

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

JAMES E. ADKINS, Administrator of
the Estate of RALPH E. ADKINS,
Deceased, et al,

Plaintiffs,

v.

CIVIL ACTION NO. 81-2098
(Consolidated with other
Civil Actions for Discovery)

MONSANTO COMPANY, a Delaware
corporation,

Defendant.

PROTECTIVE ORDER

This matter is before the Court on the motion of defendant, Monsanto Company, for a Protective Order to limit access to and dissemination of answers to interrogatories, responses to requests for production of documents, including records and documents which are produced by the defendant pursuant to discovery requests in these actions, and depositions taken which incorporate or are based on such discovery materials.

For reasons appearing to the Court, based upon the complexity of the above-styled cases and the voluminous discovery material to be filed therein, and pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, it is hereby ORDERED that:

1. All discovery materials produced by the defendant Monsanto Company, including but not limited to depositions, answers to interrogatories, answers to requests for admission, and responses, including records and other documents produced, to requests for production of documents, not be filed with the Clerk of this Court;

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ORDER BOOK

NO. _____ PAGE _____

2. The aforesaid discovery materials shall be exchanged between parties in accordance with the Federal Rules of Civil Procedure;

3. Requests for discovery shall continue to be filed with the Clerk of this Court;

4. A statement and certificate of service indicating that the opposing party has responded to a discovery request shall be filed with the Clerk of this Court in lieu of the response;

5. A statement that a deposition has been transcribed and that copies have been forwarded to counsel shall be filed with the Clerk of this Court in lieu of the deposition;

6. Any such discovery materials which may be subsequently filed with the Clerk of this Court shall be filed under seal until further order of this Court and in accordance with the following:

(a) any motions filed which any discovery materials subject to this order are in support of shall be filed with the Clerk of this Court not under seal; such motions shall generally state the grounds without revealing the substance of any discovery materials subject to this order;

(b) a copy of such motions, discovery materials subject to this order which are attached in support of the motions, and memoranda of law in support and in opposition shall be filed with the Clerk of this Court under seal;

(c) the parties shall clearly designate to the Clerk such materials as are to be filed under seal, and shall submit them to the Clerk already sealed; and

(d) a duplicate copy of those materials provided under paragraph 6 (b) shall be provided under similar seal directly to the Judge.

7. This decree shall apply to any case consolidated with the above-styled case for purposes of discovery; and

8. This decree shall remain in effect until ordered otherwise by this Court, in whole or in part.

It is further ORDERED that access to and dissemination of such discovery materials shall be governed by the following protective provisions:

1. This order shall govern all answers to interrogatories, responses to requests for production of documents, including such documents and records produced or made to date by the defendant and not yet filed with the Clerk of this Court, and those to be produced or made hereafter by the defendant, all pursuant to discovery in the course of the pre-trial stage of these actions, and depositions taken which incorporate or are based on such discovery materials, all of which are not otherwise protected from disclosure pursuant to other protective orders entered or to be entered herein.

2. Such discovery material shall be used solely for the purposes of the instant litigation, and will not be exhibited, disseminated, made available for inspection or copying, described, paraphrased, or otherwise disclosed to or discussed with anyone not a designated person as hereinafter described, and said discovery material shall not be used for any other purposes.

3. Except as hereinafter provided, access to such discovery material shall be limited to the following "designated persons":

(a) The Court and its officers;

(b) Parties, counsel for the parties, including persons regularly employed in such attorneys' offices who have been informed by counsel of the provisions of this Protective Order and have agreed to be bound by it;

(c) Court and deposition reporters whose services / in ^{are used} connection with these actions, and other persons working for such reporters, who have been informed by counsel engaging the reporter's services of the provisions of this Protective Order and have agreed to be bound by it;

(d) Independent experts who are to testify (testifying experts) or other persons whose assistance is required by the attorneys for the named parties in order to prepare for trial (consulting experts). Such experts shall not be permitted access to such discovery material until they first have been advised of the provisions of this Protective Order by counsel retaining them, and they have agreed to be bound by the terms thereof;

(e) Monsanto Company personnel assisting counsel for defendant.

