IN THE MATTER OF:

Schlumberger Industries, Inc.
vs.
American Insurance Company, et al.

Cause No. 95-CP-23-3135 (HFF)

COPY

Deposition of Thomas M. Bistline
June 16, 1998

INTERIM COURT REPORTING
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IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SCHLUMBERGER INDUSTRIES, INC.,

Plaintiff,

vs. C.A. NO. 95-CP-23-3135 (HFF)

AMERICAN INSURANCE COMPANY,
ET AL.,

Defendants.

Deposition of THOMAS M. BISTLINE, taken on behalf of the Defendant London Market Insurers, at the offices of Husch & Eppenberger, 100 North Broadway, in the City of St. Louis, State of Missouri, on the 16th day of June, 1998, before Dawn L. McTeer, Registered Professional Reporter and Notary Public.

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THOMAS M. BISTLINE,
of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

EXAMINATION

QUESTIONS BY MR. SEVER:

Q: Could you, please, state your name for the record, sir?

A: My name is Thomas M. Bistline.

Q: Would you spell your last name, please?

A: B-I-S-T-L-I-N-E.

Q: Good morning, Mr. Bistline. My name is Jay Sever. I represent London Market Insurers also sometimes referred to as Lloyds of London or Lloyds. We are defendants in an insurance coverage suit that is entitled Schlumberger versus American Insurance, et al. We're here today to talk to you about some documents and about your role as records custodian. If you have any questions at all or you need further explanation of anything that I'm trying to put to you, please don't hesitate to ask me to clarify. I see that you are a lawyer, so I don't have to give you the rest of the speech I usually

give deponents, most of whom in this case have been over the age of 60. Could I ask you to give your home address, please?

A: My home address is 15182 Isleview, one word, I-S-L-E-V-I-E-W, Drive in Chesterfield, Missouri.

Q: Your business address, please?

A: 10300 Olive Boulevard, Creve Coeur, 63131. I have to look at my business cord. 63166 will work.

Q: I see you work for Solutia, Inc.?

A: Correct.

Q: Who is that?

A: Solutia, Inc. is a company that was created on September 1st, 1997, as a spin-off from Monsanto Company. We are the chemical businesses formerly operated by Monsanto.

Q: Does Monsanto still have a headquarters here in the St. Louis area?

A: Yes.

Q: I take it Solutia also has its headquarters in the St. Louis area?

A: That's correct.

Q: Solutia's headquarters are near this address 10300 Olive Boulevard?

A: That's our corporate headquarters.

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Q: You work for the general counsel's office for Solutia?

A: Yes.

Q: You are an attorney?

A: Correct.

Q: Your boss is whom?

A: Carl Barnickol, B-A-R-N-I-C-K-O-L.

Q: His position is general counsel?

A: General counsel.

Q: How long have you held this position, I guess, since you were created in September 1 of '97? That's the beginning of your position for Solutia. My question goes to how long have you been assistant general counsel?

A: I've been assistant general counsel first at Monsanto since September 1, 1986.

Q: You were an assistant general counsel for Monsanto Company at that time?

A: That's correct.

Q: You were based here in St. Louis?

A: Correct.

Q: Where, by the way, was Monsanto's headquarters?

A: 800 North Lindbergh Boulevard in St. Louis.

Q: If I may, how far away from that are you

now, Solutia?

A: Right across Lindbergh Boulevard. Solutia, in fact, occupies what was the west campus of Monsanto.

Q: Were you with Monsanto prior to 1986 when you went to the general counsel's office?

A: Yes.

Q: What did you do then?

A: I started with Monsanto in February of 1982. I came on as a litigation attorney, and was eventually promoted to assistant general counsel.

Q: As a litigation attorney, I take it that you were an adjunct somehow to the general counsel's office?

A: We call it the law department, and I've been a member of Monsanto's and now Solutia's law department since February 1982.

Q: Between '82 and '86, I take it, that you were actively dealing with cases?

A: That's correct.

Q: Litigating?

A: Correct.

Q: After you transferred into the Attorney General, I'm sorry, general counsel's office in 1986, what did you do? What was the general nature?

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A: Let me correct the first part of that question. I've always been, as you phrased it, part of the general counsel's office. As I said earlier, we call that the law department. I've been a member of the Monsanto and now Solutia law department since February 1, 1982. That affiliation does not change.

Q: I take it the nature of your duties changed in 1986?

A: To an extent.

Q: How so?

A: When I became assistant general counsel, I inherited some administrative duties that I did not previously have.

Q: Were part -- was one of those administrative duties dealing in some manner with production of Monsanto records?

A: No, I had that assignment prior to becoming assistant general counsel.

Q: You did. When did you take on that assignment?

A: Well, to some extent, I've had it since I began with Monsanto. Specifically with respect to documents relating to PCBs, if that's where we're headed, I inherited that responsibility in January of 1982. I think I misspoke on the date I became

assistant general counsel. It was '88, not '86.

Q: Just so I'm clear, you joined Monsanto as a lawyer?

A: That's correct.

Q: That was in 1982?

A: That's correct.

Q: You held a position in the law department, but as a litigation attorney, between '82 and '88?

A: First as a litigation attorney from '82 until about '83, and then as assistant litigation counsel for a year, and then as litigation counsel for a couple of years before I became assistant general counsel.

Q: Now, let's go ahead and get to what happened in 1985 when you were given the job to oversee the production of PCB records. What was the nature of that job change?

A: We have had PCB litigation pending. Monsanto has had PCB litigation pending for a number of years. The attorney who had previously been responsible for those cases, Mr. Joseph Nassif, was involved in a large trial, and our supervisor at the time asked me if I would take on responsibility for the PCB cases that were then pending in January '85.

Q: Mr. Nassif's last name was spelled how?

A: N-A-S-S-I-F.

Q: Your supervisor at the time was?

A: Robert Barends.

Q: He was general counsel?

A: No, he was associate general counsel at Monsanto Company.

Q: Let me ask you, when you took on that role, what did you do?

A: After I said yes?

