



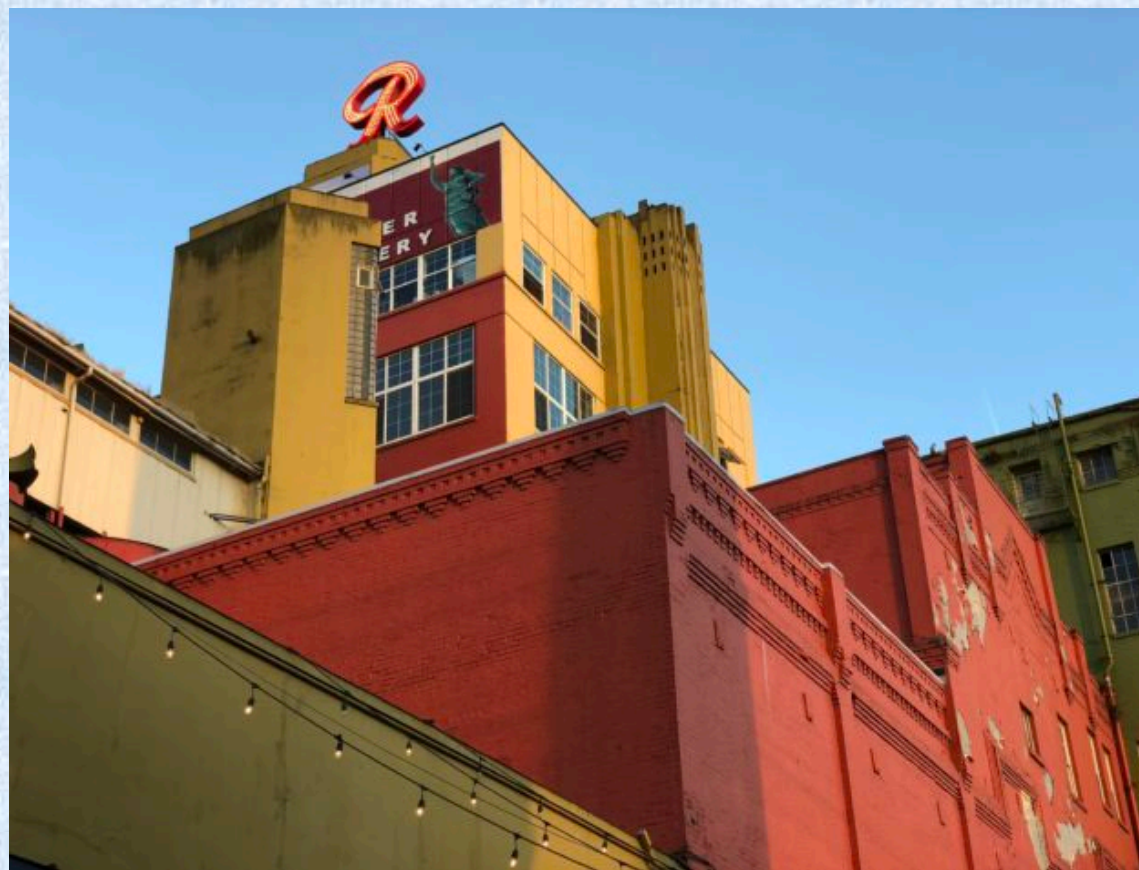
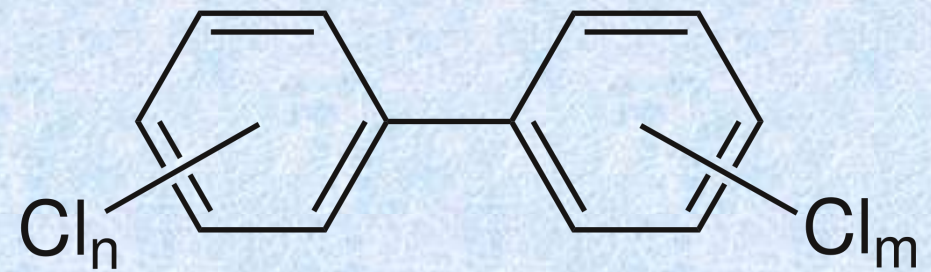
Seattle v. Monsanto

How the City of Seattle used a public nuisance claim to achieve a \$160 million settlement with Monsanto.

