

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 Mr. John McPhillips

13 August 6, 1985
14
15

16 APPEARANCES:

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

19 MR. JOHN MUSGRAVE, Attorney at Law,
20 MR. JOSEPH NASSIF, Attorney at Law, and
MR. KENNETH HEINEMAN, Attorney at Law,
21 On behalf of the Defendant.
22

23 PATRICIA A. GANDY, CSR, RPR

24 Official Court Reporter

(At this time Court was in recess and the following proceedings were held in chambers.)

THE COURT: Did you bring a copy of that proposed protective order and the one that's in force?

MR. HEINEMAN: Yes.

THE COURT: I wanted to look that over before we went into that.

MR. HEINEMAN: Here is the proposed one which a motion was filed on May the 5th, and here is the existing one that was entered very early on in the case.

THE COURT: And is still in force. In paragraph 5 of this proposed protective order, at the conclusion of that action I would assume and I would state on the record that I am assuming that that includes appeals of this action, if that's not what you intend, I would insist that that be in there.

MR. HEINEMAN: I would think so, Judge.

THE COURT: Do you have any objection to this proposed protective order?

MR. CARR: I didn't know it was going to come up today. I don't have any copies with me, and I haven't thought about it. I haven't seen it recently, I thought we were just going to do something about the--this is the one that's in effect and this is the one we want--

THE COURT: In addition.

1 MR. CARR: In addition to that one. Judge, I don't agree
2 to any part of it. I see no reason to, because this would
3 effectively limit our use of this discovered material in other
4 cases that we have. It would require us to go through the same
5 work to get this material, and I don't know anything in the law
6 that says something that they have called work product is entitled
7 to any privilege. This Court has said in effect that it's not
8 entitled to any work product privilege, that it doesn't fall
9 within that category of material that's subject to the work
10 product protection, and it is ordered that it be given to us, and
11 I see absolutely no reason or justification for any document
12 that the Court says that we can have can be considered confidential.
13 As I understand it, that there is something relevant in any of
14 these documents, we, of course, can use it in the trial of this
15 case, simply because we don't consider it relevant doesn't mean
16 that it's not something that we can use. We have cooperated
17 with other lawyers who have dioxin cases. They've shared
18 information with us and we've shared with them, and I just see
19 nothing in the law, I don't know any possible law that would
20 entitle them to this kind of protection. Why should they be in
21 a different position than other parties?

22 THE COURT: Do you have anything you wish to say?

23 MR. HEINEMAN: Well, your Honor, first of all with
24 respect to there already is an order of this Court in existence

1 with respect to any information in this case that's been turned
2 over to Mr. Carr which has been stamped confidential.

3 MR. CARR: Let me interrupt one moment. That dealt
4 with trade secrets, commercial information, confidential research,
5 and anything, and that's been my understanding from the beginning
6 that that was an order to protect trade secrets. Simply because
7 you have stamped these things "Confidential", I have not
8 considered them unless something comes close to trade secret.
9 I will be frank with you, I have not considered any of these
10 things in any way confidential because you've stamped everything.
11 There isn't a document that you have given us that hasn't been
12 stamped "Confidential, subject to protective order," and by
13 your use of it, it is meaningless to me. And I will be frank,
14 I have not made the least attempt to comply with this order of
15 '83 that dealt with, and it was my understanding at the time
16 that you got the order on trade secret and confidential research
17 development and commercial information, and I have looked at
18 it only from that viewpoint, and that's been my understanding.
19 I will be frank to admit, I'm right now in contempt of this
20 order because I have not understood that I have been kept from
21 using this information and exchanging this information with
22 other attorneys, and I have. Anything that looked like it
23 might be in the nature of a trade secret or confidential
24 research, totally different. But this order that was entered

1 April of '83 was prior to the time they started supplying
2 these documents, and I wouldn't object to that kind of order
3 then because they are entitled to trade secret protection and
4 I wouldn't give it away. But, your Honor, they have stamped
5 everything "Confidential" and subject to protective order, and
6 I simply have not been obedient to this order because of that
7 reason.

