

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

4 FRANCES E. KEMNER, et al.,)

5 Plaintiffs,)

6 v.) CAUSE NO. 80-L-970

7 MONSANTO COMPANY,)

8 Defendant.)

9
10 REPORT OF PROCEEDINGS

11 Before the HONORABLE RICHARD P. GOLDENHERSH

12 Testimony of Dr. George Rousch

13 July 16, 1985

14
15 APPEARANCES:

16 MR. REX CARR, Attorney at Law, and
17 MR. JEROME SEIGFREID, Attorney at Law,
On behalf of the Plaintiffs;

18 MR. KENNETH R. HEINEMAN, Attorney at Law, and
19 MR. JOSEPH NASSIF, Attorney at Law,
On behalf of the Defendant.

20
21
22
23 PATRICIA A. GANDY, CSR, RPR

24 Official Court Reporter

1 BE IT REMEMBERED AND CERTIFIED, that heretofore, on to-wit:
2 July 16, 1985, the matter as hereinbefore set forth came on for hearing
3 before the Honorable Richard P. Goldenhersh, Circuit Judge, Twentieth
4 Judicial Circuit, State of Illinois, and the following was had of record,
5 to-wit:

6
7 THE COURT: Good morning.

8 (Plaintiff's Exhibits 1495A and 1495B were marked
9 for identification.)

10 CONTINUED CROSS EXAMINATION

11 BY MR. CARR

12 Q Doctor, you recognize 1495A and B as being the two of the pages
13 from Exhibit 1495 which you have there that is dealing with the questions
14 asked and proposed answers for the employees?

15 A Yes, sir.

16 MR. CARR: I offer 1495A and B, if it please the Court.

17 (Plaintiff's Exhibits 1495A and 1495B were offered
18 into evidence.)

19 THE COURT: Any objections?

20 MR. HEINEMAN: No objections, your Honor.

21 THE COURT: Admitted without objection.

22 (Plaintiff's Exhibits 1495A and 1495B were admitted
23 into evidence.)

24 (Plaintiff's Exhibit 1496 was marked for identification.)

1 Q Doctor, I hand you now what has been marked Plaintiff's Exhibit
2 1496 and ask you to look at that.

3 (Plaintiff's Exhibit 1496A was marked for
4 identification.)

5 Q Doctor, I hand you now what has been marked Plaintiff's Exhibit
6 1496A. You recognize 1496A as a second version of the questions and
7 answers to be ready for the employees that might ask questions to be
8 given to the employees?

9 A Yes, sir.

10 Q And it's dated September 28th, 1979, is it not, sir?

11 A I can't tell. It looks like it might be 23.

12 Q Well, I thought so, too. You will see it is September 28, you
13 will see it refers to the one on September the 26th?

14 A Yes.

15 Q And 1496A is a page on the questions and answers from that
16 exhibit, is it not, sir?

17 A Yes, sir.

18 MR. CARR: I offer 1496 and 1496A, if it please the Court.

19 (Plaintiff's Exhibits 1496 and 1496A were offered
20 into evidence.)

21 THE COURT: Any objections to those two?

22 MR. HEINEMAN We have no objection, your Honor.

23 THE COURT: All right, they are both admitted without objection.

24 (Plaintiff's Exhibits 1496 and 1496A were admitted

into evidence.)

Q Doctor, 1496 contains a great deal of the same information contained in 1496, but there is some changes in the information, and I direct your attention to questions 1, 2, and 3 on the September 28th, that is the 1496 draft, and compare it to 10, 11 on the September 26th draft, that is 1495. The information there in question 11 on the September the 26th draft mentions that you did some analysis to compare with OSHA and that you found 18 parts per billion of tetrachlorodioxin. Two days later the new draft puts in the additional facts that it's 2,3,7,8-tetrachloro-para-dioxin and that you found 500 or 2600 parts per billion of a blank dioxin on two analyses, do you see that, sir?

A Yes, sir.

Q And of course that finding of the 500 conforms to the finding that you all received from your laboratory and the 2600 conforms with what you received from the University of Nebraska as to the tetradioxin that was in that spill, do you see that, sir, in Exhibit 1301A?

A Yes, sir.

Q Now, Doctor, don't you believe it would, that it was important that the workers be given this information, the first exhibit doesn't make it clear at all, as a matter of fact you say that you don't agree with what OSHA found, but then in the second exhibit, that is for September 28th, you indeed show that you had a greater finding of dioxin in the analyses than OSHA, and my question is, do you not think it is important that workers be given this information so that they can be fully advised of the nature and

1 purpose of this health study?

2 A No, sir.

3 Q You don't think they should be fully advised?

4 A No, sir.

5 Q Doctor, if you were working in an area where your employer had
6 found 2600 parts per billion of tetrachlorodibenzo-p-dioxin and that you
7 might have had an exposure to that level of dioxin, wouldn't you want to
8 know it?

9 A No, sir.

10 Q Why wouldn't you want to know that, Doctor, if it concerns your
11 health? It does concern your health, doesn't it, sir?

12 A This was a spill, this 500 parts per billion or 400, whatever
13 it was.

14 Q Or the 2600?

15 A No, sir, it wasn't 2600.

16 Q Yes, it was. As a matter of fact it was 2700, according to
17 the University of Nebraska. You see Exhibit 1301?

18 A Yes, sir.

19 Q It says 2700 there, doesn't it, sir?

20 A Yes, sir.

21 Q And that was sent there, or do you know the facts of how it was
22 sent there by your people to find out--

23 A Yes, sir.

24 Q What the University of Nebraska found and the University of

1 Nebraska reported that?

2 A Yes, sir.

3 Q And it's a spill of a product being manufactured at your plant,
4 isn't it, sir?

5 A Or I'm not sure what it was, but it was manufactured there, yes.

6 Q Well, you can assume that it was 2,4-Dichlorophenol being
7 manufactured in Department 237--

8 A Yes, sir.

9 Q --in 1979, and that was the product that had been manufactured
10 there in '78, '77, '76, and '79?

11 A Yes, sir.

12 Q Now, at this point in September of '79, that was the level of
13 tetrachlorodibenzo-p-dioxin and University of Nebraska said it coelutes
14 as 2,3,7,8, that they found and your people found 487 parts per billion?

15 A Yes, sir.

16 Q In that sample?

17 A Yes, sir.

18 Q Now, this is something that these workers have been working
19 with presumably for years, is it not, sir?

20 A Yes, sir.

21 Q And they're being exposed to it, aren't they, sir?

22 A Not at that level.

23 Q Doctor, how can you say they are not being exposed if it's
24 being manufactured at that level, they're handling it at that level?

1 A No, sir, that's an enclosed system in the 237 unit. There
2 was no exposure there.

3 Q Well, Doctor, what level are they handling it then? You say
4 they weren't handling at that level, they were handling this product
5 that's being manufactured there, they were transferring it, they were making
6 it in the stills, and they were transferring it to storage tank and from
7 the storage tank they were transferring to the tank cars?

8 A All ran through pipes.

9 Q But weren't they doing those things, sir?

10 A None of them were being exposed.

11 Q None of your workers were being exposed at all then, why
12 conduct this study?

13 A No, sir.

14 Q Doctor, you're conducting this study for the purpose of finding
15 whether or not your workers being exposed to dioxin and the manufacture of
16 it had any ill health effects, are you not, sir?

17 A As measured by chloracne.

18 Q As measured by chloracne?

19 A Yes, sir.

20 Q Doctor, I suggest to you that you took a lot of tests, you didn't
21 just look for chloracne, did you, sir?

22 A Yes, sir.

23 Q You did every laboratory test, there are quite a few laboratory
24 tests that were known, so you weren't measuring just by chloracne, were you,

1 sir?

2 A We were looking for--

3 Q You weren't measuring just by the symptom of chloracne, were
4 you, sir?

5 A No, sir.

6 Q This is a product that you were manufacturing at Monsanto,
7 you anticipate that questions are going to be asked about dioxin and
8 this version at least tells your employees about the fact that high
9 levels of tetrachlorodibenzo-p-dioxin were discovered in your product by
10 OSHA and that you confirmed it with your own testing?

11 A Yes, sir.

12 Q Now, Doctor, somebody apparently believed that it was important
13 that they be told but you don't think it was important it be told, and I
14 am interested in finding out why you don't believe workers should be told
15 about the poisons with which they're working, why do you believe that,
16 Doctor?

17 A Because they weren't being exposed.

18 Q Doctor, they're working with the poison, there's always the
19 chance of a little, bitty spill. You know that two ladies working in
20 237 had some spray out of a leaky pipe on them, you know that, sir? They
21 got chloracne, didn't they, sir?

22 A Yes, sir, or I'm not sure whether they got chloracne.

23 Q Now, Doctor, you know that these things occur in the best of
24 manufacturing plants that there is the potential for exposure. Pipes

1 do rust and wear out, rubber hose connections do get leaky, valves do get
2 faulty, they do those things in the best of plants, those things occur,
3 you know that.

4 A Yes, sir.

5 Q And there is an every day potential for exposure to the
6 product being manufactured in any plant, isn't there, sir?

7 A Yes.

8 Q Now, Doctor, so we've taken care of that reason that you said
9 that they shouldn't be told. Now, there is the potential for exposure,
10 why shouldn't these workers be told about that dioxin or poison content
11 with which they're working?

12 A Because that's related to a spill and unrelated to their job.

13 Q Doctor, you just got through agreeing that there is a spill
14 potential in the best of plants, did you not, sir?

15 A Yes, sir.

16 MR. HEINEMAN: Objection, your Honor. He cut the witness off.
17 Can the witness answer the question? He cut him off, and I object and
18 ask the Doctor be allowed to answer the question.

19 A I'm sorry, could you repeat the question?

20 (Previous question was read by the reporter.)

21 A Yes, sir, and when we have a spill, we clean them up just like
22 we cleaned up that spill. We treat it as though there can be no exposure
23 to that material. We make them wear respiratory protection, we make them
24 wear complete plastic suits, that there can be no exposure to the workers

1 that cleaned up that spill, and every time we have a spill we treat it in
2 the same way so the exposure, it isn't zero but it's very close to zero.

3 Q Doctor, you took those protective measures after OSHA cited you
4 and told you to do that, did you not, sir?

5 A No, sir.

6 Q You don't remember being cited by OSHA and being required to
7 put a tape around that area of the spill and clean out the dirt and have
8 the workers working in that area wear these protective suits, you don't
9 recall OSHA requiring you to do that?

10 A I thought we had already cleaned up the spill by that time.

11 Q Doctor, you had cleaned up part of the spill and you had not
12 work--well, I'm not going to dispute with you what took place or what
13 didn't take place, Doctor.

14 A Yes, sir.

15 Q But OSHA did cite you and OSHA did require you to do those
16 things, and you did do those things as late as June, four months after
17 the spill took place?

18 A That was related inside the plant, not where the spill took place
19 that was already cleaned up.

20 Q It was related to inside the plant?

21 A Yes.

22 Q Why would OSHA be having you wear things inside the plant?

23 A They called it a restrictive area until we could figure out
24 what they meant by the results of their findings.

1 Q Now, Doctor, OSHA required you to do that based upon what they
2 found was in there, they reported to you in June, the spill took place in
3 February. Now, all during that period of time your men were not working
4 in that department with these protective respirators and rubber suits,
5 were they, sir?

6 A No, sir.

7 Q They were exposed, weren't they, sir?

8 A Not to our--from our approach, they were not.

9 Q Well, you and OSHA apparently disagreed, didn't you, then?

10 A Yes, sir.

11 Q Now, Doctor, whether you agreed or disagreed, is there not the
12 potential for exposure to dioxin with your workers?

13 A It is a matter of degree, the answer is yes.

14 Q And that's what I am asking you, Doctor, and should your workers
15 not be told, shouldn't they be told what they're working with, just as
16 you are telling them here?

17 A This is a question and answer.

18 Q Yes. Shouldn't they be told? This is for the purpose of
19 informing these employees, they're going to ask questions, "Hey, howcome
20 we've got to have this health study?" "Why is Krummrich and Dr. Suskind
21 doing this health study?" That's what this information is for, isn't it,
22 sir?

23 A No, sir.

24 Q What is this for, Doctor?

1 A What is what for?

2 Q This, Doctor.

3 A That's a question and answer.

4 Q I understand that, Doctor. My question is, what is it for?

5 A If the employees ask questions, how they should answer them.

6 Q Isn't that exactly what I asked you, Doctor? That is the
7 information that you are going to give these employees when they ask
8 questions, why is this health study taking place?

9 A No, sir.

10 Q Doctor, didn't you just say that?

11 A No, sir.

12 Q What did you just say?

13 A I said that's an answer to a question and answer. That section
14 here that we are talking about now is quite unrelated to the basis of
15 that study.

16 Q Doctor, why is it included in this? See at the top, it says
17 "Dr. Suskind, Krummrich study." That's the identification of it, isn't
18 it, sir?

19 A Yes, sir.

20 Q Then it does relate to it, doesn't it, Dr. Rousch?

21 A Yes.

22 Q And Doctor, it's put in there in order to give your employees
23 accurate information about the potential for dioxin poisoning, isn't it,
24 sir?

1 A No, sir.

2 Q Why is it in there, Doctor?

3 A So that the foreman and the supervisory personnel at Krummrich
4 can use this information to answer the questions that may come up from
5 the employees.

6 Q Then it is in there for the purpose of informing the employees,
7 is it not, sir?

8 A Yes, sir.

9 Q Isn't that what I just asked you, Dr. Rousch?

10 A But it's indirect, it's not direct.

11 Q I don't care whether it's direct or indirect. It's in there
12 for the purpose of informing employees, isn't it, sir?

13 A Yes, sir.

14 Q And in this draft you are informing the employees of the facts,
15 aren't you, sir?

16 A Yes, sir.

17 Q And isn't it important that employees be informed of the facts?

18 MR. HEINEMAN: Objection, your Honor. The question is vague
19 and indefinite. All facts, any facts? What facts?

20 THE COURT: Objection is overruled. It is within context, it
21 is not vague or indefinite.

22 A They should know the facts.

23 Q Now, Doctor, this second, September 28th memo was submitted
24 to the legal department for consideration, wasn't it, sir?

1 A Yes, sir.

2 Q It was submitted to the law department for consideration,
3 wasn't it, sir?

4 A Yes, sir.

5 (Plaintiff's Exhibit 1497 was marked for identification.)

6 Q I hand you Plaintiff's Exhibit 1497 and see if you recognize
7 that as Phocion Park's response to that question and answer form that was
8 submitted to him dated September 28th, 1979. You recognize that as his
9 response, do you not, Dr. Rousch? You got a copy of it as well.

10 A Yes, sir.

11 MR. CARR: I offer Exhibit 1497 into evidence if it please
12 the Court.

13 (Plaintiff's Exhibit 1497 was offered into evidence.)

14 THE COURT: Any objections?

15 MR. HEINEMAN: If I can read it for a moment, your Honor.

16 THE COURT: Sure.

17 MR. HEINEMAN: No objection, Judge.

18 THE COURT: All right. Admitted without objection.

19 (Plaintiff's Exhibit 1497 was admitted into evidence.)

20 (Plaintiff's Exhibit 1497A was marked for identification.)

21 Q You recognize 1497A as the blow-up of 1497, Dr. Rousch?

22 A Yes, sir.

23 MR. CARR: I offer 1497A into evidence if it please the Court.

24 (Plaintiff's Exhibit 1497A was offered into evidence.)

1 THE COURT: No objection to that, also?

2 MR. HEINEMAN: I didn't hear the question.

3 MR. CARR: 1497A, counsel.

4 MR. HEINEMAN: No objection, Judge.

5 THE COURT: Fine. Admitted without objection, thank you.

6 (Plaintiff's Exhibit 1497A was admitted into evidence.)

7 Q Now, with this memo, Dr. Rousch, Park kills the thought of
8 telling the workers about the dioxin content of the material they're
9 working with, doesn't he, sir?

10 A I'm sorry, I didn't catch your question.

11 Q Park kills the thought of telling the workers about the dioxin
12 content of the material they're working with, or to which they may be
13 exposed, doesn't he, sir?

14 MR. HEINEMAN: Objection, your Honor. That certainly calls
15 for speculation on the part of the witness. Mr. Park obviously is offering
16 his opinion as it states in the first sentence.

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

18 A No.

19 Q Doesn't he suggest or state that the answer to question no. 3
20 should be changed to read, and he gives a proposed change?

21 A Yes, sir.

22 Q And if they adopt his suggested answer, it effectively eliminates
23 the information that is given the workers in 1496A, that is the memo of
24 September 28, '79, that information is eliminated, it's wiped out, it's

1 killed, isn't it, Dr. Rousch?

2 A Yes, sir.

3 Q Yes. And Doctor, Park tells something that suggests putting in
4 there something that's a lie, doesn't he, sir? He says, well, several
5 analyses have indicated dioxin levels below that found by OSHA. We're
6 still checking this. The truth of the matter is several analyses showed
7 dioxin levels considerably higher than what OSHA said.

8 A Yes, sir.

9 Q And this is another lie, isn't it, Dr. Rousch?

10 A It's incorrect.

11 Q Doctor, if he knew the truth and he had to know the truth
12 because he got a copy of the September 28th memo and he says to change
13 it to indicate that the analyses were below found by OSHA, he knows what
14 the truth is, doesn't he, sir? And he is telling your people to put a
15 lie in there in its place, isn't he, sir?

16 MR. HEINEMAN: Objection, your Honor. Mr. Carr's question
17 assumes that there are no other test results of which Mr. Park was
18 aware at lower levels.

19 MR. CARR: And there aren't any other tests at lower levels
20 of this spill sample, counsel. They are all at higher levels than OSHA.

21 THE COURT: Objection is overruled.

22 MR. HEINEMAN: Well, your Honor, may I state another objection
23 in that connection?

24 THE COURT: Sure.

1 MR. HEINEMAN: The document that he is referring to doesn't
2 say anything about a spill sample.

3 MR. CARR: Yes, it does. It talks of question no. 3 talks about
4 samples for dioxin to determine the validity of the OSHA data. The OSHA
5 data clearly question no. 1 shows samples taken near the manufacturing
6 unit of the plant, there is no ambiguity about that at all.

7 THE COURT: Objection overruled. There is no ambiguity.

8 A I'm sorry, would you repeat the question?

9 (Previous question was read by the reporter.)

10 A I don't know why he wrote that.

11 Q I'm not asking you why he wrote it, I'm asking you what he
12 did was to tell your people to put an untruth in there, didn't he, sir?

13 A Yes.

14 Q And an untruth when you know the truth is a lie, isn't it,
15 sir?

16 A If he knows the truth.

17 Q Yes. And the truth was as we have previously established,
18 the earlier response to question no. 3, wasn't that the truth, sir?

19 MR. HEINEMAN: Objection, your Honor. Mr. Carr is confusing
20 the two questions. Question no. 3 says, "Has analyzed some samples for
21 dioxin." It doesn't refer to the spill at all.

22 THE COURT: Objection is overruled. That's the one, that is
23 the objection I ruled on second to your first objection about that same
24 question. It's already been ruled on and the objection is overruled again.

1 You may continue, Mr. Carr.

2 A Yes.

3 Q And Doctor, they followed his suggestion, didn't they, sir?

4 A I don't know.

5 Q Well, you'll soon find out.

6 (Plaintiff's Exhibit 1498 was marked for identification.)

7 Q I hand you Plaintiff's Exhibit 1498 and ask you if you
8 recognize that as a Monsanto exhibit dealing with this study?

9 A Yes, sir.

10 (Plaintiff's Exhibit 1498A was marked for identification.)

11 Q I show you 1498A and ask you if that is a page, Page 2,
12 numbered 2 of that October the 2nd, 1979 final version?

13 A Yes, sir.

14 MR. CARR: Offer 1498 and 1498A.

15 (Plaintiff's Exhibits 1498 and 1498A were offered
16 into evidence.)

17 THE COURT: Any objections?

18 MR. HEINEMAN: May I see 1498, please? No objection, your
19 Honor.

20 THE COURT: Admitted without objection.

21 (Plaintiff's Exhibits 1498 and 1498A were admitted
22 into evidence.)

23 Q Now, Doctor, Park suggested the answer to question no. 3 is
24 adopted exactly and word-by-word, is it not, sir, in Exhibit 1498?

1 A Yes, sir.

2 Q And your workers at Krummrich, this is the final version, is it
3 not?

4 A Yes, sir.

5 Q And this is what the workers were finally told at Krummrich, isn't
6 it, sir?

7 A I don't know.

8 Q Doctor, it is the final version, isn't it, sir?

9 A Yes, sir.

10 Q And it therefore constitutes what the workers were finally told
11 at Krummrich, doesn't it, sir?

12 A No, sir.

13 Q What were they finally told, Doctor, if this is not the final
14 version, where is the final version?

15 A The final version is what the supervisory personnel tell them.

16 Q And this is what the supervisory people were told to tell them,
17 isn't that correct, sir?

18 A It was a suggested answer.

19 Q This is what they were told to tell them, isn't it, sir?

20 A No, sir.

21 Q It's not what they were told to tell them?

22 A No, sir.

23 Q What is it, Doctor?

24 A It's a suggested answer when they're asked questions.

1 Q And it's what they have been told, the way they have been told to
2 answer these questions, isn't it, sir?

3 A At least partially so, but that's not all they would tell them.

4 Q Well, where is the what else they would tell them?

5 A The personnel, what the personnel people over there know about
6 dioxin and chlorophenols.

7 Q All these people listed on the front page there, Bishop is in
8 charge of your press relations, he makes up publications that go to the
9 workers. Neunreiter, he is in that area, is he not? Rousch, that's a
10 doctor, Dr. Rousch, in charge of letting the people know what can happen
11 from dioxin, he is the head of the department that's supposed to be caring
12 for the health of these people and telling them about the potential for
13 exposure to toxic poison, isn't he, sir?

14 A Yes, sir.

15 Q And Tillman, he is a doctor, too, isn't he, sir?

16 A Yes, sir.

17 Q And there is other doctors in there, aren't there, sir?

18 A Dr. Coleman.

19 Q And there's people in there dealing with--Molloy, there is the
20 plant supervisor, superintendent, manager, isn't he, sir?

21 A Yes, sir.

22 Q There is Isham, he is another press relations man. Heisler, Gaffey,
23 there is a toxicologist.

24 A No; epidemiologist.

1 Q Epidemiologist. So you've got everybody there on this list to
2 receive this and all of these people, as a matter of fact they were all on
3 the versions of September the 28th, too, weren't they, sir?

4 A Part of them.

5 Q Well, many of them.

6 A A great number of them. Many of them are on there at least.

7 Q Bishop is there, Coleman, Gaffey, Heisler, Molloy; Tillman--

8 A Yes, sir.

9 Q And Bishop, Mateucci, Papageorge, and Rousch, Spano, all got a
10 copy of Park's memo, didn't they?

11 A Only four got a copy of Park's, five of us.

12 Q Including yourself?

13 A Yes, sir.

14 Q Spano?

15 A Yes, sir.

16 Q And somebody name of H.M. Keating? Who is H.M. Keating?

17 A He worked for Papageorge.

18 Q All of these people then knew as you knew that Park was suggesting
19 that the workers be told a lie, didn't they, sir?

20 A An incorrect statement.

21 Q An untruth, I think you characterized it. As a matter of fact, I
22 think you characterized it as a lie as well since you knew the truth, isn't
23 that correct, Dr. Rousch?

