

COPY

IN THE MATTER OF:

Transwestern Pipeline Company
vs.
Monsanto Company, et al.

Cause No. BC 026959

Deposition of Curtis La Verne Early
August 20, 1992

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1 SUPERIOR COURT
2 FOR THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF LOS ANGELES
4
5 TRANSWESTERN PIPELINE
6 COMPANY,
7
8 Plaintiff,
9
10 vs. NO. BC 026959
11
12 MONSANTO COMPANY AND
13 DOES 1 THROUGH 200
14 INCLUSIVE,
15
16 Defendants.
17
18 Deposition of CURTIS LA VERNE
19 EARLY, taken on behalf of the Plaintiff, at
20 the offices of Bryan Cave, One Metropolitan
21 Square, in the City of St. Louis, State of
22 Missouri, on the 20th day of August, 1992
23 before Ronald A. Gore, Registered
24 Professional Reporter and Notary Public.
25

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1 CURTIS LA VERNE EARLY,
2 of lawful age, having been first duly sworn
3 to testify the truth, the whole truth, and
4 nothing but the truth in the case
5 aforesaid, deposes and says in reply to
6 oral interrogatories propounded as follows,
7 to-wit:

8 EXAMINATION
9 QUESTIONS BY MS. GRADY:

10 Q: Good morning, Mr. Early. I
11 introduced myself earlier, my name is Janet
12 Grady, and I represent Transwestern
13 Pipeline Company in this litigation. Could
14 you please state your full name and spell
15 it for the record?

16 A: Curtis La Verne Early.
17 C-u-r-t-i-s. L-a V-e-r-n-e. Early,
18 E-a-r-l-y. Address, you want?

19 Q: Yes.

20 A: Rural Route 2, Box 2194, St.
21 James, Missouri 65559.

22 Q: Mr. Early, have you ever had your
23 deposition taken before?

24 A: One occasion. I think they took a
25 deposition. Asked me questions and I think

1 they recorded it.

2 Q: What did the matter involve?

3 A: It had to do with a fire.

4 Q: Was this related to your work at
5 Monsanto?

6 A: Let me think on that. Indirectly,
7 yes.

8 Q: How so?

9 A: As I recall, it involved PVC wire
10 coating as an alleged cause of the fire,
11 electrical fire, and Monsanto at one time
12 provided that product. I was employed in a
13 position that had to do with product fire
14 safety, and while I had nothing to do with
15 the PVC, I was asked to give testimony.

16 Q: How long ago was this deposition?

17 A: It was the mid '70's, I think.

18 Q: And you're saying PVC; P as in
19 Peter, V as in Victor, and --

20 A: Polyvinylchloride, PVC.

21 Q: Have you ever provided a statement
22 under oath in connection with your
23 employment at Monsanto?

24 A: This deposition we're talking
25 about is the only one I recall.

1 Q: Have you ever acted as an advisor
2 or a consultant on any litigation?

3 A: No.

4 Q: Have you ever acted as an expert
5 witness?

6 A: No.

7 Q: I'm sure you've gone over this
8 with your lawyer, but let me establish the
9 ground rules that we'll operate under today
10 during the deposition. You understand that
11 you're under oath today just as if you were
12 testifying in court?

13 A: Yes, ma'am.

14 Q: You will have a chance to review
15 the record that will be typed up into a
16 transcript booklet after the deposition,
17 but it's important that we try to get the
18 testimony as accurately as possible today.
19 Do you understand that?

20 A: Yes.

21 Q: So that we get an accurate record,
22 you must answer audibly. If you wait for
23 me to finish my question before you answer
24 and I wait for you to finish your answer
25 before I pose another question, it will

1 make our court reporter's life a lot easier
2 and the record a lot better. Do you
3 understand that?

4 A: I'll try.

5 Q: Good. It is important that you
6 understand the questions that I ask. If
7 you believe you do not understand a
8 question, will you please let me know?

9 A: Yes.

10 MR. MAYER: Or I will.

11 MS. GRADY: Are you under any
12 medication that would prevent you from
13 giving truthful and accurate testimony
14 today?

15 A: No, ma'am.

16 Q: Is there any other reason you feel
17 you can not give truthful and accurate
18 testimony today?

19 A: No, ma'am.

20 Q: We will likely take a break about
21 every hour or so, but if you would like to
22 take a break to consult with your lawyer or
23 for any other reason, will you please let
24 me know?

25 A: Yes, ma'am.

1 Q: I will be asking you today
2 questions about documents and events that
3 took place a considerable period of time
4 ago. I am entitled to your best
5 recollection as you sit here today. If you
6 have a recollection in response to one of
7 my questions, I'm entitled to whatever
8 recollection you have. Do you understand
9 that?

10 A: I do.

11 Q: Are you represented here today,
12 Mr. Early?

13 A: This gentleman is representing me.

14 Q: And are you being paid for your
15 time here today?

16 A: No, ma'am.

17 Q: Could you please summarize for me
18 your post-high school education?

19 A: I went to Washington University,
20 graduated in 1957, majored in chemistry
21 with a bachelor degree.

22 Q: Is that a bachelor of science?

23 A: Bachelor of arts.

24 Q: Have you had any post-graduate
25 course work?

1 A: No. I've taken some night courses
2 that may or may not have qualified as
3 graduate courses. I think no.

4 Q: Did any of the night courses you
5 took relate in any way to your employment
6 at Monsanto?

7 A: No, ma'am.

8 Q: What was the first job you had
9 after college?

10 A: I was working at Shell Oil Company
11 before and during my going to college, and
12 I worked for Shell Oil Company for five
13 years after -- more than that, for -- I
14 worked for Shell Oil Company after
15 graduation.

16 Q: So, your employment with Shell
17 ceased in about 1962, is that right?

18 A: '63.

19 Q: '63. And when did you start
20 working for Shell?

21 A: 1947, I think.

22 Q: When did you enter Washington
23 University?

24 A: 1954.

25 Q: What was your job at Shell in

1 1947?

2 A: I was a laboratory assistant in
3 the research department.

4 Q: And what were your duties when you
5 left Shell?

6 A: I was a research chemist involved
7 with product development in the industrial
8 lubricants field.

9 Q: What kind of applications were the
10 lubricants on which you were doing work
11 put?

12 A: Well, they were varied.
13 Industrial gear lubricants, quenching oils
14 for cooling hot metals, rust inhibitors for
15 automotive cooling systems. Those are
16 examples. Is that adequate?