8 MR. HZINEMAN: Have you turned over any documents to
9 somebody else that even appeared to you that they might relate
10 to confidential information or trade secret?

11 MR. CARR: No trade secret has been turned over to
12 anybody. I haven't seen anything that could be considered a
13 trade secret that you have given us. There hasn't been anything
14 that I have discussed with Paul Pratt on a number of occasions,
15 documents that we have that we've used and we've traded documents
16 with him. I can't tell you specifically that I gave a single
17 document as such to Paul Pratt, but I would be very surprised
18 if I have not. I know I've disclosed to him plenty of times
19 information that I have received from you, and I say every
20 single document you've given us has letters that you have sent
21 out to other people, and every document you've given us has got
22 that stamp on it. You haven't used it with any discretion at
23 all. And so for that reason, I just ignore it because it is
24 meaningless to me. I would have to sit down and analyze each

1 document, is this really a trade secret. As you know, you've
2 supplied thousands and thousands and thousands of pages of
3 documents to us, and no matter what the document, you've
4 stamped it trade secret, you've stamped it "Confidential,
5 subject to protective order," and it's been meaningless to me.

6 But to directly answer your question, I don't have any
7 specific reference in my mind that I have given a document to
8 either Pratt or to Stu Caldwell. But I know, when I went
9 on vacation I told Caldwell to come in and help himself to
10 my files that dealt with that particular aspect. He didn't
11 come in, but I'm telling you that that's the way I've used
12 your order, your stamp, because of that. And I read that to mean
13 trade secrets. And this current order you're trying to broaden
14 it to include what you now call work product, and that's--

15 THE COURT: We're getting off on a tangent. Do you
16 have any reply you want to make as to this proposed protective
17 order?

18 MR. HEINEMAN: I do, your Honor. Clearly, what is
19 discoverable in a particular case from a particular party varies
20 according to the law of the jurisdiction the one happens to be
21 in. Clearly under Federal law, and in the case in which Mr.
22 Caldwell is involved against Monsanto and in the cases in which
23 others are involved against Monsanto in the agent orange
24 litigation that is still pending in Federal courts, the standards

1 are quite different, and it is clearly unfair to Monsanto Company
2 to have people, litigants, their attorneys, be able to get
3 outside the judicial process in which they're involved information
4 that the Court which is administering that lawsuit would not
5 permit them to have. That's clearly not fair.

6 THE COURT: Okay, I've got two questions. Well, now,
7 wait a second. Doesn't that put you in the position of determining
8 what's privileged in Federal proceedings?

9 MR. HEINEMAN: No, what I am saying is that in that
10 litigation, that Court will decide through in camera proceedings
11 what is discoverable and what is not. In this situation you have
12 decided what is discoverable and what is not, all right. We
13 turn over documents in this litigation that you have determined
14 are discoverable, even though the standards for that discoverability
15 are quite different in other jurisdictions, all right?

16 THE COURT: Right.

17 MR. HEINEMAN: Now our position is we obey this Court's
18 order. We turn over the documents to this litigant for use in
19 this litigation and no other and let the other litigant and his
20 attorneys get whatever they're permitted to get in the Court in
21 which they're bringing their lawsuit. That's the patent unfairness
22 of it, and that's what we're trying to avoid.

