenol.

22 Q. To put it another way, do you know of any reason
23 why someone would not request a meeting on the Santophen
24 content in as much someone had requested a meeting for the

1 nine and a half parts per billion content in the 2,4-dichlorophenol?

2 A. I don't know.

3 Q. Do you know of any reason, sir?

4 A. No, I don't know of any reason.

5 Q. Other things being equal then, should a meeting have
6 been requested for the Santophen as it was requested for the
7 2,4-dichlorophenol?

8 MR. MUSGRAVE: Object. It's been asked and answered,
9 repetitive.

10 THE COURT: Overruled.

11 THE WITNESS: I have no idea. It depends on
12 whether or not someone feels that a given product would present
13 a substantial risk of injury to health or the environment.
14 Apparently, no one felt that if a meeting was not requested.

15 MR. CARR: Q. And someone felt that the nine and
16 a half in the 2,4-dichlorophenol does represent a hazard?

17 A. I don't know if it was nine and a half, Mr. Carr.

18 Q. You don't know it was nine and a half?

19 A. But for some reason someone felt that there should be
20 an 8(e) meeting to consider the dichlorophenol.

21 Q. Now, Mr. Park, you do know it was nine and a half.
22 You do know that they reconfirmed it. They examined that and
23 confirmed it. There is a September 15, 1981, memo which
24 confirms that. And you know that, don't you, sir?

1 A. I don't know that that was the cause of the meeting
2 being called, Mr. Carr.

3 Q. Well, now you are changing the subject again. You do
4 know that they confirmed the presence of that in a subsequent
5 test, the nine and a half parts per billion. You do know that
6 don't you, sir, as shown in Exhibit 1282A?

7 MR. MUSGRAVE: Well, I object, your Honor. That's --
8 there is no evidence that that was a subsequent test, whether
9 it's the same data.

10 THE COURT: Overruled.

11 MR. CARR: Q. See there nine and a half, same
12 thing, better written?

13 A. Yes, I do see that.

14 Q. Now, having called a meeting for nine and a half
15 parts per billion, is there any reason that you know of,
16 having been a functioning member of this committee, knowing
17 the people involved, knowing the ones that make the request,
18 is there any reason that you know of why a meeting should not
19 have been requested and held for the Santophen that was
20 manufactured in '79?

21 A. Yes.

22 MR. MUSGRAVE: Object, it's been asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: No one felt that there was a substantial

1 risk of injury to health or the environment.

2 MR. CARR: Q. Mr. Park, someone felt that nine and
3 a half in the 2,4-dichlorophenol represented a health risk
4 and you held a meeting.

5 MR. MUSGRAVE: Objection.

6 MR. CARR: Q. I am asking you why didn't someone
7 feel, so far as you know, that 65 parts per billion in the
8 Santophen posed a greated health risk.

9 A. I don't know, Mr. Carr.

10 MR. MUSGRAVE: Just a moment. Just a moment.

11 MR. CARR: Q. Six times greater than the nine and
12 a half in the 2,4-dichlorophenol.

13 MR. MUSGRAVE: Just a moment now. I object, your
14 Honor. Because now he is asking him why someone else, some
15 unidentified someone else didn't feel that there was some
16 reason to report this. That is speculating and requiring
17 conjecture as to the state of the mind of an unidentified
18 person who we don't even know what his qualifications were,
19 whether he could or couldn't make a determination. It's the
20 wildest speculation in the world for this person to speculate
21 on that. It's totally improper. And the question in other
22 forms as to this witness's knowlëdge as to why someone didn't,
23 though objected to previously, has already been asked and
24 answered.

1 THE COURT: Do you have anything you want to say on
2 that?

3 MR. CARR: No, your Honor.

4 THE COURT: Objection is sustained.

5 MR. CARR: Q. Is there any reason that -- you know
6 that Dr. Wilson is the organic chemist that is in charge of
7 a lot of things out there and you know he is on your committee,
8 don't you, sir?

9 A. He is not on the committee.

10 Q. Has been on your committee.

11 A. He has attended at least one meeting, perhaps others.

12 Q. Do you know of any reason, knowing Dr. Wilson, why
13 he didn't call or request a meeting for the Santophen that
14 has 20,000 parts per billion of total dioxin?

15 A. I have no idea, Mr. Carr.

16 Q. Someone requested a meeting in January, 1985, with
17 Tetrathal that contained 250 parts per billion of total
18 dioxin. You recall that, sir?

19 A. Tetrathal?

20 Q. Yes, Tetrathal that had 250 parts per billion in
21 January, 1985. Do you recall that, sir?

22 A. Yes.

23 Q. Now, and that product didn't have any 2,3,7,8 in it.
24 Only the waste, the residue had the 2,3,7,8. And it had only

1 an average of 250 parts per billion. And this is a hundred
2 times more than that, nearly a hundred times more than that,
3 of total dioxins, isn't that correct, sir, in the Santophen?
4 And no one called a meeting. Do you know of any reason why
5 someone would call a meeting for something that had 250 parts
6 per billion of total dioxins in it and yet a meeting wasn't
7 called in 1979 where something had 20,000 parts per billion
8 of total dioxin in it?

9 MR. MUSGRAVE: Your Honor, this is the same question.
10 It asks it in the same fashion, just relating it to a different
11 meeting. Mr. Carr knows very well that he is going over the
12 same ground again and again and again. It's repetitious.
13 And I object to it.

14 THE COURT: Objection is overruled.

15 THE WITNESS: I would say a meeting was not called
16 earlier because no one felt there was a substantial risk of
17 injury to health or the environment.

18 MR. CARR: Q. And someone felt that 250 parts per
19 billion did represent a substantial risk to the health and the
20 environment then?

21 A. At least sufficiently so to ask for a meeting.

22 Q. And nobody felt that 20,000 parts per billion represented
23 a substantial risk then. Is that what you are saying then, Mr.
24 Park, apparently?

1 A. I am saying that no meeting was called, Mr. Carr,
2 that apparently no one felt that the situation was such that it
3 presented a substantial risk of injury to health or the
4 environment.

5 Q. Now, do you know of any reason why 250 parts per
6 billion in Tetrathal might present a substantial risk to
7 somebody and 20,000 parts per billion of dioxin in Lysol used
8 in everybody's house does not represent a substantial risk?
9 Do you know of any reason, sir?

10 MR. MUSGRAVE: Object, your Honor. Now, counsel is
11 assuming that because there might be 20,000 parts in Santophen
12 that there are 20,000 parts in Lysol. And we have been through
13 that many times, Mr. Carr. And that's an improper assumption
14 and improper hypothetical. Again I object to the question
15 also --

16 MR. CARR: Q. It is. And I certainly will amend it
17 that the 20,000 parts per billion of dioxin goes out and it will
18 ultimately end up in the Santophen at some level.

19 MR. MUSGRAVE: And I also object to it again because
20 it is also asking the witness again to speculate and made
21 conclusions and conjecture as to why someone else, an
22 unidentified someone else, without any indication as to their
23 knowledge or their background and training may or may not have
24 made a decision as to whether there was or wasn't a potential

1 substantial risk of injury in a situation to take a look at
2 this under 8(e). Pure speculation and conjecture for this
3 witness to testify to that.

4 THE COURT: Overruled.

5 THE WITNESS: Could someone repeat the question,
6 please?

7 MR. CARR: Would you read the question to him, please?

8 (At this time the Court Reporter read back the
9 following question: Question: Now, do you know
10 of any reason why 250 parts per billion in
11 Tetrathal might present a substantial risk to
12 somebody and 20,000 parts per billion of dioxin
13 in Lysol used in everybody's house does not
14 represent a substantial risk? Do you know of
15 any reason, sir?)

16 THE WITNESS: First, I assume you meant to say
17 Tetrathal?

18 MR. CARR: Q. Yes.

19 A. Secondly, I have no idea what goes on in the minds of
20 others. So I don't know.

21 Q. Mr. Park, I can't accept that. I would like to to pass
22 on. But you do know because you meet with these people. You
23 know these people. They are people you work with in your
24 company. They work for the same company. They have the same

1 end, the same goal. So you do know. And I am not going to
2 accept that.

3 MR. MUSGRAVE: Object. He is arguing with the
4 witness.

5 THE COURT: Overruled. I don't think the answer was
6 responsive in the context this witness works. And so I think
7 that the non-acceptance of it as responsive to the question
8 is proper.

9 MR. MUSGRAVE: Your ruling is that it was not
10 responsive to the question that he doesn't know what is in
11 the minds of others, your Honor?

12 THE COURT: My ruling is that you are objecting to
13 Mr. Carr not accepting that answer. And I think his
14 non-acceptance is correct under the circumstances. Under
15 the circumstances it's not responsive. Overruled.

16 MR. MUSGRAVE: Well, may my objection to the Court's
17 ruling without an objection that it was responsive be noted?
18 I didn't think that anybody objected that it was not
19 responsive.