17 Q: Yes, that's fine. What was the
18 nature of your work as a research chemist
19 for industrial lubricants?

20 A: To develop new or replacement
21 products in these kinds of areas, to
22 improve existing products or develop new
23 products.

24 Q: And how did you go about
25 prioritizing your time? How was it

1 established what projects you would work
2 on?

3 A: To a degree, what my boss told
4 me. But the gear oils represented a major
5 -- fairly major effort, and so did the
6 quenching oils. And I was at liberty, to
7 some degree, to judge how much time I spent
8 on each. So it was a matter of -- if I
9 had a good idea on something in the gear
10 oils, I might go gung-ho on it for a while
11 and then I'd get a hot idea on the
12 quenching oils. So that was the nature of
13 the prioritization.

14 Q: Did the request for development
15 come directly to you from customers?

16 A: No. Not usually. At Shell the
17 -- again, the management would -- the
18 group leader in charge of industrial
19 lubricants would assign different projects
20 to different people, and I was assigned
21 these areas to work on.

22 Q: And within those areas were you
23 given free rein?

24 MR. MAYER: Objection, vague.

25 MS. GRADY: You can answer.

1 A: Pardon?

2 Q: You can answer.

3 MR. MAYER: You can answer unless
4 I instruct you not to, which, with an
5 objection like that, I won't do.

6 A: Well, to a degree. But I also --
7 if my boss had a good idea I would pursue
8 his idea. So, if he said go investigate
9 some additive, I would investigate that
10 additive. On the other hand, I was free to
11 use my own mind to generate ideas for new
12 additives for compositions. Does that
13 answer your question?

14 Q: No. But I think it's the
15 question, not the -- here's what I'm
16 interested in. Were you working against
17 product specifications that you were trying
18 to meet or was your work by way of more
19 pure research?

20 A: Both. Some of each.

21 Q: And how was your time divided
22 between the two, or how would you
23 differentiate between the two? Why don't
24 you answer the latter of those questions.

25 A: Gear oils were more against

1 industry accepted specifications, and I
2 probably spent more time there than on
3 other areas. The quenching oils, there was
4 no industry specs to measure the results we
5 wanted to achieve, and we had to establish
6 our own test criteria and the like.

7 Q: Were any of the products or
8 lubricants on which you were working
9 synthetic?

10 A: No.

11 Q: What was the chemical composition
12 of the industrial gear lubricants you were
13 working on?

14 MR. MAYER: Objection, seeks to
15 invade trade secret and proprietary
16 information. You can go ahead and answer
17 generically.

18 MS. GRADY: Are you representing
19 Shell?

20 MR. MAYER: No. But I think we
21 have a duty to protect their trade secrets
22 as well.

23 A: I don't want to violate any
24 confidences with Shell, either. However,
25 these gear oils were made of -- the base

1 stocks were mineral oils. And they ranged
2 from light mineral oils, like motor oil
3 viscosities, to very heavy viscus oils.
4 And they contained additives that would
5 improve the lubrication characteristics of
6 the base mineral oils. The lubrication
7 qualities and the oxydization stability
8 were the two things that we focused on in
9 trying to improve the quality of the
10 composition.

11 Q: Mr. Early, let me take care of
12 some business that we should have taken
13 care of at the beginning. It's my
14 understanding that there is a standard
15 stipulation in this case that all
16 depositions are taken under the California
17 Code of Civil Procedure. Is that your
18 understanding?

19 MR. MAYER: That would be my
20 understanding.

21 MS. GRADY: Okay.. So stipulated?

22 MR. MAYER: So stipulated.

23 MS. GRADY: Where did you go next
24 after you worked at Shell?

25 A: Monsanto.

1 Q: And how were you recruited to
2 Monsanto?

3 MR. MAYER: Objection, the
4 question lacks foundation.

5 A: Do I answer?

6 MR. MAYER: Yes, you do.

7 A: I wrote them a letter inquiring
8 about employment opportunities. I, in
9 effect, applied for a job, I was not
10 pirated.

11 Q: And why were you interested in
12 working for Monsanto?

13 A: Oh, I don't have a good answer to
14 that. I was happy at Shell, I simply
15 decided to -- at age 35, or so, to look
16 around for better job opportunities.

17 Q: And were you subsequently hired by
18 Monsanto?

19 A: Yes.

20 Q: In what position?

21 A: The title was project manager,
22 commercial development.

23 Q: What year was this?

24 A: 1963.

25 Q: What did you understand your job

1 responsibilities to be?

2 A: To identify new business
3 opportunities, product opportunities for
4 the corporation, and to introduce new and
5 experimental products into the marketplace
6 were the primary functions.

7 Q: Who did you report to in 1963?

8 A: A fellow by the name of T.P.
9 Sands, when I hired in.

10 Q: And what was his position?

11 A: I've forgotten the exact title.
12 Manager of oil additives and functional
13 fluids, commercial development. It may
14 have been just manager, additives and
15 fluids, commercial development, I don't
16 recall exactly.

17 Q: Were there other product managers
18 for commercial development in addition to
19 you?

20 A: Yes.

21 Q: How many in 1963?

22 A: 15 to 20.

23 Q: Did you have anyone working for
24 you?

25 A: A secretary, but no professional.

1 Q: And how did you get work
2 assignments?

3 A: To a large degree, I generated my
4 own. I was hired because of my background
5 in industrial lubricants, and we'd look for
6 areas in the field of oil applications
7 where we could sell new additive systems to
8 oil companies or replace oils with
9 synthetic fluids, particularly in
10 non-automotive markets.

11 Q: Did your work entail any
12 laboratory time?

13 A: Not at -- no. In training a
14 little bit, but no.

15 Q: So, how did you go about looking
16 for areas in the field of oil applications?

17 A: Well, I don't know how to answer
18 that.

19 MR. MAYER: Do you understand the
20 question, sir?

21 A: Yes, I understand the question.
22 It just gets hard to answer succinctly. I
23 just knew from my work background the
24 nature of additive systems in many
25 industrial lubricants, and I also knew

1 where there were areas that needed to be
2 improved upon. To confirm some of these
3 ideas, or this knowledge, I did make a
4 survey of nearly all the major oil
5 companies, visited their industrial
6 lubricant people to see what problems they
7 envisioned in some of the product areas and
8 came back and reported to my management
9 where there was or was not any
10 opportunities for additives for lubricating
11 oils.