23 MR. CARR: Well, I'm not familiar with any part of the
24 discovery rules that give you the right to make conditions on

1 your production. When you produce it to me, unless it is a
2 trade secret, you are entitled to protection of your trade secrets,
3 but there is nothing else in any law of discovery that I have
4 seen anywhere that gives you the right to say what I can do with
5 material that you have produced to me under order of Court. I
6 have the right to decide that, not you. The Court says it is
7 not protected information. It is not protected information that
8 you have to give it to me. Now--

9 THE COURT: Okay, now, two things, I'm going to deny your
10 motion for protective order for two reasons. Number one, by the
11 order, you have this Court allowing you to determine what is
12 Federal work product and subject to a protective order. This is
13 a State circuit court. We deal with Federal substantive statutes.
14 We have no business making that kind of determination, which is
15 properly something to be done by the United States District Court.
16 There are different standards. They are different courts, they
17 are different systems, and I have no business making that kind
18 of determination. I have no business delegating to you the power
19 by your own determination to make that determination. Number two,
20 you're basically by this protective order putting yourself in
21 the position of saying we have asserted this privilege in this
22 Court. You have denied it because you have ordered, because the
23 Court has ordered that it be disclosed, you have asserted that
24 privilege in this proceeding as far as discoverability of these

1 materials in those instances where I have ordered those materials
2 be turned over, it has obviously been denied. And now this
3 protective order would allow you to relable it that way, even
4 when it has been denied as part of the order turning it over,
5 which I don't think makes any sense at all. Basically, it's
6 been denied as far as not being discoverable in the State of
7 Illinois, and I am not about to delegate to you the power to
8 make any determination or make the determination myself as to
9 whether it is or is not work product under the Federal rules.
10 Obviously I've, in my review of authorities and materials, I
11 have some witness as to what that standard is and everything, but
12 I'm not about to make that kind of determination. I don't think
13 it is proper for me to make it.

14 MR. HEINEMAN: Your Honor--

15 THE COURT: Wait a second. It is not proper for me to
16 delegate to you the power to make that kind of determination, so
17 I think because of both of those reasons I am going to deny
18 entry of the proposed protective order. I just don't think that
19 it's something that should be entered by this Court.

20 Now, you have some questions as far as--

21 MR. HEINEMAN: May I address myself to that issue a
22 little further, Judge? I'm suggesting respectfully to the Court
23 that you're misapprehending what it is that we would be able to
24 do with this order. We are not saying that another court can or

1 cannot allow discovery of this material, all we're asking this
2 Court to do is to permit that Court to exercise its jurisdiction
3 and prevent discovery in that case of something that that Court
4 deems a litigant in that case is not entitled to have.

5 THE COURT: Wait a second. By denying this, I don't
6 either help or prevent it. There is absolutely nothing in
7 anything that I have done that prevents you from going into the
8 Federal District Court in Charleston or any place else that you
9 have litigation pending and asking that that Court prevent any
10 kind of discovery of anything that has been ruled discoverable
11 here. It is not within my jurisdiction to determine what either
12 the discovery rules in the State of Missouri for example, or the
13 United States District Court should or should not be. And I
14 have not, as far as you being a party in front of me under my
15 jurisdiction. I have not in any way tried to prevent you from
16 going into any of those courts and getting that kind of order.
17 What I am preventing you from doing is taking it upon yourself to
18 or giving to me the position of labeling what would or would not
19 be discoverable either in the U.S. District Court or in a sister
20 state's court. But I'm not preventing you from getting any kind
21 of order in either any of these other states or in the U.S.
22 District Court.

23 MR. HEINEMAN: But Judge, if a litigant in that Court
24 already has the document or let's say it's prohibited from his

1 discovery in that court and he comes to Mr. Carr and gets it
2 because Mr. Carr gives him a copy of it, because this Court said
3 it was discoverable and then uses it in that litigation.

4 THE COURT: You're going to have to go to that other
5 Court and either prevent them from getting it or prevent them
6 from using it. I don't think that any kind of limitation that
7 you are asking me for in that order is what you are aiming at would
8 do that effectively and it really does delegate that power to
9 make that determination to either me or to you, and neither one
10 of us should be making that. You can assert it if you want, but
11 you can't assert it in this form. You assert it somewhere else.
12 I understand what you are saying, but this is not the place in
13 which to address it. Neither one of us have the, should be in
14 the position of determining what is Federal work product in this
15 Court in the State circuit court.

