

3-12-2012

Silicon Intern. Ore, LLC v. Monsanto Co. Clerk's Record v. 4 Dckt. 39409

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VOL 4 of 6

IN THE SUPREME COURT
OF THE STATE OF IDAHO
SUPREME COURT DOCKET NO.

LAW CLERK 39409-2011

Silicon International Ore, LLC, and Idaho
Limited Liability Company,

Plaintiff/Appellant,

vs.

Monsanto Company, a Delaware
Corporation and Washington Group
International, Inc., and Ohio

Defendant/Respondent

FILED - COPY
MAR 12 2012
Supreme Court
SECRET CH A

MITCHELL W. BROWN
District Judge

Appealed from the District Court of the SIXTH
Judicial District of the State of Idaho, in and
for Caribou COUNTY.

David P. Garner

Attorney for Appellant

Randall Budge
Eugene Ritti
Attorney for Respondent

Volume 4 of 5 **39409**

COPY

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User	Judge
12/31/2009	NCOC	WELL	New Case Filed - Other Claims
	COMP	WELL	Complaint Filed
	SMIS	WELL	Summons Issued - Washington group
	APER	WELL	Plaintiff: Silicon International Ore, LLC Appearance David P. Gardner
		WELL	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Gardner, David P. (attorney for Silicon International Ore, LLC) Receipt number: 0006050 Dated: 12/31/2009 Amount: \$88.00 (Check) For: Silicon International Ore, LLC (plaintiff)
	SMIS	WELL	Summons Issued - Monsanto Co
1/22/2010		JORGEN	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Monsanto Company (defendant) Receipt number: 0000170 Dated: 1/25/2010 Amount: \$58.00 (Check) For: Monsanto Company (defendant)
	NOAP	WELL	Notice Of Appearance - Randall C. Budge for Monsanto
1/25/2010	APER	WELL	Defendant: Monsanto Company Appearance Randall C Budge
	AFSV	WELL	Affidavit Of Service - Washington Group - January 14, 2010 - served S.J Tharp of CT Corp System
	AFSV	WELL	Affidavit Of Service - Monsanto - January 14, 2010 - served on Michelle Smith
2/1/2010		WELL	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Hawley Troxell Ennis & Hawley, LLP Receipt number: 0000218 Dated: 2/1/2010 Amount: \$58.00 (Check) For: Washington Group International, Inc (defendant)
	NOAP	WELL	Notice Of Appearance - for Washington Group International, Inc.
	APER	WELL	Defendant: Washington Group International, Inc Appearance Eugene A Ritti
2/12/2010	ANSW	WELL	Answer and Demand for Jury Trial on Defnedant Washington Group International, Inc.
2/18/2010		WELL	Order for Submission of Information for Scheduling Order
2/23/2010	HRSC	WELL	Hearing Scheduled (Clerk Review 03/12/2010 05:00 PM) order of Submission due
2/26/2010	ANSW	WELL	Answer of Defendant Monsanto Company
	NOSV	WELL	Notice Of Service - Defendant Monsanto Company's First Interrogatories and Requests for Production of Documents of Plaintiff

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
3/4/2010		WELL	joint submission regarding scheduling	Mitchell W Brown
3/5/2010	HRSC	WELL	Hearing Scheduled ((B) Jury Trial - 2nd Setting 04/04/2011 09:00 AM)	Mitchell W Brown
	HRSC	WELL	Hearing Scheduled ((A) Jury Trial - 3rd Setting 05/02/2011 09:00 AM)	Mitchell W Brown
	NOSV	WELL	Notice Of Service - Defendant Washington Group International, Inc.'s First Set of Interrogatories to Plaintiff	Mitchell W Brown
	NOSV	WELL	Notice Of Service - Defendant Washington Group Inc.'s First Request for Production of Documents to Plaintiff	Mitchell W Brown
3/15/2010	STIP	WELL	Stipulation	Mitchell W Brown
		WELL	Order Setting Jury Trial	Mitchell W Brown
3/18/2010	MOTN	WELL	Motion for Disqualification without cause (Rule 40(d)(1)(G)) (as to alternate Judge P. McDermott)	Mitchell W Brown
3/19/2010	ORDR	WELL	Order of Disqualification without Cause	Mitchell W Brown
	CERT	WELL	Certificate Of Mailing	Mitchell W Brown
3/24/2010		WELL	Amended Order Setting Jury Trial	Mitchell W Brown
4/26/2010	WDAT	WELL	Withdrawal Of Attorney - Robert K Reynard's Notice of Withdrawal of Counsel (Utah Attorney - Firm still representing Pro Hac Vice Admission Pending)	Mitchell W Brown
5/28/2010	CRSR	JORGEN	Certificate of service plaintiffs responses to defendant Monsanto's company's first set of interrogatories and request for production of documents	Mitchell W Brown
6/3/2010	MOTN	WELL	Motion for Admission Pro Hac Vice	Mitchell W Brown
6/7/2010	CRSR	WELL	Certificate Of Service - Plaintiff's response to Defendant Washington Group int. first set of interrogatories and Plaintiff's responses to defendant Washington group int first request for production of Documents to plaintiff	Mitchell W Brown
6/8/2010	APER	WELL	Plaintiff: Silicon International Ore, LLC Appearance Daniel K Brough	Mitchell W Brown
	ORDR	WELL	Order for Admission pro hac vice	Mitchell W Brown
6/28/2010	STIP	WELL	Stipulated Protective Order	Mitchell W Brown
6/29/2010	GRNT	WELL	Motion Granted	Mitchell W Brown
11/10/2010	NOTC	WELL	Notice of Service - Plaintiff's first set of interrogatories and requests for production of documents to defendant Washington Group International, Inc., plaintiff's first set of interrogatories and requests for production of documents to defendant Monsanto company	Mitchell W Brown

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
12/6/2010	NOSV	WELL	Notice Of Service - Defendant Monsanto Company's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production	Mitchell W Brown
1/25/2011	NOTC	WELL	Notice of Hearing	Mitchell W Brown
	MOTN	WELL	Defendant Monsanto Company's Motion for Summary Judgment	Mitchell W Brown
	MEMO	WELL	Defendant Monsanto Company's Memorandum in Support of Motion for Summary Judgment	Mitchell W Brown
	AFFD	WELL	Affidavit of Randall C. Budge	Mitchell W Brown
	AFFD	WELL	Affidavit of Mitchell J. Hart. P.E.	Mitchell W Brown
	AFFD	WELL	Affidavit of James R. Smith	Mitchell W Brown
1/26/2011	NOSV	WELL	Notice Of Service - Defendant Monsanto Company's First Supplemental Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents	Mitchell W Brown
	AFFD	WELL	Affidavit of Craig Nelson in Support of Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	AFFD	WELL	Affidavit of Eugene A. Ritti in Support of Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	MEMO	WELL	Memorandum in Support of Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	MOTN	WELL	Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	NOTC	WELL	Notice of Hearing	Mitchell W Brown
1/27/2011	NOSV	WELL	Notice Of Service - Defendant Washington Group International, Second Request for production of Documents to Plaintiff	Mitchell W Brown
	NOSV	WELL	Notice Of Service - Defendant Washington Group International, Second set of interrogatories to plaintiff	Mitchell W Brown
2/1/2011	HRSC	WELL	Hearing Scheduled (Motion for Summary Judgment 02/25/2011 01:30 PM)	Mitchell W Brown
		WELL	Second Affidavit of Eugene A. Ritti in Support of Defendant Washington Group International, Inc.'s Motion for Summary Judgment (filed in a separate confidential file folder)	Mitchell W Brown
			Document sealed	
2/14/2011	STIP	WELL	Stipulation and Order Re: Schedule	Mitchell W Brown
	CERT	WELL	Certificate Of Mailing	Mitchell W Brown
	HRVC	WELL	Hearing result for Jury Trial held on 05/02/2011 09:00 AM: Hearing Vacated Firm Setting	Mitchell W Brown
	HRVC	WELL	Hearing result for Motion for Summary Judgment held on 02/25/2011 01:30 PM: Hearing Vacated	Mitchell W Brown

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User	Judge
2/14/2011	HRSC	WELL	Hearing Scheduled (Scheduling Conference 03/11/2011 01:30 PM)
		WELL	Notice of Hearing
2/15/2011	HRSC	WELL	Hearing Scheduled (Motion for Summary Judgment 04/21/2011 01:30 PM)
	NOSV	WELL	Notice Of Service - Defendant Monsanto Company's Second Supplemental Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents
2/16/2011	NOTC	WELL	Amended Notice of Hearing
2/22/2011	NOTC	WELL	Notice of Compliance
2/28/2011		WELL	Second amended Notice of Hearing
	CONT	WELL	Continued (Motion for Summary Judgment 05/13/2011 01:30 PM)
3/8/2011	NOTC	WELL	Notice of Deposition (John Rosenbaum)
3/11/2011	CMIN	WELL	Court Minutes Hearing type: Scheduling Conference Hearing date: 3/11/2011 Time: 1:43 pm Courtroom: Large Courtroom 301 Court reporter: Digital Recording Only as per admin order 11-01 Minutes Clerk: Sharon Wells Tape Number: Mr. Brough Mr. Gardner Mr. Budge Mr. Ritti
	HRSC	WELL	Hearing Scheduled (Jury Trial 09/26/2011 09:00 AM)
		WELL	Order Setting Jury Trial (Scheduling Order, Notice of Trial Setting and Initial Pretrial Order)
	CERT	WELL	Certificate Of Mailing
	DCHH	WELL	Hearing result for Scheduling Conference held on 03/11/2011 01:30 PM: District Court Hearing Held Court Reporter: Digital Recording Number of Transcript Pages for this hearing estimated: Less than 100 pages - telephonic
3/14/2011	NOTC	WELL	Notice of Compliance - re: Washington Group International - Supplemental Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents
	CRSR	WELL	Certificate Of Service - (Plaintiff's Responses to Defendant Washington Goup International, Inc.'s Second Set of Interrogatories
3/15/2011	NOTD	WELL	Notice of Deposition Pursuant to Idaho Rule of Civil Procedure 30 (b)(6) (Monsanto Company)
	NOTD	WELL	Notice Of Deposition (Jim Smith)

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
3/15/2011	NOTD	WELL	Notice Of Deposition (Dave Farnsworth)	Mitchell W Brown
	NOTD	WELL	Notice Of Deposition (Mitch Hart)	Mitchell W Brown
3/17/2011	CRSR	WELL	Certificate Of Service - (Plaintiff's Response to Defendant Washington Group International, Inc.'s Second Set of Requests for Production of Documents)	Mitchell W Brown
3/21/2011	NOSV	WELL	Notice Of Service - Defendant Washington Group International, Inc's Third Request for Production of Documents to Plaintiff	Mitchell W Brown
	NOTC	WELL	Notice of Compliance: Washington Group International, Inc's Supplemental Response to Plaintiff's First Set of Interrogatories and Request for Production of Documents	Mitchell W Brown
3/23/2011	MOTN	WELL	Motion for Admission Pro Hac Vice	Mitchell W Brown
3/29/2011	CERT	WELL	Certificate Of Mailing	Mitchell W Brown
	ORDR	WELL	Order for Admission Pro Hac Vice - Berry Johnson	Mitchell W Brown
	APER	WELL	Plaintiff: Silicon International Ore, LLC Appearance Barry N Johnson	Mitchell W Brown
4/5/2011	NOTC	WELL	Notice of Deposition - (Clayton Krall)	Mitchell W Brown
	NOTC	WELL	Notice of Deposition Pursuant to Idaho Rule of Civil Procedure 30(b)(6) (Washington Group International, Inc)	Mitchell W Brown
4/26/2011	CRSR	WELL	Certificate Of Service - (Plaintiff's Responses to Defendant Washington Group International, Inc.'s Third Set of Requests for Production of Documents)	Mitchell W Brown
4/29/2011		WELL	Plaintiff's Memorandum in Opposition to Defendant Monsanto Company's Motion for Summary Judgment	Mitchell W Brown
		WELL	Plaintiff's Memorandum in Opposition to Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	AFFD	WELL	Affidavit of Kent W. Goates	Mitchell W Brown
	AFFD	WELL	Affidavit of Todd Sullivan	Mitchell W Brown
	AFFD	WELL	Affidavit of Daniel K. Brough	Mitchell W Brown
5/5/2011	LETT	WELL	Letter - regarding Depositions of James R. Smith, David Farnsworth and Mitchell J. Hart	Mitchell W Brown
5/6/2011	AFFD	WELL	Third Affidavit of Eugene A. Ritti in Support of Defendant Washington group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	RPLY	WELL	Reply Memorandum in Support of Defendant Washington Group International, Inc.'s Motion for Summary Judgment	Mitchell W Brown
	RPLY	WELL	Defendant Monsanto Company's Reply Memorandum in Support of Motion for Summary Judgment	Mitchell W Brown

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
5/6/2011	MOTN	WELL	Motion to Strike	Mitchell W Brown
	MEMO	WELL	Memorandum in Support of Motion to Strike	Mitchell W Brown
	NOTC	WELL	Notice of Hearing	Mitchell W Brown
5/13/2011		WELL	Plaintiff's Response to Defendant Monsanto Company's Motion to Strike	Mitchell W Brown
	CMIN	WELL	Court Minutes Hearing type: Motion for Summary Judgment Hearing date: 5/13/2011 Time: 1:41 pm Courtroom: Large Courtroom 301 Court reporter: Digital Recording Only as per admin order 11-01 Minutes Clerk: Sharon L Wells Tape Number:	Mitchell W Brown
	CMIN	WELL	Court Minutes Hearing type: Motion to Compel Hearing date: 5/13/2011 Time: 3:50 pm Courtroom: Large Courtroom 301 Court reporter: Digital Recording Only as per admin order 11-01 Minutes Clerk: Sharon L Wells Tape Number:	Mitchell W Brown
	DCHH	WELL	Hearing result for Motion for Summary Judgment held on 05/13/2011 01:30 PM: District Court Hearing Held Court Reporter: Digital Number of Transcript Pages for this hearing estimated: Less than 100 pages	Mitchell W Brown
	ADVS	WELL	Case Taken Under Advisement	Mitchell W Brown
5/19/2011		WELL	Minute Entry and Order for hearing on May 13, 2011 Motion for Summary Judgment and Motion to Strike	Mitchell W Brown
5/20/2011	STIP	WELL	Stipulation to Order Vacating Second Amended Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	Mitchell W Brown
	ORDR	WELL	Order Vacating Second Amended Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	Mitchell W Brown
9/20/2011	HRVC	WELL	Hearing result for Jury Trial scheduled on 09/26/2011 09:00 AM: Hearing Vacated	Mitchell W Brown
9/21/2011	DEOP	WELL	Decision Or Opinion - Motions for Summary Judgment May 13, 2011 (Memorandum Decision and Order on Defendants' Motions for Summary Judgment) - Granted both Monsanto and Washington Groups Motions for Summary Judgment	Mitchell W Brown
10/7/2011	JDMT	WELL	Judgment	Mitchell W Brown

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
10/7/2011	STAT	WELL	STATUS CHANGED: Closed	Mitchell W Brown
	MOTN	WELL	Motion for Order Awarding Attorney Fees and Costs	Mitchell W Brown
	BREF	WELL	Defendant Monsanto Company's Brief in Support of Motion for Attorney Fees and Costs	Mitchell W Brown
	MEMO	WELL	Memorandum of Fees and Costs	Mitchell W Brown
	AFFD	WELL	Affidavit of Randall C. Budge in Support of Motion for Fees and Costs	Mitchell W Brown
	CDIS	WELL	Civil Disposition entered for: Monsanto Company, Defendant; Washington Group International, Inc, Defendant; Silicon International Ore, LLC, Plaintiff. Filing date: 10/7/2011	Mitchell W Brown
	STAT	WELL	STATUS CHANGED: closed pending clerk action	Mitchell W Brown
10/14/2011	MEMO	WELL	Memorandum in Support of Defendant Washington Group International's Motion for Order Awarding Costs and Attorney Fees	Mitchell W Brown
	MEMO	WELL	Defendant Washington Group International's Memorandum of Costs and Attorney Fees	Mitchell W Brown
	MOTN	WELL	Defendant Washington Group International's Motion for Order Awarding Costs And Attorney Fees	Mitchell W Brown
	AFFD	WELL	Affidavit of Eugene A. Ritti In Support of Defendant Washington Group International's Motion for Costs and Attorney fees	Mitchell W Brown
10/20/2011	MEMO	WELL	Plaintiff's Memorandum in Opposition to Defendant Monsanto Company's Motion for Order Awarding Attorney Fees and Costs	Mitchell W Brown
	AFFD	WELL	Affidavit of Daniel K. Brough in Support of Memorandum in Opposition to Motion for Order Awarding Fees and Costs	Mitchell W Brown
10/26/2011	MEMO	WELL	Memorandum in Opposition to Defendant Washington Group international, Inc's Motion for Order Awarding Costs and Attoreny Fees	Mitchell W Brown
11/15/2011	NOTC	WELL	Notice of Hearing	Mitchell W Brown
	HRSC	WELL	Hearing Scheduled (Motion for Attorney fees and Costs 12/09/2011 03:00 PM)	Mitchell W Brown
11/18/2011	NOTA	WELL	NOTICE OF APPEAL	Mitchell W Brown
11/21/2011		WELL	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Gardner, David P. (attorney for Silicon International Ore, LLC) Receipt number: 0002741 Dated: 11/21/2011 Amount: \$101.00 (Check) For: Silicon International Ore, LLC (plaintiff)	Mitchell W Brown
	BNDC	WELL	Bond Posted - Cash (Receipt 2742 Dated 11/21/2011 for 100.00)	Mitchell W Brown

Silicon International Ore, LLC vs. Monsanto Company, Washington Group International, Inc

Date	Code	User		Judge
11/22/2011	RESP	WELL	Defendant Monsanto's Response to Plaintiff's Opposition to Monsanto Company's Fees and Costs	Mitchell W Brown
11/23/2011	RPLY	WELL	Reply memorandum in Support of Defendant Washington Group International's Motion for Order Awarding Costs and Attorney Fees	Mitchell W Brown
12/1/2011	CONT	WELL	Continued (Motion for Attorney fees and Costs 01/24/2012 10:00 AM)	Mitchell W Brown
12/2/2011	CONT	WELL	Continued (Motion for Attorney fees and Costs 02/10/2012 02:00 PM)	Mitchell W Brown
		WELL	Notice of Hearing	Mitchell W Brown
		WELL	Defendant Washington Group Interanational, Inc.'s Request for Additional Record	Mitchell W Brown
		WELL	Defendant Washington Group International, Inc.'s Second Request For Additional Record	Mitchell W Brown
12/15/2011	BNDC	WELL	Bond Posted - Cash (Receipt 2927 Dated 12/15/2011 for 100.00)	Mitchell W Brown
1/6/2012	CONT	JORGEN	Hearing result for Motion for Attorney fees and Costs scheduled on 02/10/2012 02:00 PM: Continued	Mitchell W Brown
	HRSC	JORGEN	Hearing Scheduled (Motion for Attorney fees and Costs 02/10/2012 04:00 PM) To be recorded in Caribou	Mitchell W Brown
	NOTC	JORGEN	Amended notice of hearing-Sent by Randall Budge	Mitchell W Brown

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CARIBOU COUNTY CLERK
Shawn Will
DEPUTY

2011 APR 29 PM 3:13

David P. Gardner (Idaho Bar No. 5350)
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Attorneys for Plaintiff Silicon International Ore, LLC

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC,)	
an Idaho limited liability company,)	AFFIDAVIT OF DANIEL K. BROUGH
)	
Plaintiff,)	
)	Case No. CV-2009-0000366
vs.)	
)	Judge Mitchell W Brown
)	
MONSANTO COMPANY, a Delaware)	
corporation; and WASHINGTON GROUP)	
INTERNATIONAL, INC., an Ohio)	
corporation;)	
)	
Defendants.)	

Production LLC ("P4") and WGI, which was produced to SIO in connection with the declaration that Smith filed in this lawsuit.

8. Attached hereto as Exhibit E is an addendum to the Second Quartzite Agreement dated September 24, 2001, between P4 and WGI, which was produced to SIO in connection with the declaration that Smith filed in this lawsuit.

9. Attached hereto as Exhibit F is a true and correct copy of the deposition transcript of Smith, taken in this lawsuit. Smith was deposed in his individual capacity as well as in the capacity of a representative of Monsanto pursuant to Idaho Rule of Civil Procedure 30(b)(6). I was the attorney who took this deposition.

10. Attached hereto as Exhibit G is a true and correct copy of the deposition transcript of David Farnsworth ("Farnsworth"), taken in this lawsuit. I was the attorney who took Farnsworth's deposition.

11. Attached hereto as Exhibit H is a true and correct copy of the deposition transcript of John Rosenbaum ("Rosenbaum"), taken in this lawsuit. I was the attorney who took Rosenbaum's deposition.

12. Attached hereto as Exhibit I is a true and correct copy of a letter from Monsanto (written by Smith) to WGI (addressed to the attention of Rosenbaum), produced by Monsanto to SIO in discovery.

13. Attached hereto as Exhibit J is a true and correct copy of the Affidavit of Kent W. Goates ("Goates"), which has attached as a further exhibit Goates' expert report.

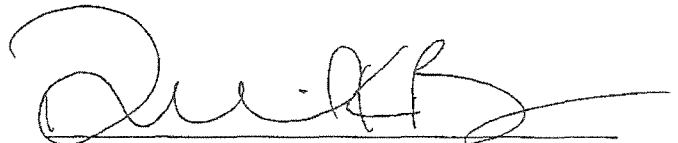
14. Attached hereto as Exhibit K is a true and correct copy of SIO's articles of organization. I personally accessed the Idaho Secretary of State's website and printed this document from that website on April 27, 2011.

15. Attached hereto as Exhibit L is a true and correct copy of an online report from the Idaho Secretary of State regarding SIO's registration. I personally accessed the Idaho Secretary of State's website and printed this document from that website on April 27, 2011.

16. Attached hereto as Exhibit M is a true and correct copy of SIO's responses to WGI's First Set of Interrogatories, which SIO served upon WGI in June 2010.

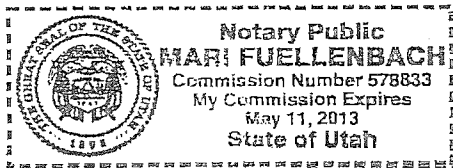
17. Attached hereto as Exhibit N is a true and correct copy of email correspondence produced by SIO in discovery.

DATED this 29th day of April, 2011.



Daniel K. Brough

SUBSCRIBED AND SWORN TO before me this 29th day of April, 2011.



Notary Public

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of April, 2011, I caused a true and correct copy of the foregoing **AFFIDAVIT OF DANIEL K. BROUGH** to be served by the method indicated below, and addressed to the following:

Randall C. Budge
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.
P.O. Box 1391
201 E. Center Street
Pocatello, ID 83204-1391
Fax: (208) 232-6109

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Eugene A. Ritti
HAWLEY TROXELL ENNIS & HAWLEY
877 Main Street, Ste. 1000
Boise, ID 83702
Fax: (208) 954-5256

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



David P. Gardner

Quartzite Agreement

THIS QUARTZITE AGREEMENT (the "Agreement"), is made and entered into as of this 10th day of MARCH 1993, by and between MONSANTO COMPANY ("Monsanto"), a Delaware corporation, with general offices located in St. Louis County, Missouri, and CONDA MINING INC. ("Conda"), an Idaho corporation, with general offices located in Missoula, Montana.

WITNESSETH:

WHEREAS, Monsanto owns and operates a plant near Soda Springs, Idaho (hereinafter called the "Plant") for refining and processing phosphate ore and producing elemental phosphorus therefrom, in connection with which Monsanto has need for certain quantities of quartzite; and

WHEREAS, Monsanto owns a quartzite quarry approximately 2.5 miles northwest of the Plant at which quartzite is mined, crushed and sized and which Conda currently operates (hereinafter called the "Quarry"); and

WHEREAS, Conda is engaged in the business, among others, of mining, processing and delivering quartzite and other materials; and

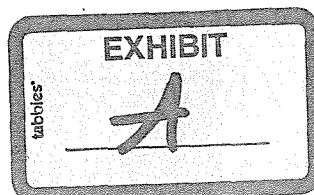
WHEREAS, Conda and Monsanto previously entered into an agreement concerning mining of quartzite, which prior agreement had an effective date of January 1, 1988 and pursuant to which mining and other services have been and are being performed for Monsanto by Conda at the Quarry; and

WHEREAS, both Monsanto and Conda desire to enter into this new Agreement concerning mining of quartzite and covering the ten-year period ending December 31, 2002;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

.. "

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1. [INTENTIONALLY LEFT BLANK]

2. Services. Commencing January 1, 1993 and thereafter during the term of this Agreement, Monsanto hereby engages Conda to perform and Conda hereby agrees to perform, the following services (all such services hereinafter collectively referred to as "Services"):

(a) beginning no later than the 3rd Monday in May of each Operating Season or such later date as Monsanto approves in writing in advance, selectively to mine, crush and screen, at the Quarry, quartzite which shall meet the specifications hereinafter described, and transport the same from the Quarry to the Plant, in such quantities as Monsanto may specify from time to time but not less than a weekly tonnage of 1/26 of the total tonnage for such Operating Season as specified in Monsanto's notice to Conda given in accordance with paragraph 7(d) of this Agreement;

(b) to remove overburden from the quartzite reserves within the Quarry prior to mining, as necessary, and to install, operate and/or maintain such mining, crushing, screening, and wet washing facilities, tailings ponds, quartzite storage areas, and truck loading facilities (all with critical spare parts in inventory as mutually agreed with Monsanto) as may be necessary and to have the same available on the Quarry site no later than April 1 of each Operating Season;

(c) at Conda's expense, to maintain and operate at such areas of the Plant as Monsanto shall designate, and to be reached by such means of access as Monsanto shall specify from time to time, such quartzite belt or other stacking system equipped with automatic sampling or other devices, all as Monsanto may reasonably require, and which is capable of stacking with a minimum of degradation and segregation the quantities of quartzite Monsanto specifies to be mined and delivered hereunder;

(d) to weigh and load at the Quarry, transport to the Plant, unload and stack

the quantities of quartzite specified by Monsanto, furnishing all weighing, loading, transportation and unloading equipment, material and labor necessary;

(e) to perform all mining in accordance with Monsanto's annual mining plans which Monsanto will develop after consultation with Conda, to deposit all removed overburden and topsoil within the confines of the Quarry limits in such manner at such points at the Quarry site as shall be described in such plan or specified by Monsanto from time to time and as shall conform to the requirements of all applicable laws, rules, regulations, ordinances, orders and other governmental actions or requests;

(f) to perform sizing and screening of quartzite necessary to cause such quartzite to comply with Section 3 of this Agreement in crushing and screening facilities to be installed and maintained at the Quarry, at Conda's expense, with the screen opening sizes in such facilities being changed only with the prior written approval of Monsanto;

(g) to maintain the quartzite haulage road between the Quarry and the Plant and all existing roads at the Quarry and to construct and maintain any additional roads at the existing Quarry, all as part of Conda's mining operations hereunder and at Conda's expense (the location of additional roads will be as mutually agreed upon);

(h) to furnish all equipment, supplies, and operating personnel necessary for the conduct of all of the aforementioned operations, including, without limitation, to furnish all fuels, lubricants, supplies, power, licenses and fees, and to repair, maintain and operate all such operating equipment and to keep all such equipment in good, safe and serviceable condition;

(i) to conduct all of its operations in a safe and diligent manner and in conformance with all safety and security practices promulgated from time to time by Monsanto, including, without limitation, requiring its personnel to attend such programs and meetings as Monsanto may request Conda's personnel to attend;

(j) to provide and maintain adequate security at all areas at which services are being performed, including, without limitation, the Quarry site and all roads described in paragraph (g) of this section 2, and all property located at such areas; and

(k) to bear and pay all costs connected with its performance of its duties, obligations and services under this Agreement.

3. Specifications. All quartzite mined hereunder shall be such that it may be wet screened to 1½" topsize. The size specifications for 1½" topsize are:

○ a maximum of 1.5% of any given volume is retained when such volume is passed through a 1½" sieve; and

○ a maximum of 1.5% of any given volume passes through an 8 mesh sieve

In addition, the following are desired ranges for the internal particle sizes:

Particle Size (minimum > x < maximum)	Desired weight % retained on standard sieve
1" > x < 1.5":	20 - 35 %
0.5" > x < 1":	40 - 60 %
0.25" > x < 0.5":	10 - 25 %
8 mesh > x < 0.25":	2 - 8 %

Determination of whether deliveries to the Plant of quartzite mined hereunder have met specifications will be determined by testing samples of quartzite obtained by the automatic sampling device forming a part of the quartzite stacking system at the Plant. Monsanto will retain the right to audit and approve the automatic sampling device and procedure. Sample cuts taken from deliveries of quartzite to the Plant will be composited continuously during periods when deliveries of quartzite to the Plant are occurring, and every 2½ hours during such periods the composite sample so accumulated to that point will be segregated for analysis. Such composite samples will be delivered to Monsanto personnel at the Plant and

shall be dried and screened over standard testing screens at Monsanto's laboratory. Prompt corrective action will be taken by Conda, and, without limiting any other remedies to which Monsanto may be entitled, Monsanto shall have the right to make equitable and appropriate adjustments in the sums otherwise due Conda hereunder in the event that non-specification quartzite is delivered by Conda into Monsanto's stockpile at the Plant. Monsanto retains the right to refuse delivery of nonspecification quartzite to the Plant. Monsanto shall not be required to pay Conda any amounts with respect to such rejected quartzite and Conda will return such rejected quartzite to the Quarry at Conda's sole cost and expense. All rejected quartzite and all overburden shall remain the property of Monsanto.

4. Termination of Previous Agreement; Term.

(a) The agreement previously entered into between the parties with an effective date of January 1, 1988 shall terminate as of December 31, 1992, provided, however, that such termination shall be without prejudice as to any rights or remedies that may have accrued thereunder prior to such termination date.

(b) The term of this Agreement shall commence as of January 1, 1993 and, unless sooner terminated as herein provided, shall continue in effect through December 31, 2002, at which time it will terminate. As used herein, an "Operating Season" is considered to be the period from January 1 to and including December 31 in each calendar year. The provisions of Section 6, paragraph 8(d) and (e), Sections 9, 11, 12, 17, 18, 20 and 22 and paragraphs 16(b) and (c) shall survive the expiration or any termination of this Agreement.

5. Water Permit. To the extent that water is necessary for Conda's performance of Services at the Quarry, and to the extent and for the period that Monsanto shall be entitled to permit such use, Conda may have access to and use the water available to Monsanto under Idaho State Water Permit No. G-32920; provided, that Conda shall not exceed the rate of usage allowed under such Permit; and provided further, that Monsanto reserves the right to use so much of the water covered by such Permit in common with Conda to the extent not

required by Conda for the performance of Services hereunder. Conda shall supply and maintain, at its expense, all pumps, piping, settling ponds, and related equipment which shall be required to make use of the water under such Permit.

6. Compliance with Laws. Conda shall comply with all applicable laws, regulations, rules, codes, orders, ordinances, actions and requests of any governmental agency, body or official having jurisdiction. Conda shall obtain promptly, and in any event prior to transporting any overburden or quartzite under this Agreement over or across any public roads or ways, all required permits, authorizations and other documentation from the State of Idaho, Department of Highways, and/or any other public authority, necessary for Conda's performance of all of its obligations, duties and services under this Agreement. Without limiting the foregoing, Conda shall abide by all applicable standards for safe practices, industrial hygiene, environmental controls, water impoundments and effluents recommended or established from time to time by the State of Idaho, the United States, and any other public authority or official having jurisdiction, and to perform all duties, obligations and services to be performed hereunder in a safe and workmanlike manner. To the extent operations hereunder may require or result in activity by Conda at the Plant, all such activity shall, in addition to the foregoing, be governed by Monsanto's security requirements and safety standards. Notwithstanding any other provision of this Agreement, Conda shall indemnify and hold harmless Monsanto from and against any and all fines, penalties, liabilities, claims, actions, suits, proceedings (whether civil, criminal, administrative, investigative, governmental or otherwise), damages, losses, costs and expenses (including, without limitation, costs and expenses of defense by counsel selected by and under the exclusive direction of Monsanto, amounts paid in settlement and attorney's fees and expenses) which Monsanto may suffer or incur by reason of the failure of Conda to obtain and/or to comply with or perform any of the terms or conditions of the foregoing.

7. Base Rates.

(a) As payment in full for the performance by Conda of all of its duties,

obligations, operations and services under this Agreement, Monsanto shall pay to Conda an amount per wet net ton of quartzite drained to surface moisture in a surge pile at the Quarry, which meets the specifications set forth in Section 3 hereof and is delivered to the stockpile at the Plant in an Operating Season. Initially, the following schedule of rates, which shall remain in effect and are firm for calendar year 1993 (the "Base Rates"), will apply, with the price per wet net ton delivered during the 1993 Operating Season being the dollar amount shown in the schedule below opposite the total tonnage of specification quartzite delivered to the Plant in such Operating Season:

Wet Net Tons Delivered During Operating Season*	Base Rate (\$ Per Wet Net Ton)
150,000 to 199,999	\$7.956
200,000 to 249,999	\$7.870
250,000 to 299,999	\$7.803
300,000 and over	\$7.770

* If fewer than 150,000 wet net tons is delivered during an Operating Season, the price per wet net ton shall be agreed upon between the parties.

The price per wet net ton of 1 1/2" topsize quartzite delivered to the Plant during Operating Seasons starting after 1993 will be the applicable Base Rate specified above, adjusted pursuant to Section 8.

(b) As an illustration of the foregoing, in the event Conda shall deliver to the Plant 225,000 wet net tons of 1 1/2" topsize quartzite during the 1994 Operating Season, the charge for each such ton delivered shall be the Base Rate of \$7.870, adjusted pursuant to Section 8.

(c) All Base Rates are based upon wet net tons of 2,000 pounds each. Measurement of quantities of quartzite delivered to the Plant will be by bin scale weights

taken at the loading point at the quartzite Quarry. The bin scale shall be checked and calibrated by Conda in such a manner and at such intervals as are acceptable to Monsanto.

(d) At least thirty (30) days before the beginning of production in each Operating Season, Monsanto shall advise Conda in writing of the total tonnage of quartzite which Monsanto expects to have mined and delivered to the Plant during such Operating Season. Monsanto shall have the right to make reasonable changes to such expected tonnage from time to time during the Operating Season by giving written notice to Conda no less than fifteen days before the effective date of such change.

(e) Conda shall invoice Monsanto for the number of wet net tons of specification quartzite delivered to the Plant during each calendar month of the Operating Season within fifteen (15) days after the end of each such month and each such invoice shall be payable net thirty (30) days after the date received.

8. Adjustment of Base Rates.

(a) Conda's calendar year 1993 costs per wet net ton for labor, equipment operating cost and expendable supplies are herein referred to collectively as "Unit Costs." Subject to paragraphs 8(f) and (g), starting January 1, 1994 the Base Rates set forth in Section 7 of this Agreement are subject to annual adjustment effective as of the first day of January, for the Operating Season then commencing. Once the adjustment for an Operating Season is determined, the charges so determined will remain firm throughout that Operating Season. The adjustment for each Operating Season beginning on or after January 1, 1994 shall be made as follows: each item of Unit Costs will be measured as of the first day of January of any Operating Season during the term of this Agreement, any increase or decrease in any item of Unit Costs above or below the corresponding item of Unit Costs prevailing as of January 1, 1993 will be determined, and each of the Base Rates shall be correspondingly increased or decreased, as appropriate, for the Operating Season then commencing by the percentage determined under the following formula with respect to each such item:

$$\frac{\% \text{ of Base Rate represented by item of Unit Costs which has increased or decreased}}{\% \text{ of increase or decrease in such item of Unit Costs above or below level prevailing as of January 1, 1993}} = \text{percentage adjustment in Base Rate with respect to such item of Unit Costs}$$

(b) The following percentages, which indicate the percentage of the Base Rates represented by each item of Unit Costs, shall be used in determining the amount by which the rates shall be adjusted in the event of an increase or decrease in any item of Unit Costs:

Item of Unit Costs	Percentage of Base Rates
Labor	30%
Equipment Operating Cost	32%
Expendable Supplies	9%

The percentages shown above representing the portion of the Base Rates represented by each item of Unit Costs will not change during the term of this Agreement. The elements (e.g., fuel, lubricants, explosives and repair parts) of which each of the items of Unit Costs set forth above is composed shall be those contained in Conda's adjustment calculations for calendar years 1988 to 1992, inclusive. The percentages used for each of such elements within an item of Unit Costs shall be established on the basis of Conda's actual experience during the preceding calendar year and shall be mutually agreed upon by both parties. If the parties fail to agree, the percentages in effect for the calendar year next preceding the Operating Season for which the adjustment is being determined shall be used.

(c) For the purpose of illustration, if the level of Conda's labor cost as of the first day of January of any Operating Season commencing on or after January 1, 1994, during the term of the Agreement has increased by eight and one-half percent (.085) over that prevailing as of January 1, 1993, each of the Base Rates shall be increased by 2.55% (30% x

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8-1/2% equals .0255). Each of the Base Rates shall be similarly adjusted for changes in other items of Unit Costs.

(d) In the event that any increase or decrease in an item of Unit Costs results in an adjustment to the Base Rates becoming effective as of the first day of January of any Operating Season commencing on or after January 1, 1994, Conda shall notify Monsanto in writing no less than thirty (30) days after such date of the amount of the increase or decrease in each specific item of Unit Costs and the adjustments to the Base Rates which will result therefrom, effective on such first day of January, together with a copy of its calculations, in reasonable detail, of the adjustments to the Base Rates and all documentation or other material in support thereof. Conda shall also furnish a report, subject to audit by Monsanto, confirming the amount of any increase or decrease in each item of Unit Costs and certifying that the amount of the adjustment in the Base Rates covered by Conda's notice is in accordance with the foregoing formula. Monsanto will also have the right to audit those of Conda's affiliates acting as subcontractors and/or suppliers of supplies and repair parts so that they affect specific items of Unit Cost pertaining to this Agreement. Monsanto shall use reasonable efforts to keep confidential any information as to Conda's costs obtained during any such audit.

(e) In connection with Monsanto's audit rights under this Agreement, Conda and each of its affiliates shall (i) cooperate fully with Monsanto's auditing efforts and (ii) provide complete and unrestricted access to all documents and accounting papers, and all work papers of any auditors, in connection with any item which is subject to audit by Monsanto under the terms of this Agreement, for inspection and/or audit by Monsanto or its auditors at such times as Monsanto may request.

(f) Notwithstanding any other provisions of this Agreement, any increases in Base Rates under this Section 8 shall be limited to those increases that result from increases in items of Unit Costs that are reasonably, necessarily and actually incurred by Conda in arms' length transactions for the elements composing the respective items of Unit Costs.

(g) If the total aggregate net increase in all items of Unit Costs from January 1, 1997 to January 1, 1998 equals two percent (2%) or less, then the increase in the Base Rates for 1998 will be the same as that for 1997 (i.e., the same charges will apply to specification quartzite delivered during the 1998 Operating Season as applied to specification quartzite delivered during the 1997 Operating Season) and hourly rental rates (in accordance with Section 11) will be equal to the 1997 rates. In addition, a new schedule of Base Rates will replace the Base Rates set forth in paragraph 7(a). Such new schedule of Base Rates will be determined by adjusting the Base Rates set forth in paragraph 7(a) as specified in paragraph 8(a) and (b) using Unit Costs determined as of January 1, 1997. For years starting on or after January 1, 1999, such new schedule of Base Rates will be the Base Rates that are subject to adjustment under this Section 8 and such adjustment will be based on comparison of Unit Costs as of January 1, 1999 and later to Unit Costs as of January 1, 1998, rather than as of January 1, 1993. If the total aggregate net increase in all items of Unit Costs from January 1, 1997 to January 1, 1998 exceeds two percent (2%) then none of the foregoing provisions of this paragraph 8(g) will apply and normal escalation in accordance with paragraphs 8(a) and (b) will apply.

9. Year-End Adjustment.

(a) Billings for Services during each Operating Season shall be at the rate, calculated pursuant to Sections 7 and 8 of this Agreement, applicable to the tonnage which Monsanto advises Conda pursuant to paragraph 7(d) that it expects to have mined and delivered during such Operating Season. If at the end of any Operating Season the total tonnage mined and delivered under this Agreement is less than the tonnage on which such billings were based, Conda shall invoice Monsanto no later than fifteen (15) days after the end of such Operating Season and Monsanto shall pay to Conda no later than thirty (30) days after receipt of such invoice, an amount equal to the difference between the applicable rate for the tonnage delivered and the rate on which such billings were originally made, times and tonnage actually delivered. If during any Operating Season the amount of quartzite actually mined and delivered exceeds the tonnage on which billings during that Operating Season have

been based, Conda shall credit Monsanto thereafter with an amount equal to the difference between the rate on which such billings were originally made and the applicable rate for the tonnage delivered, times the tonnage actually delivered, such credit to be applied against further tonnage delivered, and if there remains any unapplied credit at the end of production of any Operating Season, Conda shall refund payment to Monsanto no later than thirty (30) days after the end of such production.

(b) Notwithstanding any other provision of this Agreement, in the event the tonnage of specification quartzite actually delivered by Conda to the Plant during any Operating Season is less than the total tonnage Monsanto would otherwise have caused Conda to deliver during such Operating Season by reason of Conda's failure or inability to perform any services to be performed hereunder for any cause or reason whatsoever, then the rate with respect to the number of tons of quartzite which Monsanto would have had delivered during such Operating Season except for such failure or inability, and not the rate with respect to the tonnage actually delivered during such Operating Season, shall be the rate used to determine payments due Conda hereunder, and any overpayment by Monsanto made as a result of such failure or inability shall be promptly refunded by Conda to Monsanto.

10. [INTENTIONALLY LEFT BLANK]

11. **Equipment Rental.** Monsanto, in its discretion, may have Conda (a) remove and stockpile topsoil and remove overburden outside the present Quarry limits and dispose of it in the backfill area or other location as necessary in any new section of the Quarry, (b) remove non-specification quartzite from the present Quarry and dispose of it in the backfill area or other location as necessary; or (c) have performed any other work, including, without limitation, reclamation not otherwise specifically required in this Agreement, that Monsanto may wish to have performed. For such services, other than the removal of up to 700,000 bank cubic yards of dolomite waste, Monsanto shall pay Conda at the applicable hourly rate set forth in Exhibit A attached hereto and made a part hereof for the equipment and operator used in providing such services. Conda will remove up to 700,000 bank cubic yards of

dolomite waste at no charge to Monsanto other than \$1.23 per bank cubic yard during the 1993 Operating Season, or \$1.23 escalated by the applicable percentage as calculated in accordance with Section 8 for subsequent Operating Seasons. Removal of dolomite waste in excess of 700,000 bank cubic yards will be paid for as normal equipment rental or at a subsequently negotiated price. The invoice to Monsanto referred to in paragraph 7(e) of this Agreement shall contain the charges for any such services performed by Conda during the applicable calendar month. Monsanto must have given prior written approval and Conda must produce daily work sheets signed by a representative of Monsanto in support of such equipment rentals. After the 1993 Operating Season the list of equipment and prices set forth in Exhibit A shall be reviewed and adjusted annually by Monsanto and Conda. Monsanto shall have the right to audit the basis for any adjustment under this section 11.

12. **Indemnification.** Conda assumes full responsibility for, and shall indemnify and hold harmless Monsanto, its past, present and future directors, officers, employees, agents and representatives and any other person or entity acting on their behalf, from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses (including, without limitation, costs and expenses of defense, amounts paid in settlement and attorneys' fees and expenses), whether the same are based in contract, warranty, negligence (including Monsanto's passive negligence), strict liability, other tort or otherwise, in connection with, without limitation, (a) injuries to, adverse effect on health or death of any person, or loss or destruction of or damage to any property or adverse effect on wildlife, aquatic life or the environment arising from any activity, duty or obligation of Conda under this Agreement, or (b) the failure of Conda to comply with and perform any of its duties or obligations under this Agreement; provided, that the foregoing provisions shall not apply with respect to any such liability, claim, demand, action, suit, loss, cost or expense proven to have been caused solely and directly by the negligence of Monsanto. Conda, upon the request of Monsanto, shall, at the expense of Conda, cause any claim, demand, action, suit, or proceeding (including, without limitation, civil, criminal, administrative, investigative, governmental or otherwise) of whatsoever nature in connection with this Agreement to be defended on behalf of Monsanto by counsel selected by and under the exclusive direction of Monsanto.

13. Insurance.

(a) Conda shall obtain and maintain, at its expense, during the term of this Agreement, the following insurance in companies satisfactory to Monsanto and shall provide to Monsanto certificates of insurance satisfactory to Monsanto evidencing such insurance and that such coverage is provided on an "occurrence" basis prior to the commencement of any performance hereunder:

Coverage	Limits
(i) Workmen's Compensation	Statutory, and shall include a waiver of subrogation in favor of Monsanto.
(ii) Employer's Liability	\$500,000 each accident \$500,000 disease - each employee \$500,000 disease - policy limit
(iii) Commercial General Liability . including Completed Operations, Contractual & Aggregate Limit Per Project	
Bodily Injury & Property Damage	\$1,000,000 each occurrence
Personal Injury	\$1,000,000 each occurrence
General Aggregate	\$1,000,000
Product & Completed Operations Aggregate	\$1,000,000

(iv) Automobile Liability including
Nonowned & Hired Auto

Bodily Injury & Property Damage \$1,000,000 each accident

(v) Umbrella/Excess Liability on \$2,000,000 each occurrence
coverages (ii) through (iv),
inclusive

(b) Monsanto shall be named as an additional insured on each of these policies except for Workers Compensation and Employers Liability, and all such insurance shall be primary relative to any and all other insurance of Monsanto with respect to any and all claims and demands made against Monsanto.

(c) All insurance policies shall contain a provision that coverages afforded under the policies will not be cancelled, not renewed, or materially altered until at least thirty (30) days prior written notice has been given to Monsanto.

(d) The Commercial General Liability insurance specified in subparagraphs (iii) and (iv) above shall include coverage for all of Contractor's contractual liability under this Agreement with limits not less than those set forth in subparagraphs (ii), (iii), and (iv) above. All Liability and property insurance required under this Section 13 shall provide "occurrence" coverage and shall not provide "claims-made" coverage.

(e) The insurance in this Section 13 sets forth minimum amounts and coverage and is not to be construed as a limitation on Conda's liability under this Agreement.

14. Excuse of Performance.

(a) Performance may be suspended by either party in the event of: Act of God, riot, fire, explosion, storm, accident, flood, boycotts, act of a public enemy, sabotage; lack of adequate fuel, power, raw materials, labor, containers, or transportation facilities; compliance with present or future governmental requests, laws, regulations, orders or action (but not including Conda's compliance or failure to comply with any laws, regulation, order, action or request relating to safe practices, industrial hygiene or environmental controls, as described in the third sentence of Section 6 of this Agreement); breakage or failure of machinery or apparatus beyond the reasonable control of such party; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of such party; or in the event of labor trouble, strike, lockout or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment); which event delays or makes impracticable the performance hereunder. The party affected shall exercise all due diligence to remedy such event as promptly as possible. If the party invoking this section fails to exercise such diligence, such party shall not be excused from its obligation of performance hereunder.

(b) Monsanto may, but shall not be obligated to, arrange for other parties to perform the Services, or any part thereof, during any period(s) when Conda is delayed or prevented from performance hereunder due to any of the events specified above. Any tonnage mined and delivered to the Plant by any such other party(ies) shall be included as part of the total tonnage mined and delivered under the Agreement for purposes of determining the applicable charges for quartzite delivered under this Agreement. No payment will be due or made to Conda, however, for any such tonnage mined by such other party(ies).

15. Termination Without Cause. Monsanto shall have the right to terminate this Agreement effective as of December 31 of any Operating Season by giving Conda at least sixty (60) days' prior written notice. In the event Monsanto terminates this agreement pursuant to this Section 15, Monsanto shall pay Conda the amount shown in the schedule below opposite the effective date of termination.

If canceled	
December 31, 1993	\$560,000
December 31, 1994	\$448,000
December 31, 1995	\$358,400
December 31, 1996	\$286,720
December 31, 1997	\$229,376
December 31, 1998	\$183,501
December 31, 1999	\$137,626
December 31, 2000	\$91,750
December 31, 2001	\$ 45,875

No payment will be due to Conda under this Section 15 upon termination of this Agreement as of December 31, 2002 or later. Likewise, no payment will be due to Conda under this Section 15 if this Agreement is terminated by Conda, by mutual consent of Conda and Monsanto, or by Monsanto pursuant to Section 16.

16. Termination for Cause.

(a) Monsanto may, without further demand or notice, terminate this Agreement without being subject to any liability or obligation for reimbursement of costs, and without prejudice to any rights of Monsanto at law or in equity then existing with respect thereto in the event that:

(i) Conda shall fail to perform any of the Services required hereunder within the term periods specified herein for reasons other than those which excuse Conda from its obligation of performance in accordance with the provisions of section 14 of this Agreement, it being acknowledged by Conda that TIME IS OF THE ESSENCE, or shall be in default with respect to any of its other duties or obligations under this Agreement and any such failure, inability or default continues for more than ten (10) days after notice thereof shall have been given by Monsanto to Conda; or

(ii) any proceedings shall be instituted by or against Conda under any bankruptcy or debtor relief laws, or in the event that Conda makes any assignment for the benefit of creditors.

(b) Upon termination because of any of the above causes, Conda agrees to lease, or sell all or any of its equipment described in Exhibit B attached hereto and made a part hereof and/or used in the performance of the Services, with critical spare parts in place, to such other party as may be designated by Monsanto from the date of termination for a period of time as required up to and including December 31, 2002. The selection of items of equipment and spare parts under this paragraph and the form of transaction with respect to each (i.e., lease or sale), shall be determined by the party designated by Monsanto. The rental or selling price shall be as follows:

(i) The rental rates set forth in Exhibit B for those items listed in Exhibit B shall be firm for calendar year 1993. For purposes of this Agreement, Conda's 1993 standard cost for those items listed in Exhibit B shall be deemed to be the rental rates set forth in Exhibit B. The rental rates set forth in Exhibit B shall be escalated by the applicable percentage as calculated in accordance with Section 8 of this Agreement for those items listed in Exhibit B for the 1994 Operating Season and subsequent Operating Seasons.

The rental for items used by Conda in the performance of Services and not listed on Exhibit B will be Conda's standard rental rate for the Operating Season in which such items were added to the operation. Such rental rates shall be escalated by the applicable percentage calculated in accordance with Section 8 of the Agreement; provided that such adjustment for each item of equipment shall be based on comparison of Unit Costs as of the first day of the Operating Season in which such item was added to the operation to Unit Costs as of the first day of the Operating Season for which the adjustment is being determined. These costs are subject to Monsanto's audit under this Agreement.

(ii) The selling price for equipment described in Exhibit B and/or used in the performance of the Services shall be 95% of market value as the effective date of

490

termination, as determined no later than forty-five (45) days after such date by two independent recognized professional appraisers agreed upon jointly by Conda and the party designated by Monsanto. In the event that the appraisers cannot agree upon an appraisal, the average of their respective appraisals shall be deemed to be such market value. The cost of the appraisers is to be borne equally between Conda and the designated party. The determination of market value pursuant to this sub-paragraph shall be binding and conclusive upon all parties.

(c) Conda shall remove its equipment from the Quarry site no later than sixty (60) days after completion of rental period, or no later than sixty (60) days after the effective date of termination with respect to any equipment not rented or sold to the party designated by Monsanto.

17. Liens. Conda shall not directly or indirectly create, assume, suffer or permit to exist any mortgage, lien, charge or encumbrance on, pledge of or security interest of any kind or character in any of Monsanto's property, whether real, personal or mixed, or any part thereof, or any interest therein, nor take, nor permit to be taken, any action or permit any omission, that might result in a mortgage, lien, charge, encumbrance, pledge or security interest on the same. In addition to all of Monsanto's other rights, and notwithstanding any other provision of this Agreement, Conda shall indemnify and hold Monsanto harmless from any and all such liens, claims, charges, encumbrances, mortgages and security interests, including, without limitation, any amounts paid in settlement, attorneys' fees and expenses, and costs and expenses of defense by counsel selected by and under the exclusive direction of Monsanto.

18. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if delivered in person or if deposited in the United States mail, postage prepaid for mailing by registered or certified mail, addressed as follows:

If to Monsanto,
addressed to:
Monsanto Company
Box 816
Soda Springs, Idaho 83276
Attention: Plant Manager

If to Conda,
addressed to:
Conda Mining Inc.
101 International Way
P.O. Box 8989
Missoula, Montana 59807
Attention: President

or to such other address as may be specified from time to time in a written notice given by such party. Both parties agree to acknowledge in writing the receipt of any notice delivered in person.

19. **Independent Contractor.** Conda is and shall always remain an independent contractor in its performance of this Agreement. The provisions of this Agreement shall not be construed as authorizing or reserving to Monsanto any right to exercise any control or direction over the operations or activities of Conda in connection with this Agreement, it being understood and agreed that the entire control and direction of such operations and activities shall remain with Conda. Neither party to this Agreement shall have any authority to employ any person as agent or employee for or on behalf of the other party for any purpose, and neither party to this Agreement nor any other person performing any duties or engaging in any work at the request of such party shall be deemed to be an employee or agent of the other party to this Agreement.

20. **Confidential Information.** Conda shall treat as Monsanto's confidential property and not use or disclose to others during or subsequent to the term of this Agreement, any information (including, without limitation, any technical information, experience or data) regarding Monsanto's plans, programs, plants, processes, products, costs, equipment, operations or customers which may come within the knowledge of Conda or its employees, agents, representatives, or, subject to Section 21, assigns or subcontractors, in the performance hereof or which may be developed by Conda in the course of performance hereof without in each instance securing the prior written consent of Monsanto. Nothing

herein, however, shall prevent Conda from disclosing to others or using in any manner information which Conda can prove:

(a) has been published and has become part of the public domain other than by acts or omissions of Conda or its employees, or

(b) has been furnished or made known to Conda by third parties (other than those acting for or on behalf of Monsanto) as a matter of right and without restriction on disclosure, or

(c) was in Conda's possession at the time it entered into this Agreement and which was not acquired by Conda directly or indirectly from Monsanto, its employees or its agents.

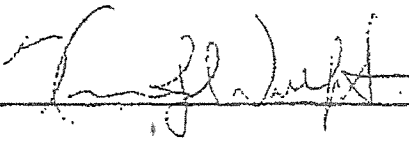
Conda shall disclose information regarding this Agreement only to those of its employees who have a need to know and are directly connected with the performance hereof, and shall also, upon request by Monsanto, cause such persons involved in the performance hereof as Monsanto designates to sign individual secrecy agreements in a form satisfactory to Monsanto.

21. Assignment. This Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, however, that Conda may not assign or otherwise transfer its rights or subcontract or otherwise delegate its performance hereunder (whether voluntarily or involuntarily or by operation of law or otherwise) without the prior written consent of Monsanto, and any assignment, transfer, subcontracting or delegation without such consent shall, at Monsanto's election, be void. Subcontracting or supply arrangements with affiliates of Conda shall be based on arms' length transactions, except that Monsanto shall be given the full benefit of any reduction in such items which may result from such affiliates' association with Conda or Conda's parent Washington Contractors Group, Inc.

22. Miscellaneous. The validity, interpretation and performance of this Agreement and any dispute connected therewith shall be governed and construed in accordance with the laws of the State of Idaho. This Agreement constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement; and all prior negotiations, dealings, understandings and agreements, whether oral or written, are hereby superseded and merged into this Agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms and conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of purchase order, shipping instructions or other forms containing terms or conditions at variance with or in addition to those set forth herein. If any term or provision of this Agreement or any application thereof shall be determined to be invalid or unenforceable, the remainder of this Agreement or any other application of such term shall not be affected thereby. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver by any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. The section headings in this Agreement, are inserted for convenience only and are in no way to be construed as part of this Agreement or a limitation of the scope of the particular sections to which they refer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

MONSANTO COMPANY

By  BY
2/25/93
Title DIR, OPERATIONS - PYED 3/10/93

CONDA MINING, INC.


By 
Title Area Manager 2/25/93

EXHIBIT "A"
EQUIPMENT RENTAL RATES* INCLUDING OPERATOR AND FUEL
FOR CALENDAR YEAR 1993

Crawler Tractors:	per hour
International TD 25 Dozer w/ Ripper	\$108.76
CAT D-9 Dozer w/o Ripper	\$111.48
CAT D-9 Dozer w/ Ripper	\$116.91
CAT D-8 Dozer w/ Ripper	\$95.17
CAT D-6 Dozer w/o Ripper	\$81.56
Loaders and Backhoes:	
International H-400 10CY Loader	\$156.53
CAT 992 13CY Loader	\$230.00
CAT 988 6.5CY Loader	\$104.67
John Deere Backhoe	\$43.52
Atlas Backhoe	\$72.04
Rubber Tired Dozers:	
CAT 834 Wheeled Dozer	\$108.76
CAT 824 Wheeled Dozer	\$100.60
Other Equipment	
CAT 14 Patrol	\$55.74
50 Ton Haul Truck	\$146.47
Water Truck 3000 Gal. Capacity	\$51.65
IR Air Trac Drill w/ Compressor	\$217.49

* Rental rates are for the equipment listed or similar equivalent units. The rental rates above represent rental rates for the equipment listed with operator, fuel, lubricants, etc. All rental rates are per hour except as otherwise indicated.

EXHIBIT "B"
EQUIPMENT LEASE/RENTAL RATES*
FOR CALENDAR YEAR 1993

Crusher Plant No. 1 (Primary)	\$112.83
Crusher Plant No. 1A (Secondary)	\$451.30
Crawler Tractors:	
International TD 25 Dozer w/ Ripper	\$73.26
CAT D-9 Dozer w/o Ripper	\$75.22
CAT D-9 Dozer w/ Ripper	\$80.59
CAT D-6 Dozer w/o Ripper	\$53.73
Loaders and Backhoes:	
International H-400 10CY Loader	\$112.83
CAT 992 13CY Loader	\$180.00
CAT 988 6.5CY Loader	\$75.22
Other Equipment:	
CAT 14 Patrol	\$42.98
50 Ton Haul Truck	\$107.45
Water Truck 3000 Gal Capacity	\$26.87
IR Air Track Drill	\$32.23
Compressor	\$64.47
Powder Magazine	\$161.19 per month
Office Trailer	\$161.19 per month
Shop	\$322.36 per month
Welders	\$8.59
Pickup Trucks	\$5.38

*The rental rates above represent rental rates for the equipment listed without operator, fuel, or other lubricants. All rental rates are per hour except as otherwise indicated. Rental rates are for the equipment listed or similar equivalent units.

Assets		
Cash & Cash Equivalents		
Pmc Operating Account	31,171	1,207
Total Cash & Cash Equivalents	<u>31,171</u>	<u>1,207</u>
Deferred Lease Costs		
Deferred Lease Commission	31,432	1,217
Net Deferred Lease Costs	<u>31,432</u>	<u>1,217</u>
Syndication Costs		
Syndication Costs	2,677,232	103,696
Total Syndication Costs	<u>2,677,232</u>	<u>103,696</u>
Building & Improvements		
Building & Improvements	27,762,768	1,075,326
Tenant Improvements	132,170	5,119
Total Building & Improvements	<u>27,894,938</u>	<u>1,080,445</u>
Escrows		
Real Estate Tax Escrow	65,001	2,518
Insurance Escrow		
Replacement Reserve	29,193	1,131
T.I. / L.C. Reserve	103,846	4,216
Tenant Security Dep Escrow	14,063	545
Total Escrows	<u>217,102</u>	<u>8,409</u>
Total Assets	<u>30,851,875</u>	<u>1,194,975</u>
Liabilities & Capital / Equity		
Mortgages Payable		
First Mortgage Payable	20,500,000	794,020
Total Mortgages Payable	<u>20,500,000</u>	<u>794,020</u>
Security Deposits		
Security Deposits Tenants	13,956	541
Total Security Deposits	<u>13,956</u>	<u>541</u>
Other Liabilities		
Deferred Rent Payable	2,439	94
Total Other Liabilities	<u>2,439</u>	<u>94</u>
Total Liabilities	20,516,395	794,655
Capital / Equity		
Ltd Partner Capital - II	10,100,000	391,200
Ltd Partner Distribution - II	(1,573,001)	(47,003)
Prior Years Retained Earnings / Deficit	904,318	21,204
Retained Earnings / Deficit	904,164	34,920
Total Capital / Equity	<u>10,335,480</u>	<u>400,321</u>
Total Liabilities & Capital / Equity	<u>30,851,875</u>	<u>1,194,975</u>

Schedule E Income		
Line 3 - Rents Received	2,804,307	108,517
Line 3 - Rents Received	2,604	-
Line 7 - Cleaning and Maintenance	127,677	4,945
Line 9 - Insurance	21,515	833
Line 10 - Legal and Professional	21,705	841
Line 11 - Management Fees	82,083	3,179
Line 12 - Mortgage Interest	1,242,163	48,112
Line 16 - Taxes	347,526	13,461
Line 17 - Utilities	55,220	2,139
Line 18 - General and Administrative	2,750	107
Total Schedule E Income	903,668	34,901
Sch B - Interest Income	496	19
Total Income	904,164	34,920
Capital Expenditures		34,920
Building & Improvements	-	-
Deferred Lease Commission	25,942	1,005
Tenant Improvements	121,307	4,699
Total Capital Expenditures	147,249	5,703
Escrows and Reserve Holdbacks		
Real Estate Tax Escrow	16,907	655
Insurance Escrow	(2,209)	(86)
Replacement Reserve	26,909	1,042
T.I. / L.C. Reserve	10,715	415
Tenant Security Dep Escrow	62	-2
Total Escrow and Reserve Holdbacks	52,384	2,029
Other Adjustments		
Advances due Sponsor	(56,483)	(4,003)
Total Other Adjustments	(56,483)	(4,003)
Cash Flow Available for Distribution	648,048	23,185
Investors' Capital		
Contributions		
Distributions	(733,467)	(26,493)
Total Investor Capital	(733,467)	(26,493)
Net Cash Flow	(85,419)	(3,309)

Deprec
 141,891 = 106,430
 Avg 1/16 = <107,215>

Note A

Fees Paid on Behalf of Investors (withheld from distributions)	
2007 LLC Delaware Annual Report Fee	200
2007 LLC Montana Annual Report Fee	200

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Note A		
Fees Paid on Behalf of Investors (withheld from distributions)		
2007 LLC Delaware Annual Report Fee	-	200
2007 LLC Montana Annual Report Fee	-	200

Deprec
 - 141,891 = 106,430
 - 1946 = (107,286)

Transcript of the Testimony of Mitchell J. Hart

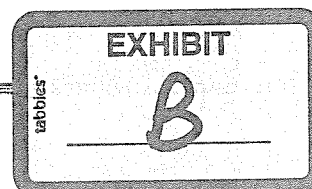
Date: April 8, 2011

Volume: I

Case: SILICON INTERNATIONAL ORE v. MONSANTO COMPANY

Printed On: April 29, 2011

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC, an Idaho limited liability company, Plaintiff, vs. MONSANTO COMPANY, a Delaware corporation; and WASHINGTON GROUP INTERNATIONAL, INC., an Ohio corporation, Defendants.

DEPOSITION OF MITCHELL J. HART Friday, April 8, 2011, 1:00 p.m. Pocatello, Idaho

Sandra D. Terrill, RPR, CSR

EXAMINATION

Table with 2 columns: Name (MITCHELL J. HART, BY MR. BROUGH, BY MR. RITTI, BY MR. BUDGE, BY MR. BROUGH) and Page (4, 4, 87, 88, 94)

EXHIBITS

Table with 2 columns: No. (4, 9, 10, 13, 14, 15, 17, 18, 19, 20, 24, 42, 47, 48) and Page (4, 57, 34, 81, 70, 72, 30, 74, 36, 45, 52, 82, 84, 85)

DEPOSITION OF MITCHELL J. HART BE IT REMEMBERED that the deposition of Mitchell J. Hart was taken by the attorney for the plaintiff at the office of Racine Olson Nye Budge & Bailey, Chtd., located at 201 East Center, Pocatello, Idaho, before Sandra D. Terrill, Court Reporter and Notary Public, in and for the State of Idaho, on Friday, April 8, 2011, commencing at the hour of 1:00 p.m., in the above-entitled matter.

APPEARANCES

For the Plaintiff: BENNETT TUELLER JOHNSON & DEERE BY: DANIEL K. BROUGH 3165 East Millrock Drive, Suite 500 Salt Lake City, Utah 84121 (801) 438-2000 For Monsanto Company: RACINE OLSON NYE BUDGE & BAILEY, CHTD. BY: RANDALL C. BUDGE AND: W. MARCUS W. NYE 201 East Center Post Office Box 1391 Pocatello, Idaho 83204-1391 (208) 232-6101 For Washington Group International: HAWLEY TROXELL ENNIS & HAWLEY, LLP BY: EUGENE A. RITTI 877 Main Street, Suite 1000 Post Office Box 1617 Boise, Idaho 83701-1617 (208) 388-4837 Also Present: Jim Smith

1 (The deposition proceeded at 1:00 p.m. 2 as follows:) 3 Mitchell J. Hart, 4 produced as a witness at the instance of the 5 plaintiff, having been first duly sworn, was examined 6 and testified as follows: 7 EXAMINATION 8 BY MR. BROUGH: 9 Q. Mr. Hart, my name is Dan Brough. I am 10 the attorney for the plaintiff, Silicon International 11 ore, in this matter. Thank you for coming to the 12 deposition today. 13 As a preliminary matter, I'm going to 14 show you a document that we're going to mark as 15 Exhibit *-4. 16 (Exhibit *-4 marked.) 17 Q. BY MR. BROUGH: Would you take a look at 18 that document and review it and let me know when 19 you're ready to proceed. 20 A. Okay. 21 Q. Have you seen that document before? 22 A. I don't believe I have. I just received 23 notice from the attorneys that the deposition was 24 going to be today. I don't believe I ever received a 25 copy of it.

1 Q. Is it your understanding that you're
 2 appearing today for a deposition in this matter?
 3 A. Yes.
 4 Q. Is it your understanding that you're
 5 appearing pursuant to this notice?
 6 A. That would be my assumption.
 7 Q. Is it your understanding too that you're
 8 appearing here today without need for Silicon
 9 International to serve a subpoena upon you?
 10 A. Yes. I never did receive a subpoena.
 11 Q. Have you ever had your deposition taken
 12 before?
 13 A. Yes.
 14 Q. How many times?
 15 A. Three.
 16 Q. Do you remember the first time that you
 17 had your deposition taken?
 18 A. Yes.
 19 Q. Do you remember the date?
 20 A. I do not.
 21 Q. Do you remember the approximate date?
 22 A. Yes. It would have been -- the mid
 23 nineties is about as close as I can get.
 24 Q. Do you remember the parties to the
 25 lawsuit in which you gave the deposition?

1 which is a subsidiary of Agrium, filed suit against
 2 the U.S. Government, and I served as a 30(b)(6)
 3 witness in two different portions of those
 4 proceedings, those depositions. One was related to
 5 surface and groundwater sampling programs, historic
 6 ones.
 7 The other 30(b)(6) deposition had to do
 8 with the organization structure of the entities that
 9 Agrium does business as in Idaho.
 10 Q. Did you serve as a 30(b)(6) designee for
 11 Agrium?
 12 A. It was for Nu-West Industries and
 13 Nu-West Mining, who are the entities in the lawsuit.
 14 Q. And do you remember where that case was
 15 filed?
 16 A. It was filed in federal district court
 17 in Boise.
 18 Q. Well, it sounds like you're no stranger
 19 to depositions.
 20 A. Well, we'll see.
 21 Q. Let me just run through a few ground
 22 rules, which I'm sure you're already aware of, but
 23 just for the sake of our record and for clarity, I'll
 24 go through them.
 25 Our court reporter is making a record.

1 A. In a general sense. The parties were --
 2 a little background. Monsanto, my former employer,
 3 has a coal calcining or a coal charting operation in
 4 Rock Springs, Wyoming. For a period of time in the
 5 late eighties into the early nineties they purchased
 6 coal from a local coal mine in the Rock Springs area,
 7 a company called Lion Coal.
 8 Lion Coal did a number -- or took on a
 9 number of partners or discussions with a number of
 10 partners, and it was my understanding that one of the
 11 partners that they took on wasn't pleased with the
 12 arrangement and so they sued Lion Coal. I don't
 13 remember who the entity was. So in that lawsuit,
 14 because of my involvement with sourcing raw material
 15 coal for the Rock Springs operation, that I was
 16 deposed at that time.
 17 Q. Do you remember where that case was
 18 filed?
 19 A. I remember the deposition was taken in
 20 Salt Lake, and so I'm not exactly sure where it was
 21 filed.
 22 Q. Tell me about the second time that you
 23 appeared at a deposition.
 24 A. The other two times were recent, in the
 25 past year, as part of a lawsuit. Nu-West Industries,

1 It will make it a lot easier for us to review that
 2 record later if we don't talk over one another. So
 3 I'll let you finish your answers if you let me finish
 4 my questions. I'll try my best not to interrupt you.
 5 A. Okay.
 6 Q. As far as answering questions,
 7 oftentimes when we speak, we'll nod our heads or say
 8 uh-huh or nuh-uh or whatever. I'll certainly
 9 understand what you mean as I see you answer, but as
 10 we read the deposition transcript, that will make it
 11 harder. So if you could answer questions with an
 12 audible yes or a no, I would appreciate that.
 13 A. I understand.
 14 Q. If you need a break at any time, that's
 15 just fine with me. I'll ask you to answer any
 16 pending questions that are out there that haven't
 17 been answered before we take the break. But as soon
 18 as you do that, feel free to let me know if you need
 19 to get up, stretch your legs, use the rest room,
 20 anything like that.
 21 A. Okay.
 22 Q. A transcript is being made that you'll
 23 have the opportunity to review later. You'll also
 24 have the opportunity to make changes to your
 25 testimony today. Please be advised though that if

1 you do that, we'll have the right to make negative
 2 inferences from any changes that you make from your
 3 testimony.
 4 A. Understood.
 5 Q. Did you do anything to prepare for your
 6 deposition today?
 7 A. I reviewed a number of times the
 8 affidavit that I signed and was issued.
 9 MR. BUDGE: Excuse me, Dan. Just for the
 10 record, can we have the usual stipulation in this
 11 case, for purposes of Monsanto and WGI, that all
 12 objections would be reserved except as to the form of
 13 the question?
 14 MR. BROUGH: As long as --
 15 MR. BUDGE: And that any objections of one
 16 party will apply to both.
 17 MR. BROUGH: The latter, certainly. I do
 18 want to make sure that if there's an objection, I
 19 have the chance to correct any error in my question.
 20 Would you just let me know if you actually do have an
 21 objection. I'll try my best to correct anything that
 22 I have.
 23 MR. BUDGE: Okay.
 24 Q. BY MR. BROUGH: Sorry.
 25 A. And in the affidavit it references a

Page 9

1 couple of e-mails and I reviewed those.
 2 Q. Okay. Which e-mails did you -- did you
 3 just review the e-mails that were referenced in the
 4 affidavit?
 5 A. Yes. And a couple others that I
 6 reviewed just briefly over lunch that may be brought
 7 up in --
 8 Q. Okay. Well, which e-mails were those?
 9 A. Exhibits *-11 -- *-11, *-12, and that
 10 one, *-25.
 11 Q. So Exhibits *-11, *-12, and *-25 --
 12 A. Yes.
 13 Q. -- you reviewed as well?
 14 A. Yeah. Just read through them.
 15 Q. Did you speak with anybody other than
 16 your attorneys regarding the deposition today?
 17 A. No.
 18 Q. Have you spoken with anybody at Monsanto
 19 regarding your deposition today?
 20 A. No.
 21 Q. I gather from our conversation that at
 22 one time you were employed by Monsanto; is that
 23 correct?
 24 A. Correct.
 25 Q. When did you start working for Monsanto?

