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The Age of Discovery:
How One Lawyer Beat
Back the Opposition

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with **LAURA MORTON**

INTRODUCTION

It was obvious from the start that the Castillos' case against chemical giant DuPont had the potential to lead me into the legal abyss. The Castillo case would be difficult but not impossible. We were to prove that a fungicide that DuPont sold, which was being used at a farm near where pregnant Donna Castillo was walking one day, had caused a serious birth defect in her son, Johnny, who was born blind.

Since there had never been a case of this nature before, there was no template we could use or improve upon in our fight against DuPont. I was in completely uncharted territory.

DuPont had corporate lawyers on the payroll and high-ticket, highly experienced lawyers on call ready to go to war day and night. Those attorneys were hired to crush guys like me under mounds of paperwork, document searches, filings, and costs.

This left us with no choice but

to chart our own course and navigate the treacherous terrain on our own knowing their tactics could potentially bankrupt my firm if I wasn't careful. I went into the case knowing that DuPont was counting on us eventually backing down. That's what they plan for in cases like this. They certainly would try to create as many roadblocks as possible during the discovery process to make this matter go away. And in most cases, their tactics work and the plaintiffs settle before the trial.

This white paper, which is drawn from my book *Blindsided*, looks at part of the arduous discovery process of the case, and the roadblocks that DuPont put up in the way of me and my colleagues, to prevent us from obtaining the information we needed to pursue our case most effectively.

This white paper aims to show how our determination won out over the efforts of a corporate giant who tried to prevent the course of justice.

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Chapter 1

The Process of Discovery

To begin preparing for a trial, both sides engage in what is referred to as discovery.

This is the formal process of exchanging information between the opposing parties about the witnesses they will call to the stand and the evidence they plan to present at trial.

Discovery enables the parties to determine before the trial begins what evidence they may choose

to present. It's designed to prevent trial by ambush, in which one side doesn't learn of the other side's evidence or witnesses until the trial is already under way, leaving no time to obtain counterevidence.

One of the most common methods of discovery is taking depositions. A deposition is out-of-court testimony given under oath by any person involved in the case.

A deposition can be used at trial or in preparation for trial.

It may be taken in the form of a written transcript, a video, or both. In most states, either of the parties may take the deposition of the other party, or of any witness. Both sides have the right to be present during depositions.

Depositions enable a party to know in advance what a witness will say at trial. Depositions can also be taken to obtain the testimony of important witnesses who can't appear during the trial. In that case, the transcript is read into evidence or the video is played at trial.

Typically a witness's deposition is taken by the opposing side and used not only to discover facts but also to discredit the witness's testimony at trial if the trial testimony is different than the testimony taken during the deposition. Most commonly, expert witnesses are deposed by the opposition to show bias or some sort of monetary interest in the litigation. These witnesses are hired by a party and paid to present their testimony.

A lawyer's dream is when inconsistent testimony is uncovered and he or she can ask a witness in front of a jury at trial, "Are you lying now, or were you lying then?"

Depositions usually consist of a direct examination, followed by cross-examination from the other side.

In addition to taking depositions, either party may submit written questions, which are called interrogatories, to the other party, which are answered in writing under oath. If one party chooses to use interrogatories, the questions are sent to the lawyer representing the other side, and that party has a period of time in which to answer. Most states allow 30 days to answer interrogatories. Usually interrogatories are used for background information, because the respondent has thirty days to think before providing answers. This eliminates the element of surprise that exists in a deposition, in which a witness has to answer questions contemporaneously.



Chapter 2

Additional Discovery Methods

In addition to depositions and interrogatories, there are other discovery methods for obtaining evidence, such as requests for production of documents and requests for admissions by the opposing party. There are other methods for gathering evidence, but these are the four most common ways to obtain

evidence before trial: depositions, interrogatories, production of documents and requests for admissions.

I knew from the very start that DuPont and Pine Island Farms—the farm that used the fungicide that affected Donna Castillo—weren't going to make things easy for us.

In this case, the discovery process would be a long and tedious road designed to break us before we even saw the inside of a courtroom. The harder they made it for us to get evidence and the more they prolonged the process, the more time and money it would cost. The hope was that I'd break, give up, and walk away.

Fat chance.
I was in this to win this.

The two defendants made a tactical decision to split up their responsibilities when it came to providing certain types of evidence.

The chemical titan DuPont took responsibility for all the science in the case, while Pine Island Farms took responsibility for defending against the alleged exposure to the DuPont product.

Fortunately, this created a very defined separation between the science and the exposure to the product. The subsequent failure of the two defendants to allow for any overlap between the science and exposure would eventually play right into our hands.



An Enormous Pretrial Witness List

Before we could get into any real discovery, we had one monumental, overriding task that required intervention by the judge.

The problem we faced was an entirely unreasonable pretrial witness list served to us by DuPont and Pine Island. DuPont hit me with an initial list of over three hundred possible witnesses, hoping that the number and sheer

workload involved would scare the crap out of me.

The case was brought before Judge Amy Steele Donner, a well-respected and highly seasoned judge who I thought would be very fair, given the many years of experience she'd had on the bench. She was known to be a no-nonsense judge, which was exactly what a case like this required.

By listing so many witnesses and knowing that we had the right, need, and necessity to depose each and every one of them, our opponents were attempting to kill the case up front by making it impossible to pursue because it would require taking depositions every single day of the week except Sunday for over a year. But if they were going to play hardball, so was I.

Our first attempt to schedule depositions of the first few witnesses on the list was met with a total lack of cooperation and obstruction from both defendants.

This led us to create a paper trail of communications with counsel documenting our attempts and their obstruction. This, in turn, led to us filing a motion before Judge Donner requesting judicial assistance in scheduling over three hundred witnesses for deposition.

At the hearing before Judge Donner, I showed up with a proposed schedule of depositions that laid out a five- or six-day-a-week plan spanning four countries over the course of the next year.

The judge could tell the list was a tactic to bury us in discovery and forced the defendants' hand. She put their feet to the fire and demanded that they provide the addresses, especially for those who didn't have one listed for every single witness on their list, and she also gave us permission to set up the schedule over the course of the next year.