20 THE COURT: You know, I don't have to go by labels.
21 What you ruled in effect was that it was -- what you were
22 arguing in effect was that it was responsive. And I am saying
23 it was not. That was the sum and substance of your objection.
24 Because your quarrel was with Mr. Carr not accepting it as

1 responsive. The objection is overruled.

2 MR. CARR: Q. Mr. Park, you do know these
3 gentlemen you are working with, don't you, sir?

4 A. I know the gentlemen that I work with and have contact
5 with.

6 Q. Do you believe that there is anything that you know
7 of about their expertise and their knowledge of dioxin that
8 would lead them to believe that 250 parts per billion in
9 the Tetrathal is going to have less of an injurious effect
10 upon the health and the environment than the 20,000 parts per
11 billion in Santophen?

12 MR. MUSGRAVE: Object to counsel now asking this
13 witness to go to the minds of others and have knowledge of
14 their knowledge and expertise and make a decision on that.

15 THE COURT: Overruled.

16 THE WITNESS: The people you are talking about did
17 not call the 8(e) meeting about the 250 parts per billion.
18 Secondly, I have no idea why in a given context would feel an
19 8(e) meeting should be called and in another context others
20 would not feel that the situation did not present a substantial
21 risk of injury to the health or the environment.

22 MR. CARR: Q. Mr. Park, do you know whether or not
23 any customer was -- whether Lehn and Fink was ever told that they
24 were buying Santophen that contained 20,000 parts per billion dioxin?

1 A. I just have no idea, Mr. Carr.

2 Q. And would it be fair to say so far as what you know
3 about the toxicity of various substances that 65 parts per
4 billion in tetra will have a more injurious effect than 9.5
5 parts per billion of tetra?

6 A. I wouldn't want to say, Mr. Carr. Because the
7 context could be entirely different.

8 Q. Could be. But I am asking you so far as what you know,
9 Mr. Park.

10 A. I don't know.

11 Q. Do you understand? I said as far as what you know.

12 A. Yes, I do. I don't know. I just don't know how they
13 would compare.

14 Q. My question, Mr. Park, so far as you know, is there
15 any reason that you know of that 65 parts per billion of
16 tetradoxin would have a less toxic effect than 9.5 parts
17 per billion of dioxin?

18 A. I guess I can think of hypothetical factors that just
19 come to mind. But I just do not know what factors would be in
20 the minds of people that do make --

21 Q. I am not asking you that, Mr. Park. I left that
22 question.

23 A. -- toxicological decisions.

24 Q. Do you understand I left that question? I am asking

1 you another question and you are back on that question. I
2 left that question. Answer this question, please, that I
3 have asked you, sir.

4 A. Okay. Would you ask it again, please?

5 (At this time the court reporter read back the
6 following question: Question: My question,
7 Mr. Park, so far as you know, is there any reason
8 that you know of that 65 parts per billion of
9 tetradoxin would have a less toxic effect than
10 9.5 parts per billion of dioxin?)

11 MR. CARR: Q. Tetradoxin.

12 A. I just don't know.

13 Q. Now, Mr. Park, the next entry there is 654 is
14 parachlorophenol. You recognize that as PCP. Do you see that,
15 sir, again in Exhibit 1135? It had 3,800 parts per billion of
16 trichlorodibenzo-p-dioxin, did it not, sir? according to that
17 exhibit?

18 A. 654?

19 Q. 654. About five various tests in the same product.

20 Q. There is 6,100.

21 Q. I am referring to the top one, MB654, the very lead
22 one. Do you see that, sir? 3,800 parts per billion of the
23 trichlorodibenzo-p-dioxin?

24 A. Yes.

1 Q. And 130 parts per billion of the tetrachlorodibenzo-p-
2 dioxin?

3 A. Yes.

4 Q. And I will represent to you that it adds up to
5 22,000 parts per billion of total dioxin. You see that, sir?

6 A. Yes, I do.

7 Q. And the next one is March 1, '79. It contains
8 significantly less quantities. This is 662 if you could see
9 that down here.

10 A. Uh huh.

11 Q. It contains significantly less quantities of the
12 trichlorodibenzo-p-dioxin, doesn't it, sir?

13 A. Yes.

14 Q. Now, this is something that was manufactured according
15 to the records just a few days or within 30 days at the very
16 least of the sample 654 where there were 3,800 parts per
17 billion of trichlorodibenzo-p-dioxin.

18 MR. MUSGRAVE: Mr. Carr, 654 -- are you getting that
19 date from Plaintiffs' Exhibit 1135? 654 doesn't show a date
20 for the sample.

21 MR. CARR: That date is from -- if you would look
22 at the code for that 1135, it gives the batch number. If you
23 look over to the left there, it says KL025021. Do you see
24 that?

1 MR. MUSGRAVE: All right. I see it.

2 MR. CARR: Q. Now, sir, the fact that the trichloro-
3 phenol in one batch of PCP is so much higher than the trichloro-
4 phenol in the other batch of PCP indicates that something is
5 at variance or something different is going on in the
6 manufacturing process, doesn't it, sir?

7 A. I don't know, Mr. Carr.

8 Q. Well, what other explanation could there be, sir?

9 A. I have no idea frankly.

10 Q. You have no idea?

11 A. No, not being familiar with the --

12 Q. Mr. Park, please explore that. Because we want to
13 finish this case some day. The product is being manufactured
14 at the same plant, is it not, sir?

15 A. I don't know.

16 Q. The Krummrich plant in Sauget, Illinois?

17 A. I don't know, Mr. Carr. I am sure there are others
18 better qualified.

19 Q. Well, I am representing to you that it is, sir.

20 MR. MUSGRAVE: May I again interpose an objection
21 to now trying to qualify this man as some kind of a process
22 chemist and give explanations to why things happen when he has
23 no expertise in the field? May my objection to the continued
24 questioning of this man about questions that call for him

1 to express opinions, even conjecture and speculation if he
2 were experienced and had the knowledge -- may this be a
3 continuing objection, your Honor?

4 THE COURT: It will be a continuing objection. I
5 don't think it calls for that. My ruling would be the same
6 under the continuing objection.

7 MR. MUSGRAVE: Thank you.

8 THE COURT: Please answer the question.

9 THE WITNESS: I don't know.

10 MR. CARR: Q. Is there anything else that you know of,
11 Mr. Park, that could account for the extreme differences in
12 tridioxin content in these samples manufactured within 30 days
13 from one another other than the manufacturing process?

14 A. I have no idea, Mr. Carr.

15 Q. My question is, is there anything else that you do
16 have an idea of, sir, that you have knowledge of? You think
17 somebody slipped out there in the middle of the night and put
18 in 3,800 parts per billion of tridioxin?

19 MR. MUSGRAVE: And I object to --

20 MR. CARR: Q. What other explanation? Could there
21 be some vandalism going on there? Can you give me in your
22 mind, sir, what other variances you could think of other than
23 the manufacturing process varying?

24 MR. MUSGRAVE: Object to the question. It's already

1 been asked and answered. The man says he does not know why
2 there are differences.

3 THE COURT: Objection sustained. It has been asked
4 and answered.

5 MR. CARR: Q. Mr. Park, the reason I am asking this
6 particular question and questions like it is because you stated
7 yesterday or last week or this morning that E.P.A. knows the
8 contents, knows these products that you are manufacturing,
9 that they have experts that test things. You recall that, sir?

10 A. Mr. Carr, what I said is --

11 Q. Do you recall that, sir?

12 A. Not quite that way.

13 MR. MUSGRAVE: Well, now you are asking him what
14 he recalls and he is going to tell you, Mr. Carr.

15 MR. CARR: Q. You don't recall it quite that way?

16 A. No. I recall it slightly differently. That the E.P.A.
17 does understand that certain processes are likely to generate
18 dioxins.

19 Q. And you also testified that they come in a plant and
20 take samples. But, of course, you couldn't specify any time
21 that they did. And they do know that it generates--chlorinated
22 phenols can have dioxin. But they also know that a
23 manufacturing process exists whereby you can -- perhaps a little
24 greater cost, a little more care -- but it exists where you

1 can manufacture chlorinated phenols without having levels of
2 dioxin. They know that too, don't they, sir?

3 A. I don't know.

4 Q. You don't know that? Well, you do know that Dow
5 does it without dioxin content, don't you?

6 A. I am not sure that I do.

7 Q. Well, you do know that there is a big variance
8 between 3,800 and 180, don't you, sir?

9 A. I don't understand your question.

10 Q. Big difference between 3,800 parts per billion and
11 180 parts per billion, isn't there?

12 A. Yes, there is a difference between them.

13 Q. And unless one tested the sample, one would not
14 ever catch the difference, would they, sir? Unless you know
15 that varying the manufacturing process can vary the content,
16 isn't that correct, sir?

17 A. Mr. Carr, I am not familiar with manufacturing processes.
18 I don't know.

19 Q. Well, you do know, Mr. Park, that if you don't test,
20 you can't find the content. You do know that, don't you?

21 A. I guess in the absence of an analysis, one will not
22 be aware of the content.

23 Q. And if one isn't aware of the content, of course,
24 then they never have to notify the E.P.A. of knowledge they don't

1 have, isn't that correct, sir?

