

Deposition Summary  
of  
**X**  
Taken 13 May 1700

**Case Style:** No. SCVSS 000027; X v Y; In the superior court of the state of California  
for the county of San Bernardino

**Appearances:**

Plaintiff (s): XX (Miller, Axline & Sawyer)

X

Garrison, et al.

Defendant(s):

Y: XXX (King & Spalding LLP)

Y1 and

Y2: XXXX (Filice & Kayhan LLP)

Y3: XXXX (Bingham McCutchen LLP)

Y5

Y6: XXXXXX (Barg Coffin Lewis & Trapp, LLP)

Y7: XXXXXXXX (Becherer, Kannett and Schweitzer)

**Summary By:** Aptara

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			EXAMINATION BY MR. BOONE
6/19	10/7	Introduction	His name is X. He was born in Santa Monica, California, in 1700. He retired around 1700 and he has been in the Newport area in Oregon ever since. He has never been represented by any counsel from Y.
10/8	16/25	Work with Y	He went to work for Y straight out of college in 1957 and he worked there for 15 years. He first started out of the St. Louis district office in Missouri and remained there for five years. He was a sales representative for Missouri, Illinois, and Indiana; and DD was one of the products that he was marketing at that time. His next assignment for Y was as a sales representative working out of Kansas City in 1700. His sales territories were Kansas, Nebraska, Colorado, and Wyoming; he sold the DD product there as well. His next assignment was as a sales representative in the Central Valley of California for the counties of Fresno, Madera, Tulare, and Kings County in 1700. Y office was in San Francisco at the time he started with the Central Valley assignment in 1700; however, shortly after that, within a year or so, it moved to Fresno. He continued to work out of the Fresno office until he left Y in 1700. He was selling the Y DD product for the entire time he had the Central Valley assignment from 1700 to 1700. DD formed a very meager part of his agricultural chemical sales when he was selling DD for Y in the Central Valley offices from 1700 to 1700. He was handling bigger sellers at that time such as Nemagon, Azodrin, Bidrin, and Planavin.
17/1	22/2	Sales and application of Y DD	As a s a professional sales representative for Y in the period from 1700 to 1700 in the Central Valley, his process to make a sale was to be in contact with the customer salespeople or their field men on a daily basis and as intimately as possible. The work entailed getting up early for breakfast, making several contacts during breakfast, and then travelling and meeting the field representatives of the distributors on a pretty regular basis. The field representatives of the distributors that Y sold to made grower contacts, and they would recommend farming practices to the growers and arrange for pesticides and fertilizers and other farm chemicals to be used on the ranches that they worked on. He had to travel a lot to make such face-to face contacts. He travelled more in the country and rarely in the cities such as the city of Clovis and the city of Atwater as farming is out in the

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			country and there is no farming in the cities. When he met with the field representatives, he would meet them at a farm where they made recommendations for various pest management and fertility programs. He does not remember any meeting with the field representatives of the distributors at particular farms where the distributor recommended an application of Y DD. When he arrived in the Central Valley in 1700, Y DD was already a well-established product in that area. Since it was an established chemical that the field representatives for the distributors already knew about, they would call the order desk at the Y office and order the DD without contacting him about it. Y did not run any type of discount, price discounting program, to promote the sales of DD during the time he was representing DD in the Central Valley from 1700 to 1700.
22/3	24/15	Nematology workshops at Y and nematode problem in Central Valley crops	Y held some nematology workshops in the early years of his employment. The workshops were conducted by the professors of several universities and those were a two-day or three-day development held in several cities around the country. He attended those when he was in St. Louis or Kansas City before he got to the Central Valley. It was his understanding that DD was used to kill nematodes in the soil. The Central Valley had nematode problems in crops such as tomatoes, root crops, and certain annual crops that could be alleviated by DD. He was never present when DD was applied at a farm in the Central Valley.
24/16	26/12	Seasonal sale of DD	During the time he was selling DD in the Central Valley from 1700 to 1700, a portion of his payment was not based on the amount of chemicals that he had sold; he was strictly salaried. The sale of DD was seasonal. It was sold most during the inactive time or when agriculture was least active; that would be in the middle of winter. The DD product had to be applied prior to planting time because it had to leave the soil before one could plant in it. He never heard of any test plots that were being established for testing DD in either the Clovis or the Atwater area.
26/13	26/25	Exhibit 1	[ <b>Exhibit 1</b> , Deposition notice, is marked for ID.]
27/1	30/2	Exhibit 2	[ <b>Exhibit 2</b> , Letter dated February 4, 1700, is marked for ID.] Exhibit 2 is Bates #STCP000000, and it is a letter dated February 4, 1700, to all salesmen from manager, western district agricultural chemicals division, Fresno,