And she made that final list of witnesses, including proper names and addresses, due within one week.

The judge also warned both sides that if we couldn't agree on when things were going to happen, she was going to set strict deadlines. She made it clear that she wanted all the pretrial work completed within the next year or two at the latest. I told the judge I was ready to start and was willing to work every day, even if it meant going out of business. I stood straight-facedly in front of her and called DuPont's bluff every bit as much as she did.

A week later, they came back with a witness list that had been pared down to 85 people.

After we had gone through the list with Judge Donner, we'd gotten it down to a total of 63 people, still located in four different countries. Little did I know at the time that my DuPont litigation (inclusive of the Castillo case and those of the twenty-nine Scottish families) would require 40 trips to London over the next decade.

All in all, I'd say we won that battle.

Now the real work began.



Making Connections

The first thing we did was nail down the November 1989 exposure incident as described by Donna Castillo.

It was clear from the outset that the farm was going to be incredibly uncooperative and obstructive at every turn.

Tactically, I decided it would be best to take the deposition of Lynn Chaffin, the manager of

the farm, without the benefit of any background interrogatories. Chaffin was a former high-end stockbroker who was hired in 1982 by Jack Wishart, the farm owner, because of his business knowledge and expertise. He became responsible for running the day-to-day operations at the fields, including the spraying program.

From looking at the John Ashton's investigative reports for the London Observer—I already knew there was a connection between the use of Benlate and ocular malformations.

Ashton had called many farmers, including Chaffin, to see what mothers had been exposed to Benlate. To give you some background, the London Observer and the BBC were conducting an investigation that focused on children in Fife, Scotland who were born without eyes. Their families all lived in an agricultural area where farmers frequently used a chemical called carbendazim.

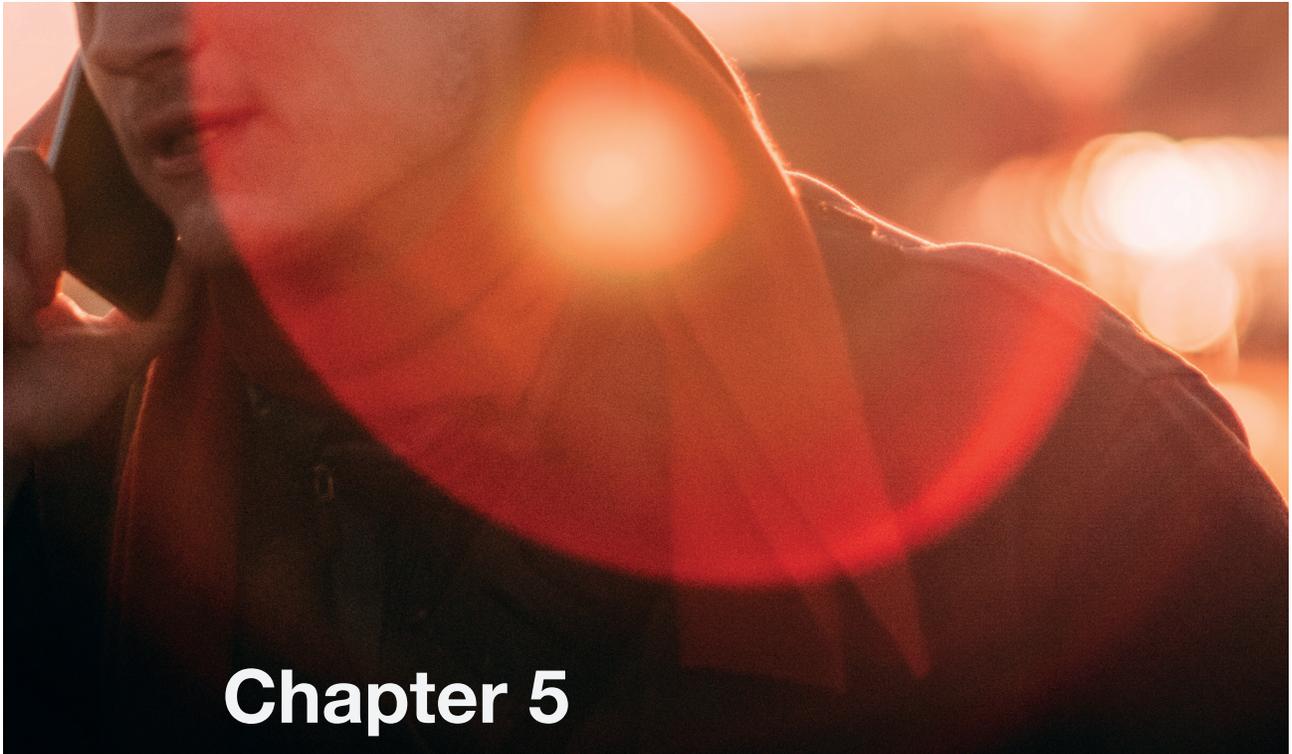
Although sold under a different trade name, this chemical is similar to one made by DuPont called benomyl, the active ingredient in a product known as Benlate. At the time, Benlate was the best-selling and most profitable agricultural product DuPont was selling worldwide. Pregnant women working with these products—primarily migrant workers—were giving birth to children with Johnny’s affliction. John Ashton, an investigative reporter with the Observer, was digging deeper into the subject, contacting farmers and families to see if he could connect the dots. He got in touch with Donna and asked if she had lived near any farms when she was pregnant with John.

Ashton had given me a copy of his notes before I met with Chaffin, who wasn't your average farmer.

Chaffin was a savvy businessman, who claimed he ran Pine Island Farms as a "hobby." We'd soon learn, Chaffin took his hobby very seriously. This wasn't someone who was in farming for fun; it was a serious business—and, as it turned out, a family business, because Chaffin is the son in law of Jack Wishart, the owner of Pine island Farms.

According to Ashton's notes, the call between Chaffin and the reporter took place on a specific day at 4:40 p.m. in the U.K., where Ashton was calling from, which is 11:40 a.m. EST.

