

having previously been duly sworn, was examined and testified further as follows; to wit:

EXAMINATION

BY MR. STEWART:

Q. Dr. Kaley, you recall being deposed, do you not, on -- I'm looking for the date on this -- I think it was in August, August 21st, 2001?

A. I recall being deposed. I don't recall the date specifically.

Q. At the law office of Lightfoot, Franklin, and White?

A. I believe that's where it was, yes.

Q. And Mr. Kelley was there, and I was there deposing you on that date?

A. Yes, yes.

Q. And that was at a time, certainly, after you all had had your discussions in Washington, was it not, the meeting in Washington sometime in January of 2001?

A. Well, if that is when there was a meeting in Washington and I was there, it would have been after that, yes.

Q. Do you remember me asking you about a trip that was made to Washington that was arranged by a gentleman named Glen Ruskin with EPA?

A. Well, I'm not sure if that particular meeting had anything to do with arrangements made by Mr. Ruskin or not.

Q. I asked you on the date that I mentioned have you been to Washington any time recently with Mr. Ruskin to meet with

the people at EPA, and you said you had been to Washington in the company of Glen Ruskin, and we have met with people at EPA. Are you saying now --

A. I don't recall specifically. I have been to Washington more than once and met with EPA or other agency people sometimes with Mr. Ruskin, sometimes not. I just don't remember specifically, number one, which meeting you are speaking about and whether Mr. Ruskin had an involvement in that or not. If I said that at the time, that was my recollection at the time. I just don't know. I don't recall.

Q. And do you recall being there at a meeting in Washington where y'all met with some representatives? You indicated at your deposition y'all met with some representatives from EPA at Region Four and a gentleman named Weinischke.

A. Yes. And I believe that meeting was not arranged by Mr. Ruskin. If that is the meeting you are speaking about, I believe that had nothing to do with Mr. Ruskin.

Q. What was the meeting for, to discuss dealing with an order on consent?

A. Yes.

Q. Do you recall me asking you what area that would cover at the time?

A. I don't recall that specifically. You may very well have.

Q. Do you recall me asking you what about the residential areas and you saying that is dealing with the residential areas which we

are dealing with that are covered by EPA or CERCLA?

A. Yes. At the time that was the correct response, yes.

Q. And do you remember saying in the deposition that if there was any effort made to work out an agreement for dealing with the plant site, that would be done with ADEM because they were regulating the plant site and surrounding areas?

A. I would have probably said something like that at the time in response to that question, yes.

Q. And certain other areas under RCRA, dealing with that under RCRA? Isn't that what you said?

A. I'm sure it is, yes.

★ Q. That was in fact the case as of August 21st, 2001, wasn't it? ★

A. I believe that would have been the case, yes.

Q. And that was the case as of the date you received a draft order, which is Plaintiff's Exhibit I-18, from EPA, isn't it?

A. I don't know which draft you are talking about, so I can't really answer that.

Q. It was the draft that was provided to me and to the Court by your attorney, Mr. Cox, just yesterday, and it is --

MR. STEWART: May I approach, Judge?

THE COURT: Certainly.

Q. -- marked I-18, and it is -- I assume that is 2002 --

A. 2001.

Q. 2001.

A. I assume that's correct.

MR. COX: I'm sorry. I was just looking over your shoulder, Donald.

MR. STEWART: It is the document you gave me. I still have your little Post-it on it.

Q. Now, turn to page eight and I'll get mine and turn to page eight. And when you look at site there, the site that is referred to on page eight of mine means residential, commercial, and public properties, which is, again, still the area, Dr. Kaley, that you were talking about back at the other meeting in Washington with EPA, correct?

A. That would be correct, yes.

Q. So as of 11-17 of 2002 -- or 2001 -- wait just a minute -- 2001, y'all were still talking about the EPA residential properties, not the plant site, not the creeks, as of that date?

A. That is what the document is addressing, yes.

Q. Well, I'm not necessarily looking now, Dr. Kaley, for the document. But certainly your understanding of that document is what I'm looking for. And what we are talking about in that document is the site that was going to be governed by this order on consent. You understand that, don't you?

A. Yes, I do.

Q. And that was the area that EPA had for all intents and purposes historically taken the responsibility for; isn't that correct?

A. I don't know what you mean by forever taken responsibility for, but at the time of this draft that was our understanding of the area that EPA had responsibilities for, vis-a-vis the areas ADEM had responsibility for, yes.

Q. And on that date -- I'm glad you said what you did. But on that date as a practical matter, ADEM had the responsibility for the plant site, creeks and streams, certain residential areas adjacent to the plant and the tributaries leading a way from the plant, didn't they?

A. Generally I would agree with that characterization, yes.

Q. Then we got Plaintiff's Exhibit I-20, and for the life of me I can't find my copy of this.

MR. STEWART: Can I approach again, Judge?

THE COURT: Certainly.

MR. COX: Judge, I have a copy, if he would like for me to give Dr. Kaley my copy.