2 A. I don't know.

3 Q. And if you don't have knowledge, then obviously you
4 don't have to report toxic substances, isn't that correct, sir?

5 A. Well, one would report whenever there is evidence of
6 a substantial risk of injury.

7 Q. Yes. But you won't even know that unless you test
8 your product, will you, sir?

9 A. There are many ways. As I mentioned, Mr. Carr, we
10 have held a number of Section 8(e) meetings.

11 Q. Now, Mr. Park, you have given us the 8(e) meetings
12 you have held and it's four in number.

13 A. Well, that's relating to the chlorophenols.

14 Q. And that's what this case is about, Mr. Park. We
15 are talking about chlorinated phenols.

16 A. Right.

17 Q. That's what we are talking about. If you don't test
18 them, you will never know they have toxic substances, isn't
19 that correct, sir?

20 A. The chlorophenol itself I understand is quite toxic.

21 Q. Could you answer that question, please, Mr. Park?

22 A. Well, the answer would have to be no. You do know
23 it's toxic, Mr. Carr.

24 Q. I didn't ask you that, Mr. Park. And you know that I

1 am talking about the dioxin content of the chlorinated phenols.
2 You know that as certainly as I am asking you as you know
3 anything, don't you, Mr. Park? But you feel that you can
4 obscure the issue by throwing this in, don't you, Mr. Park?

5 A. No.

6 MR. MUSGRAVE: Object, your Honor. He is arguing
7 with the witness. He is badgering the witness.

8 THE COURT: Overruled. It's proper cross examination
9 under the circumstances.

10 MR. CARR: Q. Mr. Park, if you don't test, you don't
11 know.

12 MR. MUSGRAVE: Object. It's been asked and answered.

13 MR. CARR: Q. And if you do know and somebody
14 doesn't request a meeting, you don't have a TSCA meeting,
15 isn't that right, sir? And if you do have a TSCA meeting
16 and if you decide there is no substantial risk or there is
17 no exposure or you are not going to get in commerce, then you
18 don't report to the E.P.A. That follows too, doesn't it, sir?

19 MR. MUSGRAVE: Object. That's about four questions,
20 multiple questions.

21 THE COURT: Overruled.

22 THE WITNESS: Could we read them back one by one,
23 please?
24

(At this time the court reporter read back the

1 following question: Question: And if you do
2 know and somebody doesn't request a meeting, you
3 don't have a TSCA meeting, isn't that right, sir?
4 And if you do have a TSCA meeting and if you decide
5 there is no substantial risk or there is no
6 exposure or you are not going to get in commerce,
7 then you don't report to the E.P.A. That follows
8 too, doesn't it, sir?)

9 THE WITNESS: Okay. We do not hold an 8(e) meeting
10 unless there is a request for one. And if during the meeting
11 it's concluded there is no substantial risk to the health of
12 the environment, then there is no report to the E.P.A.

13 MR. CARR: Q. Mr. Park, my question was simply
14 this. The E.P.A. will never know if you either don't test or
15 you don't request a meeting or you don't decide at the meeting
16 that they should be notified. All of those three things have
17 to be met before the E.P.A. is informed, isn't that right, sir?
18 You have to test for the dioxin and find it. And then somebody
19 that tested for it has to say, "Hey, we better call a TSCA 8(e)
20 meeting," and request it. And then you have to meet. And
21 after looking at that 20,000 parts per billion or 22,000 parts
22 per billion, you have to decide that that represents a
23 substantial risk to the health or environment, don't you, sir?
24 All of those three things have to be met before your

1 obligation is called upon, isn't that correct, sir, and
2 before the E.P.A. knows of it?

3 A. I don't think testing would be a prerequisite, Mr.
4 Carr.

5 Q. How would you know if you don't test, sir?

6 A. The great majority of 8(e) situations do not come
7 out of testing constituents of products.

8 Q. I understand, Mr. Park, that none of the ones or only
9 three of the ones that Monsanto come out of testing the product.
10 All of the meetings you are talking about that you held of
11 the dioxin content, all of the meetings dealt with testing
12 the product and discovering dioxin content, isn't that correct,
13 sir?

14 A. Let's see. Is that three? I think the one dealing
15 with the Sturgeon spill as I recall simply did not deal with
16 the composition of the product, but the fact that it had been
17 spilled into the environment. As I recall, that was the reason.

18 Q. That's correct. You didn't know dioxin was in it
19 then, did you, sir?

20 A. I believe that's correct.

21 Q. Because that was before your February 9 meeting,
22 wasn't it, sir?

23 A. Yeah, I think that's right.

24 Q. But in any event, Mr. Park, the point I am making is

1 if the person that tested the Santophen or the PCP and found
2 the 20,000 parts per billion, if it were never tested, he
3 would never know it, would he, sir?

4 A. That's correct.

5 Q. And if he doesn't know it, he can't request a
6 meeting, can he, sir?

7 A. He wouldn't request it for that purpose, that reason.

8 Q. And if a meeting is never held or if you do hold a
9 meeting and you decide not to report to the E.P.A., the E.P.A.
10 never knows, do they, sir? So you have to have three things,

11 don't you, sir? You have to have the test that discovers the
12 dioxin content, you have to have the request after that
13 discovery takes place and you have to have your committee
14 at such a meeting to decide the E.P.A. should be notified.
15 You have to have all of those three things, don't you, sir?

16 A. Well, I guess these three that you were talking about,
17 but not for the majority, the vast majority.

18 Q. For these three that I am talking about. Before the
19 E.P.A. knows, there has to be the test, the request and there
20 has to be the conclusion that they should be notified. Isn't
21 that correct, sir?

22 A. I would guess so. Those three were based upon dioxin
23 content.

24 Q. And one simple way of avoiding notification to the

1 E.P.A. is -- one way is then not to test for dioxin, isn't
2 that correct, sir?

3 A. Mr. Carr, as I have mentioned --

4 Q. Would you answer that question, please?

5 A. No, that --

6 Q. If you don't test, you won't know. And if you don't
7 know, you don't have to notify, isn't that correct?

8 A. We know a great deal of other things without testing,
9 without analyzing products. We have informed the E.P.A. in
10 other situations.

11 Q. You have never informed the E.P.A. about the dioxin
12 content of any of your products subsequent to a TSCA 8(e)
13 meeting according to your testimony yesterday morning, Mr.
14 Park. Isn't that correct, sir?

15 A. You said dioxin content?

16 Q. That's exactly what I said, sir.

17 A. To the best of my recollection, we have not.

18 Q. And if you don't test your chlorinated phenols for
19 dioxin, you will never know whether or not they contain
20 dioxin, isn't that correct, sir?

21 MR. MUSGRAVE: Your Honor, I don't know how many
22 times this has been asked, but it's probably about six. And
23 I object to the repetitive nature of the question. It has
24 been asked and answered.

1 THE COURT: I think it has been asked and answered.

2 MR. CARR: Q. Mr. Park, can you not avoid notifying
3 the E.P.A. by not testing for dioxin content?

4 A. That would not avoid our obligation.

5 Q. Oh, I know that. I know that so well, Mr. Park. I
6 understand that perfectly. That doesn't avoid your obligation.
7 But if you don't test, you don't perform your obligation.
8 Isn't that correct as well, Mr. Park?

9 A. Mr. Carr, I have tried to say there are any number
10 of ways that someone might --

11 Q. The obligation, Mr. Park, that we are talking about
12 now is dioxin content of your chlorinated phenols. And you know
13 it. And, please, do not lead me down another path. We are
14 talking about the chlorinated phenols and the dioxin content.

15 A. I would not go so far, Mr. Carr, as to say that by
16 avoiding testing one would avoid an obligation of notifying
17 the E.P.A.

18 Q. You can't avoid the obligation ever. There is no
19 way you can avoid the obligation. You simply don't perform
20 in the way you are obliged to perform. Isn't there a duty
21 Mr. Park, to report hazardous levels of dioxin in your
22 chlorinated phenols?

23 A. To whom, Mr. Carr?

24 Q. To the E.P.A., Mr. Park.

1 A. Not as such, no.

2 Q. And you believe the law permits you not to report
3 hazardous levels of dioxin as such to the E.P.A., is that
4 what you are saying, Mr. Park?

5 A. No.

6 Q. Is that what you are saying, Mr. Park?

7 A. No.

8 Q. I thought that's just what you said. I asked you
9 there is a duty upon you to report hazardous levels of dioxin
10 in your chlorinated phenols to the E.P.A., isn't there, sir?
11 And you said no.

12 A. And I said not as such, Mr. Carr. We take very
13 seriously our obligation under Section 8(e) --

14 Q. Mr. Park, I am asking you whether or not there is
15 a duty for you to report it and you say not as such.

16 A. Mr. Carr, whether or not the composition is hazardous
17 or not is up to our toxicologists. I rely on them.

18 Q. I am talking about Monsanto, Mr. Park, not you. And
19 you know I am talking about Monsanto. And the toxicologist
20 is part of Monsanto. My question is Monsanto has the duty
21 to report to the E.P.A. hazardous levels of dioxin in its
22 chlorinated phenols, does it not, sir?