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1 A. June 1986.
 2 Q. And when you started working for
 3 Monsanto, what was your job title?
 4 A. Mining engineer, I believe.
 5 Q. What were your job responsibilities when
 6 you first started?
 7 A. Primarily long-term mine planning.
 8 Q. And, specifically, because I'm kind of a
 9 layperson from engineering in mining, could you
 10 describe for me what your specific duties and
 11 responsibilities were.
 12 A. You bet. There's kind of an informal
 13 line, I guess, that delineates between short term and
 14 long term. Short-term planning -- mine planning are
 15 day-to-day, week-to-week, kind of month-to-month
 16 things. So things for like the next year and beyond
 17 are more long-term mine planning, more of a strategic
 18 nature where you look at what reserves you have
 19 available in front of you and plan that in an
 20 efficient manner. And then when you anticipate those
 21 reserves running out, you look for new -- your new
 22 properties to go forward and permit. And so I was
 23 responsible for that and looking at taking the
 24 geologic information and then developing a -- how to
 25 develop the mine itself.

Page 11

1 Q. Did those job responsibilities include
 2 strategic planning for the disposal of mining
 3 by-product or waste?
 4 A. Of course, yes.
 5 Q. And what types of plans or strategies
 6 would you make to do that?
 7 A. Within the laws that were available,
 8 we'd look for either placing those overburden or
 9 waste dumps externally. Or the practice as it
 10 evolved into the eighties and nineties was more of a
 11 backfilling the pits. Once you had enough elbow room
 12 in the mining process or in the pits themselves, you
 13 would just start putting the material back behind you
 14 and filling up the holes rather than leaving a big
 15 hole open down the road.
 16 Q. How long did you have those job
 17 responsibilities with Monsanto?
 18 A. Those specific ones?
 19 Q. Yes.
 20 A. I don't know. My career was kind of an
 21 evolutionary one where as I first began I focused in
 22 on long-term mine planning at our phosphate
 23 operations, got involved with -- as time went on
 24 within a few years into the late eighties, involved
 25 with the quartzite operation.

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1 Because of my background -- my previous
 2 background, in the company I worked for before I came
 3 to Monsanto, I worked underground coal, and so I was
 4 aware of the coal industry and things and so I got
 5 involved with Rock Springs in the late 1980s and
 6 sourcing raw material there. And so my job evolved
 7 into kind of a raw material coordinator or specialist
 8 to kind of balance where all the raw materials were
 9 coming from that serviced the plant.
 10 Q. And as those job responsibilities
 11 evolved, did you retain the title of mining engineer?
 12 A. There was promotions. I became a senior
 13 mining engineer. Then a specialist. And then a
 14 senior specialist. So over the -- that was kind of
 15 the evolution over a 19-year career I had with
 16 Monsanto.
 17 Q. Do you remember the approximate date on
 18 which you were made a senior mining engineer?
 19 A. No. Just -- I think you could just do
 20 the rough math. If you divide four promotions over,
 21 say, twenty years, so every four or five years I
 22 received a promotion.
 23 Q. So your promotions were pretty regular
 24 throughout --
 25 A. Exactly.

1 A. I don't. Again, it's -- you know, you
 2 can just -- every four years or five years something
 3 happened.
 4 Q. Same answer for becoming a senior
 5 specialist?
 6 A. Exactly.
 7 Q. And am I correct in understanding that
 8 you've already described how your job
 9 responsibilities changed and during this period of
 10 time you had varying titles --
 11 A. Sure.
 12 Q. -- is that correct?
 13 A. Yes.
 14 Q. As part of your job responsibilities
 15 since 1986, have you had the authority to negotiate
 16 or enter into contracts with Monsanto?
 17 A. No. I never used to have that
 18 authority. All the contracts were funneled through
 19 the local purchasing department and then, in turn,
 20 with headquarters in St. Louis.
 21 Q. Are you aware of a company named Silicon
 22 International Ore?
 23 A. I do -- I am.
 24 Q. How did you become aware of that
 25 company?

1 Q. Did your job responsibilities -- how did
 2 your job responsibilities change specifically when
 3 you became a senior mining engineer?
 4 A. Oh, I don't know if they really changed.
 5 It's more, you know, you get tenure in your job and
 6 more of a recognition, I guess, of your results and
 7 your abilities and things, as far as they may give
 8 you more responsibility. But, you know, as far as
 9 things changing, it really didn't. Titles are cheap,
 10 you know. It doesn't really matter what they call
 11 me.
 12 Q. At what point -- I mean, what new
 13 responsibilities did you get -- let's put it that
 14 way -- when you became a senior mining engineer?
 15 A. As I indicated, going from just focusing
 16 on long-term mine planning at the phosphate and
 17 quartzite operations, I got involved with Rock
 18 Springs and sourcing coal and then balancing that
 19 with another carbon raw material. Worked with the
 20 plant in balancing the coal coke that we bought or
 21 the coal char that we produced and sourced from Rock
 22 Springs to a calcine petroleum coke that we purchased
 23 from an oil refinery in California.
 24 Q. Do you remember the date, approximately,
 25 upon which you were made a specialist?

1 A. As I recall, they approached us.
 2 Q. Silicon approached Monsanto?
 3 A. Yes. I'll speak as us like -- at that
 4 time I was an employee of Monsanto.
 5 Q. Understood. Understood.
 6 On that subject I actually need to
 7 finish up a couple of things. What date did you
 8 leave Monsanto?
 9 A. It was in June of 2005.
 10 Q. And why did you leave Monsanto?
 11 A. Just to pursue other opportunities.
 12 Q. Were you terminated from Monsanto?
 13 A. Oh, no.
 14 Q. Where did you leave after you -- or
 15 where did you go to work after you left Monsanto?
 16 A. I went to work for a small development
 17 stage company based out of Utah. I set up a office
 18 in Soda Springs to pursue project opportunities in
 19 and around Soda Springs or in Idaho.
 20 Q. What's the name of that company?
 21 A. It was called Terra Systems. And then,
 22 in turn, we set up an Idaho-based LLC called Mountain
 23 Island Energy.
 24 Q. What was your role within Terra Systems?
 25 A. I was the general manager of Mountain

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1 Island Energy.
 2 Q. Is that a corporation, an LLC, a
 3 partnership?
 4 A. Terra Systems is a corporation, Utah
 5 corporation, and Mountain Island Energy is an Idaho
 6 LLC.
 7 Q. Does Terra have any directors?
 8 A. They did at the time. They've
 9 contracted and I'm not -- I've lost touch. I'm not
 10 exactly sure what their present organization is.
 11 Q. Is that the same answer for officers --
 12 A. Yes.
 13 Q. -- as well?
 14 A. They did at the time have officers and
 15 directors, yeah.
 16 Q. Do you remember the names of any
 17 individuals who have ever served as directors of
 18 Terra?
 19 A. Clayton Timothy, George Ford, Fred
 20 Buckman, Sr.
 21 Q. How do you spell Buckman?
 22 A. B-u-c-k-m-a-n.
 23 Q. Okay.
 24 A. J.R. Key.
 25 Q. How do you spell Key?

1 Holdings. And Reynold Roeder, I believe, is the
 2 manager of it now. Roeder is spelled R-o-e-d-e-r,
 3 like Roder, but it's Roeder.
 4 Q. Going back to Mountain Island Energy,
 5 the first one --
 6 A. Uh-huh.
 7 Q. -- were there any other managers other
 8 than you?
 9 A. No. It acted as kind of a subsidiary of
 10 Terra Systems, and so the officers and directors of
 11 Terra played a key decision role in whatever happened
 12 with Mountain Island Energy. I did not have
 13 unilateral authority.
 14 Q. How many members did Mountain Island
 15 Energy have?
 16 A. I think there was four of us.
 17 Q. And who were they other than you?
 18 A. Tim Gwyther, George Ford, and Clayton
 19 Timothy.
 20 Q. And how about for Mountain Island Energy
 21 Holdings? We've talked about Reynolds being the
 22 manager, but how about --
 23 A. I don't know. That was in -- when I
 24 left, that took on a different organization because
 25 -- some of it because of when I left.

1 A. K-e-y. And Tim Gwyther.
 2 Q. How do you spell Gwyther.
 3 A. G-w-y-t-h-e-r.
 4 Q. Are those all the directors that you're
 5 aware of in that company?
 6 A. Yeah. That I'm aware of. And myself.
 7 I was a director as well. Oh, and then one other.
 8 Reynold Roeder. And not all of them served at the
 9 same time. It was kind of an evolutionary thing over
 10 a two or three-year period as the company was trying
 11 to grow.
 12 Q. How about officers?
 13 A. Similar names. They served as officers
 14 and directors.
 15 Q. Okay. Was there anybody that served as
 16 an officer, but not a director, or vice versa?
 17 A. I think both -- everybody played dual
 18 roles.
 19 Q. And then how about for -- Mountain
 20 Island, is it?
 21 A. Mountain Island Energy, yeah.
 22 Q. Does it have any managers?
 23 A. I served as the manager for a period of
 24 time. It has since been folded in under another LLC,
 25 as I understand, called Mountain Island Energy

1 Q. And when did you leave? When I say
 2 this, I'll refer to all three of these entities
 3 together. When did you leave that?
 4 A. December of 2007.
 5 Q. And why did you leave them?
 6 A. I was given a job offer by Agrium. They
 7 pursued me.
 8 Q. The individual that you worked with in
 9 the Terra Mountain Island Energy -- in Mountain
 10 Island Energy Holdings group of companies, did you
 11 know any of those individuals from Monsanto or prior
 12 -- prior employment of yours?
 13 A. I became aware of them through business
 14 dealings or with Monsanto, but they -- they weren't
 15 employees or anything of Monsanto, but --
 16 Q. So none of them were prior Monsanto
 17 employees?
 18 A. No.
 19 Q. And Agrium, what does Agrium do?
 20 A. Agrium is a international company that
 21 produces -- that mines, manufactures, and markets all
 22 three primary nutrients in the agricultural business,
 23 which is nitrogen, potassium, and phosphorus.
 24 Q. Are you still employed by Agrium today?
 25 A. I am.

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1 Q. And what is your title at Agrium?
 2 A. Manager, mining projects, and
 3 remediation. I work for corporate Agrium in their
 4 environmental health and safety department.
 5 Q. Have you had the same job title since
 6 you started with Agrium?
 7 A. Yes.
 8 Q. And the same job responsibilities as
 9 well?
 10 A. Yes.
 11 Q. You mentioned that you were employed
 12 prior to the time you started working for Monsanto.
 13 where did you work?
 14 A. Shell Oil in their mining group.
 15 Q. And when did you start working for
 16 shell?
 17 A. In February 1982.
 18 Q. And what was your job title with shell?
 19 A. Mining engineer.
 20 Q. Same job title throughout?
 21 A. Well, I started as an engineer and then
 22 was promoted to mining engineer.
 23 Q. When you started as an engineer, what
 24 were your job responsibilities?
 25 A. Long-term mine planning.

1 engineer for quite some time. Okay. Thanks for
 2 that.
 3 Going back to --
 4 A. You're welcome.
 5 Q. Anything else?
 6 A. No.
 7 Q. Going back to Silicon International, did
 8 you know any members of the Sullivan family prior to
 9 the time that Silicon approached Monsanto?
 10 A. No.
 11 Q. Who specifically at Monsanto did Silicon
 12 approach?
 13 A. As I recall, myself. A little
 14 background. Shortly after I started at Monsanto, it
 15 became evident to me that there were -- we were
 16 rejecting a lot of undersized material, sand that
 17 couldn't be used in the process. So we started
 18 trying to understand what the quality of the sand
 19 was, and it seemed to be of high grade.
 20 So me and another colleague started
 21 doing some exploration of opportunities, and it
 22 became evident that the sand was a certain quality
 23 that could be developed in two different ways, either
 24 high value, low volume markets or high volume, low
 25 volume markets -- or low price markets. You could

1 Q. Essentially the same type of thing that
 2 you did for Monsanto?
 3 A. A little bit different in that we were
 4 planning to develop, like, new mines throughout the
 5 country.
 6 Q. And then how about when you were
 7 promoted?
 8 A. We were in Houston, Texas, for about
 9 three years. And then because of the downturn in the
 10 economy, they transferred ten mining engineers to an
 11 operating coal mine in central Illinois, and so ten
 12 of us engineers took on a operations training
 13 assignment. We worked as underground coal miners for
 14 -- I was there for two years and then left to join
 15 Monsanto.
 16 Q. And how about prior to Shell Oil, what
 17 did you do?
 18 A. Went to school.
 19 Q. Where did you go to school?
 20 A. University of Utah.
 21 Q. Majored in?
 22 A. Mining engineering.
 23 Q. Graduated, I suppose?
 24 A. Yes.
 25 Q. I assumed, since you've been a mining

1 either sell a lot of it at a low price or sell a
 2 little bit of it at a high price.
 3 Q. Okay.
 4 A. And through those dealings I just -- I
 5 would assume that our reputation got out that we --
 6 there was a source of sand in Southeast Idaho. And,
 7 as I recall, that's why the Sullivans had contacted
 8 us about sourcing some material for their interests.
 9 Q. What was the name of the other colleague
 10 with whom you did these studies?
 11 A. Bob Geddes.
 12 Q. How do you spell his last name?
 13 A. G-e-d-d-e-s.
 14 Q. So who was it specifically in the
 15 Sullivan family that contacted you?
 16 A. It was either Bob or Todd. I don't
 17 remember.
 18 Q. Do you know how they got your phone
 19 number or contact information?
 20 A. I do not.
 21 Q. When they contacted you, did they make
 22 any kind of proposal to you or just suggest a desire
 23 to meet?
 24 A. Well, initially they asked to meet.
 25 Early on in, I think, our discussions a group of us

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1 went to Salt Lake and met in a location that they
 2 designated. I don't remember if it was their office
 3 or somewhere. We had some preliminary discussions
 4 and they pitched an idea or a business -- at least
 5 the elements of a business plan to us and that kind
 6 of started the discussions.

7 Q. Okay. Do you remember the approximate
 8 date of that meeting?

9 A. Well, based on the information I
 10 provided in my affidavit, it would have been in or
 11 around early 2000. It could have been a few months
 12 before that, late '99, but in or around early 2000.

13 Q. Do you remember who was present at that
 14 meeting?

15 A. I believe Bob and Todd were.

16 Q. Okay.

17 A. And there was --

18 Q. Anybody else that was there?

19 A. Well, Jim and I went and as well as, I
 20 believe, John Rosenbaum with Washington Group.

21 Q. Okay. How did Washington Group become
 22 involved?

23 A. Washington Group is the contract miner
 24 that operated the quarry and they would have been,
 25 one way or another, intimately involved with whatever

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1 Q. Why did it intrigue Monsanto?

2 A. There's, of course, potential to make
 3 some money off the material. But, more importantly,
 4 is that in the process -- in the quartzite process
 5 they crush and screen the material and generate a
 6 large volume of material that they have to backfill
 7 and stockpile. And because of the limits or the
 8 boundaries of their quarry operation, they were
 9 running out of -- they, we, were running out of room
 10 to put the material.

11 And so looking at opportunities to
 12 develop a market for that material would delay the
 13 need to purchase any land or buffer zone around. So
 14 that was probably as important or more important at
 15 the time than making any money off the material.

16 Q. How imminent was it that Monsanto was
 17 going to run out of room to store this by-product?

18 A. Oh, they -- I mean, it wasn't like the
 19 next year or anything. Within the next decade. And
 20 so there was some elbow room there, but, you know,
 21 you have to plan ahead.

22 Q. Was Monsanto also concerned about any
 23 responsibility it might have in the future to
 24 rehabilitate the property upon which the mine sat and
 25 was, therefore, interested to get rid of the sand?

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1 was going to be done. And so it made sense to have
 2 them come along to see if -- where they could add
 3 value or how that relationship could be established,
 4 if at all.

5 Q. Do you know if it was somebody at
 6 Monsanto that invited -- or that alerted WGI to the
 7 fact that this meeting was going to occur?

8 A. It had to have been, yeah.

9 Q. So at that meeting you mentioned that
 10 the Sullivan family made a proposal. Do you remember
 11 any elements or the substance of that proposal?

12 A. Well, in a general sense, as I recall,
 13 they were looking at -- initially looking at a --
 14 some -- a raw material to use in, like, sandblasting.
 15 They had been exploring an opportunity to use garnets
 16 as a sandblasting medium and they approached us about
 17 using the sand for those similar purposes. And as I
 18 pointed out before, it's my recollection that they
 19 focused in on low volume but higher value type of
 20 markets for the sand.

21 Q. And what was Monsanto's reaction to that
 22 proposal?

23 A. Well, it intrigued us enough that we
 24 shortly thereafter, I believe, signed a
 25 confidentiality agreement to further discussions.

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1 A. No. That -- the operating --

2 MR. BUDGE: Excuse me. I don't mean to
 3 interrupt, but I think maybe just answer his
 4 questions. You have a tendency to --

5 THE WITNESS: Elaborate.

6 MR. BUDGE: -- elaborate.

7 THE WITNESS: No.

8 MR. BUDGE: I think Mr. Brough can ask you
 9 the questions of what he wants and just stick to
 10 those answers.

11 THE WITNESS: Understood. Would you please
 12 read back the last question asked.

13 (The record was read.)

14 THE WITNESS: Could you break down that
 15 question. Let's take it kind of sequential. It
 16 seems like --

17 MR. BROUGH: Sure.

18 THE WITNESS: -- there's embedded in that a
 19 number of question.

20 MR. BROUGH: Sure.

21 Q. BY MR. BROUGH: Were you aware that
 22 Monsanto was concerned about someday having an
 23 obligation to rehabilitate the property that the mine
 24 had sat on?

25 A. Could you ask that once again.

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1 Q. I'll have to ask it a couple of
 2 different times because there's different --
 3 A. Sure.
 4 Q. -- properties that are at issue here,
 5 the mine, the quarry, and the plant.
 6 A. Sure.
 7 Q. Speaking specifically about the mine,
 8 was Monsanto aware or concerned or mindful that at
 9 some point it would have to rehabilitate or fix up
 10 this property consistent with any environmental
 11 regulations that governed it?
 12 A. Not at that time.
 13 Q. How about for the quarry?
 14 A. The quarry itself?
 15 Q. Yes.
 16 A. No.
 17 Q. How about for the plant?
 18 A. The plant meaning Monsanto's --
 19 Q. The factory area, I guess. The factory
 20 is the wrong word, but the place where the chemical
 21 processes occurred.
 22 A. Yes. That answer would be yes.
 23 Q. And what rehabilitation would Monsanto
 24 have had to do with respect to that plant?
 25 A. I couldn't answer that. It would have

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1 to have been -- at the time of it shutting down, it
 2 would have to be negotiated, I would assume.
 3 Q. But am I correct in understanding that
 4 rehabilitation wouldn't have had anything to do with
 5 the disposal of these tailings which are somewhere
 6 else?
 7 A. No.
 8 Q. I'll refer you to a document that we'll
 9 mark as Exhibit *-17.
 10 (Exhibit *-17 marked.)
 11 Q. BY MR. BROUGH: Would you take a moment,
 12 please, to review that.
 13 A. Sure.
 14 Q. And when you're ready, let me know.
 15 A. Okay.
 16 Q. Have you seen this document before?
 17 A. Yes.
 18 Q. What is it?
 19 A. It's a series of e-mails, an e-mail
 20 chain, I guess you would call it.
 21 Q. Okay. I'll refer you to page 3 of this
 22 document. I'm looking at an e-mail that's from Todd
 23 Sullivan to John Rosenbaum, you, and Jim Smith dated
 24 June 18th of 2003. Do you see that?
 25 A. Yes. Uh-huh.

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1 Q. The first line in there says attached is
 2 the information about SIO's markets. Now, going
 3 back, at 2003 what was the status of SIO's work upon
 4 this quarry property?
 5 A. I would be uncertain. I know it's
 6 apparent in this e-mail we're talking about their
 7 business plan or their markets they want to
 8 penetrate. But beyond that I don't recall.
 9 Q. Do you remember if they had already
 10 started working on the property at that time?
 11 A. I do not.
 12 Q. What was your role or function in being
 13 in on this conversation with Jim and John in SIO? I
 14 mean, if you were an engineer and were having a
 15 conversation about royalties, why were you involved
 16 with that?
 17 A. Because at that time the quarry -- I had
 18 certain responsibilities for the quarry. As I
 19 mentioned, my responsibilities were for raw materials
 20 to the plant. So because of my involvement at the
 21 quarry, it fell to me to deal with those kinds of
 22 things -- or deferred to me, I guess.
 23 Q. Going up there's an e-mail from you --
 24 A. Uh-huh.
 25 Q. -- dated June 30th of 2003 to Todd

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1 Sullivan and to Jim Smith, John Rosenbaum, and Dave
 2 Farnsworth. And it says: Todd, I think it would be
 3 wise that we get together to discuss the following:
 4 Royalties; markets; past, present, future, approved
 5 and future approved.
 6 A. Uh-huh.
 7 Q. Do you remember why you thought it would
 8 be wise to discuss those things?
 9 A. As I recall, it was an effort to
 10 understand where SIO wanted to focus their efforts
 11 and -- and we needed to understand those so that it
 12 was not in conflict with some other discussions and
 13 some other markets that Monsanto had been pursuing up
 14 to that time.
 15 Q. Do you remember what markets Monsanto
 16 had been approving up till that time?
 17 A. Primarily the glass industry.
 18 Q. Okay. And what did it do to pursue the
 19 glass industry?
 20 A. As I indicated, Bob Geddes, a colleague
 21 and I, we had gone to glass factories. We had
 22 looked -- we had qualified the material or tried to
 23 move into those markets, which were primarily large
 24 volume, low value.
 25 Q. Going up in this e-mail, the rest of it

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1 seems to me to be e-mail correspondence about
 2 planning a meeting between --
 3 A. Correct.
 4 Q. -- SIO, Monsanto, and WGI. And it looks
 5 from the e-mail correspondence -- and I'm looking
 6 specifically at page 2 at the top.
 7 A. Uh-huh.
 8 Q. Well, actually, let me back up.
 9 Going to the first page of this there's
 10 an e-mail from you that says Jim Smith has a conflict
 11 on August 7th. Could we do this on August 8th.
 12 A. Uh-huh.
 13 Q. Do you remember if this meeting actually
 14 occurred on August 8th, 2003?
 15 A. I don't remember.
 16 Q. How involved were you in the discussions
 17 between SIO and Monsanto regarding SIO's proposal?
 18 MR. BUDGE: Do you want to tie that into a
 19 time frame.
 20 Q. BY MR. BROUGH: Yeah. The initial
 21 phases after SIO first approached Monsanto.
 22 A. As far as proposal, there was lots of
 23 discussions. Do you have any specific proposal
 24 you're referring to?
 25 Q. No. I just wanted to get a general

1 Q. Do you remember what this document is?
 2 A. Having read it, it's having to do with
 3 section 23(b), facility construction to an addendum
 4 to the quartzite agreement with Washington Group
 5 International.
 6 Q. Okay. Do you know what the quartzite
 7 agreement with Washington Group International was?
 8 A. Yeah. It was the operating agreement
 9 that established the terms and conditions that
 10 Monsanto contracted with WGI to operate the quarry
 11 for us to mine and process the rock.
 12 Q. Did you have any role in negotiating
 13 that quartzite agreement?
 14 A. Yes. There's a series of them though.
 15 Q. Yes.
 16 A. I need to qualify that.
 17 Q. Yes. I'm talking about the first one
 18 that's dated in -- I'm talking about -- well, there's
 19 lots of them other than the first one. I'll come
 20 back to that.
 21 A. Okay.
 22 Q. This e-mail's dated December 5th of
 23 2000.
 24 A. Correct.
 25 Q. And it references a meeting between SIO,

1 sense for were you the principal person for Monsanto
 2 that was the interface between it and SIO?
 3 A. To some degree. Each entity established
 4 a point contact.
 5 Q. Okay. And were you that person from
 6 Monsanto?
 7 A. Initially, yes.
 8 Q. Who, if anyone, took over that
 9 responsibility from you?
 10 A. There's two aspects of it. One was a
 11 technical aspect. One was a contractual aspect. I
 12 led the technical aspect, which had to do with
 13 markets and royalties. And then the purchasing group
 14 and St. Louis attorneys had responsibility for the
 15 contractual aspects of it.
 16 MR. BROUGH: I'm going to show you an exhibit
 17 that we'll mark as Exhibit *-10.
 18 (Exhibit *-10 marked.)
 19 Q. BY MR. BROUGH: Why don't you take a
 20 look at that and let me know when you're ready to
 21 proceed.
 22 A. Okay.
 23 Q. Have you seen this document before?
 24 A. Yes -- well, at the time the e-mails
 25 were sent, yeah.

1 WGI, and Monsanto. Does the date of this e-mail
 2 refresh your recollection as to when that first
 3 meeting between these three parties would have
 4 occurred?
 5 A. Not really.
 6 Q. Did SIO and Monsanto ever reach any
 7 agreement between them as to Silicon's presence on
 8 the quarry's sale of sand, anything like that?
 9 A. Directly between Monsanto --
 10 MR. BUDGE: Object to the form of the
 11 question. Asking for a legal conclusion. You can
 12 answer if you have knowledge --
 13 THE WITNESS: The agreement directly between
 14 Monsanto and SIO; is that your question?
 15 Q. BY MR. BROUGH: Yes.
 16 A. No.
 17 MR. BROUGH: Let me refer you to an exhibit
 18 that we'll mark as Exhibit *-19.
 19 (Exhibit *-19 marked.)
 20 Q. BY MR. BROUGH: Would you take a moment
 21 to review that and then let me know when you're ready
 22 to proceed.
 23 A. Okay.
 24 Q. Let's turn to page 2 of this exhibit.
 25 And I'm looking specifically at an e-mail from Todd

1 Sullivan to you dated Tuesday, January 15th of 2008
 2 with the subject line "thanks you very much." Do you
 3 remember receiving this e-mail from Todd?
 4 A. I do.
 5 Q. Prior to receiving this e-mail had you
 6 had any telephone or other conversations with Todd
 7 Sullivan about an agreement between SIO and Monsanto?
 8 A. No.
 9 Q. So when he says thank you for helping
 10 with this, do you remember what Todd was referring
 11 to?
 12 A. Yes.
 13 Q. What was he referring to?
 14 A. This e-mail exchange was preceded by a
 15 phone call from Todd to me asking if I could provide
 16 some clarification or some -- my memory on how things
 17 evolved with SIO and Monsanto.
 18 Q. Okay. So there was a phone conversation
 19 with Todd --
 20 A. Yes.
 21 Q. -- prior to this e-mail?
 22 Okay. And do you remember the
 23 approximate date of that phone call?
 24 A. I do not.
 25 Q. Safe to say that it preceded

1 precedes that one, the e-mail dated January 17th,
 2 2008, beginning: Todd, in response to your request,
 3 I share with you what I recall as to the intent of
 4 the Monsanto-SIO relationship.
 5 Do you see that?
 6 A. I do.
 7 Q. Looking at the bullet points that follow
 8 that: No. 1, Monsanto had determined that sand was
 9 not a core business for Monsanto.
 10 What was your recollection, memory, or
 11 factual basis for writing that bullet point?
 12 A. That I had spent a number of years
 13 looking at opportunities to develop the sand as a
 14 potential business or market for Monsanto without
 15 great success. And so Monsanto had determined that
 16 they didn't want to put any resources -- any more
 17 resources to it or any more time and money to it. So
 18 if an opportunity came along and someone else wanted
 19 to do it, which goes to the second point, if the sand
 20 could be sold as is without much involvement by
 21 Monsanto or its contractor, then they would be all
 22 for it and let someone else take the risk and process
 23 it and market it.
 24 Q. And am I correct in understanding that
 25 you didn't review any documents to come to that

1 January 15th by at least a couple of days?
 2 A. Yes. That's safe to say.
 3 Q. Okay. Do you remember what you talked
 4 about with Todd?
 5 A. He asked if I could provide, as I
 6 indicated, some recollections of some of the dealings
 7 or the discussions that Monsanto and SIO had.
 8 Q. Did you share your recollections in that
 9 vein with Todd on the phone?
 10 A. I don't recall how long our phone call
 11 took. I don't know if I shared with him verbally.
 12 Q. Okay. Am I correct in understanding
 13 then that after you spoke with Todd, you then drafted
 14 the e-mail that appears just above this one?
 15 A. Correct.
 16 Q. And I see that there's a two-day lapse
 17 between Todd's e-mail to you --
 18 A. Uh-huh.
 19 Q. -- and your e-mail back to Todd. And
 20 during that period of time did you do anything to
 21 refresh your memory or to review whether there was an
 22 agreement between SIO and Monsanto?
 23 A. Only minimal. Just thinking about it, I
 24 didn't have any access to documents, so --
 25 Q. Okay. Going up then to the e-mail that

1 recognition or remembrance; that was just your
 2 memory?
 3 A. That was my memory.
 4 Q. Going down to the next bullet point: If
 5 the by-product reject sand at the Monsanto quartzite
 6 quarry could be sold as is, Monsanto would be
 7 interested in taking the lead in those types of sales
 8 because it would require little effort or manpower.
 9 What was your recollection or basis for
 10 writing that bullet point?
 11 A. Those were the type of markets that we
 12 were pursuing. I don't recall the exact time, but we
 13 had developed a market with Ash Grove Cement over in
 14 Inkom, Idaho, where they took the material as is.
 15 And so without any, really, effort on our part other
 16 than letting them bring trucks in and selling the
 17 material and taking it over to Inkom and using it in
 18 their lime operation or cement operation, those are
 19 the type of markets we would be interested in.
 20 Little effort in making little money.
 21 Q. Turning the page and going over to the
 22 next bullet point: Monsanto viewed a relationship
 23 with someone like SIO of value if they could assure
 24 themselves that any value-added operation would be
 25 run in a way that would meet all Monsanto

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1 environmental, safety, and health standards.
 2 What was your recollection or basis for
 3 writing that bullet point?
 4 A. That point -- the previous two points
 5 lead to that point. If someone could come in and
 6 take the material as is and process it and take all
 7 the risk and market it and Monsanto would make a
 8 little bit of money off it and it could be done
 9 safely and environmentally soundly, they were
 10 interested.
 11 Q. And then the next bullet point: If
 12 Monsanto provided sand to a third party for them to
 13 process and add value to the sand and if they could
 14 receive a royalty that would be of similar value to
 15 just selling sand as is, it was viewed as a
 16 potentially attractive business relationship?
 17 A. Uh-huh.
 18 Q. What was your basis or recollection for
 19 writing that?
 20 A. It's consistent with the points that
 21 were already made, is that if it didn't distract
 22 Monsanto from their core businesses and they could
 23 rely on someone that would do it environmentally and
 24 safely, they would be interested in discussing the
 25 opportunities with them.

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1 Back in 2008 when you wrote this e-mail,
 2 what was your factual basis or recollection for
 3 writing that?
 4 A. I was referring -- I recalled at that
 5 time a general sense of how the contractual
 6 arrangements were established. But having not the
 7 documents in place -- and this was eight years after
 8 the fact -- I was just referring to that Monsanto did
 9 receive a royalty, but that mechanism came through,
 10 as I've since reviewed, through WGI.
 11 Q. And what documents did you review to say
 12 that the mechanism was through WGI?
 13 A. I became aware of -- I mean, just
 14 reviewed the contract with WGI and the contract that
 15 WGI had with SIO -- or SIO had with WGI.
 16 Q. Going down to the next bullet point:
 17 Monsanto would assure SIO certain volumes of sand
 18 that could be safely and environmentally processed to
 19 meet value-added markets.
 20 Back in 2008 when you wrote this e-mail,
 21 what was your memory or factual basis for writing
 22 that sentence?
 23 A. With the approval of Monsanto, that they
 24 would -- SIO and WGI work together on that.
 25 Q. That's what you meant to say in 2008?

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1 Q. Okay. Going down to the next paragraph,
 2 it says: With the above, in the early 2000s a
 3 contractual relationship was established or extended
 4 between Monsanto and SIO?
 5 A. Uh-huh.
 6 Q. I'll stop there. What was your
 7 recollection or factual basis for writing that
 8 sentence?
 9 A. My recollection is that we, Monsanto,
 10 signed a confidentiality agreement with SIO to
 11 explore business opportunities and ultimately a
 12 contractual relationship was extended to SIO by
 13 lining them up with Washington Group International.
 14 Q. Was that your -- was that what you meant
 15 to say when you wrote this e-mail back in 2008?
 16 A. Yeah. I mean to -- I was referring to
 17 the arrangements that were established, the contracts
 18 that were signed by SIO with WGI.
 19 Q. Even though you wrote between Monsanto
 20 and SIO?
 21 A. Yeah. But nothing would -- it was
 22 extended to SIO through WGI.
 23 Q. Okay. Going to the first bullet point:
 24 Monsanto would receive a royalty from SIO for similar
 25 value as if they would have sold raw sand.

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1 A. Yes.
 2 Q. Third --
 3 A. Well, under the contracts that I
 4 referred to.
 5 Q. The third bullet point: SIO would be
 6 limited to a specific list of value-added markets,
 7 such as fiberglass, traction, water jet media,
 8 et cetera.
 9 What was your remembrance or factual
 10 basis back in 2008 for writing that?
 11 A. As I had previously said, that there was
 12 certain limitations that were extended to SIO to
 13 certain markets, primarily low volume, high value,
 14 and so they didn't conflict with the markets that
 15 Monsanto were pursuing or had pursued up to that
 16 point, which were the high volume, low value.
 17 Q. The last line: In the end Monsanto
 18 viewed SIO as a means to move value-added sand into
 19 value-added markets without having to put up the
 20 capital and worry about the day-to-day operational
 21 issues. What was your remembrance or factual basis
 22 for writing that sentence?
 23 A. My remembrance was exactly what SIO did.
 24 Under the contractual arrangements that were
 25 established, they built a facility and took sand as

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1 is, processed it, and sold it to markets.
 2 Q. Okay. Do you remember actually sitting
 3 at a computer and typing this e-mail?
 4 A. Yes.
 5 Q. Do you remember how long it took you?
 6 A. 30 minutes. I don't know. It didn't
 7 take very long.
 8 Q. 30 minutes sounds like a thoughtful
 9 e-mail. How much thought would you say you gave to
 10 the different bullet points that you were writing in
 11 this e-mail?
 12 A. Took two days to write it and formulated
 13 my thoughts, sat down and put them on paper.
 14 Q. Okay. At the time you wrote this
 15 e-mail, did you think it was accurate?
 16 A. To the best of my knowledge at the time,
 17 eight years after the fact, yes.
 18 MR. BROUGH: I'll show you another exhibit
 19 that we'll mark as Exhibit *-20.
 20 (Exhibit *-20 marked.)
 21 Q. BY MR. BROUGH: Let me show you that and
 22 take a moment to review that, and when you're ready
 23 to proceed, let me know.
 24 A. Okay.
 25 Q. Have you seen this document before?

1 A. I don't remember the extent of that
 2 phone call.
 3 Q. After typing this -- I'm sorry. Before
 4 typing this e-mail did you do any research,
 5 remembering, thought, to put this e-mail together?
 6 A. Nothing more than I did before. I
 7 didn't have any access to documents so it was just
 8 based on memory.
 9 Q. Going through this: As per your
 10 request, I can comfortably state the following with
 11 regard to the agreements entered into and between
 12 Monsanto and Silicon International Ore?
 13 A. Uh-huh.
 14 Q. Do you remember why you used the word
 15 comfortably?
 16 A. I can vaguely remember Todd asking me to
 17 do something that I wasn't totally comfortable with
 18 and he was -- in these conversations he kept alluding
 19 to -- I'd become aware through other responsibilities
 20 that there was some -- a potential conflict with SIO
 21 and the parties at the quarry and that their business
 22 was in jeopardy or going to be shut down. And I got
 23 the sense that he was pressuring me to remember
 24 things in a way that I wasn't totally comfortable
 25 with. So that's why I stated "I can comfortably

1 A. Yes.
 2 Q. It appears to be an e-mail from you to
 3 Todd Sullivan sent March 6, 2008; is that correct?
 4 A. Yes.
 5 Q. Do you remember writing this e-mail?
 6 A. I do.
 7 Q. Now, it looks like about just a little
 8 under two months elapsed between the first e-mail
 9 that you wrote that we just went over and this one.
 10 Did you have any other conversations with Todd
 11 Sullivan or anyone else at SIO after you sent that
 12 January 17th e-mail?
 13 A. As I recall, I received another phone
 14 call from Todd Sullivan, because since I tacked this
 15 onto the previous e-mail, it was a response to a
 16 phone conversation from Todd asking me to -- asking
 17 me to provide additional remembrances.
 18 Q. Okay. Do you remember when that phone
 19 call from Todd occurred?
 20 A. I would have to assume shortly before
 21 March 6th of 2008.
 22 Q. Okay. During that phone call did you
 23 discuss the additional remembrances that you had or
 24 just agree that you would shoot Todd an e-mail
 25 summarizing it?

1 state" and then spelled out the bullet points.
 2 Q. Do you remember the way in which Todd
 3 was pressuring you to remember something that was --
 4 that made you uncomfortable?
 5 A. As I recall, he made it evident that
 6 they were going to -- the business was going to be
 7 shut down and they were no longer going to be able to
 8 operate and he was -- I got the impression he was
 9 trying to rescue that.
 10 Q. And how did that make you uncomfortable?
 11 A. Through my -- I'm on the board of
 12 directors with the Southeast Idaho Council of
 13 Governments. Through that entity SIO had secured
 14 some loans and so I was aware that SIO was in
 15 jeopardy of defaulting on those loans. And so with
 16 my role there and my former employment at Monsanto, I
 17 felt a little bit uncomfortable in the different
 18 roles I was playing. And some of the things -- the
 19 direction he was headed, I felt that he was asking
 20 too much. And so I drew a line at that point saying
 21 I could comfortably state what I spelled out. Beyond
 22 that, I wouldn't go anywhere -- wouldn't go there.
 23 Q. Just so that I'm clear, and I don't mean
 24 to belabor this point, what line did you feel like
 25 Todd was asking you to cross?

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1 A. As I recall, he was hinting at asking me
 2 to represent him to Monsanto to try to -- or to
 3 Monsanto and WGI -- whoever he was dealing with -- to
 4 interject myself into that and try to get them to do
 5 something different, and I wouldn't do that.
 6 Q. Okay. Was your hesitance to do that
 7 based on what you perceived to be the conflict
 8 between your prior employment with Monsanto and your
 9 current role with Southeast Idaho Council of
 10 Governments?
 11 A. Well, all of that was conflicting to me
 12 because I had a -- anyway, I had a responsibility to
 13 my former employer as well as my relationship with
 14 the Council of Governments.
 15 Q. Was your hesitance based in any way on
 16 any doubt in your mind that there was a contractual
 17 arrangement between Monsanto and SIO?
 18 MR. RITTI: Objection. Assumes facts not in
 19 evidence.
 20 THE WITNESS: It's my recollection and
 21 understanding there was no contractual relationship
 22 between SIO and Monsanto other than a confidentiality
 23 agreement, that the contractual arrangement was
 24 between SIO and WGI.
 25 Q. BY MR. BROUGH: Was that your

1 it. And those were the rules by which everybody
 2 lived by. Those set the boundaries. Other than that
 3 it's all -- I mean, that's where everything
 4 culminated was in these agreements.
 5 Q. The second bullet point: Terms,
 6 conditions, and expectations that each side was
 7 expected to fulfill.
 8 What did you mean by that statement?
 9 A. As I recall, there was safety and
 10 environmental and health aspects that SIO had to live
 11 by, and those were some imperatives that Monsanto
 12 required of all their -- of anybody that operated on
 13 their site, and those were extended through WGI to
 14 SIO. And then based on the terms of those
 15 agreements, that sand would be provided to SIO so
 16 they could process it and fulfill their -- whatever
 17 markets they could secure. Those are the types of
 18 terms and conditions that I am confident I referred
 19 to.
 20 Q. When you say -- okay. Strike that.
 21 Next bullet point: Term and termination
 22 clauses that would allow specified review periods to
 23 assess performance by each party.
 24 A. Uh-huh.
 25 Q. What did you mean by that?

1 recollection on March 6th of 2008?
 2 A. Not entirely. It was eight years after
 3 the fact and those facts became clearer as this
 4 lawsuit has evolved.
 5 Q. Is it correct to say that this e-mail
 6 that you were looking at dated March 6th, 2008,
 7 represents, at least in your mind, a little bit of
 8 push back to what Todd Sullivan was asking you to do?
 9 A. Yeah. As I mentioned, I was drawing the
 10 line.
 11 Q. Okay. So going back to that e-mail, in
 12 the face of Todd's request you say that you can
 13 comfortably state the following with regard to
 14 agreements between Monsanto and SIO, and the basis of
 15 those agreements was bullet point one: An overall
 16 mutually beneficial arrangement?
 17 A. Uh-huh.
 18 Q. What did you mean by that?
 19 A. The way things were organized and the
 20 contracts that were ultimately signed, everybody was
 21 comfortable with it. Monsanto signed what they
 22 signed with WGI because they felt comfortable with
 23 it. WGI signed what they'd signed with SIO because
 24 they were comfortable with it. SIO signed what they
 25 signed with WGI because they were comfortable with

1 A. Well, it was clear to me that in 2008 --
 2 March of 2008, that SIO was at risk of having to pull
 3 up stakes and relocate their business or not be in
 4 business anymore. And any contract that I was
 5 familiar with at Monsanto, that there was terms and
 6 conditions, and that was the way things were with WGI
 7 is that there was -- as I recall, an initial contract
 8 with WGI was established in 1993 for a seven-year
 9 period and then renewed in 2000. So there was terms
 10 and termination clauses in all those contracts.
 11 And so I was assuming at the time that
 12 SIO reached a point that a term and termination point
 13 was reached and it was being discussed and there was
 14 a risk of their arrangement with WGI to be
 15 terminated.
 16 MR. BROUGH: Okay. Let me show you a
 17 document that we'll mark as Exhibit *-24.
 18 (Exhibit *-24 marked.)
 19 Q. BY MR. BROUGH: Would you mind taking a
 20 look at that document and letting me know if it looks
 21 familiar to you.
 22 A. Okay.
 23 Q. Have you seen this document before?
 24 A. Yes.
 25 Q. What is it?

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1 A. It's an e-mail chain.
 2 Q. Between you and Todd Sullivan again?
 3 A. Correct.
 4 Q. Going to page 2 of this e-mail, I'm
 5 looking at an e-mail from Todd Sullivan to you dated
 6 March 13th, 2008. And it looks like -- looking at
 7 that first paragraph right after the salutation:
 8 Thank you for your e-mail last week. I am in the
 9 process of preparing correspondence and will be
 10 referencing our communications.
 11 A. Uh-huh.
 12 Q. With regard to these communications, I
 13 have written the following. And then Todd goes and
 14 says what he thinks -- what he wants to include in
 15 this communication.
 16 Did you know what correspondence Todd
 17 was preparing?
 18 A. Other than the fact of what he states
 19 below his name.
 20 Q. Okay. Well, did you know that Todd was
 21 preparing any kind of letter to Monsanto or to WGI?
 22 A. Yes. I knew he was in discussions with
 23 them and I knew he was -- yeah, it's evident that he
 24 was preparing something.
 25 Q. Okay. Did you know at this point on
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1 that Monsanto represented to us that we would be
 2 allowed to continue to operate as long as it was
 3 mutually beneficial for us to do so.
 4 Did you, in fact, concur with Todd that
 5 there was an agreement between Monsanto and SIO?
 6 A. A direct contract between the two
 7 entities, no, but WGI always was the link between the
 8 relationship.
 9 Q. Okay. Why did you not make that
 10 clarification to Todd?
 11 A. Again, it was eight years after the fact
 12 and I didn't have access to the contracts in place.
 13 Q. At the time that you validated this
 14 e-mail, did you think there was a direct contract
 15 between SIO and Monsanto?
 16 A. I was uncertain, uncertain exactly how
 17 it was arranged.
 18 Q. Did you ever tell Todd that you were
 19 uncertain how it was actually arranged?
 20 A. No.
 21 Q. Why not?
 22 A. He never asked.
 23 To be honest with you, in retrospect I
 24 think Todd Sullivan has been a little bit
 25 disingenuous in the phone conversations and e-mails
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1 March 13th, 2008, that SIO was in danger of being
 2 removed from the quarry property?
 3 A. Yes. I was aware of that.
 4 Q. So skipping over to page 1.
 5 A. Uh-huh.
 6 Q. There's another line that says: Mitch,
 7 if you could just quickly look at this and let me
 8 know, it would be very helpful.
 9 And then above there's an e-mail
 10 response from you the next day, Friday, March 14th,
 11 2008, where you say: Todd, your statement below is a
 12 fair representation of our discussions and e-mails?
 13 A. Yes.
 14 Q. So am I correct in understanding that
 15 when you wrote this e-mail on March 14th, you deemed
 16 this paragraph to be a fair representation of your
 17 discussions and e-mails with Todd?
 18 A. I stated it was a fair representation
 19 hinging on the statement "as long as it was mutually
 20 beneficial for us to do so."
 21 Q. Okay. Let's go through what Todd said.
 22 A. Okay.
 23 Q. In conversations and e-mails I had with
 24 Mitch Hart, we both concur that an agreement exists
 25 between Monsanto and Silicon International Ore, in
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1 that we exchanged. I didn't fully understand what
 2 his intentions were. And other than the fact that I
 3 knew that the business was in jeopardy and through
 4 other sources, not Todd, I knew that -- kind of what
 5 was going on through SICOG.
 6 Q. In what ways do you think that Todd was
 7 disingenuous with you?
 8 A. I think he was trying to stretch the
 9 words a little bit. And, again, I draw you to the
 10 statement that it was mutually beneficial. The terms
 11 and terminations of all contracts that Monsanto
 12 signed meant something. And if it came to a point
 13 where Monsanto didn't think it was mutually
 14 beneficial to anyone -- whether it was WGI -- they
 15 would move on. That's why you have term and
 16 termination clauses in that, to review the
 17 relationship of those contracts.
 18 Q. Again, I mean, that explanation strikes
 19 me as quite different than the paragraph that you
 20 approved for Todd. If there was a clarification to
 21 be made, why did you not make it with him?
 22 A. It was eight years after the fact. I
 23 didn't have the documents in front of me. I was
 24 representing things as best as I could recollect
 25 them.
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1 Q. Did you ever qualify to Todd that you
 2 were remembering things as best as you could
 3 recollect them and that you may be wrong?
 4 A. I don't know whether verbally. I don't
 5 know.
 6 Q. When Todd sent you this correspondence
 7 for you to approve and told you that it would be
 8 included in correspondence, did it strike you that
 9 Todd was trying to be careful with what he put in his
 10 correspondence as far as accuracy?
 11 A. If Todd was being careful?
 12 Q. Did it strike you that Todd was trying
 13 to be careful by having you approve this language
 14 before he included it in the letter?
 15 A. I got the sense that he was being
 16 careful and self-serving.
 17 Q. How self-serving?
 18 A. Trying to keep his business.
 19 MR. BROUGH: Let's discuss a document that
 20 we'll mark as Exhibit *-9.
 21 (Exhibit *-9 marked.)
 22 Q. BY MR. BROUGH: Would you mind taking a
 23 look at that and telling --
 24 A. Sure.
 25 Q. -- me when you're ready to proceed?

1 they signed.
 2 Q. Other than the passage of time, what
 3 happened between early 2000 and the date of your 2008
 4 e-mails to Todd to lead you to think that there was a
 5 contractual relationship with Monsanto? Let me
 6 strike and rephrase that.
 7 Between early 2000 and your e-mails with
 8 Todd, other than the passage of time, what happened
 9 to lead you to write in your e-mails that there was a
 10 contractual arrangement with Monsanto?
 11 A. Because there was a confidentiality
 12 agreement signed. That's a contractual relationship.
 13 I knew we executed something -- we, meaning Monsanto,
 14 executed something with SIO. And my recollection was
 15 a document was signed, and, indeed, it was. It was a
 16 confidentiality agreement.
 17 Q. Okay. But the terms of these agreements
 18 that you reference in those e-mails that we were
 19 talking about don't say anything about
 20 confidentiality; they're talking about terms and
 21 royalties and stuff like that?
 22 A. Uh-huh.
 23 Q. What happened between 2000 and those
 24 e-mails to allow you to include those terms in your
 25 e-mails?

1 A. I'm ready to proceed.
 2 Q. Okay. What is this?
 3 A. It's an affidavit I provided.
 4 Q. I'd turn you to page 4.
 5 A. Yes.
 6 Q. Is that your signature that appears on
 7 this?
 8 A. It is.
 9 Q. I'll refer you to page 2, paragraph 4 of
 10 this affidavit. And I'll look specifically at the
 11 second sentence and it says: I was generally aware
 12 that Monsanto decided not to enter into any
 13 contractual relationship with SIO.
 14 In early 2000 was that your
 15 understanding then?
 16 A. As the discussions were going on, yes.
 17 Uh-huh.
 18 Q. Okay. It was your understanding in
 19 2000 that --
 20 A. Yes.
 21 Q. -- Monsanto had decided not to enter
 22 into an agreement?
 23 A. Correct.
 24 Q. Other than the passage of time --
 25 A. Other than the confidentiality agreement

1 A. There was a linkage between Monsanto and
 2 SIO through WGI and those contracts. So whether I
 3 remembered that it was two different contracts or a
 4 relationship between SIO and Monsanto, it's just -- I
 5 mean, it was a relationship.
 6 Q. Okay. I'll turn you to -- turn the page
 7 to page 3, paragraph 5 of the affidavit.
 8 A. Okay.
 9 Q. It says sometime later in late 2000 or
 10 early 2001 SIO set up its operations at the silica
 11 mine.
 12 A. Uh-huh.
 13 Q. This appeared to be mostly a part-time
 14 operation with a relatively low-volume production and
 15 sale when I left my employment at Monsanto in 2005?
 16 A. Correct.
 17 Q. What led you to conclude that this was a
 18 part-time operation?
 19 A. During that period of time I would go by
 20 the quarry on a weekly basis and sometimes an SIO
 21 representative was there and sometimes they were not.
 22 In discussions with WGI I asked how things were going
 23 and they said business was slow and sometimes they
 24 were operating and sometimes they weren't, and that
 25 was evident, which was -- did not meet the

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1 expectations of SIO as they represented them to
 2 Monsanto, that they intended the business to grow
 3 year to year.
 4 Q. Did you have any knowledge about the
 5 volume production and sale of sand that was coming
 6 out of this arrangement?
 7 A. Only through the royalties that were
 8 received by Monsanto. You can do the math from
 9 there.
 10 Q. As part of your job responsibilities,
 11 did you review the royalty payments that were being
 12 paid?
 13 A. Yes. I was aware of them.
 14 Q. Okay. How were you made aware of them?
 15 A. I believe they were received by our
 16 purchasing group, and so, I mean, if I asked for them
 17 or could see them, they would deliver them to me. We
 18 had regular discussions with them. It was no secret.
 19 Q. Let's skip down to paragraph 8 of your
 20 affidavit: After I left my employment with Monsanto,
 21 I received a phone call and e-mails in early 2008
 22 from Todd Sullivan asking about my recollection of
 23 the Monsanto-SIO relationship eight years earlier.
 24 At Todd Sullivan's request I did send him the e-mails
 25 dated January 17th and March 6, 2008 --

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1 SIO had filed suit against Monsanto and asked if he
 2 could meet with me to discuss my recollections on
 3 things.
 4 Q. In preparing this affidavit that is
 5 Exhibit *-9, did you review any documents?
 6 A. We talked -- we had discussions, and I
 7 don't remember entirely --
 8 Q. Let me stop you right there. Does
 9 Mr. Budge represent you in this deposition?
 10 A. I would hope so.
 11 Q. Okay. Did Mr. Budge represent you in
 12 connection with these discussions that you're
 13 referring to?
 14 A. Discussions meaning our --
 15 Q. When Mr. Budge called you and asked you
 16 about this lawsuit and these e-mails, I suppose, was
 17 he representing you at that point?
 18 A. We met and we talked. Prior to me
 19 arriving I made our internal counsel at Agrium aware
 20 that I was going to have discussions with Mr. Budge.
 21 And they had talked or exchanged e-mails. They had
 22 touched base with each other and concurred. So I
 23 came. We talked. We discussed. Mr. Budge asked if
 24 he could prepare an affidavit on my behalf
 25 summarizing our discussions, and he did. Sent it to

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1 A. Correct.
 2 Q. -- copies of which are attached.
 3 why didn't you include in your affidavit
 4 the March 13th and 14th e-mails?
 5 A. I didn't have access to them. I don't
 6 know what happened to them. I'd forgotten about
 7 them.
 8 Q. Okay. And then going down to the last
 9 sentence of paragraph 8: To the extent that these
 10 e-mails sent by me in 2008 suggested that there was
 11 an agreement entered into between Monsanto and SIO in
 12 2000 would be in error and a mistake of mine in 2008
 13 when I was attempting to recollect conversations that
 14 occurred eight years earlier in early 2000.
 15 A. That's correct.
 16 Q. So it your testimony that the e-mails
 17 that we talked about were just misread by Todd or
 18 that you were mistaken in writing them?
 19 A. As stated in my affidavit, is that as I
 20 was drawn into this lawsuit, information was
 21 provided, my recollections were clearer, and so
 22 what's reflected in the affidavit is my testimony.
 23 Q. Describe for me the process by which you
 24 were drawn into this lawsuit.
 25 A. I was called by Mr. Budge saying that

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1 me. I edited it, tweaking it a little bit so that it
 2 was clearer, and then signed it and delivered it to
 3 you, I assume was the process.
 4 Q. So at the point up to and including your
 5 signature on this affidavit, were you represented by
 6 Mr. Budge as his client and your attorney?
 7 A. There --
 8 Q. I'm asking because I want to be very
 9 careful about what I ask. I do not want to get into
 10 privileged stuff.
 11 MR. BUDGE: I think we've probably confused
 12 the witness a little bit. It's clear that I was
 13 acting only as attorney on behalf of Monsanto and its
 14 employees.
 15 MR. BROUGH: Okay.
 16 MR. BUDGE: So I was representing him in the
 17 sense I think he's referring to that I was visiting
 18 with him and talking to him. But, no, I think I was
 19 not talking to him as his attorney employed by him.
 20 His employer, Agrium, has counsel who represents him
 21 and authorized that discussion.
 22 Q. BY MR. BROUGH: Okay. I'll then ask
 23 based on that, what was it that you and Mr. Budge
 24 discussed?
 25 A. The elements that were -- that make up

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1 the affidavit.
 2 Q. Okay. Did you review any documents to
 3 prepare this affidavit?
 4 A. I recall we did. The specific ones, I
 5 don't remember. They would be germane to the points
 6 that we spell out in the affidavit.
 7 Q. Okay. Did you review any quartzite
 8 agreements or addenda between Monsanto and WGI?
 9 A. No.
 10 Q. Did you review any e-mails?
 11 A. I don't recall. We may have. I don't
 12 recall.
 13 Q. Did you review any letters?
 14 A. Letters?
 15 Q. Yes.
 16 A. Be more specific. From --
 17 Q. Letters between Monsanto and SIO.
 18 A. No.
 19 Q. Well, let me ask this on a broad level.
 20 What was it that led you to conclude that the e-mails
 21 that you wrote in 2008 were erroneous?
 22 A. Erroneous in -- how do you -- could you
 23 be more specific?
 24 Q. Just in the sense that you use in
 25 paragraph 8 of your affidavit.

1 A. My intention in those e-mails were to
 2 just underscore the fact that there were discussions
 3 between Monsanto and SIO. I mean, it was a
 4 cooperative relationship. There seemed to be mutual
 5 benefits between. Ultimately what was contracted
 6 with was the arrangement between SIO and WGI.
 7 Q. But do you agree or disagree with the
 8 statement that your e-mails suggested there was an
 9 agreement between Monsanto and SIO?
 10 A. My affidavit stands. That's what I put
 11 my signature to and so that's what I will testify to.
 12 Q. Okay. Now, going on to the next half of
 13 that sentence: To the extent your e-mail suggests
 14 that there's an agreement, that would be in error and
 15 a mistake of mine in 2008 when I was attempting to
 16 recollect conversations that occurred eight years
 17 earlier in early 2000.
 18 How did you come to the conclusion in
 19 your affidavit that to the extent those e-mails
 20 suggest an agreement, that would be in error and a
 21 mistake of yours?
 22 A. In preparation -- in preparing this
 23 affidavit in the discussions with Mr. Budge, it
 24 became evident again that the relationship that was
 25 established with SIO was through WGI. Monsanto

1 MR. RITTI: I'm going to object to the
 2 question because you're mischaracterizing what's in
 3 the affidavit and you're assuming facts not in
 4 evidence. I'll put that objection on the record.
 5 Q. BY MR. BROUGH: Okay. Well, let's do it
 6 this way. Let's go back to Exhibit *-9, paragraph 8.
 7 A. Exhibit *-9?
 8 Q. Yes.
 9 A. I don't have it in front of me.
 10 Q. Your affidavit. It's that one right
 11 there.
 12 A. Oh, I'm sorry. Thank you. Paragraph
 13 what?
 14 Q. Paragraph 8, page 3.
 15 A. Okay. Yes.
 16 Q. I'm looking at the last sentence and it
 17 says: To the extent that these e-mails sent by me in
 18 2008 suggested that there was an agreement entered
 19 into between Monsanto and SIO in 2000 would be in
 20 error and a mistake of mine in 2008 when I was
 21 attempting to recollect conversations that occurred
 22 eight years earlier in early 2000.
 23 Is it your testimony that your 2008
 24 e-mails do not suggest that there was an agreement
 25 entered into between Monsanto and SIO?

1 already had an agreement with WGI, and SIO was going
 2 to operate on the quarry site.
 3 It seemed to be more -- as I recall,
 4 more -- a more simplistic relationship to have SIO
 5 work directly with WGI because they were going to --
 6 because SIO contracted with WGI to provide equipment
 7 and labor, and that's how -- I mean, they were going
 8 to help run the plant. They were going to be the
 9 labor and equipment source.
 10 So it was -- it would have been more
 11 awkward to develop a contract with Monsanto.
 12 Q. What was it that you discussed with
 13 Mr. Budge that reminded you of that?
 14 A. Just in a general sense, that's how
 15 the -- that's how things were organized. That's how
 16 the contracts were set up is that there was already
 17 an existing quartzite agreement with WGI, and then in
 18 the end SIO established a contractual relationship
 19 with WGI to allow them to build their plant and
 20 operate their facility.
 21 Q. Did you speak with anybody else
 22 regarding this last sentence in paragraph 8 of your
 23 affidavit?
 24 A. Anybody else?
 25 Q. Anybody else.

1 A. No.
 2 Q. Okay. So the only person that you spoke
 3 with to conclude that your 2008 e-mails either didn't
 4 suggest a contract or were erroneous, if they did, is
 5 that the only person that you spoke to about that
 6 was --
 7 A. The law firm.
 8 Q. Okay.
 9 A. Mr. Nye, I believe, was in that meeting
 10 and then one other associate, Mark -- anyway, another
 11 attorney.
 12 Q. Was that a face-to-face meeting or a --
 13 A. Yes.
 14 Q. -- phone call?
 15 A. Face to face.
 16 Q. Have you spoken -- did you speak with
 17 anybody at Monsanto to come to the conclusion that
 18 you reach in paragraph B --
 19 A. No.
 20 Q. -- of your affidavit?
 21 MR. BROUGH: We've been going for about an
 22 hour and a half. Would you like to take a short
 23 break?
 24 (A recess was taken from 2:27 p.m. to
 25 2:35 p.m.)

1 A. I don't remember. It doesn't say in the
 2 e-mail and I don't remember.
 3 Q. Okay.
 4 A. I don't remember if it was Soda Springs
 5 or in Salt Lake. I don't recall.
 6 Q. Okay. Going down the list: Next steps
 7 will be as follows. Do you see that at the bottom --
 8 A. Uh-huh.
 9 Q. -- of this e-mail?
 10 It says: Monsanto will take the lead to
 11 update the addendum to the quartzite agreement with
 12 Washington Group International. Focus will be on
 13 section numbering; royalty paragraph using this
 14 matrix; and as more silica products are developed by
 15 SIO, provisions will allow for an update to the
 16 matrix.
 17 Why would there have been an update to
 18 the matrix as more silica products are developed by
 19 SIO?
 20 A. Well, there's only, what, six or seven
 21 products spelled out in that if -- SIO made it clear
 22 that their business -- they intended to grow the
 23 business. If other products came about, then the
 24 provisions would be allowed to amend this so that
 25 those could be included in the royalty mix.

1 MR. BROUGH: Let's go back on the record.
 2 I'll show you, Mr. Hart, what we'll mark
 3 as Exhibit *-14.
 4 (Exhibit *-14 marked.)
 5 Q. BY MR. BROUGH: If you'll just take a
 6 look at that and let me know when you're ready to go.
 7 A. Okay.
 8 Q. Have you seen this document before?
 9 A. Yes.
 10 Q. What is it?
 11 A. Which are you referring to, the e-mail
 12 or the attachment?
 13 Q. The e-mail.
 14 A. The e-mail. It is a summary of a
 15 meeting between SIO, WGI, and Monsanto that the
 16 discussions led to the development of this
 17 spreadsheet attachment, which outlines the products
 18 that SIO was targeting to market and the
 19 appropriate -- or the respective royalties that were
 20 going to be paid against those products.
 21 Q. Do you remember being present at this
 22 meeting?
 23 A. Yes.
 24 Q. Do you remember where this meeting was
 25 held?

1 Q. Point two says: WGI will, in turn,
 2 update their agreement with SIO to parallel the above
 3 between Monsanto and WGI.
 4 Do you have any knowledge as to why the
 5 WGI-SIO agreement had to parallel the WGI-Monsanto
 6 agreement?
 7 A. It was -- it's my recollection that the
 8 spreadsheet was common to the two agreements.
 9 MR. BROUGH: Okay. I'll show you a document
 10 that we'll mark as Exhibit *-15.
 11 (Exhibit *-15 marked.)
 12 Q. BY MR. BROUGH: Take a look at that for
 13 me.
 14 A. Sure. Okay.
 15 Q. Have you seen this document before?
 16 A. Yes.
 17 Q. What is it? And by document I mean the
 18 e-mail itself.
 19 A. It's a -- it refers to an update of the
 20 spreadsheet that fills in the gaps or expands the
 21 spreadsheet that spells out the royalty matrix.
 22 Q. Why was -- well, let me just do this.
 23 This appears to be an e-mail from you to Jim Smith;
 24 is that correct?
 25 A. Correct.

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1 Q. And it says: The attached spreadsheet
 2 fills in a couple of gaps in the SIO royalty matrix.
 3 The numbers were recently updated and verified by
 4 Todd Sullivan of SIO.
 5 Why did Monsanto care about the
 6 royalties that SIO would be paying?
 7 A. Why did they care?
 8 Q. Yes.
 9 A. Because they were in receipt of them.
 10 Q. So Monsanto was ultimately going to
 11 receive the royalties from SIO?
 12 MR. RITTI: Object to the form. Assumes
 13 facts not in evidence.
 14 THE WITNESS: They were to receive them
 15 through the mechanisms of the contracts that were in
 16 place.
 17 Q. BY MR. BROUGH: Okay. So that mechanism
 18 of the contracts that were in place, how would
 19 royalty payments paid to somebody by SIO make it to
 20 Monsanto?
 21 A. It's my recollection and understanding
 22 that SIO would -- I don't know. I'd be speculating.
 23 I don't recall the entire mechanism other than -- if
 24 you'll notice that one of the folks that were cc'd on
 25 the copy of Exhibit No. *-15 is a guy named Kent

1 Q. BY MR. BROUGH: Take a look at that.
 2 A. Okay.
 3 Q. Have you seen this document before?
 4 A. Since it was from me, yeah. I -- yeah.
 5 It doesn't ring a lot of bells, but --
 6 Q. It looks to me -- and please correct me
 7 if you disagree -- that this e-mail conveys some
 8 comments from Jim Smith reflected in the revision one
 9 attachment, oversize and products to be cleared.
 10 Is that correct?
 11 A. That's what it states.
 12 Q. Do you know what that's talking about at
 13 all?
 14 A. I don't recall specifically, no.
 15 Q. I'll show you a document that we'll mark
 16 as Exhibit *-12. It's already been marked as
 17 Exhibit *-12, actually. Would you take a look at
 18 that document and let me know when you're ready to
 19 proceed. Just in the interest of time I'll refer you
 20 to pages 3, 4, and 5 -- I'm sorry -- 2, 3, and 4 of
 21 this document that look to be an e-mail from you.
 22 That specifically is what I'm going to be asking
 23 about. Have you seen that e-mail before?
 24 A. Yes.
 25 Q. And what was the context in which that

1 Harmon. He was an accountant with Monsanto and he
 2 was the one tracking those revenues. And so it --
 3 that's why -- that was another reason why Monsanto
 4 was interested and we needed to track those revenues.
 5 Q. Did Monsanto ultimately acknowledge or
 6 approve the royalties that SIO was going to be paying
 7 to Monsanto?
 8 MR. BUDGE: Object to the form of the
 9 question.
 10 THE WITNESS: Could you please --
 11 MR. BUDGE: You're asking this witness to
 12 testify on behalf of what Monsanto did? Mr. Smith
 13 was Monsanto's witness.
 14 MR. BROUGH: Okay.
 15 MR. BUDGE: You can ask him about his
 16 knowledge.
 17 Q. BY MR. BROUGH: Okay. Do you know if
 18 Monsanto was going to approve the royalty payment
 19 amounts that were being paid by SIO to WGI?
 20 A. If they approved them?
 21 Q. Yes.
 22 A. Yes.
 23 MR. BROUGH: Okay. I'll show you a document
 24 that we'll mark as Exhibit *-18.
 25 (Exhibit *-18 marked.)

1 e-mail was sent by you?
 2 A. It was sent to senior management of
 3 Monsanto. It may have been Solutia at the time, one
 4 of the entities, asking for their permission to
 5 proceed ahead with discussions and making sure that
 6 they were in the loop because they were ultimately
 7 the ones that were going to execute the contracts --
 8 or approve those contracts.
 9 Q. I'll refer you to the middle of page 3
 10 of this exhibit.
 11 A. Okay.
 12 Q. On the bottom it's marked Monsanto to
 13 SIO 119. And I'm looking specifically at the section
 14 that begins "I recommend we pursue this, dash, dash."
 15 A. Okay.
 16 Q. First, it says: It is not unlike,
 17 quote-unquote, exclusives we have had in place with
 18 other sellers of our sand, i.e., CISCO.
 19 what's that line referring to?
 20 A. As I mentioned in my earlier comments,
 21 that we'd been looking for opportunities to market
 22 the sand since the late 1980s, and one of the
 23 relationships that we established was a company
 24 called CISCO, which is Corona Industrial Sand Company
 25 out of Corona, California. And we had an arrangement

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1 or an agreement with CISCO in which they marketed --
 2 purchased and marketed the by-product sand for a
 3 period of time.
 4 Q. Okay. Were you involved in the
 5 negotiation of that agreement with CISCO?
 6 A. I was involved in the discussions. The
 7 ultimate contract -- I didn't have authority to
 8 approve any contracts, but I was involved in the
 9 technical aspects of it, but the legal aspects were
 10 always deferred to purchasing and the attorneys in
 11 senior management.
 12 Q. Do you remember what the terms of that
 13 agreement were with CISCO?
 14 A. I do not.
 15 Q. Do you remember if it culminated in a
 16 written contract?
 17 A. I don't remember.
 18 Q. Going down to the next line: The
 19 volumes are small, less than 10,000 tons plus or
 20 minus process.
 21 So what was the significance of that
 22 line?
 23 A. Just making them aware of the extent or
 24 how big the opportunity was going to be. Small,
 25 large, just trying to bring them up to speed on kind

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1 of what the opportunity was about.
 2 Q. Next line down and continuing from the
 3 former line: So it does not appear to put what we
 4 are now doing with other customers of our sand at
 5 risk, i.e., Ash Grove Cement, FMC/Agrium PPA Plant.
 6 A. Uh-huh.
 7 Q. What does that mean?
 8 A. As I also mentioned, that the
 9 discussions that we had with SIO involved specific
 10 markets that they wanted to get involved with and
 11 protecting what businesses and opportunities had
 12 already been established by Monsanto with other
 13 customers, Ash Grove Cement and then at the time FMC
 14 or Agrium, which Starus (phonetic) and Agrium were
 15 building -- had a joint venture in the plant. They
 16 were looking for some foundation material, and the
 17 sand was good material for that.
 18 Q. Next line down: We learn what they are
 19 doing.
 20 What was the significance of that?
 21 A. I don't know. It doesn't really make
 22 much sense.
 23 Q. Okay. Was Monsanto interested in
 24 learning about other ways to market and sell its
 25 sand?

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1 A. I don't know. It would be speculation
 2 on what that meant. I don't know.
 3 Q. Next line down: They are willing to
 4 give us a fixed negotiated percentage?
 5 A. Uh-huh.
 6 Q. Do you remember what the significance of
 7 that was?
 8 A. I remember that the initial discussions
 9 with SIO was that we talked about a -- just kind of a
 10 fixed royalty, that a royalty would be established
 11 just X percent or dollar per ton just to make it
 12 easier and they could do whatever they want
 13 regardless of the markets. If you go back to this
 14 previous spreadsheet, you'll know that the royalty
 15 rates are varied and that was in an effort and at
 16 request of SIO to tailor the royalties to the
 17 specific markets so that one market wouldn't take a
 18 bigger hit than the other. And so it was an effort
 19 to try to give SIO every opportunity to succeed.
 20 Q. Next line down: We can work through
 21 Conda Mining, our quarry contractor, to do most of
 22 the work.
 23 Why was that attractive to Monsanto?
 24 A. Again, as I mentioned, that SIO was
 25 looking for how to staff their operation, equipment

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1 and labor, and it seemed logical to deal with the
 2 quarry contractor.
 3 Q. Next line down: It does not require
 4 much Solutia resources at all.
 5 What did that mean?
 6 A. Again, as I previously stated, is that
 7 it wasn't a business that Monsanto or Solutia wanted
 8 to get into and spend a lot of resources. There was
 9 other demands on our time and resources. So if it
 10 was an easy opportunity, someone else could take the
 11 risk, that's what they were interested in.
 12 Q. By someone else taking the risk, what do
 13 you mean?
 14 A. By investing capital and pursuing
 15 markets and trying to grow the business.
 16 Q. Next line down: We capitalize on a high
 17 quality by-product that is now just sitting, to a
 18 large degree.
 19 Is that what you meant when you said
 20 before you've got this byproduct laying around, and
 21 if you can use it to create some value, then great?
 22 A. Yeah. Through previous testing and
 23 qualification processes the material proved to be of
 24 high quality. Unfortunately, Mother Nature doesn't
 25 always smile on high quality materials. They put

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1 them in the middle of nowhere and so it takes a lot
 2 of money to transport them.
 3 Q. Next line down: We open up more
 4 backfill space at the quarry, which we are running
 5 out of fast?
 6 A. Uh-huh.
 7 Q. What does that mean?
 8 A. As I previously stated, there was a
 9 concern down the road in the future of where to put
 10 all the material.
 11 Q. And when you say by running out fast,
 12 running out within the next decade constitutes fast?
 13 A. Sure. Monsanto is in a long-term
 14 business, so, yeah.
 15 MR. BROUGH: Okay. Let me show you a
 16 document that we'll mark as Exhibit *-13.
 17 (Exhibit *-13 marked.)
 18 Q. BY MR. BROUGH: Why don't you take a
 19 look at that.
 20 A. Okay.
 21 Q. Did you see this e-mail before?
 22 A. Yeah. I wrote it.
 23 Q. Okay. It looks to me -- and please
 24 correct me if you disagree. It looks like an e-mail
 25 sent by you to John Rosenbaum, who I know works for

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1 WGI -- or worked for them -- on Tuesday, November
 2 21st of 2000. Do you remember what this e-mail is
 3 talking about?
 4 A. Not specifically. It refers to an
 5 addendum to a contract. I'd have to presume it's the
 6 quartzite agreement we had with WGI.
 7 Q. Okay. And is this e-mail evidence of
 8 the role that you had in negotiating those agreements
 9 with WGI?
 10 A. Yeah. I mean, I had discussions with
 11 WGI working out some of the terms and the technical
 12 aspects of the contract. Ultimately it was reviewed
 13 by attorneys and purchasing folks and then blessed
 14 and recommended to management.
 15 MR. BROUGH: Okay. I'll show you a document
 16 that we'll mark as Exhibit *-42.
 17 (Exhibit *-42 marked.)
 18 Q. BY MR. BROUGH: Will you take a look at
 19 that and --
 20 A. Sure.
 21 Q. -- let me when you're ready to continue.
 22 A. Okay.
 23 Q. Have you seen this document before?
 24 A. Yes.
 25 Q. What is it?