Q: After you said yes.

A: I went about familiarizing myself with what cases were pending, what information Monsanto had by way of documents and other personal type sources of information. I spent an extensive amount of time with counsel representing Monsanto around the country to learn the status of the various cases that were then pending and what strategy had been put in place. In general, took over the day-to-day management and responsibilities for the litigation as it existed then.

Q: I'm talking now specifically about your role in dealing with document productions. I take it it was a larger role dealing with the ongoing cases?

A: Right. When I say I took responsibility for the PCB cases, that entailed, as part of the duty,

becoming custodian of Monsanto's documents relating to PCBs.

Q: I see. There was a larger role in actually dealing with PCB litigation?

A: That's correct.

Q: I take it that Monsanto was a party in some of this litigation?

A: Yes, that's correct.

Q: Were you involved in any way in litigation in which Monsanto was not a party?

MS. RUTTER: At what time, counsel?

MR. SEVER: During the period we're talking here after 1985.

A: Only to the extent that Monsanto would receive subpoenas seeking production of documents or other information to which we would respond as a third party.

Q: (By Mr. Sever) Were you actively representing Monsanto when Monsanto was a party?

A: Again, we're talking about PCB cases?

Q: Yes, I'm sorry.

A: I was in-house counsel for Monsanto. I had responsibility for the management of the cases.

Q: You held this position and fulfilled these duties for how long?

A: By these duties you mean with respect to PCB?

Q: PCBs cases.

A: Since January 1, 1985.

Q: Continuing through today?

A: That's correct.

Q: So does Solutia have some relationship with the PCB cases?

A: By agreement with Monsanto, at the time that Solutia was created, a spin-off, we have undertaken to manage and direct the litigation. Monsanto has given us the authority to do that in our name just as I was doing it when I was a Monsanto employee.

Q: Now, we've given you some documents here to look at, which we thank you for taking the time to do today this morning. Let me ask you did you bring anything with you to the deposition?

A: No.

Q: Do you have indexes of the records that you are custodian over, PCB records?

A: It depends on how you want to define index. I don't have a list of documents written down, no.

Q: You have a data base?

A: Yes.

Q: When you were going to look for a group of

documents, say, in this collection of PCB oriented records, you refer to your data base?

A: That's the source of the documents. That's correct.

Q: Are the PCB related documents kept by Solutia, or are they still in the Monsanto building?

A: The originals of the documents are stored at an off-site facility. We call it the records center, which is, I guess, a couple of miles within the Monsanto campus. They're in boxes in that facility.

Q: I'm sorry. It was the records center?

A: Records center, yes.

Q: Do you have access to information which would inform you as to how many times these records or subsets of these records have been produced to other parties?

MS. RUTTER: I'm going to object to that question, counsel. I think you're getting into an area that involves privilege and work product.

MR. SEVER: Well, let me tell you what I'm after here. What I'm trying to establish is that, when we're dealing with these productions, these earlier productions in the Whitfield action and productions that may have predated his fulfilling

his role as custodian of PCB records, in general, that he has some way, if necessary, to go back and see what was produced and to who. That's all I'm trying to get at. I don't see anything privileged there. It is merely a custodian type of question.

MS. RUTTER: Since this gets into or at least very close to an area of privilege, I think I better consult briefly with my client in relation to this issue.

(Discussion off the record.)

MS. RUTTER: I think Mr. Bistline can answer the question that you have posed. May the court reporter read it back.

(The requested portion of the record read by the reporter.)

A: The answer to that question is yes.

Q: (By Mr. Sever) Let me ask you now, because I think we'll get to it later, are you aware there has been some litigation involving Schlumberger that is previous to this insurance coverage litigation that you're currently here for?

A: Specifically with regard to?

Q: PCBs.

A: Yes, I'm aware of that.

Q: I'll represent to you that there is an

action that was filed in 1976 that we refer to as, among ourselves, the Whitfield action. Are you, generally, familiar with the litigation I'm talking about?

A: I'm familiar with the Whitfield litigation, although I don't think it was filed in 1976. It was 1985.

MR. GEDDIE: Actually it was December of '84.

A: Yes, I'm familiar with the Whitfield action.

Q: (By Mr. Sever) I appreciate it. Are you also aware that Monsanto made a production of sorts in that action?

A: Yes.

MS. RUTTER: Objection to the form of the question.

Q: (By Mr. Sever) Are you privy to -- are you able to by looking at your records determine what documents were produced in the Whitfield action by Monsanto?

A: Yes.

Q: Did you, by the way, have active management of Monsanto's role in that case?

A: Yes.

Q: So that, even though the filing of the suit

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predated your taking over for Mr. Nassif, you actually took over management of the case after he left, correct?

A: That's correct.

Q: Did Mr. Nassif have a role with respect to the Whitfield case?

A: He may have. I don't recall precisely what status the case was at the time.

Q: I can probably short-circuit that. Who was it that was responsible for the document production, the documents that were eventually produced in the Whitfield action at Monsanto headquarters?

A: I was the attorney in charge of the defense of Monsanto at Monsanto in the Whitfield case on and after January of 1985.

Q: I don't know when the actual production was made. Do you recall whether you were the person that was overseeing production of documents in that case?

A: Yes, I was.

Q: That's all I wanted to know. Let's get to the records that you looked at this morning. I take it you were given two boxes of records and a few other stacks of documents and that you looked through everything that you were given this morning?

A: I didn't look at every page. I, generally, looked through the collections of documents.

Q: Now, I gave you two boxes of documents. I see from looking at the documents that you have brought back into the deposition that you were nice enough or someone was nice enough to put the documents into different files. Were you responsible for that?

A: It was done at my request. I didn't do it personally.

Q: What I'm going to do is, in the process of asking you to identify whether these records are Monsanto business records or kept in the ordinary course of Monsanto's business, go through these files individually so that we can determine, I guess, whether you can authenticate them.

A: Fine.

Q: Let me ask you one more general question before we start going through these. I take it that the labeling of the files that I'm about to go through was done based on the subject matter of the contents that are now in the files?