23 A. There is no obligation as such that I am aware of.

24 Q. Therefore, Monsanto, in your judgment, is not obliged

1 to report the hazardous levels of dioxin content in its
2 product, isn't that correct, sir? That's your view of it,
3 Monsanto's view of it?

4 A. You changed the question a little bit, Mr. Carr.
5 And I would say at any time there was a conclusion that the
6 product would present a substantial risk of injury to the
7 health of the environment, then there would be a report filed
8 with the E.P.A.

9 Q. That's not what I asked you at all. Because that
10 requires you to reach a conclusion. You can reach a
11 conclusion fraudulently, can't you, sir? You can reach a
12 conclusion by never testing the product. You can say, "Our
13 Santophen is safe. We have never been found to be unsafe."
14 You can say to the world, "Our Santophen has never been found
15 to contain hazardous levels of dioxin that we are sending you."
16 You can say that truthfully, can't you, sir, if you never test
17 for dioxin content, isn't that correct, sir?

18 A. That's a totally hypothetical thing because I cannot
19 imagine the company not testing products.

20 Q. Well, you do know that they tested only seven batches
21 of Santophen in all of '77 and '78 or something like that. You
22 know that, don't you, sir?

23 A. I am not familiar with that, Mr. Carr.

24 Q. Well, the evidence is there, the exact amount. You

1 do know that it's never been reported to the E.P.A. and it's
2 never been told to a customer. You know that too, don't you,
3 sir?

4 A. I don't know that.

5 Q. But back to the point, Mr. Park, that I am asking
6 you about. If you don't test, you don't know. Isn't that
7 correct?

8 A. Mr. Carr, I --

9 MR. MUSGRAVE: Object. It's asked and answered.

10 THE COURT: It has been asked and answered.

11 MR. CARR: Q. Mr. Park, do you conceive then that
12 Monsanto does not have a duty, an obligation to report
13 hazardous -- well, you have answered that as well that Monsanto
14 doesn't as such have a duty to report to the E.P.A. hazardous
15 levels of dioxin content. I think you said that, didn't you,
16 sir?

17 A. No company does that I am aware of.

18 Q. No company reports it or no company has the
19 obligation? Which is it, sir?

20 A. No company has the obligation as such.

21 Q. No company has the obligation to report to the E.P.A.
22 whether or not its products contain hazardous levels of dioxin
23 in your judgment, is that correct?

24 A. Now, I am not speaking of FIFRA keep in mind. I am

1 thinking in terms of TSCA, the Toxic Substances Control Act.

2 I am not familiar with the obligations under FIFRA.

3 Q. So far as you know, since you are not familiar with
4 FIFRA -- so far as you know, Monsanto does not have the
5 obligation to report and neither does any other company in
6 your judgment have the obligation to report to the E.P.A.
7 the existence of hazardous levels of dioxin in your chlorinated
8 products. Isn't that what you are saying, Mr. Park?

9 A. If they present a substantial risk of injury to
10 the health of the environment, then there would be an
11 obligation.

12 MR. CARR: Your Honor, would you direct the witness
13 to answer that question?

14 THE COURT: Mr. Park, you have to answer that
15 question directly as posed to you.

16 THE WITNESS: Could you clarify what you mean by that?

17 MR. CARR: Q. No, Mr. Park, because you have answered
18 it once already and I am trying to be more precise. You said
19 not as such. You don't have the obligation, no company has
20 the obligation. I just want to make sure that is your opinion.

21 MR. MUSGRAVE: Object to the question. That is being
22 vague, your Honor. If he is not going to specify whether it's
23 under the statute or as a general policy or whatever, I object
24 to it as vague, making incapable the witness to answer it in

1 the context that it is given because it is vague.

2 THE COURT: It's not at all vague. Overruled.

3 MR. CARR: Q. Mr. Park, is it because that you at
4 Monsanto -- that Monsanto believes that it is not under a
5 legal obligation to report hazardous levels of dioxin in its
6 chlorinated phenols, is that the reason the E.P.A. has never
7 been notified that hazardous levels of dioxin have existed
8 in the past in your chlorinated phenol products?

9 MR. MUSGRAVE: Object, your Honor. Assumes facts
10 not in evidence.

11 THE COURT: Overruled.

12 THE WITNESS: I guess off the top of my head I am
13 not aware of the hazardous levels that were in the products.

14 MR. CARR: Your Honor, would you direct the witness
15 to --

16 THE COURT: Mr. Park, you have to answer that question
17 as it is posed to you.

18 MR. MUSGRAVE: Is that a hypothetical, your Honor?
19 that he is being required to assume?

20 THE COURT: It is a proper question. Overruled.

21 MR. MUSGRAVE: Then I do object to the hypothetical.

22 MR. CARR: Q. Is that the reason, sir?

23 A. Mr. Carr, your question assumed that there were
24 hazardous levels of dioxins in Monsanto's product. I guess that

1 I can test that assumption.

2 Q. But first of all before you do, please answer the
3 question I posed to you, sir. You can say, no, that's not
4 the reason. You can say, yes, that is the reason. And then
5 you can respond when I ask you the next question, sir.

6 A. I'm sorry. I am trying to recollect.

7 MR. CARR: Would you read the question back to him,
8 please?

9 (At this time the court reporter read back
10 the following question: Question: Mr. Park,
11 is it because that you at Monsanto -- that
12 Monsanto believes that it is not under a legal
13 obligation to report hazardous levels of dioxin
14 in its chlorinated phenols, is that the reason
15 the E.P.A. has never been notified that hazardous
16 levels of dioxin have existed in the past in
17 your chlorinated phenol products?)

18 THE WITNESS: I respond that to my knowledge there
19 have been no hazardous levels --

20 MR. CARR: Your Honor, would you direct the witness
21 to answer the question.

22 THE COURT: Mr. Park, I am ordering you to answer the
23 question as posed to you. Now, answer that question and no
24 other.

1 THE WITNESS: And secondly, that is not the reason --

2 MR. CARR: Your Honor, the witness is ignoring you
3 now. He is saying, "And secondly--"

4 THE COURT: Mr. Park, I am going to warn you only
5 one last time. Answer the question as it is posed to you.

6 THE WITNESS: Okay. No.

7 MR. CARR: Q. And the reason, I take it from your
8 answer, that you have never notified the E.P.A. is that you
9 at Monsanto don't believe that these levels of dioxin are
10 hazardous, is that correct, Mr. Park?

11 A. I do not know. I am not a toxicologist, Mr. Carr.

12 Q. I am asking you about the reasons you know. So
13 far as you know, is the reason that Monsanto has never notified
14 the E.P.A. of hazardous levels of dioxin in the chlorinated
15 phenols -- is that reason that which you tried to say in
16 response to my question -- is that reason that you don't
17 believe that these levels are hazardous? You at Monsanto do
18 not believe these levels are hazardous? Is that correct, sir?

19 A. I really think that is a question for our toxicologist,
20 Mr. Carr.

21 Q. Would you, please, answer that question? So far as
22 you know, based upon your limited knowledge, based upon what
23 you know about everything, about what I am asking you -- I
24 am asking as far as you know, Mr. Park.

1 A. Mr. Carr, I would answer then yes in the context
2 of each part.

3 Q. All right. We can pass on then, Mr. Park.

4 THE COURT: Mr. Carr, is this a good point for a
5 short break?

6 MR. CARR: Yes, your Honor.

7 THE COURT: Ladies and gentlemen, we will take a very
8 short recess at this time and then resume the testimony in the
9 case. Court is in recess. The admonishments I have given you
10 earlier will apply in this break also.

11 (A short recess was taken.)

12 (Plaintiffs' Exhibit No. 1301A was marked for
13 identification.)

14 MR. CARR: Q. Mr. Park, you recognize what has been
15 marked as 1301A as a blow-up of Exhibit 1301 that you have in
16 front of you?

17 A. Yes.

18 MR. CARR: Offer 1301A, your Honor. Counsel, you
19 need to see it?

20 MR. MUSGRAVE: Well, I will take your word it's the
21 same. But I thought we had -- he was going to -- he hasn't
22 offered this before. He requested permission to pass it
23 to the jury as I understand it.

24 MR. CARR: I think you are probably right. I will

1. just ask then leave to display this to the jury, your Honor.

2. MR. MUSGRAVE: Same basis as before.

3. THE COURT: Fine. With the reservation on
4. corrections. Same ruling on that.

5. MR. CARR: Q. Now, Mr. Park, will you refer to
6. the next entry for the -- next three entries for the Santophen
7. and check those entries against Exhibit 1195 and 1135B that
8. you have in front of you and see if those numbers entered
9. there for the Santophen for those three samples of Santophen
10. are not correct?

11. A. Mr. Carr, is the first one MB730?

12. Q. That's correct. There are two places that it is
13. referred to, 730 on the exhibit you have, 1135B, and also
14. in Exhibit 1195 and 1195A that you can check if you wish.
15. You see that, sir? There is 150 parts per billion of the
16. tri- Cl_3 , 48 of the Cl_4 in the sample KI06124. It's also
17. shown in the Exhibit 1135B. The total dioxins there are
18. 420.