The notes showed that the call lasted nine minutes. Chaffin's cellular phone number was clearly written on the single page of notes taken by Ashton, along with the words "used benomyl around November 1 or 2, 1989."



Chapter 5

Pinning Down a Testimony

I suspected that Chaffin might lie during the deposition, so I did what I could to pin him down on his answers. I started with a general conversation about his telephone numbers. I had his business, home, and cellular numbers and asked him about each one individually.

I asked, “Is this your home number?”

“Yes.”

“Who uses your home phone?”

“My wife, kids, or anyone else who is around the house,” Chaffin said.

“Is this your business number?”

“Yup.”

“Who uses your business phone?”

“Sometimes my secretary, workers at farm . . .”

I asked, “What about your cell phone? Is this your number?”

Chaffin paused. “Yes.”

“And can you tell me, Mr. Chaffin, who uses that number?”

“Just me.”

“No one else uses it?”

“No, just me.”

I got him to admit he was the only user of the number Ashton called. I didn't try to get this background information with interrogatories, because he would have had 30 days to think about his answers and their possible ramifications. Hitting him with it this way was far more productive.

I circled back to the day of the Ashton call.

“Do you recall getting a call from a reporter named John Ashton on this particular day? He had a heavy English accent and the call lasted nearly ten minutes,” I said.

“No, no recollection of that at all.”

Chaffin's cell phone records clearly supported Ashton's claim that he called at 11:40 a.m. EST and spoke with Chaffin for nine minutes. Unfortunately, Chaffin's cell phone records only showed an incoming call without disclosing the number of the incoming caller—Ashton.

Hoping he'd admit that the call took place, I put the cell phone document in front of him and asked, "Does this refresh your memory? It shows a nine-minute incoming call at the exact time Ashton states he spoke to you. Are you sure you don't remember that call?"

“Nope. No recollection,”
he said.

There's no doubt Chaffin understood that the document showed only an incoming call to his number. Since it didn't state who it was from, he gambled—big-time—by continuing to deny the call with Ashton ever took place.

This meant I would have to get Ashton's phone records to prove it.



Chapter 6

Tracking Down the Answer

Asking for phone records from the Observer would prove to be harder than I expected, because it's an overseas newspaper. It would require a year of subpoenas and going through the Hague Convention to get prior approval. It wasn't easy. It took time and effort, but I eventually obtained the records. A year later, with Ashton's phone records in hand, I scheduled a continuation of Chaffin's deposition. This time I could prove the identity of

the incoming caller to Chaffin's cell phone number. Chaffin was clearly unaware that I had obtained this critical information.

"A year ago I asked you about an English reporter," I said. "I know you're worked up over this case—thinking about it all the time . . ."

"Yeah."

"So I want to ask you again: do you remember taking this call?"

"No."

"Let me refresh your memory."

I then gave Chaffin the same cell phone records I had given him the year before. This time, however, I also provided him with a copy of the detailed bill listing all the calls made from Ashton's phone line at the Observer, provided to me by Centel, the Observer's telephone company.

Obviously, Chaffin would now be forced to admit that the call took place.

“The records show the call the reporter has spoken about was made to your cell phone. Want to take a look?”

“Maybe I thought it was a sales call. Maybe I was misleading the guy,” Chaffin said.

Despite being cornered, Chaffin still didn’t want to give up.

“Let me get this straight, Mr. Chaffin.” I said.

“You thought it was a sales call and you stayed on the phone for nine minutes? Most people duck sales calls by hanging up. But you, you stayed on the phone to deliberately mislead and lie to this guy?”

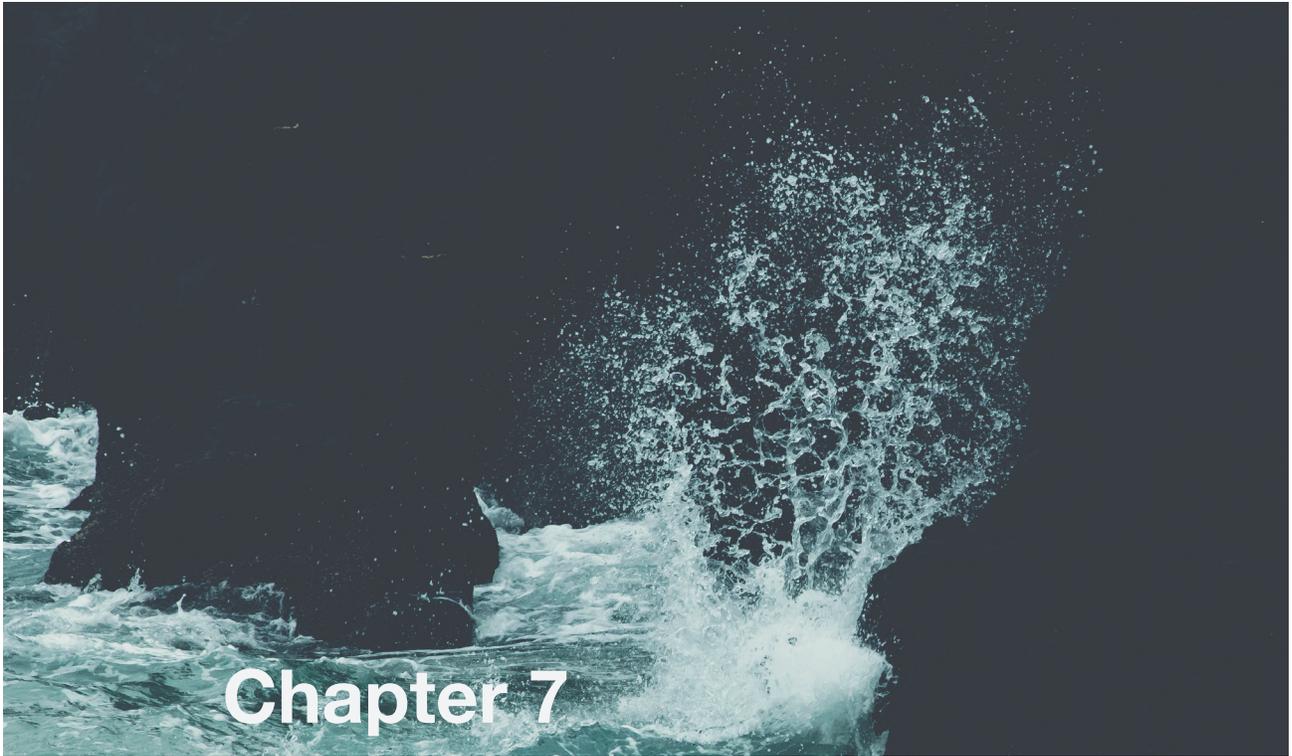
Greg Gaebe, Chaffin’s lawyer who was present for the deposition, jumped in and exclaimed, “He never said ‘lied.’”