12 Q: So the survey of oil companies was
13 as potential customers or potential
14 competitors or --

15 A: Customers. Monsanto sold
16 industrial oil additives to oil companies
17 and automotive companies.

18 Q: So, you understood that Monsanto
19 was selling lubricants to oil companies for
20 the use by oil companies?

21 A: Additives, not -- Monsanto was
22 selling additives to oil companies, yes.

23 Q: And then the oil companies -- it
24 was your understanding the oil companies
25 took the additives and put them in some

1 other --

2 A: Into their -- we sold the
3 additives, not the base stocks.

4 MR. MAYER: For the completeness
5 of the record, Mr. Early, let me caution
6 you to permit counsel to finish her
7 question before you respond.

8 A: Excuse me. All right.

9 MS. GRADY: What I'd like to do is
10 go through the rest of your career at
11 Monsanto and get the broad outlines of how
12 your work progressed. What was your next
13 position at Monsanto after project manager,
14 commercial development?

15 A: I resigned from Monsanto and left
16 the company in 1968, and went into private
17 business. I returned to Monsanto in 1970
18 and was employed as -- I think the title
19 of commercial manager, corporate fire
20 group.

21 Q: For the period between 1963 and
22 1968, were you a project manager that
23 entire period?

24 A: Yes, ma'am.

25 Q: And, then, when you returned to

1 Monsanto in 1970, you became a commercial
2 manager, is that correct?

3 A: That was my title, yes.

4 Q: What was your next position after
5 that?

6 A: I was promoted to manager,
7 corporate fire safety -- corporate fire
8 group.

9 Q: What year was that?

10 A: I think 1973.

11 Q: What was your next position after
12 that?

13 A: I was -- I had two titles. I was
14 manager, fire safety center and manager,
15 commercial development in the plastics
16 division. The manager, commercial
17 development related to the plastics
18 division only; the manager, fire safety
19 center was a corporate function.

20 Q: What year did you assume these
21 titles?

22 A: I believe I assumed those titles
23 in '73. And I may have assumed that
24 manager, corporate fire group, perhaps, in
25 '71 or '2, earlier.

1 Q: Okay. You indicated that you were
2 manager of commercial development in the
3 plastics division. Was that also called
4 the plasticizers group?

5 A: No.

6 Q: Separate entity?

7 A: Completely separate.

8 Q: What was the work of the plastics
9 division, as you understood it?

10 A: I managed a small group of people
11 who were involved with improving existing
12 products or developing new products. New
13 markets more than products, new markets in
14 the area of plastics.

15 Q: Did you continue to do any work in
16 the area of lubricants?

17 A: No.

18 Q: And what was your next position?

19 A: Commercial development manager,
20 separations business group.

21 Q: And what was your understanding of
22 your job responsibilities in that position?

23 A: We were looking for market
24 opportunities in the area of separating
25 mixtures of gases. Monsanto had new

1 technology that would allow the separation,
2 for example, of hydrogen from carbon
3 monoxide.

4 Q: In what year did you assume that
5 position, meaning commercial development
6 manager, separations business group?

7 A: I believe 1979.

8 Q: And what was your next position
9 after that?

10 A: I retired from that position in
11 1986.

12 Q: Are you currently on salary to
13 Monsanto?

14 A: No, ma'am.

15 Q: Did you act as a consultant in any
16 way after 1986 for Monsanto?

17 A: No, ma'am.

18 Q: Why did you leave Monsanto in
19 1968?

20 MR. MAYER: Go ahead.

21 A: Two primary reasons. There were a
22 number of reasons. I had planned to take
23 early retirement for several years and was
24 developing a place in the country to change
25 my lifestyle. And I also had a serious

1 health problem, which accelerated the
2 timetable. And Monsanto, in 1986, offered
3 an incentive program for early retirement,
4 so the timing -- the combination of those
5 things were the reason I left Monsanto.

6 Q: So, you were describing why you
7 retired in 1986?

8 A: Yes. Is that what you asked?

9 Q: No. What I asked was -- but
10 that's fine. What I asked was, why did you
11 leave Monsanto in 1968?

12 A: Oh, I'm sorry.

13 MR. MAYER: I think you said '86,
14 counsel.

15 MS. GRADY: If that's the case,
16 then your answer is perfectly
17 understandable. What I'd like to know
18 about is why you left in '68.

19 A: Purely personal reasons. I had a
20 hankering to go into business for myself.
21 The very nature of my employment at
22 Monsanto required a personality of that
23 type, so I wanted to go into business for
24 myself, and I took a flyer.

25 Q: What kind of business did you

1 start?

2 A: Opened up a large restaurant in
3 Titusville, Florida.

4 Q: When did you first hear about
5 PCBs?

6 MR. MAYER: Objection, vague,
7 over-broad. Go ahead.

8 A: As far as I can recollect, when I
9 joined Monsanto in 1963.

10 MS. GRADY: And what do you recall
11 hearing about PCBs upon joining Monsanto in
12 1963?

13 A: They were a major component of a
14 product line called Aroclors, which were
15 used in --

16 MR. MAYER: You've answered the
17 question.

18 MS. GRADY: Excuse me, counsel.
19 Please do not interrupt the witness when he
20 is giving an answer. Please continue, Mr.
21 Early, with your answer.

22 MR. MAYER: Well, counsel, I'm not
23 interrupting. I just want the witness to
24 understand that he's required to answer
25 your question and nothing more.

1 MS. GRADY: No, that's not true.
2 The witness is required to give me his full
3 recollection in response to the question.
4 It had not been exhausted and you did
5 interrupt the witness, and please do not do
6 it again.

7 MR. MAYER: Counsel, I'll defend
8 my witness as I see fit, thank you. Go
9 ahead, Mr. Early.

10 A: Would you repeat the question,
11 please?

12 MS. GRADY: Sure. What did you
13 learn about PCBs upon joining Monsanto in
14 1963?

15 A: They were -- PCBs were called
16 Aroclors, a line of synthetic fluids.

17 Q: And what did you understand about
18 the chemical composition?

19 A: Chlorinated biphenyls.

20 Q: Had you ever heard of PCBs prior
21 to joining Monsanto?

22 A: Not to my recollection.

23 Q: Was it your understanding that the
24 formulation of PCBs was a trade secret of
25 Monsanto's?

1 A: Yes.

2 Q: When you returned to Monsanto in
3 1970, did your work involve lubricants in
4 any way?

5 A: No, ma'am.

6 Q: Let me show you an organizational
7 chart that I think is beyond the time when
8 you were working with lubricants, but maybe
9 we can establish that. I'd like to mark
10 this as Exhibit 614. I'll describe Exhibit
11 614 for the record as bearing Bates number
12 Tran 085889 through 085894.