19. A. Mr. Carr, where is it? I don't see it on 1135B.

20. Q. Because you haven't turned the page.

21. A. All right.

22. Q. Okay. And the next entry you see for the Santophen
23. has 660 parts per billion of trichlorodibenzo-p-dioxin and
24. 33 parts per billion of the tetra with a total of 10,500 parts

1 per billion of dioxin? MB699 or KL1506.

2 MR. MUSGRAVE: Mr. Carr--

3 MR. CARR: Q. Do you have it or can I help you.

4 A. I found it. I am trying to add them up.

5 MR. MUSGRAVE: Isn't KI76 KL79?

6 MR. CARR: The exhibit 1195 -- I thought so. But
7 Exhibit 1195 described all of those as 1977 production of
8 Santophens. There is ambiguity in your records as to just
9 when they were made, just when they were made. Exhibit 1195
10 says seven batches from January to March of '77.

11 MR. MUSGRAVE: Well, I think the testimony has previously
12 established the sequences of numbers. And we would object
13 to the representation on the chart of KI6-122 as June of '77,
14 your Honor.

15 MR. CARR: KI6-122, I don't have any such --

16 MR. MUSGRAVE: 124, I'm sorry.

17 THE COURT: 124, okay. Well, if there is ambiguity,
18 I will let the record stand showing both situations on the record
19 and will go from there.

20 THE WITNESS: Mr. Carr, for MB699 I get 10,193,
21 total dioxin.

22 MR. CARR: Q. You get what, sir?

23 A. I get 10,193 rather than 10,500.

24 Q. On MB699?

1 A. Yes. WNSC

2 MR. MUSGRAVE: We also object to MB699, your Honor.
3 Mr. Carr is apparently counting the Cl₁ which are shown as
4 an interference at less than 5,000. And prior testimony has
5 established that that means it could be zero, it could be
6 4,999. But because of interference they can't say. And it's
7 an incorrect representation of that of a total of 10,500.

8 THE COURT: Overruled.

9 MR. CARR: Q. Let me refer you to 1195. There is
10 an ambiguity there in the MB. Look now at 1195. And you are
11 correct as far as the 1135 is concerned. But if you direct
12 your attention to the original exhibit that was made dated
13 June 19, 1979, Plaintiffs' Exhibit 1195, the sample KL0106,
14 would you, sir, and add those up in here and you will find
15 my figure is correct.

16 A. I believe it would still be -- you have got a less
17 than 50 there.

18 Q. But this is 350 here and you add 350 to 660 --

19 A. All of these -- well, now these are all less than this
20 number.

21 Q. That's correct, sir. At that level or less than that
22 level. That's what that means. You understand that, don't you?

23 A. Yes, sir. Okay. I thought it meant just less than
24 that number.

1 Q. It means it can't be higher than that value.

2 MR. MUSGRAVE: Object. That's incorrect.

3 THE COURT: Overruled.

4 MR. CARR: Q. And you see right here on the very
5 exhibit itself it has a star. It says, "Cannot be higher than
6 value reported." You see that, don't you, sir?

7 A. I see that, but now some of the other less thans
8 don't have the star. I don't know, Mr. Carr. This is not
9 my area.

10 Q. Mr. Park, these numbers add up to 10,500, do they
11 not, sir?

12 A. I don't know.

13 Q. Well, add them up, please.

14 A. All right.

15 Q. A little over 10,500?

16 A. Well, they do, but that doesn't take into account the
17 less than symbols there.

18 Q. Mr. Park, I understand that. And the exhibit is clear.
19 It has the symbol on it not more than or less than 5,000, isn't
20 that correct, sir?

21 A. And fifty and one hundred.

22 Q. Yes. Isn't that correct, sir?

23 MR. MUSGRAVE: Object to counsel requiring the
24 witness to interpret documents that he is not qualified to

1 interpret and when there is contrary testimony to the meaning
2 of the indicated characters.

3 THE COURT: Overruled on both.

4 MR. CARR: Q. The next sample of Santophen MB698
5 or KL3-43. You want to add those figures up there in that
6 column, sir?

7 A. All right.

8 Q. What does it add up to, sir?

9 A. If I added directly here, it would be less than 6,330.

10 Q. And I have entered on the column 5,930.

11 MR. MUSGRAVE: Again, your Honor. I object. Counsel
12 is adding interference limit as positive numbers. And that
13 is totally contrary to evidence.

14 THE COURT: Overruled. I don't believe that is
15 correct.

16 MR. CARR: Q. Well, eliminating even those, if you
17 look at the exhibit, the No. 1135, and you add up the sample 698,--
18 I think that is what we are referring to at this time, are we
19 not? You come up with 5,930 parts per billion. Do you, sir?

20 A. Yes, 5,930 is what I have.

21 Q. Directing your attention to MB686, the next item there,
22 you see that adds up to 16,070 parts per billion of dioxin,
23 does it not, sir?

24 A. Let me do this. Is that first number under the Cl₁

sign, is that --

Q. 810.

A. 810. I get 16,070.

Q. Of which 3,900 is the trichlorodibenzo-p-dioxin and 360 is the tetra, isn't that correct, sir?

A. That would appear to be the case.

Q. Now --

MR. MUSGRAVE: There is no chloro in it, Mr. Carr. It's not a chlorinated dioxin. Never mind. Go ahead.

MR. CARR: Q. These are chlorinated dioxins, counsel. The next entry there, 697, will you refer to that?

A. All right.

Q. You see the second MB697 column, a line referred to 1,400 Cl₁, 12,000 Cl₂, 4,400 Cl₃, 450 Cl₄? That adds up to 18,250 parts per billion of dioxin, does it not, sir?

A. I guess 18,250.

Q. And I want you to know, Mr. Park, and for the record as well that 686 and 697 are two different tests of the same batch of 24DCP. These are not two separate batches. And I don't want you to be misled on that. I don't want the jury to be misled on that. They are simply renumbered, the same sample and tested it on different occasions. MB758 is a Santophen sample. And it shows 310 parts per billion. And I don't want to do this unless you are with me. Are you at

1 1135? I'm sorry. You don't have it. It's 1131. You don't
2 have that exhibit.

3 A. No.

4 Q. Handing you what's been marked Plaintiffs' Exhibit 1131,
5 there are five samples of Santophen referred to in that exhibit,
6 are there not, 754, 755, 756, 757?

7 A. Well, it's got six listed here, 740 --

8 Q. Direct your attention to MB758, please, Mr. Park,
9 so we can move on. You see that Santophen 310 parts per billion
10 of trichlorodibenzo-p-dioxin, 20 parts per billion of tetra-
11 chloro-p-dioxin, for a total of 635 total dioxins. That was 758.

12 A. 758. I notice it has a less than sign in front
13 of all of these numbers.

14 MR. MUSGRAVE: We make the same objection with
15 regard to this representation, your Honor, as being misleading
16 and improper characterization of the testimony with regard to
17 what the numbers represent.

18 THE COURT: Overruled.

19 MR. CARR: Q. Does the caret sign on there in that
20 exhibit say no more than?

21 A. Mr. Carr, I don't know.

22 Q. Excuse me. Could you read the words at the bottom of
23 that Table II and does it have the caret sign equals, "No more
24 than"?

1 A. Yes.

2 Q. Mr. Park, please move on and give me, if you will,
3 the total not more than dioxin content for sample 754.

4 A. 754?

5 Q. I'm sorry. 758 was the first I asked you about.

6 A. I added those up to 635.

7 Q. Thank you. The next one is 754. Please add those
8 up. The second sample referred to there is 1,395, is it not,
9 sir?

10 A. I'm sorry. I was adding the first line. That comes out
11 to 600.

12 Q. The second line, 754 --

13 MR. MUSGRAVE: Same objection to this representation
14 intentionally misleading and mischaracterizing the evidence.

15 THE COURT: Overruled on both.

16 THE WITNESS: I get 600, 1,395.

17 MR. CARR: Q. That's what I have got. Next one, 755,
18 adds up to be eight hundred twenty -- first of all, the 754
19 sample has not more than 325 parts per billion of tridioxin,
20 isn't that correct, sir?

21 A. That's what appears to be indicated on this exhibit.

22 Q. And 755 shows for Santophen not more than 275 parts per
23 billion for the tridioxin, isn't that correct, sir? And total
24 dioxin of not more than or 825 parts per billion?

1 MR. MUSGRAVE: Same objection with regard to
2 representation on this one, your Honor. He is doing the same
3 thing.

4 THE COURT: Same ruling. Overruled.

5 THE WITNESS: Yes, I add those numbers up to be 825.

6 MR. CARR: Q. And ME656 has for the tridioxin not
7 more than 220 parts per billion, doesn't it, sir? I'm sorry.
8 756 in the second sample test.