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1 A. It's an e-mail from Robert Sullivan to
 2 myself.
 3 Q. Just for a clear record, is it an e-mail
 4 or a fax?
 5 A. Oh, a fax. I'm sorry. Yeah, I meant --
 6 yeah. I apologize.
 7 Q. And what was it? What were the contents
 8 of this fax that was sent to you?
 9 A. As I previously stated, that the initial
 10 contact that we received from SIO was looking for a
 11 water jet cutting, water blasting material. They had
 12 looked at garnets and they were looking for a
 13 competitive material to do that. And it spells out
 14 kind of SIO's experience with that and says he's
 15 extremely excited about selling the leftover
 16 quartzite of Solutia Corporation.
 17 Q. At this point -- and I note that this
 18 fax is dated April 11th of 2000 -- had Monsanto
 19 already notified WGI of this potential arrangement
 20 between -- with SIO?
 21 A. I don't remember.
 22 Q. Do you know if WGI ever actually
 23 received this document?
 24 A. I don't remember.
 25 MR. BROUGH: I'll show you a document we'll

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1 mark as Exhibit *-47.
 2 (Exhibit *-47 marked.)
 3 Q. BY MR. BROUGH: would you take a look at
 4 that.
 5 A. Sure.
 6 Q. Let me know when you're ready to
 7 continue.
 8 A. Okay.
 9 Q. Have you seen this document before?
 10 A. Yes.
 11 Q. What is it?
 12 A. It's a fax to John Rosenbaum from myself
 13 in September of 2000.
 14 Q. Okay. Is that your handwriting on the
 15 right-hand side of the page?
 16 A. It is.
 17 Q. And why did you fax this to John
 18 Rosenbaum?
 19 A. Because it appears to me that prior to
 20 the construction of SIO's proposed plant, there
 21 needed to be certain permits -- air quality permit,
 22 as I'm assuming this would be, and there's a public
 23 comment period. It appeared in the Idaho State
 24 Journal. I clipped it out and sent it to John
 25 Rosenbaum so he was aware of it.

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1 MR. BROUGH: Okay. Now let's look at a
 2 document that we'll call -- we'll number as
 3 Exhibit *-48.
 4 (Exhibit *-48 marked.)
 5 MR. BROUGH: Gentleman, I apologize. For
 6 some reason I don't have any additional copies of
 7 this exhibit in my folder. I'm happy to circulate it
 8 around so you guys can look at it.
 9 MR. BUDGE: Go ahead. We can make it
 10 afterwards.
 11 Q. BY MR. BROUGH: Take a look at that,
 12 please, Mr. Hart, and when you're ready to continue,
 13 let me know.
 14 A. Okay.
 15 Q. Have you seen this document before?
 16 A. Yeah.
 17 Q. What is it?
 18 A. It's some kind of communication from
 19 John Rosenbaum to myself outlining suggested changes
 20 to the SIO -- it says SIO contracts, Monsanto
 21 addendum to the quartzite agreement.
 22 Q. Okay. Just so that we're clear on the
 23 record, is it a correspondence from you to John?
 24 A. From John to me.
 25 Q. Okay. You're right.

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1 A. It says to Mitch.
 2 Q. I read that wrong. Okay.
 3 So can you tell from this correspondence
 4 what contract Mr. Rosenbaum is talking about in this?
 5 A. It says the Monsanto addendum to the
 6 quartzite agreement. Well, the subject is suggested
 7 changes to SIO contracts, Monsanto addendum to the
 8 quartzite agreement. If it was between WGI and
 9 Monsanto, it would -- I'm assuming it refers to the
 10 quartzite agreement, which is between us and WGI.
 11 Q. Okay. Just one final set of questions
 12 and then I think I'm going to be done, at least for
 13 now. Going back to the e-mail correspondence between
 14 you and Mr. Sullivan in January and March of 2008.
 15 You mentioned earlier that you at least understood
 16 that he was going to be using some of those topics in
 17 correspondence. Did you ever receive any phone calls
 18 or communications from anybody at Monsanto or WGI
 19 saying, hey, Mr. Hart, what are you writing here?
 20 A. Nope.
 21 MR. BROUGH: Okay. That's the only questions
 22 that I have.
 23 MR. RITTI: I have a couple of questions.
 24
 25

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EXAMINATION

1
 2 BY MR. RITTI:
 3 Q. Mr. Hart, my name is Gene Ritti, and, as
 4 you know, I represent the defendant Washington Group.
 5 Now in 2008 when you and Todd had these
 6 communications, you weren't employed by Monsanto,
 7 correct?
 8 A. No.
 9 Q. Todd knew you weren't employed by
 10 Monsanto; would you agree with that?
 11 A. That's correct.
 12 Q. Todd was a lawyer, wasn't he, at the
 13 time that he had these communications with you?
 14 A. That's my understanding.
 15 Q. You weren't authorized by Monsanto to
 16 say anything that you may have said or written to
 17 Todd in the 2008 time frame that you've covered with
 18 counsel here this afternoon, were you?
 19 A. No. I was not representing Monsanto in
 20 any way.
 21 Q. Todd never gave you any documents to
 22 review before he asked you to either agree with an
 23 e-mail he may have sent to you or to set forth your
 24 understanding, did he?
 25 A. No.

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1 Q. He didn't say here's the quartzite
 2 agreements, here are addendums to the quartzite
 3 agreements, here's the master agreement between
 4 Washington Group and SIO, here's addendums to that
 5 master agreement? He didn't provide you any of this
 6 information before he asked you to try to recall what
 7 may have gone on six years earlier; is that correct?
 8 A. No, he did not provide me any documents.
 9 Q. And as you sit here today, is there any
 10 doubt in your mind that other than a written
 11 confidentiality agreement signed by SIO and Monsanto,
 12 that there was no contract between Monsanto and SIO
 13 regarding the processing of silica at the quarry?
 14 A. That is correct. There was no direct
 15 contract between SIO and Monsanto.
 16 Q. And there's no doubt in your mind that
 17 there was no such contract, correct?
 18 A. That's correct.
 19 MR. BROUGH: Object insofar as it calls for a
 20 legal conclusion.
 21 MR. RITTI: That's all the questions I have.
 22
 23 style="text-align: center;">EXAMINATION

24 BY MR. BUDGE:
 25 Q. Mr. Hart, you had an opportunity to

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1 review your affidavit immediately before this
 2 deposition today; did you not?
 3 A. Yes. Yes, I did.
 4 Q. As a result of any of the questions that
 5 have been asked you or your answers or any of the
 6 documents that you received and reviewed here today
 7 as a part of that, has any of that caused you to
 8 change your statements made in your affidavit in any
 9 way?
 10 A. No. My affidavit stands as written and
 11 signed.
 12 Q. And do you consider your affidavit to be
 13 a correct statement of the facts as far as you know?
 14 A. As far as I know, yes.
 15 Q. Mr. Ritti asked you about this 2008
 16 conversation that you had with Todd Sullivan, which
 17 gave rise to these e-mails in 2008 that we've been
 18 discussing. At the time you had these phone
 19 conversations with Mr. Sullivan and those e-mails
 20 were written, had he disclosed to you that Washington
 21 Group International had recently terminated its
 22 contract with SIO effective December 31st of 2007?
 23 A. I don't recall what came first, if
 24 knowledge of the termination of the agreement came
 25 from SICOG or from Todd. I don't recall. It may

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1 have been about the same time, but what came first, I
 2 don't remember.
 3 Q. Did he disclose to you that in any of
 4 those conversations early in the year 2008 that SIO
 5 contemplated bringing a lawsuit against Monsanto over
 6 an alleged oral contract?
 7 A. No. It was my recollection that the
 8 reasons for his phone calls were he was trying to
 9 formulate a petition or a request for them to
 10 reconsider.
 11 Q. And you're aware today that the basis of
 12 SIO's complaint against Monsanto, if you read their
 13 complaint, is that they assert there is an oral
 14 contract that got entered into in 2000 by you acting
 15 on behalf of Monsanto enabling them to operate in the
 16 quarry. Are you aware of that now?
 17 A. I am aware of that, but that would be a
 18 naive assumption on their part.
 19 Q. Is that the first time you ever heard of
 20 Mr. Sullivan suggesting that there was an oral
 21 contract that you, Mr. Hart, made on behalf of
 22 Monsanto with SIO?
 23 A. When I first became aware of that was
 24 when I was contacted by you guys. That was kind of
 25 the direction they were headed.

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1 Q. So in your deposition you've been asked
 2 a lot of questions back and forth on e-mails and
 3 letters over the time period in 2000, in 2003, and up
 4 until you left Monsanto in 2005, about various
 5 communications you had with the Sullivans. In any of
 6 those communications at any time did you hear any of
 7 the Sullivans assert that you, Mr. Hart, had entered
 8 into an oral contract with SIO?
 9 A. To the best of my knowledge, no.
 10 Q. Now, it's my understanding that you
 11 worked under the -- you worked in the mining group
 12 when you were with Monsanto?
 13 A. Yes.
 14 Q. And who was your supervisor?
 15 A. Dave Farnsworth.
 16 Q. And at that time that you were employed
 17 by Monsanto and under the supervision of
 18 Mr. Farnsworth, did you have any authority to execute
 19 contracts on behalf of Monsanto?
 20 A. No.
 21 Q. Have you ever entered -- have you ever
 22 signed any written contract on behalf of Monsanto?
 23 A. The only one I ever signed may have been
 24 a confidentiality agreement with a party.
 25 Q. And do you have any authority, to your

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1 knowledge, to enter into any oral contracts on behalf
 2 of Monsanto?
 3 A. No. That was never a practice of
 4 Monsanto.
 5 Q. From your testimony I gather that when
 6 these contractual relationships were established
 7 between Monsanto and WGI pertaining to the quartzite
 8 mine and the addendums, that you may have had some
 9 involvement from a technical aspect?
 10 A. Correct.
 11 Q. And when these contracts are
 12 established, if I understand your testimony, the
 13 mining group would provide some technical
 14 information?
 15 A. Yes.
 16 Q. And you said there was a purchasing
 17 group that was generally involved in negotiating the
 18 contract terms?
 19 A. Yeah. They were -- locally in Soda
 20 Springs the purchasing group were the ones that
 21 interacted with the attorneys that dealt with
 22 contracts and so we would screen and route things
 23 through them and then they would help --
 24 Q. So the purchasing group and the legal
 25 group in St. Louis would be how contracts would get

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1 developed?
 2 A. Correct.
 3 Q. And would they make the determination of
 4 what the ultimate terms of those contracts might be?
 5 A. Yes.
 6 Q. And did they also make the determination
 7 of who would have authority to sign and bind
 8 Monsanto?
 9 A. That's correct.
 10 Q. Other than the confidentiality agreement
 11 that you indicated was signed between the parties
 12 early on, are you aware of any written contract
 13 signed between Monsanto and SIO?
 14 A. No, not during the time that I was
 15 employed by Monsanto.
 16 Q. You mentioned in response to
 17 Mr. Brough's question that your relationship and
 18 dealings with SIO were as a point person for
 19 Monsanto?
 20 A. Yes.
 21 Q. And by saying you were the point person,
 22 did you mean that you would take information that you
 23 might receive from SIO and convey those to other
 24 folks such as the purchasing group or the legal group
 25 at Monsanto?

1 relationship was. I'd have to give that some
 2 thought?
 3 A. I don't recall expressively stating
 4 that.
 5 Q. Okay. Do you remember stating anything
 6 like that?
 7 A. I don't recall.
 8 Q. Do you ever recall telling Todd "before
 9 I would be willing to express an opinion on that in
 10 writing, I would need to talk to some people at
 11 Monsanto"?
 12 A. I don't remember saying that, no.
 13 Q. Did you remember ever telling Todd "I'm
 14 uncomfortable making this statement in writing
 15 because I don't work for Monsanto anymore"?
 16 A. I don't believe -- I don't recall that.
 17 Q. Did Todd at any time tell you about the
 18 termination of the WGI-SIO relationship?
 19 A. I don't recall him actually stating
 20 that, but it was understood. In at least one phone
 21 conversation I offered -- I understood that they were
 22 looking at liquidating their facility and I told them
 23 if he was interested, I could provide him sources of
 24 equipment brokers.
 25 Q. Do you believe as you sit here today

1 A. Yes. I think that's reflected in the
 2 correspondence we reviewed in the exhibits, yes.
 3 Q. And, similarly, if you received
 4 directions from the Monsanto purchasing group and/or
 5 legal group, would you, if they requested, convey
 6 that information back to the Sullivans and SIO?
 7 A. Yes. That's how it worked.
 8 Q. So did you consider your role in these
 9 discussions and transactions as primarily a person
 10 who was to be the conduit of information back and
 11 forth between the parties?
 12 A. Yes.
 13 MR. BUDGE: Nothing further.
 14 MR. BROUGH: I have a few follow-up
 15 questions.
 16
 17 FURTHER EXAMINATION
 18 BY MR. BROUGH:
 19 Q. In your conversations with Todd Sullivan
 20 in January through March of 2008, did you ever ask to
 21 review any documents before you put anything in
 22 writing in an e-mail?
 23 A. I don't recall.
 24 Q. Did you ever express to Todd in response
 25 to his requests, gee, I'm not sure what the

1 that Todd withheld from you information about his
 2 intent from using the correspondence that you guys
 3 were having?
 4 A. It would only be conjecture on my part
 5 what his intentions were. I don't want to put words
 6 in his mouth.
 7 Q. As the point person for Monsanto, as
 8 Mr. Budge has just defined that with you, did you
 9 ever have any conversations with the Sullivans, any
 10 of them, where a contract between Silicon
 11 International and Monsanto was mentioned as actually
 12 existing?
 13 A. I have a vague recollection that that
 14 was contemplated early on. But as things evolved, it
 15 made more sense to set up the arrangement as
 16 ultimately executed. I believe there was maybe some
 17 initial discussions of dealing directly with SIO, but
 18 in the end the contracts that were signed were -- the
 19 ones that existed, everybody seemed comfortable with.
 20 Q. Do you remember any instance in which
 21 any member of the Sullivan family referenced to you
 22 an actual existing contract between SIO and Monsanto?
 23 A. I don't recall.
 24 MR. BROUGH: Okay. I don't have any other
 25 questions.

1 MR. RITTI: I have nothing further.
 2 MR. BUDGE: Nothing further.
 3 MR. BROUGH: Mr. Hart, thank you for coming.
 4 THE WITNESS: You're welcome.
 5 MR. BROUGH: You'll have the opportunity to
 6 read your deposition transcript and sign it. Would
 7 you like to do that?
 8 THE WITNESS: That would be great.
 9 (The deposition concluded at 3:14 p.m.)
 10 -oo0oo-
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REPORTER'S CERTIFICATE

STATE OF IDAHO)
 COUNTY OF BONNEVILLE) ss.
)

I, Sandra D. Terrill, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify:
 That prior to being examined Mitchell J. Hart, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;
 That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of said deposition.
 I further certify that I have no interest in the event of the action.
 WITNESS my hand and seal this 20th day of April 2011.

Sandra D. Terrill
 Idaho CSR No. 702,
 Notary Public in and for
 the State of Idaho.

My Commission Expires: 11-10-16

VERIFICATION

STATE OF)
) ss.
 COUNTY OF)

I, Mitchell J. Hart, say that I am the witness referred to in the foregoing deposition taken April 8, 2011, consisting of pages numbered 1 to 99; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page	Line	Should Read	Reason
------	------	-------------	--------

Mitchell J. Hart

Subscribed and sworn to before me this
 day of 2011, at , Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires

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ADDENDUM TO
QUARTZITE AGREEMENT

THIS ADDENDUM ("Addendum") is intended supplement, and, where applicable, amend the provisions of the Quartzite Agreement, by and between Monsanto Company ("Monsanto") and Washington Group International ("Washington") f/k/a Conda Mining, Inc., dated March 10, 1993. The term "Agreement" shall mean the aforesaid Quartzite Agreement as amended and modified by this Addendum. In the event of any conflict, inconsistency, or ambiguity between the terms and provisions of this Addendum and those of the Agreement, the terms and provisions of this Addendum shall govern. Any references below to sections, paragraphs, and subparagraphs refer to the sections, paragraphs, and subparagraphs of the Agreement. Capitalized terms used but not defined in this Addendum shall have the meaning provided in the Agreement as originally written.

The following shall be added after section "22. Miscellaneous."

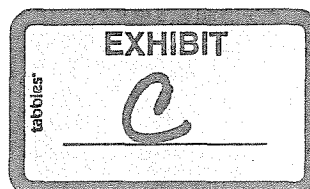
23. Silica Sand Processing Facility.

(a) Location. During the term of this Agreement Washington may construct, maintain, and operate a silica sand processing facility (the "Facility") to be located at the Northeast corner of Monsanto's property at the Quarry as more specifically identified on Addendum Exhibit I, attached hereto and incorporated herein by this reference (the "Facility Site"). The Facility shall be used solely to process and bag silica sand obtained from the product of the sand screw currently being used in the reject circuit, or reject sand stockpile, at the Plant and for no other purpose.

(b) Facility Construction. Washington shall be responsible for all fees, taxes, utilities, costs, and expenses to manage, construct, maintain, insure, and operate the Facility. Monsanto shall however have the right to review and approve all equipment and buildings that will be operated or constructed at the Facility Site. Washington shall obtain such review and approval in writing from Monsanto prior to the commencement of any construction or the installation of any equipment. Upon termination of this Agreement, Washington shall remove all equipment and buildings from Monsanto's property within 120 days unless Monsanto agrees to purchase such equipment or buildings from Washington at a mutually agreeable price.

(c) Operating Hours. The Facility shall operate during the normal business/operating hours of the Quarry and Plant. The Facility may however operate on a year-round basis, provided Washington pays any excess costs incurred by Monsanto that are attributable to the operation of the Facility. Monsanto and Washington shall meet and discuss any such excess costs as soon as either party becomes aware that they will be incurred. In any event, Monsanto shall not be required to subsidize the year-round operation.Facility.

(d) Royalty. Washington shall pay a royalty to Monsanto of \$13.00 per ton of finished silica sand product sold by Washington to a third party or used by Washington in activity unrelated to the Facility. Washington shall be responsible for keeping track of and accounting to Monsanto for all silica sand sold/used by Washington. Within thirty (30) days after the end of each calendar month during the term of this Agreement, Washington shall pay to Monsanto all royalties due under this Agreement. Washington shall keep for two (2) years from the date of payment of royalties hereunder complete and accurate records in sufficient detail to allow the royalties accruing



hereunder to be determined accurately. Monsanto shall have the right for two (2) years after receiving any report or statement with respect to royalties due and payable hereunder to appoint at its expense an independent certified public accountant to inspect the relevant records to verify such report or statement. If Monsanto's inspection discloses an error (against Monsanto) of ten percent (10%) or more in the calculation of royalties due Monsanto, then Washington shall pay Monsanto 1.5 times the amount of such error plus Monsanto's cost to have the independent certified public accountant inspect the relevant records to verify Washington's report or statement.

(e) Indemnity. Washington's obligations under Section 12. (Indemnification) and Section 13. (Insurance) of this Agreement shall extend to and include any activity, duty, or obligation related to the Facility and the handling, sale, or delivery of the silica sand by Washington, Washington's customers, or any third party, as long as Washington operates the Facility.

(f) Third Party Contracts. Washington anticipates entering into one or more contracts with Silicon International Ore, LLC ("SIO") related to the financing, construction, operation, and ownership of the equipment and building for the silica sand processing facility, as well as the sale of the processed silica sand. Any such contracts shall require SIO to enter into a secrecy agreement as provided by Section 20 of this Agreement. Further, SIO shall be required to indemnify, hold harmless, and defend Monsanto from and against any and all claims, demands, actions, suits, losses, damages, costs and expenses from any SIO employees or third party involved in the processing, handling, sale, or delivery of the processed silica sand and SIO shall name Monsanto as an additional insured on any policy of insurance related to the Facility or its operation.

All other provisions in this Agreement, to the extent consistent with the foregoing Addendum, are hereby ratified, and shall remain unchanged.

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum as of the 29 day of November 2000.

MONSANTO COMPANY

WASHINGTON GROUP INTERNATIONAL

By: _____

By:  _____

Title: _____

Title: Operations Manager

11/29/00

PAGE 2

ORIGINAL

Quartzite Agreement

CONFIDENTIAL

THIS QUARTZITE AGREEMENT (the "Agreement") is made and entered into as of this 27 day of Sept, 2001 by and between P4 PRODUCTION LLC ("P4"), a Delaware limited liability company, with a location in St. Louis County, Missouri and Washington Group International, Inc. ("WGI"), an Ohio corporation, with general offices located in Boise, Idaho.

WITNESSETH:

WHEREAS, P4 owns and operates a plant near Soda Springs, Idaho (hereinafter called the "Plant") for refining and processing phosphate ore and producing elemental phosphorus there from, in connection with which P4 has need for certain quantities of quartzite; and

WHEREAS, approximately 2.5 miles northwest of the Plant P4 owns a quartzite quarry at which quartzite is mined, crushed and sized and which WGI currently operates (hereinafter called the "Quarry"); and

WHEREAS, WGI is engaged in the business, among others, of mining, processing and delivering quartzite and other materials; and

WHEREAS, WGI (as successor to Conda Mining, Inc.) and P4 (as assignee from Monsanto Company) previously entered into a Quartzite Agreement dated March 10, 1993, for the mining of quartzite ("Old Quartzite Agreement"), pursuant to which WGI has provided and continues to provide to P4 mining and other services at the Quarry; and

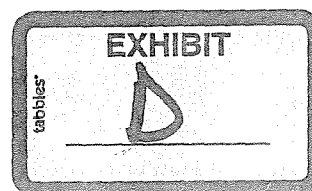
WHEREAS, the parties desire to terminate the Old Quartzite Agreement and replace it with this Agreement; and

WHEREAS, both P4 and WGI desire to enter into this new Agreement concerning mining of quartzite and covering the seven-year period ending December 31, 2007;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services. Commencing January 1, 2001, and thereafter during the term of this Agreement, P4 hereby engages WGI to perform and WGI hereby agrees to perform, the following services (all such services hereinafter collectively referred to as "Services"):

(a) beginning no later than the 3rd Monday in May of each Operating Season, as defined in paragraph 3 (b), or such later date as P4 approves in writing in advance, selectively to mine, crush and screen, at the Quarry, quartzite which shall meet the specifications hereinafter described, and transport the same from the Quarry to the



Plant, in such quantities as P4 may specify from time to time but not less than a weekly tonnage of 1/26 of the total tonnage for such Operating Season as specified in P4's notice to WGI given in accordance with paragraph 6(d) of this Agreement;

(b) to remove overburden from the quartzite reserves within the Quarry prior to mining, as necessary, and to install, operate and/or maintain such mining, crushing, screening, and wet washing facilities, tailing ponds, quartzite storage areas, and truck loading facilities (all with critical spare parts in inventory as mutually agreed with P4) as may be necessary and to have the same available on the Quarry site no later than April 1 of each Operating Season;

(c) at WGI's expense, to maintain and operate at such areas of the Plant as P4 shall designate, and to be reached by such means of access as P4 shall specify from time to time, such quartzite belt or other stacking system equipped with automatic sampling or other devices, all as P4 may reasonably require, and which is capable of stacking with a minimum of degradation and segregation the quantities of quartzite P4 specifies to be mined and delivered hereunder;

(d) to weigh and load at the Quarry, transport to the Plant, unload and stack the quantities of quartzite specified by P4, furnishing all weighing, loading, transportation and unloading equipment, material and labor necessary;

(e) to perform all mining in accordance with P4's annual mining plans which P4 will develop after consultation with WGI, to deposit all removed overburden and topsoil within the confines of the Quarry limits in such manner at such points at the Quarry site as shall be described in such plan or specified by P4 from time to time and as shall conform to the requirements of all applicable laws, rules regulations, ordinances, orders and other governmental actions or requests;

(f) to perform sizing and screening of quartzite necessary to cause such quartzite to comply with paragraph 2 of this Agreement in crushing and screening facilities to be installed and maintained at the Quarry, at WGI's expense, with the screen opening sizes in such facilities being changed only with the prior written approval of P4;

(g) to maintain the quartzite haulage road between the Quarry and the Plant stockpile and all existing roads at the Quarry and to construct and maintain any additional roads at the existing Quarry, all as part of WGI's mining operations hereunder and at WGI's expense (the location of additional roads will be as mutually agreed upon);

(h) to furnish all equipment, supplies, and operating personnel necessary for the conduct of all of the aforementioned operations, including, without limitation, to furnish all fuels, lubricants, supplies, power, licenses and fees, and to repair, maintain and operate all such operating equipment and to keep all such equipment in good, safe and serviceable condition;

(i) to conduct all of its operations in a safe and diligent manner and in conformance with all safety and security practices promulgated from time to time by P4, including, without limitation, requiring its personnel to attend such programs and meetings as P4 may request WGI's personnel to attend:

(j) to provide and maintain adequate security at all areas at which services are being performed, including, without limitation, the Quarry site and all roads described in paragraph (g) of this paragraph 2, and all property located at such areas; and

(k) to bear and pay all costs connected with its performance of its duties, obligations and services under this Agreement.

2. Specifications. All quartzite mined hereunder shall be such that it may be wet screened to 1 1/2" topsize. The size specifications for 1 1/2" topsize are a maximum of 1.5% of any given volume is retained when such volume is passed through a 1 1/2" sieve; and a maximum of 1.5% of any given volume passes through an 8 mesh seive.

In addition, the following are desired ranges for the internal particle sizes:

<u>Particle Size</u> <u>minimum > x < maximum</u>	<u>Desired weight % retained on</u> <u>standard sieve</u>
1" > x < 1.5"	20-35%
0.5" > x < 1"	40-60%
0.25" > x < 0.5"	10-25%
8 mesh > x < 0.25"	2-8

Determination of whether deliveries to the Plant of quartzite mined hereunder have met specifications will be determined by testing samples of quartzite obtained by the automatic sampling device forming a part of the quartzite stacking system at the Plant. P4 will retain the right to audit and approve the automatic sampling device and procedure. Sample cuts taken from deliveries of quartzite to the Plant will be composited continuously during periods when deliveries of quartzite to the Plant are occurring, and every 2 1/2 hours during such periods the composite sample so accumulated to that point will be segregated for analysis. Such composite samples will be delivered to P4 personnel at the Plant and shall be dried and screened over standard testing screens at P4's laboratory. Prompt corrective action will be taken by WGI, and, without limiting any other remedies to which P4 may be entitled, P4 shall have the right to make equitable and appropriate adjustments in the sums otherwise due WGI hereunder in the event that non-specification quartzite is delivered by WGI into P4's stockpile at the Plant. P4 retains the right to refuse delivery of nonspecification quartzite to the Plant. P4 shall not be required to pay WGI any amounts with respect to such rejected quartzite and WGI will return such rejected quartzite to the Quarry at WGI's sole cost and expense. All rejected quartzite and all overburden shall remain the property of P4.

3. Termination of the Old Quartzite Agreement; New Term.

(a) The Old Quartzite Agreement shall terminate as of December 31, 2000, provided, however, that such termination shall be without prejudice as to any rights or remedies that may have accrued there under prior to such termination date. WGI shall not be entitled to any termination fee pursuant to the Old Quartzite Agreement.

(b) The term of this Agreement shall commence as of January 1, 2001, and, unless sooner terminated as herein provided, shall continue in effect through December 31, 2007, at which time it will terminate. As used herein, an "Operating Season" is defined to be the period from January 1 to and including December 31 in each calendar year.

4. Water Permit. To the extent that water is necessary for WGI's performance of Services at the Quarry, and to the extent and for the period that P4 shall be entitled to permit such use, WGI may have access to and use the water available to P4 under Idaho State Water Permit No. G-32920; provided, that WGI should not exceed the rate of usage allowed under such Permit; provided further, that P4 reserves the right to use so much of the water covered by such Permit in common with WGI to the extent not required by WGI for the performance of Services hereunder. WGI shall supply and maintain, at its expense, all pumps, piping, settling ponds, and related equipment that is required to make use of the water under such Permit.

5. Compliance with Laws. WGI shall comply with all applicable laws, regulations, rules, codes, order, ordinances, actions and requests of any governmental agency, body or official having jurisdiction. WGI shall obtain promptly, and in any event prior to transporting any overburden or quartzite under this Agreement over or across any public roads or ways, all required permits, authorizations and other documentation from the State of Idaho, Department of Highways, and/or any other public authority, necessary for WGI's performance of all of its obligations, duties and services under this Agreement. Without limiting the foregoing, WGI shall abide by all applicable standards for safe practices, industrial hygiene, environmental controls, water impoundments and effluents recommended or established from time to time by the State of Idaho, the United States, and any other public authority or official having jurisdiction, and to perform all duties, obligations and services to be performed hereunder in a safe and workmanlike manner. To the extent operations hereunder may require or result in activity by WGI at the Plant, all such activity shall, in addition to the foregoing, be governed by P4's security requirements and safety standards. Notwithstanding any other provision of this Agreement, WGI shall indemnify and hold harmless P4 from and against any and all fines, penalties, liabilities, claims, actions, suites, proceedings (whether civil, criminal, administrative, investigative, governmental or otherwise), damages, losses, costs and expenses (including, without limitation, costs and expenses of defense, amounts paid in settlement and attorney's fees and expenses) which P4 may suffer or incur by reason of the failure of WGI to obtain and/or to comply with or perform any of the terms or conditions of the foregoing.

6. Base Rates.

(a) As payment in full for the performance by WGI of all of its duties, obligations, operations and services under this Agreement, P4 shall pay to WGI an amount per wet net ton of quartzite drained to surface moisture in a surge pile at the Quarry, which meets the specifications set forth in paragraph 2 hereof and is delivered to the stockpile at the Plant in an Operating Season. Initially, the following schedule of rates, which shall remain in effect and are firm for calendar year 2001 (the "Base Rates"), will apply, with the price per wet net ton delivered during the 2001 Operating Season being the dollar amount shown in the schedule below opposite the total tonnage of specification quartzite delivered to the Plant in such Operating Season:

If fewer than 150,000 wet net tons are delivered during an Operating Season, the price per wet net ton shall be agreed upon between the parties.

Wet Net Tons Delivered During Operating Season	Base Rate (\$ Per Wet Net Ton)
150,000 to 199,999	\$7.86
200,000 to 249,999	\$7.77
250,000 to 299,999	\$7.70
300,000 and over	\$7.67

(b) As an illustration of the foregoing, in the event WGI shall deliver to the Plant 225,000 wet net tons of 1 1/2" topsize quartzite during the 2002 Operating Season, the charge for each such ton delivered shall be the Base Rate of \$7.77, adjusted pursuant to paragraph 7.

(c) All Base Rates are based upon wet net tons of 2,000 pounds each. Measurements of quantities of quartzite delivered to the Plant will be by bin scale weights taken at the loading point at the quartzite Quarry. The bin scale shall be checked and calibrated by WGI in such a manner and at such intervals as are acceptable to P4.

(d) At least thirty (30) days before the beginning of production in each Operating Season, P4 shall advise WGI in writing of the total tonnage of quartzite which P4 expects to have mined and delivered to the Plant during such Operating Season. P4 shall have the right to make reasonable changes to such expected tonnage from time to time during the Operating Season by giving written notice to WGI no less than fifteen days before the effective date of such change.

(e) WGI shall invoice P4 for the number of wet net tons of specification quartzite delivered to the Plant during each calendar month of the Operating Season within fifteen (15) days after the end of each such month and each such invoice shall be

payable net thirty (30) days after the date received.

7. Adjustment of Base Rates.

(a) WGI's calendar year 2001 costs per wet net ton for labor, equipment operating cost and expendable supplies are herein referred to collectively as "Unit Costs". Subject to paragraph 7(f) starting January 1, 2002, the Base Rates set forth in paragraph 6 of this Agreement are subject to annual adjustment effective as of the first day of January, for the Operating Season then commencing. Once the adjustment for the Operating Season is determined, the charges so determined will remain firm throughout that Operating Season. The adjustment for each Operating Season beginning on or after January 1, 2002, shall be made as follows: each item of Unit Costs will be measured as of the first day of January of any Operating Season during the term of this Agreement, any increase or decrease in any item of Unit Costs above or below the corresponding item of Unit Costs prevailing as of January 1, 2001, will be determined, and each of the Base Rates shall be correspondingly increased or decreased, as appropriate, for the Operating Season then commencing by the percentage determined under the following formula with respect to each such item:

$$\begin{array}{l} \text{\% of Base Rate} \\ \text{represented by item of} \\ \text{Unit Costs which has} \\ \text{increased or decreased} \end{array} \times \begin{array}{l} \text{\% of increase or decrease in} \\ \text{such item of Unit Costs} \\ \text{above or below the level of} \\ \text{the preceding year. (first} \\ \text{year January 1, 2001)} \end{array} = \begin{array}{l} \text{percentage adjustment in} \\ \text{Base Rate with respect to} \\ \text{to such item of Unit Costs} \end{array}$$

(b) The following percentage, which indicate the percentage of the Base Rates represented by each item of Unit Costs, shall be used in determining the amount by which the rates shall be adjusted in the event of an increase or decrease in any item of Unit Costs:

Item of Unit Costs	Percentage of Base Rates
Labor	30%
Equipment Operating Cost	32%
Expendable Supplies	9%

The percentages shown above representing the portion of the Base Rates represented by each item of Unit Costs will not change during the term of this Agreement. The elements (e.g., fuel, lubricants, explosives and repair parts) of which each of the items of Unit Costs set forth above is composed shall be those contained in WGI's adjustment calculations for calendar year 2000, inclusive. The percentages used for each of such elements within an item of Unit Costs shall be established on the basis of WGI's actual experience during the preceding calendar year and shall be mutually agreed upon by both parties. If the parties fail to agree, the percentages in effect for the calendar year next preceding the Operating Season for which the adjustment is being determined shall be

used.

(c) For the purpose of illustration, if the level of WGI's labor cost as of the first day of January of any Operating commencing on or after January 1, 2002, during the term of the Agreement has increased by eight and one-half percent (.085) over that prevailing as of January 1, 2001, each of the Base Rates shall be increased by 2.55% ($30\% \times 8\frac{1}{2}\%$ equals .0255). Each of the Base Rates shall be similarly adjusted for changes in other items of Unit Costs.

(d) In the event that any increase or decrease in an item of Unit Costs results in an adjustment to the Base Rates becoming effective as of the first day of January of any Operating Season commencing on or after January 1, 2002, WGI shall notify P4 in writing no less than sixty (60) days after such date of the amount of the increase or decrease in each specific item of Unit Costs and the adjustments to the Base Rates which will result therefrom, effective on such first day of January, together with a copy of its calculations, in reasonable detail, of the adjustments to the Base Rates and all documentation or other material in support thereof. WGI shall also furnish a report, subject to audit by P4, confirming the amount of any increase or decrease in each item of Unit Costs and certifying that the amount of the adjustment in the Base Rates covered by WGI's notice is in accordance with the foregoing formula. P4 will also have the right to audit those of WGI's affiliates acting as subcontractors and/or suppliers of supplies and repair parts so that they affect specific items of Unit Cost pertaining to this Agreement. P4 shall use reasonable efforts to keep confidential any information as to WGI's costs obtained during any such audit.

(e) In connection with P4's audit rights under this Agreement, WGI and each of its affiliates shall (i) cooperate fully with P4's auditing efforts and (ii) provide complete and unrestricted access to all documents and accounting papers, and all work papers of any auditors, in connection with any item which is subject to audit by P4 under the terms of this Agreement, for inspection and/or audit by P4 or its auditors at such times as P4 may request.

(f) Notwithstanding any other provisions of this Agreement, any increases in Base Rates under this paragraph 7 shall be limited to those increases that result from increases in items of Unit Costs that are reasonably, necessarily and actually incurred by WGI in arm's length transactions for the elements composing the respective items of Unit Costs.

(g) Changes in operations that would effect the "adjustment of base rates calculation" must receive prior approval from P4.

8. Year-End Adjustment.

(a) Billings for Services during each Operating Season shall be at the rate, calculated pursuant to paragraph 6 and 7 of this Agreement, applicable to the tonnage

which P4 advises WGI pursuant to paragraph 6(d) that it expects to have mined and delivered during such Operating Season. If at the end of any Operating Season the total tonnage mined and delivered under this Agreement is less than the tonnage on which such billings were based, WGI shall invoice P4 no later than fifteen (15) days after the end of such Operating Season and P4 shall pay to WGI no later than thirty (30) days after receipt of such invoice, an amount equal to the difference between the applicable rate for the tonnage delivered and the rate on which such billings were originally made, times the tonnage actually delivered. If during any Operating Season the amount of the quartzite actually mined and delivered exceeds the tonnage on which billings during that Operating Season have been based, WGI shall credit P4 thereafter with an amount equal to the difference between the rate on which such billings were originally made and the applicable rate for the tonnage delivered, times the tonnage actually delivered, such credit to be applied against further tonnage delivered, and if there remains any unapplied credit at the end of production of any Operating Season, WGI shall refund payment to P4 no later than thirty (30) days after the end of such production.

(b) Notwithstanding any other provision of this Agreement, in the event the tonnage of specification quartzite actually delivered by WGI to the Plant during any Operating Season is less than the total tonnage P4 would otherwise have caused WGI to deliver during such Operating Season by reason of WGI's failure or inability to perform any services to be performed hereunder for any cause or reason whatsoever, then the rate with respect to the number of tons of quartzite which P4 would have had delivered during such Operating Season expect for such failure or inability, and not the rate with respect to the tonnage actually delivered during such Operating Season, shall be the rate used to determine payments due WGI hereunder, and any overpayment by P4 made as a result of such failure or inability shall be promptly refunded by WGI to P4.

9. Equipment Rental. P4, in its discretion, may have WGI (a) remove and stockpile topsoil and remove overburden outside the present Quarry limits and dispose of it in the backfill area or other location as necessary in any new section of the Quarry, (b) remove non-specification quartzite from the present Quarry and dispose of it in the backfill area or other location as necessary; or (c) have performed any other work, including, without limitation, reclamation not otherwise specifically required in this Agreement, that P4 may wish to have performed. For such services, other than the removal of dolomite waste, P4 shall pay WGI at the applicable hourly rate set forth in Exhibit A attached hereto and made a part hereof for the equipment and operator used in providing such services. WGI will remove dolomite waste at no charge to P4 other than \$1.90 per bank cubic yard during the 2001 Operating Season, or \$1.90 escalated by the applicable percentage as calculated in accordance with Section 7 for subsequent Operating Seasons. The invoices to P4 referred to in Section 6 of this Agreement shall contain the charges for any such services performed by WGI during the applicable calendar month. P4 must have given prior written approval and WGI must produce daily work sheets signed by a representative of P4 in support of such equipment rentals. After the 2001 Operating Season the list of equipment and prices set forth in Exhibit A shall be reviewed and adjusted annually by P4 and WGI. P4 shall have the right to audit the basis for any

adjustment under this Section 9.

10. Indemnification. WGI assumes full responsibility for, and shall indemnify and hold harmless P4, its past, present and future directors, officers, employees, agents and representatives and any other person or entity acting on P4's behalf, from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses (including, costs and expenses of defense, amounts paid in settlement and attorney's fees and expenses), whether the same are based in contract, warranty, negligence, strict liability, other tort or otherwise, in connection with, (a) any activity, duty or obligation of WGI under this Agreement (including, unlawful injury to, or adverse effect on wildlife, aquatic life or the environment) or (b) the failure of WGI to comply with and perform any of its duties or obligations under this Agreement; provided, that the foregoing provisions shall not apply with respect to any such liability, claim, demand, action, suite, loss, cost or expense caused solely by the negligence of P4. WGI, upon the request of P4, shall, at the expense of WGI, cause any claim, demand, action, suit, or proceeding (including, civil, criminal, administrative, investigative, governmental or otherwise) of whatsoever nature in connection with WGI's duty of indemnification hereunder to be defended on behalf of P4 by competent counsel.

11. Insurance.

(a) WGI shall obtain and maintain, at its expense, during the term of this Agreement, the following insurance in companies satisfactory to P4 and shall provide to P4 certificates of insurance satisfactory to P4 evidencing such prior to the commencement of any performance hereunder:

Coverage	Limits
(i) Workmen's Compensation	Statutory, and shall include a waiver of subrogation in favor of P4
(ii) Employer's Liability On an "occurrence" basis	\$1,000,000 each accident \$1,000,000 disease - each employee \$1,000,000 disease - policy limit
(iii) Commercial General Liability including Completed Operations, Contractual & Aggregate Limit Per Project On an "occurrence" basis	
Bodily Injury & Property Damage	\$2,000,000 each occurrence

Personal Injury	\$2,000,000 each occurrence
General Aggregate	\$2,000,000
Product & Completed Operations Aggregate	\$2,000,000

- (iv) Comprehensive or Commercial Automobile Liability including Nonowned & Hired Auto Bodily Injury & Property Damage On an "occurrence" basis \$1,000,000 each occurrence, combined single limit
- (v) Umbrella/Excess Liability on coverages (ii) through (iv), inclusive On a "claims made" basis with a three (3) year discovery period. \$10,000,000 each occurrence and annual aggregate

(b) P4 shall be named as an additional insured on each of these policies except for Workers Compensation and Employer's Liability, and all such insurance shall be primary relative to any and all other insurance of P4 with respect to any and all claims and demands made against P4.

(c) All insurance policies shall contain a provision that coverages afforded under the policies will not be canceled, not renewed, or materially altered until at least thirty (30) days prior written notice has been given to P4.

(d) The Commercial General Liability insurance specified in subparagraphs (iii) and (iv) above shall include coverage for all of Contractor's contractual liability under this Agreement with limits not less than those set forth in subparagraphs (ii), (iii), and (iv) above.

(e) The insurance in this Section 11 sets forth minimum amounts and coverage and is not to be construed as a limitation on WGI's liability under this Agreement.

12. Excuse of Performance.

(a) Performance may be suspended by either party in the event of: Act of God, riot, fire, explosion, storm, accident, flood, boycotts, act of public enemy, sabotage; lack of adequate fuel, power, raw materials, labor, containers, or transportation facilities; compliance with present or future governmental request, laws, regulations, orders or action (but not including WGI's compliance or failure to comply with any laws, regulation, order, action or request relating to safe practices, industrial hygiene or environmental controls, as described in the third sentence of Section 5 of this Agreement); breakage or failure of machinery or apparatus beyond the reasonable control

of such party; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of such party; or in the event of labor trouble, strike, lockout or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment); which event delays or makes impracticable the performance hereunder. The party affected shall exercise all due diligence to remedy such event as promptly as possible. If the party invoking this section fails to exercise such diligence, such party shall not be excused from its obligation of performance hereunder.

(b) P4 may, but shall not be obligated to, arrange for other parties to perform the Services, or any part thereof, during any period(s) when WGI is delayed or prevented from performance hereunder due to any of the events specified above. Any tonnage mined and delivered to the Plant by any such other party(ies) shall be included as part of the total tonnage mined and delivered under this Agreement for purposes of determining the applicable charges for quartzite delivered under this Agreement. No payment will be due or made to WGI, however, for any such tonnage mined by such other party(ies).

13. Termination.

(a) P4 may, without further demand or notice, terminate this Agreement without being subject to any liability or obligation for reimbursement of costs, and without prejudice to any rights of P4 at law or in equity then existing with respect thereto in the event that:

(i) WGI shall fail to perform any of the Services required hereunder within the term periods specified herein for reasons other than those which excuse WGI from its obligation of performance in accordance with the provisions of Section 12 of this Agreement, it being acknowledged by WGI that **TIME IS OF THE ESSENCE**, shall be in default with respect to any of its other duties or obligation under this Agreement and any such failure, inability or default continues for more than ten (10) days after notice thereof shall have been given by P4 to WGI; or

(ii) any proceedings shall be instituted by or against WGI under any bankruptcy or debtor relief laws, or in the event that WGI makes any assignment for the benefit of creditors.

(b) Termination without Cause. P4 shall have the right to terminate this Agreement effective as of December 31 of an Operating Season by giving WGI notice not later than September 1 prior to the December 31 termination date. In the event P4 terminates this agreement pursuant too this Section 13, P4 shall pay WGI and WGI shall substantiate, in such manner as may be required by P4, all actual costs incurred (at the P4 Quarry or the quartzite stockpile area at the Plant) for work performed to date of such termination, including the amount of any non-cancelable commitments, charges, and other costs incurred by WGI on account of such termination, including demobilization costs. P4 shall pay such substantiated cost to WGI pursuant to Section 6.

(c) Upon termination with cause, WGI agrees to lease, or sell all or any of its equipment described in Exhibit B attached hereto and made a part hereof and/or used in the performance of the Services, with critical spare parts in place, to such other party as may be designated by P4 from the date of termination for a period of time as required up to and including December 31, 2007. The selection of items of equipment and spare parts under this paragraph and the form of transaction with respect to each (i.e., lease or sale), shall be determined by the party designated by P4. The rental or selling price shall be as follows:

(i) The rental rates set forth in Exhibit B for those items listed in Exhibit B shall be firm for calendar year 2001. For purposes of this Agreement, WGI's 2001 standard cost for those items listed in Exhibit B shall be deemed to be the rental rates set forth in Exhibit B. The rental rates set forth in Exhibit B shall be escalated by the applicable percentage as calculated in accordance with Section 7 of this Agreement for those items listed in Exhibit B for the 2002 Operating Season and subsequent Operating Seasons.

The rental for items used by WGI in the performance of Services and not listed on Exhibit B will be WGI's standard rental rate for the Operating Season in which such items were added to the operation. Such rental rates shall be escalated by the applicable percentage calculated in accordance with paragraph 7 in this Agreement; provided that such adjustment for each item of equipment shall be based on comparison of Unit Costs as of the first day of the Operating Season in which such item was added to the operation to Unit Costs as of the first day of the Operating Season for which the adjustment is being determined. These costs are subject to P4's audit under this Agreement.

(ii) The selling price for equipment described in Exhibit B and/or used in the performance of the Services shall be 95% of market value as the effective date of termination, as determined no later than forty-five (45) days after such date by two independent recognized professional appraisers agreed upon jointly by WGI and the party designated by P4. In the event that the appraisers cannot agree upon an appraisal, the average of their respective appraisals shall be deemed to be such market value. The cost of the appraisers is to be borne equally between WGI and the designated party. The determination of market values pursuant to this sub-paragraph shall be binding and conclusive upon all parties.

(d) WGI shall remove its equipment from the Quarry site no later than sixty (60) days after the effective date of termination with respect to any equipment not rented or sold to the party designated by P4.

14. Liens. WGI shall not directly or indirectly create, assume, suffer or permit to exist any mortgage, lien, charge or encumbrance on, pledge of or security interest of any kind or character in any of P4's property, whether real, personal or mixed, or any part thereof,

or ally interest therein, nor take, nor permit to be taken, any action or permit any omission, that might result in a mortgage, lien, charge, encumbrance, pledge or security interest on the same. In addition to all of P4's other rights, and notwithstanding any other provision of this Agreement, WGI shall indemnify and hold P4 harmless from any and all such liens, claims, charges, encumbrances, mortgages and security interests, including, without limitation, any amounts paid in settlement, attorney's fees and expenses, and costs and expenses of defense by counsel selected by and under the exclusive direction of P4.

15. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if delivered in person or if deposited in the United States mail, postage prepaid for mailing by registered or certified mail, addressed as follows:

If to P4,
addressed to:
P4 Production LLC
P.O. Box 816
Soda Springs, Idaho 83276
Attention: Plant Manager

If to WGI,
addressed to:
Washington Group International, Inc.
91 South Main
Soda Springs, Idaho 83276
Attention: Operation Manager

or to such other address as may be specified from time to time in a written notice given by such party. Both parties agree to acknowledge in writing the receipt of any notice delivered in person.

16. Independent Contractor. WGI is and shall always remain an independent contractor in its performance of this Agreement. The provisions of this Agreement shall not be construed as authorizing or reserving to P4 any right to exercise any control or direction over the operations or activities of WGI in connection with this Agreement, it being understood and agreed that the entire control and discretion of such operations and activities shall remain with WGI. Neither party to this Agreement shall have any authority to employ any person as agent or employee for or on behalf of the other party for any purpose, and neither party to this Agreement nor any other person performing any duties or engaging in any work at the request of such party shall be deemed to be an employee or agent of the other party to this Agreement.

17. Confidential Information. WGI shall treat as P4's confidential property and not use or disclose to others during or subsequent to the term of this Agreement, any information (including, without limitation, any technical information, experience or data) regarding P4's plans, programs, plants, processes, product, costs, equipment, operations or customers which may come within the knowledge of WGI or its employees, agents, representatives, or, subject to paragraph 18, assigns or subcontractors, in the performance hereof or which may be developed by WGI in the course of performance hereof without in each instance securing the prior written consent of P4. Nothing herein, however, shall prevent WGI from disclosing to others or using in any manner information that WGI can

prove:

(a) has been published and has become part of the public domain other than by acts or omissions of WGI or its employees, or

(b) has been furnished or made known to WGI by third parties (other than those acting for or on behalf of P4) as a matter of right and without restriction on disclosure, or

(c) was in WGI's possession at the time it entered into this or any other prior Agreement and which was not acquired by WGI directly or indirectly from P4, its employees or its agents.

WGI shall disclose information regarding this Agreement only to those of its employees who have a need to know and are directly connected with the performance hereof, and shall also, upon request by P4, cause such persons involved in the performance hereof as P4 designates to sign individual secrecy agreements in a form satisfactory to P4.

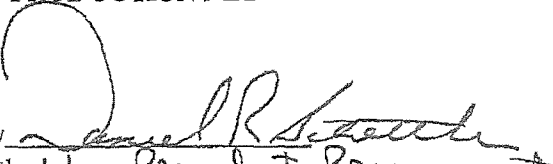
18. Assignment. This Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, however, that WGI may not assign or otherwise transfer its rights or subcontract or otherwise delegate its performances hereunder (whether voluntarily or involuntarily or by operation of law or otherwise) without prior written consent of P4, and any assignment, transfer, subcontracting or delegation without such consent shall, at P4's election, be void. Subcontracting or supply arrangements with affiliates of WGI shall be based on arm's length transactions, except that P4 shall be given the full benefit of any reduction in such terms which may result from an affiliate's association with WGI.

19. Miscellaneous. The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Idaho. This Agreement constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement; and all prior negotiations, dealings, understanding and agreements, whether oral or written, are hereby superseded and merged into this Agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms and conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of purchase order, shipping instructions or other forms containing terms or conditions at variance with or in addition to those set forth herein. If any term or provision of this Agreement or any application thereof shall be determined to be invalid or unenforceable, the remainder of this Agreement or any other application of such term shall not be affected thereby. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing,

shall be deemed to constitute a continuing waiver by any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. The section headings in this Agreement, are inserted for convenience only and are in no way to be construed as part of this Agreement or a limitation of the scope of the particular sections to which they refer. The provisions of Section 5, 7(d), 7(e), 10, 13, 17, and 18 shall survive the expiration or any termination of this Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

P4 PRODUCTION LLC

By 
Title Vice President - Procurement

and

WGI, INC.

By 
Title OPERATION MANAGER

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EXHIBIT "A"

EQUIPMENT RENTAL RATES* INCLUDING OPERATOR AND FUEL FOR
CALENDAR YEAR 2001

Crawler Tractors:	per hour
International TD 25 Dozer w/ Ripper	\$121.30
CAT D-9 Dozer w/o Ripper	\$124.32
CAT D-9 Dozer w/ Ripper	\$130.40
CAT D-8 Dozer w/ Ripper	\$106.15
CAT D-6 Dozer w/o Ripper	\$90.96
Loaders and Backhoes:	
International H-400 10 CY Loader	\$174.58
CAT 992 13 CY Loader	\$256.53
CAT 988 6.5CY Loader	\$116.72
John Deere Backhoe	\$48.53
Atlas Backhoe	\$80.34
Rubber Tired Dozers:	
CAT 834 Wheeled Dozer	\$121.30
CAT 824 Wheeled Dozer	\$112.20
Other Equipment	
CAT 14 Patrol	\$62.17
50 Ton Haul Truck	\$163.35
Water Truck 3000 Gal. Capacity	\$57.59
IR Air Trac Drill w/ Compressor	\$242.57

*Rental rates are for the equipment listed or similar equivalent units. The rental rates above represent rental rates for the equipment listed with operator, fuel, lubricants, etc. All rates are per hour except as otherwise indicated.

EXHIBIT "B"

EQUIPMENT LEASE/RENTAL RATES*
FOR CALENDAR YEAR 2001

Crusher Plant No. 1 (Primary)	\$125.83
Crusher Plant No. IA (SeWGIry)	\$503.32
Crawler Tractors:	
International TD 25 Dozer w/ Ripper	\$81.70
CAT D-9 Dozer w/o Ripper	\$83.89
CAT D-9 Dozer w/ Ripper	\$89.88
CAT D-6 Dozer w/o Ripper	\$59.92
Loaders and Backhoes:	
International H-400 10CY Loader	\$125.83
CAT 992 13CY Loader	\$200.74
CAT 988 6.5CY Loader	\$83.89
Other Equipment:	
CAT 14 Patrol	\$47.94
50 Ton Haul Truck	\$119.85
Water Truck 3000 Gal Capacity	\$29.97
IR Air Track Drill	\$35.94
Compressor	\$71.91
Powder Magazine	\$179.77 per month
Office Trailer	\$179.77 per month
Shop	\$359.52 per month
Welders	\$9.56
Pickup Trucks	\$6.00

*The rental rates above represent rental rates for the equipment listed without operator, fuel, or other lubricants. All rental rates are per hour except as otherwise indicated. Rental rates are for the equipment listed or similar equivalent units.

ORIGINAL

CONFIDENTIAL

ADDENDUM TO
QUARTZITE AGREEMENT

THIS ADDENDUM ("Addendum") is intended supplement, and, where applicable, amend the provisions of the Quartzite Agreement by and between P4 Production LLC ("P4") and Washington Group International, Inc. ("Washington") successor to and doing business as Conda Mining, Inc., dated September 24, 2001. The term "Agreement" shall mean the aforesaid Quartzite Agreement as amended and modified by this Addendum. In the event of any conflict, inconsistency, or ambiguity between the terms and provisions of this Addendum and those of the Agreement, the terms and provisions of this Addendum shall govern. Any references below to sections, paragraphs, and subparagraphs refer to the sections, paragraphs, and subparagraphs of the Agreement. Capitalized terms used but not defined in this Addendum shall have the meaning provided in the Agreement as originally written.

The following shall be added after section "19 Miscellaneous."

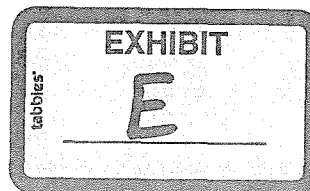
23. Silica Sand Processing Facility.

(a) Location. During the term of this Agreement Washington may construct, maintain, and operate a silica sand processing facility (the "Facility") on behalf of Silicon International Ore, LLC ("SIO"). The Facility is to be located at the Northeast corner of P4's property at the Quarry as more specifically identified on Addendum Exhibit 1, attached hereto and incorporated herein by this reference (the "Facility Site"). The Facility shall be used solely to process and bag silica sand obtained from the product of the sand screw currently being used in the reject circuit, or reject sand stockpile, at the Plant and for no other purpose.

(b) Facility Construction. Washington shall be responsible for all fees, taxes, utilities, costs, and expenses to manage, construct, maintain, insure, and operate the Facility. P4 shall, however, have the right to review and approve all equipment and buildings that will be operated or constructed at the Facility Site. Washington shall obtain such review and approval in writing from P4 prior to the commencement of any construction or the installation of any equipment. Upon termination of the Agreement, Washington shall remove all equipment and buildings from P4's property within 120 days unless P4 agrees to purchase such equipment or buildings from SIO.

(c) Operating Hours. The facility shall operate during the normal business/operating hours of the Quarry and Plant. The Facility may, however, operate on a year-round basis, provided Washington pays any excess costs incurred by P4 that are attributable to the operation of the Facility. P4 and Washington shall meet and discuss any such excess costs as soon as either party becomes aware that they will be incurred. In any event, P4 shall not be required to subsidize the year-round operation Facility.

(d) Royalty. Washington shall pay a royalty to P4 per ton of finished silica sand product sold by SIO according to Appendix A, which shall be updated by mutual agreement annually or when a new product/market is identified. Title to silica sand sold by SIO shall pass directly from P4 to SIO upon processing by the Facility, subject to payment of royalty hereunder. In addition, Washington shall pay a mutually agreed royalty to P4 for finished silica sand product used by Washington in activity unrelated to the Plant. A copy of the initial agreed to royalties is attached hereto as Appendix A. Washington shall be responsible for keeping track of and accounting to P4 for all silica sand sold/used. Within thirty (30) days after the end of each calendar month during the



term of this Agreement, Washington shall pay to P4 all royalties due under this Agreement. Washington shall keep for two (2) years from the date of payment of royalties hereunder complete and accurate records in sufficient detail to allow the royalties accruing hereunder to be determined accurately. P4 shall have the right for two (2) years after receiving any report or statement with respect to royalties due and payable hereunder to appoint at its expense an independent certified public accountant to inspect the relevant records to verify such report or statement. If P4's inspection discloses an error (against P4) of ten percent (10%) or more in the calculation of royalties due P4, then Washington shall pay P4 1.5 times the amount of such error plus P4's cost to have the independent certified public accountant inspect the relevant records to verify Washington's report or statement.

(e) Indemnity. Washington's obligations under Section 12 (Indemnification) and Section 13 (Insurance) of this Agreement shall extend to and include any activity, duty or obligation related to the Facility and the handling, sale, or delivery of the silica sand by Washington, Washington's customers, or any third party, as long as Washington operates the Facility.

(f) Third Party Contracts. Washington anticipates entering into one or more contracts with Silicon International Ore, LLC ("SIO") related to the financing, construction, operation and ownership of the equipment and building for the silica sand processing facility, as well as payment of the royalty for the processed silica sand. Any such contracts shall require SIO to enter into a secrecy agreement as provided by Section 20 of this Agreement. Further, SIO shall be required to indemnify, hold harmless, and defend P4 from and against any and all claims, demands, actions, suits, losses, damages, costs and expenses from any SIO employees or third party involved in the processing, handling, sale, or delivery of the processed silica sand and SIO shall name P4 as an additional insured on any policy of insurance related to the Facility or its operation. SIO shall be required to keep records and allow inspection thereof by P4's accountant in accordance with the requirements of paragraph (d) above.

All other provisions in this Agreement, to the extent consistent with the foregoing Addendum, are hereby ratified, and shall remain unchanged.


IN WITNESS WHEREOF, the Parties hereto have executed this Addendum as of the 1st day of March 2002.

P4 PRODUCTION LLC

By: 

Title: V.P. P4 LLC

WASHINGTON GROUP INTERNATIONAL, INC.;

By: 

Title: OPERATIONS MANAGER

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ROYALTIES

<u>Product</u>	<u>Nominal Size</u>	<u>Market</u>	<u>Volume</u>	<u>SIO Price \$/ton FOB Soda Springs</u>	<u>SIO Price \$/ton Delivered</u>	<u>Monsanto Royalty</u>
Oversize	-1/4 X +10m	Developing	250+ tpm	\$20.00	\$37.00	\$3.00
Refractory Brick	-1/4 X +10m	Utah Refractories	500 tpm	\$13.00	\$30.00	\$3.00
Traction Sand	-10m X +25M	UTA	<10 tpm	\$70.00	\$90.00	\$6.50
Conductivity (Grout)	-25m	GEO Pro	150 tpm	\$76.00	\$115.00	\$6.00
Fiberglass	-25m	Owens Corning	200 tpm	\$27.50	\$47.50	\$3.25
Foundry	-25m	Porter Warner	50 tpm	\$40.00	\$65.00	\$6.00
Sand Blasting	30m X 50m	Blast Spray	50 tpm	\$48.00	\$68.00	\$3.50
Wet Jet Media	-25 m X +80m	Numerous	100 tpm	\$150.00	\$195.00	\$13.00

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P4 PRODUCTION LLC

By: *Bruce Z. Gallante*
 Title: VP P4 LLC

WASHINGTON GROUP INTERNATIONAL

By: *John P. [Signature]*
 Title: OPERATIONS MANAGER

Appendix A
Addendum to Quartzite Agreement

This Appendix A to the Addendum to the Quartzite Agreement establishes the following effective September 1, 2003:

Approved (Sand) Products

- Traction Sand (Light and Heavy Rail)
- Conductivity (Grout)
- Asphalt
- Fiberglass
- Sand Blasting
- Recreation Sand (Volleyball Courts, Tennis Courts, etc.)
- Play Sand
- Golf Course
- Stucco
- Foundry
- Oversize
- Refractory Brick
- Water Jet Media
- Synthetic Turf Sand

New Markets – SIO must receive written approval from Monsanto prior to selling into any new market not specifically outlined above.

Volumes – Monsanto will make available sufficient feed sand to allow SIO to sell up to 25,000 tons per year of product sand into the above markets as can be processed as currently permitted by the Addendum, operating permits and facility capabilities (e.g. equipment, water, power, etc.). (Note: this volume equates to about a 50% annual growth rate of SIO products from 2003 to 2007).

Royalties – Beginning September 1, 2003; royalties will be paid to Monsanto as follows (on a per ton of finished silica sand product basis):

September 1, 2003	to	December 31, 2003	\$3.35/ton
January 1, 2004	to	December 31, 2004	\$3.45/ton
January 1, 2005	to	December 31, 2005	\$3.55/ton
January 1, 2006	to	December 31, 2006	\$3.65/ton
January 1, 2007	to	December 31, 2007	\$3.75/ton

Approvals

P4 Production LLC

By: *David Gallante*
Title: V.P. P4 L.L.C.

Washington Group International

By: *John R. Robson*
Title: OPERATIONS MANAGER

Transcript of the Testimony of **James R. Smith**

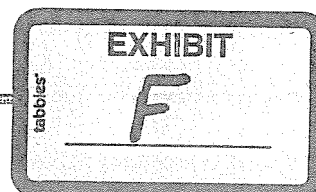
Date: April 7, 2011

Volume: I

Case: SILICON INTERNATIONAL ORE vs. MONSANTO COMPANY

Printed On: April 29, 2011

T&T Reporting
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Email: tantreport@ida.net
Internet: TandTReport@ida.net



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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC, an Idaho limited liability company, Plaintiff, vs. MONSANTO COMPANY, a Delaware corporation; and WASHINGTON GROUP INTERNATIONAL, INC., an Ohio corporation, Defendants.

DEPOSITION OF JAMES R. SMITH Thursday, April 7, 2011, 9:00 a.m. Pocatello, Idaho

Sandra D. Terrill, RFR, CSR

EXAMINATION

JAMES R. SMITH Page BY MR. BROUGH... 6 BY MR. RITTI... 179 BY MR. BROUGH... 185

DEPOSITION OF JAMES R. SMITH

BE IT REMEMBERED that the deposition of James R. Smith was taken by the attorney for the plaintiff at the office of Racine Olson Nye Budge & Bailey, Chtd., located at 201 East Center, Pocatello, Idaho, before Sandra D. Terrill, Court Reporter and Notary Public, in and for the State of Idaho, on Thursday, April 7, 2011, commencing at the hour of 9:00 a.m., in the above-entitled matter.

APPEARANCES

For the Plaintiff: BENNETT TUELLER JOHNSON & DEERE BY: DANIEL K. BROUGH 3165 East Millrock Drive, Suite 500 Salt Lake City, Utah 84121 (801) 438-2000 For Monsanto Company: RACINE OLSON NYE BUDGE & BAILEY, CHTD. BY: RANDALL C. BUDGE 201 East Center Post Office Box 1391 Pocatello, Idaho 83204-1391 (208) 232-6101 For Washington Group International: HAWLEY TROXELL ENNIS & HAWLEY, LLP BY: EUGENE A. RITTI 877 Main Street, Suite 1000 Post Office Box 1617 Boise, Idaho 83701-1617 (208) 388-4837

EXHIBITS

No. Page 1. Notice of Deposition Pursuant to Idaho ... Rule of Civil Procedure 30(b)(6) 6 2. Notice of Deposition for Jim Smith... 7 5. Defendant Monsanto Company's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents 35 6. Defendant Monsanto Company's First Supplemental Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents 36 7. Defendant Monsanto Company's Second Supplemental Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents 37 8. Affidavit of James R. Smith... 165 16. Letter from Sullivan, 06/18/03... 127 21. E-mail Chain... 143 22. E-mail Chain... 147 23. E-mail Chain... 150 25. Quartzite Agreement... 67 27. Quartzite Requirements Contract... 131 28. Quartzite Requirements Contract... 134 29. Addendum to Quartzite Agreement... 73 30. Addendum to Quartzite Agreement... 107 31. Master Agreement... 107 32. Confidentiality Agreement... 110 33. Confidentiality Agreement... 111 34. Confidentiality Agreement... 114 35. Quartzite Agreement... 82 36. Addendum to Quartzite Agreement... 85 37. Addendum to Quartzite Agreement... 116 38. Criteria for Access to Monsanto's Quarry... 135 39. Appendix A... 156 40. Memo to Krall from Wendell, 12/03/07... 159 43. Letter to Rosenbaum from Smith, 12/02/02... 160 44. Fax to Smith from Sullivan, 10/31/02... 140 45. Correlation Meeting, 03/07/02... 141 46. Notes of Phone Conversation... 162

1 (The deposition proceeded at 9:04 a.m.
 2 as follows:)
 3 James R. Smith,
 4 produced as a witness at the instance of the
 5 plaintiff, having been first duly sworn, was examined
 6 and testified as follows:
 7 MR. BROUGH: Just for the record so that
 8 we're all on the same page as far as exhibits, for
 9 the deposition today and the two tomorrow I've
 10 numbered all of the exhibits for the Monsanto
 11 depositions sequentially, so as we enter them and
 12 number them, I might be skipping around. But,
 13 hopefully, by the end of tomorrow we'll have all 48
 14 in. Does that sound okay?
 15 MR. BUDGE: That's fine. You bet. Okay.
 16 MR. BROUGH: I tried to make it a little less
 17 complex than it could be.
 18 MR. BUDGE: And I know, Dan, listed at the
 19 very beginning of that last deposition there was some
 20 confusion over the stipulation, but at least on
 21 behalf of Monsanto, we would waive any objection for
 22 purposes of the deposition and simply reserve them
 23 until time of trial or later date if the deposition
 24 was an issue.
 25 MR. BROUGH: okay.

1 to make clear, is it your understanding that you're
 2 appearing today on behalf of Monsanto pursuant to
 3 this notice of deposition?
 4 A. I am -- my attorney's explained to me
 5 that I am the company designee, yes.
 6 MR. BROUGH: Okay. Very good. I have a
 7 second exhibit that we'll have marked as Exhibit *-2.
 8 (Exhibit *-2 marked.)
 9 Q. BY MR. BROUGH: Have you seen that
 10 notice of deposition before?
 11 A. Not that I recall. It's possible.
 12 There have been a lot of documents, but I don't
 13 recall this.
 14 Q. I'll represent to you that this is a
 15 notice of your deposition personally and just want to
 16 make clear that it's your understanding that you're
 17 appearing today, not only on behalf of Monsanto, but
 18 in your personal capacity. Is that your
 19 understanding too?
 20 A. Yes, sir, that is.
 21 Q. Have you ever had your deposition taken
 22 before, Mr. Smith?
 23 A. I have.
 24 Q. On what occasions?
 25 A. I have given depositions in two

1 MR. BUDGE: Except as to the form of the
 2 question.
 3 MR. BROUGH: I'm sure if I ask something
 4 objectionable, you'll let me know.
 5 MR. RITTI: Can we have the same agreement
 6 too that if one of us objects, the other one is
 7 deemed to have joined in just so that we can speed
 8 things along.
 9 MR. BROUGH: Sure. That's fine with me.
 10 MR. BUDGE: Sure. We'd so stipulate.
 11
 12 EXAMINATION
 13 BY MR. BROUGH:
 14 Q. Mr. Smith, thank you for appearing at
 15 the deposition today.
 16 A. Yes, sir.
 17 MR. BROUGH: I'm going to start with just a
 18 few preliminary exhibits. I'm going to show you an
 19 exhibit that we'll have marked as Exhibit *-1.
 20 (Exhibit *-1 marked.)
 21 Q. BY MR. BROUGH: Mr. Smith, have you seen
 22 this notice before?
 23 A. I have seen Exhibit *-A. It's possible
 24 I've seen the other stuff. I don't recall.
 25 Q. Okay. That's fair enough. I just want

1 additional cases that I recall.
 2 Q. What was the date, approximately, if you
 3 remember, of the first time you had your deposition
 4 taken?
 5 A. Sorry.
 6 Q. That's okay. Was it a while ago?
 7 A. You know, if you had a document or some
 8 paperwork -- I'm sure some exists that we could do
 9 it, but --
 10 Q. Yeah.
 11 A. Within ten years?
 12 Q. Okay. Well, that's fair.
 13 A. Yeah. Subject to check and --
 14 Q. Yeah. No. I understand.
 15 Do you remember approximately what the
 16 subject matter of the case was that you gave your
 17 deposition in?
 18 A. As I answered earlier, there were two
 19 cases.
 20 Q. Okay.
 21 A. Yes.
 22 Q. I'm sorry. Talking about the first one.
 23 A. Yes, sir.
 24 Q. Do you remember what the subject of that
 25 first deposition was?

1 A. Yes, I do.
 2 Q. What was it?
 3 A. It was a case involving a disagreement
 4 between Monsanto and Utah Power or Pacific Corp.
 5 regarding the termination date of a contract.
 6 Q. And who were the parties in that first
 7 case in which you gave your deposition?
 8 A. Monsanto. Solutia and P4 are somewhat
 9 tied to Monsanto. I don't recall the exact date so
 10 it's hard for me to recall the exact entities, but it
 11 would have been our facility at Soda Springs, which
 12 is currently a Monsanto facility.
 13 Q. And who is the other party you
 14 mentioned, a utility company?
 15 A. Yes. That was Pacific Corp., who's also
 16 gone under numerous names: Utah Power, Rocky
 17 Mountain Power. I don't remember at the time which
 18 name they were using at that point. Sorry.
 19 Q. I'll just call them the Monsanto
 20 entities, Monsanto, P4, Solutia. Were they
 21 plaintiffs or defendants; do you remember?
 22 A. I'm not sure.
 23 Q. Let's talk about the second time you've
 24 given your deposition. Do you remember when that
 25 was?