24 A I don't think I called it a lie.

1 Q Well, Doctor, if you deliberately say something that is a falsehood,
2 that is untrue, isn't that a lie?

3 A If you knew that, yes.

4 Q Well, he did know it, didn't he, sir?

5 A It would seem so.

6 Q Yes. Now, all of these people, Doctor, approved, approved if you
7 will, including yourself, because you knew these facts, you had these memos,
8 it wasn't new to you. All of these people, important people in Monsanto,
9 approved the telling of a lie to the workers, isn't that correct, Dr. Rousch?

10 A Yes, sir.

11 Q And Doctor, as time went on, people asked for copies of these, or
12 wanted to find out about these results, didn't they, sir?

13 A I'm sure they did, but I don't recall.

14 Q After the studies, the studies that--one of the questions asked
15 there is right after, this would be the second page of the exhibit, again,
16 where you repeat to them in the final version, by the way nobody corrects
17 that. Now, as far as chloracne is concerned, this is the third copy of
18 this memo that you received, Dr. Rousch, in which it's--chloracne is described
19 as a skin condition similar in appearance to acne in adolescents, and you
20 of course know that chloracne can be and is frequently much more serious
21 than teenage acne, you know that, don't you, sir?

22 A And quite often not so, too.

23 Q My question is you know that it can be a lot more serious than
24 teenage acne. It has sacs of pus on the skin, doesn't it, Doctor?

1 A Yes, sir.

2 Q It can cause severe disabling--severe disfiguring scars, can't it,
3 Doctor?

4 A My last statement was incorrect. You don't get pus bags from
5 chloracne.

6 Q You don't?

7 A No, sir.

8 Q Doctor, I don't have it handy, I don't think I have it handy and
9 I don't know it's important enough to dig it out, but haven't you seen chloracne
10 where they have large yellow, well, for want of another word, bags of pus
11 on their face?

12 A No, sir, those aren't filled with pus.

13 Q What are they filled with?

14 A Debris of cells.

15 Q What is pus, Doctor?

16 A Pus is a purulent material that responds to a certain kind of
17 bacterial involvement.

18 Q It's the debris of cells, isn't it? The yellow stuff that you
19 have in pus, isn't that--

20 A No, sir, well, that's part of it.

21 Q And Doctor, you get large bags of that on the skin, don't you,
22 sir?

23 A Yes, and they're filled with the same kind of material on the back
24 of my skin, that's what fills up those cysts.

1 Q Now Doctor, you knew when you saw all three of these memos that
2 chloracne only in its mildest, mildest form is a skin condition similar to
3 appearance in acne in adolescents, you knew that, didn't you, sir?

4 A No, sir.

5 Q You didn't know that that's what it is in its mildest form?
6 What is it in its mildest form if it is not the blackheads and little
7 yellow bumps that one gets when he is a teenager?

8 A There is a difference between those two.

9 Q I know that, sir. My question is the mildest form of chloracne
10 is like teenage acne, isn't it, sir?

11 A It's hard to distinguish.

12 Q Is the answer yes, that the mildest form is like teenage acne?

13 A No, sir.

14 Q What is the mildest form like, Doctor?

15 A It's similar to but not the same as.

16 Q The mildest form of chloracne is similar to teenage acne, isn't
17 it, sir?

18 A Yes, sir.

19 Q And it can go up many times more severe than that, can't it,
20 sir?

21 A Yes.

22 Q Now, they are not told that, are they, sir?

23 A No, sir.

24 Q They are told about what it's similar to in its mildest form,

1 aren't they, sir?

2 A Yes, sir.

3 Q You didn't correct that, did you, sir?

4 A No, sir.

5 Q Now, Doctor, they also ask the question, they ask the question
6 why are blood and urine samples included when they never have been before,
7 and they are given the answer that Dr. Suskind included these tests to
8 verify that there are no ill effects other than chloracne.

9 A Yes, sir.

10 Q And this was a health study and that's why those tests were given,
11 to ascertain the state of the health?

12 A Yes, sir.

13 Q Insofar as the laboratories could help you ascertain the state
14 of the health, isn't that correct, sir?

15 A Yes, sir.

16 Q Now, Doctor, about a year later--

17 (Plaintiff's Exhibit 1499 was marked for identification.)

18 Q I hand you what has been marked Plaintiff's Exhibit 1499 and see
19 if you can recognize that as an update on the Suskind health study dated
20 August 13th, 1980.

21 A Yes, sir.

22 MR. CARR: Offer that exhibit into evidence, if it please the
23 Court.

24 (Plaintiff's Exhibit 1499 was offered into evidence.)

THE COURT: Any objections?

MR. HEINEMAN: Your Honor, the witness is neither a recipient nor the author of this document, and therefore I don't think adequate foundation has been laid to its admission. I object to it on that basis.

THE COURT: Objection is overruled. It is admitted over objection.

(Plaintiff's Exhibit 1499 was admitted into evidence.)

MR. CARR: Your Honor, I'm passing to the jury the second page of the exhibit, not the cover page.

THE COURT: Fine.

Q Dr. Rousch, so that the jury will be fully informed, the cover page shows that it was prepared by Sara Gainor Collins and that copies went to Curtis, Molloy, Papageorge, Bishop, Callis, Carter, Gaffey, Isham, Keating, Park, and Spano, didn't it, sir?

A Yes, sir.

Q Some of those people work in your department, don't they, sir?

A Dr. Gaffey.

Q And the one sentence on this cover page is "Attached is the request and an update on Suskind's study at Krummrich," and signed Sara Gainor Collins, isn't it, sir?

A Yes, sir.

Q Now, this page, it talks about the first question suggests that Dr. Suskind is examining what if any long term health effects associated with chlorophenol, again described it as a skin condition similar to adolescent acne and states that copies are going to be sent to individual

employees' physicians and that the results of the study would be made public upon completion, do you see that, sir?

A Yes, sir.

Q Now, the study was actually completed and as a matter of fact dated as September 29th, 1980, wasn't it, sir, about a month and a half after this update, is that correct, sir?

A Yes, sir.

Q But it was never made public, was it, sir?

A No, sir.

Q Except insofar as I have made it public, isn't that correct, sir?

A I don't know.

Q Well, you know it was never made public, don't you, sir?

A Up until a month or so ago.

Q Up until the time that it came out in this case, isn't that right?

A No, sir.

Q Sir?

A No, sir.

Q Oh, how did it come out? How was it made public, sir?

A When Dr. Suskind called that draft the final report.

(Plaintiff's Exhibit 1500 was marked for identification.)

Q I'm handing you Plaintiff's Exhibit 1500 and ask you if that is the final report submitted by Dr. Suskind on November 29th, 1980?

A No, sir.

Q Sir?

1 A No, sir.

2 Q It's dated September 29th, 1980, is it not, sir?

3 A No, sir.

4 Q And it is the final report?

5 A No, sir.

6 Q Then it is the final report?

7 A No, sir.

8 Q Then is there another report more final than this?

9 A No, sir.

10 Q Is there another exhibit put out anywhere that contains a single
11 word different than what's in here?

12 A No, sir.

13 Q Was there anything changed from this document at all, sir?

14 A No, sir.

15 Q Was there a new exhibit put out?

16 A No, sir.

17 Q Is there any other in existence other than this one?

18 A No, sir.

19 Q This is the final and last one, is it not, sir?

20 A It is the last draft thus far.

21 Q Thus far?

22 A Yes, sir.

23 Q Has Suskind told you that he is going to put out another draft?

24 A He is going to put out a final report.

1 Q When did he tell you that, sir, and by what means did he tell
2 you?

3 A We withheld--

4 Q My question is when did he tell you that and by what means did
5 he tell you?

6 A During intermission of this Court.

7 Q During the period of time that you were on the stand under cross
8 examination, isn't that correct, sir?

9 A Yes, sir.

10 Q During the time that I told you that this report had never been
11 made public during the time that I told you it had never been given to the
12 workers, isn't that correct, sir?

13 A Yes, sir.

14 Q Now, did Dr. Suskind send you a letter telling you that he's
15 going to put out another report?

16 A No, sir.

17 Q Did he tell you orally that he is going to make another report?

18 A Yes, sir.

19 Q What did he say, sir?

20 A He said he was working on a final report.

21 Q At your suggestion?

22 A No, sir.

23 Q He's working on--this one came out in 1980, did you ever get another
24 bit of communication in between the time we started this case, sir, and

1 brought out this information, did you get another piece of communication
2 from Suskind referring to this report?

3 A Yes, sir.

4 Q What did you get, sir?

5 A Asking for a final payment.

6 Q Final payment because he had done the final work and you sent the
7 final payment to him, didn't you, sir?

8 A No, sir.

9 Q You didn't send the final payment to him?

10 A No, sir.

11 Q When did you get the request for the final payment?

12 A A number of times from 1980 until now.

13 Q And you've never paid it to him?

14 A Until just recently.

15 Q You did pay it to him, then? Dr. Rousch, why did you tell me you
16 didn't pay it to him, just a second ago you did, and now you say you did?
17 Why do you tell me these things, Dr. Rousch?

18 MR. HEINEMAN: Objection, your Honor, it mischaracterizes his
19 testimony.

20 THE COURT: Objection is overruled.

21 Q Why do you tell me these things?

22 A I'm telling you what happened.

23 Q Doctor, you tell me one minute that he's never been paid, hasn't
24 received the final payment. And then two seconds later you say that he has

1 been paid.

2 MR. HEINEMAN: Objection, your Honor.

3 Q Now my question is why do you do that?

4 A I didn't say that.

5 MR. HEINEMAN: The first question was did you send it to him
6 after he asked for final payment, and he said no.

7 A From 1980 to 1985.

8 THE COURT: Objection is overruled.

9 A We refused to pay him.

10 Q When did you pay him?

11 A I'm not even sure it's paid yet.

12 Q Have you approved the payment, Doctor?

13 A Yes, sir.

14 Q When did you approve the payment?

15 A In the last month.

16 Q Within the last month?

17 A Yes, sir.

18 Q And you approved that payment after I started interrogating you?

19 A No, sir--well, yes, sir.

20 Q Yes. Did you get another bill for it?

21 A Yes, sir.

22 Q When did you get that bill?

23 A It was in way of a call from their financial man from Kettering.

24 Q That was a reminder that it had never been paid, isn't that correct?

1 sir?

2 A Yes, sir.

3 Q You didn't get another bill, he said, "Hey, the bill we sent you
4 for this final draft or this final study has never been paid," isn't that
5 what he told you? He dunned you for the money, didn't he, sir?

6 A Yes.

7 Q And you said, "Oh, I'm sorry. I'll put it in the mail."

8 A No, sir.

9 Q What did you say, sir?

10 A I said, "Is this the final report?"

11 Q And he said yes, it was, and you said, "Okay, I'll pay you,"
12 isn't that right, sir?

13 A In the last month--

14 Q Isn't that right, sir?

15 A Yes, sir.

16 Q Exactly as I said it?

17 A Yes, sir.

18 Q Now, Doctor, it was the final report, he said it was the final
19 report and you said, "Okay, I'll pay you," and so you have approved payment.

20 A Yes, sir.

21 Q Now, let me remind you of something that you just said a few
22 minutes earlier.

23 A Yes, sir.

24 Q You said it wasn't a final report and that he is going to redo

1 another final report, and you've said these two things within two minutes
2 of one another, Doctor. Do you recognize that, sir, what you are saying
3 in this case?

4 A Yes, sir.

5 Q Now, Doctor, from 1980 up until one month ago or less than a
6 month ago the document that you have before you was the final report,
7 wasn't it, sir?

8 A It was the draft of the final report.

9 Q Were you ever told by anybody at any time that it was not his
10 final report?

11 A We told him it wasn't.

12 Q Were you ever told at any time by Dr. Suskind that that was not
13 his final report?

14 A Yes.

15 Q When did he tell you that, sir, and where is the document that
16 says it?

17 A I don't have it.

18 Q No, you don't have it because it doesn't exist, isn't that correct,
19 sir?

20 A It doesn't exist?

21 Q Yes, because you were never told by Dr. Suskind in any kind of
22 written form at all that this was not a final report, isn't that correct,
23 sir?

24 A No, sir.

1 Q Where is the document then where he says this is not the final
2 report, Doctor?

3 A There is none.

4 Q And you were never told that in any document, were you, sir, that
5 this is not the final report?

6 A Yes.

7 Q Where is the document then?

8 A I don't have the document.

9 Q Doctor, listen to my question. You were never told in writing
10 that this was not the final draft, were you, sir?

11 A No, sir; no, sir.

12 Q And from 1980 up until 1985, June of 1985, there was nothing in
13 writing from Dr. Suskind other than this is the final draft, isn't that
14 correct, sir?

15 A Yes, sir.

16 Q Doctor, did you ever write him a letter saying this doesn't look
17 like a final draft to me, send me a final draft?

18 A Never wrote--

19 Q He never wrote you saying that it was not a final draft, he
20 wrote you saying it was a final draft, isn't that right, sir?

21 A No, sir; no, sir.

22 Q What did he tell you about this?

23 A This is a draft of the final report.

24 Q Where does he say it is a draft, sir?

1 A It doesn't say it.

2 Q Then why do you tell me he says it was a draft? He doesn't say
3 it was a draft, he tells you it is his final report, doesn't he, sir?

4 A No, sir.

5 Q Doctor, does he give you the results that he's reached?

6 A He gave me preliminary results.

7 Q Where does he call these preliminary results, Doctor?

8 A He doesn't.

9 Q Doctor, if he doesn't call them preliminary results, where are
10 they described as preliminary results?

11 A It doesn't say it.

12 Q Do you have a single document in existence that describes this
13 report as preliminary results?

14 A No, sir.

15 Q Do you have anything in existence other than telling you that
16 this is the final report, sir?

17 A No, sir.

18 Q And Doctor, you have a union that you negotiate with, don't you,
19 sir?

20 A We have a number of unions we negotiate with.

21 Q And you have a union that has asked you for these results, isn't
22 that right, sir?

23 A I would suspect so.

24 (Plaintiff's Exhibit 1501 was marked for identification.)

1 Q Handing you now what has been marked Plaintiff's Exhibit 1501,
2 which consists of about four pages, ask you if you recognize that as a
3 document dealing with this report and the union's request for this report.

4 MR. HEINEMAN: This is what number, 1501?

5 MR. CARR: Your Honor, I don't think I offered 1500 into evidence.
6 I offer 1500 of the report itself into evidence.

7 (Plaintiff's Exhibit 1500 was offered into evidence.)

8 THE COURT: He has just handed you 1501.

9 MR. CARR: 1500 is the report, counsel.

10 THE COURT: Do you have any objection to 1500, the report?

11 MR. HEINEMAN: No, we have no objection to 1500, your Honor.

12 THE COURT: Fine. It is admitted without objection. Thank
13 you.

14 (Plaintiff's Exhibit 1500 was admitted into evidence.)

15 MR. HEINEMAN: But we haven't said anything about 1501 yet.

16 THE COURT: Not yet. The question has been asked, I don't
17 believe it's been answered yet.

18 Q Doctor, you recognize 1501 as a Monsanto document dealing with
19 the dioxin information and the Suskind report, do you not, sir?

20 A Yes, sir.

21 MR. CARR: I offer 1501 into evidence if it please the Court.

22 (Plaintiff's Exhibit 1501 was offered into evidence.)

23 THE COURT: Any objections to 1501?

24 MR. HEINEMAN: Your Honor, my only objection would be that there

1 is no evidence that this witness has ever seen this document before. He
2 didn't write it, it isn't written to him, there is no evidence that he's
3 ever seen the documents that comprise Plaintiff's Exhibit 1501 and
4 therefore I don't think an adequate foundation has been laid for its
5 admission. I object to it.

6 THE COURT: Objection overruled. It is admitted over objection.

7 (Plaintiff's Exhibit 1501 was admitted into evidence.)

8 (Plaintiff's Exhibit 1501A was marked for identification.)

9 Q Doctor, 1501A, a blow-up of 1501?

10 A Yes, sir.

11 MR. CARR: I offer 1501A into evidence if it please the Court.

12 (Plaintiff's Exhibit 1501A was offered into evidence.)

13 THE COURT: Same objections?

14 MR. HEINEMAN: Which page is it?

15 MR. CARR: Last page.

16 MR. HEINEMAN: Same objections, your Honor.

17 THE COURT: I'll incorporate those same objections.

18 MR. HEINEMAN: In addition, your Honor, if I might object to it
19 as a hearsay document as well.

20 THE COURT: Okay. That objection is also noted and denied.

21 (Plaintiff's Exhibit 1501A was admitted into evidence.)

22 Q Doctor, the first page of 1501--oh, by the way, who is Shaneberger?

23 A He's one of the workers at the Krummrich plant.

24 Q Isn't he more than that? Isn't he plant superintendent?

1 A Molloy is plant superintendent.

2 Q Well, no, I'm sorry, Shaneberger was general superintendent of
3 personnel?

4 A I don't know that.

5 Q Well, he's described as such on the last page.

6 A Yes, sir.

7 Q And Molloy, who also received a copy of this, is the manager of
8 the plant superintendent, isn't he, sir?

9 A Yes, sir.

10 Q And the first page points out that the union has asked for
11 information about dioxin and they want to--it's important enough to them
12 that they even want to make it part of the union negotiations, don't they,
13 sir?

14 A Yes, sir.

15 Q And the--there is a suggested response there that's on the second
16 page, but to get first things first, before we get to that, the request for
17 information came from the union dated October the 13th, 1983, that's 1501A,
18 isn't it, sir? The last page?

19 A Yes, sir.

20 Q And the union wants the list of all persons that's worked in
21 Departments 236, 237, 239, and also on 262 and 268, correct, sir?

22 A Yes, sir.

23 Q Now, 262 and 268 is where the 2,4,5-T was sent from Nitro,
24 West Virginia, was mixed with the 2,4-D manufactured at the Krummrich plant,

1 isn't that correct, sir?

2 A I think that's correct. I wasn't a member of Monsanto at that
3 time.

4 Q Well, you received information to that effect, haven't you,
5 Doctor?

6 A Yes, but my memory is not accurate on that. But I think what
7 you are saying is correct.

8 Q Let me help your memory a little, sir. I don't need to make it
9 as an exhibit, but this deals with questions dealing with the Krummrich study
10 and it identifies when agent orange was made at the Monsanto plant, doesn't
11 it, sir?

12 A Yes, but my problem was the number. I knew that it was done.

13 Q See Department 238 there, sir?

14 A Yes.

15 Q Yes. Now, Doctor, the union, the officials of the union wanting
16 Monsanto to give the list of the workers that worked in Departments 236,
17 that's a pentachlorophenol, 237, that's the chlorophenol where orthochloro-
18 phenol, parachlorophenol, 2,4-dichlorophenol, all that is made, isn't that
19 right?

20 A Yes, sir.

21 Q And 238, which is also a chlorophenol department, I forget just
22 what did they make in 239?

23 A I don't know. I forgot.

24 Q They want the list of all the people that work there, don't they,

1 sir?

2 A Yes, sir.

3 Q And they also want a copy of the soil sample analyses that were
4 taken recently?

5 A Yes, sir.

6 Q You recall that you did sample the soil and you did find dioxin
7 in some of the areas of the plant, sir? You made it into a parking lot,
8 do you recall that, sir?

9 A Yes, sir.

10 Q And they wanted a copy of those soil samples, didn't they, sir?

11 A Yes, sir.

12 Q And they also wanted that you take tests in and around the
13 equipment in 237 and 239 and to give those results to them before the
14 equipment was dismantled, do you recall that, sir?

15 A I'm not sure of the relationship between that request and the
16 time it was dismantled.

17 Q Well, it says, number four, when you read number four it says
18 they want the tests of that equipment to be made before dismantling of
19 the equipment.

20 A Yes, sir, yes.

21 Q And we had the other day the memo that was dealing with the
22 dismantling of the equipment and the fact that you told the people from the
23 Haden Contracting Company that dioxin would be there and that there could
24 be severe health effects from that dioxin, do you recall that, sir?

1 A Yes, sir.

2 Q Sir?

3 A Yes, sir.

4 Q And your own workers now are wanting tests to be made of that
5 equipment and wanting information about that, aren't they, sir? Aren't
6 they, sir?

7 A Yes, sir.

8 Q And they also want you to test the people working in Departments
9 237 and 239, don't they, sir?

10 A Yes, sir.

11 Q And they want a joint letter to be issued to Dr. Raymond Suskind
12 demanding a report on the results of this testing in 1979?

13 A Yes, sir.

14 Q And Doctor, you at Monsanto had that report since September of
15 1980, didn't you?

16 A Yes, sir.

17 Q And here, the union wants you to join with them in a joint letter
18 demanding that you get these results, and you had it for three years and
19 never gave it to them and they're getting so desperate for it they want you
20 to join with them in a joint letter, aren't they, sir?

21 A Yes, sir.

22 Q Sir?

23 A Yes, sir.

24 Q And Doctor, you tell them the responses that, one of the responses

1 that you give them is the union, and this is the second document, second
2 page of this document, the union will be informed that DMEH has made
3 requests for a final report on this study, such requests have been made
4 again recently, if they insist, we will give them Suskind's address if they
5 desire to make a request of their own, do you see that, sir?

6 A Yes, sir.

7 Q And of course you had it all this time, didn't you, sir?

8 A No final report.

9 Q Oh, Doctor, we have gone through that farce once already. It
10 was treated and you had it as a final report, and that was the only form
11 you had it in, and you had it and you didn't give it to the union, isn't
12 that correct, sir?

13 A Yes, sir.

14 Q And you told them that you had made requests, well, you had made
15 requests for the report and you had received response to those requests,
16 you received the report, didn't you?

17 A No, sir.

18 Q You didn't receive the report dated September 29th, 1980 in
19 response to requests made?

20 A We had subsequent requests after that report was received.

21 Q Doctor, I beg to differ. You did not, and if you did, where are
22 they, sir? Where are the subsequent requests?

23 A They're not written.

24 Q Now, Doctor, you made no memo either, did you, sir?

1 A No, sir.

2 Q There isn't a single thing that you made a telephone call to
3 Dr. Suskind where I want a final report. What you are saying now is something
4 that has occurred to you since June of 1985, isn't that correct, Dr. Rousch?

5 A No, sir; no, sir.

6 Q Dr. Rousch, did anybody make a memo, a call to Dr. Suskind
7 requesting a final report when you had this report since September, 1980?

8 A No, sir.

9 Q Nobody did, did they, sir?

10 A No, sir.

11 Q Nobody put it in a--made a telephone record, a memo of a telephone
12 call, nobody had a letter, nobody's got a carbon copy, and you've got nothing
13 back from Dr. Suskind responding one way or another, do you, sir?

14 A No, sir.

15 Q You don't have a note from Dr. Suskind saying it's coming up,
16 and you know why you don't have it, Doctor.

17 A No, sir.

18 Q Because you had the report from September 29th or shortly before
19 September 29th, 1980. Doctor, you didn't even tell the union if you had
20 that report, if it wasn't a final report, did you, sir?

21 A I don't know.

22 Q Well, do you see any place here that they're going to be informed
23 that you've got this report and you have had it since September, 1980, that
24 it's not final and you are going to send off for a final one, is that contained

1 in there anywhere, Doctor?

2 A No, sir.

3 Q And Doctor, do you know that the union was in fact told that
4 they had never received a report from Dr. Suskind?

5 A No, sir.

6 Q Doctor, did you have any knowledge that this was going on with
7 the union as shown in 1501?

8 A I don't recall it.

9 Q Now Doctor, they refer to your department, they say the union
10 will be informed that DMEH has made a request for a final report on this
11 study you were involved with--was your department used there without your
12 knowledge, was the name of your department used without your knowledge?

