PLAINTIFF'S EXHIBIT

MON-2688

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

12600 N. Featherwood, #105
Houston, TX 77034

Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

May 19, 1986

File No: 8-63651
Re: John L. Elliott vs
Monsanto Company

File

John L. Elliott, P. O. Box 6B, Alta Loma, TX 77510
Monsanto Company, P. O. Box 1311, Texas City, TX 7759-
INA of Texas, P. O. Box 759, Houston, TX 77001
Stephen M. Vaughan, MANDELL & WRIGHT, 712 Main, Suite 1600, Houston, TX 77002
Douglas W. Pool, Attorney at Law, P. O. Box 629, Galveston, TX 77553

Gentlemen:

The enclosed Decision and Order of the Administrative Law Judge is hereby served upon the parties to whom this letter is addressed. The decision was based on all of the evidence of record, including testimony taken at a formal hearing, and on the assumption that all available evidence has been submitted.

The transcript, pleadings, and compensation order has been dated and filed in the Deputy Commissioner's Office. Procedures for appealing are described on the back of this letter.

The employer/insurance carrier is hereby advised that if the order awards compensation benefits the filing of an appeal does not relieve that party of the obligation of paying compensation as directed in this order. The employer/insurance carrier is also advised that an additional 20 percent is added to the amount of compensation due if not paid within ten days, notwithstanding the filing of an appeal, unless an order staying payments has been issued by the Benefits Review Board, U.S. Department of Labor, 1111 - 20th Street, N.W., Suite 757, Washington, D.C. 20036.

Sincerely,

MARILYN C. FELKNER
Deputy Commissioner

Enclosure

SC 10957

MCF/sm

LAM012177

Form Ltr. LS-20
Rev. Oct. 1978

Include your address, ZIP code, and file number on all correspondence

Longshoremen's and Harbor Workers' Compensation Act, as extended

A petition for reconsideration of a decision and order must be filed with the Office of Administrative Law Judges, U.S. Department of Labor, Washington, D.C. 20210, within 10 days from the date the Deputy Commissioner files the decision and order in his/her Office.

Any notice of appeal shall be sent by mail or otherwise presented to the Clerk of the Benefits Review Board in Washington, D.C., within 30 days from the date upon which a decision and order has been filed in the Office of the Deputy Commissioner. If a timely notice of appeal is filed by a party, any other party may initiate a cross-appeal or protective appeal by filing a notice of appeal within 14 days of the date on which the first notice of appeal was filed or within the 30-day period described above, whichever period last expires. A copy shall be served upon the Deputy Commissioner and on all other parties by the party who files a notice of appeal. Proof of service shall be included with the notice of appeal.

If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 percent thereof. The additional amount shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 21 of the Longshoremen's and Harbor Workers' Compensation Act and an order staying payments has been issued by the Benefits Review Board.

The date compensation is due is the date the Deputy Commissioner files the decision and order in his/her Office.

U.S. Department of Labor

Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036

In the Matter of	
JOHN L. ELLIOTT, Claimant	
v.	Case No. 85-LHC-879
	OWCP No. 8-63651
MONSANTO COMPANY Employer	
and	
INSURANCE COMPANY OF NORTH AMERICA Carrier	

SUPPLEMENTAL ORDER AWARDING ATTORNEY FEES

On February 21, 1986, I issued a Decision and Order in the above-captioned matter under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 et seq., hereinafter referred to as "the Act." Before this Office the Claimant sought disability compensation and medical benefits for asbestosis contracted in the course of his employment at Monsanto. Based on the evidence of record I found that Mr. Elliott was not disabled and therefore not entitled to disability benefits. However, I also found that he had been injured within the meaning of the Act and was, therefore, entitled to medical benefits.

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U.S. DEPT. OF LABOR
HOUSTON, TX

Attorneys fees may be awarded when medical benefits are the only form of compensation awarded. Oilfield Safety & Machine Specialties, Inc. v. Harman Unlimited, Inc., 625 F.2d 1248 (5th Cir. 1980). Consequently, my Decision and Order also awarded reasonable attorney's fees contingent upon submission and approval of a fee petition. A fee petition was received on January 28, 1986 in which Claimant's counsel requested a total of $8,000.00 in fees and expenses.

This case was heard contemporaneously with Baker v. Monsanto Co., 85-LHC-880. Both cases were almost identical with respect to issues such as jurisdiction, causation, and nature and extent of disability. A consolidated hearing was held for both claims and the pleadings and memoranda filed by

the parties were, with the exception of the fee petitions, consolidated into one document with a dual caption. Therefore, some of the hours billed in this proceeding appear to be somewhat inflated when examined in light of the companion case.

A total of 8.75 hours was billed in this case for researching and preparing the post-hearing brief. The same amount of hours have already been approved for preparing the same document in the Supplemental Order Awarding Attorney Fees issued in 85-LHC-880. While acknowledging that counsel apparently divided his hours between the two cases, under the circumstances, 3 hours is a reasonable amount of time attributable to that activity. The total number of hours billed will be reduced accordingly. Additionally, the 1.5 hours billed in January 1986 for review of correspondence and review of the Employer/Carrier's brief will not be approved. These activities cannot be characterized as augmenting the record or otherwise bearing upon the decisional process and are, therefore, not chargable to the Employer/Carrier.

I find that, based on the complexity of the issues, the geographic area and the level at which the claim was adjudicated, a reasonable hourly rate of services performed in this case is $150.00. Thus a total of 31.25 attorney hours will be approved in the amount of $4,687.50. Additionally, $730.11 in expenses and $43.75 in legal assistant time will also be approved. The additional $1,451.14 requested is disapproved.

Accordingly, it is hereby ORDERED that the Employer/Carrier will pay attorney's fees and expenses in the amount of $5,461.36 to counsel for the Claimant.

E. EARL THOMAS
Deputy Chief Judge

Dated: 6 MAY 1986
Washington, D. C.

EET/tt

SC 10960

CERTIFICATE OF FILING AND SERVICE

I certify that on May 19, 1986 the foregoing Compensation Order was filed in the Office of the Deputy Commissioner, Eighth District Office and a copy thereof was mailed on said date by certified mail to the parties and their representatives at the last known address of each as follows:

John L. Elliott, P. O. Box 6B, Alta Loma, TX 77510
Claimant

Stephen M. Vaugha, MANDELL & WRIGHT, 712 Main, Suite 1600, Houston, TX 77002

Monsanto Company, P. O. Box 1311, Texas City, TX 77590
INA of Texas, P. O. Box 759, Houston, TX 77001
Insurance Carrier or Employer (if self-insured)

Douglas W. Pool, Attorney at Law, P.O. Box 629, Galveston, TX 77553

A copy was also mailed by regular mail to the following:

Judge E. Earl Thomas, Office of Administrative Law Judges, U. S. Department of Labor, Washington, D.C. 20210

Associate Solicitor of Labor for Employee Benefits, U. S. Department of Labor, Suite N-2716, NDOL, Washington, D.C. 20210

Director, Office of Workers' Compensation Programs, (LHWCA) U. S. Department of Labor, Washington, D.C. 20211

Marilyn C. Felkner
Deputy Commissioner
Eighth Compensation District
U. S. Department of Labor
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs

MAILED: 5/19/86
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GPO 895-763

SC 10961

Form LS-19
Rev. Aug. 1975

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