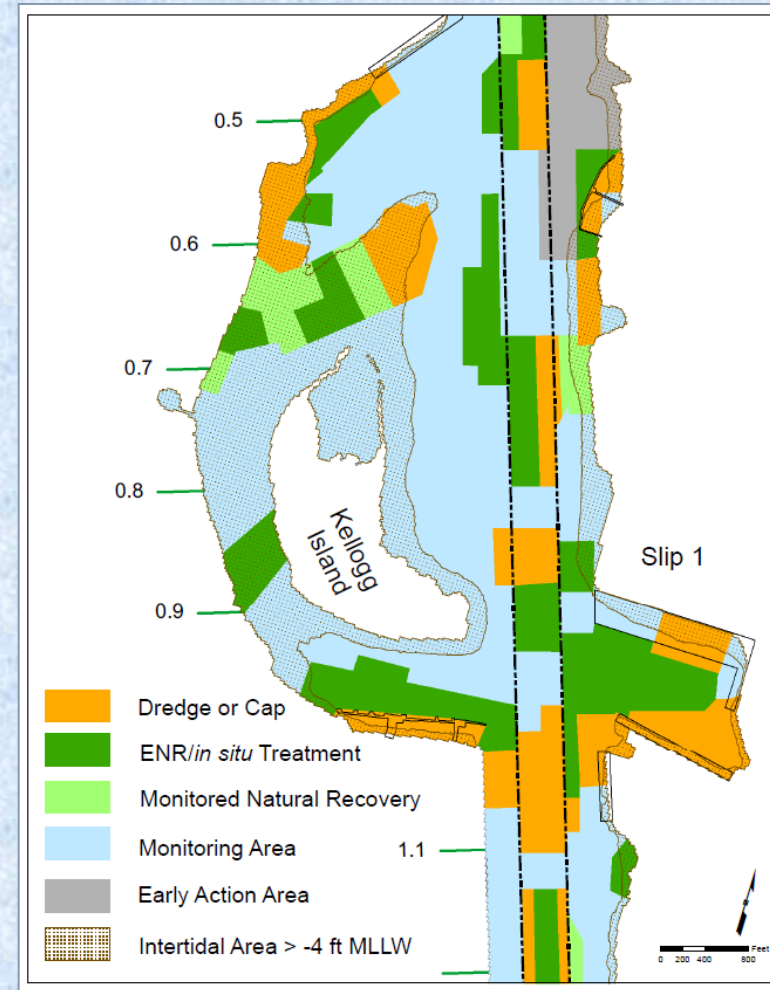
By: Seattle Assistant City Attorney, Laura Wishik

The views expressed in this presentation are solely those of Laura Wishik, not the Seattle City Attorney's Office.

Polychlorinated biphenyls



PCB contamination in the Lower Duwamish & in stormwater



Monsanto's documents

August 29, 1960

Mr. S. Pacini
Engineering Department
Portable Compressor Division
Chicago Pneumatic Tool Company
Manufacturing Division
Franklin, Pennsylvania

Dear Mr. Pacini:

Your letter to Mr. James D. Wright of our Company has been forwarded to me for answer. Your questions are difficult to answer in a generalized way.

As you know, the Pydraul fluids are insoluble in water as well as heavier than water. Unless these materials are strongly emulsified they will sink to the bottom of any receiving stream and as such will not give rise to the typical picture of oil pollution. If the material is discharged in large concentrations it will adversely effect the organisms in the bottom of the receiving stream which will effect the aquatic life in the stream. This effect will probably not be any more serious than the effect of heavier petroleum oils. If large concentrations of these materials are contemplated in your discharge stream they could probably be removed by emission breaking and settling. This can be accomplished by gravity separation if the emulsions can be readily broken.

We have had no experience with any regulatory agency concerning the discharge of these materials. I would imagine that these agencies would frown on the discharge of large quantities of any type hydraulic fluid.

Based on the toxicity studies of these fluids with laboratory animals I would not expect them to be very toxic to aquatic life. On the other hand, this is a surmise on my part since we have no tests on aquatic animals.

In summary I would like to say that if small quantities of these materials are accidentally spilled into a receiving stream there would probably be no harmful effect. If, on the other hand, a great deal of the material was spilled some readily identifiable damage might ensue.