13 A I don't know.

14 Q Now, Doctor, has the union been told now that you've got a result,
15 sir?

16 A When Dr. Suskind said it was a final report, we called it a final
17 report.

18 Q So what you are saying that you told them since our recess about
19 this report, didn't you, sir?

20 A Yes, sir.

21 Q Doctor, in point of fact, you told them after we attached and after
22 we gave you a copy of our analysis of the lab results and of the medical
23 reports, that's when you told the union, after we gave them a copy as well,
24 isn't that correct, sir?

1 A I can't relate it to the timing of your analysis.

2 Q Oh, Doctor, it occurred, you told them sometime after the second
3 week in June of 1985, didn't you, sir?

4 A I don't know the timing related to yours.

5 Q My question is, you told them sometime after the second week of
6 June, 1985, didn't you, sir?

7 A I'm not sure of the week when Suskind said that's the final report.

8 Q Doctor, it occurred after our recess, or during our recess,
9 didn't it, sir?

10 A Or just before our recess.

11 Q Or just before, Doctor?

12 A Yes.

13 Q Now you're changing your testimony.

14 A No.

15 Q It occurred, Doctor, and I've got a copy of the plant bulletin
16 and I intend to introduce it into evidence. It occurred after I served you
17 with a copy of our analysis of this September, 1980 health report, isn't
18 that correct, sir?

19 A I don't know.

20 Q You don't know? Do you know that not to be correct, sir?

21 A No.

22 Q Do you have any documents, sir, any copy of any documents where
23 you are telling the workers of this result?

24 A No, sir.

1 Q Then how did you tell them, sir? Because I am supposed to
2 receive copies of any documents dealing with dioxin, dealing with these
3 health studies, how did you tell them? Did you call them all up on the
4 telephone?

5 A No, sir. I'm not sure I have told them.

6 Q You just got through saying a few moments ago that you did tell
7 them.

8 A No, I did not.

9 Q Doctor, I ask you, have they ever been told, and you said now
10 they have been told, once we were told by Dr. Suskind that it was a final
11 report we then told them?

12 A No, sir, I said they can be told after that.

13 Q Is that what you believe you said, Doctor?

14 A Yes, sir.

15 Q And as a matter of fact they haven't yet been told, have they,
16 sir?

17 A I don't know.

18 Q Do you have any information at all as to what they have been told?

19 A No, sir.

20 Q Doctor, from 1980 until 1985 you had these results and they haven't
21 yet been told, isn't that correct, sir? To your knowledge they have not?

22 A They have not.

23 Q Now, Doctor, have you looked--well, first of all, let's look at
24 this report, sir.

1 THE COURT: Mr. Carr, before you get into that, is this a good
2 point for a short recess?

3 MR. CARR: Yes, your Honor.

4 THE COURT: Ladies and gentlemen, we will take a short break
5 at this time, and then resume testimony. I remind you that you are not
6 to discuss this matter among yourselves or with anyone outside the panel.
7 The Court is in a short recess.

8 (At this time Court was in recess.)

9 BY MR. CARR:

10 Q Doctor, with regard to the report itself, which was Exhibit 1500,
11 the very first page of it says it's a study of the health of the workers
12 involved in the production of pentachlorophenol and other chlorinated phenols,
13 does it not, sir?

14 A Yes, sir.

15 Q And on the—in the introduction page, it gives the objective of
16 the study in the very second sentence there on that page, it says the
17 objective was to determine the health status of employees of the W.G. Krummrich
18 plant who have been exposed to chlorinated phenols and to identify those
19 conditions which might be related to the work environment. Do you see that,
20 sir?

21 A Yes, sir.

22 Q And on the next page, the page numbered two of this study, it
23 says the scope and conduct of the survey, it talks about the questionnaire
24 and the medical history, it also talks about all the laboratory tests that

1 are included, blood, CA, P, BUN, creatinine, BUN-creatinine ratio, uric acid,
2 glucose, total protein, albumin, globulin, total bilirubin, transaminase
3 SGO and SGP, alkaline phosphatase, LDH, cholesterol, iron, magnesium, sodium,
4 potassium, chloride, G-glutamyltranspepsidase, triglycerides and lipoprotein
5 profiles, CBC and differential, urinalysis and urinary coproporphyrin,
6 uroporphyrins, and creatinine, do you see that, sir?

7 A Yes, sir.

8 Q Now, as far as the coproporphyrin is concerned, he describes it as
9 a single void sample, and says that it was not possible to interpret
10 significance of levels outside the normal range, do you see that, sir?

11 A Yes, sir.

12 Q This single void sample of the copro and uroporphyrins was exactly
13 the same porphyrins that he ordered in the Nitro test that he conducted some
14 four months before this, that is in June of '79, isn't that correct, sir?

15 A Yes, sir.

16 Q And he ordered these same porphyrins, he could have ordered a
17 24-hour sample if he wanted to, could he not, sir, in each of these instances,
18 that is in Nitro and in the Krummrich plant, couldn't it, sir?

19 A Yes, sir.

20 Q But he chose to order a single sample rather than the 24-hour
21 sample, didn't he, sir?

22 A Yes, sir.

23 Q Now, do you believe that it's a possibility that he chose to
24 order the single sample rather than the 24-hour sample so that he could use

1 the results if it appeared to support a position that he or Monsanto
2 wanted to take with regard to porphyrins, but that if it did not support
3 the end result desired, that he could then disregard it because he could
4 say, well, it's not a 24-hour sample if it comes out in a fashion that he
5 did not like the result of, do you think that's a possibility, Doctor?

6 A No, sir.

7 Q And Doctor, if that isn't--he did as we went through, he did put
8 the porphyrin results in the second draft of his Nitro study, didn't he,
9 sir?

10 A Yes, sir.

11 Q And he didn't call it wrong or void or anything of that sort,
12 did he, sir, but he eliminated those porphyrin results in his final
13 published report, didn't he, sir?

14 A Yes, sir.

15 Q And you know that in this report he makes no mention of the
16 porphyrin results, does he, sir?

17 A No, sir.

18 Q Now, Doctor, why would he order a porphyrin, urine porphyrin test
19 on two occasions and then disregard the results, not comment on the results
20 in the final published report?

21 A Because he hadn't looked at the Nitro study before he did this
22 one.

23 Q Well, Doctor, he knew what he was doing. He's a good, competent
24 physician, isn't he, sir? He knows the kind of porphyrins needed for, if

1 he wanted a 24-hour sample, he could have got a 24-hour sample, couldn't
2 he, sir? He ordered the tests in both of these instances, didn't he, sir?

3 A Yes, sir.

4 Q And he got what he wanted, didn't he, sir?

5 A What he asked for, yes, sir.

6 Q And he ignored the results of what he wanted and got each time,
7 didn't he, sir?

8 A Yes, sir.

9 Q And we've demonstrated in the Nitro case that there was 30 to 35
10 percent abnormal for all the workers involved in the Nitro case, between
11 28.6 to 30 percent abnormal on the tests that he ordered, didn't he, sir?

12 A No, sir.

13 Q We didn't show that, sir?

14 A No, sir.

15 MR. CARR: Your Honor, rather than me cross examine to re-establish
16 the point, would you direct the witness that he did testify that it was
17 28.6 abnormal porphyrins recorded by Dr. Suskind on the so-called unexposed
18 group and a 35 percent abnormality finding in the porphyrins for the exposed
19 group?

20 MR. HEINEMAN: Your Honor, may I make a point on that? May I
21 object to that?

22 THE COURT: Go ahead.

23 MR. HEINEMAN: Your Honor, he just changed the question. The
24 question he asked Dr. Rousch a moment ago required Dr. Rousch to admit that

1 the porphyrins were abnormal and that Dr. Rousch has always denied because
2 they weren't 24-hour urines. Now he's asking you to direct the witness that
3 he did testify that that is what was reported, and I object to the misleading
4 nature of the two separate questions as deliberately trying to mislead the
5 witness.

6 THE COURT: I think that's a distinction without a difference. I
7 think the witness had admitted that they were noted in the laboratory reports
8 as abnormal, and I don't think anything that's stated in the questions to
9 the witness and the request to this Court are contrary either within each
10 other's contradictions or contrary to the point that you've made. Your
11 objection is overruled. Dr. Rousch, you are so ordered to assume those
12 facts. You may continue, Mr. Carr.

13 BY MR. CARR:

14 Q Now, Doctor--

15 A I'm sorry, I am to assume what fact? I'm not sure what I am
16 supposed to assume.

17 Q That the porphyrins in Nitro were reported to be abnormal in the
18 case of 28.6 of those so-called unexposed workers and 35 percent in the case
19 of those that were exposed.

20 A I'll assume that.

21 THE COURT: Yes, you are ordered to assume that.

22 A Yes, sir.

23 Q And assume also as well that you so testified, Dr. Rousch, in
24 your earlier testimony, or also I understand the Court, at least what I've

1 asked for was that you assume that you also testified to that effect.

2 A Yes, sir.

3 Q Now, Dr. Rousch, Dr. Suskind obviously knew as well that these
4 were reported as abnormal, did he not, in the Nitro case?

5 A And I am assuming that they were reported as abnormal.

6 Q And assume that you testified that they were reported by the
7 laboratory to be abnormal.

8 A And now the question?

9 Q Dr. Suskind knew that as well, did he not, sir?

10 A I don't know.

11 Q Dr. Rousch, he reported it as abnormal in his second draft, did
12 he not, sir, with regard to these porphyrins, isn't that the very table
13 that we work with, a table that he created, he reported, you do know, don't
14 you, sir?

15 A Yes, sir, yes, sir, that second draft, yes.

16 Q Why did you tell me you didn't know it? We spent an hour or so
17 on it.

18 A Because the final report didn't have it in--

19 Q Well, Doctor, that doesn't take away from his knowledge, does it?
20 If he has the knowledge once, he had it at the time he prepared the final
21 draft, didn't he, sir?

22 A I don't know.

23 Q You don't know that, sir?

24 A No, sir.

1 Q You worked with Dr. Suskind, you were with him at the University
2 of Cincinnati--

3 A No, sir.

4 Q Well, he was there and you worked with him ever since you have
5 been at Monsanto at least, you communicated with him, you have a high regard
6 for his medical competence, don't you, sir?

7 A Yes, sir.

8 Q If he knew something in regard to those tests, he wouldn't be likely
9 to not know it when he prepared the next draft, would he, sir?

10 A I don't know.

11 Q You think he just simply forgot that he had found these to be
12 abnormal?

13 A I don't know why he changed--

14 Q Well, I'm asking you what you think, sir. Do you think he just
15 forgot it?

16 A No, sir.

17 Q He deliberately ignored it, didn't he, sir?

18 A No, sir.

19 Q It was an accidental ignoring of it?

20 A No, sir.

21 Q He ignored it, didn't he, sir?

22 A No, sir.

23 Q He didn't ignore it in his final draft?

24 A He left it out.

1 Q And didn't he say that he couldn't place any significance on them?

2 A Yes, sir.

3 Q And then he deliberately ignored those results, didn't he, sir?

4 A Yes.

5 Q Now, Doctor, if he wanted additional tests done or if Monsanto
6 had wanted additional tests done in the case of Nitro or in the case of
7 Krummrich, those additional tests could have been ordered, could they not,
8 sir?

9 A Yes, sir.

10 Q But no additional tests were ordered, were there, sir?

11 A No, sir.

12 Q As a matter of fact, so it would follow that Dr. Suskind, neither
13 Dr. Suskind nor Monsanto wanted 24-hour urine samples from these workers
14 for porphyrin analysis, isn't that correct, sir?

15 A No, sir.

16 Q Doctor, if Suskind wanted the 24-hour samples, he could have ordered
17 those, could he not, sir?

18 A Yes, sir.

19 Q He did not order them, did he, sir?

20 A No, sir.

21 Q Therefore, he did not want them, did he, sir?

22 A I don't know.

23 Q Doctor, could he have ordered them if he had wanted them?

24 A Yes, sir.

1 Q Could Monsanto have ordered them if they wanted them?

2 A No, sir.

3 Q Monsanto could not?

4 A No, sir.

5 Q Doctor, weren't you working with Dr. Suskind and didn't you have
6 communications with Dr. Suskind in which he asked you whether or not you
7 had ordered additional tests, and you answered to him that you didn't think
8 additional tests were needed?

9 A No, sir.

10 (Plaintiff's Exhibit 1502 was marked for identification.)

11 Q I hand you what has been marked Plaintiff's Exhibit 1502 and
12 ask you if you recognize that as a letter from Dr. Suskind, Dr. Suskind's
13 wife, Ida Suskind?

14 A Yes, sir.

15 MR. CARR: I offer 1502 into evidence if it please the Court.

16 (Plaintiff's Exhibit 1502 was offered into evidence.)

17 THE COURT: Any objections?

18 MR. HEINEMAN: Your Honor, there is no testimony that this witness
19 has ever seen this document before, and it's not by him nor is it to him,
20 and therefore no foundation has been laid for its admission and I object to
21 it. It's hearsay.

22 THE COURT: Objection is overruled. It is admitted over objection.

23 (Plaintiff's Exhibit 1502 is admitted into evidence.)

24 Q Doctor, this exhibit that you are now looking at, I think it's

1 1502, it is a letter addressed to Paul Heisler of the medical department,
2 is it not, sir?

3 A He's not medical department.

4 Q He's described as being in the medical department at least in
5 this letter, is he not, sir?

6 A Yes, sir.

7 Q Who is Paul Heisler?

8 A He was in charge of environment and safety, as well as medical.
9 They reported to him. He is not a medical man, he just has that man
10 reporting to him.

11 Q What, is your department reporting to him, then?

12 A No, Dr. Osland, the physician at Krummrich, reported to him.

13 Q Dr. Osland is within the department of the--the medical department,
14 isn't he, sir?

15 A Yes, sir, but he reported to Mr. Heisler.

16 Q He reported to Heisler and not to you?

17 A That's right.

18 Q And then Heisler reported to you?

19 A No, sir.

20 Q You've got an employee that's in your department that doesn't
21 report to you, but does report to Heisler?

22 A He isn't in my department, Dr. Osland is not in my department.

23 Q I thought he said he was in the medical department.

24 A He is the medical department at that plant.

1 Q Doctor, do you not, are you not in charge of the entire department
2 of medicine and environmental health for the Monsanto Company? Are you not
3 over all of these, every plant's medical department?

4 A No, sir.

5 Q You are not in charge of them?

6 A No, sir.

7 Q I thought you testified here that you were in charge of the
8 entire medical department at Monsanto.

9 A As defined by our department.

10 Q And Doctor, the medical departments in the individual plant is
11 not part of the medical department of Monsanto?

12 A No, sir.

13 Q And you have no jurisdiction over those persons?

14 A Not direct supervision.

15 Q I said jurisdiction, not supervision, Doctor.

16 A I'm not sure what the difference is.

17 Q Doctor, Paul Heisler worked with you and your department for
18 this Krummrich health study, isn't that right, sir?

19 A Yes, sir.

20 Q Your department worked with Heisler, Heisler worked with you?

21 A Yes, sir.

22 Q And Doctor, this letter was sent to Mr. Heisler, it's part of
23 Monsanto's files, were you aware of its existence, sir?

24 A No, sir.

Q Do you see the last paragraph on the first page where it says Mr. Belcher of Metpath laboratories indicated copies of the results of the clinical biochemical test were sent to the medical department of the Sauget plant at the same time we received our copies, do you see that, sir?

A Yes, sir.

Q And then it goes on to ask what follow-ups, if any, were done on laboratory findings suggesting additional testing, if additional tests were done, we would appreciate having the results, do you see that, sir?

A Yes, sir.

Q And that indicates, does it not, sir, that Monsanto's medical department could have ordered additional laboratory tests if additional laboratory tests were thought to be needed?

A Yes, sir.

Q And do you know that no additional laboratory tests were ordered?

A I don't know.

(Plaintiff's Exhibit 1503 was marked for identification.)

Q I hand you Exhibit 1503. Do you recognize that as a letter from Heisler to Mrs. Ida Suskind at the University of Cincinnati?

A Yes, sir.

MR. CARR: I offer that exhibit into evidence if it please the Court.

(Plaintiff's Exhibit 1503 was offered into evidence.)

MR. HEINEMAN: Your Honor, again I object on the basis, A, that it's hearsay, B, that he hasn't established that this witness has ever seen

1 it, it's not addressed to him, he didn't get a copy of it, and he didn't
2 write it, and I object to it that there is a total lack of foundation for
3 its admission.

4 THE COURT: Objection is overruled. It's admitted over objection.

5 (Plaintiff's Exhibit 1503 was admitted into evidence.)

6 Q Doctor, you see that this exhibit as all other Monsanto documents
7 that we have been referring to bears the Monsanto identification number
8 C13040 and so on, you see that?

9 A Yes, sir.

10 Q And it's also a letterhead of Monsanto?

11 A Yes, sir.

12 Q And you recognize Paul E. Heisler as being a Monsanto employee in
13 the medical department?

14 A Yes, sir.

15 Q Now, Doctor, the very last paragraph on the last page of this
16 document is what I'd like to direct your attention to. The follow-ups
17 that were done were with only three people, isn't that correct, sir?

18 A Yes, sir.

19 Q Do you know whether or not—and there were no other additional
20 testing done except for those three?

21 A I don't know.

22 Q Well, do you know of any additional testing that was done other
23 than these three people?

24 A No, sir.

1 Q And is there any--this report of Dr. Suskind's is dated September
2 of 1980, September 29th, 1980, is it not, sir?

3 A This letter from Suskind?

4 Q The report of Dr. Suskind, Exhibit 1500 is dated September 29th,
5 1980, is it not, sir?

6 A Yes, sir.

7 Q Two months after the July 21st, 1980 date on Exhibit 1503, isn't
8 that correct, sir?

9 A Yes, sir.

10 Q So the report of Dr. Suskind's was written after he learned the
11 additional laboratory tests that were done on those three people, was it not,
12 sir?

13 A Yes, sir.

14 Q And at that time he could have ordered, if he had wanted them,
15 additional porphyrin urinalysis tests, could he not, sir?

16 A Dr. Suskind?

17 Q Yes.

18 A Yes, sir.

19 Q But he did not, to your knowledge, did he, sir?

20 A No, sir.

21 Q And Doctor, have you looked at the porphyrin results from your
22 Krummrich people? Do you know how many people at Krummrich had reported
23 abnormal porphyrins by the Metpath laboratory?

24 A No, sir.

1 Q You have looked at the table that we've prepared and that I am
2 going to show you again shortly, you have seen that, have you not, sir?

3 A Yes, sir.

4 Q Sir?

5 A Yes, sir.

6 Q And that indicated abnormal porphyrins, didn't it, sir?

7 A Your report did, yes.

8 Q Did you check the report that I gave you against the laboratory
9 results shown in these documents that's right in front of you?

10 A Yes, sir.

11 Q Did you check the other results, sir?

12 A What other--

13 Q Other laboratory results in that study in that analysis that I
14 gave you in June.

15 A It's very difficult, see, I did all of that very well, but I
16 went through all that, yes.

17 Q Now, Doctor, this report makes a reference to all the number of
18 tests that were taken. Would you please point out in this report the place
19 where these lab results are reported other than the lipids?

20 MR. HEINEMAN: What laboratory results? I object, your Honor, I
21 think it's vague.

22 Q Laboratory data referred to in this report, these clinical
23 laboratory tests that were taken, shown on Page 2 on Exhibit 1500.

24 A No, sir.

1 Q Sir?

2 A Only lipids.

3 Q And Doctor, there are something like 22 tables referred to in
4 this report, do you see that, sir? Actually it lists 23, but there is
5 Table 13 missing, so there is in fact only 22 tables, do you see that, sir?

6 A Yes, sir.

7 Q Do any of those tables deal with any symptom, any disability, any
8 abnormality or any finding that could relate to dioxin poisoning other than
9 chloracne?

10 A Would you repeat that question?

11 Q Is there any table in this document that deals with anything
12 other than chloracne except Table 14, which deals with other skin conditions?

13 A And the lipids.

14 Q Even the lipid tables, Doctor, relate only to chloracne. They
15 don't relate to another single thing, another single disorder, only chloracne.

16 A Yes, sir.

17 Q So the only thing, Doctor, there are 22 tables, two of them deal
18 with the type of person, the status of the person studied, one table deals
19 with other skin disorders, and all the other tables deal only with chloracne,
20 isn't that correct, sir?

21 A Well, and lipids and chloracne.

22 Q But lipids only with regard to chloracne.

23 A Yes, sir.

24 Q There is not a--the report, though, is described as the objective

1 was to determine the health status, isn't that what it said on the very
2 first page of the text?

3 A Yes, sir.

4 Q And what it reported on, however, was not the health status of
5 these people, but their chloracne status with regard to, well, just chloracne,
6 that's all it talks about is chloracne, doesn't it, sir?

7 A And lipids.

8 Q Well, lipids only with regard, not to their health, but only
9 with regard to chloracne.

10 A Yes, sir.

11 Q The relationship between lipids and chloracne, not in regard to
12 relationship of their health, heart disease, cardiovascular disorders,
13 myelin destruction in the nerves, liver damage, psychiatric disorders,
14 neurobehavior disorders, sleep difficulty, fatigue problems, they're not
15 dealt with here, are they, sir?

16 A No, sir.

17 Q The only thing that's dealt with in this is chloracne, isn't that
18 correct, sir?

19 A Yes, sir.

20 Q Do you see any results, there is a long list of laboratory tests
21 that were given, described on the page numbered 2 that I read off, long
22 list of laboratory tests that were conducted. Do you see the results of
23 any laboratory tests other than the lipids and the glutamyltranspepsidase,
24 that is, GGT, as it relates to chloracne?

1 A That is a liver profile with SGOT and SGPT where there
2 was no difference between chloracne and acne.

3 Q They're talking about chloracne, they are not talking
4 about anything other than acne.

5 A Yes, sir.

6 Q Doctor, the question was asked are the--in the October
7 the 2nd, question number 3, why are blood and urine samples
8 included when they've never been before in the Exhibit 1498, and
9 the answer there, Dr. Suskind has included these tests to verify
10 that there are no ill effects other than chloracne, do you remember
11 that statement?

12 A Yes, sir.

13 Q Where in this report is there a verification that there
14 are, or any statement at all as to what effects, ill or otherwise,
15 effects other than chloracne? Could you find that statement
16 where it talks about a verification that there are no ill effects
17 other than chloracne in that report, sir?

18 A I don't think there is one.

19 Q And Doctor, why did you tell these people that the
20 purpose of these tests were for Suskind to verify that there
21 are no ill effects other than chloracne? Why did you say that
22 to these people?

23 A That's what Dr. Suskind thought he was doing.

24 Q Well, he is the one that wrote that report, isn't he,

1 sir?

2 A Yes, sir.

3 Q Does he say in there that he's talking about ill effects
4 other than chloracne? Where does he say it, on what page does he
5 say it? On what line?

6 A It's not in any one line.

7 Q Well, what paragraph? What page?

8 A The fact that he did all those things on Page 2 is
9 what he was looking at to see if there was anything that would
10 happen in people who have chloracne or not.

11 Q Where did he report on the ill effects as shown by the
12 laboratory tests, sir? What page of the document does he report
13 on these tests? What table refers to these tests other than the
14 GGDt and the lipids?