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			California. It is from X2 who was the district manager for Y's western region. Mr. X2 distributed memos such as Exhibit 2 to the salesmen from time to time as a way of distributing information about the Y products. The first sentence of the text there above Mr. Woodward's name refers to some revised recommendations and data received from the University of California on the use of DD and Nemagon for the control of bacterial canker on peach trees. About halfway down the "to list" at the left-hand side, his name is mentioned; there are a lot of other names mentioned in the list of the other salespeople who were working out of that Fresno Central Valley office during the period from 1700 to 1700. That would be a typical communication from Mr. X2 to the salesmen.
30/3	34/3	Exhibit 3	[ <b>Exhibit 3</b> , Document dated March 3, 1700, is marked for ID.] Exhibit 3 is a multipage document that has an STCP number at the lower right-hand corner indicating that it was produced by Y in the TCP cases. It starts from Bates #STCP000002 till 00000 and it appears to be a collection of documents whose topic is "gunky DD". On the first page in the first sentence of the text there dated March 3, 1700, it says, "Attached for your information and handling are customer complaint and credit memorandum regarding gunky DD received by Y8's warehouse". It is from X2. Page 573 is a typed-up customer complaint about the gunky DD and the discussion is about the eight drums of the DD soil fumigant, "the drums were leaking and contained gunk". As a professional sales representative for Y representing the DD product, he does not recall that there was a problem with leaking drums other than the one instance that is mentioned in Exhibit 3. He does not recall receiving other complaints about DD being gunky than the one mentioned on page 573 when he was representing DD for Y. When he represented DD for Y in the Central Valley from 1700 to 1700, his job was to sell DD to distributors as opposed to individual farmers.
34/4	34/18	Exhibit 4	[ <b>Exhibit 4</b> , Documents produced by Y, is marked for ID.] Exhibit 4 is a collection of documents that Y produced in the present TCP cases; they are not consecutive numbered because only the documents related to the year-end reports for the years that he was in the Central Valley have been picked. The range is from the first page being Bates #STCP000004 and the last page being Bates #STCP000000.

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34/19	36/11	Exhibit 4: Page STCP000040	Second page of Exhibit 4, which is STCP#000005, is titled Sales analysis by customers. The first customer mentioned is X3, and it shows the destination city and state as Clovis, California, the product as DD. The year to date as of December 1700 is 9,288 gallons. He does not recall Mr. X3 in Clovis being a customer of Y that he sold DD to. Further down that same page to the bottom block, there are a whole bunch of listings for FMC Chem. One Niagara product mentioned is DD and the amount year to date shown is 25,426 gallons in 1700. FMC Niagara was a customer of Y. He would not have sold DD to FMC Niagara for any of their offices other than Fresno, California.
36/12	37/23	Exhibit 4: Page Bates #STCP000040	Page Bates # STCP000048, on the top line that says December 1700, there is a year-to-date column and the customer shown is X4. with four locations; Firbaugh, Madera, Sanger, and Turlock. X4, Y, was his customer that he sold DD to. The amounts that are shown out in the year-to-date column are 26,070 gallons, 36,900 gallons, and 2,700 gallons. Those amounts align with his recollection of the types of amounts that he would sell in a year to X4.
37/24	38/13	Exhibit 4: Page Bates #STCP000040	Page Bates # STCP000009 shows a sale to Y7 in Fresno, California, of DD, 2,160 gallons in December 1967. Y7 in Fresno, California, was his customer that he sold DD to.
38/14	39/23	Exhibit 4: Page Bates #STCP000050 and Bates #STCP000050	Page Bates # STCP000052 has December '67, year to date and it mentions that Valley Ag Supply in Fresno, California, shows 3,564 gallons. Valley Ag Supply in Fresno was a customer of Y. Page Bates # STCP000004 says December 1700. The year-to-date column, it is Y12, about the fourth line down shows a sale to Kerman, he thinks that Kerman is west of Clovis and near to it in distance. FMC Niagara Chem was his customer. The page shows a sale made to the Kerman branch of 2,700 gallons end of year, December 1700. That sale would have been credited to him. As far as the actual sale is concerned, the customer would call the order desk and place the order; they would rarely call the salesman.
39/24	45/6	Y customers	Page Bates # STCP000005 has some more entries for X4, Y, in Gridley, Madera, Sanger, and Turlock in December 1700. The next page Bates # STCP000006 from December 1700 shows a sale of 2,160 gallons to Y7 in Fresno. Page Bates # STCP000059 shows the sales of DD