Q. If you will turn to page seven in that one, it talks about site in that one, and this is something you all forwarded to them on January 22nd of 2002 -- well, not you, but Allen J. Topol, who is an attorney representing your company. And he sent it to Bill Weinischke and Dustin F. Minor, and it is styled "Dear Bill and Dustin." We turn to page seven of that document and you talk about site then. And then you are talking

about broadening things just a tad, aren't you?

A. Well, I don't know that we are broadening things. We are attempting in this exchange of drafts to clarify which areas were under which regulatory responsibility, yes.

Q. We are? Who is we, Dr. Kaley?

A. The agencies that are involved and Solutia.

Q. Well, now, y'all have had a series of meetings after you had this initial meeting in Washington, and the people that were meeting, Dr. Kaley, were perhaps you, Craig Branchfield, some representatives from Region Four either in Atlanta or some offices up in the Justice Department. There weren't any ADEM people meeting, were there?

A. I don't recall them specifically at the meeting, no.

Q. So when you talk about agencies, you really mean one agency, and that is EPA. Now, whose idea --

A. No. I would say it was my understanding that EPA and ADEM were in communication during this entire period.

Q. They weren't at your meeting, though, were they?

A. They weren't at the meeting, but my understanding is they were in communication.

Q. Then there were some creeks added in. Snow Creek from the confluence of the Eleventh Street ditch where it crosses Interstate 20, right?

A. Yes.

Q. And then all land and structures and other appurtenances and improvements on the land owned as of this date of this consent decree by Solutia. But then it says "exclusive of the operating facility," right?

A. Yes, that's what it says.

Q. What did that include? That operating facility would not include the landfills or the plant site, would it?

A. I'm sorry?

Q. The operating facility would not include the landfills and plant site, would it?

A. Yes, it certainly would.

Q. The operating facility would include the plant site and the landfills?

A. Yes.

Q. So you took that out?

A. Well, we didn't take it out. It was part of ongoing negotiations.

→ Q. Now, the trial had started as of this time, this trial?

→ A. Yes.

Q. Been underway for a while. Had y'all discussed the trial in any of those -- any of those meetings?

A. Other than the fact it was going on, no. I mean, everyone was aware obviously that the trial was going on.

Q. Is it your testimony as you sit here today, Dr. Kaley, that there have been no discussions about injunctive relief and the injunctive relief phase of this case as of the time y'all got this draft which was 5-20

-- or sent this draft which is dated January 22nd, 2002?

A. I don't know that injunctive relief was not mentioned at one point or another. It certainly has always been a part of this case. I don't recall any specific discussions about it.

Q. Well, y'all started discussing it, then, after that letter was written on January 22nd?

A. I'm sorry? We had had discussions with EPA for a year and a half.

Q. You started discussions about the injunctive relief phase of this trial after y'all sent this letter of January 22nd, 2002, didn't you?

A. The injunctive phase of this trial had been discussed and the fact that it may or may not occurred during the entire time of that negotiation.

Q. What I'm talking about, Dr. Kaley, was in fact y'all had increased discussions about the injunctive relief phase of this case in the three meetings Mr. Branchfield testified that took place within the last month, didn't you?

A. I don't recall any increased intensity in those discussions, no.

Q. Isn't it a fact y'all had three meetings in the last month with the folks at EPA?

A. I believe there have three, yes.

Q. And you attended the meetings, didn't you?

A. I attended two of them.



Q. Where did those meetings take place?

A. In Atlanta.

Q. And was Mr. Weinischke down there trying to work something out with y'all sometime in the past couple of weeks about this order on consent?

A. Mr. Weinischke has been involved in all these ongoing discussions in attempt to reach agreement with the agencies on this order on consent. Yes, Mr. Weinischke has been involved.

Q. With the agencies?

A. Yes.

Q. How many of those meetings that you attended in Atlanta did ADEM attend?

A. One.

Q. Just one?

A. Just one.

Q. That was the one that lasted, according to Mr. Branchfield, about two or three hours?

A. It was the better part of a morning as I recall, yes.

Q. There is a charge in this site -- Take a look at page seven of Exhibit I-21 -- We have it up here. Y'all supposedly got this one at noon, and there is another one -- We will talk about this one. There is something added to that. And that is this site includes -- well, you took something out and added. This site includes but is not limited to the area covered by the RCRA permit. Who added that language? Who suggested that it be added?

A. I don't recall specifically. I mean, I have not been in the language adding and

taking out phases of the discussion. I don't know specifically who added or took out that language. I mean, it is consistent.

Q. Did some lawyer recommend it?

A. Pardon?

Q. Did some lawyer recommend it?

A. I don't know who recommended it.

Q. Well, there were people there representing you, weren't there?

A. Yes.

Q. Who was that?

A. Mr. Topol was there.

Q. Mr. Topol, is that right?

A. Mr. Topol was attending the meetings, yes.

Q. Now, this is a document that y'all got apparently a draft of on 3-13 of 2002, wasn't it?

A. I'll take your word for that. I mean, that is what it says.

Q. I was told that by --

MR. COX: We will stipulate to that, Your Honor.