A: I'm not sure what you mean by subject matter. Essentially what we did was go through the two boxes of files. Based upon a fairly quick

review, tried to separate them in to documents that we produced in response to the subpoena in this action, documents, which we may not have produced them, we believe are Monsanto documents and either those we can't identify or are not Monsanto documents.

Q: Were you responsible for responding to a subpoena that was served in connection with this action to Monsanto last year sometime?

A: I believe in April of '97, yes.

Q: Monsanto bate stamped and produced a group of documents?

A: Yes.

Q: Do you recollect approximately how many boxes of documents that was?

A: We produced, I think, around 40 boxes of documents, 110,000 pages or something in that vicinity.

Q: I think that's close to accurate. I'll represent to you what we've tried to do is cull through those for those that we're interested in in this case. That's what we have here today. Let me ask you, there's a bates number on some of these documents that starts letters MONS. Is that Monsanto's bates number?

A: Yes, that is Monsanto.

Q: Are these documents bate stamped with any other type of bates number, or is this the only one, MONS?

A: You mean a Monsanto number, one that originated at Monsanto?

Q: Yes.

A: I believe some of the documents may bear one that was applied to them by Monsanto for the Whitfield case.

Q: Does that begin with the letter designation SHL?

A: No.

Q: The documents that -- all of the documents that you produced in response to this 1997 subpoena bore the MONS designation prior to the bates number?

A: That's correct. Not all of them. Let's see if I can separate this out. Maybe I misspoke in my last answer. The documents -- most of the documents, I would say 34, 35 boxes of the documents we produced last year, bore the MONS number. There were five or six boxes of documents which were produced somewhat later than the first 34 or 35 that, I think, bore the SHL prefix.

Q: I think that's accurate.

A: The documents we produced in response had the MONS or SHL prefix on them. Sorry for the confusion.

Q: I'm going to deal with those, that production and those series of documents first. Then we'll go on to the other documents.

A: Fine.

Q: All right. The first file I have here, which we're going to go ahead and mark as Exhibit A to the deposition, is labeled, "Manufacturing Specs Monsanto Docs." If you could look at these documents for me and ascertain whether these are documents kept in the ordinary course of Monsanto's business, I would appreciate it.

(Bistline Deposition Exhibit No. 1 marked for identification.)

Q: (By Mr. Sever) Have you had a chance to look at Exhibit 1?

A: Yes, I have.

Q: Are those records that are kept in the ordinary course of Monsanto's business?

A: Yes.

Q: Those are records that are currently kept under your custodianship?

A: That's correct.

Q: They were records that were produced in response to the 1997 subpoena?

A: Yes.

Q: Exhibit 2 here is a folder labeled, "Labels." There appears to be two types of bates number ranges contained in this exhibit, one being the MONS number that we referred to earlier and the other being the SHL number. I will ask you, though, to do the same review as you did for Exhibit 1, please.

(Bistline Deposition Exhibit No. 2 marked for identification.)

Q: (By Mr. Sever) Have you had a chance to review that stack?

A: Yes, I have.

Q: Are those documents kept in the ordinary course of Monsanto's business?

A: Yes.

Q: They were produced, also, in response to the 1997 subpoena?

A: Yes.

Q: The Exhibit 2 appears to contain a group of Monsanto labels, correct?

A: That's correct.

Q: Most of those labels are for the product

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Arochlor?

A: I believe they all relate in one form or another, at least as far as I could tell, to Arochlor products.

Q: Is there a way for us to gauge a date by referencing to or looking at the document itself?

A: There may be some indications on some of these labels. The others on the date which the label was current is not obvious just by looking at it.

Q: As records custodian, are you someone who is in a position to know the particular date of labels of Arochlor?

A: I couldn't look at the label and tell you with any degree of confidence when it was used. That would be something that would require a great deal of research.

Q: Is there a person at Monsanto that you would deem most knowledgeable about that subject matter?

A: No.

Q: Not at Monsanto?

A: No.

Q: What about at Solutia?

A: Not even at Solutia.

Q: It would be someone who is retired, I

suppose?

A: Perhaps some retired person could look at it.

Q: Do you know who I'm referring to when I say Mr. Pappageorge?

A: Yes I do.

Q: Would he be someone that would be most knowledgeable?

A: Mr. Pappageorge would be for the types of warnings and the dates in which those warnings were current. I don't think even Mr. Pappageorge will be able to look at a particular label and say I know this label was used on this type of container during these dates. I'm not sure there's anybody that could give you that kind of encyclopedic information.

Q: You're not familiar with the document that places the labels with dates somehow?

A: Not that I'm aware.

(Bistline Deposition Exhibit No. 3 marked for identification.)

Q: (By Mr. Sever) Exhibit 3 is a folder labeled, "Monsanto Labels," but with "(Re: PCBs)." I'll hand you this and ask you to do the same thing, if you would, and note that I will ask you whether

any of them are related to PCBs. Have you had a chance to look at Exhibit 3?

A: Yes, I have.

Q: Now, are those records that are kept in Monsanto's ordinary course of business?

A: Yes, they appear to be.

Q: Again, those are labels of various chemicals manufactured by Monsanto?

A: They are labels. Not all of them refer to chemicals. Presumably, all were used on Monsanto products.

Q: Some of those, I saw at least one, I think, are Arochlor labels, correct?

A: Yes, there is one in here that specifically refers to Arochlor.

Q: The label brings me to a point I was going to ask you before. Do you organize your files in a way that you're able to tell which files contain labels, for example? Would you be able to go directly to a label file?

A: That wouldn't be how I would do it.

Q: Are they in a particular form of organization that you can describe generally?

A: The originals of the documents are, as I said before, stored in the records center, boxes

which they were sent to the records center.

Q: We talked briefly about the MONS number and the SHL designation bates number. Were these documents bate stamped with the MONS and SHL bates numbers specifically for this production, the one that was made in 1997?

A: The SHL numbers were specific to this subpoena or Monsanto's response to this subpoena.