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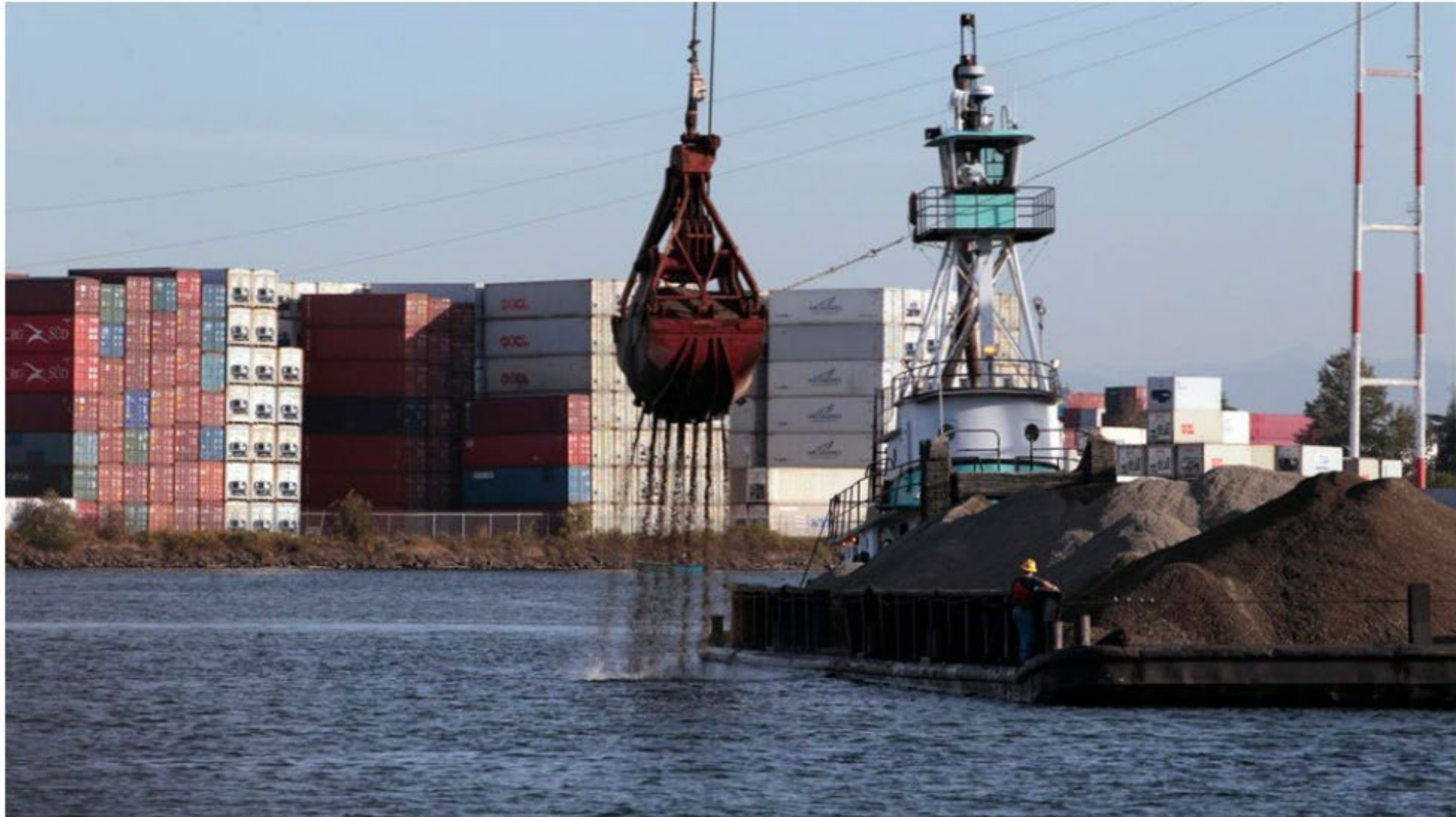
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Los Angeles settles with Monsanto for \$35 million over PCBs in waterways



Monsanto reaches \$160 million settlement with Seattle over pollution in the Duwamish River

by Martha Bellisle | Associated Press | Fri, July 26th 2024 at 8:29 AM



Why?