13 MR. MAYER: For the record, my
14 copy seems to begin only with 890, which is
15 repeated twice. Yours, as well the
16 witness's copy, as well, is missing 889.

17 MS. GRADY: I'll describe it for
18 the record, then, as Tran 085890 through
19 085894. I'd like to direct your attention,
20 Mr. Early, to the third page of the exhibit
21 which, up at the top, says "Director
22 functional products group, J. Mason." And
23 you will find your name in the third
24 column.

25 A: This is page --

1 Q: Page 085892.

2 MR. MAYER: That would be the
3 fourth page of our exhibit.

4 MS. GRADY: Because you have two
5 page 90's?

6 MR. MAYER: Right. All right?

7 A: All right. Yes. All right.

8 Q: What was the corporate fire group?

9 A: A corporate group involved with
10 the broader question of product fire safety
11 to keep abreast of regulatory activities in
12 this area, keep our business groups
13 informed so that our products were legal
14 and safe for intended applications. The
15 reason -- should I answer the reason we're
16 on this chart?

17 MR. MAYER: Well, she asked you
18 what the group was, so you can answer that
19 question.

20 A: All right. This corporate group
21 was set up by the corporate vice-president
22 of technology on the board of directors,
23 and he funded the group, but he wasn't
24 involved with the day-to-day administrative
25 -- administration of our activities, so

1 our group was plugged in to this chart for
2 administrative purposes only. We were not
3 part of the mainstream activities of this
4 business group.

5 Q: Was the corporate fire group
6 created around 1970?

7 A: Yes.

8 Q: Did your work with the corporate
9 fire group relate in any way to Aroclors?

10 A: Not that I recall.

11 Q: Did all of the work that you did
12 with Monsanto that in any way related to
13 PCBs or Aroclors occur between 1963 and
14 1968?

15 A: To the best of my recollection.

16 Q: Did you play any role in the
17 development of Turbinol?

18 A: I wasn't familiar with Turbinol,
19 per se. The precursor to Turbinol -- I
20 may have been involved with the development
21 of some of the Pydrauls, which were later
22 named Turbinol, after I left the group in
23 '68. I don't believe there was a Turbinol
24 fluid in the company during my tenure in
25 the '60's. I can't recollect there being.

1 Q: Were you involved in the
2 development of certain Pydraul products?

3 A: Yes, ma'am.

4 Q: Was it your understanding that the
5 Pydraul products, or some of the Pydraul
6 products were precursors to Turbinol?

7 A: Not during my employment, no.

8 Q: Were you involved at all with the
9 product called MCS-153?

10 A: Not that I can recall.

11 Q: Were you involved at all in
12 development or in any other way with a
13 product called OS-81?

14 A: No. Not to my best recollection.

15 Q: What does the designation MCS
16 stand for?

17 A: I think originally somebody
18 considered that to be Monsanto Chemical
19 Sample, designated a -- but it took on
20 more commercial significance later.

21 Q: What was the commercial
22 significance of the designation MCS?

23 A: I don't really know. It was just
24 associated with Monsanto.

25 Q: So, that was a commercial name for

1 certain Monsanto products were designated
2 MCS?

3 A: No. I think it was not a
4 commercial name. It was designation of
5 experimental, newer products.

6 Q: So, what's your understanding of
7 how the designation MCS came to be
8 associated with Monsanto?

9 A: Monsanto Chemical Sample. Because
10 of what it stands for, Monsanto Chemical
11 Sample.

12 Q: Did the MCS designation indicate
13 that the chemical had not yet been put into
14 production?

15 MR. MAYER: Objection, calls for
16 speculation.

17 A: I don't really know how to answer
18 that, especially with these products that
19 were before my time. If I used an MCS
20 designation it would be for a newer product
21 that we didn't have field experience with
22 yet, and until we had established its
23 utility and safety and other factors in the
24 field we didn't want to attach to it a
25 commercial name such as Pydraul or

1 Skydraul. Does that answer your question?

2 MR. MAYER: Keep in mind, the
3 important thing is whether you think you've
4 answered the question.

5 A: All right.

6 MS. GRADY: Did you ever perform
7 any experiments with Aroclors?

8 A: I was involved in tests with
9 Aroclor-containing fluids.

10 Q: What was your involvement?

11 A: In-house at Monsanto I was
12 primarily an observer of fire tests that we
13 would run on experimental fluids. And I
14 would help judge whether the fire tests
15 were successful or not. And, if not, we
16 wouldn't take them to the market.

17 Q: What about outside of Monsanto,
18 how were you involved with experiments with
19 Aroclors?

20 A: It's hard to recall. I remember
21 one instance where a customer wanted to
22 confirm the fire safety characteristics of
23 an Aroclor-containing fluid by designing
24 and running a full scale field trial. And
25 I was involved with it. There were heaters

1 on tank cars, and we would -- the heaters
2 would heat the fluid and they would be
3 pumped through the tank cars of, say,
4 asphalt, or something, to keep it molten.
5 And the customer wanted to see how safe it
6 was, so we deliberately broke a line and
7 set it on fire with the fire department's
8 -- this was near Chicago. That type of
9 thing. I've been at Underwriters
10 Laboratories and observed their testing of
11 Aroclor-containing fluids to determine
12 their safety for some intended use. Those
13 are two examples that I can recall.

14 Q: Did you meet with your attorney to
15 prepare for this deposition?

16 MR. MAYER: You may answer yes or
17 no.

18 A: Yes.

19 MS. GRADY: When did you meet?

20 A: Yesterday.

21 Q: For how long?

22 MR. MAYER: Objection, the
23 question seeks to invade the attorney work
24 product doctrine because it inquires into
25 how much time counsel thinks was necessary

1 to meet with the witness. On that basis, I
2 must instruct you not to answer.