15 A And the SGOT and the SGPT.

16 Q Only there with regard to the lipids--with regard to
17 chloracne. It doesn't say whether or not that somebody is ill
18 because of it, or how they are as far as their health is concerned
19 because of that. This talks about only how it relates to chloracne.

20 A Yes, sir.

21 Q Show me where in this document he talks about health,
22 sir.

23 A His own statement is to determine health status of
24 employees.

1 Q That's what he said he was going to do. Now, he said
2 the purpose of the health study is to determine their health
3 status. Now, I want you to tell me where in this report did he
4 report on the health status of these employees? Where is it in
5 here, sir, because I've looked and I've looked and I've looked
6 and I cannot see, and I want you to point out to me the single
7 place where he reported on the whole objective of this study.

8 A This whole document responds to that question.

9 Q Doctor, my question is not what he thinks. He said
10 the purpose of it was to determine the health status of those
11 employees who had been exposed to chlorinated phenols and identify
12 those conditions which might be related to the work environment.
13 Show me where he determined their health status, sir.

14 A The fact that he--

15 Q Show me, please, sir, don't tell me again the fact, show
16 me on this document the single paragraph, the single page where
17 he talks about the health of the workers at Krummrich.

18 A I can't.

19 Q It doesn't appear on Page 1, does it, sir?

20 A No, sir.

21 Q It doesn't appear on Page 2, does it, sir?

22 A No, sir.

23 Q Although he says on Page 2 that a thorough review of
24 the records provided by Monsanto, medical insurance claims,

1 workmen's compensation records, personnel records, personal medical
2 histories, physician notations, specific problems and so forth,
3 hypertension, diabetes and so forth, all went into--now, but no
4 result is on Page 2, is it, sir?

5 A No, sir.

6 Q On Page 3, is there, sir, any mention of this health
7 status of these people?

8 A No, sir.

9 Q Page 4, is there any mention of it, sir?

10 A No, sir.

11 Q On Page 5, is there any mention of it, sir?

12 A No, sir.

13 Q On Page 6, is there any mention of it, sir?

14 A No, sir.

15 Q On Page 7, is there any mention of it, sir? It talks
16 about acne on Page 7.

17 A Yes, sir, in great detail.

18 Q In great detail. On Page 8, is there any mention of
19 health status other than chloracne?

20 A Well, there are a lot of skin problems.

21 Q Excuse me, on Page 8.

22 A I'm looking on Page 8.

23 Q Is there mention of anything other than acne or chloracne?

24 A Yes, sir.

1 Q Where?

2 A They did skin cultures and biopsies.

3 Q And that skin culture dealt with just the skin, didn't
4 it, sir?

5 A Yes, sir.

6 Q It didn't make a single mention about their health,
7 did it, sir?

8 A That's part of the health--

9 Q Well, does it say these people were healthy or were
10 not healthy?

11 A They were trying to determine whether they had a problem
12 related to health.

13 Q Doctor, he talks about clinical, he puts one paragraph
14 here on clinical laboratory findings, doesn't he, sir?

15 A Yes, sir.

16 Q And he did a lot of laboratory tests, did he not, sir?

17 A Yes, sir.

18 Q And he says the laboratory data is presented in Tables
19 15 through 22, is the laboratory data presented in 15 through
20 22, sir?

21 A Yes, sir.

22 Q What laboratory data other than the lipids and the
23 GGDT and SGOT, sir?

24 A And SGPT.

Q And SGPT, is the iron results presented there, sir?

A No, sir.

Q Alkaline phosphatase?

A No, sir.

Q Albumin?

A No, sir.

Q Globulin?

A No, sir.

Q Bilirubin direct?

A Creatinine?

A No, sir.

Q BUN?

A No, no, sir.

Q Blood?

A No, sir.

Q Coproporphyrin, uroporphyrin, creatinine, any of these things reported, sir?

A No, sir.

Q Glucose?

A No, sir.

Q Then let's go down to discussion. Is there any discussion of the health status of these people or any mention of their health status on Page 8, sir?

A Yes.

1 Q Where is their health status mentioned, sir, other
2 than chloracne?

3 A No significant difference in clinical laboratory findings
4 between penta and the rest of the--and 237.

5 Q Well, Doctor, that hasn't got anything to do with their
6 health.

7 A Why, it certainly does.

8 Q Oh, Doctor, if there is no difference between the
9 clinical and the laboratory findings between the people that
10 are exposed solely to penta and the people that are exposed to
11 the combined product, that doesn't tell you a thing about their
12 health, they could all be perfectly healthy and have no difference
13 or they could all be falling down sick and have no difference, it
14 doesn't tell us a thing about their health, does it, sir?

15 A Yes, sir.

16 Q What does it tell about their health?

17 A It says there are no differences between the two.

18 Q That's fine, then, is anybody told whether these people
19 are unhealthy or healthy?

20 A He says more after this.

21 Q Where does he say more after that? Show me that, sir.

22 A What?

23 Q Where he says something about their health afterwards.

24 A The laboratory studies as related to chloracne are

1 health studies.

2 Q Chloracne is what we're talking about. Now, chloracne
3 does have something to do with health status, but excluding
4 chloracne, sir, what does he talk about as far as their health
5 is concerned on Page 8?

6 A Nothing else.

7 Q On Page 9, what does he talk about as far as their
8 health is concerned?

9 A Besides the cholesterol, LDL, SGOT, and SGPT and GDTT,
10 those.

11 Q All these, there are no differences in these levels?

12 A Yes, sir.

13 Q He doesn't say whether these people are sick or healthy,
14 does he, sir?

15 A No, sir.

16 Q All he is saying is there is no difference between the
17 chloracne and the nonchloracne group, doesn't he, sir?

18 A Yes, sir.

19 Q And that doesn't tell you anything about whether or
20 not they are falling down sick or hale and healthy and hearty,
21 does it, sir?

22 A No, sir.

23 Q Doctor, is there any other mention on Page 9 as to the
24 health status of these people?

1 A In that discussion of lipids.

2 Q Sir?

3 A Then the rest of the discussion on Page 9 is on lipids.

4 Q But my question is, does it have anything to do with
5 their health, does it tell you whether or not they are healthy
6 or not healthy?

7 A No, sir.

8 Q All it does is compare the lipid levels between the
9 people that work in pentachlorophenol and the people that worked
10 in the combined departments or the people that had chloracne and
11 the people that didn't have chloracne, isn't that right, sir?

12 A Yes, sir.

13 Q It doesn't tell you a thing about their health, does
14 it, sir?

15 A Yes, it does.

16 Q Where does it tell you something about their health,
17 sir?

18 A It says that these people who have chloracne do not
19 have any abnormalities compared to those who don't have chloracne.

20 Q Well, Doctor, that doesn't tell you anything about
21 their health.

22 A Yes, it does.

23 Q How so, sir? Can you tell whether or not these people
24 are healthy?

1 A That those who have chloracne do not have any
2 abnormalities of lipids as compared to those who do not have
3 chloracne.

4 Q And that tells you something about, well, then is
5 lipids an indication of health, sir?

6 A It is in talking about dioxin.

7 Q Then an abnormal lipid is an indication that there is
8 something wrong with the people and it could be caused by dioxin?

9 A No, sir, it just means--

10 Q Well, Doctor, back up. Does it have something to
11 do with their health as exposed to dioxin or not?

12 A It might have.

13 Q Then it does have, doesn't it, sir? Now, Doctor, but
14 even here, does it tell you whether or not these people with
15 abnormal lipid levels are sick or not sick?

16 A No, sir.

17 Q It just tells you, all it does is compare the abnormal
18 levels between those that have got chloracne and those that
19 don't have chloracne, doesn't it, sir?

20 A Yes, sir.

21 Q But it doesn't tell you whether those people are sick
22 or healthy, does it, sir?

23 A No, sir.

24 Q Doctor, is there anything on Page 10 that tells you

1 about the health of these people?

2 A No, sir.

3 Q Then Doctor, and Page 10 is the end of the report?

4 A Yes, sir.

5 Q Is there a single table now in all these tables that
6 talks about their health status, sir?

7 A Only by correlation of chloracne with lipids.

8 Q It doesn't even tell you that, sir, all it does is
9 compare the chloracne, the no chloracne, and the chloracne, doesn't
10 it, sir?

11 A Yes, sir.

12 Q All it does is attempt to show a relationship or no
13 relationship between lipids and chloracne, doesn't it, sir?

14 A Yes, sir.

15 Q And there is no mention of their health, is there,
16 sir?

17 A As beyond that, there is not.

18 Q Now, Doctor, could I have a--there is no mention of
19 all these other lab tests, is there, sir?

20 A No, sir.

21 Q Now, Doctor, do you reckon that those lab reports
22 showed abnormalities in the overwhelming majority of these
23 people working at the Krummrich plant exposed to dioxin, or do
24 you reckon these lab reports showed few abnormalities in these

1 people that work there, which would you reckon occurred that
2 he did not mention?

3 A He may have in his final report.

4 Q Sir?

5 A He may give it in his final report.

6 Q Doctor, we have gone through the final report jazz
7 and I am not going to go through it again. You have nothing
8 other than the document that has been described to you as a
9 final report, and all you have is something that you did after
10 it came out in this courtroom in June. That's all you did, and
11 I am not going to go through that with you again. There is no
12 mention of laboratory abnormalities and my question, sir, if you
13 were a guessing man, would you guess that the test results that
14 he ignored and left out of this report were normal or abnormal,
15 if you were a guessing man--

16 MR. HEINEMAN: Objection, your Honor. Mr. Carr's
17 speech had nothing to do with the question, I ask that it be
18 stricken and ask that the jury be instructed to disregard it.
19 Further objection--

20 MR. CARR: Well, I'll withdraw the question.

21 MR. HEINEMAN: Further objection as to the question
22 as being irrelevant.

23 THE COURT: The question is withdrawn.

24 (Plaintiff's Exhibit 1504 was marked for

identification.)

Q Doctor, I've previously placed before you what's been marked as Group Exhibit 1504. You recognize those as the full and complete questionnaire and lab reports and clinical examination that Dr. Suskind and his team conducted on the Krummrich plant workers, do you not, sir?

A I don't know yet.

Q Haven't you looked at it?

A I haven't looked at these.

Q You haven't looked at these?

A I don't know whether this is the whole report or not.

Q All right, go ahead.

A Yes, sir, I think that's correct.

Q And Doctor, a few of these reports from what you know of it do not have any laboratory results appended to them because a few people didn't have the laboratory test performed, isn't that correct, sir?

A Yes, sir.

Q But the rest of those reports all have the lab tests as reported by Metpath upon Dr. Suskind's order attached thereto.

A Yes, sir.

MR. CARR: I offer 1504 into evidence, if it please the Court.

(Plaintiff's Exhibit 1504 was offered

1 into evidence.)

2 MR. HEINEMAN: May counsel approach the bench, your
3 Honor?

4 THE COURT: Sure.

5 (The following proceedings were held at the
6 bench.)

7 MR. HEINEMAN: Your Honor, we would object to the
8 admission of these records on the basis that they're hearsay and
9 that no foundation has been laid by Mr. Carr for their admission,
10 and he's never deposed Dr. Suskind, he hasn't brought Dr. Suskind
11 into court. These documents I believe were prepared by Dr. Suskind,
12 they were certainly not prepared by this witness. We don't have
13 a proper custodian, we don't have the person that prepared the
14 documents, we don't have anybody who had anything to do with
15 their preparation to testify about them, and therefore they are
16 not admissible. They're hearsay. There's been no foundation
17 laid.

18 MR. CARR: Your Honor, the record has established that
19 these are records of Monsanto's, they paid for this study, it
20 was done under contract by Dr. Suskind, as they have admitted,
21 and is in evidence. These are questionnaires that their agent,
22 Dr. Suskind asked, they had an interview, the documents show
23 themselves to be just that, and they have been in Monsanto's
24 possession, they are lab reports that Monsanto has paid for,

1 these are documents that have been produced by Monsanto and
2 claim to be authentic by Monsanto to us, and I see no need for
3 any further foundation than that. They are Monsanto documents.

4 MR. HEINEMAN: Now, your Honor, Mr. Carr knows that
5 about 30 percent of what he just said is patently false.

6 MR. CARR: Oh?

7 MR. HEINEMAN: They were not in our possession. This
8 Court had to order us to get them from Dr. Suskind. My recollection,
9 and I think the Court's recollection would be that Dr. Suskind
10 maintained a privilege with respect to these documents. He
11 wouldn't give them to us. The Court ordered us to get them from
12 him. We finally did get them from him pursuant to this Court's
13 order. You know the procedure that Dr. Suskind required of
14 getting receipts from everybody.

15 THE COURT: If I remember correctly, someone in the
16 course of all that made the determination that due to the relation-
17 ship between Monsanto and Suskind that they were under your
18 control, as control is construed in our discovery procedures. I
19 believe I made that determination along the line.

20 MR. CARR: You did, and in fact they did tell Dr.
21 Suskind to give them the reports and these reports were given.

22 THE COURT: Okay, objection is overruled.

23 (The following proceedings were held in
24 open Court.)

1 THE COURT: Group Exhibit 1504 is admitted over
2 objection.

3 (Plaintiff's Exhibit 1504 was admitted
4 into evidence.)

5 BY MR. CARR:

6 Q Doctor, the very first one of a gentleman named
7 Andrews, it gives his background, his birthdate, where he lived,
8 what departments he worked in, who his prior employers were, and
9 what kind of jobs he had, whether or not he smoked, did he eat--
10 what did he eat on the job, and a long list of some 21 questions
11 dealing just with what he did at work, isn't that correct, sir?

12 A Yes, sir.

13 Q It talks about tobacco consumption, alcohol consumption,
14 and talks about has a family history, health history for the
15 family, and it has a personal medical history as well, does it
16 not, sir?

17 A Yes, sir.

18 Q It asks all kinds of questions all the way from
19 headaches down to cancer, isn't that right, sir?

20 A Yes, sir.

21 Q Skin cancer and other forms of cancer. And it asks
22 about hospitalization, what kind of hospitalization. Then they
23 ask a question, what current symptoms does he show, does he have
24 on Page 11, isn't that right, sir?

1 A Yes, sir.

2 Q And these are the questions asked currently, do you
3 have headaches, daily weekly, less than weekly? Do you have
4 trouble sleeping? Are you tired most of the time? Do you need
5 more sleep than usual? Do you have a good appetite? Do you
6 lose your temper easily? Do you feel angry often? Those were
7 the six--I'm sorry, seven questions asked, isn't that correct, sir,
8 dealing with the current health status or symptoms currently
9 displayed?

10 A Yes, sir.

11 Q And Doctor, there are no other questions asked in which
12 they are asked about their current health problems other than
13 these seven questions, isn't that correct?

14 A Yes, sir.

15 Q And these deal with headaches, sleep difficulty,
16 fatigue, appetite, and neurobehavioral problems, don't they, sir?

17 A Limited, but, yes.

18 Q Yes. And they're asked to respond yes or no to each
19 of those questions.

20 A Yes, sir.

21 Q Oh, and this study goes on to ask about medications,
22 what are they taking now, what kind of health aids they have,
23 and then there is several pages for the clinical examination,
24 isn't there, sir?

1 A Yes, sir.

2 Q For blood pressure, pulse, respiration, temperature,
3 weight, height, and then there is a review of systems, isn't
4 there, sir?

5 A Yes, sir.

6 Q For the physician to, not only take additional history
7 for a review of systems, to indicate problems, abnormal findings,
8 but also a physical examination for the review of systems, isn't
9 there, sir?

10 A Yes, sir.

11 Q There are several places, there is places for diagnosis
12 and impression, isn't there, sir?

13 A Yes, sir.

14 Q And Doctor, from your prior examination, you know that
15 that same thing is true for each of these employees who took
16 part in this Krummrich plant health study, isn't that correct,
17 sir?

18 A Yes, sir.

19 Q Now, Doctor, the symptomatology that's asked by
20 Dr. Suskind in his questionnaire, could you find any place in
21 the record that he made dated September 29, 1980 in which he
22 refers to the symptomatology displayed by these people?

23 A No, sir.

24 Q Because it does not exist, does it, sir?

1 A No, sir.

2 Q He asked these questions to find out whether or not
3 they have, what health symptoms they had or to put it another
4 way, what sickness symptoms they had, did they have neurobehavioral
5 problems, do they have fatigue problems, do they have sleep
6 problems, do they have appetite problems, do they have headache
7 problems, all of these things he asks, but he doesn't make a
8 single mention of what he discovered in this group report and
9 questionnaire, does he, sir?

10 A Yes, sir.

11 Q Where does he make a mention of that, sir?

12 A By not including it.

13 Q Doctor, my question is he doesn't make a single mention,
14 does he, sir?

15 A No, sir.

16 Q In this report?

17 A No, sir.

18 Q And he gives no explanation in this report as to why
19 he did not include that which he discovered in this questionnaire,
20 does he, sir?

21 A No, sir.

22 THE COURT: Okay, Mr. Carr, is this a good point to
23 break for lunch?

24 MR. CARR: Yes, your Honor.

1 THE COURT: Ladies and gentlemen, we will break for
2 lunch at this time. We will resume again at one o'clock. The
3 admonishments that I gave you earlier will apply during this
4 lunch break also. The Court is in recess.

5 (At this time, Court recessed for the
6 noon hour.)

7 BY MR. CARR:

8 Q Doctor, the questionnaire, the physical examination and
9 the laboratory tests, Group Exhibit 1504, were all basically
10 referred to or related to workers who were exposed to chlorinated
11 phenols and therefore possibly dioxin and more specifically
12 2,3,7,8 TCDD, isn't that correct, sir?

13 A No, sir.

14 Q That isn't correct?

15 A No, sir.

16 Q What part of the question or what fact in that question
17 was incorrect, Dr. Rousch?

18 A Forty-four of those people had never been exposed to
19 2,3,7,8.

20 Q Wherein is that stated, Dr. Rousch?

21 A On Page 7, 43 of them had worked in 236.

22 Q And is that the equivalent to saying that they were
23 never exposed to 2,3,7,8?

24 A Yes, sir.

1 Q Doctor, 236 and 237 are right next to one another, are
2 they not?

3 A Yes, sir.

4 Q As a matter of fact, pipes go from one department to
5 the other department, don't they, sir?

6 A Yes, sir.

7 Q You can't really tell the difference between the two
8 departments, can you, sir, when you're out there at the plant.

9 A Yes, sir.

10 Q You can really tell the difference?

11 A There is a separation between the two plants.

12 Q Between the two departments?

13 A Yes.

14 Q Aren't they right next to one another?

15 A Yes, sir.

16 Q And Doctor, these people of necessity, the people that
17 work in Department 236 walk through Department 237 from time to
18 time, don't they, sir?

19 A I'm sure they did.

20 Q And Doctor, these people are people that are working
21 right within a few feet of one another, aren't they, sir?

22 A They work close to each other, but they are separated.

23 Q Doctor, they are separated simply because you have a
24 number on one department that says 236 and right next to it you

1 have the other department that says, you've got a number on it
2 that says 237, isn't that correct, sir?

3 A Yes, sir.

4 Q And they're working, they can work right just within
5 a few feet of one another?

6 A I don't think that's right.

7 Q Well, Doctor, aren't these departments just butted up
8 right against one another?

9 A Yes.

10 Q Doctor, the people that work in 236, they've worked in
11 this plant for a number of years, well, anybody that goes through
12 that plant, we went through it on a bus, but anybody that goes
13 through that plant during the time that it's manufacturing these
14 materials, the exposure, the dust, the spillage or whatever,
15 anybody that goes through there is exposed at one time or
16 another, are they not, sir?

17 A To a degree, yes.

18 Q That's what I said, all of these people, all of these
19 people working in the chlorinated phenol department had some
20 exposure to dioxin, do they not, sir, 2,3,7,8 TCDD dioxin?

21 A But the difference is--

22 Q Excuse me, did they not, sir?

23 A I don't know.

24 Q Well, Doctor, you know that there has to be some

1 exposure on the part of each person, you know that, don't you,
2 sir?

3 A I would presume so, but I don't know.

4 Q Well, it's a presumption that you can make, a deduction
5 that you can make based upon the facts that you know about
6 Departments 237, 236, 239, 262, 268, isn't that correct, sir?

7 A No, sir.

8 Q What is wrong there, sir? That is a presumption that
9 you made based upon your knowledge about those departments,
10 isn't it, sir?

11 A I think there is a difference between working in 236
12 and 237, those who work in 236 are not exposed to 2,3,7,8.

13 Q Doctor, 2,3,7,8 is in Department 237, is it not, sir?

14 A Yes, sir.

15 Q And has been for ever since Department 237 was
16 organized back in what, the 40s, didn't we decide the other day?

17 A I think so.

18 Q So in the mid or late 40s, at least, Department 237 has
19 sat right next to Department 236 and for all those 30, 35 years
20 it was manufacturing chlorinated phenols, it was manufacturing
21 2,3,7,8 TCDD, was it not, sir?

22 A Yes, sir.

23 Q And those workers that work in Department 2,3,7,8--
24 I'm sorry, in Department 236 come into within just a few feet

1 of 237, don't they, sir?

2 A Yes, sir.

3 Q And do they not of necessity have some exposure to that
4 which is produced in Department 237 by virtue thereof?

5 A Yes.

6 Q And that which is produced in Department 237 was
7 2,3,7,8 TCDD, was it not, sir?

8 A Yes.

9 Q And therefore they had some exposure to that 2,3,7,8
10 TCDD, did they not, sir?

11 A The only question, what do you mean by some?

12 Q Any exposure. They had some exposure to that which
13 was produced in Department 237?

14 A I don't know.

15 Q Doctor, I thought you just got through saying that you
16 did know that they were exposed to that which was produced in
17 Department 237.

18 A I don't know.

19 Q Doctor, didn't you just say that they were exposed?

20 A I don't--

21 Q Didn't you just say that, sir? Are you now changing
22 your mind, sir?

23 A I'm saying I don't know whether there was exposure in
24 236 to 2,3,7,8. If it was, it was so small, but I can't say it

1 wasn't and I can't say it was so small.

2 Q Doctor, I don't care about how small it is, because
3 this case deals with symptoms caused by small amounts of dioxin.
4 That's the whole thrust of this case, that is relevant to this
5 case, Doctor. These people that work in these, not just those
6 people in that plant, but everybody that works in that Krummrich
7 plant has some exposure to that which is produced in Department
8 237, do they not, sir?

9 A I don't know.

10 Q Doctor, are you saying you don't know, because you haven't
11 seen the 2,3,7,8 floating down on them, or is it you say you
12 don't know because you can't deduce that from the facts that
13 you do know?

14 A I can't deduce it from the facts I know.

15 Q All right, Doctor, you know there is a street that
16 goes right by Department 237, don't you, sir?

17 A Yes, sir.

18 Q And you know there is--well, there is two streets, one
19 goes one direction and one goes another direction, don't you,
20 sir?

21 A I don't remember that.

22 Q Sir?

23 A I don't remember that.

24 Q You don't remember that?

1 A I know it goes past it, and that's it.

2 Q There is the main street that goes right through the
3 Krummrich plant is just what, ten feet from Department 237?

4 A I don't recall.

5 Q When is the last time you have been to the Krummrich
6 plant, Dr. Rousch?

7 A Five or seven years ago.

8 Q Doctor, you recall the main entrance where you have
9 the guards and you go in the building to get the hats and all
10 that, and just about a half a block down, you recall that big,
11 wide street there, sir?

12 A Yes, sir.

13 Q And you recall just a half a block down that street
14 on into the plant is Departments 236 and 237 off to the right-
15 hand side there?