Q: The MONS, those documents had been bate stamped previous to the issuance of the subpoena?

A: That's correct.

Q: Did you know when those documents were first bate stamped and put together?

A: First stamped with the MONS number?

Q: Yes.

A: I think about in the '94 to '95 time period.

Q: Was it in connection with another litigation?

A: Yes.

Q: Are you at liberty to tell us which litigation that was?

A: I don't recall offhand which litigation the MONS number first was used in. I just can't recall at this point.

Q: That was, though, a production that was made

as part of another litigation?

A: That's correct.

Q: When this production, the production in response to the 1997 subpoena was made, did Monsanto tender the entirety of that production?

A: Of?

Q: Of the previous production with the MONS numbers.

A: I understand what you're saying. I believe the answer to that is yes. That's correct.

Q: All right. Exhibit 4 is a file folder that is marked, "Brochures (Monsanto Documents)." Again, there are both MONS bates documents and SHL bate stamped documents. I'll have you do the same thing with these.

A: Just for your information, I'm putting these yellow tabs here. The pages are just illegible.

MS. RUTTER: Which page ranges are those?

THE WITNESS: Page MONS-076746 and 747.

Q: (By Mr. Sever) Have you had a chance to review Exhibit 4?

A: I have flipped through the pages. As you can see, there are lots of pages in this exhibit.

Q: Are you able to tell from your review of the documents contained in the file folder Exhibit 4

whether those are documents maintained in the ordinary course of Monsanto's business?

A: Yes, they appear to be.

Q: You were nice enough to indicate a couple of documents, I believe, bates range MONS-076746 through 747 that were for some reason illegible?

A: That's correct.

Q: Did you notice whether those documents also bore a bates range number at the bottom?

A: The only number on either of those two pages is the number that I called back to you, just a MONS number.

Q: Would that indicate to you, while they were illegible, that those are documents, nevertheless, kept in the ordinary course of Monsanto's business?

A: Yes, that's correct.

(Bistline Deposition Exhibit No. 4 marked for identification.)

Q: (By Mr. Sever) We're going to make as Exhibit 5 a folder containing documents that is labeled, "Safe Handling (In Monsanto's file)." I would ask you, please, again to do the same review.

(Bistline Deposition Exhibit Nos. 5, 6, 7 marked for identification.)

Q: (By Mr. Sever) Have you had a chance to

look at Exhibit 5?

A: Yes, I have.

Q: Are those all records that are kept in the ordinary course of Monsanto's business?

A: They appear to be documents that were taken from Monsanto's files, yes.

Q: Some of those that were produced in response to the 1997 subpoena, correct?

A: Yes, I believe they were all produced in response to the 1997.

Q: I think we've established all MONS and SHL documents were produced in response to the 1997 subpoena?

A: That's correct.

Q: I've got to separately ask you about these files, because we're going to maintain them in separate exhibits. I apologize for the repetition. Let me show you Exhibit 6. Before I do that, let me ask you about the SHL documents briefly. I take it SHL designates Schlumberger?

A: Right. That was the intent.

Q: The reason that these documents were designated Schlumberger was what, the SHL designation?

A: They were documents which, as a result of

conversations among counsel, that were agreed to be produced in addition to documents MONS.

Q: Does Monsanto in its records kept at the records center have a file or group of files that is designated Schlumberger?

A: Not that I know of, no.

Q: Let me show you Exhibit 6. It's a file labeled, "MSDS Product Questionnaire Shipping (Monsanto Docs)." If you could take a look at that, please.

A: Yes.

Q: Are those documents kept by Monsanto in the ordinary course of business?

A: Yes, they appear to be.

Q: Exhibit 7 is another file folder that contained a stack of documents. The file folder is labeled, "Reports (Including Drafts) Monsanto Docs)." I'd ask you to take a look at these documents, please.

(Bistline Deposition Exhibit Nos. 8 through 16 marked for identification.)

Q: (By Mr. Sever) Have you had a chance to review Exhibit 7?

A: Yes, I have.

Q: Are those all documents that are kept in the

ordinary course of business by Monsanto?

A: Yes, they appear to be.

Q: The SHL documents that we were talking about a second ago, was it you that went in and found those documents for their production?

A: I didn't do it personally, no.

Q: Someone at your office did?

A: It was done -- there was a clerical person at Monsanto. The documents are reviewed for production by outside counsel.

Q: The clerical person at Monsanto is the person who went and looked for the documents?

A: She conducted the search.

Q: She did pursuant to some instructions that came from outside counsel?

A: I don't recall whether I gave the instructions or whether counsel. From either me or counsel.

Q: I take it from your previous testimony that the instructions that came that led to the searching for those documents came as a result of discussions between counsel involved in this litigation and Monsanto's outside counsel?

A: That's correct.

Q: Were you given written instructions as to

what you should look for in connection with that production?

A: I wasn't given any instructions. I don't believe that the instructions to my clerical person were in writing. I believe it was a conversation.

Q: So there's nothing that you could give me that would show me what you were looking for?

A: With response to the subpoena indicates what we looked for and what we produced.

Q: Fair enough. Exhibit 8, again, is a grouping of documents, including some that fall into this SHL category. It is the file that is labeled, "Correspondence, C-O-R-R-E-S, Memos, Call Reports, Et Cetera, (Monsanto Docs)." There's a post-it on the first document which bears bates number MONS-096401. That says, "Customer Notification Index." I'll ask you, after you have a chance to look at these and determine whether they are kept in the ordinary course of business, the import, if any, of that post-it.

(Bistline Deposition Exhibit Nos. 17, 18 marked for identification.)

Q: (By Mr. Sever) Have you had a chance to review Exhibit 8?

A: Yes, I have.

Q: Are all of those documents documents maintained by Monsanto in the ordinary course of Monsanto's business?

A: Yes, they appear to be.

Q: You are records custodian of all those documents?

A: That's correct.