3 MS. GRADY: That is an
4 illegitimate objection.

5 MR. MAYER: That's your position.
6 I've stated mine.

7 MS. GRADY: That is my position.
8 It does not seek to invade communications
9 between attorney and client.

10 MR. MAYER: I said work product, I
11 didn't say privilege.

12 MS. GRADY: And the time you spent
13 with your client -- it is your position,
14 just for the record, the time you spent
15 with your client is work product?

16 MR. MAYER: Of course. The time
17 spent with the client is dictated by my
18 thoughts and mental impressions concerning
19 the case.

20 MS. GRADY: Mr. Early, were you
21 shown documents by your counsel in
22 preparing for your deposition today?

23 MR. MAYER: You may answer yes or
24 no.

25 A: Yes.

1 MS. GRADY: How many documents
2 were you shown?

3 A: I don't recall how many.

4 Q: Give me a ball park?

5 MR. MAYER: She's entitled to your
6 best estimate, nothing more.

7 A: Four or five.

8 MS. GRADY: Did any of the
9 documents you were shown refresh your
10 recollection about events that occurred
11 during your employment with Monsanto?

12 MR. MAYER: You may answer yes or
13 no.

14 A: Yes.

15 MS. GRADY: What events that
16 occurred while you were employed by
17 Monsanto did you have a better memory of
18 after you looked at documents than before?

19 A: It's hard to say. I don't know.
20 I had not recalled MCS-153, and then I
21 remembered that somewhere back in my
22 history there was such a product. If I had
23 been involved with its development, I would
24 have known. I don't recall other examples.

25 Q: Did each of the documents that you

1 were shown help you remember better events
2 that occurred while you were employed by
3 Monsanto?

4 A: I don't really know if each of the
5 documents did or not.

6 Q: Was it your impression that they
7 did?

8 A: Probably not all of them.

9 Q: Do you recall seeing any document
10 and saying this just doesn't help me at
11 all, I still don't remember this?

12 MR. MAYER: Do you understand the
13 question?

14 A: Yes. But I don't know the answer
15 to it. I don't know whether I saw a
16 document that did or didn't help me
17 recollect events of the past. I honestly
18 don't.

19 MS. GRADY: Well, earlier you
20 testified that you believed that when you
21 saw these documents it did help you recall
22 events in the past?

23 A: I said yes, some of them.

24 Q: Some of the documents?

25 A: Yes.

1 Q: Okay. Well, we'll take this up as
2 we go along. The next exhibit I'd like to
3 show you is Exhibit 615, which we're
4 marking here today, which I will describe
5 for the record as a one page document
6 bearing Bate's number Tran 009152, which
7 purports to be a memorandum from C.L. Early
8 to E.P. Wheeler, dated April 30, 1964. And
9 I'd ask that you read this exhibit, Mr.
10 Early, and tell me if you have seen it
11 prior to today?

12 MR. MAYER: Let me interpose an
13 objection that any inquiry into what
14 documents were shown to Mr. Early yesterday
15 would invade the attorney work product
16 doctrine, because it would require the
17 thoughts, mental impressions and theories
18 of counsel as to what was important to show
19 the witness.

20 MS. GRADY: Let me state for the
21 record that that is an illegitimate
22 objection. Under California law I'm
23 entitled to inquire as to what documents
24 were shown the witness to attempt to
25 refresh his recollection, and I'm building

1 a foundation, as you well know, to obtain
2 the documents that were used to refresh his
3 recollection.

4 MR. MAYER: I assumed you would,
5 counsel. I call your attention to Judge
6 Brown and Weil's discussion in the
7 California Practice Guide of Civil
8 Procedure before trial where they
9 specifically upheld this objection. I
10 would note, also, this is consistent with
11 the position that's been taken by Monsanto
12 counsel to date.

13 MS. GRADY: I'll note that it
14 wasn't taken by Mr. Preuss last --

15 MR. MAYER: Mr. Preuss is a little
16 taller than me, a little older, a lot
17 better looking, so, therefore, he's not me.

18 MS. GRADY: When you said Monsanto
19 counsel, you just meant yourself?

20 MR. MAYER: No. I meant Monsanto
21 counsel, myself and others.

22 A: I wrote the document, I saw it. I
23 wrote it.

24 MS. GRADY: Is that your
25 signature, Mr. Early?

1 A: Yes.

2 Q: And you have no reason to believe
3 you didn't write this document, right?

4 A: No, I have no reason to believe I
5 did not write this document.

6 Q: Who is E.P. Wheeler?

7 A: He was a member of the Monsanto
8 medical department involved with assessing
9 the safety and toxicity characteristics of
10 products.

11 Q: And how did your work bring you
12 into contact with Mr. Wheeler?

13 A: I was involved with new --
14 introducing new products to the
15 marketplace, and we took no product out
16 that did not have the medical department's
17 approval from the standpoint of safe
18 handling.

19 Q: Did you play any role in
20 determining what tests would be conducted
21 by the medical department to determine safe
22 handling?

23 A: No, ma'am.

24 Q: Was every product that was
25 formulated while you were at Monsanto

1 between 1963 and 1968 that you had any
2 involvement with sent to the medical
3 department for a determination of safe
4 handling?

5 MR. MAYER: Objection, vague and
6 ambiguous as to safe handling. Can you
7 break that down, counsel?

8 MS. GRADY: No. I'm just using
9 the term the same way you did. You can
10 answer.

11 A: Every product that I handled or
12 was involved with taking to the market went
13 to the medical department for assessment.
14 I had to have their approval regarding its
15 safety for the intended use.

16 Q: Did you have any discussions with
17 customers -- and I'm focusing all of my
18 questions -- let me make this preface. I'm
19 focusing all my questions from now on,
20 unless I tell you differently, during the
21 period 1963 to 1968 when your work in some
22 way involved Aroclors and lubricants.
23 During that time period did you have any
24 discussions with any customers concerning
25 toxicity of Monsanto products?

1 A: Only in a general way. When
2 presenting data on a new product, I would
3 discuss the technical material and call
4 their attention to the safe handling
5 information that was prepared by our
6 medical department and included verbatim in
7 the brochure or literature.

8 Q: What do you mean by the term safe
9 handling?

10 A: How to handle the product safely.
11 To -- you don't drink it. If you
12 accidentally get it on your skin, wash,
13 take a bath. If you have a spill in the
14 plant, clean it up.