4. No designated person associated with, employed by, or in any way connected with the plaintiffs or plaintiffs' prosecution of these actions shall be given access to any such discovery material protected by this Protective Order until each such person has executed an agreement to be bound by the terms of this Protective Order in the form annexed hereto as Exhibit A. Counsel for plaintiffs shall provide a copy of each such agreement executed to counsel for the defendant and shall file a copy thereof with the Clerk of the Court.

5. Such discovery material shall be used only for the purposes of the present litigation and any such material may be used during the course of any deposition taken in this action subject to the following conditions:

(a) Only designated persons may be in attendance at the deposition;

(b) The witness is advised on the record or in writing of the existence and contents of this Protective Order and the witness agrees on the record or in writing to be bound by its terms, or a copy of this Protective Order is served on such witness, a certificate of service to be filed with the Clerk of the Court within a reasonable time thereafter;

6. Each and every person present at any deposition or other proceeding/^{except one before the court,} wherein any such discovery material is produced or utilized in any manner or who otherwise receives access to any discovery material protected by this Order, is hereby enjoined from disclosing to any one not a designated person as described herein, any testimony or information derived from such discovery material.

7. No modification of this Protective Order will be made except upon notice to all parties and a hearing thereon.

8. All discovery material not used in evidence at the trial shall be returned at the conclusion of the lawsuit to the attorney for the party producing and providing the material, and no copies thereof shall be retained by any other person including the attorneys of record, except that materials in the Court file shall not be removed except in accordance with the Federal Rules of Civil Procedure and local court rules. In any case of discovery material furnished to a testifying or consulting expert, the attorneys for the party retaining such expert shall have the responsibility of insuring that all such discovery material, including abstracts and summaries thereof, is returned to the party producing same.

9. This Protective Order in no respect supercedes, in whole or in part, any other protective order regarding answers to interrogatories, documents, records, or contents of depositions in these actions.

10. The respective parties and their employees are, upon entry of this order, bound by the terms hereof.

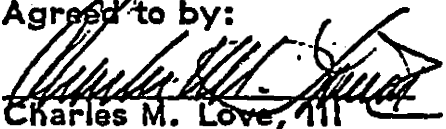
11. Counsel are not barred from discussing in general terms what their claims are and what they believe they will be able to prove, nor are they limited from making public any material obtained independently of the discovery process.

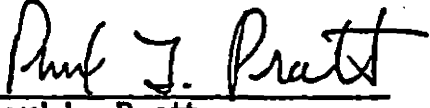
12. Nothing in this Order shall be construed as inhibiting or limiting the press or news media in gathering, disclosing, disseminating or publishing any information respecting the case.

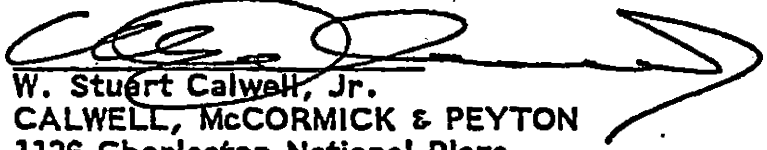
ENTER: May 5, 1983


UNITED STATES DISTRICT JUDGE

Agreed to by:


Charles M. Love, III
BOWLES, McDAVID, GRAFF & LOVE
P. O. Box 1386
Charleston, WV 25325-1386


Paul L. Pratt


W. Stuart Calwell, Jr.
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1126 Charleston National Plaza
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A TRUE COPY, Certified

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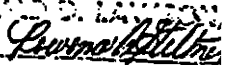
RONALD D. LAWSON

DEPT

EXHIBIT A

**AGREEMENT CONCERNING DISCOVERY MATERIALS SUBJECT TO THE
PROTECTIVE ORDER ENTERED IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

The undersigned hereby acknowledges that he has read the Protective Order entered in the United States District Court for the Southern District of West Virginia on _____, 1983, and understands the terms thereof and agrees to be bound by such terms as if he were signatory thereto.

Signature

Business Address

Date