

IN THE CIRCUIT COURT  
TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, et al.,

Plaintiffs,

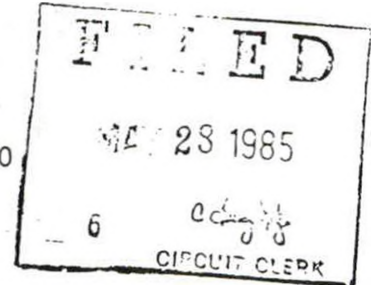
v.

MONSANTO COMPANY,

Defendant.

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No. 80-L-970



DEFENDANT MONSANTO COMPANY'S MEMORANDUM IN SUPPORT  
OF SUBMISSION OF DOCUMENTS FOR IN CAMERA  
REVIEW

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The files of Monsanto's inhouse attorneys contain a number of documents prepared for trial in cases other than this which are nevertheless responsive to this Court's current order concerning the discovery. Among these documents are certain reports prepared by outside consultants and the law firm of Bowles, McDavid, Graff & Love of Charleston, West Virginia, in preparation for trial in the cases consolidated as Adkins v. Monsanto Company, Cause No. 81-2098 pending in the United States District Court for the Southern District of West Virginia. The facts stated in the Affidavit of Charles M. Love, III, a partner at Bowles, McDavid, Graff & Love, demonstrate that these documents should be protected from discovery under the attorney work-product provisions of Supreme Court Rule 201(b)(2).

Supreme Court Rule 201(b) states:

EXHIBIT D

Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including where appropriate a reasonable attorney's fee, in such manner as is just.

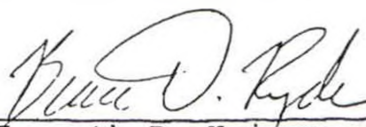
In Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250 (1982), the Illinois Supreme Court applied that rule to reports prepared by non-attorneys. The test applied by the Court was whether the report reflected or disclosed the theories, mental impressions, or litigation plans of the attorneys or whether the report was the product of the attorneys' mental processes as communicated to the person preparing the report. Id., 432 N.E.2d at 254; see Sutherland & Dietrick, "The Attorney-Client Privilege and Work Product Doctrine in Federal and Illinois Courts," 73 Illinois Bar Journal 448, 458 (1985).

Monsanto does not believe that these documents are subject to discovery; the facts demonstrate that they satisfy the tests set forth by the Supreme Court in Consolidation Coal. Mr. Love met with Dr. Weinberg and the other consultants involved in their preparation and discussed with them at length his litigation plans, strategies, theories, and mental impressions concerning the litigation. (Love Aff. ¶6). In addition to this input, drafts of all of the reports were reviewed by attorneys, whose comments were incorporated into the final reports. (Love Aff. ¶7). Thus, the reports contain the attorneys'

litigation plans and mental impressions of the case, which are inextricably combined with the work of the outside consultants. The reports also contain evaluations of arguments, expected to be used at trial in the Adkins cases, which clearly reflect the litigation plans and theories of Monsanto's attorneys. These documents must therefore be protected from discovery by Supreme Court Rule 201(b)(2).

In the event this Court decides that any portion of any of these documents should be produced, Monsanto requests that this Court enter a Protective Order in the form proposed in its Motion filed May 6, 1985. Monsanto also requests that, pursuant to Supreme Court Rule 201(b)(2), this Court apportion the cost of preparation of these materials and assess against Plaintiffs the portion of such costs corresponding to the portion of these materials produced.

COBURN, CROFT & PUTZELL

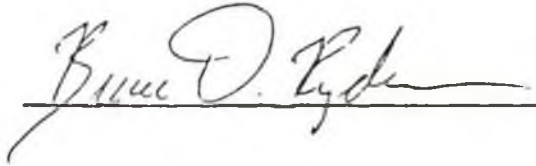
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 29th day of May, 1985, to the following attorneys of record:

Mr. Rex Carr  
Mr. Jerome Seigfreid  
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Belleville, Illinois 62221

  
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