Q: Exhibit 9 is another file folder labeled, "Correspondence, Memos, Et Cetera (In Monsanto's files)." We have both MONS series numbers contained in this file and SHL series documents in this file. If you could look at that, please. Have you had a chance to review the documents contained in the file folder marked Exhibit 9?

A: Yes, I have.

Q: Are those all documents kept in Monsanto's ordinary course of business?

A: They appear to be.

Q: You're the records custodian of those documents?

A: Yes.

Q: I'll show you Exhibit 10, another file folder containing documents, both documents with the MONS bate stamp on them and SHL. This folder is labeled, "Toxicological Studies, abbreviated T-O-X,

for Monsanto (Monsanto Docs)." If you could, please, take a look at this file. Have you had a chance to review Exhibit 10?

A: Yes, I have.

Q: Again, those are all documents that are maintained in the ordinary course of Monsanto's business?

A: That's correct.

Q: You're the records custodian of those documents?

A: Yes, I am.

Q: Exhibit 11 is another file folder labeled, "Toxicity (In Monsanto File)," and contains both MONS series documents and SHL series documents. Again, I'll ask you to look at this file, please. Have you had a chance to look at Exhibit 11?

A: Yes, I have.

Q: Those are all documents that are kept in Monsanto's ordinary course of business?

A: Yes, they are.

Q: You're the records custodian of those documents?

A: I am.

Q: I neglected to ask you going back to Exhibit 9, there was a post-it on the first document that

said something about product list. I apologize. Does the designation of this document as a customer notification index affect your testimony at all?

A: No.

Q: What is this document, if you know?

A: I could just tell you what it appears to be. It appears to be a list of customer information letters that Monsanto has sent to its PCB customers.

Q: With your permission, I'm going to take this post-it off. I don't think it's pertinent to your testimony. Do you agree?

A: That's right.

MS. RUTTER: Counsel, as a way of background, you're aware we didn't receive these documents until yesterday. We went through them very hastily.

MR. SEVER: I didn't want to confuse the record.

Q: (By Mr. Sever) Exhibit 12 is a file folder labeled, "Marketing/Sales Strategies" containing a few documents that all appear to be the MONS series. Have you had a chance to look at Exhibit 12?

A: Yes, I have.

Q: Those are all documents kept by Monsanto in

the ordinary course of business?

A: Yes.

Q: You are the custodian of those records?

A: That's correct.

Q: Exhibit 13, which I'll hand you, is another file folder containing SHL series documents. The file folder is labeled, "Sales to Sangamo," S-A-N-G-A-M-O. You've had a chance to review those documents?

A: Yes, I have.

Q: Those are kept in the ordinary course of Monsanto's business?

A: That's correct.

Q: Do you have any idea where those documents were obtained? Do you have special sales files that might designate Sangamo?

A: Not that I'm aware of.

Q: How does Monsanto keep its historic records relating to sales of Arochlor, if you know?

A: They're kept in a number of ways. These documents, some of the documents in Exhibit 13, are actual invoices that would reflect sales. Other records that pertain to sales would be more of a summary year end or month end summary that would compile sales by customer, by product. Those would

also be records that we would refer to when looking for sales to a particular customer.

Q: Are those sales records, any of those that you referred to, kept as part of this PCB collection of documents that we've referred?

A: Those records that pertain to PCBs, yes, they're part of the PCB archives.

Q: I notice documents you looked at bear the SHL as opposed to MONS bates designation?

A: That's correct.

Q: These were documents that were not made as part of the original production of the MONS series?

A: That's correct.

Q: Are these documents that are contained within the documents that Monsanto has designated as PCB related?

A: Yes.

Q: At what point in time did Monsanto organize its documents into the PCB related documents that we're referring to?

A: That's been an ongoing process, Mr. Sever. Originally documents were collected in the early 1970s in response to litigation that was then pending. Over the years, as other cases were filed, additional collections of documents that had been

created subsequent to the earlier litigation were collected. As you may know, Monsanto exited the PCB business in 1977, and thereafter the law department undertook the task of consolidating in one place all of the documents that we could then find that were relative to our manufacture and sale of PCBs.

Q: Would that effort have included within it getting documents relating to Monsanto's marketing, actual marketing visits, they paid on customers relating to the sale of PCBs?

A: If those documents were still in existence in files relating to PCB products, they would have been collected, yes.

Q: Is it the case that, therefore, any document that would have been in existence at the time that we're talking about, I take it, after 1977?

A: As I said before, the document collection occurred at various points in time during the 1970s.

Q: Let me see if I can understand this. Do you know when the effort was made to gather the Sangamo related documents?

A: I don't believe an effort was ever made specifically to gather Sangamo documents. The documents relating to Sangamo would have been collected along with documents relating to other

Monsanto PCB customers whenever search and collection effort was made.

Q: You don't know precisely when that is?

A: It could have been at any time subsequent to, I guess, about 1971 when the first sweep, if you want to use that term, was made.

Q: Exhibit 14 is another file folder labeled, "Salesman's Manual" with a collection of documents bearing a MONS series bates number. I'll ask you to look at this, please. Are those documents all kept in the ordinary course of Monsanto's business?

A: Yes, this document is kept in the ordinary course of Monsanto's business.

Q: Those are documents over which you are the records custodian?

A: That's correct.

Q: Exhibit 15 is another file folder labeled, "PCB Losses/Environmental Assessments" contains some more documents bearing the MONS designation. If you could take a look at this exhibit, please. Have you had a chance to review Exhibit 15?

A: Yes.

Q: All those documents, are they maintained by Monsanto in the ordinary course of business?

A: Yes.

Q: You are the records custodian of those records?

A: That's correct.

Q: Exhibit 16 is another file folder labeled with, "? (Probably Monsanto)." By the way, I take it your counsel was nice enough to label the file folders. Who labeled these just for the record?

MS. RUTTER: Someone who works for me.

MR. SEVER: At counsel's direction, nonetheless?

MS. RUTTER: Yes.

Q: (By Mr. Sever) Because there may be some question here, I see it's been labeled, "Probably Monsanto." I'll ask you if you can tell me which, if any, of these documents are not kept by Monsanto in the ordinary course of business that might short-circuit this?

