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received
1/16/01

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January 12, 2001

PLAINTIFF'S EXHIBIT 2
SF 7/18/01

VIA FACSIMILE

Donald W. Stewart
Donald W. Stewart, P.C.
1131 Leighton Avenue
Anniston, Alabama 36207

Re: Billy R. Nelson, et al. v. Monsanto Company, et al.

Dear Donald:

This letter will briefly summarize the discussions of counsel for the parties on Wednesday, January 10, 2001, in connection with plaintiffs' discovery requests and motion to compel. My notes reflect the following regarding our discussions:

1. Interrogatory Nos. 7 and 8: As discussed, we have not located documents that show the amount of solid PCBs that were disposed of in either the West End Landfill or the South Landfill from 1930 until the present. We understand that liquid PCBs were not disposed of in the landfills. The West End Landfill was closed in or about the late 1950s and, as you know, this property was transferred to Alabama Power Company in about 1960. Records reflecting the solid wastes disposed of in the South Landfill were kept beginning in the early 1980s, and such disposal records that have been located have been included in the DSW production. As reflected in earlier discovery responses, the PCB manufacturing process ceased in 1971, and the Aroclor Department was demolished in 1972.

Both parties are aware of a couple of documents in the DSW production set that contain estimates of the amount of solid PCBs disposed of in the South Landfill, with one of those documents containing an estimate only for the period from 1971 through 1975. In addition, you indicated that both Jerry Brown and Gene Jessee testified during their depositions that one could do a calculation regarding the amount of solid wastes generated in the PCB manufacturing process, if one knew the volume of PCBs produced in the manufacturing process. As discussed, we have searched for, but have not located, documents showing such calculations. We have provided to you in our responses to interrogatories in other cases the information we have located

EXHIBIT

regarding the volume of PCBs produced at the Anniston Plant on an annual basis, but that information is not complete. Those interrogatory responses referred to the DSW documents from which we collected that production information. We agreed to review the depositions of Mr. Brown and Mr. Jessee and to talk further with them regarding the process of calculating the amount of solid wastes that would be generated during the PCB manufacturing process and to provide to you any further information we can locate or determine regarding this subject.

2. Interrogatory No. 14: We have searched for, but not located, documents that show the total annual revenue generated from the manufacture of PCBs at the Anniston Plant for each year from 1935 (the interrogatory says 1930, but Monsanto acquired the site and the manufacturing process in 1935), until Monsanto stopped the PCB manufacturing process in Anniston. You referred to a document counsel have seen in the DSW production which contains information regarding revenues from PCB production at the Anniston Plant at the time Monsanto was considering terminating production of PCBs at Anniston. We agreed that we would search again for documents or records that contain information regarding the annual revenue from PCBs manufactured at Anniston by Monsanto for each year that Monsanto manufactured PCBs in Anniston.

3. Interrogatory Nos. 15, 16 and 17: We agreed to provide additional information and references to documents in the DSW production to supplement our responses to these interrogatories. In so doing, we will attempt to segregate specific remediation projects and the costs associated with those specific projects.

4. Interrogatory No. 23: We agreed that, assuming there is no privilege protecting the information from disclosure, we will supplement our answer to this interrogatory regarding the dollar amount of reserves established for PCB litigation at Anniston and PCB remediation at Anniston.

5. Interrogatory No. 24: The parties agreed that Monsanto/Solutia would first respond further to this interrogatory by identifying particular PCB remediation projects (excluding small or spot remediations such as clean-up of a transformer leak), and we would provide a description of that project by narrative or a descriptive project document. Plaintiffs' counsel will review this information and identify those projects with respect to which plaintiffs' counsel request further information responsive to this interrogatory.

6. Interrogatory No. 27: Counsel agreed to hold Interrogatory No. 27 in abeyance pending the supplemental responses to Interrogatory Nos. 15, 16 and 17.

7. Interrogatory No. 28: We agreed that we would provide any specific information that Monsanto/Solutia has regarding other potential sources of PCBs in and around Anniston or

would state that Monsanto/Solutia did not have such information. Plaintiffs' counsel acknowledged that they have the specific information regarding Tull Chemical Company.

8. Document Repository: Counsel discussed Monsanto/Solutia's position that the PCB document repository in Greensboro, North Carolina is protected from review by plaintiffs' counsel by the work-product privilege/doctrine. We agreed to send to plaintiffs' counsel sample copies of affidavits filed by Monsanto/Solutia in other courts in support of the work-product claim. I am faxing those affidavits with this letter.

9. Document Requests: We did not discuss specific document requests further, since the document requests correspond with the interrogatories we discussed.

I believe I have summarized our discussions regarding the discovery requests discussed at our January 10 meeting. Please let me know if I have omitted any of those requests. Based on our discussions, we do not believe that it is necessary for the parties to file further papers with the Special Master at this time regarding the motion to compel and these discovery issues but, again, please let us know if you disagree.

Very truly yours,

SMITH HELMS MULLISS & MOORE, L.L.P.

Michael E. Kelly

MEK:hm
Enclosures

cc: Charles L. Cunningham, Jr., Esq. (w/encls.)
Jack Atkin, Esq. (w/encls.)
Adam K. Peck (w/o encls.)
William S. Cox, III (w/o encls.)