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1 case, do you remember where that was filed?
 2 A. It was tried in state court in Missouri.
 3 Q. Were there any other times where you've
 4 given a deposition other than what you just
 5 mentioned?
 6 A. No, sir, I don't believe so.
 7 Q. It sounds like you've had some
 8 experience in depositions then. Let me just go
 9 through kind of a few guidelines that I hope will
 10 make the process a little bit easier. And if you
 11 have any questions, feel free to ask me or your
 12 attorney.
 13 First, as you see, we have a court
 14 reporter here who is taking down a record. It's
 15 going to produce a transcript and it's going to read
 16 like one of those Shakespeare plays. Hopefully, not
 17 quite as dramatic. But it will help if we don't talk
 18 over one another, because that will make it a cleaner
 19 record.
 20 If you don't understand a question that
 21 I ask, feel free to have me clarify it. I have no
 22 intention of being tricky or hiding the ball or
 23 anything like that. But if you answer a question,
 24 I'll assume that you did understand it. If you need
 25 a break at any time, that's just fine with me. Just

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1 A. It was in -- there were a matter of
 2 three days over a period of two years. I don't
 3 recall the dates. But there were a matter of three
 4 days that I gave depositions on a case, yes.
 5 Q. Was it within the last five years,
 6 approximately?
 7 A. Yes.
 8 Q. And do you remember the parties to that
 9 specific case?
 10 A. Yes, sir, I do.
 11 Q. And who were they?
 12 A. A company called ConocoPhillips, who
 13 also has -- who had a facility -- a coking facility
 14 in Santa Maria, California, that had gone under
 15 different names, so there were different names
 16 associated with that. But ConocoPhillips was the
 17 party, and Monsanto and P4 were the entities that I
 18 represented.
 19 Q. Do you remember -- I'm sorry to skip
 20 around. Going back to the first case, do you
 21 remember where that case was pending or filed?
 22 A. I'm not an attorney but it was federal
 23 court and it was tried here in Pocatello. I don't
 24 know what region that makes it. I'm sorry.
 25 Q. That's fine. And how about the second

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1 let me know. And if there's a question pending, I'll
 2 have you answer that question, but after that, that's
 3 fine with me if you need to take a break.
 4 As far as answers, oftentimes when we
 5 talk, an umm or a nod is perfectly fine and
 6 understandable. But for purposes of our reporter,
 7 she'll appreciate it if you answer with a yes or a
 8 no. That will just make it easier.
 9 You'll have the opportunity to review
 10 the deposition transcript when you're done. You'll
 11 also have the opportunity to make any changes to it
 12 if you wish. Please keep in mind that if you do
 13 decide to make changes to your answers, we will have
 14 the opportunity to draw negative inferences from any
 15 change in your answers that you make.
 16 And during the course of the
 17 objection -- I'm sorry -- during the course of the
 18 deposition your counsel may make some objections.
 19 Unless you're instructed otherwise, you'll still need
 20 to answer the question despite the objection.
 21 Do you have any questions before we --
 22 A. No, sir, not at this time.
 23 Q. Okay. Did you review anything to
 24 prepare for the deposition today?
 25 A. I reviewed some documents at a high

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1 level.

2 Q. Okay. What do you mean by documents at

3 a high level?

4 A. Documents that I believe -- contracts,

5 e-mails.

6 Q. Do you remember which contracts you

7 reviewed?

8 A. Again, at a very high level. I looked

9 at the WGI contract between Monsanto or P4. I don't

10 recall the -- it was probably P4 and --

11 Q. Okay. Clarify for me what you mean by

12 review at a high level. Do you mean just kind of

13 skimmed through and looked at them?

14 A. Skimming through would be inaccurate.

15 Q. Did you speak with anybody other than

16 your attorneys in preparing for your deposition

17 today?

18 A. Did I speak with anybody? I speak with

19 everybody all the time.

20 Q. I mean, specifically in preparation for

21 the deposition.

22 A. In preparation for -- no, sir. I

23 informed Monsanto management that I was going to be

24 in a deposition.

25 Q. Okay.

1 offices.

2 Q. Did you speak with Kevin Lawrence or

3 just with Helen Smith?

4 A. Just with Helen Smith.

5 Q. And what did you talk about with her

6 about the deposition today?

7 A. That I would be in depositions today.

8 Q. Okay. Anything else? Nothing about

9 substance or preparation for reviewing facts or

10 issues or anything like that?

11 A. I mentioned that I was reviewing

12 documents and that I would be in a deposition.

13 Q. Let's talk about your job history with

14 Monsanto. Do you remember the date on which you

15 started work for Monsanto?

16 A. That's actually one day that I do

17 remember. I started on my birthday, November 21st --

18 if I can get the right year -- 1988.

19 Q. Okay. Your birthday would be an easy

20 day to remember.

21 A. Yes, it was.

22 Q. What was your job title when you started

23 with Monsanto?

24 A. I began my work at Monsanto as a cost

25 accountant.

1 A. And I reviewed some papers. I think

2 Mr. Farnsworth was in a room once when I was

3 reviewing them.

4 Q. Okay. Did you talk with Mr. Farnsworth

5 about the deposition today?

6 A. In terms of is there a deposition, yes.

7 Q. Anything else you discussed with him?

8 A. In terms of what a deposition is, yes.

9 Q. Okay. Anything else you spoke about

10 with Mr. Farnsworth about the deposition today?

11 A. Those are generally my thoughts on what

12 I talked to him about.

13 Q. When you spoke with Monsanto management

14 about the deposition today, who did you speak with?

15 A. My boss. I think I mentioned to my

16 in-house attorney that there was a deposition. My

17 admin discussed as we tried to schedule things around

18 that. I think I even mentioned it in my staff

19 meeting, telling folks where I would be.

20 Q. Okay. When you spoke with your boss,

21 who is that?

22 A. I report directly to Helen Smith, who is

23 the -- works at the Soda Springs facility.

24 I have a dotted line report to a

25 Mr. Kevin Lawrence, who works out of our corporate

1 Q. What were your job responsibilities?

2 Was it a cost accountant?

3 A. Yes, sir.

4 Q. What were your job responsibilities in

5 that position?

6 A. I was responsible for accounting for and

7 analyzing costs associated with the furnace area, the

8 phosphorus furnaces at the Soda Springs plant.

9 Q. And when you say the Soda Springs mine,

10 are you talking about the --

11 A. I didn't say mine. Soda Springs plant.

12 Q. I'm sorry. When you talk about the Soda

13 Springs plant, are you talking about the -- well,

14 tell me, what is the Soda Springs plant?

15 A. At the Soda Springs plant located just

16 north of the Soda Springs -- town of Soda Springs,

17 it's a facility wherein elemental phosphorus is

18 produced.

19 Q. And so your job responsibilities as a --

20 remind me of the title. I'm sorry.

21 A. It was cost accountant.

22 Q. -- cost accountant, they involved that

23 plant?

24 A. Yes, sir.

25 Q. How long did you work in that capacity

1 for Monsanto?
 2 A. There are documents that exist that pin
 3 that down, but I don't have them in front of me. So
 4 the best of my recollection, three or four years.
 5 Q. When you stopped in that position, did
 6 you continue your employment with Monsanto?
 7 A. Yes.
 8 Q. And what was your new job title after
 9 that?
 10 A. I had additional accounting
 11 responsibilities at the site.
 12 Q. Did your job title change?
 13 A. You know, our HR department has fancy
 14 titles that they assign to each promotion. I don't
 15 pay a whole lot of attention to those. I think I got
 16 some extra money and I got more responsibility.
 17 Q. How did your responsibilities change?
 18 A. Additional accounting and reporting
 19 responsibilities at the plant. A certain amount of
 20 accounting work that must be done, and I had part of
 21 it when I started and I got more of it as I was
 22 promoted.
 23 Q. And I suppose -- and I know you said you
 24 don't remember the exact date, but you started in
 25 1988. You had this promotion about four years in, I

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1 A. I had various adjustments in my
 2 responsibilities and various job titles until
 3 approximately 1999, at which time roughly -- at which
 4 time I was -- in that period of time I was given the
 5 responsibility for the purchasing department at
 6 Monsanto. So I had various changes up to that point.
 7 The general role that I am in today, I took over
 8 roughly in that 1999 type timetable.
 9 Q. So the role that you took over in about
 10 1999 is the same role that you have today?
 11 A. Yes, sir. Some of the duties and
 12 responsibilities have changed. But, in essence, it's
 13 a similar role.
 14 Q. Tell me about your job responsibilities
 15 as of the start of your time as a plant -- plant
 16 manager, did I get that?
 17 A. No, sir. I'm the purchasing --
 18 Q. Purchasing.
 19 A. -- lead at that Soda Springs plant.
 20 Q. Okay. Tell me about your job
 21 responsibilities when you started in that role in
 22 about 1999.
 23 A. As the purchasing lead I became
 24 responsible for the procurement of items for the Soda
 25 Springs facility and, in addition, the Rock Springs

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1 thought you said?
 2 A. I'm being -- as I indicated to you, I
 3 don't have the documents in front of me. This is my
 4 best memory. It was probably three or four years is,
 5 I think, my answer.
 6 Q. Okay. So that would put it -- and I
 7 understand approximately --
 8 A. Yes, sir.
 9 Q. -- in 1992 or 1993 you had the job
 10 change?
 11 A. Yeah.
 12 Q. Okay.
 13 A. Well, yeah, '91, '92, something probably
 14 like that.
 15 Q. And as we go forward in the deposition,
 16 if you don't remember something, I will understand
 17 that that is your answer, and that's a perfectly
 18 acceptable answer.
 19 A. I'm sorry. I didn't necessarily prepare
 20 with all the dates of all my title changes and job
 21 responsibility changes.
 22 Q. Understood. Understood.
 23 what happened next at Monsanto after you
 24 had that job position? Did you keep that or did
 25 you --

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1 coker that we had. That includes the procurement of
 2 items as well as contracting with contractors to
 3 perform services at the plant. I also had
 4 responsibility for by-product sales. I had
 5 managerial responsibility for several employees that
 6 worked for me. I have responsibility for the
 7 Monsanto storeroom and I have various responsibility
 8 for inventories at the plant. That's at a high
 9 level.
 10 Q. Understood. Let's break those
 11 responsibilities down to help me understand what they
 12 actually are.
 13 when you talk about procuring items,
 14 what type of items would you get on behalf
 15 of Monsanto?
 16 A. Items necessary to run the operation of
 17 the Soda Springs plant.
 18 Q. Okay. Can you give me some examples of
 19 what those items might be.
 20 A. Nuts and bolts.
 21 Q. Okay.
 22 A. Protective clothing, paper, pencils, raw
 23 materials. The whole gamut fell under my
 24 responsibility. I have employees that I assign out
 25 the various responsibilities, but that all fell under

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1 my responsibility.
 2 Q. Would the items that you would procure,
 3 would they be as large as heavy equipment, anything
 4 -- is it anything that would be used on the --
 5 A. Yes, sir.
 6 Q. Okay. And did you do that for both the
 7 Soda Springs and the Rock Springs coking?
 8 A. The Soda Springs plant, yes. At the
 9 coker in Wyoming we have a site manager and an
 10 engineering employee there. The remainder of the
 11 responsibilities for that facility fall to an
 12 independent contractor. There are -- most of the
 13 day-to-day stuff, the independent contractor would
 14 take care of the procurement for.
 15 The larger, maybe facilities-related
 16 things, we would either handle or help them handle.
 17 Q. And who is the independent contractor
 18 that worked at the Rock Springs coker?
 19 A. It's a company called Degerstrom
 20 Converters.
 21 Q. So is there anything else that you did
 22 in connection with your procuring of items for
 23 Monsanto?
 24 A. Anything else that I did? Can you be
 25 more specific?

1 Q. Well, okay. We've talked about how you
 2 purchased things for Monsanto's work on the Soda
 3 Springs plant, and to a different extent the Rock
 4 Springs coker. Did you have authority to enter into
 5 contracts on behalf of Monsanto?
 6 A. I do.
 7 Q. Did you in 1999?
 8 A. Did I enter into contracts? Well, first
 9 of all, roughly 1999. I don't have -- I could have
 10 brought that, had you requested, but I don't have
 11 that, so that's my best guess at the time. I had
 12 authority to contract under a certain delegation of
 13 authority that is prepared by our company. So items
 14 that fell under that delegation of authority, I had
 15 responsibility for signing. Anything that was above
 16 that, I would have been involved in preparing
 17 agreements, but I would not have had the authority to
 18 enter into those without additional approvals.
 19 Q. And has your authority in that regard
 20 been the same since approximately 1999 until today?
 21 A. There have been changes in the
 22 delegation of authority. My authority has been
 23 generally the same, but there have been changes that
 24 have occurred over that period of time.
 25 Q. What type of changes have occurred over

1 that period of time?
 2 A. They periodically -- management
 3 periodically reviews it and may tighten or loosen
 4 authority levels or limits.
 5 Q. You mentioned that you ran a storehouse.
 6 Did I --
 7 A. Monsanto has a storeroom, which is
 8 basically a warehouse.
 9 Q. And what did you do to manage that
 10 storeroom?
 11 A. The storeroom has parts and material
 12 necessary for operating the plant. Those parts and
 13 equipment need to be taken care of. New ones need to
 14 be purchased when items are issued. Some items need
 15 to be maintained and there are people that work for
 16 me that I assign out those responsibilities to.
 17 Q. And going back to approximately 1999, do
 18 you remember the names of the employees that reported
 19 to you?
 20 A. Yes. I mean, I remember all of the
 21 employees that have reported to me through that
 22 period of time. The exact dates on which they left
 23 or retired or moved, I don't have that with me. But
 24 I remember the employees that report to me, yes.
 25 Q. What are the names of those employees?

1 A. That have reported to me through the
 2 years?
 3 Q. Let's start in 1999.
 4 A. Okay. But remember --
 5 Q. Understood.
 6 A. I want to be very clear this is
 7 approximate time. When I first started, there were a
 8 gentleman by the name of Delvin Humble, who reported
 9 to me; Mary Bewley, who reported to me; Brent Booth,
 10 who reported to me; Thayne Gentry, who reported to
 11 me. Sorry. I'm just trying to -- you're talking
 12 about 20 years ago so I want to make sure I don't
 13 leave anybody out. There could have been a few
 14 others. Those are the names that come to mind as I'm
 15 thinking.
 16 Q. And, generally speaking, what did these
 17 employees do for Monsanto?
 18 A. They assisted with the responsibilities
 19 of procuring items and managing inventories. They
 20 assisted in performing the responsibilities that I
 21 previously defined for you that I had.
 22 Q. In that job capacity that you had,
 23 beginning in approximately 1999, who had you reported
 24 to?
 25 A. Since the beginning of that time, I have

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1 had a -- I have reported to Helen Smith, who I
 2 directly report to. I have had dotted line reporting
 3 responsibilities to Dan Schettler and to Kevin
 4 Lawrence. Dan Schettler, when he retired, Kevin
 5 Lawrence filled his role.

6 Q. Describe for me what you mean by dotted
 7 line authority.

8 A. Helen Smith is the lead accountant for
 9 the plant. I am in purchasing. Monsanto has a
 10 corporate purchasing organization. So I have --
 11 daily direct reporting, she takes care of those
 12 issues. In regards to managing the direction of
 13 procurement, that falls to our leadership in
 14 St. Louis, of which I support those roles, so it's
 15 kind of an indirect reporting.

16 Q. Let's get back to prior to the time that
 17 you started working for Monsanto, which we said was
 18 approximately 1988.

19 A. That's correct.

20 Q. What did you do immediately prior to
 21 starting work for Monsanto?

22 A. I worked in a family business with my
 23 father.

24 Q. What business was that?

25 A. The company was called Smith's Paint

1 Q. What I'd like to do is just go through
 2 the list of topics and we'll talk about your basis
 3 for being able to testify as to these different
 4 things.

5 The first one is all contractual
 6 arrangements between Monsanto and Washington Group
 7 International, Inc., that involve or pertain in any
 8 way to the premises referred to in paragraph 7 of the
 9 complaint.

10 And I'll represent to you that by
 11 premises we're talking about the site upon which
 12 Silicon International Ore operated its business. Are
 13 you familiar with that site that I'm talking about?

14 A. Yes, sir.

15 Q. Do you, in fact, have knowledge about
 16 the contractual arrangements between Monsanto and WGI
 17 pertaining to those premises?

18 A. Yes, sir, I do.

19 Q. And what's the basis? How do you know
 20 about that?

21 A. Well, I'm in purchasing. As I indicated
 22 to you, I have responsibility for seeing the
 23 contracts are in place between entities that do
 24 business for Monsanto or work for Monsanto.

25 Q. Let's go to item 2, the terms of all

1 Company.

2 Q. And what did it do?

3 A. We sold paint and floor covering.

4 Q. And how long did you do that?

5 A. I did that my last year -- approximately
 6 my last year of college, and a year, maybe a year and
 7 a half, after.

8 Q. Where did you go to college?

9 A. Utah State University.

10 Q. And do you remember the year that you
 11 graduated?

12 A. Within '86, '87, something like --

13 Q. And I assume your degree was in
 14 accounting?

15 A. Yes, sir.

16 Q. Let's go to Exhibit *-1, which is in
 17 front of you, and let's turn to the Exhibit *-A.

18 A. Okay. You'll have to forgive me. I had
 19 full intention to bring my glasses, but I somehow got
 20 out without them. So I'll do the best I can.

21 Q. That's just fine. You mentioned earlier
 22 that you may or may not have seen the full notice of
 23 deposition for Monsanto, but does Exhibit *-A look
 24 familiar to you?

25 A. Yes. It is something that I've seen.

1 contractual arrangements, if any, between Monsanto
 2 and Silicon International Ore.

3 Now, I will represent to you that we
 4 understand full well that it's disputed that there
 5 was a contract between Monsanto and SIO?

6 A. There was no contract between Monsanto
 7 and SIO.

8 Q. Understood. What I just want to
 9 ascertain now is that you would be the person that
 10 would know if there's a contract or not between SIO
 11 and Monsanto; is that correct?

12 A. Yes, sir.

13 Q. And I assume that your basis for knowing
 14 that is the same that you told me before, that it's
 15 your responsibility to know what contracts Monsanto
 16 enters into with respect to the premises?

17 A. With respect to the Soda Springs plant.

18 Q. I'll make a note to myself that that's
 19 what we'll call it.

20 Okay. Three, SIO's and Monsanto's
 21 respective performances of the terms of any
 22 contractual arrangements encompassed by No. 2 above.

23 Again, understanding that it's disputed
 24 that there was a contract, would you be -- would you
 25 have knowledge about SIO's work upon the Soda Springs

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1 plant, generally, what it did?
 2 A. SIO had a contract with WGI. WGI would
 3 be the entity that would have the details. Do I have
 4 general understanding of what that facility -- yes, I
 5 have general, but I don't have details, specific.
 6 That was a contract between SIO and WGI.
 7 Q. Okay. Four, the nature, timing, and
 8 substance of any negotiations between SIO and
 9 Monsanto culminating in SIO's presence or work upon
 10 the premises, regardless of whether there was a
 11 contract.
 12 Do you have knowledge about those
 13 negotiations?
 14 A. I have knowledge of what happened
 15 between Monsanto and WGI and SIO and WGI for that
 16 period of time.
 17 Q. Okay. Do you have knowledge about what
 18 happened between SIO and Monsanto during that
 19 preliminary negotiation period?
 20 A. I have information about and was present
 21 in some discussions about a potential business
 22 opportunity.
 23 Q. Five, the nature and substance of all
 24 representations made by Monsanto to SIO regarding
 25 SIO's presence or work upon the premises.

1 representatives and SIO representatives from
 2 January 1st, 2008, to today.
 3 Did you ever have any face-to-face
 4 meetings with SIO folks after January 1st of 2008?
 5 A. After WGI told SIO that they were no
 6 longer contract -- or continue to contract, there
 7 were some meetings that were requested by SIO people
 8 that took place at the Soda Springs plant. I am
 9 familiar with those meetings.
 10 Q. Okay. Are you familiar --
 11 A. I don't know the exact dates that those
 12 -- you'll have to show me documents or something. I
 13 don't know when those dates were, but it was --
 14 Q. Okay. But they were after January 1st
 15 of 2008?
 16 A. I don't know. I mean, you can show me
 17 some documents. They were clearly after WGI had
 18 indicated to SIO that they would not continue the
 19 contract.
 20 Q. And are you familiar with the content of
 21 those meetings because you were present at them or
 22 did you hear about them from somebody else?
 23 A. I was present at meetings.
 24 Q. Let's go to No. 9. All payments of any
 25 kind made by SIO to Monsanto.

1 Do you have knowledge about any such
 2 representations?
 3 A. Or the lack of representations?
 4 Q. Yeah. That would go along with that.
 5 Sure.
 6 A. Yes.
 7 Q. The nature and substance of all
 8 correspondence, decision-making, or analysis
 9 pertaining to Monsanto's decision to refuse to permit
 10 SIO to work upon the premises.
 11 Specifically, what I'm talking about is
 12 the time period -- I'm going to assume it's
 13 approximately mid to late 2007 where some decision
 14 was made to not allow SIO to be on the premises
 15 anymore. Do you have knowledge about that?
 16 A. In 2007 I have knowledge about Monsanto.
 17 I have some knowledge about what WGI employees
 18 represented to Monsanto. Whether that's all of it, I
 19 -- it certainly -- I can't -- I don't have an
 20 opinion. I don't know.
 21 Q. Okay. Well, we'll hit some questions
 22 there, and if you don't know the answer, then you
 23 don't know.
 24 Substance or contents of all
 25 face-to-face meetings between Monsanto

1 In your job responsibilities were you
 2 responsible for knowing what was paid to Monsanto
 3 pursuant to the contracts it entered into?
 4 A. I was -- I'm generally aware of payments
 5 made to Monsanto. There were no payments made from
 6 SIO to Monsanto.
 7 Q. Okay. How about ten, information
 8 furnished by SIO to Monsanto regarding SIO's
 9 financial status, income revenue, or profits.
 10 Did that ever even happen or --
 11 A. You know, again --
 12 MR. BUDGE: Counsel, excuse me for
 13 interrupting. Maybe just clarify for Mr. Smith that
 14 you're referring to the time period prior to
 15 litigation or afterwards.
 16 MR. BROUGH: Yeah. That's a fair
 17 clarification.
 18 Q. BY MR. BROUGH: I'm speaking about the
 19 time period between approximately 2002 and
 20 approximately 2007.
 21 A. Between 2002 and 2007 -- okay. So I've
 22 got a time frame. Could you ask the question again.
 23 Q. Sure. During that time period do you
 24 know of any information that SIO provided to Monsanto
 25 about its financial status, income, revenue, or

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1 profits?
 2 A. I know that every year Monsanto audits
 3 WGI and we go through documents associated with WGI,
 4 which would verify costs. I would assume that audit
 5 would have also included verifying how much product
 6 left and that royalties were accurately paid. We
 7 audit WGI's information. If they had some SIO
 8 information, then we would have audited --
 9 potentially could have audited that. We have an
 10 audit team that does that. I don't personally do
 11 that, but I am made aware of the results of the
 12 audit.
 13 In regards to SIO providing us income
 14 statements and material, I don't recall ever
 15 receiving anything.
 16 Q. Let's go to paragraph 11, the factual
 17 basis for Monsanto's denials in its answer of the
 18 allegations contained in the complaint.
 19 And that's very broad. Specifically,
 20 let me ask this: Did you -- well, let me give you
 21 some context first. In this case Silicon
 22 International filed a complaint. Monsanto filed a
 23 document called an answer. Did you review that
 24 answer prior to its being filed?
 25 A. I'm not an attorney so I'm not exactly

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1 might make sense.
 2 Q. Sure.
 3 A. But you're going to have to clean it up
 4 a little bit. I'm sorry.
 5 Q. That's fine. I think we'll get to it.
 6 A. All right.
 7 Q. Did you have any role in preparing
 8 Monsanto's responses to Silicon's discovery requests?
 9 A. Yes.
 10 Q. Okay. Let me show you some documents so
 11 you know exactly what I'm talking about.
 12 A. Are you done with these two?
 13 Q. Yes, I am.
 14 (Exhibit *-5 marked.)
 15 MR. BROUGH: Let me show you a document
 16 that's marked as Exhibit *-5.
 17 I don't know if the gentleman sitting at
 18 the end of the conference table wants a copy, too. I
 19 have an extra.
 20 Q. BY MR. BROUGH: Why don't you take a
 21 minute, if you need it, to look through that document
 22 and familiarize yourself with it.
 23 A. Okay. I've looked at it. If there's
 24 some specific -- I may want to read it, if you ask
 25 me --

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1 sure complaints and -- if there's a document that you
 2 can point me to, I can better answer this. Absent a
 3 document, I had numerous discussions with my
 4 attorneys while they prepared responses to questions.
 5 Q. Okay.
 6 A. So I had dialogue with them. I tried to
 7 answer them questions. I tried to provide them with
 8 information.
 9 Q. Okay.
 10 A. I don't know how better than that to
 11 answer your question.
 12 Q. That's fair enough.
 13 Going to the next page, No. 12,
 14 Monsanto's plans and strategies for removing
 15 phosphorus waste from the premises. All actions
 16 taken since January 1st of '08 to remove
 17 phosphorus-based waste products from the premises and
 18 WGI's involvement in that.
 19 Specifically, what I would like to know,
 20 if you know, is what's Monsanto doing with its waste
 21 products after SIO left?
 22 A. Well, first of all, to be candid with
 23 you, this question makes absolutely no sense.
 24 Q. Okay.
 25 A. Maybe we could get to the point where it

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1 Q. Understood. I just want to know, have
 2 you seen that document before?
 3 A. You know, I believe so. I believe this
 4 is a document that I have seen, yes.
 5 Q. And do you have any understanding as to
 6 what it is?
 7 A. Well, again, I'm not an attorney, but
 8 it's my understanding these are answers to questions
 9 that you've submitted.
 10 MR. BROUGH: Okay. I'll show you a document
 11 marked *-6.
 12 (Exhibit *-6 marked.)
 13 Q. BY MR. BROUGH: Why don't you take a
 14 look through that and familiarize yourself with it.
 15 Let me know when you're ready to proceed.
 16 A. Okay.
 17 Q. Have you seen that document before?
 18 A. I think so.
 19 Q. And do you understand that document to
 20 be supplemental responses to SIO's discovery
 21 requests?
 22 A. I understand this document to be answers
 23 to questions that were provided to us.
 24 Q. Did you review either Exhibits *-5 or
 25 Exhibit *-6 prior to the time that they were issued

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1 by your attorneys?
 2 A. I sat down with my attorneys and we went
 3 through documents and prepared answers.
 4 Q. And are those answers reflected in these
 5 documents?
 6 A. My understanding they are, yes.
 7 Q. On Exhibit *-5 or Exhibit *-6 did you
 8 ever sign a document verifying under oath on behalf
 9 of Monsanto these answers?
 10 A. Do you have a piece of paper that
 11 would --
 12 Q. Well, it's the lack of one that I'm
 13 asking about, I guess.
 14 A. I don't recall.
 15 Q. Okay.
 16 A. We worked diligently together to prepare
 17 these. I don't recall. I don't generally give
 18 answers though that I don't believe to be accurate.
 19 MR. BROUGH: Okay. Let's go to Exhibit *-7.
 20 (Exhibit *-7 marked.)
 21 Q. BY MR. BROUGH: Have you seen
 22 Exhibit *-7 before? Oh, sorry. I'd better hand it
 23 to you before you look at it.
 24 A. Yes, sir.
 25 Q. What is that document?

1 various documents. I pulled all the documents that I
 2 had in the computer system in regards to WGI. There
 3 were some documents associated with royalties that
 4 were established. Any document that had WGI or SIO
 5 or Silicon International or anything that we thought
 6 could even broadly be construed associated with this,
 7 I pulled, put in a package.
 8 I instructed my admin to go through all
 9 the files in addition and have her extract any
 10 documents that she could find. I put out a -- I
 11 talked with Mr. Farnsworth and had him do the same.
 12 We reviewed files, which Mitch Hart had left behind,
 13 to see if there were any documents associated. I
 14 didn't necessarily pull them myself. We had people
 15 look and go through that and go through computer
 16 records. Our IT folks helped us go through computer
 17 records to try to find some.
 18 So it was rather an exhaustive search of
 19 both computers and hard copy files of anything that
 20 could possibly be related to that. That was all
 21 packaged up and sent to my attorney.
 22 Q. After that entire process was done, did
 23 you see the stack of documents that was going to
 24 be -- or that you culled from your records?
 25 A. Did I see it? It's possible. I gave

1 A. Again, it looks to me to be answers to
 2 questions which we received from you.
 3 Q. And, again, did you sign any
 4 verification page or any statement under oath
 5 acknowledging the correctness of the answers?
 6 A. I don't recall.
 7 Q. Okay.
 8 A. It's possible, but I don't recall.
 9 Q. Now, each of these three documents that
 10 we've talked about -- Exhibits *-5, *-6, and *-7 --
 11 contained a request for certain documents. Did you
 12 assist Monsanto in compiling documents to be produced
 13 that are responsive to these requests?
 14 A. I participated in collecting documents
 15 associated with SIO in this case.
 16 Q. Walk me generally through the process
 17 that you went through to compile those documents.
 18 A. Okay. I have a paper file that I keep
 19 on, generally, people that we talk to or do business
 20 with. We have quite an extensive paper file on WGI.
 21 Over the years that file would be -- there will be
 22 documents that will be put in that file so we keep
 23 those. So I pulled all the documents associated with
 24 WGI.
 25 I have a computer system where I file

1 the assignment of putting the package together and
 2 shipping them over to my admin, who's --
 3 Q. Do you have any knowledge about how many
 4 pages of documents your search would have resulted
 5 in?
 6 A. I don't know that I did a count. I
 7 don't think even she did. I think she made sure that
 8 all the documents we had were put in place, and it's
 9 my understanding -- my instructions to her, which she
 10 would have followed to the T, was to copy all of
 11 those and give them to the attorneys, so we kept the
 12 originals in a box.
 13 Q. Okay. You mentioned a file that you
 14 keep for the companies with whom Monsanto does
 15 business?
 16 A. Yes.
 17 Q. Where is that file kept?
 18 A. I have a -- what I call a contracts file
 19 where contracts are kept in a locked room in fire
 20 resistant file cabinets. Hard copies are kept.
 21 Q. Is there a criteria for what documents
 22 make it into that file and what documents don't?
 23 A. They're documents that I or other
 24 purchasing agents that work for me believe are
 25 relevant and should be kept.

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1 Q. How long are those documents retained?
 2 A. Monsanto has a records retention policy
 3 and we generally try to comply with the records
 4 retention policy.
 5 Q. What is that policy, generally?
 6 A. It depends on the document.
 7 Q. Let's say for contracts between Monsanto
 8 and a contractor that works on property?
 9 A. You know, I don't recall the exact
 10 policy. There are some caveats that are there to
 11 where at times some of those documents can be
 12 retained for as long as buyers or folks think are
 13 relevant. There's some specific criteria and then
 14 there are some other documents that gives that
 15 delegation to the buyer. We have that -- we have a
 16 corporate -- it's a policy that's published that all
 17 the entities within the corporation follow.
 18 Q. How about the storage and retention of
 19 e-mails, do you know what Monsanto's policy is
 20 regarding that?
 21 A. As to when they're backed up and all of
 22 that?
 23 Q. Sure. Let's start with the backups.
 24 A. I'm sure there is policy that our IT
 25 people follow. I don't know it.

1 between Monsanto and WGI, are you aware of anybody
 2 else at Monsanto who would also have knowledge about
 3 this issue?
 4 A. Washington Group or WGI runs our quarry.
 5 They produce quartzite from that quarry. It's a
 6 critical raw material to our operation. There could
 7 be a whole host of folks that have information
 8 regarding quartzite.
 9 Q. Okay. Specifically about the contracts?
 10 A. The people that would be generally
 11 familiar with the contracts would be Dave Farnsworth.
 12 He runs the mining group.
 13 Q. Okay. Anybody else?
 14 A. People within his organization. There's
 15 a possibility there are people within his
 16 organization that may have some information or be
 17 familiar to some degree or another with a provision
 18 or at least the price that the contract generates
 19 from.
 20 Q. Okay.
 21 A. But Dave Farnsworth is the gentleman in
 22 charge of the -- has ultimate responsibility for the
 23 quarry.
 24 Q. No. 2 -- and, again, understanding that
 25 this is disputed -- would there be anybody else other

1 Q. Do you know the process by which
 2 Monsanto went through its e-mails to respond to these
 3 discovery requests?
 4 A. The entities -- my understanding, the
 5 entities that could have had any involvement were
 6 asked to go through it. To the extent the IT people
 7 may have helped with some of the people that have
 8 left or -- I don't know. We did our best to try to
 9 find everything.
 10 Q. Do you know how long e-mails are stored
 11 on the server, I suppose, that would be that Monsanto
 12 has?
 13 A. How long they're stored on the server?
 14 Again, it would probably depend on the e-mail. I
 15 mean, I get e-mails I hit delete on every day. I
 16 don't know. An IT person could maybe better explain
 17 that. Some e-mails I have have been around for a
 18 while.
 19 Q. Let's go back to Exhibit *-1. That's
 20 the notice of deposition for Monsanto and let's go to
 21 the Exhibit *-A. Let's just run through this list
 22 quickly one more time. I just have a question to ask
 23 about each one.
 24 A. Okay.
 25 Q. For No. 1, the contractual arrangements

1 than you who would know if Monsanto and Silicon
 2 International Ore entered into a contract?
 3 A. Dave Farnsworth would know.
 4 Q. Anybody else?
 5 A. That currently work at Monsanto?
 6 Q. Well, that's a fair question. How about
 7 anybody that you know of that has worked for Monsanto
 8 since 2002?
 9 A. Well, let me answer this best by saying
 10 that Dave Farnsworth has responsibility for the
 11 mining department. He would have made assignments to
 12 various folks and he would be the best person to ask
 13 who he made those assignments to. Mitch Hart had
 14 some involvement. We have -- I mean, we have other
 15 managers that are generally familiar with things.
 16 Q. Topic three, and because the contract is
 17 disputed, let's call it this. Is there anybody at
 18 Monsanto presently other than you who would have
 19 knowledge about what Silicon did on the Soda Springs
 20 plant?
 21 A. Dave Farnsworth would.
 22 Q. Anybody else?
 23 A. Maybe people in his organization,
 24 depending on the timing of what you're asking for and
 25 who was working in those responsibilities.

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1 Q. Four: Nature, timing, and substance of
 2 any negotiations between SIO and Monsanto. Anybody
 3 at Monsanto presently other than you who would have
 4 knowledge about that?
 5 A. You're talking about that -- the timing
 6 in the --
 7 Q. Yeah. That's fair. By negotiation I'm
 8 talking about the time period in approximately 2000
 9 -- 1999 to 2001, 2002.
 10 A. Okay. So the time frame now, could you
 11 answer the question or -- I'm sorry. Ask the
 12 question again.
 13 Q. Sure. During that time frame anybody
 14 presently at Monsanto other than you who would have
 15 knowledge about the negotiations that occurred during
 16 that time period?
 17 A. Dave Farnsworth.
 18 Q. Anybody else?
 19 A. Our in-house attorney.
 20 Q. No. 5: Nature and substance of all
 21 representations or lack thereof made by Monsanto to
 22 SIO. Anybody presently at Monsanto who would have
 23 knowledge about that other than you?
 24 A. Dave Farnsworth.
 25 Q. Anybody else?

1 Q. Okay. Good enough. Which state?
 2 A. Montana.
 3 Q. But you don't know the city?
 4 A. I probably do. It's probably written
 5 down somewhere at my office.
 6 Q. Montana is a nice place to retire to.
 7 No. 7: Content of all discovery
 8 responses produced by --
 9 MR. BUDGE: He lives in Missoula.
 10 THE WITNESS: Is it Missoula?
 11 MR. BROUGH: Thank you.
 12 THE WITNESS: I thought it might be Missoula.
 13 Q. BY MR. BROUGH: No. 7: The content of
 14 all discovery responses produced by Monsanto in this
 15 lawsuit. Let's frame it this way: Did anybody else
 16 help you, other than the folks that you've already
 17 mentioned, put together Monsanto's responses to SIO's
 18 requests?
 19 A. I believe I have mentioned everybody
 20 that -- now, I want to make clear that I made that
 21 assignment -- after I had pulled everything I could
 22 find, I made that assignment to my admin. So she
 23 went to the people I told her I thought she should go
 24 to and then she diligently tried to find everything.
 25 Q. Substance and content of face-to-face

1 A. Our in-house attorney may.
 2 Q. No. 6: Nature and substance of
 3 correspondence, decision-making, or analysis
 4 pertaining to Monsanto's decision to refuse to permit
 5 SIO to continue to work on the premises in that time
 6 frame, 2007 to 2008, whenever it was that WGI sent
 7 its letter to SIO?
 8 A. Are we still dealing with people that
 9 currently work --
 10 Q. Yes.
 11 A. -- at Monsanto?
 12 Q. Yes, we are.
 13 A. Dave Farnsworth and myself.
 14 Q. Anybody that you're aware of that may no
 15 longer work for Monsanto but would have knowledge
 16 about that?
 17 A. This has happened over a period of time,
 18 but I believe -- I believe that when SIO received
 19 notice that WGI would no longer renew the contract,
 20 there was a request to speak to Dave Farnsworth.
 21 Ultimately, there was a request to speak to Bruce
 22 Pallante, the plant manager. Bruce Pallante has
 23 since retired.
 24 Q. Do you know where Bruce is living now?
 25 A. I know which state he's living in.

1 meetings between Monsanto representatives and SIO
 2 representatives from January 1st of 2008 to the
 3 present day. Do you know if you were present at all
 4 at such face-to-face meetings or do you know if any
 5 face-to-face meetings occurred that you weren't there
 6 for?
 7 A. I believe I was present at any
 8 face-to-face meetings that took place at our plant on
 9 behalf of SIO. Now, could something have happened
 10 that I don't know about? I guess it's a possibility,
 11 but I doubt it.
 12 Q. Payments of any kind made by SIO to
 13 Monsanto. You mentioned earlier that Monsanto did
 14 not make any payments directly -- I'm sorry -- that
 15 SIO did not make any payments directly to Monsanto;
 16 is that correct?
 17 A. Yes, sir. That's correct.
 18 Q. How about payments that WGI made to
 19 Monsanto based on the work at the Soda Springs plant;
 20 do you have knowledge about those payments?
 21 A. So WGI made royalty payments based on
 22 work at the quarry to Monsanto, not at the plant.
 23 Q. Okay. I'm sorry. Do you have knowledge
 24 about those payments?
 25 A. And we made payments to WGI. We engaged

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1 them as our contractor. Now, I don't know -- let me
 2 clarify. I don't know that those payments that were
 3 made to WGI -- whether they were in the form -- I
 4 don't recall whether they were in the form of a check
 5 or a credit on the invoice that Monsanto then owed
 6 WGI. I don't recall.

7 Q. But as far as payments that WGI made to
 8 Monsanto regarding WGI's work on the quarry, would
 9 you have knowledge about those payments?

10 A. I would generally have knowledge about
 11 those payments.

12 Q. Is there anybody else at Monsanto that
 13 works there presently that would have knowledge about
 14 those payments also?

15 A. There would be people in the accounting
 16 department who are required to keep a list of
 17 receivables and to -- are responsible for costing the
 18 quartzite that would know about that as well.

19 Q. What are the names of those individuals?

20 A. Presently or over the past --

21 Q. Let's start with presently.

22 A. Presently the person that passes
 23 payments to the lock box is Laura Latham. So if a
 24 check comes in, Laura Latham would process that and
 25 send it to the lock box. If it was a credit memo, it

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1 (A recess was taken from 10:09 a.m. to
 2 10:16 a.m.)

3 Q. BY MR. BROUGH: Back on the record.
 4 We've mentioned a couple of different entities.
 5 There's Monsanto Company, P4 Production, LLC, and
 6 Solutia?

7 A. Yes.

8 Q. What is Solutia?

9 A. Solutia -- I don't know how to answer
 10 that question without giving you some background.

11 Q. Feel free.

12 A. Monsanto in the late nineties or mid
 13 nineties was a conglomerate and it determined that it
 14 had a lot of -- most of its business was speed to
 15 market and then it had a very commodity group of
 16 business. So you had two different business models
 17 with products that -- speed to market was critical,
 18 and the other was just commodity where it just plugs
 19 along. It's chemical business that fell into the
 20 latter. It's, you know, commodity.

21 Monsanto in approximately '97 - late '97
 22 decided to divide its business into two parts, and it
 23 took its chemical company and spun it off to an
 24 independent company called Solutia. The remainder of
 25 the company stayed as Monsanto for a period of time.

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1 would fall to the accountant responsible for mining.

2 Q. Okay. And who is that?

3 A. I don't have any -- there's one of four
 4 or five accountants that they have hired. I don't
 5 recall. They shift responsibilities around a lot.

6 Q. What is the lock box?

7 A. Any cash payment that comes in to
 8 Monsanto is sent to a lock box where it is further
 9 processed and deposited into Monsanto's bank account.

10 Q. Okay. No. 11, the -- let me ask this
 11 this way: Are you aware of anybody at Monsanto other
 12 than you that reviewed Monsanto's response to
 13 Silicon's complaint?

14 A. I don't know if in-house legal has
 15 reviewed it or not.

16 Q. And then 12, we decided that we would
 17 come back to that one to give it more context.

18 A. To be candid with you, it doesn't make
 19 any sense to me, so it's hard for me to answer.

20 Q. I promise you that's the first thing
 21 I've ever written in my life that made no sense.
 22 These guys know that's not true.

23 A. If you don't mind, I'd like to just take
 24 a break for a second.

25 MR. BROUGH: You bet. That's perfectly fine.

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1 The entities at the Soda Springs plant were critical,
 2 both to the new Solutia as well as to Monsanto.

3 In an effort to deal with that, they
 4 created an entity called P4 Production. And P4
 5 Production owned the assets of the Soda Springs, Rock
 6 Springs, and the associated quarry and mine. And P4
 7 Production at that precise moment in time was
 8 basically majority owned by Monsanto. Solutia had a
 9 pretty good percentage, but the employees that were
 10 Monsanto the day before turned into Solutia employees
 11 the next day.

12 So Monsanto owned the majority of the
 13 stock, but the Solutia employees ran it for a little
 14 while. It was an agreement that had various buyout
 15 provisions. Today P4 continues to exist, but it's
 16 wholly owned by Monsanto. Various triggers
 17 throughout the time frame triggered Monsanto buying
 18 up more. The employees shortly -- I think it was in
 19 that '99, first of 2000 -- I don't remember the exact
 20 date -- reverted from Solutia back to Monsanto when
 21 one of those provisions was made and Monsanto
 22 exercised it.

23 So while I worked at the same facility
 24 for years, I've been a Monsanto employee, a Solutia
 25 employee, and a Monsanto employee.

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1 Q. Is Solutia still in existence today?
 2 A. How do I answer it? I don't follow with
 3 a great deal of -- exactly where Solutia is today.
 4 Solutia's assets -- some of their businesses still
 5 exist. I think they still have stock traded in
 6 public. I heard rumors about a name change to
 7 Ascend. We all joke that Solutia was the sound of a
 8 toilet when it went bankrupt, and Ascend is the new
 9 name to come back out. So that's just a local joke.
 10 Q. I guess that's an easy way to remember
 11 it.
 12 Do you know if Solutia actually did file
 13 for bankruptcy or just --
 14 A. Yes.
 15 Q. It did. Okay.
 16 A. So in that long explanation you should
 17 know who Monsanto, Solutia, and P4 are.
 18 Q. Okay. We've talked in some -- we've
 19 talked a little bit about the Soda Springs area
 20 itself and Monsanto's operations there. And we've
 21 discussed it a little bit more during the break, but
 22 I'd like to go in some detail about that just for
 23 purposes of our record so that I'm clear as to what
 24 actually is there and what Monsanto does.
 25 A. Okay.

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1 Q. My understanding, based on our
 2 conversation before our break, is that there is a
 3 plant at Soda Springs; is that correct?
 4 A. Yeah. Just north of the city of Soda
 5 Springs, yes.
 6 Q. And what happens at that plant?
 7 A. We produce elemental phosphorus.
 8 Q. Do you know the process by which the
 9 elemental phosphorus is produced?
 10 A. I'm not a chemical engineer, but I've
 11 been there for 23 years, and, generally, yeah, I know
 12 the process.
 13 Q. Generally, based on your knowledge,
 14 what's the process by which it's produced?
 15 A. Ore -- phosphate ore is mined in an
 16 open-pit mine north of our facility. That phosphate
 17 ore is brought down to the Soda Springs plant and is
 18 calcined into what we call a nodule. Those nodules
 19 are fed to one of three phosphorus furnaces with coke
 20 and quartzite, wherein large amounts of electricity
 21 are introduced into those furnaces and a chemical
 22 reaction occurs.
 23 The phosphorus comes off as a gas, which
 24 is later condensed. The remaining material in the
 25 furnace is tapped out and it's roughly a calcium

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1 silica and it is what we call dumped into a pile and
 2 is a slag material. There is some metal that is then
 3 occasionally tapped out of a furnace, and that metal
 4 is a by-product of the operation, which is sold.
 5 Q. Do you know what metal is tapped out?
 6 A. It's called ferrophosphorus.
 7 Q. Do you know how to spell that?
 8 A. Uh-huh.
 9 Q. Could you, please.
 10 A. If I could have a paper again. The
 11 chemical name is capital F, small e, capital P.
 12 That's the chemical name.
 13 Q. So it's an iron phosphate?
 14 A. Yes.
 15 Q. F-e-n-o?
 16 A. F-e-r-o. Sorry. That's an r.
 17 Q. And then phosphorus?
 18 A. Uh-huh.
 19 Q. And you mentioned that that
 20 ferrophosphorus is sold?
 21 A. It is. Yeah.
 22 Q. Does Monsanto sell it?
 23 A. Monsanto does sell it.
 24 Q. Who does it sell it to?
 25 A. For some 40 years it shipped it across

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1 the street to a company called Kerr-McGee. When
 2 Kerr-McGee exited the business, it retained the
 3 material for a few years. It's currently being sold
 4 to a company in Taiwan.
 5 Q. What are the uses of ferrophosphorus, if
 6 you know?
 7 A. Ferrophosphorus is a metal alloy. There
 8 are other metal alloys that we use day to day,
 9 stainless steel, tin. It's a combination of various
 10 metals. Ferrophosphorus is very high in iron. It
 11 also has vanadium, which is extracted to harden
 12 steel. It has some chrome in it, nickel. Most of
 13 the metals that show up have some composite amount in
 14 ferrophosphorus. So they extract -- they extract and
 15 separate those to their elemental states and then
 16 they try to sell them.
 17 Q. Let me run down the explanation that you
 18 gave and I'll ask you a couple of questions that
 19 spring to mind. When you said that -- I might say
 20 this wrong -- phosphate ore --
 21 A. Yes.
 22 Q. -- is mined, it's calcified?
 23 A. Yes.
 24 Q. And what does that mean?
 25 A. Calcined.

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1 Q. Calcined. Sorry.
 2 A. It means that they run it through a big
 3 kiln and it cooks out various impurities in the
 4 product.
 5 Q. Okay.
 6 A. That's the layman terms I can --
 7 Q. And what is produced after that process
 8 of being calcined?
 9 A. A nodule.
 10 Q. Okay. And what is a nodule?
 11 A. Have you ever seen a clinker that comes
 12 out of cement?
 13 Q. No.
 14 A. You've never had a coal stove where you
 15 had to fish the clinkers out when you're all done?
 16 Q. No.
 17 A. So it's basically a cooked -- how can I
 18 explain it to you? It's -- the material that remains
 19 is the cooked phosphate ore.
 20 Q. Okay. I realize that the analogy I'm
 21 about to give you is totally chemically wrong, but I
 22 guess I'm imagining it like a spent charcoal on a
 23 barbecue. I mean, I know the chemicals are all
 24 totally wrong, but --
 25 A. I don't know if I would agree with that

1 And as those electrodes go through and the
 2 electricity goes through those into the stock, the
 3 recipe, the mixture, then a chemical reaction occurs.
 4 Q. Okay.
 5 A. And then the phosphorus comes off as a
 6 gas.
 7 Q. Okay. And then that phosphorus gas is
 8 subsequently condensed, isn't that correct, and that
 9 means it's turned into a liquid form?
 10 A. Yeah. As you know, all products can
 11 exist either gases or liquid or solid, depending on
 12 temperatures of the product.
 13 Q. Okay. And then once the phosphorus
 14 comes off as gas, there's a remaining material. Is
 15 that --
 16 A. Two remaining materials.
 17 Q. Two remaining?
 18 A. A product we call slag, which is a
 19 calcium silicate, and ferrophosphorus.
 20 Q. Okay. And then what happens to the
 21 slag?
 22 A. The slag is retained at our operations
 23 in Soda Springs.
 24 Q. Okay. Is it retained on the mine, the
 25 plant, the quarry, or some other place?

1 analysis, but you're getting closer. It's the
 2 residue after you've cooked it.
 3 Q. Okay. And then after that, the nodule
 4 is fed to one of three phosphate furnaces?
 5 A. Phosphorus.
 6 Q. Phosphorus. Sorry. And then coke and
 7 quartzite are added to it?
 8 A. Uh-huh.
 9 Q. And does the coke come from that Rock
 10 Springs --
 11 A. Some of it does, yes.
 12 Q. Some of it does. Okay.
 13 And where does the quartzite come from?
 14 A. From the quarry that WGI operates to the
 15 west of our plant.
 16 Q. So that mixture of nodule, which is
 17 cooked phosphate ore, for lack of a better phrase, is
 18 fed to one of three phosphorus furnaces. And what is
 19 a phosphorus furnace?
 20 A. A very large carbon -- how do I get this
 21 to real simple terms? A cup or container that has a
 22 carbon roof on it, that has three electrodes made --
 23 big electrodes that are connected to large amounts of
 24 electrical power. And the carbon electrodes go into
 25 this container of -- that's also made out of carbon.

1 A. At the plant.
 2 Q. Okay. And how is it stored?
 3 A. When it comes out of the furnace, it's a
 4 molten. It's like lava. And we take it and we have
 5 big crucibles, which we put the molten material in,
 6 and then we have what we call a pod carrier that
 7 hooks up to that crucible and takes it. Because it's
 8 liquid, we can dump it over a hill and it just gets
 9 bigger and we can keep going higher and dumping it.
 10 We put it in a pile.
 11 Q. Okay.
 12 A. A very large pile.
 13 Q. And I suppose in the pile or through
 14 this process it ultimately cools?
 15 A. Yes.
 16 Q. What form is it in when it cools?
 17 A. If you were to look at a piece of slag,
 18 you would say it looks like a rock.
 19 Q. Okay. Of varying sizes?
 20 A. Well, like any rock, yeah, it could be
 21 various sizes.
 22 Q. Now, in this arrangement in the Soda
 23 Springs area we've talked about the mine, the plant,
 24 and the quarry. And you mentioned that WGI works at
 25 the quarry?

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1 A. They're our operator at the quarry.
 2 They quarry the silica rock for us at the quarry.
 3 Q. Does WGI do any work at the mine or the
 4 plant?
 5 A. WGI has from time to time done a special
 6 project for us at the plant. Have they done anything
 7 for us at the mine? It's possible. I don't recall
 8 off the top of my head. WGI is a capable mining
 9 contractor. We don't use them at the mine. We use
 10 another entity, but they're certainly capable of
 11 being used. So could it have happened on a project
 12 somewhere? It's possible.
 13 Q. Do you know the process by which
 14 quartzite is mined from the quarry?
 15 A. At a very high level.
 16 Q. What's your understanding?
 17 A. Quartzite, which is a rock, exists just
 18 west of the plant on various leases that Monsanto
 19 retains, leases from various government agencies as
 20 well as some of our own. We have -- it exists in the
 21 rock and so WGI at a very high level is responsible
 22 for going in, extracting the rock out of the
 23 mountain, sizing the rock, washing it so it doesn't
 24 have -- there's a size that they also wash it so it
 25 doesn't have any fines with it, and then they employ

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1 Q. So that process by which WGI sizes,
 2 crushes, and washes the quartzite, does that produce
 3 a by-product? I mean, it sounds like there's a size
 4 of a certain sand that Monsanto won't use in its
 5 process.
 6 A. Does it produce a by-product? Yeah. A
 7 by-product or a reject material, a material that
 8 doesn't meet our spec.
 9 Q. What happens to that reject material?
 10 A. For the most part, it's stored on site.
 11 Q. Okay. How is it --
 12 A. For the most part.
 13 Q. How is it stored?
 14 A. In piles.
 15 Q. Okay. You mentioned for the most part.
 16 Is there any other way that it might be stored?
 17 A. Well, we have sold some of the material
 18 over the years.
 19 Q. Okay. Monsanto has sold it?
 20 A. Yes.
 21 Q. Who has it sold it to?
 22 A. One of its customers was a cement plant
 23 in Inkom. They bought some reject material at the
 24 cement plant. The plant has since closed down.
 25 Q. Do you know what time frame,

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1 a contractor that delivers the rock to the Soda
 2 Springs plant during several months out of the year.
 3 Q. Is there a process by which the sized
 4 rock is reduced or crushed or something like that for
 5 its use in the phosphorus furnace?
 6 A. We have a requirement that specifies a
 7 certain size, quality of rock from WGI. So do they
 8 crush it and screen it and wash it? Yeah, they do.
 9 Q. So WGI will mine the rock and it will
 10 find the rocks with the quartzite in it and then they
 11 will wash it. And you mentioned --
 12 A. Crush it and screen it.
 13 Q. Crush it and screen it and wash it.
 14 What's the process by which it's
 15 crushed; do you know?
 16 A. I don't have firsthand experience
 17 running it, but it's just a -- it's a sand gravel.
 18 It's a crushing operation. It's not terribly
 19 sophisticated.
 20 Q. It's just a big machine they put the
 21 rocks in and it crushes it down?
 22 A. It crushes it down.
 23 Q. You mentioned it's washed in order to
 24 remove fines from the rocks. What are fines?
 25 A. Small diameter material below our spec.

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1 approximately, it was that Monsanto sold that reject
 2 material?
 3 A. Pretty much -- I don't recall when it
 4 started. It was something that was going on before I
 5 came into the purchasing role. They closed the
 6 cement plant down, gosh, late 2000-ish or -- I'm
 7 sorry -- 2009. I don't -- something in that range.
 8 Q. I assume that the Inkom cement plant was
 9 not Monsanto's only customer for this reject
 10 material; is that correct?
 11 A. Well, are there other customers? We
 12 have sold some of the sand to Smith -- Vaughn Smith
 13 Construction. I think I've sold the sand to the
 14 county. I've sold sand to WGI. I've donated sand
 15 numerous times. We have worked with many entities
 16 over the years trying to develop additional markets
 17 for the product.
 18 Q. And am I correct in understanding
 19 Monsanto started selling the sand before you started
 20 in your role and it still does it today?
 21 A. Yes. Although sales of sand -- I don't
 22 know that I had any sales of sand this last year.
 23 Q. Do you know why that would be?
 24 A. If you don't sell something, it's
 25 probably because you don't have --

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1 Q. No buyers?
 2 A. No buyers. I mean --
 3 Q. I guess my question is is that related
 4 to the economy, just no one's buying sand now or --
 5 A. It's possible. It's a very good
 6 product, but it's also -- it's challenging
 7 logistically to move the product into markets
 8 affordably.
 9 Q. What are --
 10 A. We have looked at glass suppliers, and
 11 that was one of the issues that we had. While the
 12 product was very high quality silica, the logistics
 13 -- capital logistics costs of doing something are
 14 high.
 15 Q. Tell me about -- well, do you know about
 16 the history of Monsanto's relationship with WGI?
 17 A. Yeah. Generally.
 18 Q. Okay. Generally speaking, I mean, if
 19 you know, when did Monsanto first start contracting
 20 with WGI?
 21 A. I don't recall the first contract. I
 22 probably have it in my files, but I don't recall
 23 here.
 24 Q. Was it while you were employed with
 25 Monsanto?

1 A. Monsanto -- I don't know if WGI has
 2 bought any real estate. However, the real estate
 3 that Monsanto owns that the quarry sits on is
 4 Monsanto's.
 5 Q. Okay. Pursuant to these contracts did
 6 WGI ever own any -- like gain title or own any
 7 portion of the mined materials or the quarried
 8 materials?
 9 A. Well, we had a royalty system set up
 10 where if WGI sold material -- any of the materials,
 11 we would get a royalty for it.
 12 Q. Okay. But it --
 13 A. I'm --
 14 MR. BROUGH: Okay. I think we'll get to that
 15 in just a second. Let's go to an exhibit.
 16 (Exhibit *-26 marked.)
 17 Q. BY MR. BROUGH: Would you take a look
 18 through that, and when you're ready, we'll proceed.
 19 A. Okay.
 20 Q. Have you seen this agreement before?
 21 A. This appears to be the 1993 quartzite
 22 agreement between Monsanto and WGI or Conda Mining at
 23 the time.
 24 Q. Did you have any role in negotiating
 25 this agreement or representing Monsanto in

1 A. So to answer this you must understand
 2 that WGI has -- the entity we have dealt with has not
 3 always been WGI. WGI acquired, I think, Dravo. I
 4 don't know the history of the acquisitions and that.
 5 That would be better addressed to WGI, but there's
 6 been various names.
 7 Q. Conda Mining?
 8 A. I think so. So, you know, there's
 9 various names on that. For the most part, I don't
 10 recall when that started. In my memory I think we've
 11 always dealt with that entity or the entity that has
 12 been purchased, in my memory. I just don't recall
 13 when we started.
 14 Q. What types of contracts does Monsanto
 15 enter into with WGI?
 16 A. We have a master contract that we enter
 17 into -- have entered into with WG that involves them
 18 doing the quarrying of the quartzite from Monsanto.
 19 They're the operating entity of the quarry.
 20 Q. Pursuant to those contracts did WGI ever
 21 own or acquire any portion of the quarry?
 22 A. Any portion of the quarry, could you be
 23 more specific?
 24 Q. Well, like, was it a contract to buy
 25 real estate that's a part of a quarry?

1 negotiating this agreement with Conda Mining?
 2 A. The original '99 piece of this contract?
 3 Q. What do you mean, the '99 --
 4 A. Or I'm saying the original 1993 piece of
 5 this --
 6 Q. Yes.
 7 A. -- contract?
 8 Q. Yes. This exhibit that's in front of
 9 you.
 10 A. No. This was dated prior to my
 11 involvement. I was involved with the modification to
 12 this agreement.
 13 Q. Okay. Let me refer you down -- there's
 14 a section that says "witnesseth" and then one, two,
 15 three -- four "whereases" down it says: Conda and
 16 Monsanto previously entered into an agreement
 17 concerning mining of quartzite, which prior agreement
 18 had an effective date of January 1st, 1988.
 19 Are you aware of that agreement, that
 20 1988 agreement?
 21 A. I was not involved in the creation of
 22 that agreement. Was I aware that there was an
 23 agreement that predated the '93? Yes, I was.
 24 Q. Okay. Turning the page on to page 2.
 25 There's a Section 2, services. 2(b) says: To remove

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1 overburden from the quartzite reserves within the
 2 quarry prior to mining.
 3 What is -- well, do you have any
 4 knowledge as to what that means by overburden?
 5 A. Yes, generally.
 6 Q. What is it?
 7 A. Overburden is the dirt that sits on top
 8 of the quartzite rock in the mountain, dirt and other
 9 materials.
 10 Q. Okay. And then going back up to 2(a):
 11 Beginning no later than the third Monday in May of
 12 each operating season, Conda is selectively to mine,
 13 crush, and screen, at the quarry, quartzite which
 14 shall meet the specifications hereinafter described
 15 and then transport the same from the quarry to the
 16 plant in accordance with certain tonnage
 17 requirements?
 18 A. Yes.
 19 Q. Is that what you were referring to when
 20 we were talking about that process of mining,
 21 crushing, and screening quartzite?
 22 A. That's generally what they do with the
 23 quarry, yes.
 24 Q. Okay. This agreement has a term. It's
 25 effective January 1st of 1988 and terminates --

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1 know prior to my being involved in the procurement
 2 group. I will tell you that generally I put together
 3 contracts that were no longer than three years.
 4 Occasionally I put together contracts that were five
 5 years that required a much higher level of
 6 delegation. Anything that was beyond five required
 7 signature of, like, the president of the company -- I
 8 mean, all the way up to the top.
 9 So it was my practice not to go beyond
 10 five, as instructed by my management, and that I
 11 could -- if it was within my dollar range for three
 12 years, I could sign it. If it was out of my dollar
 13 range for three years, I had other people I could go
 14 to. Once -- I could go to people for five years, but
 15 once it went past five years, it involved --
 16 involving very high level managers in the decision.
 17 So we would have generally only done that on very
 18 unique and very high level types of contracts.
 19 That's the general premises whereby --
 20 which I operated as the purchasing manager.
 21 Q. As I go through this contract -- and I
 22 understand that you didn't have a role in negotiating
 23 this contract -- I don't see a provision in here that
 24 talks about WGI selling any material that is mined at
 25 the quarry. Am I correct in understanding that in

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1 A. Can you point me to a spot.
 2 Q. I'm sorry. Page 5, section 4,
 3 subsection (a). It says that the previous agreement
 4 terminated as of December 31st of '92.
 5 And then going down to subsection (b):
 6 The term of this agreement would commence January 1st
 7 of '93 and would continue, in effect, through
 8 December 31st of 2002, at which time it would
 9 terminate.
 10 Do you have any knowledge as to why this
 11 term existed in this particular length?
 12 A. As I indicated to you, I was not
 13 involved in the development of this contract.
 14 Q. Okay. Do you know generally why
 15 Monsanto would enter into agreements with WGI that
 16 had a term on them?
 17 A. Yes. It spells out the time frame in
 18 which the agreement would --
 19 Q. Right.
 20 A. -- be in play.
 21 Q. Sure. Is there any significance though
 22 to the particular time of the term? I mean, did
 23 Monsanto have a policy of entering into seven-year
 24 agreements, ten-year agreements?
 25 A. I can't speak to information I don't

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1 reading the contract this way?
 2 A. I haven't read this contract for a very
 3 long time.
 4 Q. Okay.
 5 A. I am generally aware that I felt like
 6 this contract had to be amended to permit us to
 7 recoup revenues from WGI for sale of material, and it
 8 was -- efforts were involved to amend that -- this
 9 contract.
 10 Q. Was WGI selling any material from the
 11 quarry from 1993 to 2002?
 12 A. Was WGI selling material? Not that I
 13 recall. I can't think -- WGI began selling material
 14 that I am aware of when it entered in -- when WGI
 15 entered into an agreement with SIO.
 16 Q. And based on your job responsibilities,
 17 if WGI were selling sand between 1993 and 2002, would
 18 you have known about it?
 19 A. I was not in a procurement role from '93
 20 to roughly '99. So --
 21 Q. Okay. Well, let me ask the question
 22 then this way: From the time that you assumed the
 23 procurement role in approximately 1999, would you
 24 have known if WGI was selling material from the
 25 quarry?

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1 A. I should have been in that loop.
 2 Q. BUT you're not aware that they actually
 3 were at that time in approximately 1999?
 4 A. No.
 5 Q. Okay.
 6 A. I know Monsanto was selling some of the
 7 material, which I testified to.
 8 MR. BROUGH: Yes. Let's go to an exhibit
 9 that we'll number *-29.
 10 (Exhibit *-29 marked.)
 11 Q. BY MR. BROUGH: Why don't you take a
 12 moment to look through that and when you're -- tell
 13 me when you're ready.
 14 A. Yes, sir.
 15 Q. Have you seen that document before?
 16 A. I have.
 17 Q. What is it?
 18 A. It's an addendum for an amendment to the
 19 1993 quartzite contract.
 20 Q. Okay. And were you involved in the
 21 negotiation of this agreement -- or this addendum to
 22 the agreement, I should say?
 23 A. I had some involvement, yes, sir.
 24 Q. What was the nature of your involvement?
 25 A. I had discussions with management

1 negative in that and I don't -- I want to be clear on
 2 that, so could you rephrase it?
 3 Q. Sure. Absolutely. I want to make clear
 4 that it's not the case that WGI had been selling sand
 5 from the quarry for years and that you just needed an
 6 agreement to memorialize that; am I correct in that?
 7 A. That it's not the case that WGI had been
 8 selling sand prior to this? As I told you, before my
 9 dealings in purchasing from '93 to roughly '99, I'm
 10 not aware of any sand that was sold. Is it possible?
 11 Yes, it's possible, but I wasn't aware of it.
 12 Q. Okay. This is a hypothetical question.
 13 I might hear an objection and that's okay. To your
 14 knowledge would Monsanto have been okay with WGI
 15 selling product from the quarry?
 16 MR. RITTI: Objection. Calls for
 17 speculation.
 18 Q. BY MR. BROUGH: Go ahead and answer if
 19 you know.
 20 A. I can only speculate it would depend on
 21 the terms and conditions in which they were selling.
 22 Q. Okay. I'll explain the foundation of my
 23 question. I guess if I owned sand and had a
 24 contractor that was mining the sand for me, if the
 25 contractor was selling sand -- my sand and wasn't

1 regarding the need for the contract amendment. I had
 2 discussions with my management regarding how the
 3 agreement would work.
 4 Q. And at the time who was your manager?
 5 A. The plant manager at this time was Bruce
 6 Pallante. Dave Farnsworth was responsible for the
 7 mining and quarry operations.
 8 Q. Now, you mentioned that you had some
 9 discussions about the need for this agreement. What
 10 was the need for this addendum?
 11 A. That SIO and WGI were going to enter
 12 into a contract for the selling -- processing and
 13 selling of sand and this allowed Monsanto -- this
 14 permitted WGI -- modified the contract to permit WGI
 15 to do so and it also established a royalty by which
 16 Monsanto would get money for product that was
 17 ultimately sold.
 18 Q. And I think that you've answered this
 19 question, but let me restate something just so that
 20 I'm clear. My understanding is that it's not the
 21 case, based on your knowledge, that WGI had been
 22 selling sand for several years prior on its own and
 23 now we just needed an agreement to memorialize it; is
 24 that correct?
 25 A. I'm sorry. I thought I heard a double

1 paying me for it, but was making the profit of it, I
 2 wouldn't be too happy about that. Based on your
 3 knowledge of Monsanto, would that be consistent?
 4 A. Hypothetically --
 5 MR. BROUGH: You can object again if you need
 6 to.
 7 MR. RITTI: Same objection.
 8 THE WITNESS: Hypothetically, there are a lot
 9 -- there are some issues that would arise out of
 10 that. Monsanto tries to be a very responsible
 11 company. People taking material and arbitrarily
 12 selling it in the market would concern us. We have a
 13 stewardship committee within our corporation that its
 14 specifically responsibility is to make sure that no
 15 products are sold in a manner that would harm people
 16 or in an irresponsible manner.
 17 So if they were doing that without some
 18 sort of review, then we would be a little concerned.
 19 If you are implying that they were doing something
 20 illegal by taking something that wasn't theirs and
 21 selling it, that, hypothetically, would also concern
 22 us.
 23 I guess we could go on all day long on
 24 hypotheticals.
 25 Q. Sure. And I don't mean to do that. I

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1 just want to understand generally if you had an
 2 understanding about what Monsanto's reaction would be
 3 to that. I think you answered that question fine.
 4 Let's go to Exhibit *-29. It says this
 5 addendum is intended to supplement and, where
 6 applicable, amend the quartzite agreement between
 7 Monsanto and WGI, formerly known as Conda Mining,
 8 dated March 10th, 1993.
 9 Going down to 23(a), location, it says:
 10 During the term of this agreement Washington may
 11 construct, maintain, and operate the silica sand
 12 processing facility to be located in the northeast
 13 corner of Monsanto's property at the quarry, and more
 14 specifically identified on the addendum to
 15 Exhibit *-1.
 16 Was it your understanding that
 17 Washington -- well, let me back up.
 18 Was it your understanding that as of the
 19 date of this agreement Washington was going to be
 20 operating that facility on behalf of SIO?
 21 A. How Washington decided to work it out
 22 with SIO is really none of my business. We had a
 23 contract with Washington. Washington agreed to abide
 24 by all of the regulatory and safety and we allowed
 25 them -- we had trust in them. We audited them. So

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1 it was up to them to work something out with SIO. I
 2 became aware that -- through just general
 3 conversations, that Washington Group had employees
 4 that were working in that operation.
 5 Q. Okay. Going down to -- well, let me
 6 back up. At the time that Monsanto entered into this
 7 addendum, was it aware that SIO would be present on
 8 the quarry doing some sort of work?
 9 A. Again, Monsanto was not in a position to
 10 tell WGI how to do this. It was my general
 11 understanding from discussions with folks that the
 12 work that would be performed would be done by
 13 Washington employees.
 14 Q. Okay. Going down to -- I'm sorry. Did
 15 you have something else to add?
 16 A. No. That -- anybody that comes on the
 17 quarry -- anybody: Guest, visitor, contractor, WGI
 18 employee, subcontractor of a subcontractor --
 19 everybody had to comply with all the laws and
 20 regulations, MSHA requirements, safety rules. WGI
 21 was operating it. They were responsible for making
 22 sure that happened. How they did that with SIO was
 23 up to them.
 24 Q. But I suppose it's correct too that if
 25 WGI somehow didn't manage SIO in accordance with

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1 Monsanto's policies and these other rules and laws
 2 that you mentioned, Monsanto would have something to
 3 say about that; is that correct?
 4 A. If they were failing to comply with the
 5 rules and regulations, Monsanto would have
 6 discussions with WGI.
 7 Q. Would it have had discussions with SIO?
 8 MR. BUDGE: You mean in the context or
 9 relative to these compliance issues you've been
 10 discussing?
 11 Q. BY MR. BROUGH: In general, these
 12 compliance issues.
 13 A. So how would I -- it was WGI's
 14 responsibility to manage the site and everybody that
 15 was on it: visitors. If any of our employees were
 16 over there and they observed an unsafe act, we
 17 believe it's the responsibility of the person seeing
 18 that to say stop, you could be harmed or you could
 19 harm somebody else. We live in a small rural
 20 community where everybody knows people.
 21 So it was Washington's responsibility.
 22 Could a Monsanto guy have said, "Look, now that's a
 23 fire hazard. You know, we need to get that taken
 24 care of," yeah. But, ultimately, it was Washington
 25 Group that was -- had to manage all that.