A: Mr. Sever, all of these documents were documents that were found within Monsanto's files relating to PCBs. I think the question mark was whether these were documents created by Monsanto's employees or documents outside of Monsanto that found their way into the files.

Q: You were at least, with respect to documents in Exhibit 16, unable to tell whether Monsanto

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created those documents?

A: That's correct.

Q: However, those documents are kept in the ordinary course of business at Monsanto?

A: Yes, they are.

Q: They are, nevertheless, Monsanto's business records?

A: They were found within Monsanto's files kept within the ordinary course of business.

Q: Is there some reason they wouldn't be Monsanto's business records?

A: Monsanto didn't create them.

Q: That's the distinction.

A: Or may not have created them more precisely.

Q: You are records custodian of those files?

A: That's correct.

Q: We have finished with the MONS or SHL designated stamped documents. We're going to move into some additional documents that, I believe, were part of previous Monsanto productions bearing different bates numbers. The first series I'm going to give you bears the designation bates number SMO before each of the numbers. When you were reviewing them, someone was kind enough to note those documents which do not have -- which are not

Monsanto documents specifically, but are non-Monsanto attachments. I think the most prudent way for us to go about this is for me to give you the bates numbers of those non-Monsanto attachments and ask you whether, as to all of the remainder of the documents, they are, in fact, Monsanto documents?

A: Okay.

Q: For the record, the bates numbers of those marked non-Monsanto attachments is SMO-021609, SMO-021610.

A: I think it's 618, counsel.

Q: 610 I have before 618. Did I miss one?

A: No, you're correct.

Q: The next one is 021618. The next one is SMO-021634. The next one is SMO-0216979. The final one is SMO-021485.

A: The second to the last IS 021679.

Q: 021679, rather than 6979, is the second to the last one. Have you had a chance to review the documents we were just calling out?

A: I looked at them, the specific ones that you called out.

Q: Sure. My question for you is, save for those documents bearing the bates numbers that we

just read, are the remainder of the documents contained in the file folder marked as Exhibit 17 documents which are kept in the ordinary course of Monsanto's business?

A: They appear to be, yes.

Q: Those would be records that you are the custodian over?

A: That's correct.

Q: The only exception to those being, again, those with bates numbers that we just read, correct?

A: The documents with bates numbers that we read typically are attachments to other documents that appear in the file. Everything that --

Q: Just to be clear, you wouldn't be keeping attachments in your file. Those would not be in the Monsanto files?

A: If they were attached to Monsanto documents that were not in Monsanto's files, yes, they would be in Monsanto's files.

Q: It may be Monsanto keeps the attachments in their files as well. It's just they're not Monsanto documents?

A: These were documents that were not created by Monsanto.

Q: Nevertheless, as to these non-Monsanto

attachments, the documents may be kept in Monsanto's record collection?

A: That's correct.

Q: In fact, all of the documents in Exhibit 17 are, in fact, kept in the ordinary course of business by Monsanto?

A: I'm looking at them right now.

Q: I'll try to repeat my question. Is it the case all of the documents in Exhibit 17 are those that are kept in the ordinary course of Monsanto's business?

A: For the most part, that's correct. However, there are several documents, and I'll read out the bates numbers if you want.

Q: Certainly. We may want to remove them from the exhibit, so that perhaps what we should do is go through them individually, if you wouldn't mind.

A: The first document that I see that I have no indication from the face of the document that it was taken from Monsanto's files is SMO-027875 through 027879. I say that I can't determine whether this was taken from Monsanto's files, this particular document, because it doesn't have on the document itself a number that's associated with a Monsanto document production. It may be that the Monsanto

number has been covered over. I just can't tell you. What I can tell you is this doesn't have a Monsanto number on it.

Q: Do you recognize the subject matter addressed in the document itself?

A: It appears to be a draft of a letter that was sent by Monsanto with a signature of Elmer P. Wheeler to a list of customers in March of 1969.

Q: Elmer P. Wheeler is a previous Monsanto employee?

A: He was a Monsanto employee. That's correct.

Q: Do you have any reason to doubt the authenticity of the copy of the letter you have here?

A: Just by looking at it, I don't. I couldn't affirmatively tell you it is. It appears to be.

Q: Let's go ahead and move on to the next one you have a question about.

A: The next one that I can't tell is number SMO-0006129.

Q: Are you able to determine from the subject matter of that document whether it appears to be a Monsanto created document?

A: This one I can't tell you. The next document is numbered SMO-026154 through 026161.

Again --

Q: This document appears to be a series of Monsanto invoices, perhaps?

A: Yes, they appear to be Monsanto invoices. One is a customer problem report. These documents all have Monsanto logos. They appear to be documents from Monsanto. They simply don't have a data base number or production number that would indicate to me that these documents, in fact, came from Monsanto's files.

Q: I guess, hence, you're unable to determine whether those are currently kept as Monsanto business records?

A: As I sit here, I could not do that.

Q: All right. Let's go ahead and leave them in order. We'll just note for the record that these are a problem.

A: The next document is a document numbered SMO-027043. It's a one-page document. It appears to be a document, a copy of a memorandum by David Wood, who is a former Monsanto employee, again, lacking a Monsanto number on it. I can't affirmatively represent to you this came from documents that we have in our files currently. The next one is document numbered SMO-026128 through

026130. Again, it appears to be a document authored by a David Wood, but lacking a Monsanto identification number.

Q: David Wood, again, was a previous Monsanto employee?

A: He's a retired Monsanto employee. The next document is a document numbered SMO-027047 and 048.

Q: Could you repeat that?

A: 027047 and 48. Which appears to be a memorandum authored by Mr. Jim Ali, a former Monsanto employee.

Q: That's on Monsanto letterhead?

A: That's on Monsanto interoffice memorandum letterhead.

Q: Your testimony is you don't know whether that is kept in the ordinary course of Monsanto's business?

A: I don't know whether this memorandum came from Monsanto's files.