16 You had some questions as far as some discovery that
17 was ordered, is that correct?

18 MR. NASSIF: We had some other issues we wanted to
19 raise.

20 MR. HEINEMAN: About discovery that was ordered?

21 MR. NASSIF: Yeah, we had, well, your Honor, we have
22 to in terms of producing this information, we have counsel in
23 agent orange and in the Nitro case, we are reviewing with them
24 the documents you've ordered us to produce, and that's going on

1 right now and, you see what I mean now?

2 MR. HEINEMAN: All right, I wasn't sure what you had in
3 mind. We are in the process of clearing these documents with
4 the attorneys in those other lawsuits. Once we do that, obviously,
5 the client has to make a decision as to what it's going to do in
6 connection with this Court's order in terms of some appellate
7 procedure or something of that sort, and therefore that's what
8 we're waiting for now, and I just wanted to inform the Court
9 that that process is going on and we're going to be told--

10 THE COURT: Well, I was given to understand that the
11 reason that this hearing in the middle of trial time was being
12 asked for now was that so these matters could be cleared up and
13 it could all be produced by four o'clock this afternoon.

14 MR. NASSIF: One of the matters that needs to be
15 cleared up, and I will address that because I discussed that with
16 you, Judge, was the getting back and informing counsel promptly
17 as to what the Court's position on the protective order was
18 going to be, which I think is going to be a fairly critical,
19 maybe, may not be, but could be a critical element in our
20 decision on that, and we're going to communicate that right now
21 so that information can be communicated back right away, and I
22 think that's why we needed to talk to you at this point so we
23 could do that, and that decision could be made consistent with
24 the four o'clock deadline.

1 THE COURT: One othe thing, I assumed that it's obvious,
2 but maybe even if it's obvious, it should be stated on the record
3 that that other protective order does apply to anything that's
4 produced under this discovery order. I think that would be
5 obvious, but it's probably bast said and not left unsaid.

6 MR. HEINEMAN: The first one.

7 THE COURT: The first one that I entered.

8 MR. HEINEMAN: In 1983?

9 THE COURT: I assumed, and maybe I should have stated
10 it for the record, but everything I produced would be subject
11 to that. Now, is there anything else that has to be cleared up?

12 MR. HEINEMAN: Yes, sir, I think there is.

13 THE COURT: Oh, I would also remind you that instantner
14 in the order meant instantner.

15 MR. HEINEMAN: What we were going to do was request
16 the Court for 24 hours, I guess, in which to seek some sort of
17 appellate review of this Court's order to turn this over, if
18 it is necessary, based upon our clearing the documents with
19 the counsel in the other cases.

20 THE COURT: I'm going to deny that out of hand. These
21 materials were produced under prior orders of this Court for
22 months if not years. I mean as far as compliance with discovery
23 order of this Court, we're way past the time of giving delays.
24 The only reason that I didn't say to turn it over an hour after

1 I issued the order was because of the volume of the documents.
2 I said instantter, I meant instantter. It's all overdue as far
3 as I'm concerned, and as far as this turning it over, the volume
4 of the materials that were turned over to me should have been
5 turned over months if not a year or so before they were turned
6 over to me under the existent discovery orders of this Court.
7 I am obviously not worried about appellate review of any of my
8 decisions. I assume that everything in this case is going up
9 on appellate review and will be reviewed by the appellate courts
10 of this State. I am not going to allow your request and build
11 in further delay in this process that is months, if not years
12 overdue. So the answer is no.

13 MR. CARR: Your Honor, I'd like to make a motion with
14 respect to this order that, of April the 6th, 1983, this protective
15 order. I would like to move for permission from this Court to
16 keep in my possession any and all documents that have thus far
17 been produced to me and to be given leave to not be bound by any
18 terms of confidentiality for the reason that all of the documents
19 that have been produced to me do not in fact constitute trade
20 secrets, confidential research, development, or commercial
21 information and I want leave because of the fact that none of
22 these documents constitutes such trade secrets. I want relief
23 from this order and permission to keep the material at the
24 conclusion of this case and to have the right to disseminate

1 that information in the free exchange of information has been in
2 existence in the products liability field litigation amongst all
3 attorneys who deal in that area, so as to continue the right
4 of attorneys to obtain justice for their clients because there
5 are, there is nothing in the rules or in the law that, as I
6 understand it, to allow a litigant to have protection where the
7 material is not a trade secret or confidential, and there is
8 nothing been given to me that constitutes that.