9 MR. MUSGRAVE: Same objection on this one, your
10 Honor. Same mischaracterization.

11 THE COURT: Overruled.

12 THE WITNESS: I add those numbers up to 1,920.

13 MR. CARR: Q. And the tridioxin is not more than
14 220 for that sample, is it not, parts per billion?

15 A. That's what the exhibit says.

16 Q. And 757 has not more than 85 parts per billion of the
17 trichlorodibenzo-p-dioxon?

18 A. That's what it says.

19 Q. And it has a total of not more than 665 dioxin, does
20 it not, sir?

21 A. I add them up to that number.

22 MR. MUSGRAVE: Same objection with regard to 757,
23 your Honor.

24 THE COURT: Same ruling.

MR. CARR: Q. Directing your attention now to
Plaintiffs' Exhibit 1276, Table I on 1276. That reports, does
it not, 2,100 parts per billion of tridioxins and 2,700 parts per
billion of tetra dioxin? Isn't that correct, sir?

A. I don't know, Mr. Carr. This is a different format
than the other ones. I am not sure I understand it.

MR. MUSGRAVE: What page of 1276?

THE WITNESS: Table I.

MR. CARR: Q. Table I on it. Look at Table I.
It has at the top of it analysis of Cl₄. Table II has the
analysis for Cl₃ dibenzo-p-dioxin. Do you see that, sir?
And I misdirected you to Table I for both findings.

A. Yes, I see that.

Q. Table I shows 2,700 parts per billion, does it not,
sir?

A. This number?

Q. That's correct.

A. I see that number on there.

Q. And Table II shows for the Cl₃ dibenzo-p-dioxin it shows
2,100 parts per billion, does it not, sir?

A. I see that. That's number three, that's right.

Q. Sample number three?

A. Sample number three.

THE COURT: Mr. Carr, is this a good point at which

1 to break?

2 MR. CARR: Sure.

3 THE COURT: Ladies and gentlemen, we will break for
4 the day at this time. I will remind you as I do on any other
5 overnight break, you are not to read or watch anything about
6 this case in particular or subject matter in general in the media.
7 Gentlemen, can I see you in chambers, please?

8 (The following proceedings were held in chambers
9 with Court and counsel present.)

10 THE COURT: Let the record indicate that we are in
11 chambers outside the presence of the jury for a motion filed
12 today, I guess.

13 MR. CARR: Yes, your Honor, this morning.

14 THE COURT: Motion for sanctions and further
15 production. Anything you want to add to your motion?

16 MR. CARR: Just that as the Court knows, we spent a
17 great deal of time trying to get from Monsanto for a period of
18 months now all the documents that deal with dioxin. And I let
19 this witness who is presently on the stand know either the first
20 or second day I was examining him that I was going to refer to
21 a January, 1985, TSCA meeting that they held and was going to
22 refer to the 250 parts per billion that that memo referred to
23 as being the level at which the E.P.A. should be notified. The
24 next -- and, of course, that is an important point supporting

1 our position in this case that dioxin, not just 2,3,7,8, but
2 all dioxin is toxic and hazardous and that Monsanto has known
3 for a number of years that and yet has taken the position that
4 it is not toxic. And so that 250 parts per billion finding by
5 their toxicologist was important. And the very next morning there
6 was delivered to my -- once I let them know I was going to use
7 and rely upon that 250 parts per billion finding of that
8 toxicologist Nair, the very next morning they produced in my
9 office at 9:15 A.M. a document prepared by another toxicologist
10 Levinskas who up to the point of time the witness identified
11 Levinskas as a toxicologist, I was not aware he was a toxicologist.
12 I saw his name on any number of documents that he received
13 copies along the time documents have been produced. Levinskas's
14 name appears with some frequency. But I had not known he was a
15 toxicologist until the witness Park said in effect that -- said
16 he was and that his memo that had been delivered to me that
17 morning at 9:15 AM took away from the impact of Nair's
18 recommendation and that it, in effect, overruled Nair
19 because Levinskas was Nair's boss.

20 Now, it's obvious that after I let them know,
21 telegraphed that I was going to use and rely on that 250 parts
22 per billion memo they went back and did some digging to see
23 what they could discover to counter that finding. And lo and
24 behold, they discovered a document written by Toxicologist

1 Levinskas that says that document exaggerates -- that Nair is
2 exaggerating the toxicity of dioxin. Well, I find it
3 absolutely incredible that they could have just accidentally
4 come upon Levinskas's memo that deals with this subject. And
5 it is incredible that Levinskas would have written only one
6 document and they find it accidentally on the night of the 11th
7 of April, 1985.

8 The records also show that Roush has been on this
9 committee since 1979, has served on these committees. And
10 when the original files of Roush's, which I asked to be
11 produced and Mr. Nassif produced them and represented to me
12 that I was seeing the original files, not a single document
13 to my memory deals with the findings of this TSCA committee.
14 And there is nothing that Roush wrote either in hand or had
15 typed dealing with these findings where he gives advice.
16 So I am absolutely convinced that there is important material
17 in Levinskas's files which they have not produced and
18 important materials in Roush's files which they have not produced.
19 And there is also files of Dr. Nair. I don't know how long
20 Dr. Nair has been with them. But I would suppose that she was
21 there prior to January 14, 1985. And we have gotten no files
22 from her other than Park's file. And Park, of course, says
23 today for the first time there may be other TSCA files dealing
24 with dioxin. That's all I wanted to add to that motion, your

1 Honor.

2 THE COURT: Who is going to --

3 MR. NASSIF: We may have to handle this together.

4 But I want to address Mr. Carr's comment about the -- it's
5 obvious after he telegraphed what he was going to do that we
6 went back digging to counter Nair's memo. I was the one that
7 found Nair's memo and the Levinskas memo, your Honor. I
8 found them in a most unlikely place while I was going through
9 Phocion Park's Tetrathal TSCA. It was the Tetrathal section
10 of Phocion Park's file. I found documents and I informed
11 Mr. Carr, first of all, that we did not have the final draft
12 of the Tetrathal meeting which was not finalized. The finalized
13 meeting of the Tetrathal was not finalized until March 26,
14 1985. That was not in the file. In the course while I was
15 looking for all the final minutes, I found these two documents,
16 the Nair memo and the Levinskas memo. If you read the Levinskas
17 memo, your Honor, it references that the Nair memo is
18 attached. There was no telegraphing on our part. I didn't
19 know it referenced that because I found them separate in the
20 file. The Levinskas memo is directed to George Roush. And I
21 said, I told -- I gave the Roush memo -- the Levinskas to Roush
22 memo to our staff and I said the same day I found the Nair memo,
23 we produced the Nair memo. And I said, "Confirm that this Levinskas
24 to Roush memo was in the material Mr. Carr reviewed." I don't

1 recall the Nair memo and the Nair memo did not list Roush.

2 I was sure he got the memo. But I couldn't peg the Nair memo. So

3 we went ahead and produced the Nair memo right away. And I

4 said, "This Levinskas to Nair memo should have been produced.

5 I think I have seen it. Check on it." This was before I even

6 knew Mr. Carr was going to use the Nair memo. And, in fact, Mr.

7 Carr used the Nair memo the same afternoon we handed it to him.

8 MR. CARR: Why did he hand me the Levinskas memo?

9 MR. NASSIF: Because the memo was addressed to

10 Roush and it was not addressed at the time. In all honesty,

11 I believe that we have given you everything in his original

12 file, Rex, and that's why I didn't hand it to you.

13 MR. CARR: Why did you bring it in the next morning?

14 MR. NASSIF: Because I went back to Levinskas's file.

15 First we checked all your orders that evening. We found we

16 had no C number for that memo. And I asked George Roush

17 and Ken and they left and went back to Levinskas's office at

18 7:30 that night and pulled Levinskas's files because Levinskas

19 told me he had three files in his drawer in his own office that

20 we might not have gotten when we pulled the original files

21 under 8(e).

22 And by the way, we did take his general office 8(e)

23 file. And that was included in the material you looked at

24 and is on the microfilm I have been informed. But I want you

1 to know, your Honor, I was not sure that Levinskas's memo --
2 I said, "George, we haven't found it. I want to look in all of
3 your files including the ones in your desk." Ken and George
4 left at 7:30 that night, went to his office, pulled the
5 materials, met me the next morning at Roush's office, pulled
6 those files where Roush said they may not have been pulled in
7 the search. I reviewed them and still did not find the Levinskas
8 to Roush memo that morning. As soon as I realized it hadn't
9 been given to Mr. Carr, that morning I told Carol -- Sheila
10 was not there. I said, "You put a number on this and get it
11 up to Mr. Carr." She left at ten minutes to nine. Now, he
12 claims he got it at 9:15. I do know it was within that morning.
13 But I was convinced from the day I saw it in Phocion Park's
14 memo -- but I didn't stop there. I wanted to confirm he got
15 it. I had no idea he was going to use it that afternoon against
16 Mr. Park. As a matter of fact, Mr. Carr indicated to me when
17 I told him we didn't have the final version of the Tetrathal
18 minutes, he said to me, "I am not worried about Tetrathal."