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ATTORNEYS FOR Third-Party Defendant
Monsanto Company

CITY OF PERTH AMBOY, a Municipal Corporation,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO. L-073370-87
Plaintiff/Counter-claim Defendant,	:	
v.	:	Civil Action
WITCO CORPORATION,	:	
Defendant/Counter-claimant/Third-Party Plaintiff,	:	AFFIDAVIT OF JOSEPH G. NASSIF
v.	:	
MONSANTO COMPANY, *et al.*,	:	
Third-Party Defendants.	:	

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

JOSEPH G. NASSIF, being duly sworn according to law, upon his oath, deposes and says:

TOWOLDMON0049100
WATER_PCB-00028805

1. I have been licensed to practice law in the State of Missouri since 1974. From 1974 until May 1986 I was employed by the defendant Monsanto as an attorney in their law department. Beginning in November 1981 until my departure, I was a litigation attorney in Monsanto's law department. I am currently representing Monsanto in a number of matters, as a partner in the law firm of Coburn, Croft, & Putzell in St. Louis, Missouri. The statements in this affidavit are based on my personal knowledge, unless otherwise noted.

2. During the period from November 1981 until January 1985, I was responsible for the management of lawsuits related to the manufacture and sale of polychlorinated biphenyls ("PCBs") by Monsanto. During that time I developed, with Monsanto's outside counsel, Monsanto's PCB litigation defense strategies in pending and anticipated cases.

3. Shortly after assuming the management of Monsanto's PCB litigation defense I organized the identification and collection of all documents in the possession of the company that related in any way to the sale and manufacture of PCBs. Upon completion of this work the documents were maintained under the control of the law department. This collection of documents contained both discoverable and nondiscoverable (privileged) documents.

4. Following the collection, review, and consolidation of the documents, I decided that they required substantial

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WATER_PCB-00028806

organization in order to marshal the documents and facts which in my judgment were relevant and significant from those which were not. Also, it was necessary to organize the documents and facts in a manner which, in my opinion, would be most useful in the defense of pending and anticipated litigation. At my request, David M. Moore assisted me in these tasks.

5. Before commencing the review of the documents, Mr. Moore and I had extensive discussions regarding those documents which we felt would be particularly important in the defense of current and anticipated PCB litigation. During the course of our review of the documents, we decided whether or not particular documents were in fact significant enough to be included within the collection of documents selected for organization and categorization for use in ongoing and future litigation. Those documents which we determined to be relevant and significant were included in the litigation resource library. Documents not selected for this library were retained by Monsanto and remained available for appropriate litigation discovery.

6. Beginning in late 1982 I assessed the available computerized retrieval systems for litigation support. I then selected a retrieval software system which, based on my judgment, most closely met our needs in the approximately 34 PCB lawsuits then pending, as well as our anticipated litigation support needs in future cases.

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7. As part of the PCB document data base system design, Mr. Moore and I prepared a classification system to be used for creating and organizing coded summaries of documents considered in our judgment to be of importance in the litigation defense of Monsanto's PCB products. This data base contains my legal opinions and theories concerning the defense of Monsanto in then existing and anticipated litigation relating to PCBs, as well as the legal opinions and theories of Mr. Moore.

8. Following the preparation of the classification system for the data base, Mr. Moore and I personally trained a small number of document reviewers employed by Monsanto for the purpose of classifying and summarizing the documents pursuant to our instructions. Those instructions were designed to allow prompt retrieval of the information Mr. Moore and I considered to be significant within the context of Monsanto's overall litigation strategy. Mr. Moore and I supervised and spot-checked this classification and summarization work to assure ourselves that the completed data base would meet our litigation objectives.

9. Following completion of the PCB litigation data base, and until my responsibilities were assumed by Mr. Bistline in January 1985, the data base was used exclusively in support of Monsanto's law department and outside counsel in their defense of PCB lawsuits brought against the company. All aspects of the development and use of the system were controlled and conducted by counsel for Monsanto. At all times all counsel for Monsanto and

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their representatives were required to maintain and have, based on my information and belief, maintained strict confidentiality with regards to all aspects of the system.

10. The identity of the documents selected for inclusion in the data base and the classification system used to organize it are in my opinion attorney work product. Their disclosure would certainly reveal my legal opinions and theories as an attorney representing Monsanto in litigation relating to the manufacture and sale of PCBs by Monsanto. Neither documentation relating to the system nor any aspect of the system itself, including the classification system, can be made available to counsel for the Witco Corporation without revealing my legal opinions and litigation strategy.

Joseph G. Nassif
JOSEPH G. NASSIF

SWORN TO AND SUBSCRIBED
before me this 9th day
of July, 1992.

