

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

FRANCES E. KEMNER, et al.,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

No. 80-L-970



AFFIDAVIT OF RICHARD J. BARNES

COMES NOW Richard J. Barnes and upon his oath deposes
and states as follows:

1. I am an attorney licensed to practice in New York
and a partner in the law firm of Townley & Updike.

2. I am an attorney of record for Monsanto Company
in the case In re "Agent Orange" Product Liability Litigation,
Cause No. MDL 381 pending in the United States District Court
for the Eastern District of New York.

3. I am the partner in my firm who was responsible
for preparing the causation part of Monsanto's defense in the
Agent Orange case. After familiarizing myself generally with
the legal, scientific and medical issues involved in this
aspect of the case, I came to the conclusion that the attorneys
in my firm who would be handling all aspects of causation would

need the assistance of a scientific consultant to assist them and me in preparation of Monsanto's defense given the highly technical scientific and medical issues involved in the case.

4. In August of 1983, after conducting an investigation into the qualifications of several individual consultants and consulting firms, I retained on behalf of my firm Myron S. Weinberg, Ph.D. of Weinberg Consulting Group Inc. in Washington, D.C. After several meetings with Dr. Weinberg, and based on my analysis of the legal and scientific issues involved, I realized that the attorneys in my firm would need to have a command of the comprehensive literature relating to the highly technical and complex scientific issues involved. I recommended that we set up a computer data base of the extensive worldwide scientific literature relevant to the issues in the Agent Orange litigation. This recommendation was approved by the client.

5. I had numerous meetings and conference calls with Dr. Weinberg during which I outlined to Dr. Weinberg our needs, based upon our litigation plans and theories of the case, and established the format and structure of the data base and the methodology to be utilized in preparing abstracts and evaluation of the literature that would be included in the data base.

6. Attorneys in Townley & Updike played a major role in the design, preparation and utilization of the scientific

data base. For example, one associate and I played an extensive role in coming up with the list of key words that would be used for identifying and accessing the literature. In addition, working with Dr. Weinberg, I established the criteria that would be utilized by him in preparing summaries and evaluations of key literature references.

7. I also determined that our defense of the causation case would be aided by the preparation of what I called "issue papers" which would deal separately with discrete components of the causation case. With the assistance of an associate and Dr. Weinberg, I designed the content and form of the issue papers as well as the subject matters to be covered. During the fall of 1983 I had many meetings with Dr. Weinberg to discuss the preparation of these issue papers. Because of the magnitude of the task, it became necessary for Dr. Weinberg to retain several individual consultants and consulting firms to function as subcontractors on the preparation of the issue papers. I met with approximately a dozen of these scientific consultants to explain in detail to them the purpose of the issue papers and the manner in which they should be prepared.

8. During the course of the meetings I explained to Dr. Weinberg and the other consultants our litigation plans, strategies and theories, my own mental impressions with respect to several aspects of the case, discovery matters, including the anticipated depositions of both plaintiffs' and defendants'

expert witnesses, and our contemplated trial strategy. All of this was necessary so that the scientific consultants would have a better understanding of how the attorneys in my firm expected to utilize the issue papers when they were completed.

9. After defining, in consultation with Dr. Weinberg, the subject matters to be dealt with in the individual issue papers, I instructed Dr. Weinberg and the consultants to prepare draft outlines of an issue paper for each of the subject matters selected. Each of those outlines was reviewed and revised by attorneys and many meetings were held with each of the authors of the outlines to discuss and explain our revisions.

10. After the outlines were approved, seven attorneys, including myself, were given responsibility for one or more issue papers. As drafts of the issue papers were prepared by the consultants, the responsible attorney reviewed and revised them and then met with the author of the issue paper to discuss the changes. A number of the issue papers went through several drafts with the responsible attorney being intimately involved, in person and by telephone, with the author of the issue paper.

11. The purposes of the issue papers as designed by the attorneys in my firm were (a) as an educational tool for any attorney in my office who would have responsibility for a particular area of the causation case, (b) to aid the attorneys

in my office in preparing for and taking the depositions of plaintiffs' experts, (c) to aid the attorneys in my office in preparing for and taking the depositions of individual plaintiffs, e.g., on the issue of other causative agents, and (d) to enable the attorneys in my office to deal intelligently with expert witnesses retained by us.

12. The seven attorneys in my firm who were involved in the creation and planning of our scientific data base or the issue papers, or both, devoted in excess of 600 hours to those tasks. In addition to numerous lengthy conference calls, I attended at least sixteen meetings in Washington or New York with Dr. Weinberg and the other consultants involved discussing the data base and the issue papers. All told there were some thirty meetings involving Dr. Weinberg and his group and attorneys in my office with respect to the data base and the issue papers.

13. These issue papers and the computer data base were prepared for the sole use of defense counsel in the Agent Orange litigation. Copies of the issue papers and the summaries and evaluations of the literature on our data base were not provided or shown to any expert witness. Because of

Further affiant sayeth not.

Richard J. Barnes
Richard J. Barnes

STATE OF NEW YORK)
Subscribed and sworn to before me this 3rd day of
May, 1985.

Lori Farber
Notary Public

RONI FAPBER
Notary Public, State of New York
No. 24-4772001
Qualified in Kings County

Qualified in Kings County
Commission Expires March 27, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was hand-delivered this 6th day of May, 1985, to the following attorneys of record:

Mr. Rex Carr
Mr. Jerome Seigfreid
109 S. High Street
Belleville, Illinois 62221