15 Q: At any time during 1963 and 1968
16 did you discuss with any customer health
17 warnings concerning Monsanto products?

18 MR. MAYER: Objection, vague and
19 ambiguous as to health warnings.

20 A: I was not a toxicologist or
21 trained medically, I referred any such
22 inquiry, if I had any, and I don't
23 recollect any specific inquiries, I would
24 automatically direct them to Elmer Wheeler.

25 MS. GRADY: How did you come into

1 contact with customers during this period
2 of your work at Monsanto?

3 A: Many different ways. Many times
4 we would get inquiries cold from the field
5 for -- somebody needs something we might
6 have. In development of new products, I
7 knew from experience where some of them
8 might apply, we'd make contacts. And a
9 third avenue would be through trade
10 association meetings discussing customer
11 needs with people there.

12 Q: When you indicated in your answer
13 that you sometimes got inquiries cold, were
14 you referring to yourself?

15 A: Yes.

16 Q: So, calls would come in directly
17 to you from the field?

18 A: Yes. Although they might come
19 through the operator, or -- sometimes
20 directly to me. Because I was fairly well
21 known in the marketplace. However,
22 sometimes they would come in through some
23 other route and be referred to me.

24 Q: Did you ever have any contact with
25 a company called Transwestern Pipeline

1 Company?

2 A: No, ma'am.

3 Q: Did you ever have any contact with
4 a company called Texas Eastern Transmissiõn
5 Company?

6 A: To the best of my recollection, I
7 made one call to Texas Eastern with Dale
8 Smith of Monsanto, at his request.

9 Q: What was the purpose of the call,
10 as you understood it?

11 A: Again, I'm taxing my
12 recollection. Texas Eastern was a customer
13 of Monsanto for Aroclor-containing fluids,
14 and Dale Smith was the marketing manager in
15 charge of the Texas Eastern account. Some
16 of the products I was trying to develop
17 would be lower cost versions of what we
18 were already selling into the marketplace.
19 And if my memory serves me right, Dale
20 Smith asked me to accompany him so that his
21 customer would hear about this new line of
22 products that we were working on from
23 Monsanto rather than by hearsay, other
24 sources.

25 Q: Where did you go on this --

1 A: I do not remember.

2 Q: Who did you talk to at Texas
3 Eastern?

4 A: I do not remember.

5 Q: What did you say on your visit?

6 A: I do not remember.

7 Q: Did you discuss a low cost
8 substitute for MCS-153 -- a lower cost,
9 let me say?

10 A: Presumably, but I do not
11 remember. I do not remember the meeting.
12 I do remember Dale inviting me to go, and I
13 went.

14 Q: Is that your entire recollection
15 of any contact with Texas Eastern
16 Transmission Company at any time?

17 A: I'm sorry, that is all I remember.

18 MR. MAYER: There is no reason to
19 apologize, sir. That's your memory.

20 A: I don't remember.

21 MS. GRADY: Up at the top of page
22 615 -- I'm sorry, Exhibit 615, there is a
23 little designation under the cc column that
24 says "df," and then there is a colon next
25 to it.

1 A: All right.

2 Q: Do you recall, in Monsanto usage,
3 what, if anything, that term meant?

4 A: Development file.

5 Q: And what did the "FF" stand for?

6 A: Functional fluids.

7 MS. GRADY: Do you need a break?

8 (Recess).

9 MS. GRADY: Mr. Early, in
10 developing a new product at Monsanto, what
11 groups within Monsanto were involved?

12 MR. MAYER: Objection,
13 over-broad.

14 A: Do I answer?

15 MS. GRADY: Yes.

16 MR. MAYER: If you can.

17 A: Primarily, the research
18 department, commercial development
19 department and the marketing department
20 could all be involved.

21 Q: How did the work of the research
22 department and the commercial development
23 department differ?

24 A: The research department did the
25 hands-on formulation work and product

1 testing and the like. The commercial
2 development department would provide
3 guidance to research in terms of what the
4 market needs, what should they be working
5 on. And it would also provide information
6 on the critically important properties the
7 product might have. And they would
8 introduce the product into the marketplace
9 with the customer.

10 Q: In your work in the commercial
11 development department, did you play any
12 role in suggesting formulations to be
13 tested?

14 A: Sometimes.

15 Q: And what were your suggestions
16 based on?

17 A: The primary instance that this
18 happened was in getting lower cost
19 synthetic fluids by utilizing special kinds
20 of mineral oil, that would lower the cost,
21 but not reduce the fire resistance
22 significantly.

23 Q: At what stage in the development
24 of a new product was the toxicity testing
25 done?

1 A: Once we were reasonably satisfied
2 that the product had the properties that we
3 wanted and the costs to take to the
4 marketplace, we then sent samples to the
5 medical department, told them the intended
6 use and got their expert evaluation.

7 Q: At what stage in the development
8 of a new product was field testing done?

9 A: Well, after the formulation work
10 was done, we were satisfied that the
11 properties were adequate, there were always
12 compromises, costs were right, the medical
13 department had given us the green light on
14 toxicity and the like, and we also had our
15 legal department and some people in higher
16 management review the product before it
17 went out to see if -- for whatever reason.

18 Q: I'm sorry, I didn't understand.

19 A: For various reasons. The pricing,
20 for example, always involved people in
21 management, and we didn't go out without
22 their approval.

23 Q: The next exhibit is one I'd like
24 to mark today as Exhibit 617.

25 MR. MAYER: 616, actually.

1 **MS. GRADY:** I'm skipping, because
2 I've pre-marked. I'll describe it for the
3 record as a one page document bearing Bates
4 number Tran 009154. It purports to be a
5 memorandum from Elmer P. Wheeler, dated May
6 13, 1964. The title, "MCS-295 toxicity and
7 hazards." "Your memo 5/5/64." And it's
8 addressed to C.P., it's hard to read here,
9 I think Duncler, D-u-n-c-l-e-r. And it
10 shows a list of cc's, of which Mr. Early is
11 one. Could you please read Exhibit 617,
12 Mr. Early, so that you can tell me if
13 you've seen it prior to today?

14 **A:** All right, I've read it.

15 **Q:** Have you seen Exhibit 617 prior to
16 today?

17 **MR. MAYER:** Other than with
18 respect to anything that may or may not
19 have been shown to you by your attorney
20 yesterday, you may answer.