9 Now, if Monsanto, I'll say that I will not give that
10 information to others immediately. I haven't, inasmuch as I
11 know I haven't given a physical document to anybody, although
12 I may have given the contents or the gist of the document to
13 people, but I'll not do that if Monsanto represents to me,
14 assuming the Court gives me relief from this, gives me permission
15 to do that, if there is in fact something that they've given me
16 that really does constitute a trade secret, and I am not, and
17 I haven't recognized it as such, I'll certainly be willing to
18 reargue that point or to argue that particular document with
19 counsel before the Court. But I don't see anything that's been
20 given me to date to meet the standard of trade secret or
21 commercial.

22 THE COURT: You're saying in effect under Paragraph 3
23 you're challenging all the designations of trade secret?

24 MR. CARR: I'm moving that I be allowed to keep, they're

1 saying that I have to bring up the document that I want to use
2 or to keep or to disseminate, I'm saying all the documents that
3 I have been given. I want that leave, because none of those
4 constitute trade secrets. I'm willing to argue and litigate
5 that point with counsel now so that I can be relieved of this
6 order because of their indiscriminate use.

7 THE COURT: Let me make a suggestion on that motion.
8 First of all, the way I read Paragraph 6, you're allowed to
9 keep it through the end of the appellate process, anything
10 that's been produced in this case. If Monsanto has anything
11 that they want to designate as trade secrets, any reason why,
12 and taking my suggestion really from the Supreme Court rules
13 as to consultation between clients, I would suggest between the
14 two of you that you have a meeting among yourselves as to anything
15 that Monsanto would wish to designate as trade secrets and explain
16 in a conference between the two of you off the record as to why
17 it is a trade secret for Monsanto's protection of what they wish
18 to so designate. If the two of you can work out an agreement
19 among yourselves as to any materials, I'm sure I will be
20 inclined to go along. If there is still materials in dispute,
21 we will have an argument on that on the record. But in the
22 spirit of the rules, as far as contact between counsel to
23 resolve discovery problems and for the protection of anything
24 that Monsanto upon reconsideration may consider a trade secret,

1 I'd like that to be done, and if there is still an open dispute
2 as to any or all of the materials, I would be happy to hear your
3 arguments.

4 MR. CARR: Plaintiff agrees that that would be agreeable.

5 THE COURT: Agreeable to defendants? And I will just put
6 the motion in abeyance. As to the first part, you are allowed
7 to keep it. Any problem with having that consultation before I
8 hear any more on it, so you don't have to put what you consider
9 a trade secret on the record.

10 MR. HEINEMAN: I have no problem in a consultation with
11 respect to what's trade secret and what isn't. I obviously,
12 based upon what Mr. Carr has said to this point, believe there
13 is going to be considerable disagreement among us as to what is
14 and is not. And I don't know that it's going to end up saving
15 the Court a lot of time, but hopefully it will.

16 THE COURT: I realize it may not save me an ounce of
17 time, but I'd like to have it tried that way. I think the rules
18 so indicate that that should be tried first.

19 MR. NASSIF: Your Honor, would it be possible on the
20 in camera documents for you to give us a period of time for which
21 we can go to the courts in Charleston and New York before
22 Mr. Carr shares these documents with the individuals he's
23 mentioned that he is sharing information with so we can seek
24 orders from them before the documents are in fact disclosed to

1 counsel in other cases against Monsanto Company, and in the
2 meantime give the documents to Mr. Carr so they are not held
3 and if we should proceed to go ahead and if the stopping point
4 is the other litigation, disclosure to the counsels in other
5 litigation, could you give us some period of time, even though
6 we might disclose the documents to Mr. Carr which would not
7 delay this proceeding but give us some period of time in which
8 we can go to these other jurisdictions and request some sort of
9 order on those documents?