Lynne L. Amble
Notary Public

My commission expires:

LYNNE L. AMBLE
NOTARY PUBLIC STATE OF PRESCOTT
JEFFERSON COUNTY
MY COMMISSION EXP OCT 16,1993

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WATER_PCB-00028809

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ATTORNEYS FOR Third-Party Defendant
Monsanto Company

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. L-073370-87

CITY OF PERTH AMBOY, a Municipal Corporation	:	
Plaintiff/Counter-claim Defendant,	:	Civil Action
v.	:	AFFIDAVIT OF THOMAS M. BISTLINE
WITCO CORPORATION,	:	
Defendant/Counter-claimant/Third-Party Plaintiff,	:	
v.	:	
MONSANTO COMPANY, et al.,	:	
Third-Party Defendants.	:	

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

THOMAS M. BISTLINE, being duly sworn according to law, upon his oath, deposes and says:

TOWOLDMON0049105
WATER_PCB-00028810

1. I am licensed to practice law in the State of New York. I am an attorney in Monsanto's litigation department with responsibility, among other things, for the management of lawsuits pertaining to the manufacture of sale of polychlorinated biphenyls ("PCBs") by Monsanto. I am the successor to Mr. Joseph G. Nassif in this position. I have personal knowledge of the statements made in this affidavit.

2. In performing my law department responsibilities, I have become familiar with the computerized PCB document data base assembled by Messrs. Nassif and Moore. Under my direct supervision, this system has been used solely in connection with the defense of pending and anticipated PCB litigation.

3. The computerized document data base system, including the document classification system originally prepared by Messrs. Nassif and Moore, has been maintained in strict confidence by counsel for Monsanto. The system has never been produced in any litigation or to any person other than counsel for Monsanto or their direct representatives. The system reflects, in its original design and in its current configuration, the legal opinions of Monsanto's attorneys concerning the identity of factual subject matters important to the defense of Monsanto's PCB cases, the interrelationships between those matters, and summaries of the significant documents relating to those subjects.

4. Access to Monsanto's computerized data base system is in no way necessary for the Witco Corporation ("Witco") to

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obtain full discovery in this case. Monsanto has produced and will continue to produce all documents in its possession, including documents inside and outside of the data base, that are responsive to Witco's requests, subject only to objections made pursuant to the New Jersey Rules of Civil Procedure. I know of no reason why counsel for Witco cannot formulate their discovery requests without relying on the work product of Monsanto's lawyers.

THOMAS M. BISTLINE

SWORN TO AND SUBSCRIBED AND
before me this 9th day
of July, 1992.

Notary Public

My commission expires:

JOSEPHINE S. NIBLOCK
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 15,1995

TOWOLDMON0049107
WATER_PCB-00028812

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ATTORNEYS FOR Third-Party Defendant
Monsanto Company

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. L-073370-87

CITY OF PERTH AMBOY, a Municipal Corporation	:	
Plaintiff/Counter-claim Defendant,	:	Civil Action
v.	:	AFFIDAVIT OF DAVID M. MOORE, II
WITCO CORPORATION,	:	
Defendant/Counter-claimant/Third-Party Plaintiff,	:	
v.	:	
MONSANTO COMPANY, et al.,	:	
Third-Party Defendants.	:	

STATE OF NORTH CAROLINA)
) SS.:
COUNTY OF GUILFORD)

DAVID M. MOORE, II, being duly sworn according to law, upon his oath, deposes and says:

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one another, which documents should be classified in each subject, and which documents are appropriate to be included in the computerized data base.

4. After the classification system had been substantially completed, representatives trained by Mr. Nassif and me, and working under our instructions and supervision, classified and summarized each of the documents which we had selected for inclusion in the computerized data base.

5. The documents Mr. Nassif and I decided not to include in the computerized data base were retained by Monsanto, and based on my information and belief have been produced when responsive to discovery requests served on Monsanto.

6. Any disclosure of the contents of the PCB data base or of the classification system used in its organization would necessarily disclose Mr. Nassif's and my own legal opinions and litigation strategy.

DAVID M. MOORE, II

SWORN TO AND SUBSCRIBED
before me this 9th day
of July, 1992.

Notary Public

My commission expires: 6-4-96

TOWOLDMON0049109
WATER_PCB-00028814

1. I am licensed to practice law in North Carolina, and am a partner in the law firm of Smith Helms Mulliss & Moore, in Greensboro, North Carolina. Since 1971 I have represented Monsanto as an attorney in litigation involving the manufacture and sale by Monsanto of polychlorinated biphenyls ("PCBs"). I have personal knowledge of the statements made in this affidavit, unless otherwise noted.

2. Because of my prior experience in representing Monsanto in PCB litigation, I was asked by Joseph G. Nassif, then a litigation attorney in Monsanto's law department, to assist him during 1982 and 1983 in collecting and organizing the company's PCB-related documents in connection with pending and anticipated PCB litigation.

3. After selecting what we considered to be the significant documents for pending and anticipated PCB-related litigation, Mr. Nassif and I drafted a subject matter classification system to be used in the organization and retrieval of the selected documents. That system was based upon our professional assessment of factual and legal issues we considered to be important for pending cases and that we projected would arise in future PCB litigation. A major purpose of the classification system was to enable Monsanto's attorneys to assemble the significant documentary evidence in our possession in support of our defense strategies, and as a result the system does contain and would disclose our legal opinions as to which subject areas are important, how the subject areas relate to

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