Q: Does that appear to be a copy of a Monsanto document, however?

A: It does.

Q: Any others?

A: That was all in that exhibit.

Q: So except for those that we've just

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identified, and I won't go back through them, it appears that there were one, two, three, four, five, six of them. Except for those six documents, the remainder of those that are contained in Exhibit 17 are documents kept in the ordinary course of Monsanto's business?

A: That's correct.

Q: You're the custodian over those records?

A: That's correct.

Q: The final exhibit that I have for you, Mr. Bistline, is Exhibit 18 that is labeled, "Unidentified-Monsanto Docs From Box # Group (Sangamo History, Whitfield, et cetera)." I'm going to ask you, if you would, to do the same thing you did with Exhibit 17. I'll point out to you that a number of documents contained in Exhibit 18 have on them stickers or indications that they've been exhibits in other actions. For purposes of what we're doing today, I'd ask you to ignore that sticker. It is not pertinent, I don't think, to what I'm going to ask you. Have you had a chance to look at Exhibit 18?

A: Yes, I have.

Q: Are those records that are kept by Monsanto in the ordinary course of business?

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A: With the exception of the document numbered Box 65-131529 through 131530, I can't tell you whether these are copies from Monsanto's files.

Q: The first document in Exhibit 18, can you testify this is kept in the ordinary course of Monsanto's business?

A: This has a number that it was provided in the course of Whitfield.

Q: You can't testify it's in the ordinary course of Monsanto's business if they do not bear a bates number designating them as such?

A: That's correct.

Q: Is it the case that all documents which you are custodian of records, I'm sorry, records custodian bear a particular bates designation?

A: Yes, in one form or another, they all have an identifying number.

Q: Now, I take it, though, that Exhibit 18 does contain a number of documents that indicate they were generated by Monsanto?

A: Right. All of those documents appear to be on Monsanto letterhead or to be addressed to or authored by, both addressed to or authored by Monsanto employees.

Q: You don't have any particular basis to doubt

the authenticity of those documents, do you?

A: No, I don't.

MR. SEVER: If we could have a break, I have about four or five minutes of questions.

(Recess.)

Q: (By Mr. Sever) If I could ask you again about the relationship between Solutia and Monsanto, and I know you're a lawyer. I don't want to get too technical here, because this may go to a jury. Basically what is the nature -- you used the word "spin-off." What is the nature of the relationship between the two companies?

A: Solutia now is a completely independent freestanding company. We have no legal relationship with Monsanto. When I say "spin-off," actually the mechanics was that back on September 1st, 1997, every share owner of Monsanto received one share of the stock in Solutia for every five years of Monsanto stock that that individual owned.

Q: Specifically, too, the nature of that agreement that you referred to earlier under which you took over dealing with the Monsanto PCB issues in your capacity as the general counsel at Solutia, is it the case that Solutia is now answering for Monsanto's liability with respect to PCB?

MS. RUTTER: Objection to the form of the question.

A: I suppose it could be characterized in that fashion.

Q: (By Mr. Sever) Was there a specific written agreement by which Solutia took over the PCB responsibilities?

A: There's no agreement that deals only with PCBs. That was part of a larger agreement that had to do with allocation of responsibilities within the companies.

Q: Did that address the types of industrial chemicals that Solutia -- strike that. Did that agreement relate to the fact that Solutia was taking over all the industrial chemical business from Monsanto?

A: In part, yes.

Q: Is it fair for me to assume that, since Arochlor, the PCB product, was an industrial chemical, that, therefore, Solutia took over the management function of all the Arochlor issues?

A: That's kind of the philosophy of how the responsibilities were separated between the two companies.

Q: There's nobody now at Monsanto who deals at

all with the PCB issues?

A: That's correct.

Q: Are you actively monitoring in any ongoing way this particular insurance case?

A: Other than coming here and having produced documents, no.

Q: Do you have a function that is to address the indemnification agreements between Monsanto and their previous PCB customers?

A: I'm not sure I understand the question.

Q: Where there is an issue created by the indemnity agreements between the Monsanto Arochlor customers and Monsanto, is it you who would deal with the question?

A: If it comes up in the context of PCB litigation, yes.

Q: Do you keep the indemnification agreements that I'm talking about in separate files?

A: If you mean is there a file marked indemnification agreement, no.

Q: How are the files marked? Are they marked by subject matter?

A: The files are marked however the people who created the files marked them.

Q: So that meaning that there was no

reorganization of the files when the segregation of the PCB files was done?

A: The original PCB files that we're talking about right now are housed in our records center. They are specifically identified, but they have not been removed, for example, from -- strike that. Let me start again. Our normal records retention policy says that documents are to be kept for a certain amount of time. Documents that are no longer in current use, but which still are required to be retained for one reason or another, are sent to the records center. Typically those documents are collected by an individual who is going through his or her files, and they are -- a list of the files is made, and those files are sent directly to the records center. When we collected documents for the PCB litigation over the years, we have not removed those original documents from the files of which they were a part when they were sent to the records center. We have noted where they are. Those records are maintained in those boxes as they were transmitted to the records center.

Q: In connection with the 1997 subpoena and any further discussions that the parties in this case have had with your outside counsel, has Monsanto

and/or Solutia made an attempt to obtain all of the documents kept by Monsanto or Solutia that relate to Schlumberger or Sangamo and their purchase and use of PCBs?

A: Yes, I believe that we made a good faith attempt to review the files to the extent we could ascertain and ascertain all of those documents and produce them.

MR. SEVER: I have no further questions, and thank you very much for your time today.

EXAMINATION

QUESTIONS BY MR. GEDDIE:

(Plaintiff's Deposition Exhibit Nos. 1, 2, 3, 4, 5 marked for identification.)

Q: Mr. Bistline, I just have a few. Let me pass over to you a folder that I have marked as Plaintiff's Exhibit No. 1. Those are documents that you were kind enough to go through today or this morning?

A: That's correct.