16 A I remember, but I'm not sure how close it was to the
17 headquarters.

18 Q And there is another street where you can turn right
19 off of that big main street and you go right past 236 and 237,
20 you know that, sir?

21 A I think I recall that.

22 Q Now, the workers in that Krummrich plant have occasion
23 to be on both of those streets from time to time, don't they,
24 sir?

1 A Yes, sir.

2 Q And the cracking plant or the distilling plant or the
3 pipes and all that, these are all out in the open, they are not
4 in an enclosed building, are they, sir?

5 A No, sir.

6 Q When they said building, they don't really mean
7 building, they mean an area that has been assigned to Department
8 236 and another area that has been assigned to Department 237?

9 A Yes, sir.

10 Q So there in fact were no buildings, it's all out there
11 in the open, isn't it, sir?

12 A Yes, sir.

13 MR. HEINEMAN: I object to that, your Honor. I don't
14 know that Mr. Carr has any evidence that Department 237 was out
15 in the open.

16 MR. CARR: I think I have the evidence right here from
17 this witness, your Honor.

18 THE COURT: Objection is overruled.

19 Q Now, Doctor, because this study, well, you at Monsanto
20 knew the difference between a control group that has no exposure
21 to 2,3,7,8 TCDD and a group that could have or did have possible
22 2,3,7,8 exposure, you know the difference, don't you?

23 A Yes, sir.

24 Q And none of these people that were a part of this 1979

1 Krummrich plant study meet that definition of a controlled,
2 unexposed group, do they, sir?

3 A No, sir.

4 Q They are, therefore, all in a part of a group that
5 could have exposure to 2,3,7,8 TCDD, isn't that correct, sir?

6 A No, sir.

7 Q Which of those workers, Doctor, could not have
8 possible exposure to 2,3,7,8 TCDD?

9 A 236.

10 Q They could have no possible exposure to 2,3,7,8 TCDD?

11 A I can't say that.

12 Q I know you can't say that, Doctor, and because you
13 know good and well they could have possible exposure to 2,3,7,8
14 TCDD. They could have it just in that spill that took place in
15 February of 1979, they could have it just from that fumes that
16 went through the plant from that spill, they could have it from
17 the dust that accumulated from that spill and blew through the
18 plant, just from that one incident out of 30 or 40 years of
19 manufacturing, couldn't they, sir?

20 MR. HEINEMAN: Objection, your Honor. There is no
21 evidence there was any fumes, there is no evidence there was
22 any dust.

23 THE COURT: Overruled.

24 A I couldn't say they would have no exposure.

1 Q That's what I am asking you, sir. You can't say that,
2 can you, sir?

3 A No, sir.

4 Q And Doctor, your 1984 proposed Krummrich plant study
5 by Northwestern or the one that Northwestern gave you the
6 protocol for, you wanted that study of the Krummrich plant
7 employees, that is, that could have possible exposure to dioxin
8 and compare that to a group of people who never worked in that
9 plant who never had any possible exposure to dioxin, isn't
10 that correct, sir?

11 A No, sir.

12 Q That isn't correct?

13 A No, sir.

14 (Plaintiff's Exhibit 1505 and 1506 were
15 marked for identification.)

16 Q Doctor, I'll hand you what has been marked Plaintiff's
17 Exhibit 1506 and ask you if that is a Monsanto document dealing
18 with the number of employees at Monsanto with potential exposure
19 to dioxin at Krummrich?

20 A Yes, sir.

21 MR. CARR: Offer whatever the number is, 1506, in
22 evidence if it please the Court.

23 (Plaintiff's Exhibit 1506 was offered
24 into evidence.)

1 THE COURT: Any objections?

2 MR. HEINEMAN: Yes, your Honor. There's been no
3 foundation laid for the admissibility of this document. He
4 hasn't established that this witness ever saw it before, that
5 he wrote it, that he got it.

6 MR. CARR: Your Honor, on its face it says it's
7 department of medicine, environmental health, J.H. Spraul, M.D.

8 MR. HEINEMAN: All right, it doesn't mention George
9 Rousch, M.D., does it? And the top document doesn't look like
10 it's any part of what's attached to it there.

11 MR. CARR: I'm giving it to you the way it was given
12 to me, counsel.

13 THE COURT: Okay, objection is overruled. It is
14 admitted over objection.

15 (Plaintiff's Exhibit 1506 was

16 admitted into evidence.)

17 Q Dr. James H. Spraul is a doctor in your department,
18 is he not, sir?

19 A Yes, sir.

20 Q And you and he and others in your department work on
21 this proposed study to be conducted by Northwestern University
22 which we have discussed before?

23 A Yes, sir.

24 Q Did you not, sir? And this document has as a heading

1 of it The Estimate of Number of Employees with Potential Dioxin
2 Exposure at Krummrich, does it not, sir?

3 A Yes, sir.

4 Q And it describes in that group as Department 236, 237,
5 268 and 239, does it not, sir?

6 A Yes, sir.

7 Q Sir?

8 A Yes, sir.

9 Q And the second page talks about comparing this group
10 with a suitable control population, doesn't it, sir, in the
11 paragraph numbered 2 under the heading Proposed Program?

12 A Yes, sir.

13 Q And the objective of the study is to get an independent
14 study of the health status of workers in these departments to
15 establish whether or not there are health effects attributable
16 to dioxin, does it, sir?

17 A Yes, sir.

18 Q Then it deals with the workers in 236 who have the
19 potential for exposure at Krummrich to dioxin, doesn't it, sir?

20 A Yes, sir.

21 Q And that is the same group of people that the Krummrich
22 health study worked with that we are now discussing in Exhibit
23 1500 and 1501 and 1504, isn't that correct, sir?

24 A Yes, sir.

1 Q So now your department has described these people as
2 having a potential for dioxin exposure, don't they, sir?

3 A Yes, sir.

4 Q And they want to compare them with the people who have
5 had no exposure, don't they, sir?

6 A Yes, sir.

7 Q Now, Doctor, back to this group that we're talking
8 about. This group, therefore, all potentially had some exposure
9 to dioxin. By this group, I mean the Krummrich plant health
10 study, the group that describes in Suskind's report dated September
11 29th, 1980.

12 MR. HEINEMAN: Objection, your Honor. He was talking
13 about 2,3,7,8 before, and this document talks about dioxin,
14 generally. Object to it as misleading.

15 THE COURT: Objection is overruled.

16 Q Could you answer that question, please, sir?

17 A Yes.

18 Q And is that the answer to my question, yes?

19 A It's a study of those exposed to dioxin, and the
20 answer is yes.

21 Q Yes. Now, Doctor, these, this study then that we have
22 here that Dr. Suskind performed was not of unexposed people,
23 was it, sir?

24 A No, sir.

1 Q Now, these people, sir, all had various tests performed,
2 and you, of course, have seen the test results. But if I under-
3 stand it correctly, you have not analyzed them except following
4 the--or during the time we had our recent vacation break, isn't
5 that correct, sir?

6 A I didn't look at the individual records until this
7 interval.

8 Q That's what I've asked you, sir.

9 A Yes, sir.

10 (Plaintiff's Exhibit 1507 was marked
11 for identification.)

12 Q Doctor, I hand you Plaintiff's Exhibit 1507 and ask
13 you if that is the analysis that we prepared that you have seen
14 and saw during this vacation break that I delivered to Monsanto?

15 A Yes, sir.

16 MR. HEINEMAN: Excuse me, your Honor. Are we missing
17 a number? What happened to 1505?

18 MR. CARR: I didn't use it. I had it marked, but I
19 didn't use it.

20 MR. HEINEMAN: Shouldn't I get to see it?

21 MR. CARR: The witness didn't see it, I didn't refer
22 to it. I used another document to prove the point, counsel.

23 Your Honor, I'm going to ask some questions with the
24 Court's permission about this exhibit, and I would like the jury

1 to have the exhibit, and I will represent to the Court that this
2 exhibit is a summary of those things shown in Group Exhibit
3 1504, and that at the conclusion of Dr. Rousch's testimony--I
4 could have asked to take him off, and I have told counsel and they
5 didn't want to do that, I will have a registered nurse who will
6 testify to the results in this and that these are in fact the
7 results shown from and data taken from Group Exhibit 1504, and
8 I will represent to the Court that it will be so connected, and
9 I'd like to pass it to the jury so that I might ask some
10 questions of the witness.

11 MR. HEINEMAN: Are you moving its admission now?

12 MR. CARR: I am, based upon the condition that I will
13 tie it up.

14 MR. HEINEMAN: May we approach the bench, your Honor?

15 THE COURT: Yes, you may.

16 (The following proceedings were held at the
17 bench.)

18 MR. HEINEMAN: Your Honor, obviously we would object
19 to this document created by somebody employed by Mr. Carr on
20 a number of different grounds. First of all, it's our position
21 that the evidence on which he has represented it is based is
22 inadmissible. I know the Court has already ruled that it's
23 admissible and admitted it into evidence, but our position is
24 that the underlying data that he represented this is based on

1 is inadmissible. In addition, there is no foundation laid for
2 its admission into evidence. It is hearsay. There is no
3 expert who has testified to link up what he purports to show
4 by this exhibit with any of the Kemner plaintiffs. Its probative
5 value and its relevance have not been established. In our
6 opinion, it is inaccurate and it would be unfair. For example,
7 if I am able to establish in cross examining his next witness
8 who is supposed to qualify this document, if I am able to
9 establish to the Court's satisfaction that it is sufficiently
10 inaccurate, that it has inadequate probative value and should
11 be stricken, it will be too late. The jury will have already
12 seen it and it will be too late to erase it from their minds.
13 So it isn't fair to us to give it to the jury now before we
14 have an opportunity to cross examine the person who is allegedly
15 going to establish its foundation, and we object to it. There
16 is a great many things in it which we think are inaccurate.
17 There is a number of things in it which are not in the lab
18 reports that were done and offered on behalf of the Plaintiffs
19 in the case. In other words, the lab reports that were done of
20 the specimen submitted by the Plaintiffs, there are some things
21 that are in this that are not in that, and it's unfair to compare
22 apples and oranges.

23 THE COURT: You mean different tests?

24 MR. HEINEMAN: Different tests, right. And there's

1 just no foundation for it, and it puts us in an impossible
2 position to ask the jury to see it now. We would submit to
3 the Court that eventually it shouldn't be submitted at all,
4 that it's totally inadmissible in any event.

5 MR. CARR: Your Honor, I have the option if I wish
6 to ask the Court leave to take the Doctor off and put on this
7 witness and put the Doctor on for the relatively few questions
8 that I am going to ask him about this exhibit. I have represented
9 to the Court, I will represent to the Court that this is a true
10 and accurate summary of the data that's in this exhibit. They
11 have had this exhibit in their hands now for, oh, at least a
12 month or thereabouts. The Doctor has reviewed it, he's reviewed
13 the reports, and if in fact this Court ultimately strikes this
14 exhibit, it would have to be on the basis that it is not an
15 accurate reflection, substantially accurate reflection of the
16 exhibit that's already in evidence, and I am representing to the
17 Court that it is a substantially accurate summary of the test
18 results.

19 THE COURT: I'm going to overrule your objection.
20 I'll allow you to have it admitted subject to later connection.

21 MR. CARR: Thank you, your Honor.

22 (The following proceedings were held in
23 open Court.)

24 Q Doctor, to put this in proper perspective, it is a

1 summary of the Krummrich plant health study, it bears--it deals
2 with the chlorinated phenol Departments 236 and 237, and it
3 shows the date of examination is 1979, done by Dr. Suskind, and
4 it was reported in September, 1980, do you see that? And that
5 all is correct, to your knowledge, is it not, sir?

6 A Yes, sir.

7 Q I'm sorry, I couldn't hear you.

8 A Yes, sir.

9 Q And it discusses the symptoms reported there are
10 headaches, sleep difficulty, fatigue, poor appetite, and
11 neurobehavioral problems, and those are symptoms represented
12 by the questions 3 to 9 that we previously asked you that were
13 part of this study, are they not, sir?

14 MR. HEINEMAN: Excuse me, are you asking him whether
15 the checkmarks there represent those questions?

16 MR. CARR: No, the symptoms reported at the top of
17 the page, counsel. If you see, I just read it, whether or not
18 those are the same symptoms that I discussed with him this
19 morning that were represented by questions 3 to 9 on the
20 questionnaire that's part of Exhibit 1504.

21 A Yes, sir.

22 Q And Doctor, you recognize the names as those names
23 of those people that submitted to this examination, do you not,
24 sir?

1 A Yes, sir.

2 Q And there are some 58 in number, do you see that, sir?

3 I'm sorry, 58 on one page, 50 on another, 108 in number?

4 A 105.

5 Q Well, I think you added it up, it added up to be 108,
6 but I won't quarrel with your--

7 A I'm sorry, you may well be right. I took those numbers
8 and added them up. I thought it was 105, but it does come out--
9 I thought there were 105 rather than 108.

10 Q Well, be that as it may, it is all those that recorded
11 the lab results, I counted 108 and your counting certainly could
12 be as good as mine, that's neither here nor there. The second
13 column shows the symptoms, have you had occasion to add up
14 the number of people that reported one or more of these dioxin
15 type symptoms, Dr. Rousch?

16 A Yes, sir.

17 Q And it's 83, isn't it, sir?

18 A I don't recall.

19 Q Well, that's what I added up, that there is 83.

20 A If you add them, all of the symptoms together, it
21 comes out to 83.

22 Q 83 persons having one or more of these symptoms as
23 reported to Dr. Suskind.

24 A Yes, sir.

1 Q And Doctor, 83 is 77 percent of the 108. You can take
2 my word for that, I did that on a calculator, is it not, sir?

3 A That's about right.

4 Q So if this summary is correct, it means that more than
5 three-fourths of your workers in the chlorinated phenol department
6 at Krummrich plant had one or more of symptoms and so reported
7 to Dr. Suskind that can be associated with dioxin poisoning,
8 isn't that correct, sir?

9 MR. HEINEMAN: Objection, your Honor. Well, perhaps
10 if I--did he say of anyone that ever worked in the plant or
11 produced in the study?

12 MR. CARR: These that are reported here, counsel,
13 as you know.

14 THE COURT: Objection is overruled. You may continue.

15 Q Isn't that correct, Doctor?

16 A Yes, sir.

17 Q Now Doctor, Dr. Suskind asked those questions, the
18 only questions asked on current status, on current health
19 status, he asked those seven questions for a scientific purpose
20 didn't he, sir?

21 A Yes, sir.

22 Q And he is the one that designs those questions as
23 he designed this entire study that's associated with or to be
24 the health status study for people exposed to dioxin, isn't

1 that correct, sir?

2 A Yes, sir.

3 Q Sir?

4 A Yes, sir.

5 Q Now, do you not believe that it is significant that
6 the man that asks the questions, he is the one that said these
7 are the symptoms that I am going to inquire of, these are the
8 things that I consider important and for to have results that
9 show here that show 77 percent of the people. Now, some of
10 these people, Doctor, haven't worked in--well, strike that. You
11 know that some of these people haven't worked in the chlorinated
12 phenol department for years, you know that, don't you, sir?

13 A Yes, sir.

14 Q Some of these people had exposure in the, only in the
15 60s and 70s, or some of them in the 50s and were transferred
16 to other departments and were not currently exposed on a daily
17 basis in '79 to that which was produced in Department 237, isn't
18 that correct, sir?

19 A I don't know that.

20 Q But you know that from the nature of these questionnaires,
21 don't you, sir?

22 A Some of them. I didn't go through to find out how
23 long they had been out.

24 Q That's the only thing you're quarreling with is how

1 long they had been not in the chlorinated phenol department, is that correct,
2 sir?

3 A Yes, sir.

4 Q But now Doctor, for 83 Krummrich plant workers, 77 percent of
5 the people that took part in this study and had laboratory exams as well
6 and asked by a scientist to find that there is a positive relationship in
7 77 percent of the people, isn't that significant, Doctor, to a scientist?

8 A No, sir.

9 Q Wouldn't there be statistical significance to the fact that 77
10 percent of your workers have one or more of these abnormalities, these
11 symptoms?

12 A No, sir.

13 Q Doctor, he asked the question for a purpose, he didn't ask it
14 idly, did he, sir?

15 A I can't tell.

16 Q Doctor, didn't we just establish that he asked it for the purpose
17 of determining the possible effects, health effects by exposure to dioxin,
18 didn't we just establish that a few minutes ago?

19 A No, sir.

20 Q Doctor, wasn't this study for the purpose of determining the
21 health status of these people that are employees of this plant have been
22 exposed to these chlorinated phenols?

23 A Yes, sir.

24 Q And didn't he ask these questions in order to determine that

1 health status?

2 A No, sir.

3 Q Then why did you ask these questions, Doctor?

4 A That's a typical medicine question.

5 Q Well, no, he picked out, he designed these questions, he didn't
6 ask did you have a pain in the side, he didn't ask do you have a backache,
7 he didn't ask a number of questions that are typical questions, he designed
8 these, he took these six questions because they were the only questions
9 asked about your current health condition, isn't that right, sir?

10 A Yes, sir.

11 Q Of all the questions asked these people, only six related to
12 their current health condition, isn't that right, sir?

13 A Yes, sir.

14 Q And these six were as reported in, as described in this document,
15 these symptoms reported, weren't they, sir?

16 A Yes, sir.

17 Q Then he's not asking it in general, he wants it because he considers
18 it to be important or to shed some light on their health status, isn't he
19 asking it for that reason, Doctor?

20 A Yes, sir.

21 Q Now, he finds that 77 percent respond positively to those questions,
22 but he didn't make one single mention of it, does he, sir?

23 A No, sir.

24 Q Doctor, if you were to find that 77 percent had signs, symptoms of

1 dioxin poisoning, wouldn't you consider it important that 77 percent of
2 your workers have got symptoms of dioxin poisoning, why don't you consider
3 that important, sir?

4 A You can't make a diagnosis of dioxin poisoning--

5 Q Doctor, I'm not asking you to make a diagnosis, that's what
6 Dr. Suskind was going to do with his lab test reports with his physical
7 examination and with the symptomatology and with the records and everything
8 else. I'm not asking to make a diagnosis just on that. What I am asking
9 you is wouldn't you consider it important that 77 percent of your employees
10 had symptoms of dioxin poisoning?

11 A No, sir.

12 Q Doctor, isn't it important to you that your Krummrich plant
13 workers, 77 percent have one or more of these symptoms of dioxin poisoning?

14 A No, sir.

15 Q Why isn't that important to you, Doctor? Don't you care about
16 their health?

17 A Eighty percent of the general population complains of headaches
18 alone, so 77 percent, just a headache would take care of the 77.

19 Q But Doctor, did you see where it was one or more? If it was
20 just a headache, there would just be one checkmark there, wouldn't there,
21 sir?

22 A Yes, sir.

23 Q There is only 26 that have only one checkmark, and that's not
24 necessarily the headache. I'm not representing that it is. There's only

1 26 out of 108 that have only one symptom.

2 A Yes, sir.

3 Q Now, that means there are 66 that have more than one symptom or
4 thereabouts, my addition and subtraction may be wrong. And Doctor, the
5 headache question was asked by Dr. Suskind?

6 A Yes, sir.

7 Q Because he knows that it is commonly reported by people who have
8 exposure to dioxin that they get headaches on a chronic, long-term basis,
9 either on a daily or weekly basis, you know that, don't you, sir?

10 A No, sir.

11 Q You don't know that?

12 A No, sir.

13 Q Why do you think Dr. Suskind asked that question then, if he
14 didn't know that?

15 A I don't know why Dr.--what Dr. Suskind was going to do with that
16 history.

17 Q Dr. Rousch, you knew Dr. Suskind was asking these questions
18 because he was studying whether or not there was a relationship between
19 the exposure and their health, he so states, doesn't he, sir?

20 A Yes, sir.

21 Q And that's the reason he asks the questions, isn't that right,
22 sir?

23 A Yes, sir.

24 Q Now, Doctor, he could have asked any questions, and he could

1 have put as many questions in here as he wanted, but he selected these
2 seven people, didn't he, sir?

3 A Yes, sir.

4 Q And he had reported to him the sleep difficulty, the fatigue,
5 the poor appetite, and the neurobehavioral problems, hasn't he, sir?

6 A Yes, sir.

7 Q And he doesn't make one mention of it in his report, does he,
8 sir?

9 A No, sir.

10 Q Now, did he consider that, do you think he considered that 77
11 percent wasn't a large figure, a large statistic, do you think maybe he
12 thought it should be 100 percent?

13 A No, sir.

14 Q Well, it is, if that, if these are the dioxin symptoms or chlorinated
15 phenol exposure symptoms and so designed, the questions designed by
16 Dr. Suskind to reveal that, then the answers to those questions become
17 important, don't they, sir?

18 A Possibly important.

19 Q And to have 83 out of 108, with one or more of these symptoms,
20 that becomes important, doesn't it, sir?

21 A No, sir.

22 Q Now, Doctor, why ask the question if it's not important?

23 A It's a medical approach to try to decide whether there is a
24 problem.

1 Q And he doesn't make any decision on that, does he, sir?

2 A He couldn't.

3 Q Sir?

4 A He couldn't.

5 Q What do you mean he couldn't? He could do exactly the same thing
6 I did, or my nurse did, can he not?

7 A When a physician looks at that, he looks at it differently than
8 a nurse would look at it.

9 Q For a diagnosis, but not for a study. He made these questions,
10 he asked these questions, because he was interested in the answers because
11 he thought the answers would be relevant to their health, didn't he, sir?

12 A Possibly relevant.

13 Q And he got responses?

14 A Yes, sir.

15 Q Of possibly relevant things?

16 A Yes, sir.

17 Q Now, if it were all negative, if you didn't have these problems,
18 don't you think he would have reported none of these people or a very
19 small percentage of these people had any symptoms of problems that are
20 associated with dioxin exposure, don't you think he would have said that, sir?

21 A It couldn't happen that way.

22 Q It couldn't be negative?

23 A These are nonspecific questions.

24 Q Doctor, why did he ask the questions if he is not interested in

1 their health?

2 A He was trying to see what the results of that would be.

3 Q And he found out what it would be, didn't he, sir?

4 A Yes, sir.

5 Q He found out that 77 percent were positive, didn't he, sir?

6 A Yes, sir.

7 Q And he didn't use it, did he, sir?

8 A Nor would I.

9 Q Doctor, he didn't use it, did he, sir?

10 A No, sir.

11 Q And he didn't even mention any reason why he didn't use it, did
12 he, sir?

13 A No, sir.

14 Q He didn't say that it was unimportant, did he, sir?

15 A No, sir.

16 Q He didn't say that he couldn't draw any conclusions from it,
17 did he, sir?

18 A No, sir.

19 Q And he just completely ignored it, didn't he?

20 A No, sir.

21 Q Oh? Where did he make any mention of it in his report?

22 A He didn't put it in the report, but that didn't mean he didn't
23 look at it.

24 Q I asked you whether or not he ignored it. I know he looked at it,

1 I know that he added it up, I know he did exactly the same thing that I did,
2 and you can do, you can look at those reports and look at those symptoms
3 and see 77 percent symptomatology.

4 A Yes, sir.

5 Q He saw this and he decided to ignore that result, didn't he, sir?

6 A No, sir.

7 Q Did he make any mention of it in his final report, Dr. Rousch?

8 A That's not his final report.

9 Q Dr. Rousch, we went through that, it was his final report up until
10 mid June of 1985, wasn't it?

11 A Yes, sir.

12 Q Now, Doctor, did he make any mention of these symptomatology in
13 his report?

14 A No, sir.

15 Q Do you think he owes the men at Krummrich an explanation of why
16 he asked the question, got the answers to his questions, and then decided
17 to ignore the answers to the questions?