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			to Y9 in Fresno and Madera, and the amounts of 162 gallons and 4,942 gallons in December 1700. The next page Bates # STCP000060 from December 1700 shows the sales to X4, Y, Madera, Sanger, and Turlock in the amounts that are shown there. X4 was still a customer of Y as of December of 1969. The next page Bates # STCP000061 from December 1700 shows the sales to Standard Oil, Chevron Chemical in Fresno, DD in the amount of 4,320 gallons. Standard Oil Chevron Chemical in Fresno was a customer of Y. Y7 was still a customer of Y in 1700. In 1700, Y9 was still a customer of Y for DD.
45/7	47/22	Exhibit 4: Page Bates #STCP000070 and Bates # STCP000070	Page Bates # STCP000002 from December 1700 shows a sale of 324 gallons to a X5, PLTSC in Fresno. It does not look familiar to him. Page Bates # STCP000076 from December 1700 shows a sale to AM VA and then the last part of the name looks like Reilly in Clovis. It is the Y10, which was a customer of Y.
47/23	49/15	Competition between Telone and DD	He was aware of competition for the Telone product at the time he was representing DD for Y in the Central Valley from 1700 to 1700. He met the Y2 representative who was representing Telone in the same areas that he was representing DD; however, he does not remember the Y2 representative's name. In the two Fresno offices that he was operating from, there were not any Y employees whose job was to go out to the fields and help with the applications of DD. He does not know that Y ever offered to help the growers with applications as an incentive for them to purchase DD.
49/16	51/7	Chemical constituents of DD	He does not remember learning what the chemical content of DD was during the Y nematology seminars that he had attended. Aside from the nematology seminars that he attended, he does not remember learning what the various chemical constituents were that were a part of DD at any time he was representing DD for Y. He does not recall hearing that there was a chemical that was called TCP, which was in DD. He does not recall being told by anyone from Y, at the time he was working for Y that any chemicals that were in DD could get into groundwater.
			EXAMINATION BY MS. Z
51/8	53/11	Sales records and volume of DD	He had no role in preparing Exhibit 4, which is set of sales records. He personally did not take the orders for Y DD from any of the distributors and hence, the amounts that are reflected in those Y sales records are not necessarily amounts or volumes that he was personally involved with

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			taking down from those distributors. He did not have any involvement in providing information that was used by Y to prepare those sales records. He does not have any information about the volumes of DD that are listed in Exhibit 4 as to where that material was actually applied.
53/12	55/8	Effectiveness of DD	In the years of representing the DD soil fumigant, he became familiar with its effectiveness for nematode control. It was quite effective; besides controlling nematodes, it also had other benefits. It controlled or killed various soil insects, wireworms, soil active insects, soil diseases, fusarium, verticillium wilt, and others. It controlled weeds as well; as they tried to germinate, it would control weed seed germination. In his experience, if a farmer tried to grow a crop in an area known to be infested with nematodes without fumigating, if it were a crop that was sensitive to nematodes, it would be either severely wiped out or injured by the nematodes. Without fumigating, crops could be grown, but not profitably.
			<b>FURTHER EXAMINATION BY MR. BOONE</b>
55/9	56/22	Selling of DD	During the years from 1700 to 1700 when he was meeting the field representatives for distributors as a part of representing DD for Y as a part of his job, he talked extensively to many field representatives for distributors. His job was to sell DD to distributors. He is not sure whether it was discussed during the numerous conversations with the distributors and field representatives that they were purchasing DD from him or Y so that they could resell it to farmers to apply to crops. He knew that they were purchasing it to apply to farms.
			<b>DEPOSITION ADJOURNED</b>