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1 Q. So if there was a violation of a safety
 2 regulation or some of sort of law that concerned
 3 Monsanto, would Monsanto have terminated the contract
 4 with WGI or would it have just told SIO you can't be
 5 on the property anymore; WGI, find somebody else?
 6 MR. RITTI: Objection. Calls for
 7 speculation.
 8 THE WITNESS: That hasn't happened so I'd
 9 just as soon not go down that path.
 10 Q. BY MR. BROUGH: Going to paragraph (d)
 11 under Section 23, royalty: Washington shall pay a
 12 royalty to Monsanto of \$13 per ton of finished sand
 13 product sold by Washington to a third party or used
 14 by Washington in activity unrelated to the facility.
 15 Now, in the context of Silicon
 16 International Ore's presence on the quarry, where it
 17 was selling some finished by-product, would the sand
 18 that silicon sold be included in that royalty
 19 calculation?
 20 A. Any material that Washington sold via
 21 any agreements it had with any other party would, in
 22 my view, fit into this.
 23 Q. So am I correct in understanding that
 24 it's Monsanto's position that, okay, we've got a
 25 contract with WGI. WGI contracts with SIO or

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1 whoever. whatever sand gets sold out of WGI's work
 2 there, regardless of who's actually selling it,
 3 that's WGI's royalty to pay; is that correct?
 4 A. Any sale of material that Washington
 5 made through itself or one of its third parties that
 6 met this criteria, there would be a royalty paid to
 7 Monsanto.
 8 Q. Let's go over to subparagraph (f) on the
 9 next page, third-party contracts: Washington
 10 anticipates entering into one or more contracts with
 11 Silicon International Ore related to the financing,
 12 construction, operation, and ownership of the
 13 equipment and building for the silica sand processing
 14 facility, as well as the sale of the processed silica
 15 sand.
 16 So does this paragraph demonstrate, in
 17 your mind, Monsanto's understanding that SIO would be
 18 on the property doing something?
 19 A. This is my understanding, that this was
 20 one of those third-party -- an example of one of
 21 these third-party sales where Washington would be
 22 selling material and -- through its third party to
 23 various areas and we would gain a royalty on that.
 24 Q. Skipping down to the signature blocks, I
 25 see the signature of Washington Group International

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1 A. I have.
 2 Q. And what is it?
 3 A. It's a contract that was entered into
 4 between WGI and P4 Production dated September 24th,
 5 2001.
 6 Q. Okay. Let me ask an introductory
 7 question. The contract in Exhibit *-26 was between
 8 Monsanto and Conda, and this one in Exhibit *-35 is
 9 between P4 and WGI. And I understand, I think, the
 10 relationship between WGI and Conda. Why is this
 11 agreement now where P4 Production is the party rather
 12 than Monsanto?
 13 A. So you remember that explanation that I
 14 gave you?
 15 Q. Yes.
 16 A. Well, in '93 there was just Monsanto.
 17 Q. Okay.
 18 A. So now we're going forward to 2001. The
 19 entity that owned the assets is P4 Production.
 20 Q. Okay.
 21 A. Now, I'm not an attorney, but my
 22 attorney -- the internal attorney instructed me that
 23 the name that should be on the contract is P4
 24 Production.
 25 Q. Okay. Going down -- let's turn the

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1 and it looks like the signature of John Rosenbaum. I
 2 don't see a signature for Monsanto Company. Do you
 3 know if there's a signed copy of this agreement by
 4 Monsanto anywhere?
 5 A. So this specific copy, I believe, came
 6 out of my files. And this is the copy I have. I
 7 generally keep the signed copies. Was it signed? I
 8 thought it was signed or I thought there was a
 9 document that was signed. I, obviously, didn't think
 10 this one was signed. I can see that. I thought
 11 there was a document that was signed. In my files
 12 this is what I had and this is what I produced.
 13 Q. Okay.
 14 MR. RITTI: We did produce a copy that was
 15 signed by Monsanto.
 16 MR. BROUGH: Okay.
 17 MR. RITTI: It's URS Bates 24042405.
 18 MR. BROUGH: Okay. Let's go to another
 19 exhibit. We'll call this Exhibit *-35.
 20 (Exhibit *-35 marked.)
 21 Q. BY MR. BROUGH: Would you mind taking a
 22 look at that document and let me know when you're
 23 ready.
 24 A. Okay. Yes, sir.
 25 Q. Have you seen this contract before?

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1 page. Let's go to paragraph -- I'm sorry --
 2 section 3 on page 4. Paragraph (a) says: The old
 3 quartzite agreement -- which I'll represent to you
 4 refers to the prior one that we just talked about --
 5 shall terminate as of December 31st, 2000.
 6 Now, if you go back and look at the
 7 first quartzite agreement that we talked about, I
 8 believe the termination date is in 2002. Do you know
 9 why Monsanto decided to have that first contract
 10 terminate two years early?
 11 A. Do I know why generally?
 12 Q. Yes.
 13 A. It has been our practice at times with
 14 very important entities that we do business with to
 15 start negotiations on contracts early so there's
 16 plenty of time to come to an agreement. Occasionally
 17 the negotiations result in a contract that both
 18 parties would like to put in place immediately,
 19 rather than wait for the expiration.
 20 Q. Okay.
 21 A. It doesn't happen in all cases. It
 22 happens occasionally. I can think of a half a dozen
 23 where I know that it's occurred, and this happens to
 24 be one of them. We started early. We started
 25 discussing, and it made sense to renew that.

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1 Q. Okay. Going down to subsection (b):
 2 The term of this agreement shall commence as of
 3 January 1st of 2001, and unless sooner terminated, as
 4 herein provided, shall continue in effect through
 5 December 31st of 2007, at which time it will
 6 terminate.
 7 Now, this is a seven-year term?
 8 A. Yes.
 9 Q. Was this the type of contract that you
 10 mentioned earlier had to receive approval from upper
 11 management at Monsanto?
 12 A. This -- yes. And this received approval
 13 from Dan Schettler, our vice president.
 14 MR. BROUGH: Let's go to Exhibit No. *-36.
 15 (Exhibit *-36 marked.)
 16 Q. BY MR. BROUGH: Would you take a look at
 17 that agreement, and when you're ready, let me know.
 18 A. Okay. I looked at this.
 19 Q. Have you seen this contract or this
 20 addendum before?
 21 A. I have.
 22 Q. Is this an addendum to the quartzite
 23 agreement that we just discussed as Exhibit *-35?
 24 A. Yes, it is.
 25 Q. Let's go to section 23, subparagraph

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1 A. I know that there was a building
 2 constructed. I don't know who actually did the
 3 physical construction of the building.
 4 Q. Going down to paragraph (d), royalty:
 5 Washington shall pay a royalty to P4 per ton of
 6 finished silica sand product sold by SIO according to
 7 appendix A.
 8 A. Yes.
 9 Q. Now, that language is different from the
 10 prior addendum in two respects. First, it doesn't
 11 specify a royalty in this paragraph. I assume the
 12 royalty schedule that you referred to, Exhibit *-A.
 13 Is that your understanding as well?
 14 A. It is my understanding that
 15 Exhibit *-A -- well, and let's be clear because
 16 there's a change to Exhibit *-A that takes place
 17 about a year later.
 18 Q. Okay.
 19 A. The first Exhibit *-A that you have
 20 there represents the royalties associated with this
 21 time frame and this change. It appears to me that it
 22 was changed again September 1st of 2003.
 23 Q. Now, the royalty to -- in the prior
 24 addendum it just specified \$13 per ton. And this
 25 appendix A, the first one as of March 1st of 2002,

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1 (a). It says: During the term of this agreement
 2 Washington may construct, maintain, and operate a
 3 silica sand processing facility on behalf of Silicon
 4 International Ore, LLC.
 5 Now, the prior to addendum to the prior
 6 quartzite agreement that we talked about does not
 7 include that language "on behalf of Silicon
 8 International Ore, LLC." Do you have any knowledge
 9 or recollection as to why that language was included
 10 in this addendum?
 11 A. Do I have any knowledge? I don't recall
 12 any specific reason for those specific words. My
 13 internal attorney, I believe, drafted those words in
 14 conjunction with others, so I don't.
 15 Q. Going down to subparagraph (d).
 16 A. That's (b) or (d)?
 17 Q. (B). I'm sorry.
 18 A. (B). Okay.
 19 Q. I'm looking at the second sentence there
 20 where it says: P4 shall, however, have the right to
 21 review and approve all equipment and buildings that
 22 will be operated or constructed at the facility site.
 23 Now, the relationship between WGI and
 24 SIO, do you know if SIO constructed a building on the
 25 quarry site?

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1 specifies differing royalties for differing types of
 2 sand. Was this more detailed schedule the product of
 3 any negotiations between Monsanto and WGI?
 4 A. Monsanto and WGI and SIO had a couple of
 5 meetings in which WGI through SIO explained to us
 6 some additional markets that they would think that
 7 they could penetrate. This -- and those markets had
 8 thought that they could be developed and the royalty
 9 would be less than the \$13 to do that.
 10 Monsanto agreed to charge WGI less money
 11 for royalties in these various categories. The
 12 information that was presented to us in the meeting
 13 -- the detailed information that was presented to us
 14 in the meetings regarding this was done by WGI's
 15 sales partner or -- I don't know if partner is the
 16 right word -- sales -- working with us. So SIO was
 17 the experts on these. WGI invited them in as a part
 18 of this discussion as to what royalties would be.
 19 Our relationship, Monsanto's relationship, P4's
 20 relationship, was always with WGI.
 21 Q. Going back to subparagraph (d), that
 22 sentence again says: Washington shall pay a royalty
 23 to P4 per ton of finished silica sand product sold by
 24 SIO according to appendix A, which could be updated
 25 by mutual agreement.

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1 Now, the prior addendum that we talked
 2 about specified that we were talking about silica
 3 sand sold by WGI, and this one says sold by SIO. Do
 4 you know any reason why this new agreement says this?
 5 A. Not exactly. I suspect there's a
 6 reason, but I don't know the reason.
 7 Q. From the time that SIO and WGI entered
 8 into their contract, are you aware of WGI selling any
 9 sand on its own, not through SIO?
 10 A. Not any material quantities, and in some
 11 cases, I don't know that -- I have a fleeting memory
 12 of Monsanto donating some sand and WGI maybe hauling
 13 that sand and getting reimbursed for it. So, in
 14 essence, did WGI -- I think they were reimbursed cost
 15 so I don't know that I'd characterize it as a sale.
 16 You know, there were several instances where Monsanto
 17 was approached for donations and we made the sand
 18 available as a donation, but moving it away and
 19 hauling it and stuff had to have WGI's involvement.
 20 Q. And when WGI was reimbursed for cost,
 21 would it have been Monsanto that reimbursed it for
 22 cost?
 23 A. Again, I don't -- I just -- I have a --
 24 you know, a fleeting recollection that I think there
 25 was some dialogue around how would you then make it

1 mining season was to start. And it's my recollection
 2 -- this going back ten years -- that when this was
 3 drafted and the attorneys put it together, that there
 4 was a recollection -- or a realization that they
 5 didn't include the amendment that took place in '93
 6 to permit it and so we needed to put that in place
 7 for this.
 8 Q. Okay.
 9 A. That's my recollection, but it was ten
 10 years ago.
 11 Q. Okay.
 12 A. But if you can look by the dates, it all
 13 happened prior to the quarry season beginning.
 14 Q. Let me put my question a different way.
 15 I appreciate the answer. Let me put my question a
 16 different way.
 17 The first addendum mentions SIO in
 18 November of 2000. And this one mentions SIO in March
 19 of 2002. And the second quartzite agreement is
 20 September of 2001. So this quartzite agreement
 21 that's Exhibit *-35 postdates that first addendum, as
 22 does the second addendum. So if the relationship
 23 between WGI and SIO was already in a contract by
 24 March of 2002, why was it mentioned again in an
 25 addendum? I guess it just seems to me like you would

1 go away and they needed to talk to WGI. You'd have
 2 to discuss that with them. For all I know, WGI
 3 donated their labor. I don't know.
 4 Q. Now, we've talked about two quartzite
 5 agreements and two addenda, one each to the quartzite
 6 agreements. In both cases the SIO involvement in
 7 this is done in an addendum. Why is that?
 8 MR. RITTI: Let me object to the form. You
 9 said SIO's involvement in the addendums, which are
 10 between Washington and Monsanto, so I'm not
 11 understanding the question.
 12 MR. BROUGH: I'll rephrase the question.
 13 Q. BY MR. BROUGH: This addendum to the
 14 quartzite agreement is dated March -- the 1st of
 15 March 2002. And the prior addendum was dated in
 16 November of 2000. Now, by the time we got to the
 17 second addendum everybody already knew, I suppose,
 18 that SIO was going to be doing some work on the
 19 quarry. Why was the notion of WGI or SIO selling
 20 sand not included in the principal quartzite
 21 agreement; why was it in an addendum?
 22 A. So the master agreement was signed on
 23 September 24 of 2001. This addendum was March of
 24 2002. So September 2001 was after the mining season
 25 closed. Okay? March 2002 is still before the next

1 have just put it in the main quartzite agreement that
 2 WGI can do whatever it's going to do. Was there a
 3 reason for that?
 4 A. I tried to explain what my recollection
 5 on the thing was, recognizing it was ten years ago.
 6 But I think what happened, to be candid with you, is
 7 when all the papers got sent over, it just failed --
 8 and the contract was drafted by legal, it just failed
 9 to grab that piece. It was recognized and we got it
 10 back and put it in there before the mining season.
 11 That's -- that's my recollection. But before the
 12 mining season started, we had it taken care of.
 13 Q. Okay. When was Monsanto -- well, let me
 14 ask this: Was Monsanto approached by SIO about
 15 working on the premises? By premises I mean the
 16 quarry.
 17 A. Do you have a time frame that you're
 18 talking about?
 19 Q. Yeah. Late nineties, 1998, 1999, maybe
 20 2000.
 21 A. I believe that -- I don't know if it was
 22 SIO. At least -- I don't know if SIO existed back
 23 then, but the Sullivan family, whether it did or not,
 24 was aware that we had a quarry and approached us
 25 about discussions regarding some maybe future or

1 potential business relationship.
 2 Q. What was your role within Monsanto at
 3 the time that the Sullivan family approached
 4 Monsanto?
 5 A. I don't know exactly when the first time
 6 that approach may or may not have been made. As I
 7 told you, roughly, in the '99-ish time frame, I began
 8 to support the purchasing.
 9 The first face-to-face meeting that I am
 10 aware of took place between Monsanto, WGI, and
 11 Silicon International where we -- the three of us sat
 12 down and had some discussions regarding what
 13 opportunities might exist and what, you know,
 14 possible businesses could be in place to take
 15 advantage of those opportunities. There is a
 16 document -- there's a confidentiality document that I
 17 believe predated that meeting that was put in place
 18 so that all parties could talk and show all their
 19 cards regarding those potential feasibility studies.
 20 Q. Okay.
 21 A. And I believe there's also an e-mail
 22 that references it.
 23 Q. We'll get there. The first meeting of
 24 which you're aware between SIO, WGI, and Monsanto,
 25 who was -- what individuals were present at that

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1 meeting?
 2 A. Well, this happened ten or so years ago,
 3 and without documents and things in front of me, my
 4 best recollection was that John Rosenbaum, the
 5 operating manager for Dravo or WGI -- I don't know
 6 the entity that owned them at the time -- was there.
 7 Mitch Hart was there, myself, and I'm pretty
 8 confident that Todd Sullivan was there, and Bob, the
 9 father, I think, was there. I don't recall whether
 10 or not the other brother, Tim Sullivan, was there. I
 11 don't recall.
 12 Q. Do you remember where that meeting
 13 occurred?
 14 A. You know, it was on the -- my best
 15 recollection is that it happened somewhere on the
 16 bench in Salt Lake. Maybe at a law office or
 17 something. I don't -- without documents or -- it
 18 happened ten years ago.
 19 Q. Okay. At the first meeting that you
 20 recollect, do you remember, at least generally, what
 21 was discussed at that meeting?
 22 A. Well, Monsanto had for years sold or
 23 tried to sell silicon from its operation. I think
 24 the twist that SIO had was they felt like by
 25 processing the sand, sizing it, cleaning it,

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1 whatever, processing the sand, that it would allow
 2 somebody to be able to penetrate some markets that
 3 you just couldn't penetrate with the run of the pit,
 4 sand or reject.
 5 Q. So am I correct in understanding then at
 6 this meeting you heard SIO's pitch for why it could
 7 contribute something unique to this effort by
 8 Monsanto to sell these products?
 9 A. My recollection is, yeah, they felt like
 10 there was a niche that could be approached. I think
 11 they represented they had the know-how to make that
 12 and they represented, well, you have the sand. But I
 13 would point out that John Rosenbaum of WGI was with
 14 us. I mean, they were talking to both Monsanto and
 15 WGI or Dravo. I'm sorry. I don't know whose name
 16 was on the entity at the time.
 17 Q. Okay. Do you know if SIO contacted WGI
 18 before it contacted Monsanto?
 19 A. I don't know.
 20 Q. Do you know who invited WGI to that
 21 meeting, whether it was SIO or Monsanto?
 22 A. You know, I don't know that I know that.
 23 I remember the three of us -- Mitch Hart, John, and
 24 myself -- going there.
 25 Q. Do you remember anything else that was

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1 discussed at that meeting?
 2 A. You know, this wasn't the first time or
 3 has it been the last time that somebody's approached
 4 us saying, hey, come and do business with us. I
 5 remember thinking the idea was intriguing. I
 6 remember thinking there's a lot of challenges to try
 7 and put something like this together. So, you know,
 8 I knew that it was worth assessing, but whether it
 9 would get off the ground or not, I -- you know, I was
 10 still fairly unsure.
 11 Q. After that meeting that we've been
 12 talking about, did you discuss the content of the
 13 meeting or your impressions of it with anybody?
 14 A. I discussed that with my management.
 15 Q. And who specifically of your management
 16 did you discuss it with?
 17 A. I recall discussing it with Dave
 18 Farnsworth and I believe Bruce Pallante, the plant
 19 manager. From that point I think there were other
 20 discussions with other managers higher up, but I
 21 don't -- I don't remember being in those meetings,
 22 but it's possible.
 23 Q. Do you remember what the reaction of
 24 Dave Farnsworth or Bruce Pallante was to what you
 25 talked about at the meeting with them?

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1 A. I -- it was -- I think it was somewhat
 2 guarded. I think the -- I didn't -- typically,
 3 capital is hard to come by at Monsanto, so I didn't
 4 see us investing any capital in it. People that come
 5 on our site are -- have to live under the same
 6 scrutiny that the agencies put on us. I think we
 7 felt like that might be a challenge for the whole
 8 thing. I think at the end of the day all of our
 9 folks said, well, have them site a plant somewhere
 10 and we'll sell them sand. Then they can process it
 11 and do what they want with it.

12 Q. Okay. You mentioned a few minutes ago
 13 that SIO's proposal was intriguing. Why was it
 14 intriguing?

15 A. Monsanto had some desire to sell the
 16 reject material. They were talking about markets and
 17 represented those markets to be fairly attractive if
 18 we could -- if somebody could get a sized material
 19 that met those specs.

20 Q. Was Monsanto's interest in selling the
 21 material just to make a profit off of something that
 22 it wasn't profiting off of then or was it concerned
 23 that the stuff's piling up and we have to think about
 24 getting rid of it somehow?

25 A. Two questions. Your first question was

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1 quartzite. Washington is responsible for the
 2 operations, which includes maintaining the piles.

3 Q. I see. Let's go back to the discussions
 4 with SIO or the Sullivan family. After that first
 5 meeting you heard SIO's proposal. You spoke about it
 6 with Dave Farnsworth and Bruce Pallante, got their
 7 reaction. What happened then?

8 A. It's my recollection that we went back
 9 and said, look, great idea, go for it. We'll sell
 10 you the sand.

11 Q. Okay. Monsanto would sell who the sand?

12 A. Monsanto -- if SIO constructed a
 13 facility somewhere and wanted to buy the sand, we
 14 would sell the sand like we were selling it to Ash
 15 Grove. They're the Inkom cement plant.

16 Q. When you relayed that information to
 17 SIO, did your correspondence or communication include
 18 anything about, yeah, if you have to construct a
 19 facility at the quarry, go ahead, that's fine? I
 20 mean, how --

21 A. No.

22 Q. -- were they going to --

23 A. No. You go buy a piece of ground and
 24 you put your equipment on it.

25 Q. I see. Okay. How did it --

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1 was Monsanto interested in making a profit? Well,
 2 Monsanto is in a very competitive business. Anything
 3 Monsanto can do to reduce its cost that it can do
 4 responsibly without incurring additional risks or --
 5 I guess we listen to those ideas. We don't pursue
 6 them all, but we listen to them.

7 Was Monsanto -- your second part of your
 8 question was was Monsanto wanting to remove the pile?
 9 There's some long-term plans. There are some --
 10 there are some -- there is some good quartzite that
 11 can be mined that sits under portions of the piles.
 12 At some point in time Monsanto would like to mine
 13 those properties. Do those piles prevent it from
 14 mining? No. But if the piles were gone, it would be
 15 easier to mine.

16 Q. Did it cost Monsanto anything monetarily
 17 to keep the piles at the quarry?

18 A. Did it cost Monsanto? Monsanto engages
 19 WGI to manage the operation. We pay a certain amount
 20 of money for finished rock. That's how that's
 21 structured. So maintaining the piles and that is
 22 something that Washington's responsible for.

23 Q. Does Monsanto pay Washington to maintain
 24 the piles?

25 A. Monsanto pays Washington for finished

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1 A. I mean, that's what everybody does.

2 Q. Okay. How did it come up that SIO would
 3 put equipment on the Monsanto quarry?

4 A. It's my recollection that that was what
 5 they wanted. They wanted to be able to locate the
 6 facility at the quarry.

7 Q. SIO wanted that. Okay. And what was
 8 Monsanto's reaction to that?

9 A. No way.

10 Q. Okay. Why not?

11 A. Monsanto was not going to -- Monsanto
 12 was not going to supervise or have another --
 13 inexperienced people who have never operated a
 14 facility before who's not familiar with all the
 15 regulations that -- there's no way.

16 Q. Was Monsanto's concern a liability
 17 concern for itself?

18 A. Well, recognize we don't -- there's no
 19 money in sand. Our business is elemental phosphorus.
 20 So anything that would put that in jeopardy was of
 21 great concern to us.

22 Q. Did Monsanto perceive that this sand
 23 business would put the elemental phosphorus business
 24 in jeopardy?

25 A. Well, Monsanto wasn't going to go down a

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1 path that that would happen.
 2 Q. Okay. My question is did it perceive
 3 that it could happen? Is that why it rejected this
 4 proposal to put the facility on the quarry?
 5 A. It was a risk.
 6 Q. Okay. So you go -- Monsanto goes back
 7 to SIO and says, that's great, you want to buy some
 8 sand from us, we'll sell you sand. Go find some
 9 property, process it, sell it. God speed. What was
 10 SIO's reaction to that?
 11 A. That wasn't what SIO wanted.
 12 Q. What did it want?
 13 A. My understanding is SIO wanted to site
 14 the facility at the quarry. SIO didn't want to buy
 15 the sand. They wanted to take the sand, process it,
 16 take the material that they -- the sized material and
 17 sell it and not have the burden of what do you do
 18 with the stuff that doesn't meet that size. And I'm
 19 not sure -- you know, I can't speak past that. I
 20 don't know what other issues that SIO internally was
 21 considering. Those were the ones that I recall that
 22 were represented to us.
 23 Q. So it sounds like at that point Monsanto
 24 and SIO were at an impasse; is that fair to say?
 25 A. Well, an agreement directly with

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1 Monsanto, there's no way. We were at an impasse.
 2 Q. What happened next? Was that impasse
 3 ever resolved?
 4 A. Well, in my opinion, it was based on the
 5 actions that took place. SIO was able to contract
 6 with Washington to run a facility, somebody we did
 7 have confidence in and had demonstrated experience at
 8 running and managing and remaining in compliance.
 9 And, basically, WGI was willing under their agreement
 10 to make sure that all of our safety, environmental
 11 health concerns were addressed. They represented
 12 that they could do that and it could be done at the
 13 quarry. So they entered an agreement with SIO and we
 14 changed our contract to allow that to occur.
 15 Q. In the negotiations that led up to that
 16 arrangement, were the issues of royalty amounts ever
 17 discussed?
 18 A. Give me a time frame.
 19 Q. In 1999 to 2002. At any time you were
 20 involved in this --
 21 A. Were royalty numbers thrown out? Yes,
 22 I'm sure they were.
 23 Q. Who was throwing the royalty numbers
 24 out?
 25 A. You know, I don't recall exactly who

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1 broached -- it took place over ten years ago. I
 2 don't recall. But I'm sure there was some discussion
 3 around the business cases. It's evident from the
 4 addendums that it took place. The first addendum
 5 that we did to the '93 contract had it for \$13. The
 6 addendum that took place in 2002 had varying
 7 royalties for varying different markets.
 8 Q. Do you remember in the discussions that
 9 you were involved in, did Monsanto ever take the
 10 position we need to at least make this much off of
 11 royalties?
 12 A. I'm sure Monsanto would have said
 13 something like that.
 14 Q. Do you remember if WGI said that?
 15 A. To who? I mean, I'm selling sand to
 16 WGI. I'm sure we said there's a certain amount of
 17 money that's got to be made by this. Did WGI say
 18 back to me that there should be -- I don't know. I
 19 don't know. I'm sure there was a discussion. I
 20 don't --
 21 Q. Do you know if WGI was making a profit
 22 off of the selling of this sand with SIO?
 23 A. You know, at the time it's -- I don't
 24 recall. I recall maybe some discussions at the end
 25 or just in passing that WGI thought they would --

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1 that they might be able to make some money based on
 2 running the facility. Whether they were going to
 3 make some on the royalties, I don't think so, but
 4 it's possible. I don't know what WGI was talking
 5 about.
 6 Q. What was the arrangement for how --
 7 well, let me ask this: I mean, out of the
 8 negotiations between Monsanto, SIO, and WGI, I
 9 presume that some arrangements for how royalties were
 10 going to be paid were made; is that correct?
 11 A. Well, let's make sure that we're clear.
 12 Monsanto allowed in the addendum for Washington with
 13 any of the partners it chooses from in the first one
 14 and later, as you pointed out, specifically spells
 15 out SIO in the second one, that they would be selling
 16 sand, and Monsanto charged a royalty for that to
 17 Washington, and we established what those royalties
 18 were.
 19 Q. Okay. During the negotiations between
 20 Monsanto, SIO, and WGI, did Monsanto -- I'm sorry --
 21 did SIO ever make a proposal that regarded the
 22 duration of any agreement with Monsanto?
 23 A. Well, first of all, your question's real
 24 broad. So during negotiation with WGI and Monsanto
 25 on a term of contract, WGI and Monsanto had

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1 discussions on term.
 2 Q. Right.
 3 A. Did SIO have discussions with WGI on
 4 term? I would assume so, but I wasn't in those
 5 discussions. I can't tell you.
 6 Q. Okay. Did SIO have discussions as to
 7 the term with Monsanto?
 8 A. SIO and Monsanto never had a contract.
 9 There was no terms and conditions.
 10 Q. Well, I know that. But when SIO wanted
 11 a contract, did it say we want the contract for this
 12 term?
 13 A. When we were talking about
 14 feasibility -- I don't recall them doing that.
 15 Q. Okay.
 16 A. When we were talking about feasibility,
 17 could they have said we want a contract that goes on,
 18 you know, ten days past forever? That's possible.
 19 You know, we didn't put an agreement in place. There
 20 was no contractual agreement. We were talking
 21 feasibility, what a business might look like, what it
 22 could look like, how it might be structured, whether
 23 there would be any money. We weren't fine-tuning any
 24 contract because no contract existed.
 25 Q. Well, I understand that. I understand

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1 I can only assume yes. They came up with a contract.
 2 MR. BROUGH: Okay. Why don't we take our
 3 break. I'm at a decent stopping point. Do you want
 4 to say an hour and come back at 1:00?
 5 MR. BUDGE: Sounds good.
 6 (A recess was taken from 11:53 a.m. to
 7 1:05 p.m.)
 8 (Exhibit *-30 marked.)
 9 Q. BY MR. BROUGH: I'll just represent to
 10 you that this is a copy -- it looks like to me it is
 11 the same addendum to quartzite agreement dated in
 12 2000 that we referred to prior to in this deposition;
 13 is that accurate?
 14 A. Yes, I believe so.
 15 Q. Specifically I wanted to ask you about
 16 this one because this has some handwritten notes on
 17 it. Do you recognize that handwriting at all on
 18 there?
 19 A. It's not my handwriting. No, I don't.
 20 MR. BROUGH: Fair enough. I'll show you now
 21 a document that we'll mark as Exhibit *-31.
 22 (Exhibit *-31 marked.)
 23 Q. BY MR. BROUGH: Why don't you take a
 24 look at that and let me know when you're ready to
 25 keep going.

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1 that to be Monsanto's position. My question pertains
 2 specifically to when the parties are all together in
 3 some room somewhere talking about what the
 4 arrangement would be, did SIO say we would like an
 5 arrangement for this period of time? I understand
 6 Monsanto says it rejected that.
 7 A. So the answer to your question is no
 8 because no meeting and negotiations took place
 9 between SIO, Washington, and Monsanto. If you're
 10 talking about a meeting discussing feasibility and
 11 what potential might exist regarding, you know, could
 12 you sell it into the market, you know, there were a
 13 lot of ideas expressed. None of them were for sure
 14 and everybody was giving their best opinion and --
 15 but there was nothing set. This was just all maybe.
 16 It was all blue sky.
 17 Q. Okay. I understand.
 18 A. So there was no negotiations that took
 19 place between the three parties.
 20 Q. No negotiations ever happened?
 21 A. Between the three parties?
 22 Q. Yes.
 23 A. No. Did negotiations take place between
 24 Washington and Monsanto? Yes. Did negotiations take
 25 place between SIO and WGI to put their agreement in?

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1 A. Okay.
 2 Q. Have you seen this document before?
 3 A. I believe that I was provided a courtesy
 4 copy of this agreement or a copy of this agreement.
 5 It's an agreement between Washington Group and
 6 Silicon International. So I believe I was provided a
 7 courtesy at some point in time after. I don't recall
 8 when.
 9 Q. Do you remember who would have given you
 10 this copy?
 11 A. You know, I don't remember the person
 12 doing it. Probably a few people that potentially
 13 could have, but I don't recall actually somebody
 14 handing it to me. But I do recall receiving a
 15 courtesy copy and having it sitting around and
 16 finally filing it.
 17 Q. Did you put this document in the file
 18 that we talked about at the beginning of the
 19 deposition?
 20 A. This was a document that was -- that was
 21 a part of the files that I turned over to my
 22 attorney.
 23 Q. Do you remember if you requested a
 24 courtesy copy of this contract from anybody?
 25 A. I think it was provided to me. Did I

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1 request it? It's so long ago. It's possible. But I
 2 think it was just here's a courtesy copy. That's how
 3 I think I got it.

4 Q. Do you remember if since receiving this
 5 document you referred back to it for any particular
 6 reason when issues with SIO or WGI arose?

7 A. There's only one instance in which I
 8 recall -- you know, we're talking about ten years.
 9 There's only one instance where I recall being of
 10 interest in the document. So one time I recall.

11 Q. And what was that time?

12 A. As I mentioned to you earlier, everybody
 13 that comes on our site, any of our sites, has to go
 14 through a series of orientations and has to comply
 15 with certain safety and health guidelines. It is the
 16 practice of Monsanto to send out packages,
 17 qualification packages, to all of our contractors.
 18 But also sometimes our contractors say, hey, I may
 19 have an intention of using somebody else, and so
 20 would you send a package out to them. Because
 21 everybody has to qualify.

22 And we would receive lists from various
 23 folks, like our operator at Rock Springs and our
 24 operator at the mine and our operator at the quarry,
 25 WGI and others, saying these are the people that I'm

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1 Let me know when you're ready to go on.

2 A. Yes.

3 Q. Have you seen this document before?

4 A. I have.

5 Q. What is it?

6 A. It's a confidentiality agreement for the
 7 purpose of sharing information and making sure it
 8 doesn't get into the public domain.

9 Q. Now, I'm going to suspect that the
 10 answer to this question comes from the explanation
 11 that you gave earlier about P4 Production and
 12 Monsanto. But let me ask the question in context of
 13 this agreement so that I'm clear. Why are P4
 14 Production and Monsanto parties to this agreement?

15 A. Well, P4 owns our assets. The assets
 16 are in the name of a corporation called P4. Monsanto
 17 owns P4. So that's why it was put together. Todd
 18 Sullivan is an attorney. I think he was the one that
 19 drafted this, and so, you know, he put both of those
 20 names on it. That's my recollection.

21 MR. BROUGH: I'll show you a document that
 22 we'll mark as Exhibit *-33.
 23 (Exhibit *-33 marked.)

24 Q. BY MR. BROUGH: Why don't you take a
 25 look at that, and let me know when you're ready to

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1 planning on using. We need to make sure that they
 2 get the safety rules and the package and they report
 3 all their numbers and they send in their insurance
 4 certificates and such.

5 There was a time when SIO -- WGI
 6 requested that we send one of these packages to SIO.
 7 And so a package was sent and the -- Tim Sullivan
 8 refused to deal with it. And so the question became
 9 this is Washington's problem. They fixed it. But
 10 there was some discussion as to how does the
 11 relationship with Washington and SIO work. And we
 12 had a copy of that, and so that's how the issue came
 13 up.

14 Q. Okay. So is it your understanding that
 15 this agreement defines or summarizes, or whatever,
 16 the agreement or relationship between SIO and WGI?

17 A. Well, I didn't participate in those
 18 negotiations. I can only look back as a spectator.
 19 But as a spectator I would say this is the agreement
 20 between SIO and Washington that governs their
 21 relationship.

22 MR. BROUGH: Let's go to a document that
 23 we'll mark as Exhibit *-32.
 24 (Exhibit *-32 marked.)

25 Q. BY MR. BROUGH: Take a look at that, and

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1 keep going.

2 A. Okay.

3 Q. Have you seen this document before?

4 A. Yes, I have.

5 Q. And what is it?

6 A. It's a confidentiality agreement.

7 Q. Okay. I note that the date on this,
 8 it's March blank, and it looks like there's a little
 9 scribbling over the blank 2000. And the first
 10 confidentiality agreement is December 19th of 2000,
 11 so there's about eight months difference between
 12 these. Do you know why two separate confidentiality
 13 agreements were entered into?

14 A. I have -- it doesn't seem to make a lot
 15 of sense that two would be entered into. But, you
 16 know, that's -- apparently, you know, there was --
 17 someone felt the need that we had to -- I don't know
 18 if the person didn't recognize we had the one
 19 earlier, but it's a confidentiality agreement which
 20 protects information.

21 Q. It looks like, if you read the first
 22 paragraph, Monsanto is not a party to this agreement.
 23 Only P4 Production is. Do you know why that would
 24 be?

25 A. I'm not an attorney. I know that there

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1 are legal reasons why there are two parties. Me
 2 personally consider P4 and Monsanto, in essence, the
 3 same thing. Okay? From a business standpoint
 4 Monsanto is the purchasing agent for P4. So whether
 5 I'm acting in the name of P4 or I'm acting under
 6 Monsanto as purchasing agent, in essence I'm doing
 7 the same thing from my perception. But, again, I'm
 8 not an attorney, so I'm not giving you a legal
 9 review.

10 Q. understood. The dates on this
 11 confidentiality agreements, March of 2000 and
 12 December of 2000, you mentioned earlier that these
 13 confidentiality agreements would have roughly
 14 coincided with the commencement of discussions
 15 between SIO, Monsanto, and WGI. Do these dates
 16 refresh your recollection as to when those
 17 discussions would have commenced?

18 A. Well, so, I mean, clearly when -- in
 19 this range give or take.

20 Q. Okay.

21 A. I mean, clearly when you start divulging
 22 information that you think is of value and you don't
 23 want everybody to know, you put a confidentiality
 24 agreement in place.

25 Q. Sure. Okay. But, generally, you would

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1 That's, of course, his name.

2 Q. Sure. We received from Monsanto in
 3 discovery these two copies of this same
 4 confidentiality agreement, and one is -- it looks
 5 like a faxed copy, and that's Exhibit *-33, and the
 6 other is an original according to this writing up
 7 here. Did you put both an original and a copy in the
 8 file?

9 A. We put every document that we could
 10 find, whether it was copies or -- obviously, one is
 11 signed and one isn't signed, so we would have
 12 included both of them.

13 Q. My question specifically though is when
 14 you talk about the file that you retain or that
 15 Monsanto retains, I guess, for its contractors, did
 16 both an original and a copy go into that file?

17 A. I believe that in my file where I keep
 18 the purchasing documents just the original went. I
 19 believe, based on what I can see here, that this is
 20 probably Dave Farnsworth's file that was pulled, and
 21 apparently he kept both of them.

22 Q. So that I'm clear, the file that you
 23 talked about at the beginning of the deposition that
 24 you keep for contractors, that's just your personal
 25 file?

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1 say that the discussions commenced around this time?

2 A. Yeah, give or take. But I would -- I
 3 mean, Mr. Sullivan, Todd Sullivan, was very
 4 particular, wanted to make sure that anything of any
 5 detail or precision was -- that we had a
 6 confidentiality in place.

7 MR. BROUGH: I'll show you a document that
 8 we'll mark as Exhibit *-34.
 9 (Exhibit *-34 marked.)

10 Q. BY MR. BROUGH: Why don't you take a
 11 look at that document. While you're looking at it,
 12 I'll just represent to you that it looks like the
 13 same confidentiality agreement dated March of 2000.
 14 Mostly does that sound fair or accurate to you?

15 A. Yeah. I don't remember which exhibit,
 16 but it looks like some signatures and stuff. It
 17 looks like one of the copies that was sent.

18 Q. It would be Exhibit *-33 that it would
 19 be the same copy of. I specifically just wanted to
 20 ask you about the handwriting in the upper right-hand
 21 corner. Do you know whose handwriting that is?

22 A. Well, I believe the signature is Dave
 23 Farnsworth, so I would assume the rest of it is his.
 24 But I don't know that. But the signature in my --
 25 based on my experience appears to be Dave Farnsworth.

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1 A. No, sir. That's the official Monsanto.
 2 I keep the purchasing documents. Does that mean that
 3 somebody else couldn't have one? Yes. Does it mean
 4 that the original couldn't be with Dave Farnsworth
 5 and I have a copy? I could have a copy. I mean, I
 6 secured the information that was available. I prefer
 7 to get the original, but I don't always.

8 MR. BROUGH: I see. Then we'll have a
 9 document Exhibit *-37.
 10 (Exhibit *-37 marked.)

11 Q. BY MR. BROUGH: I'll represent to you
 12 that this is another copy of the addendum to
 13 quartzite agreement from March of 2002. We've
 14 already looked at this as an exhibit. Does that
 15 sound like a fair characterization of what this
 16 document is?

17 A. It appears to be.

18 Q. Specifically in looking at Exhibit *-36,
 19 and it would be the same copy of that -- well, no.

20 A. I don't think so.

21 Q. You're right. I was just curious. If
 22 it really is confidential, then I'll stop asking.
 23 But do you know what was blocked out off of this
 24 document? It looks just like a signature and a
 25 couple of stamps.

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1 A. Do I know what was under those? Not
 2 without seeing them before they were blocked out.
 3 Sorry.
 4 Q. Not without seeing what's under it?
 5 A. I'm sorry. I know that's not very
 6 helpful to you.
 7 Q. I understand. I assume that at some
 8 point WGI approached Monsanto and said we're done
 9 with SIO. Do you have any recollection of those
 10 conversations?
 11 A. I recall some conversations towards the
 12 period of time in which WGI decided that they were
 13 not going to renew any contracts.
 14 Q. Do you remember the approximate date
 15 that you had your first conversation about that?
 16 A. They would have been around the period
 17 of time in which we were putting together or the
 18 contract that -- I don't remember. I think we had it
 19 here. Was it the 2007 contract between WGI and
 20 Monsanto? 2008? I need to see the contract so I can
 21 tell you the exact date. But it would be in that
 22 period where we created a new contract.
 23 Q. I don't think we've introduced yet any
 24 contract between Monsanto and WGI that started on
 25 that date. We did talk about a contract, the second

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1 that started at the end of the last one, we'll say
 2 late 2007, early 2008, do you have a copy of that
 3 contract in your file?
 4 A. Do I have a copy of the contract with
 5 WGI that took place after the conclusion -- yeah, I
 6 do.
 7 MR. BROUGH: That document hasn't been
 8 produced to us to my knowledge. Randy, is that
 9 something that we could --
 10 MR. BUDGE: Let's go off the record.
 11 (A discussion was held off the record.)
 12 Q. BY MR. BROUGH: Going back to the new --
 13 we'll call it the new WGI-Monsanto contract --
 14 A. The new. Give me the time frame. The
 15 one that --
 16 Q. The one that was entered into in
 17 approximately January of 2008.
 18 A. Okay.
 19 Q. Does that contract permit WGI to sell
 20 sand?
 21 A. When we were negotiating with WGI and we
 22 were looking at the contract and we were negotiating
 23 how much it would cost us, the net cost to us of
 24 silica, quartzite, we ran various analysis to that
 25 present value and the whole works. We would -- as a

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1 quartzite agreement that terminated on December 31st
 2 of 2007. Is that what you mean?
 3 A. Yeah. The contract that went into place
 4 that replaced that contract would have been the time.
 5 Q. I see. Who did you speak with at WGI
 6 about those?
 7 A. It would have been one of two people.
 8 Clayton and Craig Nelson.
 9 Q. Do you remember what you talked about
 10 with them?
 11 A. Well, we were in the process of putting
 12 a new agreement together to go for another period of
 13 time. In our discussions we -- we were in
 14 negotiations with them. We were working out business
 15 terms and conditions, and the discussion eventually
 16 came around to whether or not -- that we would put in
 17 the contract provisions for them to continue to pay
 18 us a royalty and -- into the contract.
 19 Several weeks after that or -- I don't
 20 recall the exact amount of time, but during that
 21 process towards the end of that process I was
 22 informed by them that they had done an analysis on
 23 that part of the business and had decided that they
 24 would not extend the contract with SIO.
 25 Q. The contract between Monsanto and WGI

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1 practice we would fold in any royalty payments WGI
 2 would give to us in analyzing that.
 3 WGI indicated to us that they were no
 4 longer going to continue the relationship with SIO.
 5 As a result of that, in our analysis we struck the
 6 need for putting a royalty in. Now, could the
 7 documents still have a provision for if they sold
 8 sand for them to pay royalties, I don't -- I'd have
 9 to go look at the documents. It's been a long time
 10 since I've looked at them. I don't remember those
 11 kind of details. But I know the analysis we ran was
 12 without expectation of royalties.
 13 Q. Is WGI presently selling sand?
 14 A. I do not believe so.
 15 Q. Would you know if it were?
 16 A. I should know that, yes.
 17 Q. The buildup of the sand, we'll call it,
 18 is anybody selling sand now that -- well, strike
 19 that. That's a terrible question.
 20 What is Monsanto doing now with the
 21 by-product sand, we'll call it?
 22 A. I have sand. I have sold some to Ash
 23 Grove up to the point in time that they ceased their
 24 operation in Inkom. I have sold some sand to the
 25 county for some of their needs. So I don't -- I

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1 recall selling some sand to an employee who was
 2 starting a greenhouse business and needed sand to
 3 construct his greenhouse. I've had those. They're
 4 not material in nature. They're relatively small.
 5 But I have from time to time sold. I don't believe I
 6 sold any last year. Could be mistaken. I clearly
 7 didn't sell any material amounts.

8 Q. So that sand by-product, it's continuing
 9 again to accumulate on the Monsanto quarry?

10 A. Well, yes. There's more -- remember the
 11 process. We take quartzite, we size and screen it,
 12 you're left with the hole. You have sand that's a
 13 by-product. You can put it back in the hole. But
 14 it's not -- yes, it's still there.

15 Q. Is Monsanto incurring any additional
 16 costs because nobody's -- because no other entity is
 17 taking that sand away?

18 A. Are we incurring any additional cost?
 19 Well, it sounds like a simple question. It's not so
 20 simple to answer. Are we paying somebody to haul the
 21 sand off and put it somewhere? Not really. I mean,
 22 it's by-product that comes off the operation, reject,
 23 goes into a pile. Are we incurring extra costs
 24 because somebody isn't buying it and so I don't have
 25 revenue from that and so that means extra costs?

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1 a decision that WGI needed to make.

2 Q. When you say you mentioned in your
 3 answer there were lots of reasons, what did you mean
 4 by that?

5 A. Well, SIO and WGI had a relationship.
 6 It had gone on for a few years. You know, you hear
 7 something like that, I guess in some ways you think,
 8 oh, okay, that's something new. So that's clearly a
 9 reaction.

10 I had had thirdhand information from
 11 various WGI people that they considered the Sullivans
 12 difficult to work with. I wasn't terribly surprised
 13 because there wasn't -- I didn't think it was a huge
 14 amount of dollars one way or another. So, you know,
 15 there was hopes at the beginning of this it would
 16 develop into something that never really did. Their
 17 volumes were relatively constant throughout the whole
 18 period of time, and they were minimal and much less
 19 than -- much less than anticipated originally by the
 20 same folks.

21 Q. That was actually going to be my next
 22 question. When you heard that WGI was going to part
 23 ways with SIO, were you surprised?

24 A. Now you're asking me personally. The
 25 last time you asked Monsanto.

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1 Well, I guess, you know, in an indirect fashion you
 2 could say that we're not selling it, so we don't have
 3 that revenue. But quartzite operation to us is not a
 4 profit center. We purchase from Washington, through
 5 a contract, quartzite.

6 Q. You mentioned earlier that the piles of
 7 this sand rest upon some areas that Monsanto may wish
 8 to exploit in a mining fashion. Is Monsanto walking
 9 away from some profit arising from that because the
 10 sand is there?

11 A. We have adequate mining reserves without
 12 sand sitting on it at the present time.

13 Q. Going back to the discussions with WGI
 14 about the termination or declining to renew the
 15 contract between WGI and SIO, you mentioned that you
 16 spoke with Clayton Krall, I believe it would be.
 17 Remind me of the other name?

18 A. Clayton Krall somewhere during the
 19 discussions was replaced by a gentleman by the name
 20 of Craig Nelson.

21 Q. What was Monsanto's reaction to WGI's
 22 statement of its intent?

23 A. Monsanto's reaction. I don't know that
 24 we had a huge reaction. There were a lot of reasons,
 25 but I don't know that we had a huge reaction. It was

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1 Q. Yeah. You personally, were you
 2 surprised?

3 A. We were in very difficult discussions
 4 with WGI. We were trying to find ways to reduce the
 5 cost of quartzite. We had threatened even to go to a
 6 different supplier or turn that over to somebody else
 7 if we couldn't reach an agreement. We felt like
 8 there were things that could be done by both parties
 9 to reduce costs, and we were in discussions regarding
 10 that.

11 I guess the royalty amount was always
 12 treated to reduce the cost -- by Monsanto was always
 13 treated to reduce the cost of quartzite. And even
 14 though it was minimal, it was at least something. So
 15 I guess it was a little surprise that here was an
 16 opportunity where we could reduce cost, and yet WGI
 17 was telling us it just wasn't worth it anymore.

18 Q. I don't mean to mischaracterize anything
 19 you said, so if I do, please correct me. Am I
 20 correct in understanding that Monsanto viewed SIO's
 21 work as a way to reduce the cost of quartzite,
 22 however little?

23 A. Monsanto has corporate accounting
 24 policies that indicate that by-product sales reduce
 25 the cost of operation of the product you're

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1 producing. So that's our accounting policy. So any
 2 income from by-product sales, small or large, reduces
 3 the cost of operations.
 4 Q. Am I also correct in understanding that
 5 Monsanto viewed that reduction of cost, however
 6 small, as a favorable thing for it?
 7 A. Monsanto believed that the ultimate cost
 8 of quartzite to be the key indicator. And
 9 discussions between WGI and Monsanto were that WGI
 10 did not believe that the revenues that they received
 11 from the SI operation were covering their cost, hence
 12 an increase to the cost of creating quartzite.
 13 Q. Did WGI ever represent to Monsanto that
 14 WGI had a desire to run the Silicon International
 15 business?
 16 A. No. I've never heard them say anything
 17 like that.
 18 Q. After WGI severed its relationship with
 19 SIO, did Monsanto hear from the Sullivan family at
 20 all?
 21 A. Yes.
 22 Q. What were those conversations about?
 23 A. We received, I believe, a letter from
 24 Todd Sullivan that exists somewhere I've seen. I
 25 haven't seen it produced yet, but I've seen a letter

1 be glad to -- absent that the only information
 2 generally was that they felt like if Washington
 3 wasn't going to do -- have a contract with them, that
 4 Monsanto should have a contract with them.
 5 Q. Did the Sullivans ever offer to buy or
 6 lease a portion of the Monsanto quarry real estate
 7 such that they would own it and operate their
 8 facility there?
 9 A. I don't recall.
 10 MR. BROUGH: Let's go to a document that
 11 we'll mark as Exhibit *-16.
 12 (Exhibit *-16 marked.)
 13 Q. BY MR. BROUGH: Would you take a look at
 14 that and when you're ready to go on, let me know.
 15 A. This was a long time ago. I assume you
 16 want me to read it then.
 17 Q. You don't have to -- well, just read it
 18 to yourself. Just familiarize yourself with its
 19 contents.
 20 A. Okay. I've read it.
 21 Q. Have you seen this before?
 22 A. Apparently. It was sent to me, yes.
 23 Q. It looks to me like an e-mail from Todd
 24 Sullivan to you, Mitch Hart, and Doug Rosenbaum of
 25 WGI. As I read the first line of the body of the

1 from Mr. Sullivan indicating that there was some
 2 phantom contract, oral phantom contract that existed,
 3 and we didn't have the right to terminate it. We had
 4 phone calls requesting audience with us. I believe I
 5 recall two, although they could have been folded into
 6 one. I believe one was -- one phone call went to
 7 Dave Farnsworth where they asked for a meeting. I'm
 8 not sure they got what they wanted anyway. However,
 9 I do recall a meeting as well with -- that they
 10 requested from Bruce Pallante, our plant manager.
 11 So there was a letter. There was
 12 request for meetings. And as a matter of practice we
 13 generally will accept meetings to discuss with
 14 people, you know, their issues. There may have been
 15 some phone calls. I do remember a few times some
 16 very heated phone calls, people very passionate about
 17 their position. I don't recall if they were all part
 18 of the same, but I do recall generally that those
 19 were the communications.
 20 Q. Did the Sullivans ever make any
 21 additional proposals to Monsanto, like, as far as
 22 ways to resolve this dispute or to get back into
 23 doing this type of business using Monsanto's sand?
 24 A. Well, without notes and stuff, it's hard
 25 for me to recall everything. If there are some, I'd

1 e-mail, it says attached is the information about
 2 SIO's markets. Do you recollect what the interest
 3 was in the markets that SIO was to sell sand in?
 4 A. Yes. At a general level.
 5 Q. What's your recollection?
 6 A. I think I answered it in a previous
 7 question, but let me clarify a little more. Monsanto
 8 had received approval from its stewardship committee
 9 to sell sand in various approved markets and areas
 10 where Monsanto stewardship committee felt it was safe
 11 for us and didn't cause any harm to the public for
 12 selling it in those markets. So we were interested
 13 that any of the product that left our site that was
 14 being done so in accordance with the approvals we had
 15 received internally in areas that we were allowed to
 16 sell sand.
 17 Q. Did Monsanto ever have any
 18 communications with SIO along the lines of, look, if
 19 you're going to sell sand, you can only sell sand in
 20 these certain markets?
 21 A. I think we had conversations, and these
 22 were the areas or markets that we have approval to
 23 sell sand, and so these particular markets are open
 24 to us to sell. If we were to ever approach a market
 25 that wasn't approved, we would -- could not do so or

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1 we would be faced with the option of going back to
2 the stewardship committee.

3 For instance, if somebody was selling
4 sand for ingredients to be added into Cheerios, it's
5 probably not a market we would want to get into.
6 Sand is a safe product, but anything safe can still
7 go into an area that we wouldn't want our name
8 associated with.

9 Q. I see. Did Monsanto communicate that
10 directly to SIO?

11 A. Monsanto communicated it directly to SIO
12 prior to in the feasibility time when we were talking
13 about that we were selling product into some markets.
14 We had some success in selling run-of-the-quarry type
15 sand. We had approval from our marketing folks to
16 sell into certain markets, and that was all we had
17 approval for. So if we went into a different market,
18 we would have to have approval.

19 Q. Looking at the notion of royalties, am I
20 correct in understanding that Monsanto and WGI
21 entered -- let me back up. Actually, just strike
22 that entirely.

23 Is it the case that Monsanto and WGI
24 entered into an agreement whereby Monsanto would get
25 royalties in whatever it was that WGI did with SIO to

1 the royalties were paid as between these three
2 entities?

3 A. I know how the royalties were paid to me
4 by Washington.

5 Q. Okay. Do you know if SIO paid WGI
6 royalties and then WGI turned around and paid a
7 portion of those royalties to Monsanto and retained
8 other portions? Is that how it worked?

9 A. I don't know what WGI did. I don't
10 know. I mean, I've had some discussions with
11 Washington folks early on that implied that -- where
12 it was my understanding that they intended to benefit
13 from this relationship via them providing the workers
14 for the processing plant. Whether they benefited
15 from some royalties, I don't know.

16 MR. BROUGH: Let me give you a document that
17 we'll mark as Exhibit *-27.

(Exhibit *-27 marked.)

19 Q. BY MR. BROUGH: Why don't you take a
20 look at that and familiarize yourself with it.

21 A. Yes.

22 Q. Have you seen this document before?

23 A. You know, briefly, although to be candid
24 with you, it's been a lot of time. But yes.

25 Q. Do you know what it is?

1 get royalties with its own business? Is that
2 Monsanto's understanding?

3 A. Let's take that question -- because
4 I'm --

5 Q. Yeah. So is it Monsanto's position that
6 its agreement with WGI was that WGI would pay
7 Monsanto royalties for sand sold?

8 A. It was Monsanto's position and as
9 evidenced by our contract that WGI would provide us
10 royalties for the sand that was sold.

11 Q. Now, that royalty calculation, was that
12 royalty calculation between Monsanto and SIO -- I'm
13 sorry. Between Monsanto and WGI, was that negotiated
14 with any input from SIO or just between Monsanto and
15 WGI?

16 A. When we would talk about royalties, WGI,
17 who had a third party, SIO, who was selling the sand,
18 the three of us would meet. And the reason was is
19 that WGI was selling sand via SIO and that SIO was
20 intimately familiar with the markets, and so rather
21 than SIO telling the information to WGI, WGI then try
22 to come to represent it, it was just easier for them,
23 WGI and SIO, to show up and tell us about what the
24 markets were.

25 Q. Do you have an understanding about how

1 A. I do. It's an example of what SIO
2 thought a contract would look like when we first met
3 to talk about a feasibility.

4 Q. Did Monsanto draft this or did SIO
5 provide this?

6 A. SIO -- I don't know who drafted it, but
7 it was provided to us as an example -- by SIO as an
8 example of what a contract would look like.

9 Q. I note that this sample contract is
10 dated May 15th, 2000. Were you involved in the
11 preliminary discussions with SIO on behalf of
12 Monsanto around that date?

13 A. Are you asking me was I involved in the
14 feasibility?

15 Q. Yes.

16 A. Yes. And in the meeting down in Salt
17 Lake which I talked to you about, I was there.

18 Q. Was this document presented at that Salt
19 Lake meeting?

20 A. I believe it was provided -- shortly
21 after that I think it was sent to us. I remember
22 Mr. Todd Sullivan was an attorney, and he was trying
23 to dot all the I's and cross all the T's from a legal
24 basis. We were all feasibility. We're still talking
25 blue sky a little bit.

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1 Q. I'll take you down to recital F. Buyer
 2 desires to use the services of Conda Mining, Inc., to
 3 process the surplus quartzite into the finished
 4 product.
 5 Do you remember what SIO's desire was
 6 with respect to how Conda or WGI would fit into this
 7 arrangement?
 8 A. You know, I would assume this is
 9 somewhat accurate. I wasn't necessarily focused very
 10 much on specific details of how it would work. I was
 11 still -- I think Monsanto was still grasping with the
 12 idea of is this even something that makes sense.
 13 This document was given to in-house legal and, I
 14 think, probably just filed off because there was
 15 no -- Monsanto management had no intention of ever
 16 entering into an agreement.
 17 Q. Turn your attention over to the next
 18 page, item seven, where it says: Term. The term of
 19 this agreement will commence upon the effective date
 20 stated above and shall continue until December 31st,
 21 2020.
 22 Does this reflect your recollection as
 23 to whether SIO wanted an agreement with Monsanto for
 24 a defined term?
 25 A. This was an example that was thrown to

(Exhibit *-38 marked.)
 2 Q. BY MR. BROUGH: Do you mind taking a
 3 look at that.
 4 A. Okay.
 5 Q. Have you seen this document before?
 6 A. It's probable that I have, yes.
 7 Q. Do you know what it is?
 8 A. Yeah. It's a list of things that a
 9 person would have to -- requirements that a person
 10 would have to meet to have unsupervised access within
 11 the quarry.
 12 Q. Now, let's go back to the files that
 13 were kept for specific Monsanto contractors. Did
 14 Monsanto keep a file for SIO as well as for WGI?
 15 A. There was a file for WGI which had a
 16 subfile in it which referenced some SIO material.
 17 Q. Which file was this document kept in?
 18 A. I don't know that this document was in
 19 that file.
 20 Q. Okay. It might have just been in
 21 Monsanto's retained documents?
 22 A. I asked my admin to go through
 23 everything and produce everything even possibly that
 24 could be construed.
 25 Q. Do you know if this document was ever

1 us as to what a contract would be looking for. I'm
 2 sure it had every wish and list of everything that --
 3 it doesn't surprise me.
 4 Q. Okay.
 5 A. It was never executed.
 6 MR. BROUGH: Let's go over to document *-28.
 7 We'll mark it as Exhibit *-28, I mean to say.
 8 (Exhibit *-28 marked.)
 9 Q. BY MR. BROUGH: I'll represent to you
 10 that that looks like a very similar copy of the
 11 proposed contract that we just talked about. It
 12 looks, though, that the recitals on this one were
 13 numbered rather than lettered A, B, C, D, and E as
 14 the prior one was. Do you remember if SIO actually
 15 presented two different proposals for a contract to
 16 Monsanto?
 17 A. Again, I don't recall. I remember that
 18 they said that they would fire off and fired off a
 19 proposal of what a contract might look like. Did
 20 they do it twice? Is this the first edition and this
 21 is the second? I don't have any idea. To be candid
 22 with you, it was way ahead of anywhere we were, and
 23 we didn't -- we didn't pay much attention to it.
 24 MR. BROUGH: Let's go to a document we'll
 25 mark as Exhibit *-38.

1 presented to SIO?
 2 A. No, sir, I don't.
 3 Q. I'm sorry. Did I interrupt you?
 4 A. I know why the document was produced,
 5 but I don't -- it was produced at the request of a
 6 contractor to be able to go on the site when WGI
 7 wasn't there.
 8 Q. Which contractor wanted to go on the
 9 site?
 10 A. Subject to some checking, I think it was
 11 one of our trucking contractors. It could have been
 12 McNabb or it could have been Barnes Trucking. One of
 13 the two. Nevertheless, the requirements are the same
 14 for any individual that would want unsupervised
 15 access.
 16 Q. Was the information contained in this
 17 document ever presented to SIO orally or in some
 18 letter or something like that?
 19 A. I don't know. I know that when WGI
 20 terminated the contract, the contract provided a
 21 certain amount of days for WGI to remove their
 22 material and their property. Of course, they didn't
 23 meet that. There was some discussion later on, then
 24 how do they get their property off, and they were
 25 going to hire some contractors to do it. I don't

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1 believe that we provided them with unsupervised
 2 access. They had to be there while there was
 3 supervised access. Now, some of these things would
 4 still maybe pertain to even -- you still have to
 5 comply with the guidelines even if you're not
 6 supervised.

7 Q. You mentioned earlier that one of the
 8 reasons that Monsanto would not enter into a contract
 9 with SIO was SIO's inexperience in dealing with these
 10 types of issues. Is that correct?

11 A. That was a concern that we had.

12 Q. How long would SIO -- let me ask you
 13 this: Does Monsanto have any policies for how long
 14 somebody needs to operate in a particular business to
 15 have sufficient experience to make Monsanto more
 16 comfortable?

17 A. I don't know that duration of operations
 18 is one of those criteria. For instance, I have --
 19 we're doing contractor guest evaluations right now.
 20 We have a contractor who has worked for us for over
 21 20 years who had a fatality and will not qualify this
 22 year, will not be coming on our site. So it's much
 23 more than just longevity. It's performance.

24 Q. Do you know any of the other criteria
 25 other than performance?

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1 but there were a few that we asked WGI to work out.

2 Q. Do you know who at Monsanto would know
 3 what those issues were?

4 A. The individuals worked for Danny
 5 Farnsworth. There was some concern over -- I know a
 6 couple. There was some concern over some equipment
 7 that all of a sudden SGI owned that just showed up
 8 one day.

9 Q. That SGI?

10 A. That SIO owned that just showed up one
 11 day. Of course, all equipment, mobile equipment,
 12 must meet MSHA requirements. Operators on a quarry
 13 have to be -- have certification to be able to
 14 operate those. There's quite a -- you just don't
 15 bring a piece of equipment on without inspections and
 16 meeting all of those types of things. But those
 17 issues were talked to about Washington, and
 18 Washington had an obligation to take care of their --
 19 those.

20 Q. Those policies that Monsanto has about
 21 safety, are those summarized or contained in a policy
 22 manual or anything like that?

23 A. The Monsanto ones are, and they are
 24 provided to folks annually when they certify. And
 25 any changes or modifications are provided.

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1 A. Generally.

2 Q. What are they?

3 A. They would have to have a -- they would
 4 have to be able to work safely. They would have to
 5 be able to understand and know all of the
 6 requirements that are associated -- MSHA
 7 requirements, Clean Air Act. All of the issues that
 8 the company has to deal with, they would have to be
 9 familiar with. We would never let one person on.
 10 There has to be two so that we have a response in
 11 case something happened.

12 There's just a whole host of things.
 13 Typically we look at safety numbers to see what their
 14 demonstrated performance is. We look at -- we look
 15 at a whole host of things. We require insurance. So
 16 there's a whole host of things that you have to
 17 require now in the U.S. to be -- to maintain a
 18 production facility.

19 Q. During the time that SIO worked on the
 20 quarry, was Monsanto aware of any safety issues that
 21 SIO's presence presented?

22 A. There were some concerns that Monsanto
 23 expressed to WGI about some performance issues.

24 Q. What were those concerns?

25 A. I don't know that I can recall them all,

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1 Q. Did SIO ever receive a copy of that
 2 policy?

3 A. Washington received it. And there were
 4 a couple of years that we provided that at
 5 Washington's request packages were sent out to SIO.
 6 You remember my reference of Tim getting one and
 7 basically -- I won't use the words that he told us.

8 MR. BROUGH: I appreciate that since they'll
 9 be written down.

10 Let's go to a document that we'll mark
 11 as Exhibit *-44.

12 (Exhibit *-44 marked.)

13 Q. BY MR. BROUGH: Take a look at that and
 14 let me know when you're ready to proceed.

15 A. Okay.

16 Q. Have you seen that document before?

17 A. Apparently. It says it was sent to me.

18 Q. Do you know what this would be?

19 A. It looks like it's correspondence on a
 20 couple of new markets that they were moving into.

21 Q. It looks at the bottom like -- well, it
 22 looks like you correctly say that it's a fax from
 23 Todd Sullivan to you dated October 31st of 2002, and
 24 its subject line says royalties for new markets. And
 25 as you go down to the bottom, it looks like there's a

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1 little table for royalties, sale price, and notes.
 2 In this fax why was Todd Sullivan sharing this
 3 information with Monsanto?
 4 A. As I had commented to you earlier, and
 5 we have some evidence that you showed me, annually,
 6 or thereabouts, we would sit down with WGI, and SIO
 7 would be invited, and we would talk about how the
 8 business was going. They would share with us their
 9 progress that they had made in selling. And
 10 apparently this is a follow-up to that discussion.
 11 Q. Do you have any reason or understanding
 12 why no representative from WGI appears to have
 13 received this fax?
 14 A. You'd have to ask Todd. He sent it. I
 15 don't know that WGI didn't get it. I just sent -- I
 16 wouldn't expect them to send one to me and reference
 17 that they were sending one to Washington. I don't --
 18 that wouldn't make any sense.
 19 MR. BROUGH: Let's go to a document that
 20 we'll mark as Exhibit *-45.
 21 (Exhibit *-45 marked.)
 22 Q. BY MR. BROUGH: why don't you take a
 23 look at that.
 24 A. Yes.
 25 Q. Have you seen that document before?

1 discussions with WGI and SIO? I think you could
 2 logically assume that, but I don't know. That was
 3 between them.
 4 MR. BROUGH: Let's go to a document that
 5 we'll mark as Exhibit *-21.
 6 (Exhibit *-21 marked.)
 7 Q. BY MR. BROUGH: Have you seen that
 8 document before?
 9 A. Do you want me to look at the whole
 10 document, all of the pages, or are you going to
 11 reference --
 12 Q. I'm going to reference all of the pages.
 13 Feel free to look at whatever you'd like.
 14 A. Okay. I've read it.
 15 Q. Have you seen this before?
 16 A. Apparently, yes.
 17 Q. Let me turn your attention to the page
 18 marked URS000031.
 19 A. Yes.
 20 Q. That looks like the first e-mail in the
 21 sequence. It's an e-mail sent by Clayton Krall to
 22 you, cc'ing Steve Taylor and Daniel Wendell. Who is
 23 Steve Taylor? Or do you know Steve Taylor?
 24 A. I know Dan Wendell.
 25 Q. Who is Dan Wendell?

1 A. I believe so.
 2 Q. What is it?
 3 A. I believe it's an agenda for a meeting
 4 that was held on March 7th, 2002, apparently. That's
 5 what it would -- the date on the document is.
 6 Q. Do you remember attending that meeting?
 7 A. I remember attending various meetings,
 8 yes.
 9 Q. Am I correct in understanding that
 10 during this meeting, consistent with Roman numeral
 11 II, there was a discussion about royalties to be
 12 paid?
 13 A. Yes.
 14 Q. Did Monsanto have any say over the
 15 royalty arrangement between WGI and SIO?
 16 A. Monsanto's agreement for royalties was
 17 with WGI.
 18 Q. So am I correct in understanding that it
 19 did not have any say over the royalty arrangement
 20 between SIO and WGI?
 21 A. Well, I mean, our agreement was with
 22 WGI. The provisions in the contract, the
 23 establishment were royalties that were required --
 24 required by Monsanto of WGI. Did that in
 25 conversation indirectly have some impact on

1 A. He's a WGI employee that works in the
 2 operation in Soda Springs. I may know Steve Taylor,
 3 I just don't recollect.
 4 Q. So it looks to me like this is WGI's
 5 notification to Monsanto that it's going to end its
 6 relationship with SIO; is that correct?
 7 A. It appears to be Mr. Krall telling me
 8 that information, yes.
 9 Q. Do you remember if this was the first
 10 time you learned that WGI intended to do that?
 11 A. I think my answer to Clayton is quite
 12 specific.
 13 Q. Which is?
 14 A. I cannot comment on something I know
 15 nothing about or give you a call on something that I
 16 have no facts on. However, on its face this does not
 17 look like something that I would recommend to my
 18 management.
 19 Q. So this would have been the first time
 20 you would have learned about this?
 21 A. More than likely, yeah. I mean, clearly
 22 from my response I don't know anything about it.
 23 Q. Well, if you look back at the original
 24 e-mail from Clayton, it says WGI intends to cease
 25 doing business, contract was continued. And then the

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1 second paragraph says: We need to know if Monsanto
 2 has any intention of purchasing any or all of the SIO
 3 facility if we opt not to purchase.
 4 When you say "this is not something that
 5 I would recommend to my management," what does "this"
 6 refer to? Is it the purchase of the SIO facility or
 7 the termination of the SIO relationship?
 8 A. I don't get to tell Washington who they
 9 can do business with or don't do business with. My
 10 reference is to whether or not we had any interest in
 11 the facility.
 12 Q. Going up to the next e-mail from Clayton
 13 sent Friday, December 28th, it says: Jim, very well.
 14 These are the facts. It makes no economic sense for
 15 Washington-URS to continue our contractual
 16 relationship with SIO. I can share those details
 17 with you if you wish.
 18 Did Clayton ever share those details
 19 with you?
 20 A. As part of some of our negotiations he
 21 did give me some more information. Whether he was
 22 sharing all of those details, I don't know. But he
 23 did share some information with me.
 24 Q. Do you recollect what information he
 25 shared with you?

1 A. Just that they had done an analysis and
 2 that it was their opinion that it no longer made
 3 financial sense to continue their relationship with
 4 SIO.
 5 Q. Did you ever speak with anybody at
 6 Monsanto about purchasing the SIO facility?
 7 A. No. Not that I recall.
 8 Q. So were you the person that decided that
 9 Monsanto would not do that?
 10 A. No. As I illustrated and talked to you
 11 before, when we did the feasibility Monsanto wasn't
 12 really interested in being in that business.
 13 Q. Okay. So my question, though, is who
 14 decided not to purchase the facility?
 15 A. I would have reviewed this with
 16 management, but I don't know anybody in our
 17 organization that would have wanted to buy that.
 18 Q. That was my initial question.
 19 A. I'm not quite candidly sure, to be
 20 honest with you, that Clayton Krall of WGI -- it's
 21 appropriate for him to be trying to sell me assets
 22 that don't belong to him. Candidly. Apparently, he
 23 references some clause in a contract that provides
 24 for that, but I hadn't read it. I mean, I didn't --
 25 I didn't own those assets. So for me to buy them

1 from a party that --
 2 Q. Well, obviously, you didn't own them.
 3 He was asking if you wanted to buy them. Was it your
 4 concern that WGI didn't own them?
 5 A. Well, if I walked up to you and said,
 6 hey, would you like to buy Randy's truck, do you
 7 think Randy might have something to say about that.
 8 Q. Sure. But I guess my point is that, of
 9 course, Monsanto didn't own it; your concern is that
 10 WGI didn't own it?
 11 A. Yeah. I mean, how can WGI tender
 12 something for sale. Now, admittedly, in the next
 13 paragraph he explains that there's some termination
 14 clause or something that I hadn't read. I don't know
 15 that I paid much attention to it.
 16 Q. Could you remind me what exhibit that
 17 was?
 18 A. This one was Exhibit *-21.
 19 MR. BROUGH: Let's go to a document that
 20 we'll mark as Exhibit *-22.
 21 (Exhibit *-22 marked.)
 22 Q. BY MR. BROUGH: would you take a look at
 23 that and let me know when you're ready to go on.
 24 It's an e-mail chain, so you'll want to start from
 25 the back.

1 A. Give me a minute.
 2 Q. You've got it. I might be able to speed
 3 this up. The first e-mail, I'll represent to you, is
 4 a lengthy e-mail sent to you and to others by Todd
 5 Sullivan.
 6 A. Yes. It's a very lengthy e-mail.
 7 Q. It sounds like you got enough time to
 8 read it to at least remind yourself of the gist of
 9 it; is that correct?
 10 A. Yes, the gist.
 11 Q. Going up, it looks like there's an
 12 e-mail from Clayton Krall to you and to Dave
 13 Farnsworth cc'ing others saying SIO didn't send this
 14 directly to me, but WGI responded as attached. Do
 15 you see that down there at the bottom of page 1, the
 16 first part of page 2?
 17 A. Yes, I see that.
 18 Q. Then going up, it looks like Dave
 19 Farnsworth says, Jim, it's difficult to follow
 20 Clayton's response on my bb, which I understand to be
 21 his BlackBerry. Is Mark going to draft or send a
 22 response. Do you see that?
 23 A. Yes.
 24 Q. Then what I wanted to ask you just in
 25 context of all of that, I was curious about the first

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1 line that you wrote back to Dave Farnsworth where it
 2 says, Dave, I'm not sure what WGI is doing other than
 3 ducking for inventive cover. What did you mean by
 4 that phrase?
 5 A. I'm sorry. I'm still trying to
 6 digest this.
 7 Q. Just in context of this whole e-mail
 8 correspondence, you get this very long e-mail from
 9 Todd Sullivan saying mean things about Monsanto. WGI
 10 responds. Dave Farnsworth asks what you think about
 11 Clayton's response. And then you say you're not sure
 12 what WGI was doing other than ducking for inventive
 13 cover. I was just curious as to what you meant by
 14 that phrase?
 15 A. Well, just my recollection, Clayton was
 16 talking about -- the original document was sent to
 17 Dave Farnsworth. It had me copied, and apparently it
 18 was copied -- well, apparently it was copied to
 19 Clayton Krall as well. And Clayton says that he's
 20 going to send a note to -- a response on the e-mail
 21 to Dave. So I don't know.
 22 Q. So --
 23 A. I'll be honest with you. I'm trying to
 24 think. I don't recall. There may have been some
 25 other discussion. I don't -- I just don't recall.