That was true, but then I asked Chaffin, “What is the difference between lying and misleading to you, Mr. Chaffin?”

“There is no difference.”

Basically, Chaffin was busted. The call clearly took place, and now everyone knew it.

At this point I thought any jury would see Chaffin for what he was: a liar. Furthermore, any jury would believe Benlate was used on the farm on November 1 or 2, 1989.



Chapter 7

Needing Further Proof

Despite the milestone success in busting Chaffin, there was still a huge problem: Benlate is an odorless, tasteless, and colorless spray.

We still needed to prove that the liquid that came out of the big sprayer attachment with the 36-foot wingspan described by Donna Castillo in my office and in her depositions was, in fact, Benlate.

Strategically, I needed to show that the farm not only had Benlate

at the time but also that they actually used it in the manner Donna had described.

It was important to know what chemicals the farm had on hand and was using then.

This meant that we had to get their purchase records through a request for production. I was able to narrow my search to two suppliers that sold the farm its chemicals during that period of time.

Unfortunately, one of them had lost all their records during Hurricane Andrew, the strongest hurricane to ever hit south Florida. Andrew wiped out communities south of Miami, killing fifteen people when it struck in 1992. Dozens more died from injuries stemming from the storm and its aftermath.

The other supplier had provided Benlate to the farm in May 1989.

It was reasonable to believe that the farm still had a supply of it in November. Unfortunately, its records showed that the farm also had a total of 64 other chemicals on hand then, too, including herbicides, insecticides, fungicides, nutrients, and water. The task at hand now was to determine how many of the 65 chemicals, if any, were odorless, tasteless, and colorless and would have been applied with the 36-foot sprayer attachment.

We had already ruled out water because when I deposed Chaffin, I asked him how they watered the crops.

He explained that it was done with a water cannon, which shoots water at the crops. It doesn't come from a tractor with a sprayer attachment. So with that admission, we immediately knew whatever Donna had been soaked in wasn't water.

We had also ruled out nutrients, because I had asked Chaffin about how the farm provided nutrients to its crops.

He explained that the nutrients were put into a planned water irrigation system, then applied directly to the root zone of the plants by means of applicators (orifices, emitters, porous tubing, perforated pipes, etc.), placed either on or below the surface of the ground and operated under low pressure.

Furthermore, we were able to eliminate all herbicides from our list of possibilities, because based on Chaffin's deposition, the farm used a special tractor with a 12-foot wingspan for spraying them.

That left us with about
20 insecticides and
fungicides to focus on.

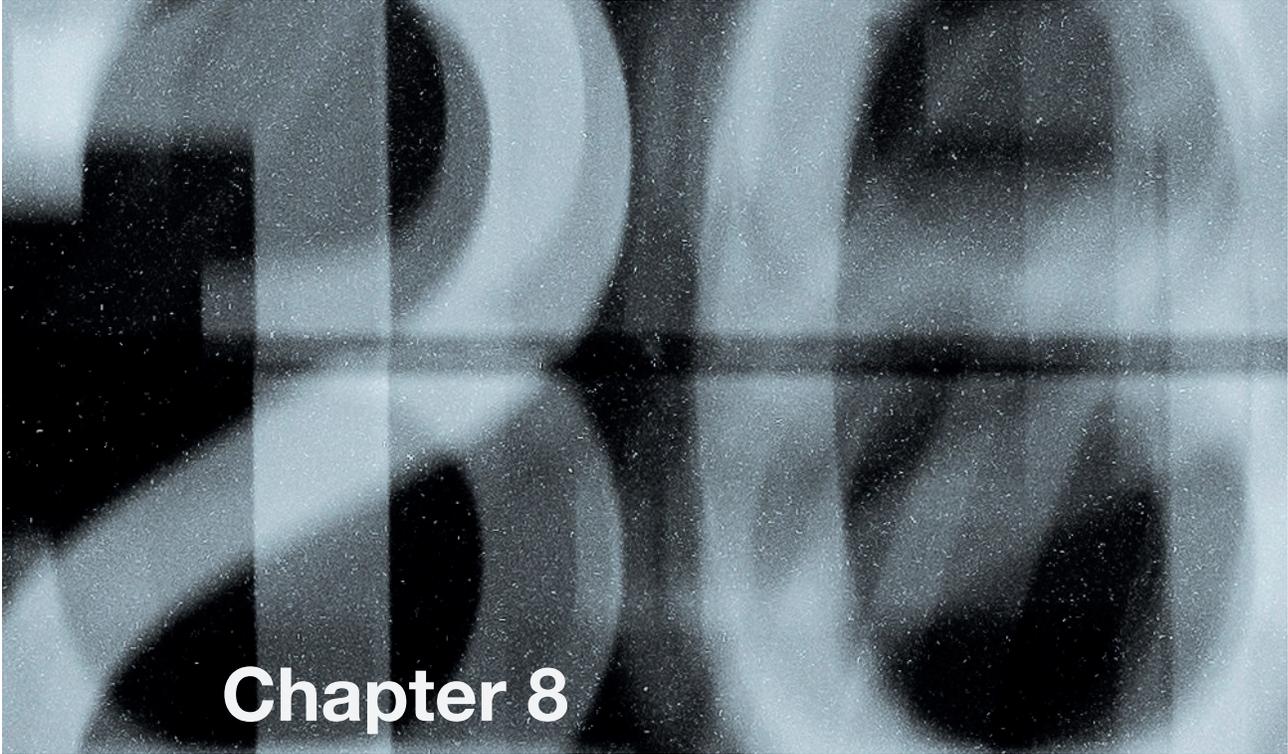
Most of those had an odor or some kind of taste, but there were five that were odorless, tasteless, and colorless and appeared to be just like water. The good news was that we had narrowed the list of 65 chemicals to only five possible culprits.

