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MEMORANDUM

TO: Jonathan Sullivan
Alan Nadel
FROM: Jeffrey S. Wolff
DATE: February 17, 2009
RE: Syngenta/Paraquat Liability Matters

**Responses to Questions Regarding Widnes Interviews, Scientific Presentations at the
Toxicology Forum and Lewis Smith's Employment**

Jonathan, the questions raised in your February 13, 2009 email message regarding the Widnes interviews, the proposed scientific presentations at the Toxicology Forum, and Lewis Smith's employment are set out below followed by my responses which appear in the indented text beginning with the word "Comment."

1. Clive Campbell has expressed interest in interviewing a number of individuals (in his conversation with me on the subject he named four) who were employed at the 4'-bipyridyl plant at Widnes, in order to build up a better picture of the exposure profile in connection with the assessment of the feasibility of carrying out an epidemiological study. What are the pros and cons of taking this step from a litigation perspective and would the position be different if the interviews were conducted by in-house or external counsel in the UK (recognizing that this of itself could be sensitive from the perspective of the interviewees)? The people involved are all current or former employees of Syngenta or its legacy companies.

Comment: If the interviews are conducted by Dr. Campbell alone, it is highly likely that any information he learns or written interview summaries he prepares would not be protected by either the attorney-client or the work-product privileges. It is also highly likely that any written or verbal communications involving Dr. Campbell concerning the results of the interviews would not be privileged unless such communications were directed by Mr. Campbell to legal counsel seeking legal advice, and then only the communication of the information to counsel would be privileged, not the underlying information obtained by Dr. Campbell without the assistance of counsel. In other words, information that is not

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privileged does not itself become privileged by communicating it to counsel.

If the interviews are conducted by Syngenta in-house legal counsel, it is likely that written summaries prepared of the interviews would be protected by either the attorney-client or the work-product privileges, as would the interviews themselves. The highest level of protection would be provided if the interviews were conducted by outside counsel. The United Kingdom, like the United States, recognizes that in-house counsel can have privileged communications with employees (or former employees) of the company by whom they are employed. The issue of to whom these communications can be communicated within the company while retaining their privileged character is still a matter of controversy in the United Kingdom, but like the United States, the communication must be for the purpose of rendering legal advice. Since the position of some EU (and non-EU) countries is more restrictive regarding the privileged nature of in-house counsel interviews, the safest course would be for outside counsel to conduct the interviews.

It is understood that Dr. Campbell's participation in the Widnes interviews is important to their success. Under American principles of privilege, Dr. Campbell's presence at the interviews, with inside or outside counsel, should not abrogate either the attorney-client or work-product privileges. The same result would most likely occur under United Kingdom principles, though the most secure method of ensuring that communications are privileged is if they occur only between counsel and the witness.

Various EU countries follow privilege principles that are substantially similar to the Anglo-American approach. For example, Denmark, follows the substantially same rule. Although France now appears to treat in-house and outside counsel alike, there still seems to be a lack of certainty regarding how French courts would treat this privilege issue.

Other EU countries such as Germany, and significantly Switzerland, follow slightly different rules as they relate to in-house counsel and it cannot be said with certainty that these types of communications (a) would enjoy the same level of privilege protection if conducted by in-house counsel in these countries, or (b) would be granted privileged status by the courts of these countries if litigation were instituted in these countries. For example, Switzerland makes the privilege available only to outside counsel. And while Germany permits in-house counsel to refuse to give evidence against their employers (when the evidence relates to

confidential matters that they conducted while employees) they must be admitted to practice law in Germany. This is not intended as a comprehensive review of the privilege rules of the entire continent, but one principle clearly emerges from an analysis of these countries: the highest level of protection is available for confidential communications between outside counsel and their client.

Additionally, while it might be expected that a conversation privileged in the country in which it occurs would also be treated as privileged in a court proceeding in a different country, this is not always the case. For example, if a forum court's law of privilege does not recognize the right of in-house counsel to conduct privileged communications, a court could likewise refuse to recognize the privileged nature of the communications as well. Therefore, the safest course, if litigation might be initiated outside the borders of the country in which the communications are to take place, is to follow the most conservative approach to these communications, which involves the use of outside, rather than inside counsel.

2. Lewis Smith has begun to discuss with me the prospect of Syngenta organizing to take a more proactive stance particularly with regulators on the claimed links between paraquat and parkinsonian symptoms. Specifically Lewis is looking at the possibility of a verbal presentation to the Toxicology Forum (see www.toxforum.org) of the peer review by a panel of external scientific experts (acting at the request of Syngenta) of the published scientific and epidemiological studies, contained in a paper an advanced draft of which is attached. There is a lead time of several months to secure space on the agenda for meetings of the Toxicology Forum. You will see from the website that the next meetings of the Forum are in Aspen in July 2009, in Brussels in October 2009, and in Washington in February 2010. According to Lewis the audiences would include senior managers from EPA. The paper would be presented by one of the authors who would say that the authors had acted at the request of Syngenta.

Comment: The importance of proactively publicizing research studies that discredit the alleged connection between paraquat and Parkinson's disease is clear; however, the publication of an agenda for upcoming Toxicology Forum meetings that references Syngenta-sponsored research in this field conceivably could have adverse consequences.

For example, the public announcement in the Toxicology Forum agenda of an upcoming discussion of the Berry, La Vecchia and Nicotera research may increase the likelihood that their continuing (Syngenta-sponsored) work will come to the attention of (a) lawyers for claimants, and (b) anti-pesticide advocates such as NGOs. To the extent there is some public acknowledgment that the work of Berry, La Vecchia and Nicotera is