1 Q. The next bullet point: If the
 2 by-product reject sand at the Monsanto quartzite
 3 quarry could be sold as-is, Monsanto would be
 4 interested taking the lead in those type of sales
 5 because it would require little effort and manpower.
 6 Would you consider that to be correct?
 7 A. Yes. I indicated to you that we were
 8 selling the product, the run-of-the-quarry product,
 9 and it was our interest in continuing to just sell
 10 run of the mill. We weren't -- had not the ability
 11 to process it or the intent to.
 12 Q. Third bullet point: Monsanto viewed the
 13 relationship with someone like SIO of value if they
 14 could assure themselves that any value-added
 15 operation would run in a way that would meet all
 16 Monsanto environmental safety and health standards.
 17 Is that an accurate statement?
 18 A. Someone like SIO that could meet the
 19 standards, yeah. It seems to be accurate.
 20 Q. Bullet point four: If Monsanto provided
 21 sand to a third party for them to process and add
 22 value to the sand, then if they could receive a
 23 royalty that would be of similar value to just
 24 selling sand as-is, it would be viewed as a
 25 potentially attractive business relationship.

1 MR. BROUGH: Let's go to a document that
 2 we'll mark as Exhibit *-23.
 3 (Exhibit *-23 marked.)
 4 Q. BY MR. BROUGH: I'll walk you through
 5 this one too since it contains another lengthy e-mail
 6 from Todd. Let's turn to page 2.
 7 A. Okay.
 8 Q. And in the middle of that you'll see an
 9 e-mail from Todd Sullivan to you. And as you -- in
 10 the first paragraph it says: Per our discussion I'm
 11 forwarding to you an e-mail from Mitch Hart
 12 describing the relationship between SIO and Monsanto.
 13 Do you remember receiving this e-mail
 14 from Todd?
 15 A. Yes, I do.
 16 Q. And then the e-mail that Todd is
 17 forwarding is below. And it's an e-mail from Mitch
 18 Hart to Todd Sullivan, dated January 17th of 2008.
 19 And it says: Todd, in response to your request I
 20 share with you what I recall as to the intent of the
 21 Monsanto-SIO relationship. Here are a few bullet
 22 points. Monsanto had determined that sand was not a
 23 core business for Monsanto. Would you consider that
 24 a true statement?
 25 A. I would consider that accurate.

1 Does that statement sound accurate to
 2 you?
 3 A. Accurate. It's a possible way for
 4 Monsanto to receive compensation for the sand, yeah.
 5 Q. And then going down to the next line:
 6 With the above, in the early 2000s a contractual
 7 relationship was established or extended between
 8 Monsanto and SIO in which Monsanto would receive a
 9 royalty from SIO for similar value as if they would
 10 have sold raw sand; Monsanto would assure SIO certain
 11 volumes of sand that could be safely and
 12 environmentally processed to meet value-added
 13 markets; and SIO would be limited to a specific list
 14 of value-added markets such as fiberglass, traction,
 15 water, jet media, et cetera.
 16 Is there anything that Monsanto
 17 disagrees with in that paragraph?
 18 A. Absolutely.
 19 Q. What?
 20 A. A contractual relationship was
 21 established or extended between Monsanto and SIO is
 22 absolutely incorrect and in error.
 23 Q. When you received this e-mail --
 24 A. I'm not done.
 25 Q. Sorry.

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1 A. Monsanto would receive a royalty from
 2 SIO, that is in error. We received a royalty from
 3 WGI.
 4 Monsanto would assure SIO certain
 5 volumes. Monsanto did not ensure SIO certain volumes
 6 but assured WGI certain volumes.
 7 SIO would be limited to specific lists
 8 of value-added markets. WGI was limited, not SIO.
 9 Q. Anything else that you disagree with?
 10 A. I think "in the end Monsanto viewed the
 11 relationship between SIO and WGI as a means to add
 12 value to the sand" would be more accurate.
 13 Q. Anything else you disagree with?
 14 A. That -- those appear to be the ones that
 15 jump out at me today.
 16 Q. So as you sit here, and I understand
 17 there may be other things you disagree with, but it
 18 sounds like you would consider these bullet points
 19 correct statements if you just crossed out SIO each
 20 time and put WGI. Is that Monsanto's position?
 21 A. I didn't think of it as just saying
 22 cross that out when I answered your questions. But
 23 do you want me to answer the questions again?
 24 Q. No, no need to answer the questions
 25 again. I just want to make sure I understand your

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1 trying to be helpful many years after the -- many
 2 years after all this took place, without the benefit
 3 of the documents sitting in front of him, made a
 4 mistake.
 5 Q. Did you attempt to contact Mitch to
 6 correct his mistake?
 7 A. Did I -- no. I think that my
 8 limitations -- any discussions about this to Mitch
 9 during that time frame was that WGI had canceled
 10 their contract with SIO.
 11 Q. At this time of this e-mail from Todd
 12 dated January 18th of 2008, was Mitch Hart still with
 13 Monsanto at that time?
 14 A. No, he was not. Nor would he have had
 15 the ability to look at the documents to refresh his
 16 memory as to what happened.
 17 Q. So you didn't call Mitch to discuss this
 18 e-mail; is that correct?
 19 A. No, I did not call -- I don't recall
 20 calling Mitch.
 21 Q. Did you discuss this e-mail with anybody
 22 else at Monsanto?
 23 A. It's my recollection that I probably
 24 would have shared this document with Dave Farnsworth.
 25 It's possible I would have shared it with Dave

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1 answer, which is, no, Monsanto wasn't going to get a
 2 royalty from SIO; it was going to get it from WGI,
 3 right?
 4 A. That's correct.
 5 Q. Monsanto wasn't going to assure SIO of
 6 anything. It was going to assure WGI, right?
 7 A. That's what Monsanto did.
 8 Q. SIO would not be limited in anything.
 9 WGI would?
 10 A. WGI was the responsible party.
 11 Q. And then below, in the end Monsanto
 12 viewed SIO and WGI --
 13 A. I would say that it viewed WGI in its
 14 relationship with SIO, WGI's relationship with SIO,
 15 as a means. You left out the first one, and that was
 16 the contract. There is no contract.
 17 Q. Agreed. Well, I don't agree, but I
 18 understand what your argument is.
 19 A. That's fine.
 20 Q. So when you got this e-mail from Todd
 21 and it's got this e-mail from Mitch Hart, did you
 22 have any reaction or thoughts when you read this?
 23 A. Did I have any reaction? Yeah.
 24 Q. What was it?
 25 A. It was my reaction that Mitch Hart,

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1 Farnsworth. It's possible that I may have shared it
 2 with Bruce Pallante.
 3 Q. Do you remember the reaction that either
 4 one of them might have had to this e-mail?
 5 A. Mitch Hart is an honorable man. He
 6 generally tries to be as helpful as he can. He's a
 7 politician. He sits on the city council. He's
 8 active in the community. When somebody asks him for
 9 help, he's generally the first guy to jump up and
 10 offer help. Is he perfect? No. Is he wrong in this
 11 case? Absolutely. It was my impression that once
 12 Mitch -- if Mitch was ever given the opportunity to
 13 look at the documents and the facts, that he would
 14 quickly correct the mistake.
 15 Q. Do you know if anybody -- if anybody
 16 else at Monsanto contacted Mitch in response to this
 17 e-mail?
 18 A. Not that I'm aware of.
 19 MR. BROUGH: I'll show you a document that
 20 we'll mark as Exhibit *-39.
 21 (Exhibit *-39 marked.)
 22 Q. BY MR. BROUGH: Feel free to take a look
 23 at that. Just for the sake of time I'll represent to
 24 you that this is a -- it appears from the top
 25 right-hand corner that this is a draft of the

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1 appendix A to the latter addendum to quartzite
 2 agreement. Is that an accurate characterization?
 3 A. It does say it's a draft. And it
 4 references appendix A, which establishes the
 5 royalties between P4 and Washington. So yes, it
 6 sounds --
 7 Q. Okay. There's a list here of approved
 8 sand products, and it goes: Traction sand,
 9 conductivity, asphalt, et cetera. Was Monsanto
 10 concerned not only with the markets that SIO would
 11 sell their sand into but also the type of sand or its
 12 uses?
 13 A. Was Monsanto concerned about its uses?
 14 We were. Can you break that question down into
 15 pieces for me.
 16 Q. Certainly. Yes. We talked earlier that
 17 Monsanto received approval to sell sand into certain
 18 markets that it deemed appropriate?
 19 A. Yes.
 20 Q. Within those markets did it also have
 21 concerns over the use of the sand within those
 22 markets? For example, you can certainly sell sand to
 23 a golf course for its bunkers but not for its
 24 concessions?
 25 A. I mean, yeah. Generally. We wouldn't

1 don't know the answer.
 2 Q. The sand that SIO sold, did it fall
 3 within the category of this fine a diameter of
 4 silica?
 5 A. I do not believe so. You'd have to ask
 6 SIO and Washington.
 7 MR. BROUGH: Let's go to a document that
 8 we'll mark as Exhibit *-40.
 9 (Exhibit *-40 marked.)
 10 Q. BY MR. BROUGH: Take a moment to look at
 11 that.
 12 A. Yes, sir. I have that.
 13 Q. Have you seen that document before?
 14 A. You know, I'm not referenced on the top.
 15 But this is very similar to a document that was
 16 provided to me during the negotiations of the current
 17 silica contract which showed an analysis of the
 18 costs: URS's costs for Washington; WGI's costs
 19 regarding the SIO operation.
 20 Q. Do you remember if this document was
 21 ever provided to you by somebody at WGI?
 22 A. It's distinctly possible. I don't know
 23 who --
 24 THE WITNESS: Is this our stamp that we
 25 provided?

1 be in favor of people eating sand.
 2 Q. There's a line below: "Potential (sand)
 3 products needing clearance prior to sale. silica
 4 flour," and it's lined out. Do you know what that
 5 line is about?
 6 A. You know, I don't recall the specifics.
 7 But silica flour would be one that we did not have
 8 approval from our stewardship committee regarding.
 9 Silica in a very fine powder-like form. If it were
 10 to be breathed in over long, long periods of time, it
 11 could be harmful to somebody. It's sand. You
 12 wouldn't breathe sand. You can imagine that's not a
 13 good thing for you. So when you get to that size
 14 fraction, you would have to have more industrial
 15 controls to provide a surety that nobody would get
 16 hurt with it.
 17 Q. Did WGI's work at the quarry produce any
 18 sand of that fine a diameter?
 19 A. I don't know what the size fractions
 20 coming off that are. Generally Monsanto's concerned
 21 about dusting and things like that. So we run water
 22 trucks where vehicles go through, and so we monitor.
 23 But as far as the size fractions that exists in,
 24 generally it's bigger than that. But could there be
 25 some fine stuff there, I guess it's possible. I

1 MR. BUDGE: Yeah.
 2 THE WITNESS: Yeah. Apparently I had it in
 3 my file.
 4 Q. BY MR. BROUGH: Do you remember if you
 5 had it in your file or if it was in the larger
 6 Monsanto document retention file?
 7 A. I don't recall.
 8 Q. Okay. Do you remember receiving
 9 information like this from WGI?
 10 A. I don't remember talking about the
 11 specifics. I do recall the discussion from Clayton
 12 or even maybe later from Craig. I don't recall which
 13 one of them talked to me about the fact that they had
 14 analyzed the SIO business, and they felt like that it
 15 was more of a detriment than a plus in the
 16 operations.
 17 Q. So it's your understanding that this was
 18 the analysis by WGI upon which it based its analysis
 19 that the SIO relationship was not working out
 20 economically; is that correct?
 21 A. That is, yes.
 22 MR. BROUGH: Let's go to a document we'll
 23 mark Exhibit *-43.
 24 (Exhibit *-43 marked.)
 25 Q. BY MR. BROUGH: would you mind taking a

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1 Look at that.
 2 A. Yes. I see that.
 3 Q. Have you seen this document before?
 4 A. Yes. It appears that I prepared it.
 5 Q. What is it?
 6 A. It's a letter to John at WGI indicating
 7 our agreement on royalties for products being sold
 8 into three different areas.
 9 Q. And the agreement that you just
 10 mentioned in your answer, who was that agreement
 11 with?
 12 A. It says there with Washington Group.
 13 Q. It says: As a result of SIO's ongoing
 14 effort to market fine material being produced by
 15 Washington Group, P4 --
 16 A. Being produced at P4's quarry by
 17 Washington Group International, WGI's operation.
 18 Q. In the next paragraph down after the
 19 royalty numbers it says: The following numbers
 20 represent royalties agreed to by SIO as fair and
 21 reasonable and accepted by P4?
 22 A. Yes. SIO made the presentation at the
 23 meeting with Washington and P4, and we agreed to
 24 accept those recommendations of royalties to -- for
 25 Washington Group.

1 all contractors and guests met safety guidelines.
 2 Q. Was he present in the room with you and
 3 your admin?
 4 A. Apparently. It appears so. It was
 5 witnessed by him.
 6 Q. And what was the subject of this
 7 conversation?
 8 A. The equipment -- the equipment that SIO
 9 apparently owned on our quarry site. When the
 10 contract with SIO and WGI was terminated, the
 11 contract with the two of those entities provided for
 12 a certain period of time for which SIO was to remove
 13 their property. They failed to do so. And so later
 14 at this particular time, we're talking about
 15 September 15th of 2008, Bob and Todd were talking to
 16 us at Monsanto about receiving permission to go in
 17 and get that property. And they had engaged a
 18 contractor to do that work for them. Of course at
 19 our insistence anybody going on the site must meet
 20 the safety -- environmental, safety, and health
 21 guidelines.
 22 Q. Okay. Going to the middle there's a
 23 line "Sullivan: Jim, what exactly do you need?
 24 Insurance" --
 25 A. I'm sorry. Are you saying middle?

1 MR. BROUGH: Let's go to an exhibit that
 2 we'll number Exhibit *-46.
 3 (Exhibit *-46 marked.)
 4 Q. BY MR. BROUGH: Have you seen that
 5 document before?
 6 A. Yes, I have.
 7 Q. What is this document?
 8 A. This is a document concerning a phone
 9 conversation with Bob and Todd Sullivan.
 10 Q. It says at the top that it was witnessed
 11 by Gillian Lloyd, admin. Is that the admin that
 12 you've been referring to?
 13 A. Yes. And it's the one that I engaged to
 14 take notes of the conversation.
 15 Q. When it says that it was witnessed by
 16 her, what does that mean?
 17 A. Bob and Todd were on a phone, and I was
 18 on a phone with a conference setting on, and Gillian
 19 took notes.
 20 Q. At the end on the second page it says
 21 this call was witnessed by Tab Mendenhall. Who is
 22 Tab Mendenhall?
 23 A. Tab Mendenhall at the time was our
 24 contractor safety -- our contractor safety
 25 coordinator. He was responsible for ensuring that

1 Q. I'm sorry. Yeah. It's a line that
 2 says: Sullivan, colon, Jim, what exactly do you
 3 need? Insurance limits. What else?
 4 Do you see that line?
 5 A. I've lost you. Jim, what exactly do you
 6 need? Insurance limits. What else?
 7 Q. Just reading down from there: Smith --
 8 that's you -- there's a whole packet of data we
 9 request: Safety numbers, safety programs he has in
 10 place, and verification his folks are drug tested.
 11 I'll send that package out to you.
 12 Sullivan: Jim, so we don't lose another
 13 week, can we pick up the package from you or fax it.
 14 I'm worried about mailing it to Salt Lake, then back
 15 up to Pocatello.
 16 Is this the safety package that you
 17 talked about that Jim Sullivan rejected?
 18 A. Many years earlier. It's the packet
 19 that we sent out annually to whoever --
 20 Q. I see.
 21 A. -- is on the list.
 22 Q. I see. Okay.
 23 A. And it works better if it goes out by
 24 e-mail because it has a whole link to various things,
 25 and you receive all the links. That facilitates

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1 returning it to us because you can fill it out and
 2 hit the links and send it back to us.
 3 Q. Did the Sullivans know that this
 4 conversation was being recorded?
 5 A. Did the Sullivans know that there were
 6 additional people in the room on my conference? Yes.
 7 They heard them talking.
 8 Q. Did they know this conversation was
 9 being recorded though?
 10 A. I asked Gillian Lloyd to take minutes
 11 from that. Did I disclose to them that Gillian was
 12 taking minutes, I don't recall.
 13 Q. Was this conversation recorded, like, on
 14 a tape cassette or a CD or something?
 15 A. No. I think she just wrote it down.
 16 MR. BROUGH: Wrote it down. Okay.
 17 It might make sense for us to take a
 18 short break.
 19 (A recess was taken from 2:55 p.m. to
 20 3:10 p.m.)
 21 (Exhibit *-8 marked.)
 22 Q. BY MR. BROUGH: Back on the record.
 23 During the break, Mr. Smith, I showed you a document
 24 that we've marked as Exhibit *-8. During the break
 25 did you have a chance to review that?

1 between them and SIO, I would defer you to WGI.
 2 Q. In what sense would you say or what
 3 sense did you use the word "controlled"? How does
 4 WGI control the sand at Monsanto silica quarry?
 5 A. The sand is put in established piles.
 6 Those piles are maintained and controlled by WGI.
 7 They are the operating entity. They manage those
 8 piles.
 9 Q. At the point that WGI manages those
 10 piles of sand, that management alone you wouldn't say
 11 gives it some sort of ownership interest in that
 12 sand, would you?
 13 A. Well, I don't want to -- I'm not
 14 splitting definitions on words, but the rock and the
 15 material was Monsanto's. WGI was the operating
 16 entity. WGI provided us with royalties when sand was
 17 sold.
 18 Q. Let's turn over to page 5, paragraph 8.
 19 And looking at the last sentence there, it says
 20 "instead, because Monsanto" -- do you see that?
 21 A. Yes.
 22 Q. Instead, because Monsanto had contracts
 23 in place with WGI as described above to operate the
 24 silica mine, a decision was made that SIO would need
 25 to contract with WGI to acquire silica sand from the

1 A. I've seen that document, yes.
 2 Q. What is it?
 3 A. It's an affidavit which I provided in
 4 this case.
 5 Q. I'd like to refer you to page 4 of the
 6 affidavit. Paragraph 7 is a long paragraph. And I
 7 will refer you to the last complete sentence on
 8 page 4 beginning with "Exhibit *-5 attached." Do you
 9 see that?
 10 A. Yes. It says: Exhibit *-5 attached is
 11 the master agreement --
 12 Q. Yes. -- between WGI and SIO, dated
 13 December 1st of 2000, pursuant to which WGI supplied
 14 SIO a portion of the silica sand controlled and
 15 produced by WGI.
 16 I wanted to ask you about the word
 17 "controlled." We talked earlier -- did WGI ever buy
 18 sand from Monsanto?
 19 A. Well, I would interpret that sand on
 20 which a royalty payment was paid was sand that was
 21 bought by WGI.
 22 Q. Did WGI ever pay a royalty payment out
 23 of its own money, or did it take SIO's royalty
 24 payment and use that to pay Monsanto?
 25 A. WGI paid Monsanto. What they did

1 silica mine.
 2 In the context of this paragraph, that's
 3 your explanation for why Monsanto did not enter into
 4 a contract with SIO; is that correct?
 5 A. Well, I believe that Monsanto would have
 6 entered into a contract with SIO had SIO had a site
 7 that they owned somewhere and bought
 8 run-of-the-quarry material. It's not what SIO
 9 wanted. SIO wanted to locate a site at the quarry
 10 and to just purchase the finished product that they
 11 made. As a result that sentence makes sense, yes.
 12 Q. We talked earlier in the deposition
 13 about how SIO -- I'm sorry -- Monsanto never would
 14 have entered into a contract with SIO because of
 15 safety issues. Is that another reason why Monsanto
 16 declined to enter into the contract?
 17 A. Safety issues. We talked about the fact
 18 that Monsanto requires all contractors and guests of
 19 its operation to comply with safety requirements.
 20 Did SIO have safety incidents prior to our agreement?
 21 Monsanto had no experience with SIO. I don't know if
 22 they had safety problems or not.
 23 I mean, it would be an error for me to
 24 say SIO had safety problems. That's not accurate.
 25 What I represented was that anybody that was allowed

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1 on the site had to comply with all of those
 2 requirements, the knowledge of all those
 3 requirements. It was our belief and what was
 4 represented to us in our early discussions that SIO
 5 did not have that requisite knowledge at the time.
 6 Q. Fair enough. And I appreciate that
 7 clarification. Was that an additional reason why
 8 Monsanto was unwilling to enter into a contract with
 9 SIO?
 10 A. I think it was a concern and maybe one
 11 of numerous reasons. Was that the reason, no. I
 12 think there was numerous reasons.
 13 Q. Was there any reason why you didn't
 14 summarize those additional numerous reasons in your
 15 affidavit?
 16 A. What I say is instead because Monsanto
 17 had a contract in place with WGI, as described above,
 18 to operate the silica mine, a decision was made that
 19 SIO would need to contract with WGI, a sophisticated
 20 party that was familiar with our operations and our
 21 requirements, had a proven track record, had
 22 employees that were qualified. If they wanted to be
 23 on that site, it would have to be under the WGI
 24 operations.
 25 Q. The contracts in place with WGI, those

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1 have thought about our conversation on Monday, I am
 2 being led more and more to the conclusion that the
 3 easiest and most effective way for both our companies
 4 to meet these commitments would be for SIO to lease
 5 or buy the land on which we now operate. This lease
 6 would come with rights to the sand, rights to access
 7 the property -- including current electrical lines --
 8 and rights to safely dispose of our waste and excess
 9 material.
 10 Did you discuss that proposal from SIO
 11 with anybody?
 12 A. Well, first of all, Mr. Sullivan
 13 represents a significant amount of stuff in his
 14 letters that I don't agree with. I think they're
 15 erroneous. In fact, in some ways I believe they're
 16 just downright untruthful. Okay?
 17 Mr. Sullivan called me and told me that
 18 we had some phantom contract, which I told him there
 19 is no contract. It doesn't exist. Of which he
 20 insisted there was. And I said produce it. His
 21 result in producing it was this e-mail from Mitch
 22 Hart, which is no document. It's Mitch's erroneous
 23 remembrance of facts that just aren't supported by
 24 any documents at all. Okay?
 25 So as he states in this paragraph, as

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1 were contracts to operate the quarry; is that
 2 correct? They weren't contracts to sell sand; is
 3 that right?
 4 A. WGI was the operating entity for our
 5 quarry. Did they operate the quarry, yes, they did.
 6 And they moved the material, and they screened and
 7 crushed the product, and they provided quartzite.
 8 Were they capable of delivering and selling sand?
 9 WGI is a very sophisticated corporation. They had
 10 the ability to do a lot of things.
 11 Q. It's not -- let me make sure I
 12 understand. It's not the case that SIO was going to
 13 be taking a portion of WGI's business; is that
 14 correct?
 15 A. I can't -- I can't represent WGI.
 16 That's a question to give them. But it's my
 17 understanding that WGI was not in the business of
 18 selling processed sand into those markets at the time
 19 of this. I don't know what they're doing now.
 20 Q. Let's go back to Exhibit *-23. And I'll
 21 refer you to page 2 of this where we have the e-mail
 22 in the middle from Todd Sullivan to you, dated
 23 January 18, 2008. Do you see that?
 24 A. Yes.
 25 Q. In the second paragraph it says: As I

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1 he's thought about it, he's thought about the
 2 conversation, he thinks that the best way to solve
 3 the problem is for us just to lease them or let them
 4 buy the land.
 5 Q. Okay.
 6 A. That's his opinion.
 7 Q. Understood. What was your reaction to
 8 his opinion?
 9 A. Monsanto had no intention of selling a
 10 part of its quarry, a doughnut hole out of the middle
 11 of the quarry. That is a critical operation for the
 12 P4 plant. We were not going to let that out of our
 13 control.
 14 Q. Did you discuss that with anyone else at
 15 Monsanto?
 16 A. Did I share this -- his idea with
 17 others? You know, I suspect -- well, yes. I shared
 18 his response with our in-house attorney, and I have
 19 talked with Dave Farnsworth about it. And possibly
 20 even Bruce Pallante as I brought him up to speed on
 21 where we were.
 22 Q. And their reaction, I suppose, was the
 23 same as yours?
 24 A. Yes.
 25 Q. Let's get back to Exhibit *-7.

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1 A. Yes, sir.
 2 Q. Going to page 3.
 3 A. Okay.
 4 Q. And then I'm looking at the last
 5 sentence in the first paragraph that begins "after
 6 SIO expressed an interest in." Do you see that?
 7 A. Hold on a second. In the first
 8 paragraph?
 9 Q. Yeah. Last full sentence, "after SIO
 10 expressed an interest in."
 11 A. I have "Monsanto instead decided to" --
 12 Q. We can start there.
 13 A. I'll go where you want me to go.
 14 Q. No, you're right. I missed the period.
 15 That's all.
 16 Monsanto instead decided that because
 17 Monsanto had a contract in place with WGI to operate
 18 the quartzite mine, SIO would need to contract with
 19 WGI to acquire silica sand from the quartzite mine.
 20 Now, as we talked about before from your
 21 declaration, there were apparently lots of other
 22 reasons that Monsanto was unwilling to enter into a
 23 contract with SIO; is that correct?
 24 A. There were other reasons.
 25 Q. Let's turn to page 7. I'm looking at

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1 interrogatory No. 13.
 2 A. Uh-huh.
 3 Q. And the answer: Despite all previous
 4 objections, which are not waived, Monsanto has never
 5 incurred any expenditures or paid anyone to remove
 6 any waste material or by-product from the operation
 7 of the quartzite mine.
 8 So it's never paid anyone to do that?
 9 A. So -- no, it hasn't. Monsanto hasn't
 10 paid people to remove sand from -- for the sake of
 11 just removing it to get rid of it. Monsanto has sold
 12 some sand of which it received revenue from. It is
 13 possible that the person who delivered that sand on
 14 Monsanto's behalf received a payment, but it was a
 15 sale. It wasn't -- we didn't pay somebody to remove
 16 the sand. We sold the sand, and there may have been
 17 a part of that that somebody delivered it for us.
 18 So, you know, as I read the question it was talking
 19 about removing waste. And we've not just paid
 20 somebody just to get rid of it.
 21 Q. Skipping up to interrogatory No. 12
 22 answer, the last sentence says: However, Monsanto
 23 requires that all of its contractors and
 24 subcontractors comply with all government rules and
 25 regulations pertaining to employee hirings and

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1 health, safety, and environmental requirements.
 2 Did Monsanto ever consider SIO a
 3 subcontractor?
 4 A. There were discussions within Monsanto
 5 internally about what happens at that facility that's
 6 located there. We were not Washington. We did not
 7 know what Washington was doing. I mean, we're
 8 another party. So there was some questions of
 9 whether or not the relationship between SIO and
 10 Washington was a subcontractor, whether Washington
 11 was doing the work, who was actually doing the work,
 12 and who needed to be qualified as a contractor, who
 13 needed to fill out the safety data, who needed to --
 14 who was the responsible party.
 15 † There was discussions back and forth on
 16 that. Ultimately we decided that that was Washington
 17 Group. There were some internal discussions
 18 regarding that which I've been asked questions about
 19 earlier today which I've answered.
 20 Q. Now skipping over to page 8,
 21 interrogatory No. 15, looking at the answer, skipping
 22 over the objections language it says: Monsanto has
 23 previously conducted an internal review of the sand
 24 by-product material, which determined that no
 25 quartzite quarry material constitutes an

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1 environmental hazard.
 2 When was that internal review conducted?
 3 A. Monsanto has put together an MSDS, which
 4 is a requirement of ours, and that MSDS details any
 5 health concerns and environmental issues dealing with
 6 sand.
 7 Q. When was that done?
 8 A. I don't recall.
 9 Q. Is that study still in the possession of
 10 Monsanto?
 11 A. Does Monsanto have a MSDS for sand?
 12 Yes, we do.
 13 Q. Skipping back to interrogatory 12 on the
 14 previous page, you mentioned some internal
 15 discussions within Monsanto about who the responsible
 16 party would be?
 17 A. I don't think that's --
 18 Q. I'm sorry.
 19 A. -- a characterization of my comments.
 20 Q. Okay. Why don't you characterize them
 21 for me so I don't put words in your mouth.
 22 A. All contractor guests that come on
 23 Monsanto's property have to be qualified. They have
 24 to abide by all of the safety and environmental and
 25 health requirements. It's Monsanto's obligation to

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1 ensure that anybody that enters our property complies
 2 with those.
 3 Every year we sit down and we send out
 4 qualification packages to those contractors. So part
 5 of that we discuss with our contractors if there's
 6 any of their subcontractors that they would like us
 7 to send those packages out and subsequently qualify.
 8 Even though a Washington Group may decide they have
 9 five or six other people that are going to come on
 10 that site, the guy that changes their tires, the guy
 11 that does their engine work on their CAT, those
 12 people as well that come on the site have to be
 13 qualified.
 14 Monsanto will perform -- will perform
 15 that qualification for those parties which they
 16 submit the names. So we'll send out our safety and
 17 health requirements, we'll send out a questionnaire
 18 to get their safety numbers to make sure they have a
 19 safety program, to ensure they have some sort of drug
 20 testing program, to ensure that they have insurance
 21 certificates. We do that every year.
 22 WGI provided us with a list of the
 23 people that they have, and in a couple years SIO was
 24 on that list. And so a package went out to them.
 25 The first year that it went out, the year that I was

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1 heavily involved it went out to Mr. Sullivan, Mr. Tim
 2 Sullivan, and he basically told us what we could do
 3 with our package.
 4 Q. In a prior response you mentioned some
 5 conversations internal to Monsanto about whether the
 6 package should go to SIO at all. Am I
 7 mischaracterizing that?
 8 A. The people that we have are clerical in
 9 nature, they were provided a list, they sent the
 10 information out, they got responses back. Some cases
 11 they didn't get responses back. They called to
 12 follow up on whether or not they got -- why they
 13 didn't get a response. And so the question then
 14 came, do -- who needs to fill this out, what's the
 15 issue.
 16 Q. Okay.
 17 A. So there was an internal discussion
 18 regarding that which I have divulged to you.
 19 Q. Were there any folks who thought that it
 20 should be Monsanto -- it should be SIO to receive
 21 that stuff?
 22 A. There were people that thought that the
 23 documents should go to WGI. There were people that
 24 felt like -- that it should go to SIO.
 25 Q. Who were the people that thought it

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1 should go to SIO?
 2 A. I don't recall.
 3 Q. Do you remember what their reasoning was
 4 for why it should go to SIO?
 5 A. It was their interpretation that SIO was
 6 doing the work. When we investigated the facts,
 7 WGI's people were doing the work, and so WGI would be
 8 the proper entity to qualify.
 9 Q. Okay.
 10 A. Had SIO had people that were doing the
 11 work, then the opinion probably would be different.
 12 MR. BROUGH: I don't have any more questions.
 13 Do you have any follow-up?
 14 MR. RITTI: I have a couple. Actually, it
 15 just concerns what we've been talking about.
 16
 17 EXAMINATION
 18 BY MR. RITTI:
 19 Q. Mr. Smith, as you know, my name is Gene
 20 Ritti. I represent the defendant Washington Group.
 21 Earlier this afternoon when you were talking about
 22 this very same subject matter you said something to
 23 the effect that when SIO received this packet of
 24 information, Tim Sullivan used words that I won't
 25 repeat. That's what I heard you say?

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1 A. Yes.
 2 Q. And I don't want to embarrass you in
 3 front of Ms. Terrill, our court reporter, but I think
 4 it is important that the record reflect what Mr. Tim
 5 Sullivan said after Monsanto sent him this packet of
 6 -- would it be called safety information? would that
 7 be a proper characterization?
 8 A. Yes. It had a request for information,
 9 you know, and it also had our safety rules and
 10 regulations, the Monsanto ones. It also referenced
 11 MSHA requirements and others.
 12 Q. And what's your recollection as to what
 13 Mr. Tim Sullivan said?
 14 A. Well, what was represented to me -- I
 15 did not hear it. It was represented that Mr. Tim
 16 Sullivan told us to go to hell.
 17 Q. And who was it that told you that Tim
 18 Sullivan said Monsanto could go to hell?
 19 A. It was one of our clerks. I don't
 20 remember the one that we had hired at the time that
 21 was in charge of sending that out and getting the
 22 feedback back.
 23 Q. And was this a woman or a man clerk?
 24 A. We've had women doing that.
 25 Occasionally they might be supported by one of the

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1 purchasing agents or somebody else like that. But
 2 the last couple positions have been held by women.
 3 Q. Well, regardless, did the clerk say that
 4 this conversation with Mr. Sullivan took place over a
 5 phone call?
 6 A. You know, I don't recall.
 7 Q. Do you recall any other occasions when
 8 Tim or Bob or Todd Sullivan or any of their spouses
 9 had, you know, conversations in the same vein with
 10 Monsanto representatives, that we're not going to do
 11 this or you guys can go to hell or anything like that
 12 on any other type of topic?
 13 A. So over this period of time and
 14 recognizing that it was a very passionate subject,
 15 had numerous conversations with various Sullivans
 16 regarding it. And then, you know, I guess what we
 17 consider hearsay, people let me know of their
 18 discussions as well.
 19 What I found in firsthand experience is
 20 I had a very difficult time dealing with Bob
 21 Sullivan. There were numerous times when he got very
 22 loud and irritated and angry in our discussions. In
 23 fact, that's one of the reasons why in that one
 24 document you provided me, I had Gillian take notes
 25 because I want -- I felt like it was a protection to

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1 him for him to know that there were other people
 2 listening in, and I was hoping we would be more
 3 productive by doing that.
 4 In one of our meetings with Dave
 5 Farnsworth, Todd Sullivan, who was the coolest head
 6 of the brothers, had to keep his father and Tim
 7 calmed down. He kept trying to calm them down. I
 8 had heard her horror stories from some of the
 9 Washington folks regarding discussions that they had
 10 had with Mrs. Sullivan in regards to collecting money
 11 in terms of payments that were owed to Washington.
 12 But that was secondhand. It was not something I
 13 witnessed.
 14 Q. Do you recall from whom on the
 15 Washington Group side you heard those accounts of
 16 conversations with Mrs. Sullivan?
 17 A. Clayton Krall, I believe, would have
 18 been one. Craig Nelson had some experience. We had
 19 some challenges because once that occurred, then they
 20 would no longer go back and talk to that individual.
 21 So, like, the quarry manager, Terrel Parsons, at one
 22 point in time they got to a point where they just
 23 wouldn't even deal with him. So when they came --
 24 decided at the point where they wanted to come back
 25 and get the assets, it was difficult for me to find

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1 somebody to manage all that over there that they were
 2 willing to work with.
 3 Q. When you say they didn't want to deal
 4 with them, that --
 5 A. Just refused to talk to them.
 6 Q. Does that mean someone on the Monsanto
 7 or Washington Group side didn't want to have to deal
 8 with the Sullivans anymore or the Sullivans said I
 9 don't want to deal with this Washington Group person?
 10 A. It was Sullivans indicating they did not
 11 want to work with the Washington person.
 12 Q. What was the nature of the -- or what
 13 was the issue that seemed to get Mrs. Sullivan so
 14 angry or upset or whatever she was?
 15 A. Again, I don't have firsthand knowledge.
 16 I just have the knowledge from what I heard from
 17 Washington folks. But on occasion we have to -- not
 18 all of the material that we have at that site, what
 19 belongs to us, we have to pay the government
 20 royalties on some of that product, and that requires
 21 prompt reporting at the conclusion which required us
 22 to get information from WGI on what they sold.
 23 Hence, there was times when they would
 24 be late with that, and I would call. And some of the
 25 times it got so late that I had to call and say, hey,

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1 you've got to speed this up. That was the dialogue
 2 on which they were frustrated as they went to
 3 Mrs. Sullivan to try to get that information to get
 4 those payments.
 5 Q. When you first got into this topic of
 6 the safety packets being sent to SIO earlier this
 7 afternoon, I think this was where perhaps you used an
 8 example of some SIO equipment just appeared at the
 9 quarry, which you said that just can't happen. Do
 10 you remember that?
 11 A. Yes. I remember that.
 12 Q. What type of equipment do you recall
 13 that we're talking about?
 14 A. If SIO purchased a dump truck, a used
 15 dump truck, and showed up on the site with that. Of
 16 course, if the truck doesn't have a fire extinguisher
 17 and meet all the safety, if MSHA were to show up and
 18 arrive, then all entities could have been fined --
 19 MSHA could ultimately shut down the quarry. And so
 20 -- with such an infraction. So the fact that it
 21 would show up, we have a person that part time does
 22 audits and spot checks to make sure WGI is complying
 23 with various things. It happened to show up a period
 24 of time when my Monsanto spot auditor was there and
 25 said, hey, we have a problem.

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1 Q. Do you know how that problem got
 2 resolved?
 3 A. We talked to WGI and told them they've
 4 got to get it taken care of.
 5 Q. Do you know what Washington Group then
 6 did to take care of it?
 7 A. Details I don't know.
 8 MR. RITTI: That's all the questions I have.
 9 MR. BUDGE: No questions.
 10 MR. BROUGH: I have just one or two follow-up
 11 questions if you don't mind.
 12
 13 FURTHER EXAMINATION
 14 BY MR. BROUGH:
 15 Q. Were you ever aware of any breaches of
 16 the agreement between WGI and SIO?
 17 A. Breaches --
 18 MR. RITTI: Let me just object to that first
 19 in terms of ambiguous as to what you mean by the word
 20 breach.
 21 MR. BROUGH: I'll be more specific.
 22 Q. BY MR. BROUGH: Did anybody from WGI
 23 come to you or come to anybody at Monsanto that
 24 you're aware of and say: These SIO guys just aren't
 25 honoring our agreement?

1 Does that answer your question?
 2 Q. Was Monsanto always paid the royalties
 3 that it was supposed to receive from WGI?
 4 A. Monsanto received royalties from WGI.
 5 In one of the spot audits that was performed, we
 6 noted trucks leaving the facility. When we went to
 7 the log and to the weigh tickets to get weights for
 8 those trucks at the times they left, there was
 9 nothing in place.
 10 We confronted WGI about the issue, and
 11 WGI confronted SIO about trucks leaving and not
 12 showing up on the -- of course, that's a pretty
 13 serious infraction because of the situation. Not
 14 only is that how the contract works, in commercial
 15 terms works, but it's also a requirement on our part
 16 to report product that leaves to the federal
 17 agencies. So SIO was -- WGI talked to SIO. They
 18 indicated there was a mistake and that they corrected
 19 it.
 20 MR. BROUGH: I don't have any more questions.
 21 MR. RITTI: I have nothing further.
 22 MR. BROUGH: Mr. Smith, like I mentioned at
 23 the beginning, you have the opportunity to read and
 24 sign a copy of the deposition transcript. Would you
 25 like to do that?

1 A. There's three situations that come to
 2 mind. When they would haul material out in the dump
 3 truck, they would provide weigh tickets. And we
 4 needed what -- WGI needed to get a ticket of the
 5 truck empty so they could do some comparisons. And
 6 they just couldn't get that information. That was
 7 represented to me as somewhat of a breach because
 8 they couldn't calculate the amount of material that
 9 was leaving. That was one instance that I recall.
 10 It's not a big issue. I think it later got fixed.
 11 But I know that there was some complaining on both
 12 sides regarding that.
 13 In terms of payments, when I got after
 14 them regarding the getting me the information on the
 15 royalty so we could report the data, they told me
 16 that SIO was late with the payments to them. So not
 17 only didn't they have the information, but they
 18 hadn't received money from SIO, so they were having
 19 to float that. That could be termed somewhat of a
 20 breach, although a minor one.
 21 The last one that I was aware of was
 22 when SIO -- when the contract was terminated there
 23 was a provision within the contract that required
 24 them to remove the equipment by a certain time, and
 25 they failed to comply with that as well.

1 THE WITNESS: Yes. If you don't mind,
 2 there's only one comment that I've said today, as I
 3 think about it, I would really like to check to make
 4 sure it's accurate.
 5 MR. BROUGH: Okay.
 6 THE WITNESS: I referred to Dravo. I believe
 7 I should have mentioned the name Conda. I believe
 8 Dravo was an early name for Degerstrom Ventures, who
 9 is our mining contract, not the quartzite. So in all
 10 of the name changes over the years, I think I said
 11 the wrong one. So that should be replaced.
 12 But, yeah, that would be fine. I can
 13 read it and see if there's anything else.
 14 MR. BROUGH: Okay.
 15 (The deposition concluded at 3:45 p.m.)
 16 -00000-
 17
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VERIFICATION

STATE OF)
) ss.
COUNTY OF)

I, James R. Smith, say that I am the witness referred to in the foregoing deposition taken April 7, 2011, consisting of pages numbered 1 to 190; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page Line Should Read Reason

James R. Smith

Subscribed and sworn to before me this day of 2011, at , Idaho.

(Seal) Notary Public for Idaho
My Commission Expires

REPORTER'S CERTIFICATE

STATE OF IDAHO)
COUNTY OF BONNEVILLE) ss.
)

I, Sandra D. Terrill, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined James R. Smith, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 18th day of April 2011.

Sandra D. Terrill
Idaho CSR No. 702,
Notary Public in and for
the State of Idaho.

My Commission Expires: 11-10-16

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Transcript of the Testimony of **David Farnsworth**

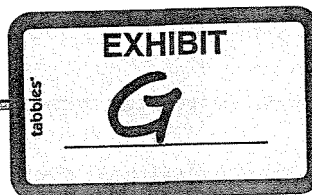
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC, an Idaho limited liability company, Plaintiff, vs. MONSANTO COMPANY, a Delaware corporation; and WASHINGTON GROUP INTERNATIONAL, INC., an Ohio corporation, Defendants.

DEPOSITION OF DAVID FARNSWORTH Friday, April 8, 2011, 8:45 a.m. Pocatello, Idaho

Sandra D. Terrill, RPR, CSR

EXAMINATION

Table with 2 columns: Name (DAVID FARNSWORTH, BY MR. BROUGH, BY MR. RITTI, BY MR. BUDGE, BY MR. RITTI, BY MR. BROUGH) and Page (4, 75, 78, 81, 83)

EXHIBITS

Table with 2 columns: No. (3, 11, 12, 25, 41, 49) and Page (4, 43, 49, 60, 66, 74)

DEPOSITION OF DAVE FARNSWORTH BE IT REMEMBERED that the deposition of Dave Farnsworth was taken by the attorney for the plaintiff at the office of Racine Olson Nye Budge & Bailey, Chtd., located at 201 East Center, Pocatello, Idaho, before Sandra D. Terrill, Court Reporter and Notary Public, in and for the state of Idaho, on Friday, April 8, 2011, commencing at the hour of 8:45 a.m., in the above-entitled matter.

APPEARANCES

For the Plaintiff: BENNETT TUELLER JOHNSON & DEERE BY: DANIEL K. BROUGH 3165 East Millrock Drive, Suite 500 Salt Lake City, Utah 84121 (801) 438-2000

For Monsanto Company: RACINE OLSON NYE BUDGE & BAILEY, CHTD. BY: RANDALL C. BUDGE 201 East Center Post Office Box 1391 Pocatello, Idaho 83204-1391 (208) 232-6101

For Washington Group International: HAWLEY TROXELL ENNIS & HAWLEY, LLP BY: EUGENE A. RITTI 877 Main Street, Suite 1000 Post Office Box 1617 Boise, Idaho 83701-1617 (208) 388-4837

Also Present: Jim Smith

1 (The deposition proceeded at 9:01 a.m. 2 as follows:) 3 (Exhibit #-3 marked.) 4 David Farnsworth, 5 produced as a witness at the instance of the 6 plaintiff, having been first duly sworn, was examined 7 and testified as follows:

EXAMINATION

8 9 BY MR. BROUGH: 10 Q. Mr. Farnsworth, my name is Dan Brough, 11 I'm the attorney for the plaintiff, Silicon 12 International Ore, LLC. It's nice to meet you and 13 thank you for coming to the deposition today. 14 A. Thank you. 15 Q. Just as a preliminary matter, I'm going 16 to hand you a document that we've marked as 17 Exhibit #-3. 18 And just so that you're not confused, we 19 have a number of exhibits that we talked about 20 yesterday that are not all sequentially numbered, but 21 we're filling them in as we go. So if I hand you 22 exhibits that are numbered out of order, that's why. 23 Would you mind taking a quick look at 24 that document and let me know if you've seen it 25

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1 before.
 2 A. Yes, I have.
 3 Q. Do you know what that is?
 4 A. Yes.
 5 Q. Is it your understanding that you're
 6 appearing today pursuant to that notice of
 7 deposition?
 8 A. Yes.
 9 Q. And it's my understanding that you're
 10 appearing here without need for silicon to have
 11 served a subpoena upon you; is that correct?
 12 A. That's correct.
 13 Q. Have you ever had your deposition taken
 14 before, Mr. Farnsworth?
 15 A. No.
 16 Q. I'm sorry that that streak will end
 17 today.
 18 So that you are aware, just a few
 19 guidelines for helping the deposition go more
 20 smoothly. As you know, we have Sandra, our court
 21 reporter, who is taking down a transcript. So it
 22 will be helpful if we don't talk over one another.
 23 If you let me finish the questions, I'll let you
 24 finish your answers, and we'll try to proceed that
 25 way.

1 despite any objections, we would ask you to,
 2 nevertheless, answer the question that's asked.
 3 Do you have any questions before we
 4 proceed?
 5 A. No.
 6 Q. It's my understanding that you are
 7 currently an employee of Monsanto Company; is that
 8 correct?
 9 A. Yes.
 10 Q. When did you first start working for
 11 Monsanto?
 12 A. I started with the -- what we call the
 13 old Monsanto in January of 1977.
 14 Q. And define for me what you mean by the
 15 old Monsanto.
 16 A. It was the Monsanto Chemical Company and
 17 it has -- over the 34 years plus, my career has been
 18 different organizations. Merged with Pfizer in 1997
 19 and then was spun off in its current form in 2000.
 20 Q. Since starting with, we'll call it the
 21 old Monsanto, have you been an employee of any of
 22 those spinoffs or merged companies or have you been a
 23 Monsanto employee throughout your time?
 24 A. In '97 the chemical part of Monsanto
 25 spun off as Solutia and I became a Solutia employee.

1 If you do not understand the question,
 2 feel free to ask me to clarify it. I have no
 3 intention of tricking you or leading you down a false
 4 path. But if you do answer the question, I will
 5 assume that you did understand it.
 6 If you need a break at any time, feel
 7 free to just say so. If there's a question pending,
 8 I will have you answer the pending question, but
 9 after that I have no objection to taking as many
 10 breaks as you might need.
 11 A. Okay.
 12 Q. In conversation we often give answers
 13 such as uh-huh or a nod, and I will certainly
 14 understand what you mean, but our court reporter may
 15 not. So if you answer a question with an audible yes
 16 or a no, that will make it a lot easier for her.
 17 You'll have the opportunity at the end
 18 of your -- well, when the transcript comes back, to
 19 review that transcript and make any corrections or
 20 changes that you feel need to be made. If you do do
 21 that, silicon International has the right to draw
 22 negative inferences from any changes that you make in
 23 your testimony.
 24 Finally, you may hear some objections
 25 today. Unless you're instructed not to answer,

1 In 2001 we were brought back into what
 2 was then Pharmacia and we were given and recognized
 3 as having no interruption in service.
 4 Q. Have you ever been an employee of an
 5 entity called P4 Production, LLC?
 6 A. No. P4 is strictly an owner.
 7 Q. Okay. So let me ask that question, are
 8 you familiar with what P4 Production is?
 9 A. Yes, I am.
 10 Q. Would you please -- you did just a
 11 little bit now, but would you please describe what
 12 that is.
 13 A. P4 Production is a LLC. Originally was
 14 formed between Monsanto -- old Monsanto and Solutia,
 15 the spinoff company. It holds the assets here in
 16 Idaho of the elemental phosphorus plant and the
 17 associated mineral leases and mineral properties.
 18 Q. When you first started working for
 19 Monsanto -- was it 34 years ago?
 20 A. Yes.
 21 Q. -- what was your job title?
 22 A. I was mining engineer.
 23 Q. What were your job responsibilities in
 24 that job title?
 25 A. I was responsible for mine planning,

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1 mine scheduling of both our phosphate mine and silica
 2 operation.
 3 Q. Did you have a specific geographic area
 4 for which you were responsible?
 5 A. Yes. I was -- as I said, the -- for our
 6 Henry Mine at that time, which was our phosphate
 7 mine, and the quartzite operation.
 8 Q. And I'm not familiar -- I've never heard
 9 the term Henry Mine. Where is the Henry Mine?
 10 A. It's about 18 miles northeast of Soda
 11 Springs.
 12 Q. And then the phosphate --
 13 A. That is the phosphate mine.
 14 Q. Okay. And was there another one that
 15 you mentioned?
 16 A. The silica pit or the quartzite
 17 operation.
 18 Q. And where is that located?
 19 A. About two miles west of the plant site
 20 just north of -- north and west of Soda Springs.
 21 Q. And how long did you hold that title --
 22 mining engineer, was it?
 23 A. Yes.
 24 Q. How long did you hold that title?
 25 A. I think within a year or so I was

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1 promoted to a senior engineer position. And then in
 2 1980 became production supervisor, mine production
 3 supervisor.
 4 Q. As a senior engineer did your job
 5 responsibilities change at all from those of a mining
 6 engineer?
 7 A. Not significantly.
 8 Q. Did they change at all?
 9 A. No.
 10 Q. And then in 1980 you became a production
 11 supervisor; is that correct?
 12 A. Right.
 13 Q. And what were your job responsibilities
 14 there?
 15 A. I became responsible for the production,
 16 the operation of the mine and quartzite operation.
 17 Q. What specific job responsibilities did
 18 that entail?
 19 A. Supervision of the contractors. We had
 20 two contractors and I supervised their operation to
 21 ensure that they were in compliance with the
 22 operating contracts that we had. I was responsible
 23 for the reclamation work that was done and the
 24 delivery of product from the two mines to the plant
 25 site.

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1 Q. Who were the contractors that you
 2 supervised?
 3 A. At that time our phosphate mining
 4 contractor was Dravo-Soda Springs and the operating
 5 entity at the quarry was -- I want to say it was
 6 Morrison-Knudsen.
 7 Q. How long did you serve as a product --
 8 I'm sorry -- project supervisor?
 9 A. Production.
 10 Q. Production. I'm sorry.
 11 A. In 1985 I was given the additional
 12 responsibility for the engineering technical site and
 13 the exploration work that went on.
 14 Q. And what were your job -- I mean,
 15 specifically, what new responsibilities did that
 16 entail?
 17 A. Well, I became responsible for the
 18 design, not only the operation of the mining
 19 facilities, but the design of them, and the
 20 exploration and evaluation of outside properties,
 21 future mining properties.
 22 Q. Did that involve a change in title or
 23 were you just given the additional responsibilities?
 24 A. It was just additional responsibility at
 25 that time.

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1 Q. What happened in your employment with
 2 Monsanto after that?
 3 A. In 1987 I became mine superintendent,
 4 which gave me responsibility for all the mining
 5 operations here in Idaho, both the silica pit, the --
 6 all the permitting going up to the mining operation,
 7 the actual operation of the mine and reclamation and
 8 subsequent return of those lands to the federal or
 9 state agencies involved.
 10 Q. Am I correct in understanding then that
 11 your geographic job responsibilities encompassed the
 12 entire state of Idaho?
 13 A. Well, yeah, to the degree that Monsanto
 14 has mining operations, but they're -- primarily,
 15 they're in the southeastern corner of the state.
 16 Q. I see.
 17 A. In 1992 I assumed responsibility for our
 18 Rock Springs, Wyoming, calcine plant. We produce
 19 coal coke, take coal material, run it through a
 20 process and produce a high grade coke product. And
 21 the extent of my responsibilities at that time then
 22 moved over into the Rock Springs area and the supply
 23 of -- the procurement of supply of raw materials for
 24 that plant, coke. Since that time --
 25 Q. I'm sorry. May I interrupt you just

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1 briefly?
 2 A. You bet.
 3 Q. Am I correct in understanding -- and I'm
 4 just trying to glean from your history, which I
 5 appreciate. In 1992 when you assumed responsibility
 6 over the Rock Spring calcining area, I mean, did you
 7 stop being the mine superintendent?
 8 A. No.
 9 Q. It was just an additional --
 10 A. Additional responsibility.
 11 Q. I'm sorry. Go ahead with what you were
 12 going to say.
 13 A. Since that time there have been changes
 14 in title, but overall job responsibilities really
 15 haven't changed.
 16 Q. Are you still a mine superintendent
 17 today?
 18 A. My current title is business unit lead
 19 for mineral activities.
 20 Q. Are your job responsibilities
 21 significantly different from those that you had when
 22 you were mine superintendent?
 23 A. Just with the addition of the role over
 24 Rock Springs.
 25 Q. So as of 1982 your job responsibilities

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1 have not significantly changed; is that correct?
 2 A. That's correct.
 3 Q. Although your title might have from time
 4 to time?
 5 A. Correct.
 6 Q. As a mine superintendent -- well, since
 7 1987 have you had authority to enter into contracts
 8 on behalf of Monsanto?
 9 A. Very limited. Monsanto has a delegation
 10 of authority that spells out what contracts and
 11 agreements various levels can sign. And so there
 12 have been various things that I could enter into and
 13 they're fairly limited to -- in term and dollars.
 14 Q. Can you define for me in some greater
 15 detail the types of contracts that you can enter
 16 into. For example, what term of contract can you
 17 enter into?
 18 A. I'd have to pull it out and check.
 19 Typically, it's either two or five years or less as
 20 far as term. And then it depends on the type of
 21 contract. If it's goods and services, it's -- it's
 22 one of those things that the computer systems are set
 23 up so that you can't approve something that is
 24 outside your delegation, so I don't remember what
 25 those limits are. But maybe 50,000 is the maximum

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1 agreement.
 2 Things involving leases or land are not
 3 included. I have a special delegation to sign mine
 4 plans, water right applications, those sorts of
 5 permits, but -- specific to contracts. Any
 6 significant contracts -- I'm sure anything over five
 7 years or an indefinite term, I would not have
 8 authority to sign. And all those contracts
 9 require -- depending on what they are, require either
 10 purchasing, legal, or environmental reviews before
 11 they can be signed.
 12 Q. Since 1992 with the job responsibilities
 13 you've had since that date, would you have knowledge
 14 of contracts that Monsanto entered into regarding
 15 your sphere of responsibility?
 16 A. Yes.
 17 Q. And how would you learn about those
 18 contracts?
 19 A. Some of them myself or my people would
 20 initiate. Others might be brought to us by
 21 purchasing or legal.
 22 Q. So even if you didn't have authority to
 23 sign these contracts, were you -- are you generally
 24 consulted on them?
 25 A. Yes.

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1 Q. Prior to coming to Monsanto, were you
 2 employed?
 3 A. Yes.
 4 Q. Where were you employed?
 5 A. I was employed by Morrison-Knudsen in
 6 Boise.
 7 Q. And what did you do there?
 8 A. I was a mining engineer.
 9 Q. How long did you work in that capacity
 10 for Morrison-Knudsen?
 11 A. A little less than two years.
 12 Q. Prior to that what did you do?
 13 A. I was a student.
 14 Q. Where at?
 15 A. University of Utah. I graduated in 1975
 16 with a degree in mining engineering.
 17 Q. Are you familiar with a company called
 18 Washington Group International, Inc.?
 19 A. Yes.
 20 Q. How are you familiar with that company?
 21 A. They have been a contractor for Monsanto
 22 for a number of years.
 23 Q. Are you aware of the date upon which
 24 they first became a contractor for Monsanto?
 25 A. I don't remember exactly when it was,

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1 no.
 2 Q. Were you working at Monsanto when they
 3 first became a contractor?
 4 A. Yes. WGI also has other contracts with
 5 Monsanto, and the only one that I'm familiar with is
 6 the silica and quartzite operation.
 7 Q. How are you aware of the other contracts
 8 that Monsanto has with WGI?
 9 A. As we've talked -- internally within the
 10 corporation, you talk and mention to a visitor from
 11 St. Louis that WGI is a contractor here in Soda
 12 Springs, and they say, oh, yeah, we've used them on
 13 this project or that project.
 14 Q. I see. What does -- well, let me define
 15 this first. When we talk about WGI, are you aware of
 16 any predecessor companies or affiliated companies
 17 with whom Monsanto has also had contracts?
 18 A. Yes.
 19 Q. And what are the names of those
 20 companies?
 21 A. That would be Conda Mining and
 22 Morrison-Knudsen.
 23 Q. Just so that we're clear, when I talk
 24 about WGI, I'm going to lump all of those companies
 25 together just for ease of reference; is that okay?

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1 A. Yes.
 2 Q. What's the nature of the contract that
 3 you're aware of with WGI? What does WGI do?
 4 A. WGI supplies screened and washed rock --
 5 quartzite rock from Monsanto's quartzite operation to
 6 the plant.
 7 Q. And when you say it supplies this
 8 quartzite, does WGI own the quartzite and it sells it
 9 to Monsanto or in what sense does it supply it?
 10 A. Monsanto owns the quartzite. WGI mines
 11 it, crushes, washes it, and delivers it to the plant.
 12 Q. I see. So is it fair to say that WGI is
 13 a contractor for Monsanto?
 14 A. Yes.
 15 Q. I'm going to show you an exhibit that we
 16 marked yesterday as Exhibit *-26. Would you mind
 17 just taking a look through that document to
 18 familiarize yourself with it, and when you're done,
 19 let me know.
 20 A. Okay.
 21 Q. Have you seen that document before?
 22 A. Yes, I have.
 23 Q. What is it?
 24 A. It's the 1993 operating agreement
 25 between Monsanto and WGI, or at that time Conda

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1 Mining.
 2 Q. If you go down on the part of that page,
 3 that first page that says "witnesseth" and there are
 4 five paragraphs beginning "whereas," do you see that?
 5 A. Uh-huh.
 6 Q. On the fourth paragraph it says: Conda
 7 and Monsanto previously entered into an agreement
 8 concerning mining of quartzite, which prior agreement
 9 had an effective date of January 1st, 1988.
 10 Are you familiar with that agreement?
 11 A. Yes.
 12 Q. Did you have any role in negotiating
 13 this Exhibit *-26 agreement?
 14 A. Yes.
 15 Q. What was your role in doing that?
 16 A. I would have been part of and probably
 17 led the negotiation of pricing and other operational
 18 terms.
 19 Q. When you say pricing, can you define in
 20 a little bit more detail what you mean by that.
 21 A. That would be the price that Conda
 22 Mining would have been paid for doing the services.
 23 Q. Just so that I'm clear what we're
 24 talking about, can you turn to page 7 of the
 25 agreement. In the middle there's a small chart with

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1 two columns. "Wet net tons delivered during
 2 operating season" and then "base rate dollars per wet
 3 net ton." Is that the pricing?
 4 A. Yes, it is.
 5 Q. Thank you. Skip back to page 2, if you
 6 wouldn't mind. On section 2, services, it says:
 7 Commencing January 1st, 1993, and thereafter during
 8 the term of this agreement, Monsanto hereby engages
 9 Conda to perform, and Conda hereby agrees to perform
 10 the following services.
 11 Now, the term of this agreement -- and
 12 I'm getting this from page 5, section 4(b) -- means
 13 that it will continue, in effect, through
 14 December 31st of 2002, at which time it will
 15 terminate.
 16 Is that your recollection of the term of
 17 this agreement?
 18 A. That was the original term, yes.
 19 Q. When you say the original term, did the
 20 term change at all?
 21 A. I believe there was a 1998 agreement,
 22 which was entered into by the two companies.
 23 Q. Then going down, the different services
 24 that WGI would perform, in section (a) -- I won't
 25 read the whole thing so we're not here all day, but

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1 it sounds to me like this paragraph (a) says that WGI
 2 will selectively mine, crush, and screen quartzite.
 3 It will meet the specifications described and
 4 transport that from the quarry to the plant.
 5 Is that a fair assessment of generally
 6 what WGI did?
 7 A. Yes.
 8 Q. And then going to paragraph (b): Remove
 9 overburden from the quartzite reserves within the
 10 quarry prior to mining and to install, operate,
 11 maintain, mining, crushing, screening, wet washing
 12 facilities, et cetera.
 13 Define for me what you understand
 14 overburden to be.
 15 A. Overburden is the -- anything but the
 16 ore material is the waste rock over, above, around,
 17 or within the deposit that does not contain silica
 18 meeting our products quality specs.
 19 Q. I see. So it's my understanding that
 20 WGI's mining process produces a type of sand, we'll
 21 call it, that is finer in diameter than what Monsanto
 22 needs for its phosphate processing; is that correct?
 23 A. That's correct.
 24 Q. Would that smaller diameter sand be
 25 considered overburden?

1 A. No.
 2 Q. Is there a provision in this contract
 3 for what WGI is supposed to do with that smaller
 4 diameter sand?
 5 MR. BUDGE: Counsel, could you point him to
 6 the page that you want to refer to just so he doesn't
 7 have to read this lengthy contract.
 8 Q. BY MR. BROUGH: Yeah. I appreciate --
 9 that's perfectly fine. I don't see such a provision.
 10 I'll just represent that to you. And, I guess,
 11 specifically, it would be on pages 2 going to the top
 12 of page 4.
 13 A. Right. Just in brief, looking here, it
 14 says in (b), operating, maintaining such mining,
 15 crushing, screening facilities, including tailings
 16 ponds. That would have been one of the locations.
 17 Q. Okay. And describe for me what a
 18 tailings pond does.
 19 A. Washington's process at that time was to
 20 -- all the rock goes through a number of crushers and
 21 then screens. And there are water sprays put over
 22 these screens in order to wash off the fine
 23 particles. Those fine particles drop down to the
 24 bottom, were collected and put into a large -- they
 25 were collected wet and slurried into a pond where the

1 course sand particles would settle out to the bottom
 2 of the sand -- or to the bottom of the pond and the
 3 water would rise to the top and then be routed back
 4 through the plant.
 5 Q. Were there any other ways in which WGI
 6 managed these tailings other than through the use of
 7 these ponds?
 8 A. During the course of operations -- and I
 9 don't -- couldn't tell you offhand what year it was
 10 done -- they switched processes slightly, such that a
 11 portion of the washed product coming off the screens
 12 went to what's called a sand screw. And this is a
 13 large screw that mechanically separates the sand,
 14 finer particles, from the water such that only a
 15 portion of the very wet product went into the
 16 tailings pond and the damp -- we'll call it a damp
 17 sand product -- was collected and put on a conveyor
 18 belt and then stacked into mined out portions of the
 19 site.
 20 Q. Do you know -- and if you don't I
 21 suppose that's the answer -- but do you know what
 22 percentage, approximately, of the tailings were
 23 stored in ponds versus stored in the conveyor belt
 24 and stacking method?
 25 A. I couldn't tell you.

1 Q. Going on, the next phrase on that
 2 paragraph (b) on page 2, it refers to quartzite
 3 storage areas. Would that also be a reference to a
 4 way in which WGI stored tailings?
 5 A. No. No.
 6 Q. What is quartzite storage area?
 7 A. The way the crushing plant --
 8 crushing/washing plant is set up, the material goes
 9 through a primary crusher and then into a stockpile
 10 area and then comes out of that stockpile area, goes
 11 through the washing plant -- the screening and
 12 washing plant and then goes into an intermediate
 13 stockpile before it's loaded into the trucks for the
 14 haul to the plant. So that refers to those storage
 15 piles there.
 16 Q. As I read paragraph (b) -- well, let me
 17 ask you this. I shouldn't assume. Other than the
 18 tailings ponds, is there any other reference in
 19 paragraph (b) to what WGI would do with these
 20 tailings?
 21 A. I can't see anything else other than
 22 2(b).
 23 Q. Are you aware -- based on the
 24 arrangement memorialized in this contract, did
 25 Monsanto sell WGI sand?

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1 A. No.
 2 Q. I'll refer you to an exhibit that we
 3 marked yesterday as Exhibit *-29. Can you take a
 4 look through that and familiarize yourself with it
 5 and let me know when you're ready.
 6 A. Okay.
 7 Q. Have you seen this agreement before?
 8 A. Yes.
 9 Q. What is it?
 10 A. It's an addendum to this 1993 contract.
 11 Q. Did you have a role in negotiating or
 12 formulating this addendum?
 13 A. Yes.
 14 Q. What was your role?
 15 A. It would have been review and consult.
 16 Q. With whom?
 17 A. Our purchasing and legal people in
 18 putting this together and working with Washington to
 19 see what their needs were.
 20 Q. Okay. Generally speaking, what is your
 21 understanding of the purpose or the intent behind
 22 this addendum?
 23 A. The intent was to allow WGI to build and
 24 operate a facility for the purpose of further
 25 screening that fine sand material on behalf of SIO.

1 Q. Go to the second line there that refers
 2 to silica sand products sold by Washington. Was it
 3 your understanding that Washington was going to be
 4 selling this sand?
 5 A. Yes.
 6 Q. You mentioned just a few moments ago
 7 that Washington was going to be operating this
 8 facility on behalf of SIO. What did you mean by
 9 that?
 10 A. We understood -- we were knowledgeable
 11 that Washington and SIO had entered into an agreement
 12 or were going to enter into an agreement where they
 13 would -- Washington would operate a facility to, like
 14 I say, further screen and clean the sand to a product
 15 that SIO would market.
 16 Q. Okay. Were you aware of what potential
 17 customers this sand was going to be sold to?
 18 A. Yes.
 19 Q. Were those customers organized or
 20 identified by WGI or by SIO?
 21 A. To my knowledge they were -- that was
 22 SIO. I don't know that we were -- or that I was
 23 aware of specific customers. It was more
 24 marketplace.
 25 Q. I see. I see. Just so that we're

1 Q. Now, as I go -- if you turn to page 2 of
 2 this agreement, it says the parties hereto have
 3 executed this addendum as of the 29th day of
 4 November 2000. And there's no signature by Monsanto
 5 there, but I know that Monsanto did -- we do have a
 6 signed copy of this. I don't know why my secretary
 7 put this one in here and not that one. Is it your
 8 recollection that Monsanto, in fact, executed this
 9 agreement on or about November 29th of 2000?
 10 A. Yes.
 11 Q. Were you the signatory?
 12 A. No.
 13 Q. Who did?
 14 A. I believe it was Alan Seder.
 15 Q. Would you turn with me back to page 1 of
 16 this agreement on paragraph (d). It says under the
 17 royalty section: Washington shall pay a royalty to
 18 Monsanto of \$13 per ton of finished silica sand sold
 19 by Washington to a third party or used by Washington
 20 in activity unrelated to the facility.
 21 Did you have a role in negotiating that
 22 royalty amount with WGI?
 23 A. No.
 24 Q. Who did?
 25 A. That would have been Jim Smith.

1 clear, were those markets identified by WGI or by
 2 SIO?
 3 A. SIO.
 4 Q. Do you know whether it would have been
 5 WGI or SIO that was out entering into contracts for
 6 the sale of the sand?
 7 A. I don't know.
 8 Q. So when you say, as you said a few
 9 moments ago, that it would be Washington selling the
 10 sand, what did you mean by that?
 11 A. Monsanto was holding Washington
 12 responsible for the product.
 13 Q. So am I correct in understanding that
 14 from Monsanto's perspective sand is going to get sold
 15 and we're just treating WGI as the seller of the
 16 sand; is that a fair assessment?
 17 A. Yes.
 18 Q. Turn with me to page 2, please. On
 19 paragraph (f), third-party contracts, it says:
 20 Washington anticipates entering into one or more
 21 contracts with Silicon International Ore, LLC,
 22 related to the financing, construction, operation,
 23 and ownership of the equipment and building for the
 24 silica sand processing facility, as well as the sale
 25 of the processed silica sand.