The bad news was that we had to prove Benlate, as opposed to the other agents, was the cause.

We were about a year away from our scheduled trial date, and I still needed to figure out how I was going to solve this problem. While I had eliminated the bulk of the possibilities, there were still five potential fungicides or insecticides the farmer could have been using the day Donna was sprayed.

If the farm simply said they were using all five, we were fucked. Game over. Case closed.

There would be no way for us to say which one of the five she had been hit with, because the burden of proof was on us.



Chapter 8

Percentages

It was incumbent on me to prove by the greater weight of the evidence that it was Benlate. What I mean by proving the greater weight of the evidence is that it has to be a greater-than-50% chance it was Benlate, or we could never get in front of the jury. A one-in-five shot is only 20%, and not enough to win the case.

It felt as though the whole case was about to go down the tubes.

By the time I got to this point, I was already two years into discovery and had a boatload of time and money sunk into this case.

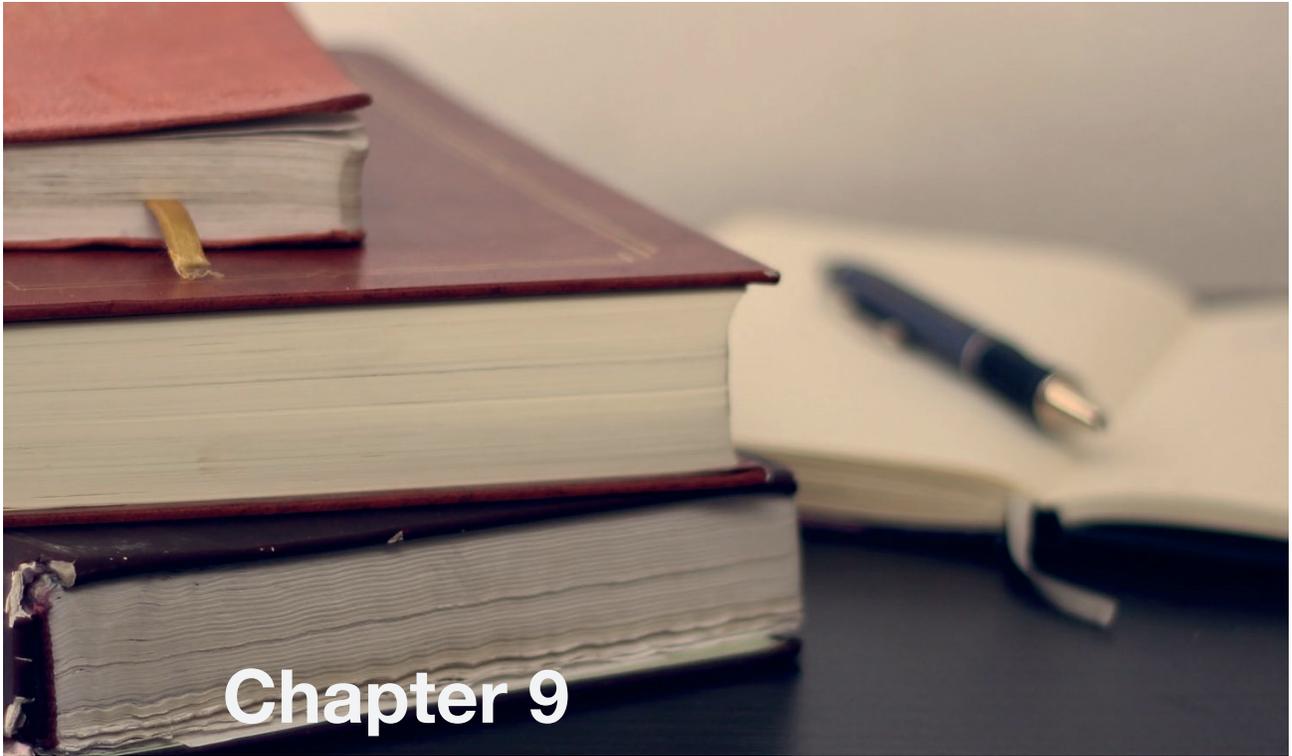
I spent endless days and nights wracking my brain, trying to figure out how I was going to prove it was Benlate that had been coming from the damn tractor with the 36-foot sprayer attachment.

There was no chance Chaffin would knowingly admit it or that the worker driving the tractor would remember. Too much time had passed, and too much was at stake.

It occurred to me about a year before trial that the only solid chance we had left to save the case was to use requests for admissions.

These are simply statements of fact that either side prepares and that the opposing party must admit or deny. You design your own requests for admissions, and the opposing party has thirty days to reply. The answers provided by them become absolute irrefutable facts that can be used against them at trial.

The only problem is that, just like interrogatories, the answering party has 30 days to reflect and think about their response. For this reason, I had to be very tactical about when I would send the requests. I needed to catch the other side off guard.



Chapter 9

Obstruction and Obstnacy

It was during a particularly tumultuous deposition, where both DuPont's and Pine Island's attorneys were being so obstructive and obstinate that they were instructing their clients not to answer many of my questions (refusing even to provide us with their business address!), that the lights went on in my head.

This was the perfect time to prepare and serve requests for

admissions. It was a year before trial, and both defendants were clearly in total denial mode about every facet of the case. They were putting up brick walls at every turn, thinking that would cause me to cave. With so much time left before the trial, neither defendant appeared especially focused on the big picture—certainly not like I was, or as they should have been at the time.