Class action vs. independent lawsuit

Better facts and fact witnesses

Better state nuisance law

Determination & perseverance

Outside counsel

Initial Claims

1. Public nuisance
2. ~~Equitable indemnity~~
3. ~~Failure to warn~~
4. ~~Defective design~~
5. ~~Negligence~~



Final Claim

Intentional public nuisance

Monsanto asserted 90 defenses and 6 counterclaims under ~~CERCLA, the Clean Water Act,~~ negligence, ~~unjust enrichment and contribution.~~ 15 defenses dismissed.

Class action

Nationwide: all local governments that discharge into water bodies impaired for PCBs.

Seattle likely would have been awarded about \$25 million.



Better facts and fact witnesses

Documented presence of PCBs in stormwater going to the Lower Duwamish.

Documented risk to people from consuming resident seafood and evidence that people were nonetheless continuing to consume it.



Long history of Seattle working to control sources of PCBs to stormwater.

Fact witnesses with a years of relevant experience and commitment to reducing the harm from PCBs.

Better state nuisance law

RCW 7.48.120

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either **annoys**, injures or endangers the **comfort, repose, health or safety of others**, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or **in any way renders other persons insecure in life**, or in the use of property.

Champa v Washington Compressed Gas Co., 146 Wash. 190, 197 (1927)

The statute **enlarged** the common-law definition and remedy for a private nuisance.

The “enlargement” is for interference with “comfortable enjoyment.”



Everett v. Paschall, 61 Wash. 47, 51 (1910)
(fear due to tuberculosis sanitarium in
residential neighborhood).

*“The question is, not whether the fear is
founded in science, but whether it exists; not
whether it is imaginary, but whether it is real, in
that it affects the movements and conduct of
men.”*

*“The theories and dogmas of scientific men,
though provable by scientific reference, cannot
be held to be controlling unless shared by the
people generally.”*

Id., at 52

Tiegs v. Watts, 135 Wn.2d 1 (1998)

“A person who conducts a business or a plant lawfully and in the best manner practicable with a sound operation may still commit nuisance if the operation interferes unreasonably with other persons’ use and enjoyment of their property.”

“The fact a governmental authority tolerates a nuisance is not a defense if the nuisance injures adjoining property.”

Kitsap County v. Kitsap Rifle and Revolver Club, 184 Wash.App. 252, 279-280 (2014)

“The Club cites no Washington authority for the proposition that noise cannot constitute a nuisance unless it violates applicable noise regulations and Code provisions. None of the nuisance statutes or Code provisions require that a nuisance arise from a statutory or regulatory violation. A nuisance exists if there has been a substantial and unreasonable interference with the use and enjoyment of property.”

Ferry v. City of Seattle, 116 Wash. 648, 662 (1922) (construction of a large reservoir on a hill above a residential neighborhood).

*“The test. . .is . . .whether the complaining property owners are **under a reasonable apprehension of danger**, and the question of the reasonableness of the apprehension turns again, not only on the probable breaking of the reservoir, but the realization of the **extent of the injury** which would certainly ensue; that is to say the court will look to consequences in determining whether the fear existing is reasonable.”*



The public has a right to the use and enjoyment of public waters. Monsanto's PCBs are interfering with that right. The public has a reasonable fear of consuming resident seafood due to PCB contamination.

Fishing for the Safest Seafood from the Lower Duwamish River? Eat Salmon.

The main way people are exposed to chemicals in the river is through eating fish. Don't eat resident fish, shellfish, or crab that live year-round in the river. Salmon are the healthiest choice because they spend a short time in the river.



Chum		SAFE TO EAT 2-3 MEALS per week			
Coho					
Pink					
		OR	Sockeye		
Chinook (King)		LIMIT 1 MEAL per week			
OR					
Blackmouth	Resident Chinook caught during winter	CAUTION 2 MEALS per month			

DO NOT EAT RESIDENT FISH, SHELLFISH, or CRAB

Especially **WOMEN** who are or may become **PREGNANT, NURSING MOTHERS, and CHILDREN.** They have chemicals that can harm the growth and brain development of babies and children.



Crab, Flounder, Perch, Clams, Sole

For more information call 1-877-485-7316 www.doh.wa.gov/fish

RCW 7.48.160

Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.

Kitsap County v. Kitsap Rifle, 184 Wash. App., at 281.

“We interpret RCW 7.48.160 as requiring a direct authorization of action to escape the possibility of nuisance.”

City of Benton City v. Adrian, 50 Wash. App. 330, 342 (Div. 3 1988)

“[I]f apportionment is difficult or impossible,” Defendant has the burden of proving the individual contribution to the nuisance by multiple parties.