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1 Were you aware of any role that SIO
 2 would have in actually operating the equipment and
 3 building on the Monsanto quarry?
 4 A. It was our understanding that it would
 5 be WGI that would operate the facility.
 6 Q. I will show you a document that we
 7 marked yesterday as Exhibit *-30. Would you mind
 8 taking a look through that, and when you're ready to
 9 proceed, let me know.
 10 A. Okay.
 11 Q. Have you seen this document before?
 12 A. Yes.
 13 Q. What is it?
 14 A. It looks like to be a preliminary draft
 15 with comments to the document we just reviewed, the
 16 addendum to the '93 contract.
 17 Q. Do you recognize the handwriting?
 18 A. No, I don't.
 19 Q. I assume by the fact that you don't
 20 recognize it, that it's not yours?
 21 A. That's correct.
 22 Q. Sometimes I don't recognize my
 23 handwriting so I thought I would ask.
 24 I'll show you a document that we marked
 25 yesterday as Exhibit *-35. Would you mind taking a

1 have been -- documents were done -- there was no --
 2 the -- there was no formal documentation of that.
 3 Monsanto was the operator of the facilities for P4.
 4 Q. I see. Going down to the witnesseth
 5 section on page 1, there's a list of "whereases" and
 6 it says at the bottom, the last whereas, both P4 and
 7 WGI desire to enter into this new agreement
 8 concerning mining of quartzite and covering the
 9 seven-year period ending December 31st of 2007.
 10 Now, we talked that the prior quartzite
 11 agreement had an expiration date at the end of 2002.
 12 This agreement's dated September of 2001. And you
 13 mentioned a 1998 agreement. Was this what you meant?
 14 A. This is what I meant, yeah. I knew that
 15 the '93 agreement was terminated early.
 16 Q. Do you know why it was terminated early?
 17 A. WGI, in a desire to continue the
 18 relationship, made pricing concessions to secure an
 19 extension of the contract.
 20 Q. And am I correct in understanding that
 21 those pricing concessions would have taken effect
 22 prior to the expiration date of the prior quartzite
 23 agreement?
 24 A. That's correct.
 25 Q. And, hence, therefore, Monsanto's desire

1 look through that document. When you're ready to
 2 proceed, let me know.
 3 A. Okay.
 4 Q. Have you seen this document before?
 5 A. Yes, I have.
 6 Q. What is it?
 7 A. It's the 2001 operating agreement
 8 between P4 and WGI.
 9 Q. Did you have a role in negotiating this
 10 agreement?
 11 A. Yes, I did.
 12 Q. Did you negotiate this agreement on
 13 behalf of P4 Production?
 14 A. Yes.
 15 Q. At the beginning of our deposition --
 16 please correct me if I misstate this -- you mentioned
 17 that you had never been an employee of P4 Production;
 18 is that correct?
 19 A. That's correct.
 20 Q. Did P4 Production give you authority to
 21 negotiate this agreement on its behalf?
 22 A. Yes.
 23 Q. Was that authority memorialized in some
 24 kind of document or was it an oral communication?
 25 A. At that time -- let's see, this would

1 to wipe away that old --
 2 A. That's correct.
 3 Q. -- agreement and have the new pricing
 4 concessions in place; is that correct?
 5 A. Yes.
 6 Q. Do you know why -- well, is there any
 7 significance that you're aware of in the fact that
 8 this agreement has a seven-year term ending
 9 December 31st of 2007?
 10 A. Not that I can recall.
 11 Q. Going to paragraph 1 -- I'm sorry --
 12 section 1 on that first page, it says: Services.
 13 Commencing January 1st, 2001, and thereafter during
 14 the term of the agreement, P4 engages WGI to perform
 15 and WGI hereby agrees to perform the following
 16 services.
 17 Now, I don't want to waste time reading
 18 through pages one through three. But is it your --
 19 but you're welcome to review them if you want. My
 20 question is going to be this: Is it your
 21 understanding that WGI's work upon the quarry did not
 22 change from the first quartzite agreement to this
 23 quartzite agreement?
 24 A. Yes.
 25 Q. I'll show you a document that we marked

1 yesterday as Exhibit *-36. Why don't you take a look
 2 through that, and when you're ready to proceed, let
 3 me know.
 4 A. Okay.
 5 Q. Have you seen that document before?
 6 A. Yes.
 7 Q. What is it?
 8 A. It's the addendum to the 2001 contract
 9 covering the use of Monsanto's land and the operation
 10 of the sand processing facility.
 11 Q. Did you have a role in negotiating this
 12 addendum?
 13 A. Yes.
 14 Q. What was your role?
 15 A. Advise and review.
 16 Q. The same as you talked about before --
 17 A. Yes.
 18 Q. -- in the prior addendum?
 19 I see. Look with me at section 23,
 20 paragraph (a), where it says: Location. During the
 21 term of this agreement Washington may construct,
 22 maintain, and operate a silica sand processing
 23 facility on behalf of Silicon International Ore, LLC.
 24 Now, the prior addendum that we looked
 25 at did not contain that language "on behalf of

1 property or operate on Monsanto's property.
 2 Q. Would that include any equipment that
 3 was used by SIO at the facility site?
 4 A. There was not to be any equipment
 5 operated by SIO at the facility. So it covered all
 6 anticipated equipment to be built, constructed, or
 7 used by Washington because there was no intent for
 8 silica to operate.
 9 Q. Going down to paragraph (d), royalty, it
 10 says: Washington shall pay a royalty to P4 per ton
 11 of finished silica sand product sold by SIO according
 12 to appendix A, which shall be updated by mutual
 13 agreement annually or when a new product market is
 14 identified.
 15 That phrase, "updated by mutual
 16 agreement," whose agreement would be required to
 17 update the royalties?
 18 A. It would be Monsanto and Washington.
 19 Q. Going back to just previously on that
 20 line it reads, specifically, "of finished silica sand
 21 product sold by SIO." And that phrase sold by SIO
 22 did not appear in the prior addendum, but appears
 23 here. Do you know why that phrase now appears here?
 24 A. I do not.
 25 Q. Is it your understanding that pursuant

1 Silicon International Ore, LLC." Do you know why
 2 that was added in this addendum?
 3 A. My understanding, the best of my
 4 recollection, it was because SIO and WGI had entered
 5 in -- by this time had entered into the agreement
 6 between themselves for the operation of that
 7 facility, whereas in the original one it was only
 8 contemplated.
 9 Q. So is it correct then that this language
 10 is in to clarify that there is now an agreement, an
 11 actual agreement between SIO and WGI?
 12 A. That's to the best of my recollection,
 13 yes.
 14 Q. Going to paragraph (b), the first
 15 sentence discusses Washington's responsibility for
 16 financial aspects of the operation. On the second
 17 sentence it says: P4 shall, however, have the right
 18 to review and approve all equipment and buildings
 19 that will be operated or constructed at the facility
 20 site.
 21 What's your understanding of the meaning
 22 of that provision?
 23 A. Monsanto was to -- or WGI was to present
 24 to Monsanto a list of the equipment, buildings, other
 25 facilities that they would be putting on Monsanto's

1 to this addendum it would still be WGI selling the
 2 sand?
 3 A. I don't know.
 4 Q. In the Monsanto/WGI relationship did WGI
 5 ever own any portion of the quarry upon which the
 6 quartzite was mined?
 7 A. No.
 8 Q. Did WGI and Monsanto ever enter into any
 9 agreements where it would share profits from the sale
 10 of any sand?
 11 A. No.
 12 Q. Going back to the last exhibit that
 13 we've talked about, that addendum, turn with me to
 14 the second page, if you will. It looks like that --
 15 this document was signed on the first day of -- well,
 16 it says it was executed, the addendum, as of the
 17 first day of March of 2002. Do you have any
 18 knowledge as to whether that's the date that it was
 19 actually signed by Monsanto?
 20 A. No.
 21 Q. Do you know why -- well, let me back up.
 22 Back in -- well, previous to this there
 23 was a quartzite agreement and an addendum and the
 24 addendum was dated in 2000. And then we had a
 25 subsequent quartzite agreement dated 2001 and this

1 addendum dated 2002. why was the WGI/SIO
 2 relationship discussed in an addendum and not just in
 3 the quartzite agreement?
 4 A. I don't remember.
 5 Q. We've talked to some degree about SIO or
 6 Silicon International Ore as a company. Describe for
 7 me -- I assume you're familiar with that company; is
 8 that correct?
 9 A. Yes.
 10 Q. Tell me how you first became familiar
 11 with that company.
 12 A. In the mid 1990s Monsanto was looking
 13 for opportunities to bring value to our -- additional
 14 value to our by-products, and so we were
 15 investigating options for dealing with the silica
 16 sand reject material and had looked at various
 17 markets. And to the best of my recollection, WGI, or
 18 whatever Conda partnership at that time, suggested to
 19 us that we talk with these people.
 20 Q. WGI suggested -- or Conda, I should say,
 21 suggested that Monsanto should talk about this with
 22 SIO?
 23 A. That's my recollection, yes.
 24 Q. Do you remember the individual who first
 25 discussed this opportunity or this proposition with

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1 you?
 2 A. I don't, no.
 3 Q. Are you aware if Monsanto ever had in
 4 the past prior to the time that SIO first came to
 5 Monsanto entered into any agreements for the sale or
 6 the disposal of these tailings?
 7 A. From time to time there were spot sales
 8 to various companies or individuals, small.
 9 Q. In those cases was it Monsanto directly
 10 selling the sand to some other purchaser?
 11 A. Yes.
 12 Q. Had Monsanto ever contracted with
 13 another party to either sell or remove these
 14 tailings?
 15 A. Other than the sales that I just
 16 mentioned, I'm not aware of anything.
 17 Q. Were you ever present at any meetings
 18 with any representatives of SIO during this initial
 19 stage that you mentioned in the late nineties?
 20 A. No.
 21 Q. When was the first time you met with an
 22 individual from SIO?
 23 A. To the best of my memory, it would have
 24 been shortly after the start-up of the facility in,
 25 what, 2002.

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1 Q. Do you remember the context of that
 2 meeting?
 3 A. It was just an introduction, more or
 4 less, to Mr. Sullivan at the site. I was on a visit
 5 to the quartzite operation and I don't remember who
 6 introduced me to -- is it Tim that operated the
 7 facility or supervised the facility there for SIO?
 8 He was outside and I was outside and we shook hands,
 9 and that was the extent of the meet and greet.
 10 Q. When you say Tim was supervising the
 11 facility on behalf of SIO, we talked just a little
 12 while ago that it was WGI that was going to be
 13 operating and supervising this. What was your
 14 understanding of what Tim's role was?
 15 A. Tim was SIO's representative and would
 16 be the one through WGI's management to say "make
 17 this" or "make that" and how to handle the product
 18 and what have you.
 19 Q. Did Tim maintain any kind of office on
 20 the site?
 21 A. I don't know.
 22 Q. You mentioned that you met Tim on a
 23 visit to the site that you made. In your job
 24 responsibilities did you regularly make visits to the
 25 site?

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1 A. To the quartzite operation, yes, but I
 2 did not regularly go to the sand processing facility.
 3 Q. What would be the reasons why you would
 4 make a visit to the quarry, generally?
 5 A. Monitoring safe, efficient operation of
 6 the facility.
 7 Q. Were those visits periodic or random
 8 or --
 9 A. More random.
 10 Q. Going back to the time that -- the first
 11 time that SIO approached Monsanto -- that SIO and
 12 Monsanto had contact, I should say, what was your
 13 awareness of that first contact? I mean, did you
 14 know specifically who SIO was talking to at Monsanto?
 15 A. Yes.
 16 Q. Who was SIO talking to?
 17 A. It would have been Mitch Hart.
 18 Q. Did you have any conversations with
 19 Mitch about SIO's proposals?
 20 A. Yes.
 21 Q. Do you remember the first conversation
 22 that you had with him?
 23 A. No.
 24 Q. Do you remember any specific
 25 conversations you had with him about it?

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1 A. No. Nothing specific.
 2 Q. Do you remember generally what you spoke
 3 about with Mitch regarding SIO's proposal?
 4 A. It would have been along the lines of it
 5 sounds attractive, we have excess material there that
 6 we would like to find outlets for, and that he would
 7 need to be careful and not make commitments in his
 8 role. His role was to find, identify, and then bring
 9 those contacts back to purchasing and legal to
 10 actually formalize.
 11 Q. Were you aware of what SIO's specific
 12 proposal was?
 13 A. I don't know that I -- I don't remember
 14 if I was.
 15 Q. What's your recollection of what SIO's
 16 proposal was at those initial stages when they were
 17 talking with Mitch?
 18 A. The initial -- the best of my memory,
 19 the initial proposal was that they would purchase raw
 20 sand from us and take it to a site of their own for
 21 processing.
 22 Q. Did you have any reaction or opinion as
 23 to that proposal?
 24 A. We were generally favorable.
 25 Q. Are you aware of how the discussions

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1 preliminary progressed between SIO and Monsanto
 2 regarding that?
 3 A. Just in a general nature. Very shortly
 4 after the start of those discussions SIO indicated
 5 that -- for whatever reason, I don't remember -- that
 6 they were unable or didn't want to have a site of
 7 their own and whether they could build the facility
 8 on our site.
 9 Q. And who made you aware of that position?
 10 A. That would have been Mr. Hart.
 11 Q. What was your opinion or reaction to
 12 that position?
 13 A. Our concern was that SIO was basically
 14 an unknown small startup operation, which we had no
 15 experience with, were uncertain as to their abilities
 16 to operate a facility in a safe and environmentally
 17 responsible manner, and so we were generally
 18 reluctant.
 19 Q. Would Monsanto's concerns have been
 20 alleviated by a provision whereby SIO would indemnify
 21 Monsanto for any harm or liability that would have
 22 resulted from its presence on the site?
 23 A. That was going to be part of any
 24 agreement. But that was just -- that had to be
 25 there. The other concerns were above and beyond

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1 that.
 2 Q. What other concerns above and beyond the
 3 one that you just mentioned?
 4 A. Well, an indemnification is only as good
 5 as the resources and assets that back it up. And as
 6 we looked at SIO and their limited background,
 7 experience, track record, we didn't see that there
 8 was an asset there that -- yeah, you could have the
 9 indemnification clause, but there was nothing to back
 10 it up.
 11 MR. BROUGH: We've been going for about an
 12 hour. Would you mind if we took a short break?
 13 THE WITNESS: Sure.
 14 (A recess was taken from 9:58 a.m. to
 15 10:06 a.m.)
 16 (Exhibit *-11 marked.)
 17 Q. BY MR. BROUGH: Let's go back on the
 18 record. I'm going to show you a document that we've
 19 just marked as Exhibit *-11. Would you mind taking a
 20 look at that and familiarizing yourself with it.
 21 When you're ready let me know.
 22 A. Okay.
 23 Q. Have you seen this document before?
 24 A. Yes.
 25 Q. What is it?

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1 A. It's an e-mail from myself to one of our
 2 senior managers in St. Louis.
 3 Q. And is that senior manager John Sheptor?
 4 A. Yes.
 5 Q. Do you know if he's still with the
 6 company?
 7 A. I don't believe he is.
 8 Q. Do you remember the date, approximately,
 9 at least, on which you would have sent this e-mail?
 10 A. I don't.
 11 Q. As I look at the second line it says:
 12 Silicon International Ore, LLC, approached us this
 13 past spring.
 14 Does that refresh your memory to be able
 15 to ballpark this in approximately the fall of 2000?
 16 A. I would assume that it's summer or early
 17 fall 2000.
 18 Q. The e-mail begins: When you were here
 19 at Soda, I mentioned an opportunity to sell some of
 20 our reject quartzite material into a new market.
 21 Silicon International Ore approached us this past
 22 spring in regards to purchase of some of our reject
 23 silica.
 24 Is this consistent with what you
 25 testified before, that Silicon's proposal was to

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1 purchase some of Monsanto's sand?
 2 A. Yes.
 3 Q. Going down to the second paragraph:
 4 During the production of coarse quartzite rock for
 5 the Soda plant, we produce a large quantity of fine
 6 reject quartzite. We typically sell a small portion
 7 of this material locally as fill and to a cement
 8 producer each year.
 9 Does that line refer to the intermittent
 10 sales contract that Monsanto entered into to sell the
 11 tailings?
 12 A. Yes.
 13 Q. Then the next line says: The bulk of
 14 the volume is backfilled into mined out areas of the
 15 quartzite pit. Backfilling has a cost associated
 16 with it and is increasing as the distance increases
 17 between the screening plant and the disposal area.
 18 What are the costs associated with
 19 backfilling?
 20 A. It's the purchase and operation of
 21 additional conveyor belts and, ultimately, the
 22 reclamation of the site.
 23 Q. What do you mean by the reclamation of
 24 the site?
 25 A. Placing topsoil over the reject material

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1 and revegetating it, seeding it.
 2 Q. And what is Monsanto's interest in doing
 3 that?
 4 A. Monsanto is a very environmentally
 5 responsible company and we also operate within the
 6 terms of the Idaho Surface Mining Act, which require
 7 a level of stabilization of an area at the close of
 8 mining. And so Monsanto has always as quickly as
 9 practical reshaped or revegetated mined out areas.
 10 Q. I'm no engineer. Am I correct in
 11 understanding that sand is considered less stable
 12 because it doesn't support vegetation as readily as
 13 other types of soils?
 14 A. Right.
 15 Q. Going on in that next line: Backfilling
 16 has a cost associated and it is increasing as the
 17 distance increases between the screening plant and
 18 the disposal area.
 19 Can you explain that for me a little bit
 20 more?
 21 A. Physically, the areas closest to the
 22 screening plant had been filled to their limit and so
 23 you had to go to more distant areas of the property
 24 to place that sand material.
 25 Q. Skip down with me to four paragraphs

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1 down.
 2 A. Okay.
 3 Q. And I'm looking specifically at the
 4 third sentence beginning "Monsanto's involvement."
 5 Do you see that?
 6 A. Uh-huh.
 7 Q. Monsanto's involvement will be limited
 8 to invoicing WGI for the sand that they take and
 9 limited periodic audits of the site to ensure the
 10 safety and environmental program, slash, controls are
 11 working.
 12 If SIO's proposal was to purchase some
 13 of the sand, why would it be that Monsanto would be
 14 invoicing WGI?
 15 A. In the third paragraph we talk about
 16 provide sand from the screening plant to WGI and
 17 lease them a location for the building for further
 18 screening and bagging. WGI would contract with SIO
 19 to provide them the raw materials to build and
 20 operate the necessary screening and bagging facility.
 21 So that's what we're talking about is
 22 that we're providing the sand to WGI. WGI would be
 23 operating the facility and our role would be to
 24 inspect that facility for compliance with
 25 environmental safety rules.

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1 Q. I'll skip back down to the last full
 2 paragraph where it says: I would request your
 3 approval to move forward with the appropriate legal
 4 representatives to establish a sales contract with
 5 WGI.
 6 Is that the -- is that the contract that
 7 you're talking about?
 8 A. Yes.
 9 Q. Did Monsanto ever, in fact, enter into a
 10 sales contract with WGI for the material?
 11 A. That would be these addendums to the
 12 quartzite agreements that we've been reviewing.
 13 Q. Okay. Let's go back to those, if you
 14 don't mind. I'll refer you, just for the sake of
 15 simplicity, to Exhibit *-36. Do have that in front
 16 of you?
 17 A. Yes.
 18 Q. Going down to paragraph (d), royalty, is
 19 this the paragraph of this addendum that Washington
 20 considers the sales provision of the sand -- I'm
 21 sorry. Not Washington. Monsanto.
 22 A. Yes.
 23 Q. Okay. What language in there does
 24 Monsanto rely on to call this a sales contract?
 25 MR. BUDGE: Object to the form of the

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1 question. Asks for a legal conclusion, but you can
 2 answer if you know.
 3 THE WITNESS: I don't. Obviously, there were
 4 some changes as we worked with our legal people
 5 between the language that I used in the preliminary
 6 and what they finally drafted.
 7 MR. BROUGH: I'll show you an exhibit that
 8 we'll have marked as Exhibit *-12.
 9 (Exhibit *-12 marked.)
 10 Q. BY MR. BROUGH: would you mind taking a
 11 look at that, and when you're ready to keep going,
 12 let me know.
 13 MR. BUDGE: Dan, while he's reading that,
 14 maybe before you go into Exhibit *- 12 in any depth,
 15 you might ask him if his review of that, which has
 16 that March 1, 2000, date on it, would refresh his
 17 memory as to when Exhibit *-11 came in.
 18 MR. BROUGH: Yeah.
 19 MR. BUDGE: I think he said fall of that
 20 year, and it had to have been earlier, it looks like.
 21 THE WITNESS: Okay.
 22 Q. BY MR. BROUGH: I'm sorry that that was
 23 a very long document to review. I just don't want to
 24 surprise you or --
 25 A. Yeah.

1 Alan on March 1st of 2000. Do you see that?
 2 A. Yes.
 3 Q. Then going up above that there's an
 4 e-mail from Alan -- am I saying that right, Seder?
 5 A. Uh-huh.
 6 Q. Do you remember if you received that
 7 e-mail from Alan?
 8 A. I don't remember.
 9 Q. Let me just ask you a couple of
 10 questions about Alan's e-mail, and if you can
 11 remember, great. If not, then not as great.
 12 It says: Have we reviewed with our
 13 legal folks whether or not the proposed agreement can
 14 be constructed to legally grant exclusivity to SIO in
 15 specific markets and also limit SIO ability to sell
 16 on other markets or to specific customers; two, not
 17 conflict with any existing sales agreements. Do we
 18 have the right people interfacing with SIO to avoid
 19 contamination if this deal falls through?
 20 Let me ask you about that. No. 1,
 21 legally grant exclusivity to SIO in specific markets
 22 and limit SIO's ability to sell in other markets.
 23 What's that referring to?
 24 A. We already had contracts in place with
 25 other people for certain markets.

1 Q. -- not give you a chance to look at it.
 2 Have you seen this before?
 3 A. Yes.
 4 Q. What is it?
 5 A. It's a series of e-mails between myself,
 6 Mitch Hart, and various management representatives of
 7 Monsanto.
 8 Q. I'll refer you to page 2 of this
 9 agreement. I'm looking down at the bottom where it
 10 says subject, silica sand, sell to SIO, LLC; author,
 11 Mitchell J. Hart; date, February 24th of 2000. Do
 12 you see that?
 13 A. Uh-huh.
 14 Q. And it looks like the e-mail is sent to
 15 Alan, slash, Mike. Do you know who those people are?
 16 A. I don't with certainty. I'm assuming
 17 Alan was Alan Seder, who is the author on the 3-1
 18 reply. And I believe Mike is probably a reference to
 19 Mike Lauman, who was a purchasing agent at the Soda
 20 Springs site.
 21 Q. Do you remember if you received this
 22 e-mail from Mitch on February 24th of 2000?
 23 A. I don't remember.
 24 Q. Going up, just the e-mail above that, it
 25 looks like there's an e-mail from you to Mike and

1 Q. okay.
 2 A. And we were in discussions with other
 3 people on other markets. And, again, SIO had said
 4 that they had a limited area and type of product that
 5 they were interested in selling.
 6 Q. When you say that Monsanto had
 7 agreements with some, what agreements were those?
 8 A. We were selling sand to a concrete
 9 producer in 2000. I believe we had another agreement
 10 in place regarding the production and potential sale
 11 of golf course sand through another company. And
 12 that agreement included certain markets. I don't
 13 remember just what those markets were, but we wanted
 14 to make sure that there wasn't a conflict or an
 15 overlap.
 16 Q. So just so that I'm clear, was the
 17 discussion at this point that -- let's take, for
 18 example, the concrete company, which I understand to
 19 be in Inkom -- Inkom; is that right?
 20 A. Yes.
 21 Q. Was the discussion that SIO could not
 22 sell sand to any concrete company, any concrete
 23 company within a particular area, or what?
 24 A. I don't believe that the discussions
 25 ever got to that point.

1 Q. I see. So when we're talking about
 2 limiting SIO's ability to sell in other markets or to
 3 specific customers -- let's talk about the markets.
 4 Was the discussion or the thought at the time that
 5 Monsanto would want to limit SIO in selling golf
 6 course sand? I mean, how are you defining market?
 7 A. We needed to protect those existing
 8 contracts and so to the degree that those contracts
 9 or other discussions were in place or had preceded
 10 SIO and we had an obligation, we needed to protect
 11 those agreements.
 12 Q. And by protect those agreements, what do
 13 you mean?
 14 A. We didn't -- we couldn't enter into a
 15 new agreement that would conflict with those either
 16 in pricing or supply type of material, point of use,
 17 type of use.
 18 Q. So when you say conflict -- please
 19 correct me if I'm wrong -- do you mean you didn't
 20 want Monsanto to be selling sand to one golf course
 21 company, for example, at one price and selling sand
 22 to another golf course company at another price; is
 23 that the kind of conflict you're talking about?
 24 A. It would be whatever the terms and
 25 conditions of that previous agreement would be.

1 exclusivity that SIO sought --
 2 Q. I see.
 3 A. -- originally in their proposal.
 4 Q. I see. Did Monsanto ever enter into an
 5 agreement with WGI regarding exclusivity of sand that
 6 would be sold?
 7 A. No.
 8 Q. So from Monsanto's point of view, WGI
 9 could sell sand to whomever; is that correct?
 10 MR. BUDGE: Excuse me, Counsel. You're
 11 referring in the context of which of these
 12 agreements?
 13 MR. BROUGH: In context of the addendum to
 14 quartzite agreement, which we've discussed as
 15 Exhibit *-36.
 16 Q. BY MR. BROUGH: We talked about that
 17 Monsanto considers this to be the contract of sale
 18 between -- from Monsanto to WGI?
 19 A. Right.
 20 MR. BUDGE: So you're essentially jumping
 21 forward, just so the record is clear, from
 22 Exhibit *-12, which are e-mails back in 2000 that
 23 preceded any addendum to the questions asked in the
 24 context of once the addendum to the quartzite
 25 agreement was entered into in 2002, Exhibit *-36,

1 Q. I apologize for belaboring this. I'm
 2 just trying to understand the conflict. Did Monsanto
 3 have agreements with these purchasers that it would
 4 not sell sand to anybody else? I mean, was Monsanto
 5 an exclusive provider of sand for these folks?
 6 A. I don't remember. I don't remember the
 7 exact terms of those other contracts. But there --
 8 to the best of my memory, there were some
 9 restrictions in those previous contracts.
 10 Q. When this e-mail talks about exclusivity
 11 to SIO, what does that mean?
 12 A. Where, specifically, are you?
 13 Q. I'm sorry. I'm looking at the e-mail on
 14 page 2 of this exhibit from Alan Seder, and you
 15 mentioned earlier that you don't recollect whether
 16 you actually received this e-mail from Alan or not.
 17 But I'm curious to know if you have an opinion or any
 18 knowledge about when it says in point one, I'm
 19 referring to, "legally grant exclusivity to SIO." Do
 20 you see that in the second line of that e-mail?
 21 A. Uh-huh.
 22 Q. Do you know what that would be referring
 23 to, exclusivity to SIO?
 24 A. This is Alan's words so I'm interpreting
 25 what he means, but it's in reference to the

1 your question was then what sales could WGI make at
 2 that point in time?
 3 MR. BROUGH: That's exactly right. I
 4 apologize for the jump. Thanks for the
 5 clarification.
 6 THE WITNESS: I believe it's Monsanto's
 7 intent that the sales -- what it was authorizing
 8 Washington to do was limited to work on behalf of
 9 SIO, as is in Exhibit *-36, and relates to the types
 10 of material that's included there as appendix A.
 11 Q. BY MR. BROUGH: If you could turn the
 12 page to the last page of Exhibit *-36. This says:
 13 This appendix A to the addendum to the quartzite
 14 agreement establishes the following effective
 15 September 1st of 2003.
 16 Are you familiar with this page,
 17 appendix A?
 18 A. Yes.
 19 Q. Did you have any role in preparing or
 20 negotiating or contributing to it?
 21 A. Just review.
 22 Q. As I look down that list, approved sand
 23 products: Traction sand, light and heavy rail;
 24 conductivity, grout; asphalt; fiberglass;
 25 sandblasting, et cetera, were these the types of --

1 or the uses of the tailings that WGI could sell?
 2 A. Yes.
 3 Q. Did Monsanto effectively -- well, that's
 4 a bad way to say it. Did Monsanto control what
 5 markets this sand could go to?
 6 A. If I may ask, what do you mean by
 7 markets? Do you mean geographic or uses?
 8 Q. I mean use-markets.
 9 A. Monsanto --
 10 MR. BUDGE: Excuse me. Let me object to the
 11 form of the question. I think we need to refer to a
 12 use or a market. When you use use-markets together,
 13 I think you could be talking two different things.
 14 MR. BROUGH: Fair enough.
 15 MR. BUDGE: Looking at your Exhibit *-A
 16 you're referring to, it's talking about specific uses
 17 there and it could be multiple markets, so maybe that
 18 compound question could be broken up.
 19 MR. BROUGH: That's fair.
 20 Q. BY MR. BROUGH: Did Monsanto control --
 21 did Monsanto control who the sand was ultimately sold
 22 to?
 23 A. No.
 24 Q. So going back to my initial question,
 25 could WGI sell sand to whomever it wished to sell it?

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1 A. It was Monsanto's intent that WGI could
 2 process and sell sand to SIO, not to a larger --
 3 Q. Monsanto knew that SIO would turn around
 4 and sell that sand to various customers; is that
 5 correct?
 6 A. That would be the assumption.
 7 Q. Did Monsanto exercise any control over
 8 the customers to whom SIO sold the sand?
 9 A. No.
 10 Q. So SIO could have sold the sand to
 11 whomever it wished?
 12 A. Yes.
 13 Q. Going down to appendix A on
 14 Exhibit *-36, and I'm referring specifically to the
 15 last page. Look with me in the middle where it says
 16 new markets. SIO must receive written approval from
 17 Monsanto prior to selling into any new market not
 18 specifically outlined above.
 19 So is it the -- I mean, did Monsanto --
 20 is that consistent with your statement that Monsanto
 21 didn't control the customers to whom SIO sold?
 22 A. Monsanto controlled the uses that the
 23 material could be sold into, not the customer.
 24 Q. I see. I see. And who did Monsanto
 25 exercise that control over; was it WGI or SIO?

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1 A. WGI.
 2 Q. Can you explain, just so that I'm clear
 3 then, why then it says SIO must receive written
 4 approval from Monsanto prior to selling into any new
 5 market not specifically outlined above?
 6 A. Monsanto knew that the ultimate marketer
 7 at this time was SIO, and in order to ensure that the
 8 material was used in the proper uses, we required
 9 them to seek that approval.
 10 Q. Let's go back to Exhibit *-12. We'll go
 11 to the e-mail on page 2, the one from Alan Seder
 12 dated March 1st of 2000. On No. 2 where it talks
 13 about not conflict with any existing sales
 14 agreements, is that what you were talking about
 15 before where Monsanto was concerned that any sale of
 16 the sand would conflict with any current contracts
 17 that it had?
 18 A. Yes.
 19 Q. Looking at the last sentence in that
 20 e-mail: Do we have the right people interfacing with
 21 SIO to avoid, quote-unquote, contamination if this
 22 deal falls through. And I understand that these are
 23 Alan's words and that you don't remember receiving
 24 this e-mail, but do you have any knowledge about what
 25 he would have meant by contamination?

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1 A. No.
 2 MR. BROUGH: Let me show you a document that
 3 we'll have marked as Exhibit *-25.
 4 (Exhibit *-25 marked.)
 5 Q. BY MR. BROUGH: would you please take a
 6 look at this much shorter e-mail.
 7 A. Okay.
 8 Q. Have you seen this e-mail before?
 9 A. I wrote the initial one. To that
 10 degree, yes.
 11 Q. Okay. That initial e-mail is the one
 12 that I'm referring to. I assume -- do you know who
 13 Mick is?
 14 A. Yes.
 15 Q. Who is Mick?
 16 A. Mick Portra at the time of this was our
 17 silica area operator.
 18 Q. Going to the e-mail that you wrote dated
 19 October 30th, 2002, it looks like you wrote that
 20 e-mail to Bruce Pallante. Who is Bruce Pallante?
 21 A. Bruce Pallante at the time was plant
 22 manager and my direct supervisor.
 23 Q. And when you say at the time, you mean
 24 at October 30th, 2002?
 25 A. Yes.

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1 Q. And Michael Portra, that's Mick?
 2 A. Yes.
 3 Q. And Randy Vranes, who is that?
 4 A. Randy at that time was the mine
 5 operation supervisor.
 6 Q. And Julie Bell, who is that?
 7 A. She was the safety contractor -- guest
 8 safety representative for the plant.
 9 Q. The substance of the e-mail says: FYI,
 10 it looks like we have full oversight and review of
 11 whatever WGI puts in or operators for SIO at the
 12 silica pit. That operation should be held to all
 13 Monsanto's standards and expectations just like the
 14 silica pit mine.
 15 Do you remember the context in which you
 16 sent this e-mail?
 17 A. To the best of my memory, it was in
 18 regard to the facilities and whether we were going to
 19 inspect the sand facilities -- sand processing
 20 facilities there and what the standards were going to
 21 be.
 22 Q. Did you play any role in the negotiation
 23 of the royalty that Monsanto would receive from WGI?
 24 A. No.
 25 Q. Who did?

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1 A. That would have been Jim Smith and Mitch
 2 Hart.
 3 Q. Let's skip back again to Exhibit *-12.
 4 A. And I may -- excuse me. I may be saying
 5 Jim Smith, and at the time it may, indeed, have been
 6 Mike Lauman.
 7 Q. How do you spell his last name?
 8 A. L-a-u-m-a-n.
 9 Q. What role do you think Mike Lauman might
 10 have had?
 11 A. He was the purchasing agent at the time.
 12 I'm not sure when he retired.
 13 Q. Okay. On Exhibit *-12 I'll refer you to
 14 the second e-mail on the first page, specifically,
 15 the one where you are the author and it's dated
 16 March 1st of 2000 at 10:14 a.m. Do you see that?
 17 A. Un-huh.
 18 Q. And this e-mail is being sent to Alan
 19 Seder. Does that sound fair?
 20 A. Yes.
 21 Q. I'm looking at the second sentence on
 22 the first paragraph of that e-mail beginning "all
 23 documents will be." Do you see that?
 24 A. Uh-huh.
 25 Q. All documents will be worked through

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1 Bill Lambert or his designee. Who is Bill Lambert?
 2 A. Bill Lambert was corporate counsel.
 3 Q. It says Bill -- next sentence: Bill has
 4 assisted in the past in our previous arrangements on
 5 sand and/or quartzite.
 6 What previous arrangements is that
 7 sentence referring to?
 8 A. That would be the operating agreements
 9 with WGI and sales agreements with those other
 10 customers that we had.
 11 Q. Next sentence: The current interface
 12 with SIO is limited to Mitch Hart and myself.
 13 You mentioned a while ago that the first
 14 time you had a face-to-face meeting with anybody from
 15 SIO was after the operation was already underway and
 16 it was a meet and greet with Tim?
 17 A. Uh-huh.
 18 Q. What interface is this sentence talking
 19 about?
 20 A. Specifically, I can't recall, but it
 21 primarily was going through Mitch.
 22 Q. Do you remember if you had any telephone
 23 calls with anybody from SIO during that preliminary
 24 discussion phase?
 25 A. I don't remember.

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1 Q. Skipping down to the third paragraph --
 2 and it looks like kind of a broken up paragraph. I
 3 assume that's just how the e-mail printed. I'm
 4 looking at the part that says "a commitment from us
 5 to work on." Do you see that?
 6 A. Uh-huh.
 7 Q. Looking at the last sentence it says:
 8 Just guessing prices, I'd estimate the value of this
 9 at about 100,000 annually for what is otherwise a
 10 waste. Not a real big hunk of cash, but it is
 11 positive.
 12 Does that sentence encapsulate the
 13 reason why Monsanto was interested in discussing with
 14 SIO this proposal?
 15 A. Yes.
 16 Q. Were you aware of the broader royalty
 17 arrangement between Monsanto, WGI, and SIO? And by
 18 that -- I'll clarify that. I understand that it's
 19 Monsanto's position it had no arrangement whatsoever
 20 with SIO, but do you know -- you know what, strike
 21 that whole thing. It's going to be a mess.
 22 Do you know how WGI and SIO operated
 23 their royalty arrangement?
 24 A. No.
 25 Q. Do you know how Monsanto and WGI

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1 operated their royalty arrangement?
 2 A. Yes.
 3 Q. Generally speaking, broadly, how did it
 4 do that?
 5 A. Well, it started with the simple \$13 a
 6 ton, and at the request -- as markets were identified
 7 and added to the list, at SIO's request new rates
 8 would be agreed to and incorporated in the agreement
 9 with Washington.
 10 Q. When you use the phrase at SIO's
 11 request, who at SIO made that request to?
 12 A. It would be to our purchasing group.
 13 Q. To Monsanto's purchasing group?
 14 A. Yes.
 15 Q. So Monsanto makes a royalty request to
 16 Monsanto's purchasing group. What would have
 17 happened then?
 18 A. You said Monsanto makes -- I believe you
 19 meant SIO.
 20 Q. I did. Thank you for correcting me.
 21 When SIO makes a request for an
 22 amendment to royalty or an amount or whatever and
 23 that goes to Monsanto's purchasing agent, what would
 24 Monsanto's purchasing agent do with that?
 25 A. They would review it with myself and

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1 Do you know what meeting Robert Sullivan
 2 is talking about?
 3 A. Yes?
 4 Q. What meeting was it?
 5 A. There was a meeting held between
 6 himself, other of the family members there, WGI's
 7 representatives, and Monsanto.
 8 Q. Do you remember which Monsanto
 9 representatives were present at the meeting?
 10 A. I don't remember. From the text here, I
 11 assume it was Chris Leatherman, Mick Portra, and
 12 myself.
 13 Q. Who is Chris Leatherman?
 14 A. Chris Leatherman is the current
 15 production supervisor, my production supervisor.
 16 Q. Do you remember who was present at that
 17 meeting representing WGI?
 18 A. I believe both Tim and Todd in addition
 19 to Robert. And I believe there was one other
 20 individual, and I don't remember.
 21 Q. That would have been who was there from
 22 SIO, right?
 23 A. Oh, yes.
 24 Q. Who was there from WGI?
 25 A. I can't tell you. I don't remember.

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1 probably the plant manager to get approval.
 2 Q. And then once the approval is given
 3 within Monsanto, what happens then?
 4 A. Then it's -- the subsequent notification
 5 would go from purchasing back to Washington that this
 6 is the -- we accept the proposed new royalty rate.
 7 Q. Okay. Why would that -- if the initial
 8 proposal came from SIO, why would the acceptance be
 9 communicated to WGI?
 10 A. Because our agreements were with WGI.
 11 MR. BROUGH: Let me show you a document that
 12 we'll mark as Exhibit *-41.
 13 (Exhibit *-41 marked.)
 14 Q. BY MR. BROUGH: would you mind taking a
 15 look at that and letting me know when you're ready to
 16 proceed.
 17 A. Okay.
 18 Q. Have you seen that document before?
 19 A. Yes, I have.
 20 Q. What is it?
 21 A. It's a letter from Robert Sullivan to
 22 myself.
 23 Q. The first line says: Thank you very
 24 much for your time last week. From our standpoint, I
 25 feel it was a very constructive meeting.

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1 Q. What was discussed at that meeting?
 2 A. There were concerns around the operating
 3 area that SIO was being allowed to bring common
 4 carriers, trucking, in to load the material on. And
 5 I believe it was also at the same meeting that there
 6 was concerns by SIO about access to the quartzite
 7 stockpiles, the sand stockpiles, and the intent was
 8 to get the parties there and resolve those issues.
 9 Q. The second line -- I'm sorry -- second
 10 paragraph, second sentence says: We felt there may
 11 have been an issue regarding our getting into the
 12 trucking business.
 13 Do you know what that sentence refers
 14 to?
 15 A. Again, it goes back to the assumption or
 16 the direction that we understood that all the
 17 equipment on the site was going to be WGI owned. And
 18 SIO had purchased some equipment and brought it onto
 19 the site, some of which, rather than being common
 20 carrier, was their own tractor trailer units to haul
 21 material off.
 22 Q. Okay. The next sentence says: Your
 23 assurance that this poses no problem for Monsanto as
 24 long as all safety regulations are adhered to was
 25 good news.

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1 what assurance is he talking about; do
 2 you know?
 3 A. To the best of my recollection, we told
 4 them it didn't matter to us whether it was the truck
 5 that hauled the finished product off, whether it was
 6 an SIO truck, or if it was a third-party contract
 7 trucking firm. It didn't matter to us, but the same
 8 rules and regulations would apply to that, to
 9 Washington, and they needed to define where that
 10 truck had come and how the loading of that truck was
 11 to be done.
 12 Q. The third paragraph says: I'm pleased
 13 that Chris and Tim will revisit the problems on the
 14 boundaries for the, quote-unquote, common area.
 15 Do you know what that sentence is
 16 referring to?
 17 A. As the -- Washington was concerned about
 18 Tim operating the truck, the SIO truck, and other
 19 equipment that SIO had brought on site an extended
 20 distance away from the facility, such that it was
 21 becoming interference with their processing and their
 22 work at the quartzite operation.
 23 And so it was agreed in that meeting
 24 that there would be a common area there just because
 25 of the size of the facilities where everybody had to

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1 understand that both sides had a right to be -- just
 2 you could not say that one side or the other could be
 3 in there and that's it. For this area both sides
 4 could be there and it was to these guys to work out
 5 how they would -- where that common area would be and
 6 how they would work in that common area.
 7 Q. If the agreement was -- the series of
 8 agreements, we'll call them, between Monsanto and WGI
 9 and then between WGI and SIO, what was the rationale
 10 behind having all three of those parties in the same
 11 room together?
 12 A. SIO felt that Washington was being
 13 unfair, and Monsanto was operating as something of an
 14 arbitrator to try and see if there wasn't common
 15 ground that could be reached.
 16 Q. Something akin to what I might do with
 17 my children?
 18 A. Yeah.
 19 Q. You mentioned a little while ago that
 20 your first face-to-face meeting was with Tim Sullivan
 21 under the circumstances that we discussed. What
 22 other personal interaction did you have with the SIO
 23 individuals?
 24 A. To the best of my recollection, there
 25 were two or three phone calls from Todd along these

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1 sorts of lines of issues that had arisen between them
 2 and WGI and attempting to elicit Monsanto's
 3 assistance to resolve those conflicts.
 4 Q. Do you know, just ballpark, how many
 5 instances that was where you stepped in to discuss
 6 that with Todd?
 7 A. Two or three.
 8 Q. What other interaction, if any, did you
 9 have with any of the Silicon International folks?
 10 A. To the best of my recollection, this one
 11 meeting is the only time.
 12 Q. Really?
 13 A. Yeah.
 14 Q. Okay. Are you aware that WGI concluded
 15 its relationship with Silicon?
 16 A. Yes.
 17 Q. How did you become aware of that?
 18 A. I received a phone call from the area
 19 manager -- I think it was Clayton Krall at the time
 20 -- notifying me that they were going to terminate
 21 their agreement.
 22 Q. And what was your response to Clayton?
 23 A. That's between them and SIO.
 24 Q. Did you have any other discussions with
 25 anybody at Washington Group about the conclusion of

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1 that WGI/SIO relationship?
 2 A. There had been discussions between
 3 Monsanto and WGI. They had asked whether we would --
 4 we wanted to take ownership of the relationship or
 5 take ownership of the facilities, would we object to
 6 them canceling the agreement or terminating the
 7 agreement. And subsequently to them notifying SIO
 8 that they were canceling the agreement, there were
 9 conversations about the removal of the facilities.
 10 Q. Okay. When WGI proposed to Monsanto
 11 whether it wanted to assume -- I'm searching for the
 12 right word -- ownership being the wrong word, but
 13 assume control over this silica bagging operation,
 14 what was Monsanto's response to that?
 15 A. We were not interested.
 16 Q. And why was Monsanto not interested?
 17 A. That's not the sort of work that we do.
 18 Q. How about the purchase of the facility,
 19 was Monsanto interested at all in that?
 20 A. No.
 21 Q. For the same reason?
 22 A. We didn't have a use for it.
 23 Q. Since the sand -- well, let me back up.
 24 Does Monsanto presently have any
 25 arrangements with anybody to remove sand from the

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1 quarry area?
 2 A. No.
 3 Q. Does Monsanto still sell the sand
 4 periodically to various companies and individuals?
 5 A. Yes.
 6 Q. How frequent or large would you say
 7 those sales are?
 8 A. I don't think we've had an actual sale
 9 for probably two years, and they are, at most, maybe
 10 less than a hundred tons.
 11 Q. Since the conclusion of the WGI/SIO
 12 relationship, after that time have you had any
 13 conversations with members of the Sullivan family?
 14 A. No.
 15 Q. When was the last time you spoke with
 16 anybody at SIO?
 17 A. I would say early 2007.
 18 MR. BROUGH: we've been going for about
 19 another hour since our prior break and I'm getting
 20 close to the end of my road with you. I would like
 21 to take a look through this agreement that was
 22 produced --
 23 THE WITNESS: Sure.
 24 MR. BROUGH: -- and see if there's any
 25 questions I can raise with you about that. But why

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1 contract whereas the priors were a seven-year
 2 contract?
 3 A. No.
 4 Q. Turning to page 2 of this agreement,
 5 section 1, services. I won't have you read through
 6 everything, but is it your understanding that
 7 pursuant to this contract WGI performs the same
 8 services for Monsanto as it did pursuant to the prior
 9 quartzite agreements that we've talked about?
 10 A. Yes.
 11 Q. Pursuant to this agreement does WGI sell
 12 Monsanto sand?
 13 A. No.
 14 Q. Does it take title to or otherwise
 15 purchase or own any of that sand?
 16 A. No.
 17 Q. Does it take title to or purchase any of
 18 the land belonging to Monsanto?
 19 A. No.
 20 MR. BROUGH: That's all the questions that I
 21 have.
 22
 23 EXAMINATION
 24 BY MR. RITTI:
 25 Q. Mr. Farnsworth, my name is Gene Ritti

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1 don't we take a short break and I'll collect my
 2 thoughts.
 3 (A recess was taken from 10:56 a.m. to
 4 11:07 a.m.)
 5 (Exhibit *-49 marked.)
 6 Q. BY MR. BROUGH: I'm going to show you a
 7 document we've marked as Exhibit *-49. It's very
 8 long so feel free to look at every page. But are you
 9 generally familiar with what that document is?
 10 A. Yes.
 11 Q. What is it?
 12 A. It's the current operating agreement
 13 between P4, Monsanto, and WGI.
 14 Q. Were you involved in the negotiation of
 15 this document?
 16 A. Yes.
 17 Q. In what capacity?
 18 A. Advise, review.
 19 Q. Did you approve it?
 20 A. Yes. Not a final approval but one of
 21 the approvals, yes.
 22 Q. Going down to the last recital "whereas,
 23 both P4 and WGI desire to enter into this new
 24 agreement," it references a five-year term. Is there
 25 any significance to the fact that this is a five-year

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1 and I represent the defendant, Washington Group, that
 2 SIO has sued.
 3 Let me ask you a couple of questions.
 4 If you could look at *-41. So *-41, as I understand
 5 it, you had described a meeting among Monsanto,
 6 Washington Group, and SIO to talk about what, some
 7 issues that had come up between SIO and Washington
 8 Group?
 9 A. Yes.
 10 Q. And as I understood your testimony, your
 11 understanding is that following the meeting everybody
 12 was on the same wavelength as to what was going to
 13 happen with equipment and these boundaries that you
 14 talked about?
 15 A. Yes.
 16 Q. And is it your understanding that that,
 17 in fact, did happen, everyone -- SIO, Washington
 18 Group, were able to move forward in their business
 19 relationship and these problems didn't come up again?
 20 A. The relationships moved forward. These
 21 particular problems were resolved.
 22 Q. Okay. And I didn't see any other
 23 documents that were introduced this morning that
 24 talked about any other issues between SIO or
 25 Washington Group that got Monsanto involved in them.

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1 Were you aware of any that Monsanto had to get
 2 involved and act as this arbiter, as you described?
 3 A. There were attempts by both WGI and SIO
 4 to involve Monsanto in subsequent issues that arose.
 5 And my direction to my people was that's an issue
 6 between WGI and SIO to resolve.
 7 Q. Was it your understanding that whatever
 8 those issues were, somehow got worked out between
 9 those two companies?
 10 A. I don't believe that -- ultimately they
 11 were resolved and that led to the actions that were
 12 taken.
 13 Q. What were the issues that you instructed
 14 your people to let Washington Group and SIO resolve
 15 by themselves?
 16 A. There was continued dialogue about the
 17 use of Washington's personnel to operate the
 18 facility, the cost of those personnel, and the use of
 19 SIO equipment outside of the processing facility
 20 itself.
 21 Q. But neither of those issues required
 22 Monsanto to participate in any future meetings to try
 23 to address the concerns between Washington Group and
 24 SIO, whatever they may have been?
 25 A. That's correct.

1 in this case, the various contracts between Monsanto
 2 and WGI that we have exhibits on and some of the
 3 contracts between Washington and SIO?
 4 MR. BROUGH: Objection. Vague and ambiguous.
 5 Compound.
 6 Q. BY MR. BUDGE: You can answer that. Do
 7 you want me to rephrase that?
 8 Under the delegation of authority does
 9 it provide or allow entering into oral contracts --
 10 A. No.
 11 Q. -- of the type you see for Washington
 12 and Monsanto in the silica operation here?
 13 A. No, it doesn't.
 14 Q. Does it allow for the oral contracts at
 15 all?
 16 A. No.
 17 Q. When I looked at Exhibits *-11 and *-12
 18 Mr. Brough asked about -- if you still have those
 19 available. Looking first at Exhibit *-11, Mr. Brough
 20 had asked you some questions about this and,
 21 particularly, the last paragraph. And you state in
 22 that first sentence: I would request your approval
 23 to move forward with the appropriate legal
 24 representatives to establish the sales contract.
 25 And then if I look at Exhibit *-12,

1 MR. RITTI: That's all the questions I have.
 2 MR. BROUGH: Randy, do you have any follow-up
 3 questions?
 4 MR. BUDGE: Just a couple, it looks like.
 5
 6 EXAMINATION
 7 BY MR. BUDGE:
 8 Q. Mr. Farnsworth, one of the issues in
 9 dispute in this case is the allegation by the
 10 plaintiff, SIO, that they entered into an oral
 11 contract with Monsanto. Are you generally aware of
 12 that?
 13 A. Yes.
 14 Q. And you discussed earlier in your
 15 testimony that there is a delegation of authority
 16 policy that Monsanto has; is that correct?
 17 A. Yes.
 18 Q. And my understanding is that that policy
 19 would give direction to Monsanto employees as to what
 20 authority they may have or may not have relative to
 21 entering into contractual obligations with others?
 22 A. Yes.
 23 Q. Does that delegation of authority allow
 24 Monsanto employees to enter into oral contracts of
 25 the type we have seen here in some of these exhibits

1 which Mr. Brough also asked you questions about, it
 2 talks there about documents being worked through
 3 Mr. Lambert or his designee. And did you indicate
 4 Mr. Lambert was corporate counsel in St. Louis?
 5 A. Yes, he is.
 6 Q. So when you talk about involving
 7 appropriate legal representative and Mr. Lambert,
 8 what is their role in the establishment of a contract
 9 after you've had some negotiations of the type you
 10 discussed here with SIO or with WGI?
 11 A. Once the general concept had been worked
 12 out between parties, we then work with purchasing and
 13 legal to codify those and make sure that both sides
 14 are in agreement to the content of the legal binding
 15 contract, written contract. And anything up to then
 16 is always premised with these are preliminary
 17 discussions and the parties in those discussions do
 18 not have the authority to enter into formal
 19 contracts.
 20 Q. And who's responsible for the
 21 preparation of the written contracts that you
 22 described?
 23 A. Our legal representatives.
 24 Q. And is that always the case?
 25 A. Yes.

1 Q. And so to enter into a contractual
 2 arrangement, if I understand your testimony, it
 3 requires a written signed contract and someone with
 4 authority on behalf of Monsanto to sign that and bind
 5 the company?
 6 A. That's correct.
 7 Q. Is that practice ever deviated from,
 8 based on your experience in the Soda Springs
 9 operation?
 10 A. Not to my knowledge.
 11 MR. BUDGE: No further questions.
 12 MR. BROUGH: None for me. You'll have the
 13 opportunity to read and sign.
 14
 15 FURTHER EXAMINATION
 16 BY MR. RITTI:
 17 Q. Let me ask you this, Mr. Farnsworth: At
 18 any time when SIO brought up issues of this sort that
 19 you discussed in your testimony here today in
 20 Exhibit *-41 -- so we're talking about SIO saying
 21 things -- talking about equipment usage and talking
 22 about common boundaries -- did anybody on behalf of
 23 SIO ever say to you or, to your knowledge, anybody on
 24 the Monsanto side that Washington Group is
 25 interfering with some contract between Monsanto and

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1 SIO concerning these equipment issues, concerning
 2 boundary issues, concerning any other issues? Did
 3 SIO ever say anything like that?
 4 And the question again is that
 5 Washington group was interfering with some contract
 6 SIO claimed it had with Monsanto, not with Washington
 7 Group, but with Monsanto?
 8 A. I believe that claim was made and
 9 Monsanto promptly said that there are no contracts
 10 between SIO and Monsanto. All contracts in place are
 11 between SIO and WGI.
 12 Q. And other than the meeting that's talked
 13 about in Exhibit *-41, do you recall at any other
 14 time SIO making some allegation that Washington Group
 15 was doing anything of some sort that SIO claimed or
 16 alleged tampered with some deal between SIO and
 17 Monsanto other than what you just mentioned?
 18 A. Other than that meeting and the phone
 19 calls that I've mentioned before, that may have been
 20 a comment made in those. But, again, Monsanto's
 21 position has always been that there is no contractual
 22 arrangement between SIO and that -- SIO and Monsanto,
 23 and, therefore, we're not interfering.
 24 Q. So my understanding is that if SIO ever
 25 brought up this concept of some oral agreement

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1 between SIO and Monsanto, it's your testimony that
 2 Monsanto promptly unequivocally said there is no such
 3 contract?
 4 A. Correct.
 5 Q. Did SIO in response to that ever say,
 6 well, our lawyers will get ahold of your lawyers to
 7 work this out or -- I mean, what did they say when
 8 Monsanto said there's no deal between the two of our
 9 companies of any kind? Did they just not say
 10 anything?
 11 A. They would probably --
 12 Q. If you remember. If you don't
 13 remember --
 14 A. To the best of my recollection, they
 15 would not accept that as a simple answer. But after
 16 they had been told two or three times, they dropped
 17 it and went on to something else.
 18 MR. RITTI: That's all the questions I have.
 19
 20 FURTHER EXAMINATION
 21 BY MR. BROUGH:
 22 Q. I now have a few follow-up questions.
 23 Do you know who it was at Monsanto that SIO went to
 24 to say WGI is interfering with our contract?
 25 MR. RITTI: I'll object to the form of that

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1 question when you say our contract.
 2 MR. BROUGH: Okay. I'll rephrase.
 3 Q. BY MR. BROUGH: Do you know who it was
 4 at Monsanto that SIO went to to say WGI is
 5 interfering with the contract between SIO and
 6 Monsanto?
 7 A. That would have been myself and/or Mick
 8 Portra.
 9 Q. Do you remember the conversation with an
 10 SIO representative about that topic?
 11 A. It would have been part of this meeting.
 12 Q. It would have been part of this 2006
 13 meeting?
 14 A. Yes.
 15 Q. And do you remember telling SIO there is
 16 no contract between Monsanto and SIO?
 17 A. Yes.
 18 Q. Do you remember, approximately, the
 19 words that you used?
 20 A. It would have been along the lines that
 21 there is no contract between Monsanto and SIO.
 22 Q. And do you remember who at SIO you told
 23 that to?
 24 A. It would have been Robert, Todd, and
 25 Tim. All three of them were in the room.

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1 Q. And their reaction to that was what?
 2 A. As I said, they challenged it and we
 3 repeated it. And as I remember, Tim became a little
 4 belligerent and had to be calmed down by his brother.
 5 Q. You mentioned earlier in your testimony
 6 that somebody at Monsanto said this to SIO two or
 7 three times, that there's no contract between SIO and
 8 Monsanto. Did all of those two or three times occur
 9 in this meeting or were there separate days?
 10 A. Well, it would have been myself. It
 11 would have been this meeting and any telephone
 12 conversations we had in or around this same time.
 13 Q. Okay. Do you remember if this issue
 14 arose in a telephone conference prior to this meeting
 15 referred to in Exhibit *-41?
 16 A. I don't remember.
 17 Q. Do you remember telling anybody at SIO
 18 after this meeting referred to in Exhibit *-41 that
 19 there's no contract or agreement between Monsanto and
 20 SIO?
 21 A. I don't remember.
 22 Q. Do you know of any other Monsanto
 23 employee or representative who said that to anybody
 24 at SIO at any time other than you?
 25 A. I'm not aware of that.

VERIFICATION

STATE OF)
) ss.
 COUNTY OF)

I, David Farnsworth, say that I am the witness referred to in the foregoing deposition taken April 8, 2011, consisting of pages numbered 1 to 88; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page Line Should Read Reason

David Farnsworth

Subscribed and sworn to before me this
 day of 2011, at , Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires

1 MR. BROUGH: That's all the questions I have.
 2 MR. RITTI: I don't have anything.
 3 MR. BUDGE: Nothing further.
 4 MR. BROUGH: Now I will tell you, if you
 5 wish, you may read and sign your deposition
 6 transcript. Would you like to do that?
 7 THE WITNESS: Yes, please.
 8 (The deposition concluded at 11:24 a.m.)
 9 -oo00o-

REPORTER'S CERTIFICATE

STATE OF IDAHO)
 COUNTY OF BONNEVILLE) ss.
)

I, Sandra D. Terrill, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify: That prior to being examined David Farnsworth, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 18th day of April 2011.

Sandra D. Terrill
 Idaho CSR No. 702,
 Notary Public in and for
 the State of Idaho.

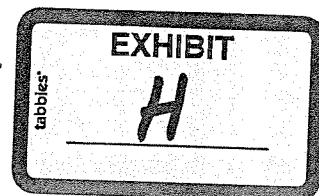
My Commission Expires: 11-10-16

**Silicon International Ore, LLC vs. Monsanto Company
Deposition of John Rosebaum - 3/9/2011**

<p align="center">IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT STATE OF IDAHO, COUNTY OF CARIBOU</p> <p>SILICON INTERNATIONAL ORE, LLC, an Idaho limited liability company,</p> <p align="right">Plaintiff,</p> <p>vs.</p> <p>MONSANTO COMPANY, a Delaware corporation; and WASHINGTON GROUP INTERNATIONAL, INC., an Ohio corporation;</p> <p align="right">Defendants.</p> <p align="center">DEPOSITION OF JOHN ROSENBAUM</p> <p align="center">March 9, 2011 8:32 a.m. Phoenix, Arizona</p> <p align="right">Prepared by: Cecelia Brookman, RPR Arizona Certified Reporter No. 50154</p> <p align="right">Prepared for:</p>	<table border="1"> <thead> <tr> <th colspan="4">INDEX TO EXHIBITS</th> </tr> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>BATES NOS.</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>17-18</td> <td>(Not marked or identified)</td> <td>--</td> <td>--</td> </tr> <tr> <td>19</td> <td>Addendum to Quartzite agreement (Confidential)</td> <td>URS002074-2077</td> <td>36</td> </tr> <tr> <td>20</td> <td>12/2/02 letter to John Rosenbaum from Jim Smith (Confidential)</td> <td>URS002338</td> <td>58</td> </tr> <tr> <td>21</td> <td>(Not marked or identified)</td> <td>--</td> <td>--</td> </tr> <tr> <td>22</td> <td>Proposed Silicon International Ore project process and contract overview</td> <td>Monsanto to SIO - 55-56</td> <td>61</td> </tr> </tbody> </table>	INDEX TO EXHIBITS				NO.	DESCRIPTION	BATES NOS.	PAGE	17-18	(Not marked or identified)	--	--	19	Addendum to Quartzite agreement (Confidential)	URS002074-2077	36	20	12/2/02 letter to John Rosenbaum from Jim Smith (Confidential)	URS002338	58	21	(Not marked or identified)	--	--	22	Proposed Silicon International Ore project process and contract overview	Monsanto to SIO - 55-56	61
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Silicon International Ore, LLC vs. Monsanto Company
Deposition of John Rosebaum - 3/9/2011

1 JOHN ROSENBAUM,
2 called as a witness herein, having been first duly sworn
3 by the Certified Reporter to speak the whole truth and
4 nothing but the truth, was examined and testified as
5 follows:
6
7 EXAMINATION
8 BY MR. BROUGH:
9 Q. Good morning, Mr. Rosenbaum. As we talked
10 about before, my name is Dan Brough. I am the attorney
11 for Silicon International Ore. We're here today for your
12 deposition. So that I'm clear and just as a preliminary
13 matter, are you represented by counsel today?
14 A. Yes.
15 Q. And is Mr. Ritti your counsel?
16 A. Yes.
17 MR. NYE: Counsel, this is Mark Nye. Can
18 you hear me okay everybody?
19 MR. BROUGH: Yes, we can. Can you hear us,
20 Mark?
21 MR. NYE: Yes very well, and I just need to
22 have objections and stipulations, if we can, before you
23 get going.
24 MR. BROUGH: Go ahead.
25 MR. NYE: For the record, we must and do

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1 object to the taking of this deposition or the use of it
2 for the reasons that have been communicated by e-mail to
3 plaintiff's counsel, and we're here by phone, and subject
4 to the objections hopefully it's okay with everybody that
5 we're available by phone.
6 Randy Budge my partner just walked in, by
7 the way, everyone. And we would like to have the
8 stipulation that this deposition and any objections are
9 preserved except as of form, and it's my understanding
10 that's pretty standard. I haven't talked to plaintiff's
11 counsel about that, but that would be my request. I'm
12 sorry to interrupt you. That's all.
13 MR. BROUGH: Are you going to be available
14 by telephone for the whole deposition, Mark?
15 MR. NYE: I'm going to try, yes, and Randy
16 arrived. My plan is to sit through and I don't know if
17 you take breaks or how we reconnect or anything, but...
18 MR. BROUGH: Our thought, Mark, is that if
19 we take any breaks we'll just keep on the phone and just
20 agree on a time to reconvene, five or 10 minutes or
21 whatever. We can talk about that when the time comes.
22 MR. NYE: Okay, I just had to note those
23 objections because if they're not made they may be
24 waived. And as far as the stipulation preserving
25 objections, what do you guys want to do on that?

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1 MR. BROUGH: Gene, do you have any thoughts?
2 MR. RITTI: That's fine with me on behalf of
3 Washington Group.
4 MR. BROUGH: On behalf of Silicon, it's our
5 understanding, if you guys are here I think now is
6 probably the time to any objections you have. I don't
7 know about preserving objections for later. So I guess
8 on that end I don't know that we can agree to stipulate
9 to that. But we certainly have no problem with you
10 participating by telephone and you're free to make any
11 objections you see fit during the course of the
12 deposition.
13 MR. NYE: Well, I've got the rules out here,
14 counsel, if it helps, and under rule 32(d), it just says:
15 objections to competency, relevancy, materiality are not
16 waived by failure to make the objections before or during
17 the taking of the deposition. I don't want to object --
18 I think we're granted a standing objection or -- I don't
19 know how you want to handle that. And I apologize to the
20 witness for this preliminary stuff, but we don't want to
21 object to everything. We just want to have an agreement
22 that -- if you want, we're objecting to every question
23 for the reasons set forth in our e-mail, and as an
24 alternative, regardless, everyone agree that all
25 objections are preserved except as to the form. I think

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1 that's how it's normally done up here. I don't know
2 what, Gene, what you think about all that, or counsel,
3 whatever.
4 MR. BROUGH: I guess my thought, Mark, is
5 yeah, we want to be as accommodating as we can and don't
6 feel compelled to make you object to every question if
7 you feel so. Rule 32 does say that some objections are
8 not waived if they're not raised in the deposition, and I
9 fully understand that rule exists and would govern this
10 deposition. But to the extent there are other objections
11 other than those encompassed by rule 32 we think now is
12 the time for you to make them. Does that make sense?
13 MR. NYE: Yeah, I think so. If I can't hear
14 or say -- how do I call you guys back if we lose
15 connection? Is there a way to do that?
16 MR. BROUGH: Yes, there is. What I would do
17 is -- actually, this is a separate line. If we lose
18 connection we will promise you that we will call you.
19 MR. NYE: Okay. Thank you very much.
20 MR. BROUGH: Thank you, Mark.
21 Q. BY MR. BROUGH: My apologies, Mr. Rosenbaum.
22 Thanks for letting the attorneys hash that out.
23 A. Okay.
24 Q. Have you ever had your deposition taken before?
25 A. Yes.

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Pages 5 to 8

Silber International Ore, LLC vs. Monsanto Company
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1 Q. Do you remember when that was?
2 A. I've had them two or three different times.
3 One was sometime last year.
4 Q. Let's go back in time and start with the first
5 time. When was the first time you had your deposition
6 taken?
7 A. I'm going to say in the late '70s.
8 Q. And do you remember what the subject matter of
9 the case was that you gave your deposition in?
10 A. That particular case was a case between
11 Washington and International Dealership.
12 Q. Was Washington a plaintiff in that case, a
13 defendant or just a third party?
14 A. We were the plaintiff, I presume. We're the
15 one that brought the case.
16 Q. Do you remember where that case was filed?
17 A. No, I don't.
18 Q. Let's go to the second time you've had your
19 deposition taken. When was the second time?
20 A. I had one taken in Salt Lake probably 15 years
21 ago.
22 Q. Do you remember who the parties were to that
23 case?
24 A. It was Washington again, and I cannot remember
25 the name of the other company. It was -- we were a

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1 you let me finish my question I promise I'll let you
2 finish your answer. That way we can get a clean
3 transcript.
4 Also, because it's a transcript, if I ask
5 you a question, although it's perfectly fine in another
6 conversation to nod or say uh-huh or something like that,
7 it's very hard for her to take down. So if you could
8 respond with a yes or no. If I gently remind you to do
9 that please don't be offended.
10 If you need a break at anytime feel free to
11 let me know. Also, I'll try to make my questions as
12 clear as possible. I have one intention only in this
13 deposition, that is to get the clear truth and not trying
14 to trick you or anything like that. So if I ask a
15 question that is confusing to you, please ask me to
16 clarify. It's been known to happen from time to time
17 that I ask an unclear question. So just let me clarify
18 that and we'll take it that way.
19 A. Okay.
20 Q. Any questions?
21 A. No.
22 Q. One more thing. You will, if you like, have
23 the opportunity to review your testimony at the end of
24 the deposition. You can change your testimony at that
25 time. If you do, however, SIO has the right to draw

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1 contractor for a company then.
2 Q. Was Washington the plaintiff in that case also?
3 A. Yes.
4 Q. Do you remember the subject matter of that
5 case?
6 A. Nonpayment.
7 Q. What was the third time you had your deposition
8 taken?
9 A. Last year I had a deposition taken in reference
10 to a suit with the federal government over some mining
11 issues in Idaho.
12 Q. Who were the parties to that case?
13 A. U.S. government took the deposition, and I was
14 an employee. I worked for Washington at that time, and
15 Agrium was also there.
16 Q. Where was that case filed, if you know?
17 A. I'm going to guess Idaho, but I don't know
18 that.
19 Q. Since you've had your deposition taken before,
20 some of this introductory stuff is probably review to
21 you. As you know, we have a court reporter here. She's
22 taking down everything that we say. At the end she'll
23 produce a transcript. Because it's going to be in
24 written form it makes it a lot easier for her and for us
25 to read it later if we don't talk over each other. So if

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1 negative inferences from the changing of your testimony.
2 To the extent we can give you any advice, we would advise
3 you to testify as accurately as you can now.
4 Do you understand that you've been placed
5 under oath?
6 A. Yes.
7 Q. Do you understand the oath obligates you to
8 tell the truth as if this were a formal court proceeding?
9 A. Yes.
10 Q. Have you reviewed anything to prepare for your
11 deposition?
12 A. Looked at some documents.
13 Q. What documents did you look at?
14 A. I can't name them all, just some of the
15 contracts with SIO and Washington.
16 Q. Did you review any other documents other than
17 those contracts?
18 A. Some letters and different memos and stuff.
19 Q. Did you speak with anyone other than your
20 attorney to prepare for the deposition today?
21 A. No.
22 Q. Let's begin the substance by talking about your
23 relationship with Washington Group. When did you start
24 working for Washington?
25 A. 1974.

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Pages 9 to 12

Silica International Ore, LLC vs. Monsanto Company
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1 Q. When you first started working for Washington,
2 were you an employee?
3 A. Yes.
4 Q. Was your employer actually Washington Group or
5 was it some other related entity?
6 A. I think the first name was Washington
7 Construction.
8 Q. Did that ever change?
9 A. Several times.
10 Q. When did it change?
11 A. I can't give you the dates. It went from
12 Washington Construction to Washington Corporation to
13 Morrison Knudsen, Conda Mining. They were all different
14 names of our entity.
15 Q. Do you know whether Conda Mining was a
16 subsidiary or was it just the same company as the other
17 companies?
18 A. It was a wholly-owned subsidiary of Washington.
19 Q. How about the other companies you mentioned?
20 Were they all the same company, just changed names or
21 were they subsidiaries?
22 A. Yes, changed names.
23 Q. Were you employed prior to the time that you
24 worked for WGI? I'm sorry. That misstates your
25 testimony.

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1 I'm going to call it Washington understanding that the
2 name's changed. Your first employment with Washington,
3 what did you do for them?
4 A. I was a surveyor at Dry Valley Mine.
5 Q. Where is Dry Valley Mine?
6 A. Located about 30 miles northeast of Soda
7 Springs, Idaho.
8 Q. Did your job responsibilities ever change while
9 you worked for WGI?
10 A. Yes.
11 Q. What did you do after you were a surveyor?
12 A. I became the mine engineer.
13 Q. What are the job responsibilities of a mine
14 engineer?
15 A. Mine planning and mine layout, surveying for
16 payment.
17 Q. Do you remember the date approximately that you
18 became a mine engineer?
19 A. That was late in 1974.
20 Q. Did you remain a mine engineer or did you also
21 again change job responsibilities?
22 A. I changed jobs again in 1980, became the mine
23 manager.
24 Q. What are the job responsibilities of a mine
25 manager?

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1 Before you started work for Washington, were
2 you employed before that?
3 A. Yes.
4 Q. Where were you employed?
5 A. Immediately prior I was working for a private
6 surveyor in Missoula, Montana.
7 Q. What was the name of that surveyor?
8 A. Lou Mayette.
9 Q. How long did you work for Lou Mayette?
10 A. Approximately a year.
11 Q. Could you spell the name of that company?
12 A. Not anymore I couldn't, no. It was just a
13 private individual.
14 Q. And where did you work prior to that?
15 A. In the U.S. Army in Ft. Lewis, Washington.
16 Q. How long were you in the Army?
17 A. Two years.
18 Q. Did you have any employment before that?
19 A. Federal government, with Federal Highway
20 Department.
21 Q. What did you do for the Highway Department?
22 A. Engineering aide.
23 Q. How about for the Army?
24 A. Supply sergeant.
25 Q. When you first started work for Washington, and

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1 A. Total oversee of the mine. I mean, we were
2 contract miner but we had the equipment and the
3 personnel, did the mining.
4 Q. Did you remain a mine -- correct me if I use
5 the wrong term, a mine manager for the rest of your time
6 at Washington?
7 A. No. In 1982 I became what they called the area
8 manager, operations manager, whatever, in Soda Springs,
9 that had more than one project under it.
10 Q. How many projects did you have underneath you?
11 A. Anywhere from three to seven, depending on the
12 time.
13 Q. What were your job responsibilities as an area
14 manager?
15 A. Oversee all the operations for profitability
16 planning, personnel.
17 Q. Did you have the authority to enter into
18 contracts on behalf of Washington Group?
19 A. At times I did and at times I didn't.
20 Q. What was the criteria for determining when you
21 had authority to enter into a contract?
22 A. While I was at Conda Mining I was actually an
23 officer. I was the vice-president for a period, and at
24 other times they would have me sign, I can't even think
25 of the name of the document, so I could sign documents.

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Pages 13 to 16

Sili International Ore, LLC vs. Monsanto Company
Deposition of John Rosebaum - 3/9/2011

1 And that was on a yearly basis.
2 Q. So am I correct in understanding that when you
3 worked for Conda Mining you were an officer as well as an
4 employee?
5 A. For a period of time I was vice-president. Not
6 the full time but for a period of time.
7 Q. Do you remember the dates in which you served
8 as an officer?
9 A. Would have been in the late '80's.
10 Q. When you stopped being an officer of Conda
11 Mining, did you then just become an employee?
12 A. Yes, and in supervisor capacity, yes.
13 Q. What were the reasons that you stopped being an
14 officer of Conda Mining?
15 A. It was another time that the company changed
16 names, formats, whatever you want to call it.
17 Q. What was the format change that necessitated
18 the...
19 A. I think it was the merger with Morrison Knudsen
20 in the mid '90s.
21 Q. In your capacity as an area manager what was
22 your geographic area of responsibility?
23 A. I had projects in Idaho, Montana, Nevada and
24 Utah, not necessarily all at the same time but at
25 different times.

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1 under a project manager?
2 A. Very drastically depending on the project. It
3 might be a small project that had 10 people, it might be
4 a mine that had three to four hundred people.
5 Q. For a particular mine in general, did you have
6 any direct interaction with the mine operations itself or
7 was that delegated to somebody else?
8 A. Very little direct. It was through our other
9 supervision at the site.
10 Q. Are you familiar with the Soda Springs site?
11 A. The office in Soda Springs?
12 Q. Yes.
13 A. Yes.
14 Q. Are you familiar with a quarry located in Soda
15 Springs that's owned by P4 Production?
16 A. Yes.
17 Q. Did you have any -- was that within your
18 umbrella of authority as an area manager?
19 A. Yes.
20 Q. So you're acquainted with that project and that
21 mine?
22 A. Yes.
23 Q. When did you first take authority over that
24 mine?
25 A. When I became area manager in '82.

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1 Q. Did you have anybody that you reported to?
2 A. I always reported to somebody to corporate
3 office, yes.
4 Q. Do you remember the names of the people that
5 you reported to?
6 A. The last couple would have been Ken Klickstall
7 and Rod Pace.
8 Q. Do you remember the names of anybody else that
9 you reported to as an area manager?
10 A. In the first few years it was Don Perricini out
11 of Missoula.
12 Q. Do you know how many WGI employees reported to
13 you?
14 A. It fluctuated drastically between shutdown
15 periods, full operation periods. Direct supervisors who
16 reported to me could be between three and 20, and then
17 total employment would exceed 500 at times.
18 Q. What types of -- this is a very broad question.
19 What types of WGI employees reported to you? Were they
20 kind of the lower level supervisors or managers,
21 employees or what?
22 A. I had a staff in Soda Springs that reported
23 directly to me and on each project I had a project
24 manager that reported directly to me.
25 Q. Do you know how many people would have worked

Page 18

1 Q. And did you retain authority over that mine
2 until the time that you -- let me back up.
3 Do you still work for Washington Group now?
4 A. No, I do not.
5 Q. When did you stop working for Washington Group?
6 A. 2007.
7 Q. Did you retain authority over that Soda Springs
8 mine from 1982 till the time you left in 2007?
9 A. No, I did not.
10 Q. When did you stop having authority over that
11 mine?
12 A. I left Soda Springs in early May of '05.
13 Q. So as of early May '05 you no longer had any
14 supervisor authority over the P4 Production at Soda
15 Springs?
16 A. That's correct.
17 Q. Did you have any affiliation or connection at
18 all with that mine after May of '05?
19 A. The only connection I would have had is I moved
20 to the mining group headquarters in Denver and I was the
21 equipment manager, so I had communications with all the
22 projects in relation to the company-owned equipment.
23 Q. As part of your job responsibilities as area
24 manager, what do those job responsibilities entail with
25 respect to this P4 Production mine?