Our only hope was that they would take their current denial mentality to the next level.

Maybe they would neglect to think things through properly and simply deny my requests for admissions. If they were dumb enough to do that, they'd be stuck holding the position that none of the other products came out of the tractor with the 36-foot sprayer attachment on the day in question. That position would be binding.

In other words, the one who makes an admission cannot suddenly change their mind or say, "That's not what I meant." It is what it is, and it's done. It becomes an absolute fact.

It was a risk, but it was definitely worth a shot. “What the hell?” I thought. So I wrote up 65 requests for admissions, each one a single line asking the defendants to:

- “admit or deny they were using Benlate on or about November 1 or 2, 1989”;
- “admit or deny they were using Trigard on or about November 1 or 2, 1989”;
- “admit or deny they were using Bravo on or about November 1 or 2, 1989”;
- and so on until I had individually listed all 65 chemicals the farm had had on hand.

I put the requests for admissions in a package, crossed my fingers, and mailed it out.

Waiting those 30 days for their responses was like waiting for a jury verdict. I was on pins and needles, hoping and praying for denials across the board.

If they all came back as admissions, we were screwed. While you can use the answers that are favorable to you against the opponent, you can also throw the ones that don't work for you in the garbage.

But even if the responses were not helpful and I threw them all away, I didn't know how else I could prove it was Benlate and not any of those other 64 agents. To pull this off, our only hope was to get denials across the board.

Thirty long and painful days of waiting later, we received their answers.

They denied everything. Everything!

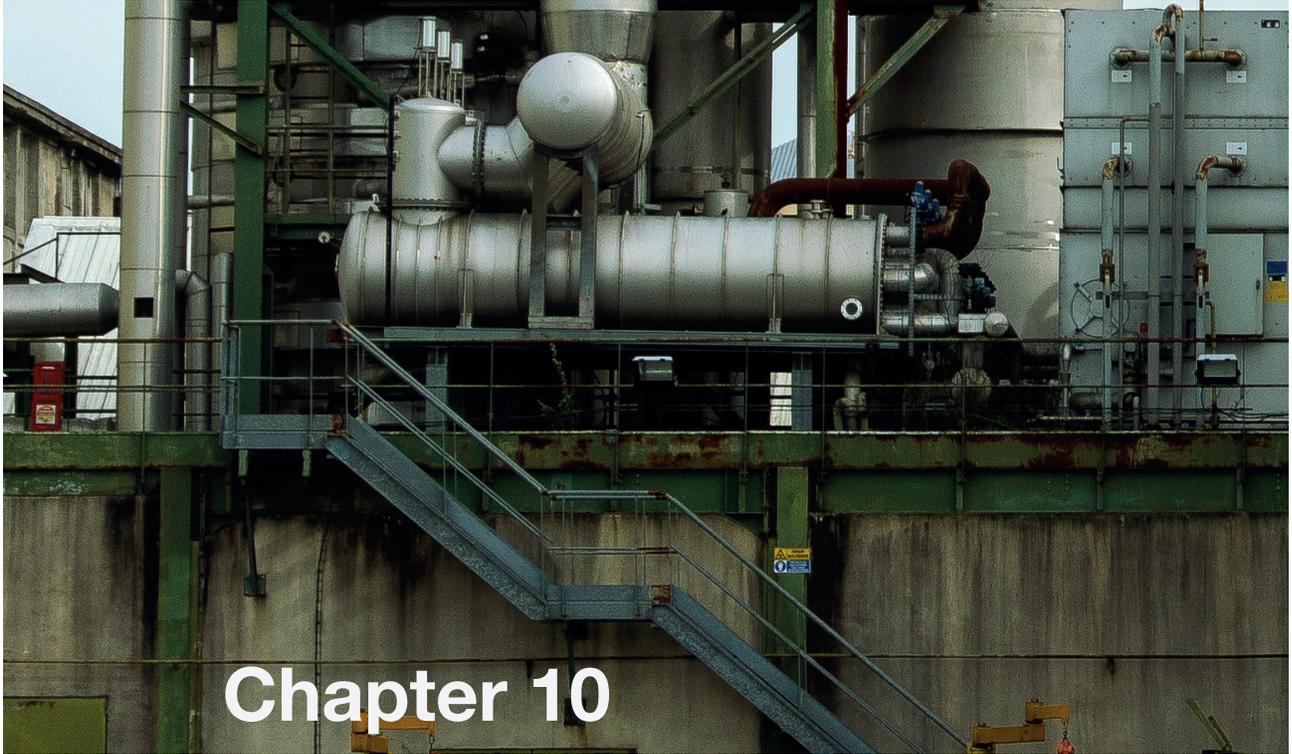
I turned to my team and said, "Holy shit. Look at this. This is fucking awesome. They did it. They fell right into our trap!"

This was a huge break for us. As far as litigation went, this was a great—albeit lucky—move.

I mean very lucky.

It was also a game-changer. It was one of those moments when I had to take a shot—be all in or get the hell out.

Thankfully, it worked. They had no idea what they'd done, and I had no intention of tipping them off until we got to trial.



Dealing with the DuPont Librarian

DuPont had known for a long time that Benlate was dangerous. There had been ongoing litigation over the same product for several years before we filed the Castillo case, because the harmful chemical was destroying farmers' harvests.

Interestingly, the way Benlate extinguished crops mirrored the way it damaged human eyes. As a species, we have something in

our cells called tubulin, which is also present in plants. Benlate is a spindle poison that inhibits the growth of tubulin. It finds the tubulin in the cells of fungus and kills it. Unfortunately for DuPont, it works on both humans and plants in the same way. That is exactly what showed up in the 1991 University of California study, too.

What I wanted to find out next was whether DuPont had done studies of its own that showed similar harmful results. After all, it created the poisonous product. DuPont must have done some research or had some documentation that showed results similar to those of the University of California studies.

I knew DuPont had a document depository in Delaware, where its corporate offices were located, which they had created during the crop litigation. DuPont kept millions of documents filed there in a large warehouse building where it could look for whatever they thought they needed for their cases.

