

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

CECIL SCOTT, et al.,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 902-02008
vs.	)	
	)	Division No. 1
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM IN OPPOSITION TO
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Monsanto Company submits this Memorandum in Opposition to Plaintiffs' Motion to Compel Production of Documents. Because plaintiffs' document request is so overbroad as to include non-discoverable as well as discoverable documents, Monsanto's objection to the request should be sustained, and plaintiffs' Motion to Compel overruled.

I. BACKGROUND.

In an earlier phase of this litigation, pending in federal court in Texas, Monsanto produced to plaintiffs over 75,000 pages of documents relating to PCBs. Among the many topics covered by that production were health effects of PCBs in humans and animals, warnings and instructions issued by Monsanto, and sales of PCBs to plaintiffs' employers. Monsanto produced all of its technical manuals on PCBs, all warning labels used on PCB products, and results of animal testing of PCBs. Plaintiffs now seek production of even more documents, using a "catch-all"

this case: an invoice for the sale to a customer in Boise, Idaho of a PCB product not involved in this case; construction blueprints for the PCB production unit at a Monsanto plant; a performance specification for a PCB product not involved in this case; a list of products sold by Monsanto during the year 1938, which mentions a PCB product not involved in this case, but makes no other statement about PCBs. Moreover, attorney-client privileged and attorney work product documents would fall within the request. Like the requests in Meeker and Wilson, plaintiffs' request must be denied because it is not reasonably particular, and consequently requests non-discoverable documents as well as discoverable ones.

Plaintiffs argue that "any document which relates to PCBs could lead to the discovery of admissible evidence. This is, of course, the test for discoverability" (Plaintiffs' Memorandum in Support, p.2). Plaintiffs have misstated the law; the information sought must appear "reasonably calculated to lead to the discovery of admissible evidence." Rule 56.01. In product liability cases, discovery is generally limited to the time frames, products, and types of defects alleged in the pleadings. State ex rel. Kawasaki Motors Corp., U.S.A v. Ryan, 777 S.W.2d 247 (Mo. App. 1989). Plaintiffs' request is not so limited, and, as illustrated above, there are many categories of documents relating to PCBs which are not reasonably calculated to lead to the discovery of admissible evidence.

It is theoretically possible that there are categories of discoverable documents which were not requested by plaintiffs in the last round of discovery. In light of the extreme breadth of plaintiffs' previous production requests, and the huge volume of documents Monsanto produced in response to those requests, this possibility is vanishingly small. If any such documents exist, however, the proper procedure is for plaintiffs to file requests for these particular categories of documents, rather than "encompassing 'catch-all' demands" which include documents having no relevance to the litigation. State ex rel. Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo.App.1985); State ex rel. St. John's Mercy v. Hoester, 708 S.W.2d 796, 798 (Mo.App. 1986). Plaintiffs argue that "it is impossible for the plaintiff to make specific requests concerning all of the documents which might relate to" the product. (Plaintiffs' Memorandum in Support.) If this were true, no lawyer would ever file a document request other than: "Produce all documents which relate to the subject matter of this case." In fact, lawyers routinely make specific requests for production of documents -- and plaintiffs counsel in this case did so in order to obtain over 75,000 documents from Monsanto.

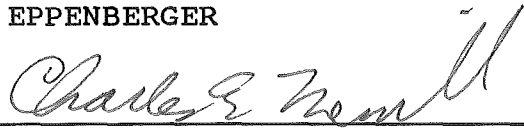
III. CONCLUSION

Plaintiffs' Request for Production fails to describe the documents requested with reasonable particularity and, consequently, requests not only discoverable documents but documents beyond the bounds of proper discovery. Plaintiffs' Motion to Compel should be denied.

Respectfully submitted,

HUSCH & EPPENBERGER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 31st day of March, 1992, by first class mail, postage prepaid to:

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