Order Denying Monsanto’s Motion for Summary Judgment, at 8 (J. Richard Jones)

“The City correctly notes that if an apportionment is difficult or impossible, the defendants have the burden of proving their individual contribution.”

Comparative Fault

RCW 4.22.070

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages The sum of the percentages . . . shall equal one hundred percent. The entities whose fault shall be determined include the claimant

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances



Contributory Fault

RCW 4.22.005

. . . Any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages . . .

Morgan v. Johnson, 137 Wash. 2d 887, 894 (1999) (Legislature purposefully omitted intentional conduct from RCW 4.22.015).



Statute of Limitations

RCW 4.16.160

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any . . . municipality . . .of the state, in the same manner as to actions brought by private parties:

PROVIDED, That . . .there shall be no limitation to actions brought in the name or for the benefit of the state

Wash. Pub. Power Supply System v. General Electric Co., 113 Wn.2d 288, 293 (1989)

“[M]unicipal actions are brought ‘for the benefit of the state’ when those actions arise out of the exercise of powers traceable to the sovereign powers of the state which have been delegated to the municipality.”

Proprietary

Operating drainage system

Contracting to produce electricity

Declaring emergency due to contaminated
drinking water

Sovereign

Administering public schools

Leasing land for logyards

Maintaining public recreation facilities

RCW 35.22.280

Specific powers enumerated.

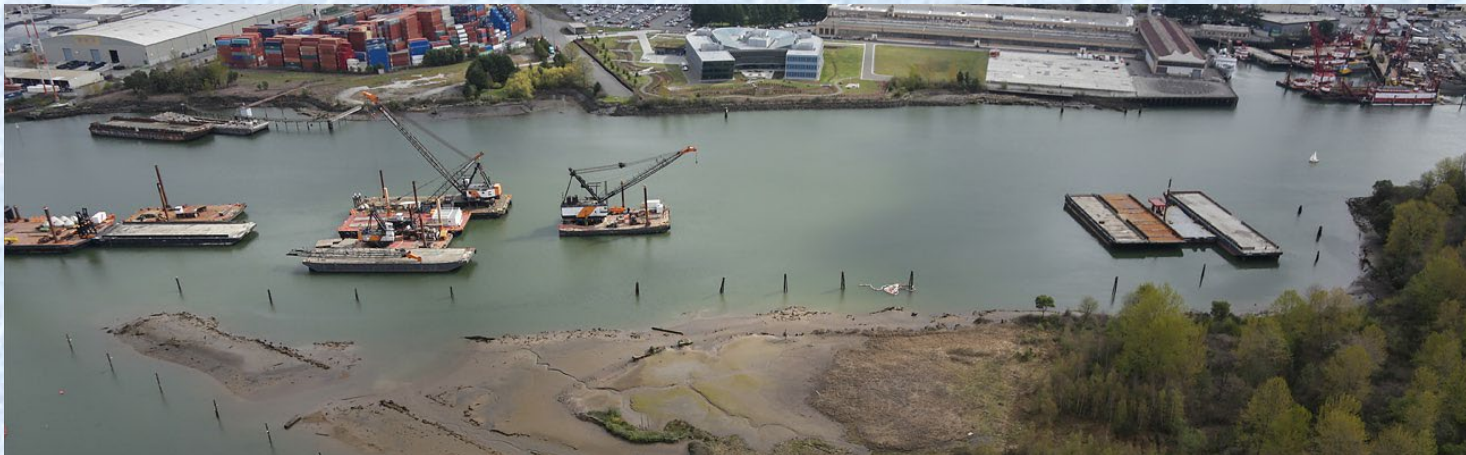
Any city of the first class shall have power:

(29) . . . to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits . . .

(30) To declare what shall be a nuisance, and to abate the same . . .

Order Granting in Part and Denying in Part Monsanto’s Motion to Dismiss, at 9 (J. Robert Lasnik)

“Seattle is authorized by statute to prevent ‘the defilement or pollution of all streams running through or into its corporate limits. . . Maintenance of public waterways fulfills the city’s delegated responsibility to act as steward of the land and waters within its boundaries for the benefit of the public at large”



Practical Considerations

- Counter-claims
- Discovery burden
- Available fact witnesses, particularly 30(b)(6)
- “Bad” documents
- Outside counsel



Because

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