The depository was intimidating, imposing, huge, poorly organized (at least for us!), and very dusty. The first time I walked in I just wanted to turn around and go home. My only thought was that I could spend ten years there and still barely make a dent.

To make matters worse, this was before the digital age, so all the files were paper files, which meant we had to physically wade through each and every potential page of evidence by hand.

There were hundreds of thousands of pages, if not more, that we had to get through.

The depository had a librarian on staff whose sole job was to make opposing lawyers' lives miserable. She fit the classic librarian stereotype: gray hair, a bit frumpy.

While she appeared to be kind and accommodating, her real mission was to confuse, mislead, and disarm the opponent. To her, anyone outside the DuPont family was the enemy.

While there was an index of documents, it was extremely difficult to understand, unless of course you were the one who compiled it. It made little sense to anyone other than the librarian and a handful of DuPont insiders. That was the point.

My team consisted of Marjorie Salem and myself. Marjorie was an associate who worked for me, spent endless hours delving into old boxes that had been hidden away for years. We could have sat there endlessly, with no promise of ever coming up with what we were looking for. Nothing was properly labeled or logically filed. There was no rhyme or reason to what was handed over to us, which I suspected was very much by design.

This is what is known as a classic document dump. Defendants are required to cooperate by giving you access to their documents, but they aren't required to make it easy.

“Here you go. You figure it out.”

Yeah, right.

Whenever we asked for a specific document, the librarian's answer was always, “No, we don't have that study,” or “If we do have that study, it might be in this area over here,” or “Did you look over there?” and she'd wave her hand in the general direction of more boxes taking up space in the large, dark, and dreary warehouse building. Sure, she provided some assistance, but nothing was ever where it was supposed to be.



Chapter 11

Doing the Opposite

Finally, we realized that if she sent us to the right, we ought to check out whatever was to the left. If she said look up, we should look down.

We'd go to wherever she told us to search and begin by looking around the edges, then work our way out and back in again. Odds were that whatever we were looking for—especially if it was the rat studies on Benlate or benomyl—we were not going to find it there. And if the studies were there, they

weren't going to be clearly labeled “Rat Studies.”

We did, however, find some in-vitro tests and dermal skin transmission studies that proved to be important elements in our case.

The in-vitro tests showed the level of exposure to benomyl at which cells die, and the dermal skin transmission studies showed what percentage of the chemical could permeate human skin.

The in-vitro test results were good for us, because they illustrated that at the very low dose of 22 parts per billion of benomyl, cells die. This is what causes malformations. And the dermal skin transmissions studies illustrated that 3% of the amount of the chemical that gets on a person's skin makes its way into their bloodstream. This was solid information and would help our case, but what we really needed to find were those rat studies.

As mentioned earlier, the biggest obstacle was the filing index. Documents were not filed in any rational manner. To the contrary—they were intentionally filed in an irrational manner so that critical documents would be nearly impossible to find. It became clear to us that while critical documents were filed in a way that kept them hidden from outsiders, there still had to be a system in place to make sure they were properly mislaid. **Otherwise, how would the librarian know how to misdirect us?**

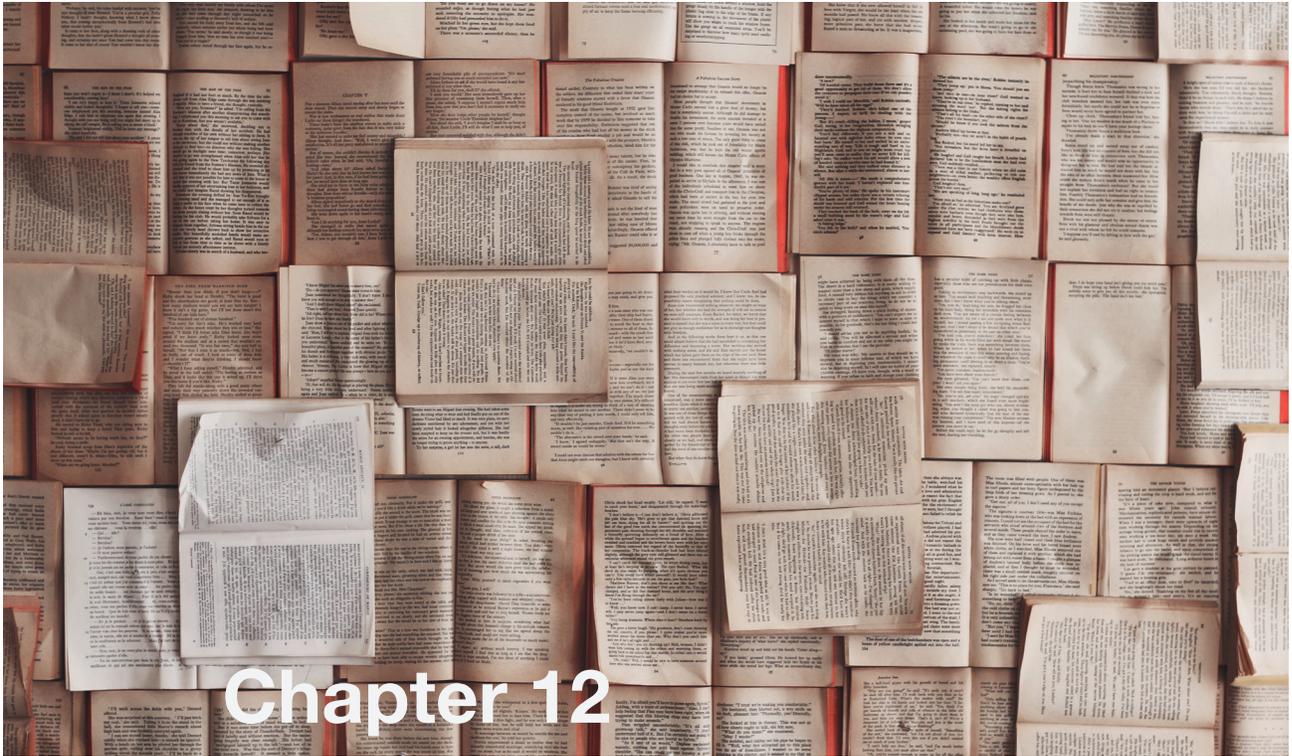
Shortly before we were about to pack it in, I stumbled across a stack of papers marked “Special Luncheon Memo(s)” that had several attachments stapled to them. These appeared to be suspiciously out of place, so I began flipping through them, one page after the other.