19 MR. CARR: Because I wasn't aware that you had
20 dioxin minutes relating to Tetrathal.

21 MR. NASSIF: We produced to your office, well,
22 before this in the Roush materials and earlier when you asked
23 for documents having to do with dioxin and Monsanto products,
24 a number of reports, I think a proposed press release having

1 to do with dioxin and Tetrathal. So you were quite aware that
2 there were dioxins in Tetrathal, that we had found them. The
3 only thing I told you was I didn't have this final draft of the
4 Park memo that had been circulated and finalized on March 26,
5 your Honor. It wasn't even in Park's file. It was on its
6 way being prepared. And I said, "I am going to get that to
7 you." Now, I had -- there was no way -- I am representing to
8 this Court it was not accidental that we came upon the Levinskas
9 memo after finding the Nair memo. It was not accidental at
10 all. I can attest I have not found the Levinskas memo in any of
11 George Roush's materials either that we gave to Rex or pulled.
12 The memo was addressed to him. I have questioned Dr. Roush
13 why he doesn't have this memo and he doesn't have an answer.
14 The Levinskas -- I believe I found the Nair memo
15 in Levinskas's original files in what you looked at or what we were
16 to produce to you. I am not sure about that.

17 MR. CARR: I haven't seen Kevinskas's original files.

18 MR. NASSIF: In the Roush original files. But I
19 didn't find the Levinskas cover memo.

20 MR. CARR: I didn't see it.

21 MR. NASSIF: I am not going to say for sure. But I
22 do know, your Honor, the only time I found those two documents
23 in one file together was when I was pulling those last Tetrathal
24 minutes that Phocion Park had in his 8(e) files. They weren't

1 attached. They are attached now. They weren't attached.
2 I said, "I am sure Rex got this Levinskas to Roush thing."
3 It's a good memo for us. I wouldn't have -- I wasn't trying
4 to trap you in any way. I had no idea you were going to talk
5 about Tetrathal. But I was sure we had given Rex all of
6 Roush's original files. This memo was addressed to him, a
7 recent memo. As a matter of fact, I thought I recognized it
8 and told them to go back and just confirm it. When we couldn't
9 confirm it, we checked it that night, had Ken go back and
10 look in his 8(e) files. We confirmed it hadn't been produced
11 and I produced it that morning. It is true -- I admit this to
12 the Court when he said 250 parts per billion the night before,
13 it was true it rang a bell. I suddenly realized he was going to
14 use the Nair materials. And you are right. I did make every
15 effort that evening to make sure we had produced that document.
16 But I was making that effort before he made any reference to
17 that. And we were making that effort, your Honor. And we
18 confirmed it and I produced it the next morning to him. I
19 produced it to him as soon as we confirmed it hadn't been in
20 Roush's original materials.

21 Now, let me -- there is one other point, the Roush
22 files, whether Rex has gotten all of the Roush files. On
23 the 8(e) files there was a general 8(e) file that Roush's
24 secretary said was the 8(e) file. And Mr. Carr had an

1 opportunity to see that file when he was in my office.
2 There are also two other 8(e) files that I have personally
3 reviewed that I did not know about at the time Mr. Carr sat
4 in my office, two or three. I can't remember. But they were
5 very small. They were folders he had in his desk or office
6 area. They were not included in the materials that Mr. Carr
7 looked at. I admit that, your Honor. I personally looked
8 at these three files and produced every document in there that
9 had the word "dioxin" in it that had not been previously
10 produced. I make that representation to the Court. I did that,
11 well, within the middle or late last week when Ken got those
12 files. Thursday night you got them. I reviewed those files that
13 morning, confirmed that, in fact, everything in there. There
14 were no handwritten notes by the way.

15 MR. CARR: I want to see those original files. I
16 insisted upon seeing it to start with because I did not
17 believe I would get the contents of the file because we have been
18 getting these files day after day that you supposedly reviewed
19 in February and January to pull out everything dealing with
20 dioxin. I am still getting them. I want to see the original
21 files. I want to see Levinskas's original files and Roush's
22 original files. I can't believe he would have gotten a memo
23 in January of '85 dealing with dioxin and he doesn't have it in
24 his files somewhere.

1 MR. NASSIF: If you want to see Roush's original
2 files, again, you can look at them again plus the ones --

3 MR. CARR: But I apparently did not see his files.

4 MR. NASSIF: If you want to see all the original
5 files you did not see the first time, that is fine.

6 MR. CARR: That's what I want to see, all the files
7 I have not seen.

8 THE COURT: Anything else?

9 MR. NASSIF: Yes, your Honor. I do want to say one
10 thing. To my knowledge, I don't have any problem if he wants
11 to see Levinskas's original dioxin files. Keeping in mind,
12 your Honor --

13 THE COURT: What about Nair's?

14 MR. NASSIF: I don't have any problem with Nair.
15 Keep in mind, your Honor, we do not produce Nair and Levinskas
16 files on the basis of just the mere word dioxin as we did with
17 the Paget file and Mr. Mahoney's file. I am not saying that
18 other than to say they might have reference to the word dioxin,
19 but it might not have anything to do with toxicity of chlorophenols
20 or toxicity of dioxin or the presence of it in any of our products.

21 MR. CARR: It's incredible that you can have two
22 toxicologists -- from 1979 I have seen Levinskas's name on a
23 memo as far back as '79. I know I have seen a number of
24 memos reference to Levinskas. And I haven't got the document

1 that you brought in 9:15 the other morning is the first
2 document I recollect having been signed or prepared by
3 Levinskas. To me it boggles the imagination you could have
4 a toxicologist in dioxin, all the memos I have gotten from
5 you all -- dioxin is the big problem. You are fighting it
6 here and there. You could have a toxicologist who has not
7 got anything in his files dealing with dioxin.

8 MR. HEINEMAN: I would like to respond to that,
9 your Honor. I have been through piles of documents myself.
10 I have seen a number of documents authored by Mr. Levinskas
11 that have C numbers on them. I know there have been
12 documents produced to Mr. Carr authored by Dr. Levinskas
13 because I have seen them. This isn't the only one. I
14 don't know if these came out of George Levinskas's files.

15 MR. CARR: I will check my files again.

16 MR. HEINEMAN: I have them with C numbers on them.

17 MR. CARR: You may have them. Maybe I don't have
18 them.

19 MR. NASSIF: I would add we produced microfilm to
20 Mr. Carr and my understanding -- and I am not saying there
21 are Levinskas memos on that. My understanding is, however,
22 that his files were included in their search and in the
23 materials that were ultimately put on the microfilm.

24 THE COURT: They were included in the search but

1 you are not sure they were included on the microfilm?

2 MR. NASSIF: I haven't confirmed that they are on
3 the microfilm. I have been told they would be at least
4 early on in the early materials.

5 THE COURT: Do you have any reply?

6 MR. CARR: Nothing further, your Honor.

7 THE COURT: I am going to order the production of
8 the original files of Levinskas, Nair and Roush. And I
9 gather that it's by agreement. And I want these files
10 produced as described in the motion. I am also going to
11 order as far as the affidavits that the president of Monsanto
12 file the affidavit as requested. And you, Mr. Heineman,
13 you file the affidavit that has been requested of you. And
14 I will reserve until a future time any question of sanctions.
15 When can you get these original files?

16 MR. NASSIF: I will tell you in the morning,
17 your Honor, if that would be okay.

18 THE COURT: Fine. And if you could also tell me
19 then, I guess, when the affidavits can come in.

20 MR. NASSIF: Your Honor, I don't know if this needs
21 to be on the record. We are trying to get complete -- the
22 last outstanding in terms of Monsanto documents, that is the
23 board request and all of that together, and as supplemented
24 by Mr. Carr. And I mentioned to him the time table on that

1 on Friday.

2 THE COURT: Okay.

3 MR. NASSIF: We were trying to wrap everything up
4 to do the affidavit. And we have continued, however, your
5 Honor, to search for producable files. As a matter of fact,
6 I produced this morning as it turns out a document which
7 had been previously produced. But we are still in the
8 process of trying to check every nook and cranny before
9 we do perform the affidavit. And we were waiting to complete
10 the board materials which I did over the weekend before we
11 file the affidavit of total compliance.

12 THE COURT: Okay. I think that covers everything
13 in your motion.

14 MR. CARR: Your Honor, there is one other thing
15 I would like to bring up. I haven't gone through all of
16 these materials that have been produced to me just today.
17 The raw data has been supplied. I want to make sure there
18 are no cracks in the discovery motions by which you could
19 say that there are some things I didn't precisely ask for.
20 Because just the brief looking that I have right now -- what
21 I saw was something that appeared to be taken from other
22 examinations. The document that I had said, if I can
23 remember it correctly, taken from examination and put down
24 on this, in this place. So that indicates to me that there

1 must be some other records that are in existence. I am not
2 saying that you have them. Suskind may have them that served
3 as a source for these documents that you have given me. And
4 I wanted all the documents, not just his conclusions from
5 the examination. And that's much of what I have got are
6 conclusions. I want all the documents that he has dealing
7 with his examinations and findings and laboratory tests on
8 these people.