21 **A:** I don't recall it.

22 **MS. GRADY:** You don't recall
23 seeing it prior to today?

24 **A:** No.

25 **Q:** Was this one of the documents

1 shown to you by your attorney?

2 MR. MAYER: Objection. Seeks to
3 invade the attorney work product doctrine.
4 For the reasons previously stated, you may
5 not answer that question.

6 MS. GRADY: The last sentence in
7 the first paragraph of the memorandum
8 states, "The reference in the letter to
9 U.S. Steel about containing chlorinated
10 hydrocarbons is in order since we would
11 have to include such a statement on a label
12 for the product anyway." Was there a legal
13 requirement that any product containing
14 chlorinated hydrocarbons contain a label
15 stating as much, to your understanding, in
16 your work at Monsanto in the research
17 department?

18 MR. MAYER: Objection, vague and
19 ambiguous, calls for a legal conclusion.
20 Do you understand the question?

21 A: Yes.

22 MR. MAYER: Go ahead.

23 A: I don't recall any such
24 requirement.

25 MS. GRADY: What's a chlorinated

1 hydrocarbon?

2 A: A carbonaceous material with
3 chlorine attached to it.

4 Q: Is natural gas a chlorinated
5 hydrocarbon?

6 A: No.

7 Q: Is natural gas a hydrocarbon?

8 A: Yes.

9 Q: Do you recall in your work at
10 Monsanto between 1963 and 1968 informing
11 any customer that a Monsanto product
12 contained Aroclors?

13 A: I do not recall specific examples
14 of so informing customers. It was not a
15 secret, however.

16 Q: But you have no recollection of
17 informing customers that products, Monsanto
18 products contained Aroclors, is that
19 correct?

20 MR. MAYER: Objection, asked and
21 answered.

22 A: I know that many of my customers
23 knew this, we did not keep it a secret.

24 MS. GRADY: Move to strike the
25 answer as non-responsive. Do you recall

1 informing any customers during your work at
2 Monsanto during the time frame 1963 to 1968
3 that Monsanto products contained Aroclors?

4 MR. MAYER: Objection, asked and
5 answered.

6 MS. GRADY: It hasn't been
7 answered, counsel.

8 MR. MAYER: I disagree.

9 A: I do not recall specific examples
10 of telling this to customers.

11 Q: The rules of the deposition, Mr.
12 Early, are that unless your counsel
13 instructs you not to answer a question, and
14 there are very limited circumstances when
15 such an instruction would be legally
16 justified, then the rule is that you answer
17 the question. And your counsel, quite
18 legitimately, is preserving the objections
19 for a judge to decide. The judge gets to
20 decide if all of these objections will be
21 sustained or overruled at some point. Was
22 there -- I'm referring to the sentence in
23 Exhibit 617 that states, "We could make a
24 more definitive interpretation of the
25 specific hazards with MCS-295 if we could

1 reveal the formulation." Was there a
2 policy at Monsanto not to reveal the
3 formulation of its products to customers?

4 A: Yes.

5 Q: The next exhibit I'm going to mark
6 today is Exhibit 618, which I will describe
7 for the record as a two page document,
8 Bates range Tran 056589 through 90, which
9 purports to be a letter to C.N. Bunting,
10 B-u-n-t-i-n-g, dated May 13, 1964, from R.
11 Emmet Kelly, with a list of blind cc's,
12 including Mr. Early. And I'd ask you to
13 read this document, Mr. Early, and tell me
14 if you have seen it prior to today?

15 A: I do not recollect seeing this
16 document.

17 Q: Was there a procedure within
18 Monsanto during 1963 and '68 to distribute
19 correspondence to the people who were cc'd
20 on the correspondence?

21 MR. MAYER: Objection. Vague,
22 ambiguous, over-broad, lacking in
23 foundation.

24 MS. GRADY: Even though there were
25 many of them, none of them said don't

1 answer, so you still need to answer.

2 MR. MAYER: Do you have the
3 question in mind, sir?

4 A: Please ask it again.

5 MS. GRADY: Sure. Was there a
6 procedure in place at Monsanto during your
7 employment there between 1963 and 1968 to
8 distribute correspondence to people who
9 were cc'd on the correspondence?

10 A: Yes.

11 Q: So, it was your understanding that
12 if someone else within Monsanto cc'd you on
13 a document, you would receive it in the
14 normal course, is that correct?

15 A: Yes.

16 Q: And how did you receive the
17 correspondence that was cc'd to you? Was
18 there a distribution system?

19 A: The mail distribution system.

20 Q: Let me direct your attention down
21 to the last paragraph on the first page of
22 Exhibit 618. Do you recall if there was a
23 standard warning for Aroclor products?

24 MR. MAYER: Objection, vague and
25 ambiguous as to standard warning. Could

1 you explain that, counsel?

2 MS. GRADY: Do you understand my
3 question, Mr. Early?

4 A: Yes.

5 Q: Could you answer it, please?

6 MR. MAYER: Could I have the
7 question read back?

8 (The requested portion of the
9 record read by the reporter).

10 MR. MAYER: The same objection.

11 A: In my experience, every product I
12 took to the field, I asked the medical
13 department's opinion on toxicity and safe
14 handling for the intended use, and I always
15 told them how we expected it to be used.
16 And their response was in that context.
17 And they varied from use to use to some
18 degree.

19 Q: Have you ever heard the term
20 chloracne? Chloracne?

21 A: I don't recall. I may have, but I
22 don't recall.

23 Q: Did you ever hear anything about
24 Monsanto employees who were in the
25 production process for Aroclors suffering

1 from a skin disease associated with their
2 contact with the Aroclors?

3 A: No, ma'am.

4 Q: Did you ever get any Aroclors on
5 you in any of your work at Monsanto?

6 A: Yes, ma'am.

7 Q: What precautions did you take when
8 you were working around Aroclors?

9 A: Primarily, I would wash up good
10 afterward, they were mild irritants. And I
11 would avoid breathing hot vapors because
12 they were irritating, such as in fire
13 tests.

14 Q: Anything else?

15 A: No.

16 Q: During 1963 and 1968 do you recall
17 any environmental tests being done on any
18 of the products you were involved in
19 developing?

20 MR. MAYER: Objection. Vague and
21 ambiguous as to environmental tests.

22 A: No, ma'am.

23 MS. GRADY: Do you know, when you
24 returned to Monsanto in 1970, whether
25 Monsanto was conducting environmental tests

1 on all or certain of the products it was
2 developing for market?