BINGO!

“Hey, look at this!” I shouted across the room to Marjorie. “I think I found the rat studies!”
And I had.

They were studies Robert Staples, the head of toxicology for DuPont, had conducted in 1980 and 1982, cleverly hidden under special luncheon memos where no one else was likely to search.

Clearly, we needed to take Staples's deposition. I now felt that we were in a strong enough position to make our case—that it was a good a time to pull the trigger and let the show begin.



Chapter 12

More Obstruction, at a Price

After three weeks of combing through hundreds of thousands of pages, I came up with 80,000 pages of relevant material that I wanted to use, and I earmarked it as evidence. When I told the librarian about my needs, she smiled and said, “No problem.” I figured they’d send me a bill for the usual 10 cents a page,

along with copies of everything I had put aside.

Marjorie and I left Delaware and waited for the 80,000 pages we had selected to arrive. We needed those documents, which DuPont had to deliver to us within a certain window of time to be compliant.

When the bill arrived, I thought it had to be some kind of mistake. Surely they had made an error. But they hadn't. The cover letter stated that I was required to pay the full amount in advance or they wouldn't send me the documents.

DuPont knew we were under a tight discovery schedule, with several pending motions that could kill our case without those documents.

I went bat-shit crazy and began bitching and complaining to my staff like a lunatic on the loose, which is exactly what they expected me to do. Regardless, I didn't want DuPont to perceive any weakness on our side. I contemplated going to the judge, but we didn't have the time—nor was there any assurance it would help. After some deep thought and deliberation, I decided I would turn their hoped-for weakness into a strength.

Even though it would put a financial strain on me and I wasn't happy about it, I prepared a check for the full amount and placed it in a FedEx envelope to go out that day. I put a one-line note inside that read,

“Enclosed you will find a check in the amount of \$80,000—I expect the documents as agreed by 5:00 p.m. tomorrow.”

This was part of the
DuPont litigation strategy.
Make the case impossible
at every turn, both
physically and financially.

I'd heard from a friend that they had been snooping around, looking up my tax returns to see just how far they could financially push me and our firm. Thankfully, we were still making really good money. Little did they know that I could and would endure their wrath, come hell or high water.

It had been made very clear who I was dealing with—a bunch of ruthless bastards who were out to ruin me before I could take them down for what they had done to little Johnny Castillo. From where I stood, that just meant they were worried because they knew I was on to them and had a good shot at winning this case. It was only after I paid for the documents that I think the defense lawyers began treating me with a little respect. None of their nonsense was working, and they must have realized that I was crazy enough to see this through to the bitter end.

While the results of the Staples studies weren't quite as bad as those of the University of California study, they certainly weren't good. It appeared that Staples had tested the product in two different studies and got two different results.

DuPont had been trying to get their product licensed since 1977. At the time they conducted the 1980 study they had a Rebuttable Presumption Against Registration (RPAR) that they needed to warn pregnant women about possible birth defects caused by exposure to Benlate.

To lift the RPAR, DuPont needed to prove that their product was safe.

The 1980 Staples study did not accomplish that. So DuPont went back and repeated the study in 1982, but this time the results were much better. Purportedly it was the same study, but all of a sudden the results were much better, because they weren't finding as many malformations this time around.

We were baffled by the differing results.

Armed with the 80,000 pages of documentation from DuPont, I was able to take Staples's deposition. In preparing for that deposition, I smelled a rat—and it wasn't a lab rat. There had to be something different in those studies. I wracked my brain, reading and rereading the studies and the underlying data until it finally came to me.

One study was histological, and the other was clinical.

A histological study is better, because it's carried out with a microscope, and the measurement (in this case, of the eyes) is actually calculated mathematically. If the eyes were undersized, they were called microphthalmic, which means there was a negative effect—the eyes didn't grow enough and it was considered a malformation.

In contrast, clinical studies are based largely on opinion: some guy in a lab is saying, “**Looks good to me.**” He is essentially eyeballing the results and then moving on to the next rat. You can easily get better results from a test like that than you can when you are conducting a mathematically based histological study.

Finally, when scientists conduct these studies, they compare milligrams of the chemical to kilograms of body weight (mg/kg). In a well-designed study, the rats will be weighed every day.

Rats aren't like humans; they grow really fast, which means their weight can change very quickly. This can radically affect the ratio of milligrams to kilograms. In the more scientific 1980 Staples study, the rats were weighed daily, which provided a true and accurate comparison of dose to weight measurement.

In 1982, however, they were not weighed daily, and therefore the information in this second study produced artificially better results for DuPont and could not be considered anywhere near as accurate as the 1980 study. Staples admitted the methodology was good for the 1980 study but couldn't explain why the results were so bad. His only attempted explanation for the improved results in 1982 was the availability of better "computer technology." However, when we pressed Staples in his deposition, he admitted that the two studies had different methodologies and that the preliminary report he prepared in 1980 wasn't so good for DuPont.

The results showed signs of eye malformations at very low testing levels. As it turned out, Staples caught a lot of heat from his superiors—even though he was the head of toxicology—for preparing the report without prior review from the higher-ups in the company.

Marjorie and I felt we had struck gold when we found those rat studies—especially the Staples studies. Now, after the depositions, it was clear that in fact we had.

These and other discovery findings would prove essential in our winning the case against DuPont— which I cover in great detail in my book, *Blindsided*.

This paper has given you a taste of the lengths to which I and my team went in order to combat the lengths to which DuPont and its team went to hide the facts from us. **But our determination paid off in the end.**