9 MR. NASSIF: I will respond only to say, your
10 Honor, that I know for a fact there are reports of lab
11 tests in those documents. At least one on each individual.
12 That is raw material. Those are the lab tests. I have
13 not -- I have reviewed that material and to the best of
14 my knowledge, your Honor, it seemed complete to me. It is,
15 in fact -- and I will confirm, Mr. Carr, everything that we
16 have that -- you know we have searched around -- and try to
17 compare it to whatever information we may have. That is
18 more than we had within Monsanto. It includes any and
19 everything that we had.

20 MR. CARR: Well, just for one thing. There is a
21 listing of abnormals, listing of normals and listing of
22 abnormals and values for the normals. There are no values
23 given for the porphyrins, no normal values given for the
24 porphyrins. There are porphyrin results given, but no normals.

1 I haven't gone through everything. There may be somewhere
2 in that stack, may be a reference range for the porphyrins.
3 But it's not on each individual report. There are normal
4 findings, normal ranges for all the other lab tests. But
5 there are not normal ranges for the porphyrins on what I
6 have looked at thus far.

7 MR. HEINEMAN: Let me make sure that I understand
8 the first thing that you were describing. Because I will
9 call them back up and see. You said that you saw something
10 that refers to another examination?

11 MR. CARR: Refers to the examination taken from the
12 examination. I can be more -- I will have more time to look
13 at it this evening. And I haven't gone through it all. I
14 didn't want to give you a final request for additional
15 without being sure of what I am speaking. But I am just
16 telling you this as a preliminary. As far as I can see,
17 there have been other findings of some sort written down
18 somewhere that we haven't got. And there are no values
19 given for the normal porphyrins. There is a finding that
20 the porphyrins are abnormal. But there is nothing to check
21 it with to see that the report is correct as to what is the
22 normal reference range.

23 MR. HEINEMAN: Okay.

24 THE COURT: Okay. Anything else?

1 MR. HEINEMAN: Your Honor, could I ask this, for
2 the Court to explain to me -- obviously, or it seems
3 obvious to me that the president of Monsanto Company doesn't
4 have the vaguest notion about the productions of documents
5 that have occurred. What is the purpose, if the Court would
6 be so kind to explain it to me, of having an affidavit from
7 the president of the company?

8 THE COURT: Let me ask you. You knew that we were
9 discussing this motion and you knew that was part of the
10 motion. And I didn't hear any objection to it so I assumed
11 there was no objection to it. And I don't think that is an
12 unreasonable assumption. What objection might you have to it?

13 MR. HEINEMAN: My objection to it would be how in
14 the world would -- everybody in the room knows that the
15 president of the company doesn't have the slightest connection
16 with the production of documents. And we would object to
17 having to have any kind of affidavit from him. What in the
18 world would he know about it?

19 MR. CARR: Let me give an analogy for that. In
20 practically all of the jury cases that I have handled, the
21 defendant requires that the plaintiff sign personally the
22 affidavit that production is completed and sign personally
23 the interrogatories that the answers are true. In most of
24 those instances, the plaintiff doesn't have much of an idea

1 at all as to whether that is all the production or whether
2 these documents are material. He relies upon the attorney
3 to tell him those things. But he can hold the attorney
4 responsible if he signed an affidavit that is incorrect
5 because I am telling my client, "Sign this. We have
6 produced." And invariably the defendants require that it
7 be signed by the client and not just by the attorney because
8 it's the client that is in the case.

9 Well, in this instance, I have asked that the
10 president sign it because he will make damn sure if he is
11 putting his signature on the line. He will make damn sure
12 that the people working for him have produced to you the
13 proper materials. You have to rely upon the people at
14 Monsanto. You cannot go through all of these files yourself
15 and neither can Joe Nassif. You have to rely upon Wilson and
16 Metcalf and Roush that he hasn't stashed away some file.
17 You have to rely upon the integrity of the people reporting
18 to you. Monsanto's president, Mahoney, is the person that
19 can put their feet to the file. You can't and neither can
20 Joe. But Mahoney can. And this is the only way I can be
21 sure to have Mahoney see to it that the production is complete
22 just as the plaintiff is required to in an ordinary lawsuit,
23 just as our plaintiffs have signed answers and affidavits
24 that production has been complete and that the interrogatory

1 answers are true.

2 MR. HEINEMAN: Well, your Honor, I think that
3 obviously he is not going to be giving an affidavit based
4 upon personal knowledge. And all he can do is give an
5 affidavit on what he knows. If that is what the Court orders,
6 that's what we will ask him to do.

7 MR. NASSIF: As a possible alternative, your Honor,
8 perhaps having it signed by the head of the law department,
9 senior vice president of Monsanto, would be someone who would
10 have a little more understanding of why this is going on and
11 would also have the power to bring to bear the proper pressures
12 as Mr. Carr is indicating would be a little more -- having
13 it signed by someone with a better understanding of the
14 process and what needs to be done and all of that.

15 MR. CARR: I object to that, your Honor. The
16 plaintiffs don't have understanding of all the process. But
17 yet they are required to sign the affidavits. Mahoney can
18 be made to understand. And, therefore, I want him to be
19 made to understand. Because then he can bring the pressures
20 to bear that he is not going to be signing an affidavit
21 that is false. Your lawyer doesn't have the same clout that
22 Mahoney has.

23 MR. NASSIF: I argue that this individual is in
24 much the same shoes as Mr. Mahoney as an officer of the

1 company. He is senior vice president. He is similar to the
2 analogy that Mr. Carr is making. He has that kind of power
3 and presence in the corporation. It is not necessary for
4 us to go to Mr. Mahoney and explain to him this process as
5 a non-lawyer and help him try to understand what is being
6 required.

7 THE COURT: He may be similar, but not the same.
8 I think it's a good idea. I have in the past before this
9 case ordered the chief executive officers of companies
10 involved in litigation to execute things as well as requiring
11 plaintiffs to execute matters in discovery as opposed to
12 their attorneys. I think it's a good idea. And I will
13 grant it over objection since it has now been brought up and
14 argued. I think your analogy is correct. I think it's a
15 good idea. I have done it in the past. So I see no reason,
16 frankly, not to do it now. And I think your language is
17 correct. He is in a somewhat same position as far as the
18 senior vice president. But he is not in the same position.
19 Mr. Mahoney or anyone else who would occupy the chair of
20 Monsanto chief executive officer, there is no exactly
21 comparable chair. So I will grant it over objection now
22 that it's been brought up and argued. Okay?

23 MR. NASSIF: One point, your Honor, of clarification.
24 I am to produce Roush's original files as not previously

1 reviewed, isn't that our understanding?

2 MR. CARR: Yes.

3 MR. NASSIF: Are we to produce these in triplicate
4 as we did or duplicate?

5 THE COURT: That was your idea.

6 MR. CARR: It's up to you.

7 THE COURT: It's a good idea. That's what you did
8 with Roush's other files.

9 MR. NASSIF: It only goes to show how soon we can
10 have them available.

11 MR. CARR: I want them available sooner than an
12 hour before I examine him.

13 THE COURT: Why don't you skip the triplicate on
14 Roush's?

15 MR. NASSIF: Fine.

16 THE COURT: Let me know tomorrow morning how
17 quickly you can have the others. Because if there is a
18 great time difference, we may skip the triplicate on all of
19 them.

20 MR. NASSIF: Fine. I will let you know.

21 THE COURT: Okay.

22 COURT ADJOURNED:

23 * * * * *

1 IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT

2 ST. CLAIR COUNTY, ILLINOIS

3
4
5
6
7 I, DONNA F. BREWER, an Official Court Reporter for
8 the Circuit Court of St. Clair County, Twentieth Judicial
9 Circuit of Illinois, do hereby certify that I reported in
10 shorthand the proceedings had on the hearing in the above
11 entitled cause; that I thereafter caused the foregoing to be
12 transcribed into typewriting, which I hereby certify to be a
13 true and accurate transcript of the proceedings had before
14 the Honorable Richard P. Goldenhersh, Judge of said court.

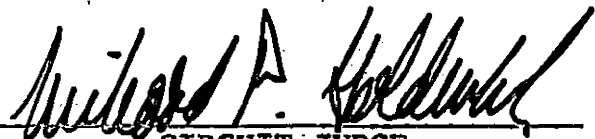
15
16 Donna F. Brewer
17 Official Court Reporter

18
19
20
21
22
23 Dated this 19th day
24 of April, 1985.

1 IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
2 ST. CLAIR COUNTY, ILLINOIS
3
4
5
6

7 I, RICHARD P. GOLDENHERSH, Circuit Judge in and
8 for the Twentieth Judicial Circuit of the State of Illinois,
9 and the sole presiding Judge in the aforesaid cause on the
10 15th day of April, 1985, do hereby certify that I have
11 examined the aforesaid transcript of the proceedings and
12 further certify that the same is a true and correct transcript
13 of said proceedings had in said cause.

14 DATED: This 24th day of April, 1985.
15
16

17 
18
19
20
21
22
23
24

CIRCUIT JUDGE