18 A I don't know.

19 Q You don't know whether or not he owes them an explanation?

20 A If he were asked, yes.

21 Q Now, Doctor, he asked the question to see if there was a
22 correlation between working in the chlorinated phenol department and these
23 symptomatology, did he not?

24 A Yes, sir.

1 Q And he found that there was a correlation, didn't he, sir?

2 A No, sir.

3 Q Isn't there a correlation, Doctor, between these 77 percent of
4 the people that got it and their exposure to chlorinated phenols?

5 A No, sir.

6 Q Aren't these all these people exposed to chlorinated phenols and
7 potentially exposed to dioxin?

8 A Not if they work in 236.

9 Q Doctor, we just went through that. I just cannot go through the
10 same thing over and over again. Don't you recall, we had this list of
11 those, this is the exhibit just before this one, or during the course of
12 this one, the list, you have it in front of you somewhere, those people
13 with potential exposure to dioxin. Do you recall that, sir, that we went
14 through that?

15 A Yes, sir.

16 Q And included all these people in 236, didn't we, sir?

17 A Yes.

18 Q Now, Doctor, there is a correlation then between exposure to
19 chlorinated phenols, the possible exposure of dioxin and these symptoms,
20 isn't there, sir?

21 A No, sir.

22 Q Doesn't 83 correlate well with 108 exposed?

23 A If 80 percent of normal population had headaches--

24 Q Excuse me, Doctor, doesn't 83 out of 108, isn't that a pretty good

correlation?

A No, sir.

Q What do you need, 108 out of 108 for it to be a good correlation?

A No, sir.

Q Huh?

A No, sir.

Q How many do you need having headaches before you find there is a correlation? How many do you need with neurobehavioral problems? How many do you need with sleep difficulty? How many do you need with fatigue before you find there is a correlation, Dr. Rousch?

A It's got to be above expected.

Q And what is expected, Doctor, of these symptoms?

A I told you, one of them was headache--

Q Well, what about fatigue and sleep difficulty?

A Sleep difficulty, at least 20 percent of the population and maybe all of the normal population has some complaint of sleep difficulty. Something of the order of 10, 15 percent of the people who have sleep difficulty take medication. So there were 20 people who had sleep difficulty.

Q Doctor, let's stop one moment and be fair on this. You're talking about people who are ill, who don't work, you are not talking about a plant population.

A I'm talking about normal people.

Q You're talking about all the population, you're not talking about normal people.

1 A Yes, I am talking about normal people.

2 Q You are not talking about sick people as well?

3 A No, sir.

4 Q They are not included in that group?

5 A No, sir.

6 Q You are saying 10 percent or what percent?

7 A Ten percent of people taking medication for sleep.

8 Q Ten percent of normal healthy people take medication for sleep?

9 A Yes, sir.

10 Q And Doctor, where do you find that recorded?

11 A I think it's McBride's Signs and Symptoms, 1983.

12 Q And it was of a random selection?

13 A Normal population, people who come in without any other complaint
14 will complain of headaches, I mean, complain of difficulty sleeping.

15 Q And what about the fatigue, sir?

16 A The statement that's by the same author says most people will
17 complain of fatigue.

18 Q And what about the poor appetite?

19 A On the poor appetite, about half of these people complaining of
20 poor appetite here were overweight.

21 Q Doctor, what about poor appetite?

22 A I don't have a number on that because it's hard to describe.

23 Q What about the neurobehavioral?

24 A Couldn't find anything on neurobehavioral either, but five people

1 complained of both temper and anger together.

2 A And how many complained about one or the other?

3 A A large number, but if you don't have one, you can't have anger
4 without a temper, and a lot of them complained of anger without a temper.

5 Q Doctor, the questions that were asked in that regard were, "Do you
6 lose your temper easily?" and "Do you feel angry often?" There is a
7 distinction between those questions, and it was designed, the questions
8 were asked with that distinction in mind, isn't that correct, sir?

9 A No, sir, I don't believe so.

10 Q Then what Suskind did was just ask two questions that meant the
11 same thing.

12 A Yes, sir, on purpose.

13 Q And he did it on purpose?

14 A I would suspect so, I can't speak for him.

15 Q Doctor, why did you say he did it on purpose if you are simply
16 suspecting? Did you talk it over with him?

17 A No, sir.

18 Q Didn't you see these questionnaires before they ever went out,
19 or at the same time they were sent out?

20 A No, sir.

21 Q Doctor, he sent you the sample questionnaire and the letter that
22 he was going to send out by you, I mean your medical department, before it
23 was ever sent out, didn't he, sir?

24 A I don't recall.

1 Q Well, Doctor, you had people that discussed it with him that went
2 over the questionnaire, did you not, sir?

3 A I don't think so.

4 Q Then what you're saying then that he just asked the questions,
5 these two questions, for no good or valid reason?

6 A No, sir.

7 Q Well, what did he ask it for?

8 A You will have to ask him.

9 Q Doctor, as far as you're concerned, there was no good and valid
10 reason to ask these two questions, was there, sir?

11 A It has some value, not much.

12 Q And their equivalent to say you feel angry often is the same
13 thing as to say you lose your temper easily?

14 A Yes.

15 Q A person can feel angry often without ever losing his temper.

16 A I don't know what he means by losing temper and don't get angry.

17 Q Doctor, if you don't know what it means, why are you saying they
18 are the same?

19 A That's what we in medicine do.

20 Q Doctor, you are saying they are the same?

21 A To me they are.

22 Q But now I just got through asking you, Doctor, can you not feel
23 angry often and never lose your temper? That is, you have the ability, you
24 may feel anger, but you have the ability to control it, you don't lose your

1 temper easily, you control it, you can feel angry and not lose your temper,
2 can you not, sir?

3 A Yes, sir.

4 Q So there is a difference between those two questions, isn't there,
5 sir?

6 A That's where the judgment comes.

7 Q There is a difference, isn't there, sir?

8 A Yes.

9 Q And he asked the question because he designed the study and he
10 wanted to find out a difference, didn't he, sir?

11 A Yes, sir.

12 Q And he also asked the question about the tired most of the time,
13 and do you need more sleep than usual. He asked those questions for a
14 reason.

15 A Yes, sir.

16 Q And those two questions are tied with fatigue, aren't they, sir?

17 A Sometimes.

18 Q If you are tired most of the time, you generally need more sleep
19 than usual, don't you, sir?

20 A Not necessarily.

21 Q Not necessarily, but you usually do.

22 A No, sir.

23 Q No, sir? Well, then again he asked these questions for a purpose,
24 didn't he, sir?

1 A Yes.

2 Q Now, and he also asked a question about trouble sleeping for a
3 purpose, didn't he, sir?

4 A Yes, sir.

5 Q But he makes no mention of those, any of those problems, does he,
6 sir?

7 A No, sir.

8 Q And he doesn't say, well, they have the same problems as the rest
9 of the United States population, does he, sir?

10 A No, sir.

11 Q Now, don't you reckon that if he found that that is the conclusion
12 that because he's being paid by Monsanto and Monsanto has a financial stake
13 in showing that dioxin doesn't cause these problems, don't you reckon that
14 he would have stated it if he found that to be the case?

15 A No, sir.

16 Q Now, Doctor, Monsanto does have a financial stake in the question
17 of health related to dioxin, doesn't it?

18 A Yes.

19 Q And it is an important financial stake, isn't it, Doctor?

20 A I don't know.

21 Q You don't know that it's an important financial stake?

22 A I don't know how important it is.

23 Q I didn't ask you how important, I just asked you if it was an
24 important financial stake.

1 A Yes.

2 Q And Doctor, if by these studies you can show that there are no
3 health problems related to the exposure to dioxin, that is important to
4 Monsanto from a financial viewpoint, isn't it, sir?

5 A I don't know.

6 Q Haven't you seen memos, sir, in which it is so described?

7 A This has never been publicized.

8 Q Sir?

9 A This has never been publicized.

10 Q Doctor, I'm not asking you about that. I'm asking you if you have
11 ever seen memos to the effect that it's important to Monsanto from a
12 financial interest that you want protection from litigation, and that that's
13 the reason these studies are important.

14 A I don't recall.

15 (Plaintiff's Exhibit 1508 was marked for identification.)

16 THE COURT: Any objection?

17 MR. HEINEMAN: Oh, has it been offered, your Honor?

18 MR. CARR: I haven't offered it yet. I'm waiting for you to quit
19 looking at it so I can show it to the witness and then offer it.

20 Q Doctor, I'll hand you Exhibit 1508. Do you recognize that as
21 a memo dealing with the Krummrich study program that you are planning to
22 undertake with Northwestern, have you got a copy of that memo?

23 A Yes, sir.

24 Q And just turn to the second page. Does not that memo discuss

1 that you want, one of the purposes for it is to protect Monsanto's financial
2 interests against unwanted litigation--

3 MR. HEINEMAN: Excuse me, your Honor, is it being offered now?

4 MR. CARR: No, counsel.

5 MR. HEINEMAN: You are not offering it into evidence?

6 MR. CARR: No, I'm not.

7 MR. HEINEMAN: Well, I'll object to any testimony about it, your
8 Honor.

9 MR. CARR: Well, I'll offer it if he is going to object to it,
10 not that it's going to make any difference.

11 THE COURT: Any objection?

12 MR. HEINEMAN: No objection.

13 THE COURT: Admitted without objection.

14 (Plaintiff's Exhibit 1508 was admitted into evidence.)

15 Q Doctor, does it not state that one of the purposes of the
16 Northwestern study that you are going to have is to protect Monsanto's
17 financial interests against unwanted litigation?

18 A Yes, sir.

19 Q Now, does that refresh your recollection that that's one of the
20 purposes of health studies?

21 MR. HEINEMAN: You're talking about the Northwestern health studies?

22 MR. CARR: No, counsel.

23 MR. HEINEMAN: That's what that's talking about, isn't it?

24 MR. CARR: I understand that, counsel.

1 Q What is the answer to my question?

2 A The Krummrich study--

3 Q The Krummrich study or any study that Monsanto pays for.

4 A No, sir.

5 Q That's not one of the purposes, Doctor?

6 A It can be.

7 Q Doctor, the study that you paid for with Dr. Suskind that we're
8 discussing now didn't serve that purpose, did it? It would not protect
9 Monsanto's financial interest, would it, sir?

10 A I don't know.

11 Q Doctor, do you know anybody outside of the group at Monsanto if
12 the upper echelons in the management that had a copy or received a copy of
13 this report at all or even knew of its existence before this Court ordered
14 your lawyers to bring it in to me? Do you know of anybody anywhere that
15 even knew of the existence of this study outside of the people that I
16 described at Monsanto?

17 MR. HEINEMAN: Objection, your Honor. That question mischaracterizes
18 what occurred. It is correct as far as it goes, but as Mr. Carr knows,
19 this Court ordered us to get it from Dr. Suskind, who refused to give it
20 to him, and--

21 MR. CARR: That isn't the facts at all. This was in your
22 possession, this study was in your possession and had been since September
23 29, 1980. I'm talking about this report.

24 Q Doctor, this so-called health study, September, 1980 is when you

1 received it from Dr. Suskind. I'm asking you, Doctor, is there anybody
2 outside of the group at Monsanto that even knew of the existence of this
3 health study until we, until this Court ordered Monsanto to produce it to
4 me?

5 A I don't think so.

6 Q Doctor, is it a possible reason for the refusal of Monsanto to
7 publish this report or to let it be known, you announced in 1980 that you
8 were going to let the public know of it, is a possible reason that you didn't
9 is because this report showed that there is a direct relationship between
10 exposure to chlorinated phenols containing dioxin and certain health
11 effects?

12 A No, sir.

13 MR. HEINEMAN: Object to the form of the question, your Honor.
14 It implies---it doesn't imply---it states that we refuse to publish it,
15 refuse to let it be known, and I don't know that there is any evidence of
16 that at all.

17 THE COURT: Objection is overruled.

18 Q This Exhibit 1504 shows that the union was going to demand that
19 a joint letter be issued to Dr. Suskind demanding this report on these
20 results, doesn't it, sir?

21 A Yes, sir.

22 Q And it wasn't public so far as the union knew, was it, sir?

23 A No, sir.

24 Q And no one else knew of this report, did they, sir?

1 A No, sir.

2 Q Now, Doctor, isn't it a possible reason that the abnormal lab
3 reports that are shown in this report correlates with the exposure to
4 these chlorinated phenols containing dioxins, correlate with the symptoms
5 and that that is the reason that you at Monsanto have not caused this to
6 be published?

7 A No, sir.

8 Q That's not a possible reason?

9 A No, sir.

10 Q Now, Doctor, look at the porphyrin results shown here.

11 A Yes, sir.

12 Q There are 38 people with abnormal porphyrins, according to the
13 Metpath laboratory based upon the sample sent them.

14 A No, sir.

15 MR. HEINEMAN: Excuse me, your Honor, which report are we talking
16 about now? I thought he was talking about the Suskind report. I'm
17 confused. Are you talking about this document you created?

18 MR. CARR: Yes, counsel.

19 MR. HEINEMAN: Mr. Carr--

20 Q Because Suskind doesn't mention the porphyrins, does he?

21 MR. HEINEMAN: My question is which document are you talking
22 about?

23 Q Doctor, the document that I have in my hand and that you're
24 looking at is the summary of the abnormal lab reports, it's Exhibit 1507 and

1 it shows--

2 MR. HEINEMAN: Thank you.

3 Q --abnormal porphyrins in 38 people tested.

4 A No, sir.

5 Q Have you counted up those checkmarks, Doctor?

6 A No, I did not.

7 Q Well, are you going to count them? I counted them, it adds up to
8 38.

9 A But they're not abnormal.

10 Q Doctor, did not the laboratory report these as abnormal?

11 A No, sir.

12 Q Did not?

13 A No, sir.

14 Q Doctor, if you will look at the first one that has abnormal
15 porphyrins would be Andrews, would you look to his porphyrins and see what
16 Metpath reported? Metpath reported what for the coproporphyrin, Doctor?
17 The last page.

18 A Nine micrograms per liter.

19 Q And what was the normal range given by Metpath?

20 A There is none.

21 (Plaintiff's Exhibit 1509 was marked for identification.)

22 Q Doctor, you are aware of the fact that Monsanto ordered us to
23 give the normal test range for these various laboratory reports, you are
24 aware of that fact, sir?

1 A No, sir.

2 Q I show you Exhibit 1509 and ask you if you have ever seen what
3 Metpath says is normal for its porphyrins?

4 A Yes, sir.

5 Q You have seen those before?

6 A No, sir

7 Q And Doctor, normal for coproporphyrin--

8 MR. CARR: Offer 1509 into evidence if it please the Court.

9 (Plaintiff's Exhibit 1509 was offered into evidence.)

10 MR. HEINEMAN: May I see it?

11 MR. CARR: Sure.

12 Q Doctor, while he's looking at it, you are aware of the fact that
13 Dr. Suskind used the same laboratory for the Nitro studies and for the
14 Krummrich studies, the Metpath?

15 A I thought so.

16 Q And do you recollect looking at the Nitro study and it gave normal
17 and abnormal porphyrin ranges in the Nitro study?

18 A No, sir.

19 Q You don't recollect that?

20 A No.

21 MR. CARR: Offer 1509 and I represent to the Court that this was
22 delivered to us under order of the Court for the normal test references used
23 by Dr. Suskind in his Krummrich and in his Nitro study, your Honor.

24 MR. HEINEMAN: I'd like to see the request for production pursuant

1 to which this was produced, your Honor, because I don't recall that being
2 the case. This has written on it "Suskind Nitro study."

3 MR. CARR: I wrote that on there, counsel.

4 THE COURT: Objection is overruled.

5 MR. HEINEMAN: And I object to it further on the basis that
6 there is absolutely no foundation laid for the admission of this document
7 into evidence.

8 THE COURT: Objection is overruled.

9 MR. HEINEMAN: The witness has never seen it before.

10 THE COURT: Objection overruled. It is admitted.

11 (Plaintiff's Exhibit 1509 was admitted into evidence.)

12 Q Doctor, the coproporphyrin normal range from Mayo is from a
13 low of 30 to a high of 240?

14 A Is this Metpath or Mayo? You said Mayo.

15 Q I'm sorry. The Metpath ranges as from February 25, '79 was from
16 30 to 240, is it not, sir?

17 A For 24 hours.

18 Q Doctor, that's the test range that was given to us. You understand
19 that, and they have their normal range at 30 to 240, do they not?

20 A For 24 hours, otherwise it doesn't count.

21 Q You're saying otherwise it doesn't count, but they have it as
22 their test range of microgram units, 24 hours, 30 to 240, 30 to 240, do they
23 not?

24 A Yes.

1 Q And it is per liter?

2 A No, sir, absolutely not.

3 Q Doctor, we'll get to that subsequently. But the range that they've
4 given here ranges from 30 to 240, does it not?

5 A For 24 hours.

6 Q Whatever, it is the same range that Dr. Suskind used in his study
7 of abnormal porphyrins, was it not, sir?

8 A I don't know.

9 Q Doctor, if you turn to Table 35 in Plaintiff's Exhibit 1493, on
10 Page 77, are you there, sir?

11 A I've got Page 77, yes, sir.

12 Q And does not Dr. Suskind describe the normals for the coproporphyrin,
13 the range of 30 to 240?

14 A I need one of the other ones. Yes, sir, I'm sorry, I was trying
15 to see which is right.

16 Q Does not Dr. Suskind describe the normals for coproporphyrin as
17 from 30 to 240 micrograms per liter?

18 A I can't tell, yes, sir.

19 Q And does he not, and you recognize that it's the same laboratory,
20 Metpath, that he used there that he used here?

21 A Yes, sir.

22 Q And that is the same normal range that I've shown you in Exhibit
23 1509, is it not, sir?

24 A No, sir.

1 Q It's not 30 to 240, sir?

2 A Yes, but that's per liter.

3 Q Doctor, he is the one--you recognize this as the Metpath results
4 that was given, I'll represent to you that Exhibit 1509 is the Metpath
5 test ranges given to us by Monsanto for the basis for the normals for the
6 Suskind/Nitro study, that is Exhibit 1483, and it was given to us for the
7 basis of the normals for the Krummrich study for Metpath as well. Would
8 you take that as represented, sir, are these tests ranges the same range
9 in the Krummrich plant study and in the Exhibit 1483 for coproporphyrins,
10 30 to 240?

11 A No, sir.

12 Q Doctor, you see that 30 is low and 240 is the high?

13 A Yes, sir.

14 Q And this table for coproporphyrins, 30 is the low and 240 is
15 the high?

16 A Yes.

17 Q They are the same, are they not, Doctor?

18 A But one is per liter and the other one is per 24 hours.

19 Q Dr. Suskind interpreted those to mean the micrograms per liter,
20 did he not, sir?

21 A I don't know how he got that.

22 Q Doctor, you can see, doesn't that L stand for liter?

23 A Yes, sir.

24 Q And doesn't MCG stand for microgram?

1 A Yes, sir.

2 Q And didn't he have these normals from Metpath?

3 A I don't know, but he must have--

4 Q Doctor, he must have had, at least your counsel have represented
5 to us that this is what he used, sir. Now, based upon that representation,
6 has he not interpreted Metpath's normal range to be 30 to 240 micrograms
7 per liter?

8 A I don't know.

9 Q Doctor, does he put it there?

10 A Yes, sir.

11 Q Did he put it there?

12 A No, sir.

13 Q Has he described it at 30 to 240 micrograms per liter?

14 A Yes, sir.

15 Q And that's how he has used the Metpath normals, is not that
16 correct, sir?

17 A I don't know.

18 Q Doctor, he used it, didn't he?

19 A I'm not sure where he got that from.

20 Q Doctor, I'm representing to you that this is where it came from,
21 that your people have told us under order of Court that these are the
22 Metpath normal ranges, these and no others, Doctor.

23 A Those are the Metpath normal ranges, yes, sir.

24 Q All right, and you know that for a fact, don't you, sir?

1 A Yes, sir.

2 Q You also know that Dr. Suskind used Metpath in the Nitro study
3 and in the Krummrich study, you know that, too, don't you, sir?

4 A Yes, sir.

5 Q And you know then that he interpreted the Metpath normal ranges
6 for uro and coproporphyrins to be as he's put it in Table 35 and Exhibit
7 1483, you know that, too, don't you, sir?

8 A Yes, sir.

9 Q And he has put down, he interprets that to be micrograms per liter,
10 doesn't he, sir? 30 to 240 micrograms per liter as normal?

11 A Yes.

12 Q Now, based upon his interpretation of the Metpath values, will
13 you now agree that Andrews has an abnormal coproporphyrin and an abnormal
14 uroporphyrin result?

15 A No, sir.

16 Q Doctor, what is Andrews' coproporphyrin result?

17 A It's listed at nine micrograms per liter.

18 Q And what is the range given by Dr. Suskind in Exhibit 1483 for?

19 A That's--

20 Q For normal, sir?

21 A It's per liter.

22 Q What is the range, sir, that Suskind has given for coproporphyrins?

23 A 30 to 240.

24 Q Micrograms per what, sir?

1 A Per liter.

2 Q And what does this man have micrograms per liter?

3 A Nine micrograms.

4 Q Is that more or less than 30 micrograms?

5 A It's less than.

6 Q Therefore, it would be low, according to the Dr. Suskind Table 30
7 of normals from 30 to 240 micrograms per liter, would it not, sir?

8 A Yes, sir.

9 Q And on the uroporphyrins, what does Dr. Suskind interpret or has
10 he put in Table 35 as being the Metpath ranges for normal?

11 A Fifteen to sixty.

12 Q And what did Andrews report in uroporphyrins?

13 A Five micrograms.

14 Q Is that less or more than 15?

15 A Less.

16 Q Therefore, Andrews has low coproporphyrins and low uroporphyrins
17 according to these ranges set out in Plaintiff's Exhibit 1483 at Table 35,
18 does it not, sir?

19 A Yes, sir.

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

21 MR. CARR: Yes, your Honor.

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

(At this time, Court was in recess.)

BY MR. CARR:

Q Doctor, with respect to these Metpath lab reports, on the lab reports that you have in Exhibit 1504, Metpath has one section for one portion for normals, and then he has a fourth for results outside the reference range, does he not, sir?

A Yes, sir.

Q And the--both the uro and the coproporphyrins that we have discussed in the case of Andrews or in that section reserved for the results that are outside the established reference range, are they not, sir?

A Yes, sir.

Q And this is the placement of these values of these test results as being outside that reference range is done by Metpath, that wasn't done by Suskind, was it, sir? This is their document, is it not, sir?

A This is their document, yes, sir.

Q And signed by one of their laboratory pathologists, I suppose?

A Yes, sir.

Q And have you had an opportunity to look at the porphyrins or at least a sample of the porphyrins to establish that wherever we, or the nurse that went through this for me, checked off abnormal porphyrins, they were in fact reported as being test results outside the established reference range by Metpath?

A No, sir.

Q You haven't checked that out?

1 A I haven't gone through it, but it doesn't say outside the
2 reference range.

3 Q It says test results outside established reference ranges or
4 confirmed normal result, doesn't it say that, sir?

5 A Yes.

6 Q And doesn't it say coproporphyrin and uroporphyrin, do they not
7 fall within that category just described?

8 A They list a range.

9 Q Doctor, they have reported the uroporphyrin, the creatinine, the
10 triglycerides, all as test results outside the established reference range,
11 don't they, sir?