Q: There are a number of notations on there indicating that there are attachments to documents that may not have been authored by Monsanto, but are attached to Monsanto related documents?

A: That's correct.

Q: I guess my question is, having reviewed those documents, do you have any reason to question the authenticity of any of those documents in file folder number one?

A: No.

Q: Let me pass, if I will, if I may, Exhibit No. 2, Plaintiff's Exhibit No. 2, which is simply a separate stack of documents. As the custodian of records of Monsanto's Arochlor documents, do you have any reason to question the authenticity of any of the documents in that file folder number two?

A: Give me one minute, Mr. Geddie.

Q: Sure.

A: The only document as to which I couldn't give you an opinion at this point is a document that's marked Box 16-032970 through 032981. This document appears to be, in part, a document created by Monsanto and, in part, not. I have -- as to the non-Monsanto part of that, I have no indication -- I couldn't express an opinion on its authenticity.

Q: With your agreement and agreement from counsel, I'll just remove that from the file.

MR. SEVER: That's fine.

Q: (By Mr. Geddie) Let me show you what I've marked as Exhibit No. 3. It is from the stack of

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documents that you reviewed this morning. It's entitled, "Generator the Travelers Engineering Division." Is that a division of the Monsanto Company?

A: Not that I'm aware of, no.

Q: Does that document appear to be prepared by the Travelers Insurance Company or some subsidiary of it?

A: That would be my surmise.

Q: Down in the lower right-hand corner, there is a bate stamp number WM.

A: That's correct.

Q: Is that the nomenclature for the documents produced in the Whitfield case?

A: It is.

Q: The second one is an SMO document.

A: Yes.

Q: Do those two bate stamps indicate to you that Plaintiff's Exhibit No. 3 came from the Monsanto files?

A: The WM number does. I don't believe SMO was a Monsanto number.

Q: The WM document indicates to you that the generator document was produced in connection with the Whitfield case and it came from the Monsanto

files?

A: That's correct.

Q: It's an authentic document in that it was maintained by Monsanto in the normal course of business?

A: Correct.

Q: Let me show you what I've marked as Plaintiff's Exhibit No. 4. In all fairness to you, you marked with a yellow sticker just a question mark on it. I would refer you to the second page, and ask you if you can identify the source of the information contained on that document?

A: Are you referring to the small type?

Q: No, to Mr. Wheeler's name.

A: This indicates that the information contained on the document was furnished by Mr. Wheeler, who at the time was a Monsanto employee.

Q: Below that, I believe, the questionnaire was originally authored by the S. C. Johnson Company?

A: That's what it appears, yes.

Q: Based on the bate stamp number, again, on Plaintiff's Exhibit No. 4, the WM designation, does that indicate to you that Plaintiff's Exhibit No. 4 was maintained by Monsanto in the normal course of business?

A: It indicates it was produced in the Whitfield case, which indicates it came from Monsanto's files, yes.

Q: The last exhibit is Plaintiff's Exhibit No. 5. Do you have any reason to question the authenticity of that document?

A: I have no reason. No, I have no reason to question the authenticity.

Q: That's based on the bate stamp nomenclature at the bottom?

A: That's correct. SHL numbers which indicate, again, it was produced by Monsanto, a document found in its files.

Q: Let me get four people's names. Who was Bill Pappageorge, and what were his job responsibilities?

A: Bill Pappageorge was a long-time Monsanto employee, who, as is relevant here, in 1970 became the person at Monsanto who was the focal point for our efforts to deal with the PCB issues and the growing awareness of PCBs in the environment and the appropriate Monsanto response.

Q: Just so the jury could understand, would one appropriately characterize Mr. Pappageorge as Monsanto's in-house expert on PCBs?

A: That would be fair.

Q: Who is Paul Benignus?

A: A long-time Monsanto employee. His title would have been manager for PCBs. He had a long relationship with PCBs as Monsanto product manager.

Q: Who was Randy Graham?

A: Randy Graham was a person in the sales area of Monsanto who for a time with Monsanto was associated with PCB products.

Q: Who was Elmer Wheeler?

A: Mr. Wheeler was Monsanto's chief industrial hygienist/toxicologist for a number of years.

Q: On Exhibit No. 4, Plaintiff's Exhibit 4, he's referred to as the manager of environmental health?

A: That's correct.

Q: That job would involve what?

A: As I recall, at that time Mr. Wheeler was in charge of industrial hygiene and toxicology at Monsanto.

MR. GEDDIE: That's all I have, sir. Thank you.

MR. SEVER: Thank you for your time. We do some weird things here. You're going to send the original to him. He's going to sign and send it

back to you. You are going to seal the original and put a stamp over the seal, then send that to an address that I'm going to give you along with another copy. Then you can also send a copy to me. I think you need to send a copy to plaintiff's counsel. For the record, counsel have agreed to separate the exhibits from the transcript for efficiency purposes and because the exhibits are so voluminous. I think we have an agreement among ourselves to keep the exhibits in the order in which they have been presented, and that we will each get a copy of the exhibits in due course with the transcript.

COMES NOW THE WITNESS, THOMAS M. BISTLINE, and having read the foregoing transcript of the deposition taken on the 16th day of June, 1998, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_ _ _ _ _ _ _ _ _ _ _ _ _ _

THOMAS M. BISTLINE

Subscribed and sworn to me before this

_ _ _ _ day of _ _ _ _ _ _ _ _ _ _ _ , 1998.

My Commission expires: _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Notary Public

State of Missouri

SS.

City of St. Louis

I, Dawn L. McTeer, Registered Professional Reporter and Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the civil cause now pending and undetermined in the Court of Common Pleas, State of South Carolina, County of Greenville, to be used in the trial of said cause in said court, I was attended at the offices of Husch & Eppenberger, 100 North Broadway, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 16th day of June, 1998.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned

witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this 24th day of June, 1998.

My Commission expires September 21, 1999.

Notary Public in and for the

State of Missouri

Dawn L. Mattes
Notary Public-Notary Seal
State of Missouri
St. Louis County
My Commission Expires 09/21/99

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