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Pages 17 to 20

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1 A. Client relations and supervision over the
2 project personnel -- the project manager.
3 Q. Were there project managers underneath you
4 during the time that you supervised this mine?
5 A. Yes.
6 Q. Who were they?
7 A. I think the first one was Mel Eisenbarth, the
8 next one was Sidney Johnson, and the last one that I
9 worked with was Teryl Parsons.
10 Q. Would you mind spelling Teryl, if you can?
11 A. T-e-r-y-l.
12 Q. Do you remember the dates in which those
13 individuals worked underneath you?
14 A. Mel would have been the first in the early to
15 mid '80s, and then Sidney Johnson, everybody called him
16 Leroy, came in I believe in around '87, '88, somewhere in
17 there.
18 Q. Do you remember when Leroy stopped serving
19 underneath you in transition to Teryl?
20 A. I don't remember the exact date. It was in
21 2003 period, two. I don't know exact date.
22 Q. What kinds of interactions would you have
23 with -- let me make sure I've got the title right. The
24 folks that reported to you, Sidney, Teryl, what was their
25 title?

Page 21

1 A. Project manager, project superintendent,
2 depending on what they wanted to call them.
3 Q. What kind of interactions would you have with a
4 project manager?
5 A. Almost on a daily basis I would be on the phone
6 with them, you know, what happened yesterday and what do
7 you need, that type of stuff.
8 Q. Was there a daily reporting practice that you
9 had?
10 A. Not a standard report, no.
11 Q. But generally speaking, they would call you or
12 you'd call them about every day?
13 A. Pretty regular, yes.
14 Q. During the time that you worked as an area
15 manager with authority over this P4 mine, did you have
16 authority to enter into contracts on behalf of Washington
17 Group?
18 A. Like I said earlier, not all the time but at
19 certain times, yes, I did.
20 Q. And during that time -- let me back up.
21 During the time that had you authority over this mine did
22 you serve as an officer for Conda Mining for a portion of
23 that time?
24 A. A portion of it.
25 Q. At the time that your officer status ceased did

Page 22

1 you get some other separate authority from Washington
2 Group to enter into contracts?
3 A. At different times, yes, I had authority to
4 enter into contracts when I was area manager.
5 Q. In connection with your work as an area
6 manager, did you ever enter into contracts on behalf of
7 Washington Group with Monsanto Company?
8 A. Yes.
9 Q. What contracts did you enter into?
10 A. The mining contract with Monsanto.
11 Q. Do you remember what that contract addressed,
12 what its terms were?
13 A. Total contract owner relations with everything
14 from production, safety, insurance, indemnities. The
15 normal, full-fledged contract.
16 Q. Was that the only contract that WGI and
17 Monsanto had with respect to that P4 mine?
18 A. To my knowledge, yes.
19 Q. What work did Washington Group do on this mine
20 site?
21 A. We did the quarrying of the rock and the
22 crushing of the material, and we delivered it to a
23 stockpile at the Monsanto plant.
24 Q. Let me, because I don't have any experience in
25 mining, I need to break that down just a little bit.

Page 23

1 When you talk about the quarrying, define for me what you
2 mean by the quarrying?
3 A. Go up into the actual quarry site, drill and
4 blast, load the material onto off-road trucks, haul it to
5 the crusher.
6 Q. What material was being mined?
7 A. Quartzite, commonly called silica.
8 Q. Just so that I'm clear, and please correct me
9 if I'm wrong, so there would be drilling or blasting at
10 the quarry, that would produce some rock or material; is
11 that correct?
12 A. Yes.
13 Q. And then would the entirety of that rock or
14 material be put on the truck and hauled over to the
15 Monsanto site?
16 A. No, it would be hauled to a crusher on-site
17 that we ran to produce a certain size material that they
18 wanted, and that size would go to them, and the rest of
19 it would become a reject that would stay on the property.
20 Q. I see. What was the criteria for determining
21 what would go and what would stay on the property?
22 A. The main thing was the size, quarter-inch plus
23 went, quarter-inch minus, stayed.
24 Q. This relationship with WGI and Monsanto, did
25 that allow WGI to retain subcontractors?

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1 A. Yes.
2 Q. What subcontractors did it retain to help it?
3 A. Normally the subcontractor we had, we hired a
4 hauling contractor to haul it from our crusher to
5 Monsanto's stockpile site.
6 Q. Did WGI own its own equipment to do this or did
7 it lease or borrow it?
8 A. The majority of it was privately owned by
9 Washington. If we needed a specific piece for a short
10 period we may rent or lease.
11 Q. What was -- did Monsanto pay WGI to do this
12 work for it?
13 A. Yes.
14 Q. Once WGI mined, crushed and transported this
15 material, was it able to keep any of this material for
16 itself or was --
17 MR. NYE: I object as to vagueness as to
18 time.
19 Q. BY MR. BROUGH: Let's start from the beginning.
20 At the time that WGI started doing the work on the
21 Monsanto quarry, was WGI allowed to keep any of the
22 material that it mind?
23 A. We didn't keep any, no.
24 Q. Did that ever change in the course of your work
25 there?

Page 25

1 A. In the later years we had an agreement with
2 Monsanto that we could pay them royalty and use some of
3 the fines.
4 Q. How would WGI use some of the fines -- the fine
5 material?
6 A. Yes.
7 Q. How would it use it?
8 A. Sell it to another entity.
9 Q. When did that relationship start?
10 A. I believe in the first off-site that I can
11 remember was some material was hauled to Ash Grove Cement
12 in the late '90s. I'm not sure if the contract was with
13 us or with Monsanto and we just did the work. I believe
14 that was with Monsanto and we did the work.
15 Q. So to the best of your recollection, this
16 concrete company entered into a deal with Monsanto where
17 it would be able to keep the --
18 A. I believe that was the case, yeah and we did
19 the work.
20 Q. Am I correct in understanding, throughout the
21 course of WGI's work on the P4 mine, its compensation was
22 monetary, like it got paid money rather than in a share
23 of the dirt?
24 A. Yes.
25 Q. Were you aware whether the fine material, we'll

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1 call it, constituted any kind of environmental hazard at
2 all?
3 A. Oh, absolutely. It was silica, so I mean
4 silica dust can be a problem.
5 Q. In what sense, based on your understanding,
6 whatever that might be? How is that a problem?
7 A. It can --
8 MR. RITTI: Let me register an objection.
9 Calls for a legal conclusion, but you may answer, if you
10 can.
11 THE WITNESS: All I know is it can cause
12 breathing problems.
13 Q. BY MR. BROUGH: Were you aware of --
14 MR. NYE: Excuse me, counsel.
15 MR. BROUGH: Yes.
16 MR. NYE: This is Mark. Can you hear me?
17 MR. BROUGH: Yes.
18 MR. NYE: To speed this up might we all
19 agree that the objection by one defense counsel in this
20 case is an objection by all the defense counsel?
21 MR. BROUGH: That's fine with me. Gene, is
22 that okay with you.
23 MR. RITTI: That's fine with Washington
24 Group.
25 MR. NYE: Thank you. Sorry to interrupt.

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1 MR. BROUGH: No problem.
2 Q. BY MR. BROUGH: Were you aware of any superfund
3 designations on or around this P4 mine?
4 A. No.
5 Q. I should have asked first, do you know what a
6 Superfund designation is?
7 A. Not 100 percent, no.
8 Q. May I ask what your understanding is of what a
9 Superfund designation is?
10 A. Some type of a cleanup fund, I believe.
11 Q. How did you become aware, first, that the fine
12 silica material may constitute a health hazard?
13 A. Well, we were aware of it all because we were
14 crushing it.
15 Q. But did somebody tell you that or did you
16 actually see people get sick with it or anything like
17 that?
18 A. I didn't see people get sick with it. We took
19 precautions from day one with respirators, whatever, to
20 stop it.
21 Q. So before the time that WGI started doing this
22 work -- let me ask this.
23 Do you know what date, approximately, WGI
24 started working on this P4 mine?
25 A. I believe our first contract was in 1973.

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Pages 25 to 28

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1 Q. Do you know what Monsanto did with this fine
2 material before the time that WGI started working on it?
3 A. All I know is it was fine material there when
4 we got there, that was stockpiled, or backfilled into a
5 prior mine.
6 MR. BROUGH: Let's go to our first exhibit.
7 Bear with me.
8 Mark, for your benefit, in the documents
9 that we e-mailed you yesterday, I'm going to a start
10 looking at the document No. 8, and it's master agreement
11 between Silicon International Ore and Washington Group
12 International. For purposes of our deposition we'll ask
13 that this be labeled Exhibit 1.
14 MR. NYE: Why don't you just use the same
15 numbers?
16 MR. BROUGH: Okay, it will be Exhibit 8.
17 (Exhibit No. 8 was marked for
18 identification.)
19 Q. BY MR. BROUGH: Mr. Rosenbaum, have you seen
20 this document before?
21 A. Yes.
22 Q. What is it?
23 A. It's a master agreement between Washington and
24 SIO.
25 Q. Let me refer you to the Page No. 7 at the

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1 bottom center of this page. Is that your signature that
2 appears on the bottom right-hand side?
3 A. Yes, it is.
4 Q. Let's go back to Page 1. If you look at the
5 first line, it says that this agreement is dated December
6 1st of 2000. Do you see that?
7 A. Yes.
8 Q. Do you remember if that's the date that you
9 actually signed the agreement?
10 A. I can't tell you that.
11 Q. Do you remember if it was approximately that
12 time?
13 A. I would assume it would have been in that time
14 frame.
15 Q. Go with me down to Paragraph 3, where it says
16 scope and payment in bold letters. Do you see that?
17 A. Yes.
18 Q. As I read that first line, and I won't read the
19 whole thing, contractor agrees to supply the company a
20 portion of the silica sand within its control and
21 produced at its project site.
22 Do you remember what it meant when it says
23 within WGI's control?
24 A. That Monsanto had allowed us to sell certain
25 portions, yes.

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1 Q. Did Monsanto actually sell the portions to WGI
2 and then WGI sold it to SIO?
3 A. Yes. We paid royalty to Monsanto.
4 Q. Did WGI actually take title or ownership to the
5 sold material?
6 A. It passed through.
7 Q. Go with me down to the -- three lines up on
8 that paragraph, where it says contractor agrees to obtain
9 all permits necessary, so on. Did WGI actually obtain
10 any permits for SIO?
11 A. Yes.
12 Q. What permits did it obtain?
13 A. Building permit, air quality permit.
14 Q. Any other permits?
15 A. Can't tell you whether it was more than that or
16 not.
17 Q. On Paragraph 3, going over to Page 2, actually
18 1 and 2, three lines up from the bottom of the page it
19 says: Company agrees to remove all process equipment,
20 the foundation and all buildings associated with the
21 facility within 120 days of contract termination or
22 sooner, and so on, if company, the Monsanto Company or
23 contractor terminates the operations, unless contractor
24 reaches an agreement with company to purchase part or all
25 of the facility?

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1 Did WGI ever reach an agreement with SIO to
2 purchase any of its facility?
3 A. Not while I was present.
4 Q. Do you remember -- let me back up. Was this
5 agreement, this master agreement, was that something that
6 was negotiated with Silicon International?
7 A. Yes.
8 Q. Were you the one that participated in the
9 negotiations of it?
10 A. Yes.
11 Q. Was there any one else at Washington Group that
12 participated in those negotiations with you?
13 A. I can't tell you how many people may or may not
14 have been at any particular meeting but any contract
15 entered into was approved by the corporate office.
16 Q. So in order to sign this agreement on behalf of
17 WGI did you have to go and obtain, for lack of a better
18 word, permission from the head office of WGI?
19 A. Yes.
20 Q. Who did you talk to there?
21 A. Like I say, it would have been the operation
22 manager for the company at that time. I'm not positive
23 who that was anymore.
24 Q. Who was it that represented SIO in the
25 negotiation of this agreement?

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1 A. Bob Sullivan, Todd Sullivan and Tim Sullivan.
2 Q. Do you know -- let's talk generally about when
3 WGI and SIO first interacted with each other. Were you
4 around or do you know how that happened?
5 A. I believe it was in the late '90s and I think I
6 actually met Tim at a site out of Arco, Idaho, where he
7 was looking for a silica operation, and I was nosing
8 around for our company.
9 Q. And what were you nosing around for your
10 company for?
11 A. Just to see if there was another source and if
12 there was another potential operation we could get into.
13 Q. Did Tim contact you or did you contact Tim?
14 A. I honestly can't tell you. I believe we just
15 met in the field by accident.
16 Q. Funny how that happens sometimes. Do you
17 remember specifically what you talked about during the
18 first meeting with Tim?
19 A. No, I don't.
20 Q. After the first meeting, do you remember what
21 happened after that?
22 A. I know there was discussion that he was looking
23 for a silica sand source.
24 Q. Was there a discussion -- when you say you know
25 there was discussion, do you mean discussion between Tim

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1 and WGI?
2 A. There was some. I mean, we even made some
3 rough proposals to do some work for them at Arco
4 Q. Do you know -- okay. After Tim contacted --
5 after and you Tim first met to talk about this, did you
6 go and take that idea to anybody at Washington?
7 A. Oh, yes.
8 Q. Who did you talk to, if you remember?
9 A. Like I say, it would have been the operation
10 people in the headquarters.
11 Q. Were they in favor in entering into this
12 relationship?
13 A. We never entered into a relationship at that
14 time. It was favorable to discuss it and see if there
15 was any potential.
16 Q. Do you know if, when you first talked with Tim
17 about this, had he already approached Monsanto?
18 A. I don't know.
19 Q. After you met with Tim, you guys discussed a
20 relationship involving another site. Do you know what
21 happened after that?
22 A. I know there was some discussions of what our
23 current operations was, and Monsanto quarry came up.
24 Q. How did that Monsanto quarry come up?
25 A. In the fact that it was a silica quarry, so

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1 that's what they were looking for, was silica.
2 Q. Did WGI reach out to Monsanto to ask Monsanto
3 if it was interested in this type of relationship?
4 A. I don't know how to answer that for sure other
5 than they was, I talked to Monsanto if there was a
6 potential that we could sell some of the sand.
7 Q. Who did you talk to at Monsanto?
8 A. I would have -- not 100 percent sure, I guess
9 Dave Farnsworth and Mitch Hart.
10 Q. Do you remember when you first reached them to
11 talk about this with them?
12 A. I'm going to say in the late '90s.
13 Q. At the time that you first reached out to them,
14 what was their reaction to this?
15 MR. NYE: Object to the form.
16 Q. BY MR. BROUGH: Go ahead and answer.
17 A. I would assume it's kind of like ours, let's
18 see if it's going to go anywhere.
19 Q. How did WGI make any determination that this
20 would go somewhere?
21 A. Well, we entered into an agreement with SIO.
22 Q. Walk me through the chronology of the different
23 agreements. On or about December 1st of 2000 we've
24 talked about how WGI entered into an agreement with SIO.
25 Did WGI enter into a separate agreement with Monsanto

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1 regarding this arrangement?
2 A. Entered into an addendum to our master
3 agreement that would allow us to purchase sand and resell
4 it.
5 MR. BROUGH: I'm going to go now, Mark, to
6 the document that you have tab No. 19 and we'll call this
7 Exhibit 19.
8 (Exhibit No. 19 was marked for
9 identification.)
10 Q. BY MR. BROUGH: Mr. Rosenbaum, have you seen
11 this document before?
12 A. Yes.
13 Q. What is it?
14 A. It's an addendum to our agreement with
15 Monsanto.
16 Q. Please turn with me to the page that's marked
17 Page 2 of 2. Is that your signature that appears on the
18 bottom right-hand side?
19 A. Yes, it is.
20 Q. And do you know who it is that signed this on
21 behalf of Monsanto -- I'm sorry, on behalf of
22 P4 Production.
23 A. Yes.
24 Q. Who was that?
25 A. Bruce Pallante.

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Pages 33 to 36

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1 Q. What discussions did you have with Bruce
2 Pallante regarding this agreement?
3 MR. NYE: Object to the form.
4 THE WITNESS: I don't understand the
5 question.
6 Q. BY MR. BROUGH: Did you ever talk with Bruce
7 Pallante about entering into this agreement?
8 A. Very little. I worked with people under him.
9 Q. I see. Go with me to, it's under the line that
10 says 23, silica sand processing facility and it's
11 subparagraph (a) location.
12 A. Okay.
13 Q. Do you see that? It says: During the term of
14 this agreement Washington may construct, maintain operate
15 facilitate a processing sand facility on behalf of SIO.
16 The facility is to be located at the northeast corner of
17 P4's property quarry specifically identified on the
18 addendum, Exhibit 1. Let's go to the addendum,
19 Exhibit 1.
20 Now, based on this agreement, on this page,
21 what were the boundaries of SIO's operations?
22 A. As it's shown on the map, it would be that area
23 around the proposed processing facility.
24 Q. Just so we're clear on the written record,
25 we're talking about a square that appears to be located

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1 200 feet from a boundary and it's a square that's 45 feet
2 by 60 feet. Is that what you're referring to?
3 A. That was the actual site for the processing
4 plant. They had some stockpile area around it, too.
5 Q. Do you know how far away from that plant area
6 the stockpile was?
7 A. Oh, it was very close.
8 Q. So what would the boundaries of SIO's operation
9 be? Would it be just the area surrounding this facility
10 plus the stockpiles?
11 A. Yes.
12 Q. Would it be, was that a defined boundary at
13 all?
14 A. I don't remember.
15 Q. Let's go back to the first page of this
16 agreement. On the first line, as I read it, says: This
17 addendum is intended supplement, and where applicable,
18 amend the provisions of the quartzite agreement.
19 Is that the agreement that you're referring
20 to, the principal agreement between WGI and Monsanto?
21 A. Yes.
22 Q. And as I read on, it's by and between
23 P4 Production and Washington Group International,
24 successor to and doing business as Conda Mining, dated
25 September 24th of 2001.

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1 Please help me to understand this. And if I
2 mischaracterize something please let me know. I thought
3 we had talked earlier that at the time WGI and SIO
4 entered into this master agreement, there was already a
5 contract in place between WGI and Monsanto?
6 A. The master agreement was in place.
7 Q. Do you know why this agreement says that master
8 agreement is dated September 4th of '01?
9 A. I don't.
10 Q. Is it your understanding, whatever agreement
11 was between WGI and Monsanto did predate this master
12 agreement?
13 A. Which master agreement are you referring to?
14 Q. Exhibit 8, the first contract we talked about.
15 A. Our master agreement with Monsanto preceded the
16 master agreement with SIO, yes.
17 Q. So then you wouldn't know one way or the other
18 why this says it was actually dated September 24th of
19 '01?
20 A. No.
21 Q. Go with me down to Paragraph (d). It says:
22 Washington shall pay a royalty to P4 per ton of finished
23 silica sand product sold by SIO according to Appendix A.
24 Were you involved in the negotiation of the
25 royalty amounts?

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1 A. Yes.
2 Q. How were those amounts determined?
3 A. Mutually agreed to.
4 Q. By who?
5 A. By SIO and Washington would agree to the
6 royalties and Monsanto and Washington would agree to
7 royalties.
8 Q. So let me make sure I understand. SIO and WGI
9 would agree on a royalty amount, and then WGI and
10 Monsanto would agree on a royalty amount?
11 A. Monsanto had some input.
12 Q. Were you ever present at any meetings where
13 somebody from SIO, WGI and Monsanto were all present
14 together?
15 A. Yes.
16 Q. Tell me about when those meetings happened.
17 When is the first one you remember?
18 A. I can't put a date to it. I would assume in
19 2000 sometime.
20 Q. Do you remember who was present there?
21 A. Not everybody, no. I know there was
22 representatives from all three parties.
23 Q. Do you remember what was discussed at that
24 first meeting?
25 A. No, I don't, per se.

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1 Q. Do you remember generally whether royalties
2 were discussed?
3 MR. RITTI: Object to the form, calls for
4 speculation, but you may answer it if you can.
5 THE WITNESS: I can't tell you whether they
6 were or not.
7 Q. BY MR. BROUGH: Go down to the second sentence
8 in that royalty paragraph, where it says: Title to
9 silica sand sold by SIO shall pass directly from P4 to
10 SIO.
11 Earlier, I believe you testified that title
12 to the sand passed through WGI.
13 A. That's what I meant, was that it passed from P4
14 to SIO.
15 Q. I see. So this line is consistent with your
16 understanding what the agreement is?
17 A. Yes.
18 Q. As far as the payment of royalties, how would
19 that work in practice? Walk me through the process of
20 how royalties would be calculated and paid.
21 A. All the product that left the site was weighed
22 by the truckload, and it was calculated and paid on tons.
23 Q. Who paid -- let me back up. Did SIO pay the
24 royalty first?
25 A. They paid it to Washington.

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1 Q. What specifically did SIO pay to Washington?
2 They paid a royalty, did they pay anything else?
3 A. Yes, they paid for our services.
4 Q. When Washington received payment from SIO, did
5 that come in the form of separate checks for different
6 types of payment or in one lump sum check?
7 A. I can't remember whether there was multiple
8 checks or not.
9 Q. When WGI received this payment from SIO, did it
10 then turn around and pay a portion of that to Monsanto?
11 A. We paid royalties to Monsanto, yes.
12 Q. Did it pay the royalties to Monsanto Company or
13 to P4 Production L.L.C.?
14 A. I'm assuming that was the name.
15 MR. RITTI: Don't assume. If you know,
16 answer the question.
17 THE WITNESS: We paid to P4 and then it
18 turned back to Monsanto at some point.
19 Q. BY MR. BROUGH: Did you have any responsibility
20 for actually signing checks that were paid to Monsanto?
21 A. No.
22 Q. Who would or who did?
23 A. I can't even tell you that other than corporate
24 office.
25 MR. BROUGH: would you mind if we took just

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1 a short break? You can stretch your knee. Mark, we'll
2 keep the line on and we'll just alert you when we're
3 back; is that okay?
4 MR. NYE: Okay, thank you.
5 (A recess ensued from 9:21 a.m., to
6 9:29 a.m.)
7 Q. BY MR. BROUGH: Let's go back on the record.
8 Mr. Rosenbaum, let's discuss the meetings
9 that occurred where there were SIO, WGI and Monsanto
10 representatives all together. Do you remember where any
11 of those meetings would have occurred?
12 A. Some of them occurred in Salt Lake, some of
13 them occurred in Soda Springs.
14 Q. Do you remember traveling down to Salt Lake for
15 some of those meetings?
16 A. Yes, I do.
17 Q. Do you remember about how many meetings
18 occurred?
19 A. I can't tell you a number. I know I went to
20 Salt Lake two or three times.
21 Q. Do you remember where in Salt Lake the meetings
22 happened?
23 A. Not exactly.
24 Q. Generally speaking, at those meetings, what was
25 discussed?

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1 A. What the operation was going to be, what the
2 potential clients for SIO was, where they could sell the
3 product, what markets they were going to try and be in.
4 Q. Was SIO going to be limited in any way to the
5 markets that it could sell in?
6 A. I don't know.
7 Q. In these meetings, as far as royalties on that
8 specific issue, who was making proposal for royalty
9 amounts? Which of the three participants?
10 A. SIO and Monsanto.
11 Q. Did WGI make any proposals for royalty amounts?
12 A. I can't say one way or the other.
13 Q. But you do know that Monsanto did; is that
14 correct?
15 A. And SIO.
16 Q. And SIO, okay. Going to Exhibit 8, the master
17 agreement, when WGI and SIO entered into this agreement,
18 did WGI have to confirm this or get approval from
19 Monsanto to enter into this agreement?
20 A. We had a separate agreement with Monsanto.
21 Q. And is that the quartzite agreement that we
22 discussed before?
23 A. Yes.
24 Q. Did WGI receive any approval from Monsanto to
25 actually enter into this arrangement with SIO, other than

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1 the quartzite agreement itself?
2 A. Not to my knowledge.
3 Q. Let's go now to our second contract, the
4 addendum to quartzite agreement. Let's go to Page 2
5 of 2. Going to the end, it says in witness whereof, the
6 parties hereto executed this addendum as of the 1st day
7 of March 2002. Do you see that?
8 A. Yes.
9 Q. Do you remember if March 1st, 2002 is the date
10 that the parties actually signed this agreement?
11 A. No, I don't.
12 Q. Do you remember approximately when you would
13 have signed this?
14 A. It would have been in that time frame.
15 Q. So in 2002, roughly?
16 A. Yes.
17 Q. When did SIO actually start its operations on
18 the property?
19 A. I believe late 2000.
20 Q. Do you know -- let me ask this. Did the main
21 quartzite agreement between WGI and Monsanto, did that
22 agreement address SIO's presence on this P4 mine
23 property?
24 A. No, we had an addendum with Monsanto.
25 Q. And is this that addendum?

1 MR. BROUGH: I'm going to show you a
2 document that we'll mark as Exhibit 10.
3 (Exhibit No. 10 was marked for
4 identification.)
5 Q. BY MR. BROUGH: Have you seen that document
6 before, Mr. Rosenbaum?
7 A. Not that I can remember, no.
8 Q. Is that your handwriting?
9 A. No.
10 Q. Understanding that you've not seen this
11 before -- just to be clear, let me back up. You didn't
12 write any of this stuff here?
13 A. No.
14 Q. Understanding that, and if you don't know, you
15 don't know, and that's fine, go to the page that's marked
16 on the bottom right-hand corner, URS000231.
17 You'll see some dates on the left-hand side.
18 12-28-07, do you see that?
19 A. Yes.
20 Q. Going three lines down, as I read that, it
21 says: Monsanto playing dumb on relationship with SIO.
22 Based on your experience with Monsanto and
23 WGI, do you even know what that's talking about?
24 A. I have no idea.
25 Q. Let's go back to the master agreement between

1 A. No, this was the addendum -- yes.
2 Q. So if SIO started work in 2000 and this
3 agreement was signed in 2002, what arrangement did SIO
4 and Monsanto have in the interim?
5 A. In looking to the documents, I'm going to have
6 to say I must have been wrong, because, I mean, this
7 drawing that we put up was in January of 2001, so there
8 was no work in 2000.
9 Q. Okay, so is it your understanding, then, that
10 SIO started its work on or about January of 2001?
11 A. That's when I think that we started to talk
12 about putting the plant and stuff up, yes.
13 Q. Do you know the date upon which SIO actually
14 started its work?
15 A. No, I don't.
16 Q. Do you remember generally what year?
17 A. Just what I'm looking at here, '01 and '02.
18 Q. Were you present at any meetings where -- well,
19 do you know if SIO and Monsanto reached any agreements as
20 between the two of them with respect to SIO's work on
21 this mine?
22 A. I have no knowledge.
23 MR. NYE: Object to the form.
24 Q. BY MR. BROUGH: So you don't know?
25 A. I don't know. That would be between them.

1 WGI and Monsanto -- I'm sorry between SIO and WGI. Let's
2 go to the page marked 4 at the bottom center. It says:
3 Term and termination of. This agreement shall become
4 effective as of the date first written above and shall
5 remain in full force and effect for a period of five
6 years, unless otherwise agreed to in writing by the
7 parties.
8 Do you know if this agreement terminated at
9 anytime?
10 A. Not that I had in mind.
11 Q. After December 1st of 2005, did WGI and
12 Monsanto continue their relationship?
13 A. I had no involvement but I assume so. They're
14 still under contract.
15 Q. They're still under contract?
16 A. Well, to do the -- they're still doing the
17 silica quarry, I believe.
18 Q. When you say that -- what do you mean? WGI is
19 still under contract, is that what you mean?
20 A. Yes.
21 Q. WGI is still doing the work on the silica
22 quarry at Monsanto, to your knowledge?
23 A. That's what I've heard.
24 Q. Who have you heard that from?
25 A. I can't even tell you that.

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1 Q. You don't know?
2 A. No.
3 MR. BROUGH: Go to the document that we'll
4 mark as Exhibit 9.
5 (Exhibit No. 9 was marked for
6 identification.)
7 Q. BY MR. BROUGH: Have you seen this document
8 before, Mr. Rosenbaum?
9 A. Yes.
10 Q. What is it?
11 A. It's a price adjustment for SIO's operations.
12 Q. Did WGI send these -- let me ask this. Why did
13 WGI send this price adjustment to SIO?
14 A. It was just an escalation clause in the
15 contract that adjusted the rates yearly.
16 Q. In which contract did that escalation clause
17 appear?
18 A. In the master with Silicon.
19 Q. These rates, this price adjustment, how did WGI
20 determine these prices?
21 A. It was by a formula in the contract that was
22 tied to the price index.
23 Q. Did WGI discuss these prices with Monsanto
24 prior to sending this?
25 A. No.

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1 Q. Would you have been the person to discuss these
2 with Monsanto before sending these?
3 A. I didn't discuss them with Monsanto.
4 Q. While you were at WGI, were you present at any
5 meetings or aware of any discussions about WGI's
6 termination of its relationship with SIO?
7 A. No, I was not.
8 Q. Are you aware of whether any such discussions
9 occurred?
10 A. I do not know.
11 Q. As the area manager, while SIO was working on
12 the quarry, what interaction did you have with SIO?
13 A. When I visited the sites, I would talk to Tim.
14 Q. How often did you visit the sites?
15 A. Probably weekly.
16 Q. Were those regularly scheduled visits?
17 A. No.
18 Q. Was there any particular reason you would make
19 a visit to the site?
20 A. I tried to visit all the sites as often as I
21 could.
22 Q. What was your understanding of what SIO was
23 doing on the mine site?
24 A. Processing the fine silica sand into various
25 products for resale.

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1 Q. Was it SIO that was actually doing the
2 processing or was it WGI that was doing the processing?
3 A. SIO furnished the equipment, WGI furnished the
4 labor.
5 Q. Do you remember discussing with Tim a wash
6 screen that SIO needed?
7 A. Yes.
8 Q. What's your recollection of your discussions
9 with Tim about that?
10 A. That they was anticipating an increased volume
11 and they needed more production.
12 Q. Do you remember discussing with Tim any
13 deficiency in the wash screen that they were currently
14 using?
15 A. No.
16 Q. Do you know whether their wash screen was
17 broken or anything?
18 A. Don't understand whether whose wash screen was
19 broken.
20 Q. Whether SIO's wash screen, had their wash
21 screen broken or anything like that?
22 A. I don't know.
23 Q. Do you know if WGI required SIO to purchase and
24 construct a new wash screen?
25 A. No.

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1 Q. Do you remember or were you involved in any
2 requests for approval for a new wash screen for SIO?
3 A. Yes.
4 Q. What was the nature of your involvement with
5 that?
6 A. Where they wanted to put it, and the size and
7 the power usage, and the layout.
8 Q. Did you approve that request?
9 A. Yes.
10 Q. What were the issues with the size of the wash
11 screen?
12 A. For the physical location within our plant,
13 there was limited room where you could put equipment.
14 Q. Did SIO ever approach Monsanto -- I'm sorry,
15 strike that.
16 Did SIO ever approach WGI and ask WGI to
17 construct a wash screen or fix up a wash screen for it?
18 A. I believe we installed it for them, yeah.
19 Q. Do you remember whether a dispute arose between
20 SIO and WGI regarding this wash screen issue?
21 A. No, I don't remember.
22 Q. Did you ever have any discussions with Tim
23 Sullivan about some displeasure about this wash screen
24 issue?
25 A. I don't remember anything.

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Silicon International Ore, LLC vs. Monsanto Company
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1 Q. As far as the hiring of employees, was it your
2 understanding that SIO could hire its own employees if it
3 wanted to?
4 A. It was my understanding that Washington was to
5 furnish the labor.
6 Q. As far as the boundaries of SIO's operations on
7 the quarry, how were those boundaries determined?
8 A. On the area they needed to do their operation.
9 Q. So is it correct to say that as much area as
10 SIO needed to do its operation, it could have?
11 A. It wasn't nonlimited, no. If the necessity was
12 there, they had the area.
13 Q. Were you involved in any determinations of the
14 boundaries of SIO's operations on the quarry?
15 A. I don't remember.
16 Q. When you say that WGI's responsibility was to
17 furnish labor, what is the basis for that understanding?
18 A. It's in the master agreement with SIO.
19 Q. You testified earlier that you left WGI in
20 2007; is that correct?
21 A. Yes.
22 Q. Do you remember approximately what month in
23 2007?
24 A. October.
25 Q. Did you retire from WGI at that time?

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1 and Randy.
2 (A recess ensued from 9:49 a.m., to
3 10:00 a.m.)
4 BY MR. BROUGH: Back on the record.
5 Let's go to the document that is tabbed as Exhibit 14,
6 (Exhibit No. 14 was marked for
7 identification.)
8 Q. BY MR. BROUGH: Mr. Rosenbaum, have you seen
9 this document before?
10 A. Yes.
11 Q. What is it?
12 A. It's an e-mail from Mitch Hart.
13 Q. Was it your understanding that Mitch Hart
14 worked for Monsanto?
15 A. Yes.
16 Q. Let's go down, looks like there's a second set
17 of address blocks there, after the line original message.
18 There's Dave Farnsworth. Do you know if Dave Farnsworth
19 worked for Monsanto?
20 A. Yes.
21 Q. How about Howard Smotkin?
22 A. Do not recognize the name.
23 Q. And Mitch Hart you said worked for Monsanto.
24 How about Michael T. Portra?
25 A. He worked for Monsanto.

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1 A. Yes.
2 Q. Have you done any other work for WGI in any
3 capacity since October of 2007?
4 A. I worked for them one day as a consultant about
5 two months after that to inspect some equipment they were
6 having fixed in Mesa, Arizona.
7 Q. Did WGI pay you for that consulting work?
8 A. Yes.
9 Q. Since your departure from WGI, have you talked
10 with anybody at WGI regarding SIO's work on this quarry
11 site?
12 A. No, I have not.
13 Q. Have you talked with anybody at Monsanto since
14 that date?
15 A. No.
16 Q. How would you characterize -- well, if you have
17 an opinion, what is your opinion about how you'd
18 characterize the relationship between SIO -- I'm sorry,
19 between WGI and Monsanto? Was it cordial, adversarial?
20 A. It was a good working relationship.
21 MR. BROUGH: Gene, if you'll give me five
22 minutes, I hate to break this to you, but we may be close
23 to complete.
24 MR. RITTI: Okay, sure.
25 MR. BROUGH: Let's take a quick break, Mark

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1 Q. And how about Jim R. Smith?
2 A. He worked for Monsanto.
3 Q. So going down this list, it looks like there
4 was an e-mail: Dave, pursuant to the section 23(b)
5 facility construction and the addendum, Monsanto reviewed
6 construction plans on Monday, December 4th, 2000 on the
7 WGI, SIO project. It lists two names for SIO, three
8 names for WGI, and one name for Monsanto. Actually two,
9 I'm sorry. Under WGI it says Steve, engineer. Do you
10 know who that was?
11 A. Steve Kirk.
12 Q. How do you spell Kirk?
13 A. I believe it's K-i-r-k.
14 Q. And it looks like you were present also at that
15 review?
16 A. Yes.
17 Q. What did that review entail?
18 A. I have no memory of the meeting, but looking
19 down, it was talking about permitting and layout of the
20 building.
21 Q. Do you know why Monsanto was involved in that?
22 A. It's their property.
23 Q. This e-mail looks like it's dated December 5th
24 of 2000, and it refers to the addendum to quartzite
25 agreement, which we discussed earlier. It was dated, at

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Silco International Ore, LLC vs. Monsanto Company
Deposition of John Rosebaum - 3/9/2011

1 Teast, March 1st of 2002. Do you know anything about why
2 that discrepancy in dates would occur?
3 A. I believe there's another document somewhere.
4 Q. There's another -- what other document is
5 there?
6 A. I think there's a prior addendum.
7 Q. So it's your understanding that there's a
8 quartzite agreement and then the one addendum that we've
9 talked about, and then an additional one?
10 A. Yes.
11 Q. One that would predate the one that we've
12 talked about?
13 A. Yes.
14 MR. RITTI: There's one attached to the Jim
15 Smith affidavit. That's an addendum to the 1993
16 agreement.
17 MR. BROUGH: Okay.
18 MR. RITTI: And it's dated December of 2000
19 or late November of 2000, or somewhere in there.
20 BY MR. BROUGH: Let's go over to the
21 document that we'll tab as Exhibit 16.
22 (Exhibit No. 16 was marked for
23 identification.)
24 Q. BY MR. BROUGH: Have you seen this document
25 before, Mr. Rosenbaum?

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1 Q. What is it?
2 A. It's a letter from Jim Smith to me.
3 Q. Do you remember why Jim wrote you this letter?
4 A. Looks like it's an agreement on royalty
5 payment.
6 Q. Going down to the second paragraph, after the
7 setoff paragraph for pricing, it says: The following
8 numbers represent royalties agreed to by SIO as fair and
9 reasonable and accepted by P4.
10 Was it your understanding that SIO and P4
11 reached an agreement as to royalty amounts?
12 MR. RITTI: Object to the form. You may
13 answer it.
14 THE WITNESS: I don't know whether they had
15 any agreements.
16 Q. BY MR. BROUGH: How frequently were royalties,
17 for lack of a better word, amended? Was it an ongoing
18 yearly review where royalties were reassessed?
19 A. I believe it was done yearly, yes.
20 Q. Were you involved in those discussions?
21 A. The early ones, yes.
22 Q. What would be the criteria for raising or
23 lowering or altering a royalty amount?
24 A. Some of the criteria would be the client, the
25 end product, what it was going to be used for, the

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1 A. Yes.
2 Q. What is it?
3 A. It's a letter from Mitch to me on the Monsanto
4 addendum.
5 Q. When it says subject, suggested changes to SIO
6 contract, what SIO contracts do you understand Mitch to
7 be talking about there?
8 A. I do not know.
9 Q. Do you remember if he was talking about the
10 master agreement between WGI and SIO?
11 A. I do not remember.
12 Q. Do you remember if he was talking generally
13 about a contract between WGI and SIO?
14 A. I don't remember those discussions.
15 Q. Do you know or remember of any reason why Mitch
16 Hart would be giving input on contracts that WGI entered
17 into?
18 A. No, I don't.
19 MR. BROUGH: Let's go to the document tabbed
20 No. 20, we'll call that Exhibit 20.
21 (Exhibit No. 20 was marked for
22 identification.)
23 Q. BY MR. BROUGH: Have you seen this document
24 before, Mr. Rosenbaum?
25 A. Yes.

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1 volume.
2 Q. In your work there, were you ever aware of WGI
3 proposing any increase or decrease in royalty?
4 A. No.
5 Q. Was it -- to your recollection, was it always
6 Monsanto that requested a change in royalty amount?
7 A. I believe SIO requested them, too.
8 Q. But that discussion was between SIO and
9 Monsanto; is that correct?
10 A. I don't know if they had discussions or not.
11 Q. Well, were you ever present for a discussion?
12 A. I was present when all three of us had
13 discussions, yes.
14 Q. And when you were present in the discussion
15 that you observed happening, was the royalty discussion
16 occurring between the Monsanto and the SIO
17 representatives or did you weigh in on those?
18 MR. NYE: Object to form.
19 THE WITNESS: I weighed in on them.
20 MR. BROUGH: Was there an objection in
21 there, Mark?
22 MR. NYE: Yes as to time and foundation.
23 Sorry.
24 Q. BY MR. BROUGH: During these discussions with
25 SIO, Monsanto and WGI regarding royalties where you

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Silica International Ore, LLC vs. Monsanto Company
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1 weighed in, what was the nature of your contribution to
2 these?
3 A. I can't remember specifics.
4 MR. BROUGH: Let's go to the document tabbed
5 as Exhibit 22.
6 (Exhibit No. 22 was marked for
7 identification.)
8 Q. BY MR. BROUGH: Have you seen this document
9 before, Mr. Rosenbaum?
10 A. You have to give me a minute to look at it.
11 (Brief pause.)
12 Q. BY MR. BROUGH: Have you seen this document
13 before?
14 A. I don't think so.
15 Q. Does it -- I guess if you haven't seen it you
16 haven't seen it. Could it possibly be a document
17 submitted in connection with SIO's proposal to WGI?
18 A. I don't know what it was referred to.
19 Q. At the time of your retirement from WGI in
20 October of 2007, did WGI and SIO, were they continuing to
21 work together at that time?
22 A. I honestly don't know.
23 Q. Do you know if, at the time you retired, WGI
24 had sought to terminate its relationship with Monsanto?
25 A. I have no knowledge.

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1 MR. RITTI: That's all the questions I have.
2 MR. BROUGH: Just a couple of follow-up
3 questions, Mr. Rosenbaum.
4
5 FURTHER EXAMINATION
6 BY MR. BROUGH:
7 Q. Did WGI ever fix or provide a wash screen for
8 any other company?
9 A. We had wash screens there for Monsanto.
10 Q. Was there another sand vendor like SIO for whom
11 WGI fixed a wash screen?
12 A. There was one other vendor. I don't know who
13 it was that took some golf course sand and we run it
14 through our existing plant, yes.
15 Q. In order to -- let me make sure I understand.
16 So WGI ran that sand through its existing plant; is that
17 what you said?
18 A. After the completion of our normal operating
19 year.
20 Q. And why did it do that?
21 A. Because it needed a size different than what
22 the normal reject was.
23 Q. Did WGI decline to do the same thing that it
24 did for this other company, for SIO?
25 A. Not to my knowledge.

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1 MR. BROUGH: Gene, I think that's all the
2 questions that I have. Do you have any additional?
3 MR. RITTI: Mark, do you have any questions?
4 MR. NYE: No, thank you.
5 MR. RITTI: I just have one or two.
6
7 EXAMINATION
8 BY MR. RITTI:
9 Q. Let's refer to what's been marked as Exhibit 8
10 to your deposition, Mr. Rosenbaum. This is the master
11 agreement dated December 1, 2000 between SIO and
12 Washington Group. If we turn to Page 2, at that top
13 paragraph, about four lines from the bottom, from the end
14 of that first paragraph, it says, quote, company, which
15 means SIO. Would you agree?
16 A. Yes.
17 Q. Quote, company agrees to provide all necessary
18 plant equipment to dry, screen and bag the silica sand,
19 period, unquote. Do you see that?
20 A. Yes.
21 Q. What was your understanding under the terms of
22 the master agreement as to whether SIO had the
23 responsibility to provide all screens necessary for the
24 silica operation?
25 A. That they did have to.

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1 Q. Did SIO -- I'm sorry, did WGI require SIO to
2 provide and construct its own wash screen on this
3 property?
4 A. The master agreement says that SIO had to
5 provide all the equipment.
6 Q. Based on your knowledge of the negotiations
7 between SIO, Monsanto and WGI, was it your understanding
8 that Monsanto would permit SIO to be on the property only
9 if WGI was working on the property, as well as the
10 contractor?
11 MR. RITTI: Object to the form.
12 MR. NYE: Object to the form.
13 MR. RITTI: You may answer, if you can.
14 THE WITNESS: I know my understanding was
15 that if Washington's contract terminated, there was a
16 potential termination of the SIO contract, yes.
17 Q. BY MR. BROUGH: When you say potential
18 termination of the SIO contract, do you mean a contract
19 between SIO and Monsanto?
20 A. No, SIO and Washington.
21 MR. NYE: Objection.
22 Q. BY MR. BROUGH: So that I'm clear as to what
23 you just said, it's your understanding that when WGI
24 terminates its contract with SIO, that would also be a
25 potential termination of another contract. What other

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MONSANTO



Soda Springs, Idaho Plant

1853 Highway 34
Post Office Box 816
Soda Springs, Idaho 83276-0816
Phone: (208) 547-4300
Fax: (208) 547-3312

Washington Group International, Inc.
91 South Main
Soda Springs, Idaho 83276

December 2, 2002

Attention: John Rosenbaum
Operations Manager

Dear John,

As a result of Silicon International Ore, LLC (SiO) on going efforts to market the fine material being produced at P4's Quarry by Washington Groups International, Inc (WGI) operations. P4 agrees to accept the following royalty for the sale of fine material marketed in the following markets.

Heavy Rail Traction sand	\$ 3.00
Recreational Sand	\$ 4.25
Play Sand	\$12.00

The following numbers represent royalties agreed to by SiO as fair and reasonable and accepted by P4, until a full review can be preformed in March 2003.

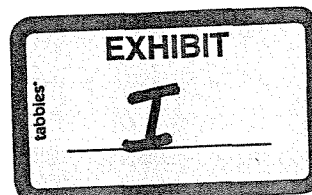
A full review of all royalties will be preformed in March of each year, by representatives of P4, WGI, and SiO, for the purpose of establishing royalty payments for the following year.

Sincerely,

Jim Smith,
Purchasing Supervisor

Cc: Todd Sullivan - SiO
PO. Box 711658,
Salt Lake City, Utah 84171

Mitch Hart
Dave Farnsworth
Mick Portra



Monsanto to SiO - 96

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6. In 1987, I joined Price Waterhouse, where I worked in its southern California and New York City offices. In 1989, I was promoted to tax senior manager. In southern California, I served as a full-service tax professional consulting with a wide variety of companies, including many companies involved in Aerospace and manufacturing. While there, I also conducted reviews of large client corporations' in-house tax departments, specifically assessing structure and competencies. In New York City, I served in Price Waterhouse's Technical Tax Services group in the firm's national office. In that capacity, among other things, I assisted with technical tax issues addressed by many of the Price Waterhouse offices, worked on troublesome practice issues, edited several publications, and authored numerous articles. I also worked directly for the head of the U.S. tax practice and the head of the firm's Washington National Tax Practice office on many projects.

7. In 1993, I served as the Director of Tax for Kennecott Corporation, a \$1.7 billion diversified U.S. mining organization with over 5,000 employees. There, I directed all of Kennecott's tax-related activities, specifically as they related to the mining industry. This included performing tax due diligence on many mining companies. In that capacity, I gained specialized knowledge regarding the mining industry, its operations, and the financial issues that attend those operations. While in that role, I also was the primary author, working with the Utah State Tax Commission, outside valuation experts, and members of the Utah Mining Association, of Rule R884-24P-7, Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201. The purpose of this rule is to establish guidelines for properly valuing mining operations for purposes of determining property tax assessments.

8. In 1997, I joined Kennecott Energy Company in Gillette, Wyoming. There, I served as its Vice President and Chief Financial Officer, and handled duties attendant to those roles. I continued to be intimately involved in the mining industry. In that role, I also oversaw all of the financial and tax aspects of the company's due diligence efforts for acquisitions, which were extensive, directed all budgeting and forecasting efforts, and chaired the company's investment committee. This entailed assessing all significant purchases and operational changes in the organization.

9. Since 2003, I have served in various financial capacities for a variety of companies, including Certiport, Inc. (where I served as its Executive Vice President, Chief Operating Officer and Chief Financial Officer), Amp Resources, LLC, and Amp Capital, LLC (where I served as a partner, Chief Operating Officer, and Chief Financial Officer). Amp Resources was a geothermal energy company.

10. In these capacities, I have gained additional extensive and specialized knowledge in business management, human resources, economic valuation, business forecasting, and other complex calculations.

11. I have been retained by Silicon International Ore, LLC ("SIO"), the plaintiff in the above-captioned lawsuit, to opine upon (1) the amount of reliance damages arising to SIO and its members; (2) the diminishment of SIO's business enterprise value to its members; and (3) SIO's lost profits. I have also been asked to provide observations about the business that are pertinent to my analysis, with my accounting and business experience (specifically, my experience in the mining industry) serving as a foundation.

12. In connection with the formulation of my opinions, I have reviewed extensive documents, including SIO's complete QuickBooks files, tax returns, other financial information, and other documents pertaining to SIO's work upon the silica quarry owned by P4 Production, LLC, a wholly owned subsidiary of Monsanto Company, and operated by Washington Group International Inc.

13. Also in connection with the formulation of my opinions, I have spoken at length about SIO's business with Todd Sullivan, Sue Sullivan, Robert Sullivan, Delane Sullivan and Tim Sullivan.

14. My review of the documents and information provided to me leads me to the following conclusions:

a. SIO invested a total \$2,193,006 in the silica quarry project, which includes initial investment, operation of the facility, and taking down the facility at the conclusion of the SIO-Monsanto relationship.

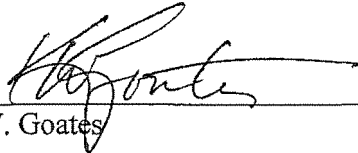
b. As of October 7, 2011 (which I understand to be the last scheduled day of trial in this matter), SIO's estimated business enterprise value will be about \$2,536,000.

c. Through December 31, 2027, SIO will have incurred lost profits in the amount of \$25,607,000.

15. The basis of my calculations, including a listing of the documents and information upon which I relied, and upon which I will rely as exhibits if called upon to testify, are contained in my expert report, a true and correct copy of which is attached hereto as Exhibit 1. The expert

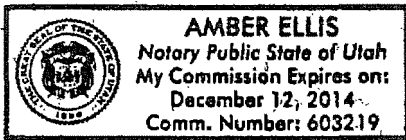
report also lists my qualifications, compensation, publications, and experience testifying at trial or deposition.

DATED this 29th day of April, 2011.



Kent W. Goates

SUBSCRIBED AND SWORN TO before me this 29 day of April, 2011.



Notary Public

Exhibit 1



April 29, 2011

Mr. Daniel K. Brough
Bennett Tueller Johnson & Deere
3165 E. Millrock Drive, Suite 500
Salt Lake City Utah 84121

Re: Silicon International Ore, LLC vs. Monsanto Company and Washington Group International, Inc., Case No. CV-2009-366

Dear Mr. Brough:

We have reviewed the information provided us concerning the complaint of Silicon International Ore, LLC ("SIO") against Monsanto Company ("Monsanto") and Washington Group International ("WGI"). We understand that this complaint arose as the result of the termination of SIO's agreement with these parties on December 31, 2007 for processing and selling silica from the Monsanto silica quarry near Soda Springs, Idaho. You have informed us that the cause for this complaint is SIO's reliance on the commitments made by Monsanto to SIO in mid-May of 2000 upon which SIO committed significant capital and resources to its business.

In connection with that complaint, you have asked that we provide assistance in determining:

- the amount SIO and its members have spent, and will have spent, in reliance upon Monsanto's representations and commitments,
- the diminishment of the business enterprise value of SIO to its shareholders upon the termination, and
- the profits lost to SIO had it been allowed by Monsanto and WGI to continue operating the business through 2008 and beyond.

You have also asked that we provide observations about the business that are pertinent to our analysis.

Background

SIO was formed in 1999 for the purpose of developing and selling silica sand products. In performing due diligence on appropriate production sites, SIO discovered the silica pit in Soda Springs, Idaho, owned by Monsanto and operated by WGI. Monsanto uses silica from this pit in the manufacturing of elemental phosphorus. A waste product from Monsanto's process is silica material of one-fourth inch size and smaller. As SIO needed silica material the size of Monsanto's waste silica, the synergies of the two operations appeared to become evident. Not only would SIO have a viable material for its product, but Monsanto would have an effective aid in dealing with its waste stream and remediation requirements. On or about May 15, 2000, Monsanto and SIO agreed that SIO would develop a silica processing facility at the Soda Springs site. In exchange for this agreement, SIO agreed to pay a royalty to Monsanto for tons of Monsanto's silica used from the site.

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Agreement for assistance from WGI for the installation, operation and maintenance of the SIO facility at the site was reached on December 1, 2000. In exchange for WGI's services, SIO agreed to pay WGI on a time and materials basis for all costs (including labor and excess costs incurred by WGI as a result of SIO operations) and expenses associated with the installation, operation and maintenance of the facility. SIO also agreed to pay WGI a per ton fee for silica processed and sold. This fee was to be inclusive of the royalty committed to Monsanto as described above.

Construction of the facility occurred during 2001 and was completed in December of that year. Sales commenced in 2002 and continued into 2008. But on December 28, 2007, SIO was informed by WGI that it was terminating its agreement with SIO. Thereafter, SIO processed and sold small amounts of silica until it finally closed down and dismantled the facility. Final sales occurred in the summer of 2008.

Silica sold by SIO between 2002 and 2007 was primarily used for traction (on railroads, transit systems, and airport runways), fiberglass manufacturing, drilling, and heat conveyance in the geothermal energy arena, but significant sales also occurred for sand used in golf courses, sandblasting, playgrounds, and parks. Sales growth occurred year-over-year between 2002 and 2006, with a slight drop occurring in 2007. Based on information in the Company's books and records, and from discussions with Todd and Tim Sullivan, this drop appears to have occurred because of declining business in the fiberglass market, but strengthening sales in the drilling and geothermal markets appeared to be replacing that loss. Table 1 contains a chart showing the Company's gross revenues, with a trendline demonstrating the potential direction of revenues of the company had the December 31, 2007 termination not occurred. This information is taken directly from the Company's QuickBooks records, and it is consistent with information from the Company's tax returns.

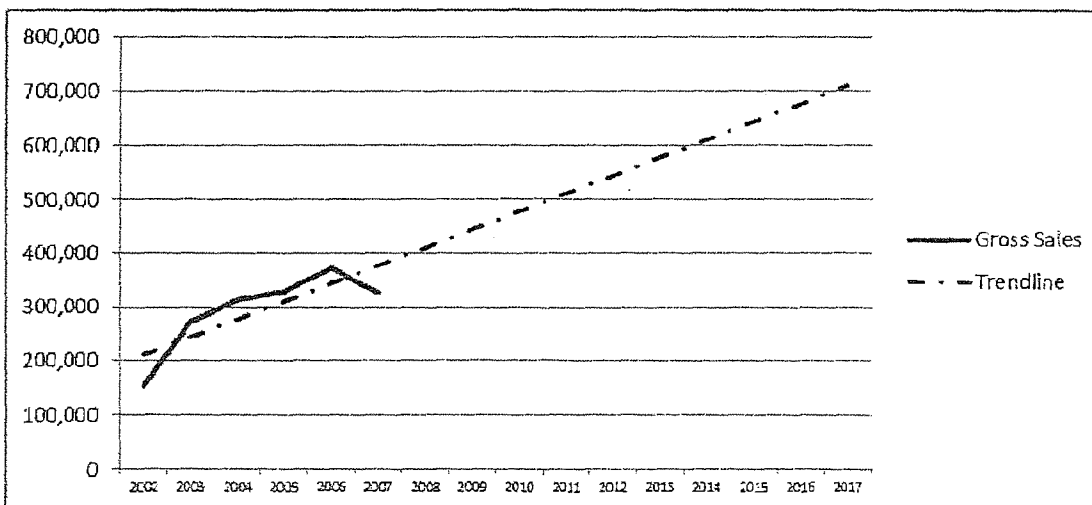


Table 1. 2002 to 2007 gross revenues of Silicon International Ore, with trendline

Based on our calculations, the weighted average growth rate of SIO's gross sales from 2002 to 2007 is 21.79%

SIO's accounting records (and tax returns) also demonstrate that it was trending toward a positive cash flow on December 31, 2007, when WGI terminated its agreement with SIO. This is shown in Table 2 below. The cash flows include net income/(loss) after interest and increases in inventory and capital expenditures. The cash flows do not include taxes, depreciation or amortization. These numbers start on May 16, 2000, the day following the approximate date of the commitment by Monsanto to SIO, and continue through December 31, 2007, the date of the termination.

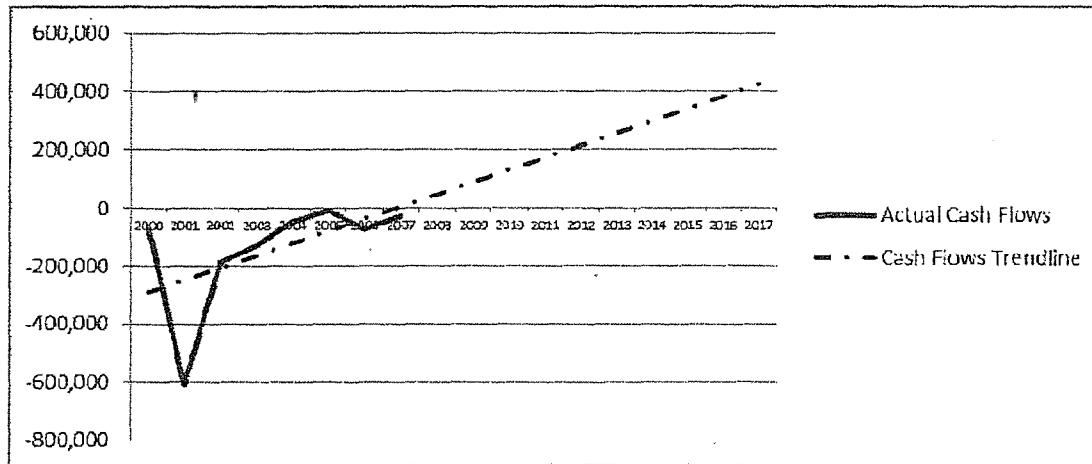


Table 2. 2000 to 2007 cash flows of Silicon International Ore with trendline

SIO's Investment and Reliance

Following the agreements between Monsanto, WGI, and SIO providing for construction and operation of the processing facility at the Soda Springs mine, SIO committed substantial invested and borrowed monies to the development and operation of the business. This included constructing a building and installing a significant amount of processing equipment. It also included the construction of storage facilities, acquisition of mobile equipment for moving and transporting silica, and equipment for washing it. The amount of these monies and monies used in operating the business, offset by revenues and assets sales, constitutes the reliance damages being sought by SIO. This computation is shown at Exhibit 2. Information used to compile this computation has been taken from SIO's books and records, as well as from the records of its members for obligations they have undertaken personally from SIO following the date of the termination. The total amount we calculate is \$2,193,006. The computation of this amount with pre-judgment interest through October 7, 2011 totals \$3,184,407, as shown in 2C.

Loss of Business Value with Termination Notice from WGI and Monsanto

A projection of SIO's revenues, cost of goods sold, royalty commitments, salaries and wages, and operating expenses was prepared using information normalized from the actual operating numbers shown in the Company's trial balances for 2005, 2006 and 2007. Costs of goods sold are reflected as percentages of revenues (based on historical factors), while royalties are computed using a rate of \$3.85 per ton in 2008 (escalating by \$0.10 each year thereafter) for tons processed and sold. (This is consistent with the revenue rates for prior years.) All revenues and costs are inflated at the rate of 2.6%, based on a 20 year average of changes in consumer prices indices, as published by the Consumer Price Index, Bureau of Labor Statistics, U.S. Department of Labor. Efficiency gains of

1.25% relative to revenues have been assumed each year for both cost of goods sold and production related expenses. The application of these efficiency gains are based on our own experience in processing natural resources.

Based on our experience in mining and manufacturing, we note that the labor rates charged by WGI appear to be higher than we would have assumed for this silica processing facility, especially where it is located in a rural area, but as these costs are based on contractual terms between the parties, we have not replaced them with lower costs in our model. The same applies with equipment charge rates of WGI and WGI requirements that SIO acquire certain equipment.

Silica production and sales increases have been projected at 21.79% per annum (reflecting the weighted average growth rate of sales between 2002 and 2007) for years from 2008 through 2012. Thereafter, growth slows, indicating a maturing business. This growth is shown in Exhibit 3. It is assumed that the facility operates for 4 day per week, as it has in the past, and with overall operating availability of 98 percent for most years. When heavy maintenance is required, which is assumed to be every five years, availability drops to 95 percent. This is based on our experience with operating facilities. We have also assumed that the facility operates for 50 weeks per year with the plant lying dormant for one week in November and one week in December of each year. This again is consistent with the plant's operation in the past. Information regarding the historical operations of the plant was obtained from Tim Sullivan. Based on our experience, additional plant capacity could be achieved by raising the number of operating hours at the plant beyond the peak of 17.4 reached in our projections, increasing the number of workdays each week to 5 or 6, and having the plant in production for 52 days each year.

A capital expenditure is assumed of \$50,000 in 2008 for equipment that will make the waste pile silica more accessible to the plant. As the plant has historically received all of its silica from WGI's current production (a circumstance which has led to silica shortages for the plant), we believe, based on discussions with Todd and Tim Sullivan, that additional equipment will be needed to access silica in the waste piles. An additional set of capital expenditures, in an amount totaling \$400,000 is assumed in 2019. \$150,000 of this amount is added to double the throughput capacity of the plant; including replacing the crusher, adding two additional Sweco screens, and two more bins for storage capacity. \$250,000 is also incurred to build load-out facilities enabling to plant to better use the railroad to ship its silicas for use by glass manufacturers. These numbers were provided by Robert, Todd and Sue Sullivan.

Per Todd and Robert Sullivan, the market for SIO's current customer types (traction, fiberglass, drilling, geothermal, golf course, playground, etc.) will maximize at about 50,000 tons of production each year. Thereafter growth will come from expansion in the glass industry. Potential market size assumed for this market, per Todd and Robert Sullivan, which is limited principally to locations between the Sierra and Wasatch mountain ranges because of transportation costs, is 300,000 tons per year. Penetration into this market reaches only about 25,000 tons per year, however, in our models.

Although operating metrics of the Company from pre-2007 years appear to be trending positively, we found that an additional capital infusion of about \$115,000 is required in 2008 to cover operating and capital costs in that and the following year. Cash flows thereafter do increase regularly and it is

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April 29, 2011
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anticipated that this capital infusion could be withdrawn as early as 2012. We have not, however, assumed withdrawal of this amount in our model.

A tax rate of 35% has been assumed, and normal tax depreciation rates have been deployed in the model. A discount rate of 16.53% has been developed and, based on information from Ibbotson and Duff & Phelps, using a weighted average cost of capital approach. (see Exhibit 1). Factors used in determining the discount rate have been drawn from those considered in Duff & Phelps "High Financial Risk Study" due to Silicon International Ore's small size, lack of profitability, and debt/equity structure at December 31, 2007.

The summary of our model is found at Exhibit 3, which shows an estimated business enterprise value of about \$2,536,000 at the October 7, 2011 present value date. It should be noted that this discounted cash flow starts on January 1, 2008, as if business was not interrupted on December 31, 2007 by Monsanto and WGI, and continues for 20 years.

Estimated Lost Profits

As part of our modeling, we have also projected estimated lost profits for SIO from January 1, 2008 through December 31, 2027. The estimated lost profits total \$25,307,000. This is shown in Exhibit 4.

Documents Relied Upon

Appendix A contains a listing of the documents we relied upon in the preparation of this report. A copy of each of the documents is included in a separate binder.

Conclusion

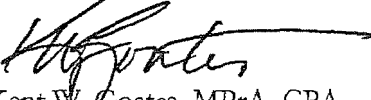
In conclusion, a summary of the amounts discussed above is as follows:

	<u>Amount</u>	<u>Pre-Judgment Interest</u>
Loss from Reliance on Monsanto	\$2,193,006	\$991,401
Estimated Loss of Business Value	\$2,536,000	
Estimated Lost Profits	\$25,607,000	

The conclusions of our analyses will likely change if there are changes in the facts, inputs and assumptions incorporated herein. BrightEdge therefore reserves the right to update this report and reflect the impact of new or updated data or assumptions that may become available.

Please feel free to call me at 801.201.1192 should you need to discuss the findings in this report.

Sincerely,


Kent W. Goates, MPrA, CPA
BrightEdge Associates, LLC

Appendix A Documents Relied Upon

Reference Tab	Document Description
1	CD containing Silicon International Ore Quickbooks Portable File covering years 1999 through March 2011
2	Silicon International Ore, LLC, Plaintiff vs. Monsanto Company and Washington Group International, Inc., Complaint, Case No. CV-2009-366
3	Articles of Organization – Idaho Secretary of State for Silicon International Ore, LLC Certificate of Existence – State of Idaho, for Silicon International Ore, LLC
4	Master Agreement dated December 1, 2000 between Silicon International Ore, LLC and Washington Group International, Inc.
5	Silicon International Ore, Business History, Prepared March 13, 2003
6	Addendum to Quartzite Agreement dated November 29, 2000
7	Settlement Statement dated April 18, 2008 between Robert E. Sullivan, DeLane S. Sullivan, Todd R. Sullivan and Provident Funding Associates, L.P. concerning the home located at 3636 East McClain Mountain Circle, Cottonwood Heights, Utah 84121
8	Provident Funding Amortization Payment Information for the loan established with the Settlement Statement noted in 7 above.
9	<ul style="list-style-type: none"> • Home Equity Line of Credit Agreement between Todd R. Sullivan and Utah First Credit Union dated 4/23,2008 on the home located at 3636 East McClain Mountain Circle, Cottonwood Heights, Utah 84121 • Loan Payment History on the above noted Home Equity Line of Credit
10	Bill of Sale between Silicon International Ore, LLC and G&G Corporation. Amortization payment schedule associated with the above noted Bill of Sale
11	<ul style="list-style-type: none"> • Promissory Note dated March 15, 2004 in the amount of \$10,000 between Silicon International Ore, LLC (Payor) and Keith and Lorna Eggleston (Payee). • Promissory Note dated April 21, 2004 in the amount of \$16,000 between Silicon International Ore, LLC (Payor) and Keith and Lorna Eggleston (Payee). • Promissory Note dated November 18, 2004 in the amount of \$20,000 between Silicon International Ore, LLC (Payor) and Keith and Lorna Eggleston (Payee).
12	<ul style="list-style-type: none"> • SICOG RLF Loan for Silicon International Ore, LLC in the amount of \$150,000 • Loan Profile and payment schedule for \$150,000 loan to Silicon International Ore from SICOG
13	<ul style="list-style-type: none"> • Promissory Note dated February 17, 2005 in the amount of \$55,000 between Silicon International Ore, LLC and Southeast Idaho Council of Governments (SICOG) • Loan Profile and payment schedule for \$55,000 loan to Silicon International Ore from SICOG
14	<ul style="list-style-type: none"> • Promissory Note dated February 16, 2005 in the amount of \$95,000 between Silicon International Ore, LLC and Southeast Idaho Council of Governments (SICOG) • Loan Profile and payment schedule for \$95,000 loan to Silicon International Ore from SICOG
15	<ul style="list-style-type: none"> • Loan Statement from Washington Mutual dated 10/9/2003 concerning \$384,000 loan on property at 3636 McLain Mountain Circle, Salt Lake City, Utah 84121 • Deed of Trust between Robert E. Sullivan and Greenpoint Mtg Fndg dated 4/15/2003 concerning \$384,000 loaned on the property located at 3636 McLain Mountain Circle, Salt Lake City, Utah 84121-5946 • Monthly Mortgage Statement dated 4/29/2003 from GreenPoint Mortgage
16	<ul style="list-style-type: none"> • Chase Mortgage Loan Statement dated 2/2/2006 on the second mortgage of \$145,200 on the property located at 3636 McLain Mountain Circle, Salt Lake City, Utah 84121
17	Silicon International Ore Application for SICOG Revolving Loan Fund dated December 22, 2002
18	Email from Todd Sullivan to a person named "Clayton" at Washington Group International (WGI) in early 2008 regarding WGI letter dated December 28, 2007 termination the Master Agreement.
19	<ul style="list-style-type: none"> • February 12, 2007 letter from Clayton Krall to Todd Sullivan regarding WGI's price adjustment starting February 2007. • WGI Job 802 Daily Force Account Work Sheet dated 11/27/2002

	<ul style="list-style-type: none"> • WGI Job 802 Daily Force Account Work Sheet dated 6/29/2004 • WGI Job 802 Daily Force Account Work Sheet dated 6/30/2005 • WGI Job 802 Daily Force Account Work Sheet dated 11/25/2005 • WGI Job 802 Daily Force Account Work Sheet dated 11/1/2007
20	Monsanto letter with a faxed date of Feb, 6 2003 to Caribou County Commission expressing support for approval of the construction of the SIO silica project
21	URS Washington Division Memorandum dated December 3, 2007 from Dan Wendell to Clayton Krall regarding SIO Revenue/Cost Information
22	Monsanto Letter dated April 17, 2008 from Mark W. Boswell to Todd Sullivan re: end of quarry mining and removal of building and equipment from site
23	U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, U.S. City average, All Items
24	Prime Rate Historical Data
25	Morningstar, Ibbotson Cost of Capital Reports, Individual Reports & Statistics, Statistics for SIC Code 32, data updated through March 2008
26	Cost of Equity Estimates, Duff & Phelps Risk Premium Calculator, Duff & Phelps Risk Premium Report, 2011
27	Federal Reserve Statistical Release, Selected Interest Rates
28	Silicon International Ore, Form 4562 Statement – 1065, Depreciation, 12/31/2007
29	Handwritten note from Sue Sullivan dated 4/22/2011 concerning balances on Quickbooks.
30	<p>Silicon International Ore Facsimiles regarding Weigh Bill Summaries dated:</p> <ul style="list-style-type: none"> • January 7, 2003 • February 3, 2003 • January 14, 2004 • February 10, 2004 • February 3, 2005 • February 3, 2006 • January 4, 2007
31	<p>Silicon International Ore Facsimiles regarding Weigh Bill Summaries dated:</p> <ul style="list-style-type: none"> • February 5, 2007 • February 28, 2007 • April 11, 2007 • May 9, 2007 • June 1, 2007 • July 16, 2007 • August 1, 2007 • September 4, 2007 • October 10, 2007 • November 7, 2007 • November 26, 2007 • January 7, 2008 • February 1, 2008
32	Silicon International Ore 2000 U.S. Return of Partnership Income
33	Silicon International Ore 2001 U.S. Return of Partnership Income
34	Silicon International Ore 2002 U.S. Return of Partnership Income
35	Silicon International Ore 2003 U.S. Return of Partnership Income
36	Silicon International Ore 2004 U.S. Return of Partnership Income
37	Silicon International Ore 2005 U.S. Return of Partnership Income
38	Silicon International Ore 2006 U.S. Return of Partnership Income
39	Silicon International Ore 2007 U.S. Return of Partnership Income
40	Silicon International Ore 2008 U.S. Return of Partnership Income
41	Silicon International Ore 2009 U.S. Return of Partnership Income
42	Idaho Code Section 28-22-101 (2011)

Exhibit 1
Silicon International Ore, LLC
Facts, Inputs and Assumptions

Table 1: Inflation Rate Computation (average of twenty prior years)

Year	Change in Consumer Price Index (%) ¹
1991	4.20%
1992	3.00%
1993	3.00%
1994	2.60%
1995	2.80%
1996	3.00%
1997	2.30%
1998	1.60%
1999	2.20%
2000	3.40%
2001	2.80%
2002	1.60%
2003	2.30%
2004	2.70%
2005	3.40%
2006	3.20%
2007	2.80%
2008	3.80%
2009	-0.40%
2010	1.60%
Average	2.60%

¹ Consumer Price Index, Bureau of Labor Statistics, U.S. Department of Labor

Table 2: Discount Rate Computation

Weighted Average Cost of Capital (WACC)

Component	Component Value	Weight ¹	Weighted Cost
- Cost of Equity ³	20.14%	66.88%	13.47%
- Cost of Debt ²	9.25%	33.12%	3.06%
WACC			16.53%

¹ Capital Structure is equal to the capital structure of companies within the industry for SIC Code 32. Obtained from Morningstar Ibbotson Cost of Capital Reports, Individual Reports and Statistics, Statistics for SIC Code 32, data updated through March 2008, median, 5 yr average.

² Cost of Debt Component Value is equal to prime plus 2 percent as at December 31, 2007.

³ Cost of Equity (See Exhibit 1A)