12 A That's what they say.

13 Q And in fact the coproporphyrin and the uroporphyrin were both
14 outside the range that we had shown you before established by Metpath and
15 used by Dr. Suskind in Exhibit 1483.

16 A No, sir. The reference range that you have for Metpath was
17 in 24 hours rather than liters.

18 Q Doctor, Dr. Suskind used that as an abnormal result, didn't he,
19 sir? Micrograms per liter as reported by Metpath?

20 A I don't know what was reported by Metpath.

21 Q Well, you know that these results were reported by Metpath.

22 A Yes, sir.

23 Q We went through that several times already, Doctor.

24 A Yes, sir.

1 Q And Metpath puts these in the category of test results that are
2 outside the established range, doesn't he, sir? Don't they, sir?

3 A Yes.

4 Q And look at Riley, sir, one of the part of Group Exhibit 1504, or
5 look at, well, look at Riley because that is one where Metpath also gives
6 an established range. Would you do that, sir?

7 A Yes, sir.

8 Q Gives us the range of normal for these porphyrins.

9 A Yes, sir.

10 Q Now, again in the category for test results outside established
11 reference range, Metpath has put in both coproporphyrin and uroporphyrin,
12 haven't they, sir?

13 A Yes, sir.

14 Q And they give the range for coproporphyrin at 30 to 240, do they
15 not, sir?

16 A Micrograms per 24 hours.

17 Q And they call 13 abnormal, don't they, sir?

18 A That's what they reported.

19 Q Yes, and that 13 is outside the normal range that's on this
20 report, on their test results, is it not, sir?

21 A That's based on a volume of--

22 Q Doctor, my question is simply Metpath has put 13 in here and it's
23 put in their category of outside the established reference range, isn't
24 that right, sir?

1 A Based on the--

2 Q Excuse me, could you answer that question?

3 A I am, sir.

4 Q Thirteen is lower than 30 to 240, isn't it, sir?

5 A But they don't say--

6 Q Excuse me, Doctor, could you answer that one at a time?

7 A Yes, sir.

8 Q Thirty is lower than the range they put right next to that.

9 A Yes, sir.

10 Q They put that range in there?

11 A Yes, sir.

12 Q Not Suskind and not you and not me.

13 A Yes, sir.

14 Q They put the range in there at 30 to 240, did they not, sir?

15 A Yes, sir.

16 Q The same as Suskind used, the same as was in the exhibit that I
17 gave you earlier of the Metpath ranges.

18 A No, sir.

19 Q 30 to 240 is not the same, sir?

20 A One is based per liter.

21 Q Excuse me, isn't 30 to 240 the same?

22 MR. HEINEMAN: Objection, your Honor, he interrupted his answer.

23 THE COURT: Objection is overruled.

24 A I'm sorry.

1 Q Isn't 30 to 240 the range that's established here by Metpath?

2 A Yes, sir.

3 Q And isn't it 30 to 240 that's in the other exhibit that he gave
4 you earlier for these normal values here for the range values, Exhibit 1509?

5 A What's 1509?

6 Q The range, Metpath's ranges, the 30 to 240 for the copro and the
7 15 to 60 is exactly the same, is it not, sir? It's 30 to 240 on 1509 for
8 coproporphyrin.

9 A Micrograms per 24 hours.

10 Q And they got the same 30 to 240 in this result for Riley, don't
11 they, sir?

12 A Yes, sir.

13 Q And they call his result of 13 as abnormal, don't they, sir?

14 A Yes, sir.

15 Q And they call his result of in the uroporphyrin of 1.20 as abnormal,
16 don't they, sir?

17 A Yes, sir.

18 Q And they have as a normal range 15 to 60 in his lab results, don't
19 they, sir?

20 A Yes, sir.

21 Q And they also have the same 15 to 60 as their abnormal in
22 Exhibit 1509, don't they, sir?

23 A Yes, sir.

24 Q And Doctor, if you look at Thoman's, out of the same group exhibit,

1 would you look at that, sir? The last page of the exhibit.

2 A Yes, sir.

3 Q They have the copro and uroporphyrin values, don't they, sir,
4 the reference ranges, established reference ranges?

5 A Yes, sir.

6 Q And it is exactly the same, 30 to 240 for copro and 15 to 60
7 for uro?

8 A Yes, sir.

9 Q Now, they show here the copro having 96 micrograms in 24 hours
10 and they show that to be normal, don't they, sir?

11 A Yes, sir.

12 Q They showed the uroporphyrins for Thoman to be 62, and that's
13 outside the normal, isn't it, sir?

14 A Yes, sir.

15 Q That's high, isn't it, sir?

16 A Yes, sir.

17 Q And Doctor, these are the same values that exist in each of these
18 exhibits in Group Exhibit 1504 in each of these lab reports, isn't that correct,
19 sir?

20 A No, sir, not at all.

21 Q Sir, do they give any other normal range or established reference
22 range other than 30 to 240 for the copro and 15 to 60 for the uro?

23 A No, sir.

24 Q They use the same in each of these abnormal porphyrins, each of

1 these porphyrin results here, they use that same range, don't they, sir?

2 A No, sir.

3 Q Doctor, show me where there is a different range that they use.

4 Show me--

5 A They haven't established a range.

6 Q Doctor, do they not in each of these instances that we have
7 checked here, are not these porphyrins and the values that they call outside
8 the established reference range?

9 A No, sir.

10 Q Well, look at each of these, look at each one that you want,
11 Andrews was, was it not?

12 A No, sir.

13 Q Doctor, didn't we just go through this?

14 A Yes, sir.

15 Q And establish it was outside the 30 to 240, and that they had put
16 it in the--

17 A No, sir.

18 Q We didn't just go through that for the coproporphyrins.

19 A And I said no, sir then, too.

20 Q Doctor, isn't 9 less than 30 to 240?

21 A It has to be in the same unit.

22 Q Doctor, excuse me, isn't 9 less than 30 to 240?

23 A Yes.

24 Q And do they not have it as being outside the established reference

1 range?

2 A No, sir.

3 Q Doctor, do you see the line, the name there, test results there
4 outside established reference range, and are they not talking about the
5 coproporphyrin?

6 A Yes, sir.

7 Q Then have they not put the coproporphyrin results as being outside
8 the established reference range?

9 A No, sir.

10 Q Doctor, how can you say that coproporphyrin, they have it listed
11 here as being outside the established reference range, don't they, sir?

12 A No, sir.

13 Q Doctor, am I misreading this?

14 A Yes, sir.

15 Q Coproporphyrin is somehow or another not below this line where
16 it says results outside--

17 A Yes, sir.

18 Q It is?

19 A Yes, sir.

20 Q And they are communicating to the reader of this document that
21 the coproporphyrin is outside their established--

22 A No, sir.

23 Q There is an asterisk, asterisk one says number one was no total
24 volume given, and the results are expressed for liter and Metpath has no

1 established range for porphyrins per liter. Doctor, we saw that with the
2 Suskind study, we saw that with Riley and Thoman, didn't we, sir?

3 A Those two were based on 24-hour urine specimens.

4 Q Who says that?

5 A It's in there.

6 Q Where does it say that?

7 A On Thoman, it says total volume of urine, two liters.

8 Q No, .20 liters.

9 A Well, that's 2 liters.

10 Q Doctor, it says .20 liters.

11 A No, oh, I'm looking at Thoman.

12 Q I'm sorry, I'm looking at Riley.

13 A The total volume on Riley--on Thoman was two liters.

14 Q Yes.

15 A And because it's two liters, they then can put a range out here
16 in micrograms per 24 hours, and when it's abnormal and outside the range
17 it will be put down here, the uroporphyrins were outside because--and they
18 expressed it as 24 hours rather than per liter.

19 Q Well, Doctor, but they treat it normal for the coproporphyrins,
20 do they not?

21 A Yes, sir.

22 Q And they treat the uroporphyrin as abnormal, do they not?

23 A Yes, sir, but they don't have that little asterisk for number
24 one, two, and three.

1 Q Doctor, where is there some indication that these gentlemen
2 gave 24-hour urine samples?

3 A This right here, it says this is expressed in two liters of urine
4 was sent to them.

5 Q So?

6 A That's the basis for their calculation.

7 Q Two liters of urine doesn't mean it is a 24-hour sample, does it,
8 sir?

9 A The Metpath assumed it was 24 hours.

10 Q Well, look at this one, .20 liters. Now, Doctor, in 24 hours
11 somebody is going to urinate .20 liters, that's a fifth of a liter?

12 A I don't understand how they--

13 Q All these people got the same instructions, and they all delivered
14 the same amount.

15 A No, sir.

16 Q This is really at .20 liters?

17 A That's what it says.

18 Q And that is--

19 A And all these documents express--

20 Q Excuse me, Doctor, and that was called a normal range for 24
21 hours of urine output?

22 A No, and if we--

23 Q Excuse me, Doctor, is that what you would call a 24-hour output?

24 A I wouldn't.

1 Q Nobody else would, either, would they?

2 A I hope not.

3 Q Now, Doctor, what you have done with this statement is you
4 have taken figures from Metpath and said, since they put it in liters,
5 therefore it's a 24-hour sample?

6 A No, sir.

7 Q And that's the only thing that you did.

8 A No, sir.

9 Q Oh, really? Now, Doctor, wherein do any of these abnormal values
10 on Andrews, for instance, don't they call it abnormal?

11 A No, sir.

12 Q Now, Doctor, and I am afraid you're going to be going in circles
13 forever, is it above or below the line for normal porphyrins?

14 A It's below the line.

15 Q Yes, the things below the line are outside the established
16 reference range?

17 A No, sir.

18 Q Doctor, does it say that?

19 A But that is--

20 Q Doctor, does it say that?

21 A Yes, sir.

22 Q Now, Doctor, the urinary porphyrins, these were what Suskind
23 ordered, what Monsanto knew was going to be ordered, and what in fact was
24 reported on, Metpath reported on that which you sent, isn't that correct,

1 sir?

2 A No, sir.

3 Q They did not?

4 A Monsanto didn't send them.

5 Q Suskind was working for Monsanto, was he not, sir?

6 A He was working for himself.

7 Q Doctor, he was being paid for every bit of his time and every
8 bit of his effort and every bit of his skill by Monsanto, wasn't he, sir?

9 A Yes, sir.

10 Q Now, if you pay somebody for their time, if you pay somebody for
11 their work, if you pay everything that they bill you for, and you pay them
12 and you design the study, they're working for you, aren't they, sir?

13 A Not a university.

14 Q Well, Doctor, we're talking about Suskind. My question is
15 talking about Suskind. It is his study, is it not, sir?

16 A Yes, sir.

17 Q And you paid him for it, didn't you, sir?

18 A Yes, sir.

19 Q And you paid the laboratory, didn't you, sir?

20 A Yes, sir.

21 Q And every expense, everything associated with this study you
22 paid for, didn't you, sir?

23 A Yes, sir.

24 Q And you paid for these porphyrin results, did you not, sir?

1 A Yes, sir.

2 Q And didn't you give Suskind support by way of personnel as well?

3 A Yes, sir.

4 Q And it was Monsanto's--he did it for Monsanto, did he not, sir?

5 A Yes, sir.

6 Q And these porphyrin results, if you at Monsanto or Suskind
7 were dissatisfied with any result, you could have sent and got more, couldn't
8 you, sir?

9 A Yes, sir.

10 Q If you weren't satisfied with these results by Metpath, you could
11 have had each of those men send a 24-hour sample, couldn't you, sir?

12 A Yes, sir.

13 Q But you didn't do that, did you, sir?

14 A No, sir.

15 Q So there wasn't anything about these results that you were
16 dissatisfied with, isn't that correct, sir?

17 A Dr. Suskind said they were no good.

18 Q Excuse me, Doctor, would you answer that question, please, sir?

19 A Would you repeat the question, please?

20 (Previous question was read by the reporter.)

21 A No.

22 Q That isn't correct?

23 A No.

24 Q Well, what, did you order any additional tests?

1 A No, sir.

2 Q Did you have the power, the capacity, the time to order additional
3 tests if you wanted them done, sir?

4 A Yes, sir.

5 Q Would you have ordered additional tests if you were dissatisfied
6 with the test results that you got, sir?

7 A If I thought it was necessary.

8 Q Well, it would be necessary if you can't rely upon these results
9 for porphyrins, isn't that right, sir?

10 A Yes.

11 Q And so you didn't feel it was necessary for porphyrin results to
12 send another sample, did you, sir?

13 A Not at that time.

14 Q Yes, and you never at any time since then, did you, sir?

15 A No, sir.

16 Q So these results, you were satisfied with, and did not ask for
17 any new or additional tests, did you, sir?

18 A No, sir.

19 Q And these results that were reported to you by Metpath, you've
20 known since 1980, have you not, sir?

21 A No, sir.

22 Q Sir?

23 A No, sir.

24 Q Doctor, do you not recall the exhibit that said that Metpath

1 sent the results, you've known it since 1979; you're correct in saying no,
2 sir, these results were sent to you in 1979, in October of 1979.

3 A To Monsanto.

4 Q Well, that's what I am talking about when I say you, Monsanto,
5 isn't that right, sir?

6 A It was sent to the plant.

7 Q To the Monsanto medical department?

8 A Yes, sir.

9 Q And these porphyrin results were reported just exactly as we
10 see them here, weren't they, sir? These are the lab reports just as sent
11 to you at Monsanto by Metpath.

12 A I think so, but I didn't see them. I suspect so.

13 Q And Monsanto didn't express any dissatisfaction with that, did
14 they, Doctor?

15 A Dr. Osland did.

16 Q And he's working for Monsanto, isn't he, sir?

17 A Yes, sir.

18 Q He is paid by Monsanto?

19 A Yes, sir.

20 Q He is an employee of Monsanto, isn't he, sir?

21 A Yes, sir.

22 Q So Monsanto didn't express any dissatisfaction with any of these
23 porphyrin test results, did they, sir?

24 A I don't know what the three that were redone, I don't know what,

1 there were three of them that had something done, and I don't know why those
2 were done.

3 Q Well, if you could look at Isaac, was one of them. He has the
4 same, if you want to look at Isaac's porphyrins, if you would.

5 A They were repeated because they were broken in transit.

6 Q Well, they were repeated for that purpose then, so if you are
7 not satisfied with those, any results, you would have them repeated, wouldn't
8 you, sir?

9 A Dr. Osland would have.

10 Q And Dr. Osland is Monsanto in this instance, isn't he, sir?

11 A Yes, sir.

12 Q So you at Monsanto were perfectly satisfied with these laboratory
13 reports, aren't you, sir?

14 A Yes.

15 Q They gave you the information that you were looking for and
16 seeking, didn't they, sir?

17 A Yes.

18 Q They gave you the information that you believe was important to
19 help you arrive at the conclusion as to whether or not these people had
20 anything wrong with them that might be associated with dioxin, isn't that
21 correct, sir?

22 A I don't know what Dr. Osland thought.

23 Q Doctor, I'm talking about Monsanto. I'm not talking about
24 Dr. Osland himself. It was not his study. He didn't pay for it, he's

1 being paid just like everybody else, that is by Monsanto.

2 A Yes, sir.

3 Q So don't try to say that it's Dr. Osland's study, because it
4 isn't. It is Monsanto's study, is it not, sir, and not Dr. Osland's?

5 MR. HEINEMAN: Objection, your Honor. He just demanded that
6 the witness answer everything on behalf of Monsanto because Dr. Osland did
7 it. Now, he doesn't want to know what Dr. Osland thought. I object to
8 it.

9 THE COURT: Objection is overruled.

10 A May I have the question, please?

11 (Previous question was read by the reporter.)

12 A The answer is yes.

13 Q And Doctor, these porphyrin results, well, we've established
14 earlier that porphyrins are considered by some to be a better hallmark of
15 dioxin exposure than chloracne, do you recall that, sir?

16 A No, sir.

17 Q You don't recall that?

18 A No, sir.

19 Q You don't recall that we went through that, Dr. Rousch?

20 A But I never agreed that that was a hallmark.

21 Q I didn't ask whether or not you agreed, I said that others have
22 said that, Doctor, I did not, sir.

23 A Yes, sir.

24 Q And we went through that, didn't we, sir?

1 A Yes, sir.

2 Q And these porphyrins show this table that you have in front of
3 you from this Metpath results showed 38 abnormal porphyrins, doesn't it,
4 sir, 38 of your workers with abnormal porphyrins.

5 A No, sir.

6 Q It shows 38 who have values other than the range for coproporphyrin,
7 30 to 240, and uroporphyrin from 15 to 60, does it not, sir?

8 A Yes, sir.

9 Q And Doctor, you knew that in 1979, I mean you at Monsanto knew
10 that in 1979, didn't you, sir?

11 A Yes, sir.

12 Q You did not advise any of these workers that had these results
13 to go back and have another urine sample, did you, sir?

14 A No, sir.

15 Q You didn't ask any of them to go back for a 24-hour sample,
16 did you, sir?

17 A No, sir.

18 Q Now, Doctor, insofar as the lipids are concerned, there are 61
19 persons who have one or more abnormalities in the lipids, aren't there, sir?

20 A Yes, sir.

21 Q And Doctor, as far as the other laboratory results are concerned,
22 there are 80 that have one or more other abnormal lab reports, isn't that
23 correct, sir?

24 A I didn't go through it to add those up.

1 Q You didn't?

2 A No, sir.

3 Q Well, there is 36 on the first page and 44 on the second page,
4 that adds up to 80, doesn't it, sir? If my statement to you is correct.

5 A Yes, sir.

6 Q Now, Dr. Rousch, these reports given by Metpath and used by
7 Dr. Suskind show, do have a bearing upon the health of these workers at
8 Krummrich, don't they, sir?

9 A They can.

10 Q Doctor, if you add the lipid results to the other abnormalities
11 and the porphyrin results to the other abnormalities, there is about a half
12 a dozen, there is ten people out of all this work force, there is only ten
13 people that have no laboratory or porphyrin or lipid abnormalities, isn't
14 that correct, sir?

15 MR. HEINEMAN: Let me object, your Honor, to Mr. Carr's question.
16 He's asking this witness to make a determination as to whether or not that
17 document created by Mr. Carr is accurate when the witness has never purported
18 to do that, and I object to it. How can this witness know?

19 MR. CARR: Your Honor, let me withdraw the question, because
20 Mr. Heineman is correct in his objection.

21 Q Doctor, if the results as shown in Plaintiff's Exhibit 1507 are
22 correct, and I've represented to the Court that we will establish the
23 correctness of these results by another witness, this shows a large number
24 of your employees who have abnormal lab results and symptoms that can be

1 related to dioxin, doesn't it, sir?

2 A Yes.

3 Q Now, Doctor, these men were also asked cancer histories, weren't
4 they, sir, and other histories of that sort, weren't they, sir?

5 A Yes, sir.

6 Q And Dr. Suskind makes no mention as to the number of people that
7 have cancer, does he, sir?

8 A No, sir.

9 Q And you know that there is about at least five that reported
10 cancer histories to Dr. Suskind, don't you, sir?

11 A I know there are some.

12 Q And you know this is in a population of relatively young men,
13 their average is in the 40s, isn't it, sir?

14 A Yes.

15 Q Now, Doctor, have you with Dr. Suskind ever sat down and
16 attempted to work together to find out why so many abnormalities shown in
17 these lab reports in these men?

18 A I don't think these are abnormal.

19 Q Doctor, would you assume, please, that these are abnormalities
20 that were reported in the Metpath results as outside the test range for
21 Metpath, will you do that, sir?

22 A Yes, sir.

23 Q And this is a large number of abnormalities, is it not, sir?

24 A I don't know.

1 Q Doctor, would you expect 99, and that's what it is, 99 of your--
2 of a normal healthy population to have these kind of abnormal results out of
3 108? Doctor, doesn't that just shock you?

4 A No, sir.

5 Q That you have that many abnormal results, if these are abnormal?

6 A No, sir.

7 Q Doctor, why didn't you in 1979, and by you, I mean you at
8 Monsanto, why didn't you go through the symptoms and these lab reports and
9 talk to the men and tell them what showed up here and suggest to them that,
10 well, these might be abnormal, but then again they might not be abnormal
11 and you ought to go get more tests done? Why didn't you do that, Doctor?

12 A Dr. Suskind may have done that.

13 Q He may have done that.

14 A He wrote to 80 of them.

15 Q Then is what you are saying that he in fact did find 80 people
16 to be--to have abnormalities, sir?

17 A No, sir.

18 Q Then why did he write to 80 of them, Doctor?

19 A Because they asked them to write to their family doctor.

20 Q They asked him to pass on abnormalities, didn't they, sir?

21 A The results of his examination to be sent on to their family
22 doctor.

23 Q And what did he tell them?

24 A I don't know.

1 Q You've never received a copy of what Dr. Suskind concluded as
2 to these people?

3 A No, sir.

4 Q Then he could have concluded that there were 80 sick people,
5 couldn't he, sir?

6 A Yes, sir.

7 Q Why didn't you ask Dr. Suskind if 80 of your 108 people were
8 sick and needed treatment?

9 A He told the family doctor that they needed treatment.

10 Q Now, Doctor, you had the lab reports yourself, why didn't you
11 do something about following up?

12 A They weren't given to me.

13 Q Doctor, you had the lab results, they were given to you.

14 A They were given to Monsanto

15 Q Why didn't you follow up yourself, sir?

16 A I didn't know we got them.

17 Q By you, I mean Monsanto, not you personally.

18 A Dr. Osland did follow up on three of them.

19 Q On three of them?

20 A In his judgment, that's all that was indicated.

21 Q Doctor, did Dr. Osland ever put together a picture here to
22 show who was abnormal and how many lipids were abnormal?

23 A No, sir, but he went through every one of those records.

24 Q Doctor, doesn't it shock you that 61 of these people have abnormal

lipids?

A No, sir.

Q Now, Doctor, lipids are connected, strongly connected with dioxin exposure, aren't they, sir?

A No, sir.

Q You don't even agree with that?

A No, sir.

Q Now, Doctor, why did Dr. Suskind even attempt to make a correlation between lipids and chloracne if he wasn't thinking about dioxin?

A He was thinking about it.

Q And why dioxin causes lipid abnormalities?

A Dioxin in some circumstances has affected lipids.

Q Doctor, here you've got 61 people.

A Yes, sir.

Q With abnormal lipids?

A Yes, sir.

Q Over half of your population there with abnormal lipids, doesn't that strike you as strange, Doctor?

A Dr. Suskind addressed that in his report.

Q Well, he only addressed it with mere reference to chloracne.

A Yes, sir.

Q He didn't reference it with respect to heart disease or prospective heart disease or anything else, he only talked about it with reference to chloracne. Doesn't it shock you that over half of your people out there have

1 got abnormal lipids?

2 A No, sir.

3 Q Doctor, is it your view that these men with the abnormal porphyrins
4 with the symptoms and the other abnormalities have no connection to dioxin?

5 A Yes, sir.

6 Q Now Doctor, if that is your view, what is the point in having
7 a study like this? Why even conduct your study if you are not going to pay
8 any attention to the results of it? Why have these lipids tested? Why
9 have all these other things tested? Why have the porphyrins tested if when
10 you get a positive result you say, well, it doesn't mean anything? Why
11 do it then, sir?

12 A Each one of those results had been evaluated by Suskind.

13 Q That isn't what I asked you, Doctor.

14 A Yes, sir.

15 Q Would you read my question to him?

16 (Previous question was read by the reporter.)