Q. -- Mr. Cox. You don't recall who from your side recommended that?

A. I don't know that anybody from our side recommended it. It may have been somebody from EPA, may have been somebody from ADEM. I don't know who recommended that particular language.

Q. Who was it from EPA that told -- Strike that.

Who told the EPA folks that Mr. Cobb had testified and the substance of his

testimony from that witness stand that you are sitting in right there?

A. Who told the EPA folks that?

Q. Yeah. Who shared with the EPA people what Mr. Cobb testified about ADEM's regulatory authority in this courtroom when we were talking about injunctive relief before y'all got this draft document?

A. I'll cut to your question about who spoke about Mr. Cobb's testimony with EPA. The rest of it I'm not sure I got. But the answer to that is I don't know if anyone did or, if they did, who did.

Q. Is it your testimony here today, Dr. Kaley, that there was no discussion between Solutia and EPA, you being one of the parties or participants in that particular negotiation, about the fact that Mr. Cobb and them felt they had the regulatory authority at ADEM to govern the plant site and also the creeks leading away from that plant site and the creeks and streams going down to Lake Logan Martin, including Snow and Checcolocco Creek?

A. I'm sorry. Are you asking me whether I was aware that that testimony by Mr. Cobb was transmitted to EPA after his testimony? I was not aware of that. Am I aware that has been in the past a position consistent with ADEM's view of their responsibility under the RCRA permit, I believe that is consistent with that, yes.

Q. Did y'all try to get EPA to get ADEM to sign on to a memorandum indicating y'all were going to go over to federal court and try to

get an order on consent spread over the record of the district court? Did y'all try to get them to do that?

A. At EPA and ADEM we felt -- and I believe the agency felt, EPA felt it would be advantageous to have ADEM as a signatory to the consent decree which we were negotiating with the agency.

Q. When exactly did y'all decide you needed to get ADEM involved?

A. I don't recall when that was.

Q. Didn't y'all go to try to see them, Friday after the testimony ended up over here last week?

A. Not that I'm aware of.

Q. You are not aware there was some effort by EPA to get ADEM to sign on to that sometime last week?

A. Not that I'm aware of.

Q. Tell me if you would, Dr. Kaley, why EPA told y'all they felt like it would be important to have ADEM sign on? Isn't it a fact that that was done because ADEM had been seen as the agency that has the authority to regulate the RCRA plant site?

MR. COX: Objection to what EPA felt or what EPA believed. If he has an understanding, I believe he can testify to it.

Q. What did they express to you? Why did they say to you, they felt like it would be advantageous? You just got through saying they felt like it was. What did they say the reason for that was, Dr. Kaley?

A. I'm sorry, Mr. Stewart. You have lost me in your speech. I'm sorry. Would you please repeat your question?

Q. You just indicated a minute ago that EPA felt like it would be advantageous to have the signature of ADEM's representative on this consent order. What did they tell you about why they felt it would be advantageous --

A. I don't recall what they said. I think we also felt it would be advantageous to have ADEM for the very reason you said, that we are trying to negotiate a consent decree which will regulate the further investigation and remediation of the site under both agencies, whatever RCRA was responsible for with ADEM and whatever CERCLA was responsibility for under EPA. Certainly I can't speak to what EPA felt, but I think we believed and believe that it would be better if all the investigation and remediation of this site were dealt with under a single consent decree.

Q. Isn't it a fact, Dr. Kaley, that what y'all were trying to do is just avoid the jurisdiction of this court? Isn't that a fact?

A. I have no idea that that would be true, no.

Q. Is it your testimony here today that Mr. Weinischke didn't tell you that is what would happen if y'all signed that?

A. That would be my testimony, yes.

Q. He hasn't stated that to anybody?

A. Not that I'm aware of.

Q. Has Dustin Minor ever said that to you, that he felt like this Court didn't have the authority or capability to circumvent anything that EPA was doing if y'all went running over there to federal court and signed this order on consent and got it spread on the record?

A. Is there a question in there?

Q. I'm asking you if he ever told you that.

A. No, he never told me that.

Q. Well, y'all didn't have a suit filed against you by EPA, have you?

A. I think we have been put on notice under a CERCLA decree that -- I don't know that we have had a suit filed. I know we have been put on notice. We have responsibilities under CERCLA.

Q. Y'all do not have a pending matter of litigation, do you?

A. Not that I'm aware of.

Q. They haven't sued you, have they?

A. Not that I'm aware of.

Q. Never have fined you, have they?

A. No, they have not fined us.

Q. Who is Linda Fisher?

A. Linda Fisher is at this point an administrator in the Environmental Protection Agency.

Q. Who did she used to work for?

A. She used to work for Monsanto Company.

Q. How long did she work for Monsanto before she became a -- What does she do now?