10 MR. CARR: I would object to that, your Honor, because
11 that allows their action in another court to control what this
12 Court believes is right and proper, but I will tell this, that
13 I have no current plans, nor any current requests from anybody
14 relative to any of your documents and I don't intent to rush
15 out and give these documents to anybody. It's certainly not--and
16 there's no exigent reason to do that, and I will represent to
17 you that I will not give the documents to anyone in the near
18 future. But I certainly don't want this Court entering an
19 order dependant upon some other court's action.

20 MR. NASSIF: Your Honor, I would suggest that if you
21 are unwilling to give us just a period of time, and when Mr. Carr
22 says not give it away, if he lets somebody sit and read it,
23 that is almost as bad as giving it away.

24 MR. CARR: I won't let anybody sit and read it. I'm

1 telling you in good faith, there is no reason for me to disclose.
2 No one has ever asked me for any secret in camera documents,
3 all right, and I haven't given those in camera documents to
4 anybody. No one's seen them except Jerry and I. What I am
5 telling you is that I see no urgency about this situation, and
6 I am not, and I am representing as an officer of this Court
7 that I am not going to rush out and send to somebody this
8 document as far as I'm concerned. If you want to go to some
9 other court, you will have ample time to do so, but I will be
10 opposed to this Court entering an order on me as to what I can
11 or cannot do with this material. This Court cannot be controlled
12 by your actions in another court.

13 MR. NASSIP: Your Honor, we are not asking this Court
14 to be controlled by our actions in another court. We're simply
15 asking this Court to give us time to approach the other courts.

16 THE COURT: It sounds like you have that by agreement,
17 so--

18 MR. NASSIP: Well, can I have a definition of--

19 THE COURT: On the basis of my reasons for not entering
20 your original protective order, I would rather not enter an
21 order such as that. Apparently by agreement you are achieving
22 the same effect anyway, so--

23 MR. CARR: I will agree not to divulge any of this
24 in camera material to anyone for at least a period of 30 days,

1 and if you indicate that you are in the process of getting some
2 order in another place, I'm not going to try to skirt the effect
3 of another court. I respect all of the courts, and I am not
4 going to play dirty pool with another court. If you have an
5 order waiting there, I'm not going to rush out and give it to
6 somebody. So if 30 days is not adequate, you come back and
7 if I feel that in some way or another that I will be betraying
8 the lawyer on the other side by waiting any longer, I'll take
9 it up by this Court and tell the Court and you, hey, this is
10 dynamite stuff. Once I see it and I just in good faith cannot
11 keep this from these other lawyers, it will be condemning them
12 to some horrible fate if I do, I'll let you know if that comes
13 up. And this Court knows--

14 MR. NASSIP: After the 30 days?

15 MR. CARR: No, I'm giving you the 30 days. I agree to
16 the 30 days, but in that period of time I should find some
17 urgent reason to disclose, I will bring it up to the Court now.

18 MR. SEIGFREID: Since you have chosen to ignore me in it,
19 I assume you want me to be bound also by this?

20 MR. NASSIP: Your Honor, my request was that you bind
21 both.

22 MR. HEINEMAN: I was addressed to counsel, and I don't
23 think that's what you have done all the way through.

24 MR. CARR: Jerry, why didn't you be quiet?

1 MR. NASSIF: Your Honor, would you please extend my
2 motion to both counsel, and I assume that it is still denied?

3 THE COURT: I think the agreement gives you what you
4 want. I am not inclined to rule on this issue. I'm really not.
5 I think it's something that, again, it is the same type of thing
6 as that protective motion, and I don't think that I should be
7 making that kind of ruling.