17 A The lipids were evaluated and discussed by Suskind.

18 Q Doctor, that isn't what I asked you. I asked you why do all
19 these tests, if when you get the results and these are positive results,
20 that you don't do anything about it, you draw no conclusions from it?

21 A Which are the positive results?

22 Q The 61 people with abnormal lipids, the 38 people with abnormal
23 porphyrins, the 80 people with other laboratory abnormalities.

24 A The lipids have been handled by Dr. Suskind. Those without

1 chloracne is the way to look at lipids, those exposed in the plant and
2 got chloracne or didn't get chloracne, whether they affected the lipids,
3 you look to see whether they've affected them, and you either say based on
4 statistical evaluation there is an excess or there is not, so that they
5 did take care of lipids. And the porphyrins, the porphyrins cannot be
6 evaluated in the form that they were done.

7 Q Doctor, on that point, why didn't you ask for other porphyrin
8 tests if you can't use these?

9 A That should be addressed to Dr. Suskind, it was his study.

10 Q Doctor, would you answer that question, please, sir?

11 A I don't know what I would have done if I would have seen the
12 data when it came out. I didn't see this data.

13 Q Doctor, that isn't what I asked you. Why ask for the porphyrin
14 tests if you are not going to use it when you get the results?

15 MR. HEINEMAN: Objection, your Honor, that's a different
16 question.

17 MR. CARR: It is a different question.

18 THE COURT: Objection is overruled.

19 A Could you repeat the question, please?

20 (Previous question was read by the reporter.)

21 A I can't use porphyrin results if they are not given.

22 Q Then why don't you ask for more, then, Doctor?

23 A Because we didn't think that those negative results by themselves
24 were important.

1 Q Then why ask them to start with, Doctor?

2 A Dr. Suskind asked for them originally.

3 Q And you approved it?

4 A No, I didn't approve them.

5 Q Did you approve it? You paid for it. The protocol was set up,
6 you knew what he was doing, you knew what he did at Nitro, you knew exactly
7 what he asked at Nitro, you knew he asked for exactly the same laboratory
8 studies that he asked for and obtained at Nitro, you knew that, didn't
9 you, Dr. Rousch?

10 A No, sir.

11 Q You didn't know that?

12 A No, sir.

13 Q Doctor, why is it then that you're paying for something that
14 you don't know what you are getting?

15 A When you have a consultant, you have to let them do what they
16 want to do.

17 Q And you just didn't know that he did the--by you at Monsanto, I
18 mean you didn't know that he did the porphyrins?

19 A The plant probably knew.

20 Q Well, Doctor, the plant is you. Would you please bear in mind
21 that Monsanto is the you that I am talking about?

22 A Yes, sir.

23 Q Why did you have these done and you knew they were being done
24 if they weren't going to be used?

1 A They didn't know they weren't going to be used.

2 Q Why didn't you ask for more samples when these came to you and
3 you saw, you at Monsanto saw that these were not 24-hour samples?

4 MR. HEINEMAN: Objection, your Honor, it's been asked and
5 answered.

6 THE COURT: Overruled. You may continue.

7 A We didn't know what the results meant.

8 Q Doctor, you told me that you had worked in the laboratory.

9 A Yes, sir.

10 Q And you had experience in there?

11 A Yes, sir.

12 Q You represented that you did that before you came to Monsanto.

13 MR. HEINEMAN: Objection, your Honor, he just demanded that the
14 witness answer on behalf of the Monsanto plant medical department, and
15 now when he says we on behalf of somebody who didn't know the difference,
16 now he's saying you personally have experience. Sure he does, but he
17 didn't see them. That's the point. I object to the way that Mr. Carr
18 keeps flip-flopping on this witness. Let him answer the question.

19 THE COURT: Mr. Carr, you may proceed. Objection is overruled.

20 Q Doctor, are you suggesting that nobody at Monsanto knew about
21 laboratory results except you, and that because you personally did not
22 see them, that you people at Monsanto weren't aware of the fact that
23 Metpath was reporting these results?

24 A Yes, sir.

1 Q Is that what you are saying?

2 A Yes, sir.

3 Q All right. Then when did you personally become aware of the
4 fact that Suskind wasn't using these results that Metpath reported?

5 A In his report.

6 Q And Doctor, when you learned that, did you get a hold of Suskind
7 and say, hey, porphyrins are very important. People have said porphyrins
8 can be strong indication of exposure to dioxin and liver disease and liver
9 problems, we ought to get that done correctly. Did you tell him that?

10 A No, sir.

11 Q Doctor, doesn't it come down to this, that you at Monsanto
12 and Dr. Suskind determined that you have the best of both worlds, that you
13 order this kind of porphyrin test, if you like the results, you would use
14 it, and you never mention to the world, like Suskind didn't mention in
15 Exhibit 1483, won't mention to anybody that these are abnormal porphyrins.
16 If you like the results, you'll use it, if you don't like the results, you
17 say, well, these are void samples, like he did in his final report and
18 like he did in his September 29, 1980 report?

19 A I would never approve doing a spot sample for porphyrin.

20 Q Doctor, I don't think you answered my question.

21 A Would you repeat the question for me?

22 (Previous question was read by the reporter.)

23 A No, sir.

24 Q Doctor, that's exactly what occurred, though, isn't it? You

1 ordered Suskind and Monsanto, Suskind in behalf of Monsanto ordered these
2 porphyrin tests, specifically ordered these urine samples, got the results,
3 started to use it in draft number two in Exhibit 1483, never mentioned anywhere
4 that they were void samples, or not 24-hour samples, never mentioned at all,
5 drew up a table on it, decided that he didn't like what he saw, and then
6 in the final report says, well, I can't use them because they are of no
7 real significance?

8 MR. HEINEMAN: Objection, your Honor. I think the question is
9 misleading. If you look at Page 77 of Exhibit 1483 of that interim draft,
10 right at the bottom it says the values for coproporphyrin and uroporphyrin
11 were from a single void sample, doesn't it, sir?

12 MR. CARR: Indeed it does, but does it say it is of no significance
13 and cannot be used? Does it say that anywhere in the document?

14 MR. HEINEMAN: No, but you said he didn't say it was from a
15 single void sample, and he did, and I object to your question as being
16 misleading.

17 MR. CARR: Well, maybe at that time it was misleading, but to
18 make it precise so that it won't mislead anybody--

19 Q He said in September 29th of 1980 that the sample that he was
20 using that he got was--could not have significance because it was not a
21 24-hour sample, that's what he said in the Exhibit 1500, didn't he, sir?

22 A Yes, sir.

23 Q But now, the Exhibit 1483, which was prepared after September
24 29th, 1980, that is prepared in 1982, you said he doesn't make that

1 statement about these porphyrin results, does he, sir?

2 A In this draft?

3 Q Yes. In that draft, No. 1483 that he wrote and gave you in
4 1982, two years after he said similar porphyrin results can't be used.

5 A But he does mention the spot sample--

6 Q Doctor, would you answer the question, please?

7 A Could you repeat the question?

8 THE COURT: Doctor, you've got to start listening to these
9 questions more carefully.

10 A I am listening.

11 THE COURT: Well, you don't seem to be remembering any of them.
12 I think you have to try harder to remember them. You may repeat this
13 question.

14 Q Doctor, in 1980 he says on Page 2, "Since the values for
15 urinary coproporphyrin, uroporphyrins, and creatinine were determined from
16 a single void sample, rather than the required ten milliliters aliquot of
17 24-hour volume, it was not possible to interpret significance of levels
18 outside the normal range," did he not, sir?

19 A Yes, sir, apparently so. I didn't read it with you.

20 Q A statement like that does not appear in the document that he
21 created in 1982, that is Plaintiff's Exhibit 1483, does it, sir?

22 A It doesn't make the same statement.

23 Q A statement like this doesn't appear, does it, sir?

24 A No, sir.

1 Q And he in fact uses those results, creates a Table 35, didn't
2 he, sir?

3 A Yes, sir.

4 Q And now, but later on in 1984, he publishes a report dealing
5 with the Nitro morbidity study in which he makes the same statement that
6 he made in 1980 in Exhibit 1500, doesn't he, sir?

7 A Yes, sir.

8 Q Now, Doctor, doesn't this indicate that where he wants to use
9 the results, he makes the statement as he did in 1500 and in the Suskind
10 morbidity Nitro study, but where he, let me start over again, where he
11 wants to use the results as he did in this draft 1483, he doesn't make the
12 statement that they cannot be used, does he, sir?

13 A Not in that draft.

14 Q But when he doesn't want to use the results, he makes the
15 statement, doesn't he, sir, as he did in 1980 and as he did again in
16 1984?

17 A Yes, sir.

18 Q So doesn't that indicate, Doctor, that when he wants to use it,
19 he'll treat them as valid?

20 A No, sir.

21 Q He did treat them as valid in Exhibit 1483, didn't he, sir?

22 A But that was a draft.

23 Q Excuse me, he did treat them as valid in Exhibit 1483, didn't
24 he, sir?

1 A Yes.

2 Q Yes. Doctor, you have also, do you recall an inquiry that was
3 made of Monsanto based upon a statement by Ralph Nader in which he suggested
4 that your people at Sauget were exposed to dioxin, and that they face a
5 higher cancer risk, do you recall that, sir?

6 A No, sir.

7 MR. HEINEMAN: Objection, the question is hearsay.

8 MR. CARR: I'm sorry?

9 MR. HEINEMAN: He's injecting hearsay into this question. Is
10 there something, is there a document we can look at?

11 MR. CARR: Well, surely, I always ask the question relating
12 to documents, you know that.

13 THE COURT: Objection is overruled. Go ahead.

14 Q But first of all, do you recall such an incident?

15 A No, sir.

16 (Plaintiff's Exhibit 1510 was marked for identification.)

17 Q I hand you what has been marked Plaintiff's Exhibit 1510 and I
18 ask you to look at that, please. You recognize that as a document
19 created by Daniel L. Bishop for and on behalf of Monsanto?

20 A Yes, sir.

21 Q And it relates to the health of Monsanto employees, does it not,
22 sir?

23 A I don't know, I haven't read it yet.

24 Q Well, do you want to read it so you can be apprised of it? Have

1 you had an opportunity to read it, Doctor?

2 A Yes, sir.

3 Q You now recall the subject matter, Doctor?

4 A No, sir, I wasn't a part of that.

5 Q Doctor, you're not, you have not been aware of what has been
6 said about Sauguet and Nitro exposure?

7 A Not this, I haven't seen.

8 Q Doctor, you may not have seen this particular piece of paper.
9 What I am asking you, are you familiar with the subject of it, sir?

10 A No, sir.

11 Q You're not familiar with the NIOSH, the study?

12 A The NIOSH, yes, sir, I know about that.

13 Q All right. And you are familiar with the fact that Ralph Nader
14 had a press conference relating to it, sir?

15 MR. HEINEMAN: Objection, your Honor. He's trying to sneak
16 in what's in the document without laying a foundation for its admission.
17 He hasn't even moved its admission, and I object to it.

18 MR. CARR: I'm in the process of establishing a foundation, if
19 it please the Court.

20 THE COURT: Objection is overruled. You may continue.

21 Q Doctor, were you familiar with that fact that he held a press
22 conference?

23 A No, sir.

24 Q Are you familiar with the, well, you are familiar with the fact

1 that NIOSH came to Monsanto in 1970, aren't you, sir?

2 A Yes, sir.

3 Q And they inspected records at the Nitro and Sauget plant, you
4 do know that, don't you, sir?

5 A I'm not sure how they got the information, but we are a part
6 of their registry.

7 Q Now, Doctor, Bishop is in charge of public relations for
8 Monsanto, isn't he, sir?

9 A Yes, sir.

10 Q And this is a document created by Bishop?

11 A Apparently so.

12 Q And he got the information about what NIOSH did from your
13 medical department, didn't he, sir?

14 A I would assume so.

15 Q And Doctor, these persons that got copies of this, do they
16 include people in the department of medicine and environmental health?

17 A No, sir.

18 Q Isn't Kerney associated with that group?

19 A No, sir.

20 Q Frazier?

21 A No, sir.

22 Q Elsworth?

23 A No, sir.

24 Q Doctor, did Bishop have access to your medical records, that is,

1 by you, I mean the department of medicine and environment for the purposes
2 of preparing press reports and press releases?

3 A I don't know where he got the information.

4 Q My question is, does he have access to those records?

5 A No, sir.

6 Q Does he have the right to call you or any of your subordinates,
7 any of the other employees, and ask questions about what you know?

8 A Yes, sir.

9 Q And Doctor, is it true that the NIOSH people did compile a
10 list of registry of the people who may have been exposed to dioxin?

11 A I believe so.

12 Q And Doctor, do you believe that it was true that your employees
13 were fully aware of any potential past exposure?

14 MR. HEINEMAN: Objection, your Honor. Now Mr. Carr is clearly
15 trying to get in.

16 MR. CARR: I'll offer this Exhibit, if it please the Court.

17 (Plaintiff's Exhibit 1510 was offered into evidence.)

18 MR. HEINEMAN: There is absolutely no foundation laid for the
19 admission of this document. It is hearsay. This witness has never seen
20 it, nobody in his department's ever seen it, he's never heard of it before.
21 There is no foundation whatsoever for its admission.

22 MR. CARR: It is a document created by Daniel Bishop, who is a
23 public spokesman for Monsanto and it has been produced to us by Mr. Heineman.

24 MR. HEINEMAN: That doesn't establish a foundation for its

admission into evidence.

MR. CARR: It surely does.

THE COURT: It is admitted over objection.

(Plaintiff's Exhibit 1510 was admitted into evidence.)

Q Doctor, my question is, do you believe that your employees are fully aware of any potential past exposure?

A I think our employees are aware.

Q Doctor, my question is, Bishop makes the statement here, does he not, "I can tell you he makes a statement to the people from the Post Dispatch and Independent Network News, according to this document that our employees are fully aware of any potential past exposure," does he not, sir?

A Yes, sir.

Q You know in point of fact and we established this morning that your employees were told an untruth about their potential exposure, weren't they, sir?

A Not an accurate statement.

Q Doctor, we established this morning that this statement prepared here by Mr. Park was a lie, didn't we, sir?

A It's incorrect.

Q Didn't we establish this morning that it was a lie?

A No, sir.

Q Didn't you agree with me, sir, that it was a lie?

A It's incorrect.

1 Q Doctor, my question is, did you not agree with me this morning
2 when I asked you and you're under oath now, Dr. Rousch, did you not agree
3 with me this morning that it was a lie?

4 A I don't recall.

5 Q Now, Doctor, these employees who inquired of Monsanto in this,
6 by means of this memo or what the information would divulge, they were not
7 fully aware of past potential exposure, were they, sir?

8 A It wasn't dealing with our employees.

9 Q Sir?

10 A That is a request from Washington.

11 Q Doctor, are you looking at the same paragraph that I am looking
12 at? This is Daniel Bishop, your press relation spokesman.

13 A Yes, sir.

14 Q He prepared this document, did he not, sir?

15 A Yes, sir.

16 Q And doesn't he say, "I don't know whether NIOSH informed our
17 workers who made the registry, but I can tell you that our employees are
18 fully aware of any potential past exposure," doesn't he say that?

19 A Yes, sir.

20 Q And that statement is not true, is it, sir?

21 A I'm not sure they're fully aware, but they're aware of past
22 exposure.

23 Q Doctor, my question is that statement is not true, is it, sir?

24 A I don't know.

Q Well, you know from the evidence--strike that. Do you know of any bulletin put out by Krummrich, put out by anybody that would show that these people have been told that they were exposed to dioxin?

A I can't recall any.

Q Doctor, what they're told from time to time is exactly like what they were told in October of 1979 by the suggestion of Mr. Park that several analyses have indicated dioxin levels below what's found by OSHA, and we're still checking. That's what they have been told time and again, isn't that correct, sir?

A No, sir.

Q Doctor, weren't they told as far as this very report that we're talking about, weren't they told by you at Monsanto that there were no significant health problems found by Suskind?

A Yes, sir.

Q And in point of fact, that's not the truth, is it, sir?

A No, sir.

Q And you know it's not the truth because you've seen these lab reports and he made no such finding, did he, sir? He never did find that there was "no significant health problem at the Krummrich plant," did he, sir?

A Yes, sir.

Q Where did he make that finding, Doctor?

A The form of writing said he--

Q Excuse me, Doctor, where did he make that finding?

1 A No, sir, he doesn't.

2 Q Indeed, he doesn't, but you told your employees that he did
3 find there were no significant health problems at Krummrich, didn't you,
4 sir?

5 A Yes, sir.

6 Q When in fact he didn't make that finding, did he, sir?

7 A Yes, he did.

8 Q Well, then, Doctor, I'll ask you again, where is the finding
9 that he made?

10 A The form in which it was written describes it.

11 Q We went through that, Doctor, and he makes no mention of
12 health problems whatsoever, whether they have them or don't have them, he
13 makes no finding that they have no significant health problems, does he,
14 sir?

15 A Yes, sir.

16 Q Where does he?

17 A There is no specific statement like that, that's correct.

18 (Plaintiff's Exhibit 1511 was marked for identification.)

19 Q Now, Doctor, I'll hand you Plaintiff's Exhibit 1511 and see if
20 you recognize that as a Krummrich publication or part of a Krummrich
21 publication.

22 A Yes, sir.

23 MR. CARR: I offer--well, counsel hasn't seen it yet, your Honor.
24 Now I'll offer 1511 into evidence.

(Plaintiff's Exhibit 1511 was offered into evidence.)

THE COURT: Any objection?

MR. HEINEMAN: He made the offer as he handed it to me, Judge, I haven't had a chance to read it yet.

Q Doctor, while he's looking at that, I might ask you a few more questions on this press release. He makes a statement there that the Nitro employees have been the subject of several epidemiological studies both outside, results of these medical studies have been compared with these employees both in general and specifically as they related to one person, do you see that, sir?

A Yes, sir.

Q Well, that's not true, either, is it, sir?

A Yes, sir.

Q Doctor, were the employees told about the 28 cancers that were reported to Suskind as we went into the other day in one of these exhibits? Were they, sir?

A I can't answer that.

Q Doctor, do you have any information that they were ever told that 28, not 14, but that there were 28 cancers reported to Suskind in the Nitro study?

A Dr. Suskind went to Nitro and talked to them about results of his study, following the study he went there and spent several hours discussing the results of his study--

Q Were you ever told, hey, there are 28 of you that have reported

1 cancers to me, or 28 cancers have been reported to me, rather?

2 A I don't think there were 28.

3 Q Doctor, we went through that already, have we not? Twenty-seven
4 or twenty-eight, we've got one questionable here, 27 cancers. Did you ever
5 see any document that he reported that to those people?

6 A I don't think there were 27.

7 Q Now, Doctor, assume that you have agreed that there were 27
8 that were reported to Dr. Suskind; would you assume that, please, sir?

9 A Yes, sir.

10 Q Was the employees at Nitro ever told that, to your knowledge?

11 MR. HEINEMAN: Objection, that's a different question. First
12 he said reported to Suskind, and then he asked the witness to agree that
13 there were, and that's two different things. I think it's misleading.

14 THE COURT: Objection overruled. It is not misleading.

15 A I know that they were told the results of the study, but I
16 don't know what he said.

17 Q Well, you know they were told what he published, you know that,
18 don't you, sir?

19 A Yes, sir.

20 Q But he published only the existence of 14 cancers as reported
21 to him, a history of 14 cancers, didn't he, sir?

22 A Yes, sir.

23 Q He didn't publish 27 cancers, did he, sir?

24 A No, sir.

1 Q Do you have any information that he was, that they were told
2 anything other than what was published?

3 A No, sir.

4 Q Now, Doctor, you've also said here that "our workers are not
5 suffering from any chronic or lasting health effects from exposure to
6 dioxin," now these reports that Dr. Suskind got from the laboratory and
7 these findings that were shown in the laboratory show that these health
8 effects came or lasted long after exposure to dioxin in many of these
9 men, didn't they, sir?

10 A No, sir.

11 Q They did not, sir?

12 A No, sir.

13 Q Only a relatively few parts of these people presently working in
14 chlorinated phenol department, Dr. Rousch?

15 A Yes, sir.

16 Q Over half of them had their exposure years prior to this study,
17 isn't that correct, sir?

18 A I don't know.

19 Q Well, the reports that, the lab reports you have show these
20 abnormalities in these men and they are not just chloracne, are they, sir?

21 A No, sir.

22 MR. CARR: Your Honor, I see I've gone past, it's five after
23 four, I'm sorry.

24 THE COURT: All right, ladies and gentlemen, we'll adjourn

1 for the day at this time. We'll start again tomorrow morning at nine
2 o'clock. I would remind you besides the regular admonishments at any
3 break, that you are not to read, listen to, or watch anything about this
4 case in particular or subject matter in general. Thank you for everything.
5 The Court is adjourned.

6 (At this time Court adjourned for the day.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

WITNESSES:

Page

DR. GEORGE ROUSCH

Continued Cross Examination by Mr. Carr 2

EXHIBITS:

Marked

Offered

Admitted

Plaintiff's 1495A

2

2

2

Plaintiff's 1495B

2

2

2

Plaintiff's 1496

2

3

3

Plaintiff's 1496A

3

3

3

Plaintiff's 1497

14

14

14

Plaintiff's 1497A

14

14

15

Plaintiff's 1498

18

18

18

Plaintiff's 1498A

18

18

18

Plaintiff's 1499

25

25

26

Plaintiff's 1500

27

36

36

Plaintiff's 1501

35

36

37

Plaintiff's 1501A

37

37

37

Plaintiff's 1502

55

55

55

Plaintiff's 1503

58

58

59

Plaintiff's 1504

75

76

79

Plaintiff's 1505

92

Plaintiff's 1506

92

92

93

Plaintiff's 1507

96

INDEX Cont.

EXHIBITS:	Marked	Offered	Admitted
Plaintiff's 1508	119	120	120
Plaintiff's 1509	124	125	126
Plaintiff's 1510	163	166	167
Plaintiff's 1511	170	171	

1 STATE OF ILLINOIS)

) SS.

2 COUNTY OF ST. CLAIR)

3
4
5
6 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for the

7 Twentieth Judicial Circuit, hereby certify that the above is a true and
8 correct transcript of the proceedings had in the case captioned:
9

10 FRANCES E. KEMNER, et al., v. MONSANTO COMPANY, Cause No. 80-L-970, heard
11 on July 16, 1985.

12 DATED this _____ day of July, 1985.

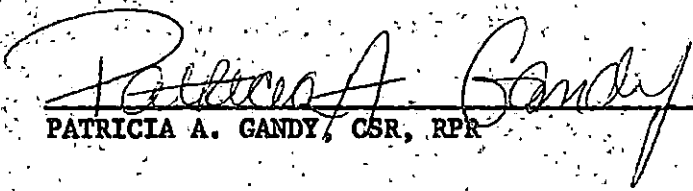
13
14 ENTER:

15
16
17 RICHARD P. GOLDENHERSH, Circuit Judge
18
19
20
21
22
23
24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
4
5
6
7

8 I, Patricia A. Gandy, CSR, RPR, Official Court Reporter in and
9 for the Twentieth Judicial Circuit, and the Official Court Reporter who
10 transcribed the above-styled cause had on July 16, 1985, do hereby certify
11 that the foregoing transcript of proceedings is a true, correct and
12 complete transcript of the proceedings had on said date.

13 DATED this 19th day of July, 1985.
14
15
16
17
18
19
20
21
22
23
24


PATRICIA A. GANDY, CSR, RPR