8 You had something else?

9 MR. HEINEMAN: I have one more item that my good friend
10 and colleague James Craven has asked to bring to the Court's
11 attention. I am given to understand from Mr. Carr that either
12 today or early tomorrow he intends to rest his case.

13 MR. CARR: It won't be today, that's for usre.

14 MR. HEINEMAN: I apologize, Jerry, I really don't mean
15 to do that, I really don't, and I apologize. I understand that
16 both counsel for the Plaintiffs intend to rest their case
17 within the very near future. Mr. Craven is presently along with
18 other attorneys in our office working on our motion for a
19 directed verdict at the close of the Plaintiff's case. We
20 intend that to be a very serious presentation with a good deal
21 of case law related to it. I have been requested by Judge
22 Craven to ask the Court for a couple of days off between the
23 ending of Mr. Carr's case and the beginning of ours for the
24 purpose of presentation of our motion for directed verdict and

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Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

No. 80-L-970

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permit Plaintiffs to disclose said documents to any person for use in connection with any pending or future litigation against Monsanto, without permitting Monsanto to assert its privileges in the court in which such litigation is or will be pending.

4. No Federal court or other state court can determine the existence of any privilege with respect to said documents at this time, as a motion to determine such privilege in the absence of an outstanding request for production covering the subject matter of said documents would seek an advisory opinion, which is forbidden by the United States Constitution, Article III.

5. Supreme Court Rule 201(c) authorizes protective orders, limiting, conditioning, or regulating discovery whenever appropriate to prevent unreasonable disadvantage or oppression.

6. Monsanto respectfully suggests that the only way to accomplish the Court's stated objectives of permitting the Federal courts to determine the application of any Federal privileges to said documents is to enter a protective order in the form attached hereto so that, in the event Monsanto receives a request for production in another case covering the subject matter of any of said documents, Monsanto may assert such privileges for determination by the court before which that case is pending.

WHEREFORE, Defendant Monsanto Company prays that this Court reconsider Monsanto's Motion for Protective Order and, after reconsideration, enter a Protective Order in the form attached hereto.

COBURN, CROFT & PUTZELL

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Attorneys for Defendant
Monsanto Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was hand-delivered this 21st day of August, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
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Bruce D. Ryder

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

FRANCES E. KEMNER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 80-L-970
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER

Upon the Motion of Defendant Monsanto Company, the Court having been advised in the premises, it is hereby ORDERED as follows:

1. Whereas this Court's discovery orders in the above-entitled cause have required Monsanto Company to disclose certain documents prepared in anticipation of litigation in other cases pending against it which may not be subject to discovery in those cases, the Court finds that Monsanto Company is entitled to a protective order restricting the use of such information to this litigation.

2. Monsanto Company may designate as work product material subject to this protective order any document produced to Plaintiffs on August 6, 1985, or any other document which this Court may require to be produced which was prepared in anticipation of litigation in other cases. Such designation may be made by identifying such documents by number in a memorandum filed in this case and served on Plaintiffs, marking documents supplied to

Plaintiffs with the notation "Work Product - Subject to Protective Order", or by any other means which reasonably informs Plaintiffs that the documents are subject to the terms of this Order.

3. All material subject to this Order is to be given to counsel for Plaintiffs, and the contents thereof shall be shown or disclosed only to the individual Plaintiffs and to no other persons. Said material is to be used only for purposes of this case and for no other purpose.

4. Upon the request of Monsanto Company made at the conclusion of this action, all documents subject to this Order. (including copies thereof and extracts therefrom) shall promptly be returned to Monsanto Company.

5. In the event that Plaintiffs desire to dispute Monsanto Company's designation of any document as subject to this Protective Order, Plaintiffs shall abide by the terms of this Order respecting the confidentiality of same unless or until the Court finds, upon motion duly made and presented, that said document was incorrectly designated as work product information.

ENTERED this _____ day of _____, 1985.

Judge