3 MR. MAYER: Same objection.

4 A: No, ma'am.

5 MS. GRADY: You have no
6 familiarity with any environmental tests
7 conducted for any Monsanto products, is
8 that correct?

9 MR. MAYER: Same objection. Do
10 you understand the question?

11 A: I think so. I don't know of any
12 environmental tests being conducted.

13 MS. GRADY: When you provided
14 information to the medical department on
15 the intended use of products that you were
16 working on, what kind of information did
17 you provide?

18 A: An example would be a die casting
19 machine for aluminum and zinc parts. The
20 die casting machine would include molten
21 metal that could be an ignition source, and
22 it was actuated by hydraulic mechanisms
23 which could break and create a fire
24 condition. There were operators at the
25 machines. So I would give this kind of an

1 intended use as an example.

2 Q: Did you provide any information --
3 during this time period when you were
4 working on the development of lubricants,
5 did you provide any information to the
6 medical department concerning exposure of
7 the product to the environment?

8 MR. MAYER: Objection, vague and
9 ambiguous.

10 A: No, not to my recollection.

11 MS. GRADY: The next exhibit I'd
12 like to mark today is Exhibit 620, which I
13 will describe for the record as a
14 multi-page document headed on the first
15 page "Progress Report, Organic Chemicals
16 Division," bearing Bates numbers Tran
17 005691 through 5707. You can read as much
18 of this document as you would like, Mr.
19 Early, but mainly I'm interested in the
20 form of the document, not its contents, so
21 if you could familiarize yourself with the
22 form, that would probably be adequate for
23 the questions I'm going to ask you.

24 A: Well, I'm familiar with the
25 format. I'm looking, I'm familiar with it

1 by having just read it and looked at it,
2 yes.

3 Q: Have you seen Exhibit 620, this
4 exact exhibit, prior to today?

5 MR. MAYER: With the exception of
6 any documents which may or may not be shown
7 to you by counsel, sir, you may answer.

8 A: I do not recall this document --
9 seeing this document.

10 MS. GRADY: You do recall seeing
11 the form of this document, is that correct?

12 A: Yes, ma'am.

13 Q: Can you tell me what Exhibit 620
14 is in its basic format?

15 A: It's a progress report, as it
16 says, by the research department on work
17 that they've done for a period, in this
18 case April through June.

19 Q: Did you use progress reports in
20 your day-to-day work at Monsanto during the
21 period '63 to '68?

22 A: Not much.

23 Q: Was it your understanding that you
24 were only copied on progress reports that
25 included research that was being done on

1 projects that you were involved in in some
2 way? Let me strike that, that's a bad
3 question. Let me make it simpler for you,
4 Mr. Early. Did you have any understanding
5 of what progress reports you received,
6 whether you received all of them or some
7 sub-set of them?

8 A: I received most progress reports
9 that were involved with functional fluids.
10 They summarized the work. But the
11 information that was pertinent to my
12 particular projects I had already received
13 before these were issued.

14 Q: So, you would have direct contact
15 with the research department on the
16 projects on which you were working, is that
17 correct?

18 A: Yes.

19 Q: Did the progress reports summarize
20 all research that was done by the research
21 department in any given time period?

22 MR. MAYER: Objection, calls for
23 speculation.

24 A: I can't answer if it included all
25 the work or not.

1 **MS. GRADY:** You understand that
2 every question I ask you, Mr. Early, calls
3 for speculation if you don't know the
4 answer, so if you don't know the answer to
5 the question, that's a perfectly adequate
6 response. Did you do work on the Therminol
7 products?

8 **A:** Yes, some of them.

9 **Q:** Was it the policy or practice
10 within Monsanto to circulate a progress
11 report for the reformulation of each
12 product?

13 **MR. MAYER:** Objection, over-broad
14 as to time. What time frame are we talking
15 about?

16 **MS. GRADY:** '63 to '68.

17 **A:** I think not. We would report
18 everything they tried, but -- summary
19 reports.

20 **MS. GRADY:** Based on your
21 understanding of the research department in
22 Monsanto and how it related to the
23 development department if a product was
24 reformulated, would you expect to see a
25 research department progress report on

1 reformulation?

2 A: Yes.

3 Q: How did you use research
4 department progress reports in your work,
5 if you did?

6 A: Primarily, just to keep up-to-date
7 on the progress of the work that was being
8 done.

9 Q: Did you use any of the objective
10 technical information in the progress
11 report for any of your job duties?

12 A: Yes.

13 Q: How so?

14 A: When we were -- when work was far
15 enough along to justify taking a product
16 out of the company to the field, we would
17 prepare technical brochures for customer
18 use and we would extract data and
19 information from research reports as
20 appropriate.

21 Q: Have you ever heard of a company
22 called Columbia Gulf?

23 A: No.

24 Q: The next exhibit I'd like to mark
25 today is Exhibit 621, which I will describe

1 for the record as a two page document
2 bearing Bates range Tran 003061 through
3 3062, the first page of which purports to
4 be a memorandum from D.F. Smith dated
5 September 1, 1964, topic, "MCS-153
6 specifications," with a list of cc's which
7 includes Mr. Early. The second page of the
8 document is a memorandum from Mr. Schott,
9 S-c-h-o-t-t, to Mr. -- it's very difficult
10 to read, but I think it's Mayward, dated
11 August 11, 1964, entitled "MCS-153
12 specifications." Could you look at these
13 two memoranda that make up Exhibit 621 so
14 that you can tell me if you have seen
15 either one of them before today?

16 MR. MAYER: Again, sir, you may
17 respond other than with respect to any
18 documents which may have been shown or not
19 shown to you by counsel.

20 A: I do not recall this document.

21 MS. GRADY: Do you have any
22 recollection of the specifications for
23 MCS-153 changing during any time between
24 1963 and 1968 when you were working on the
25 development of industrial lubricants?

1 A: No, ma'am.

2 Q: Was it within your experience at
3 Monsanto during that same time period that
4 specifications of a product that was being
5 sold would sometimes change?

6 A: Developmental products, by their
7 very nature, the purpose of field trials
8 would be to determine if all the properties
9 were what they should be, so in
10 developmental products, yes, they would
11 change. In commercial, fully commercial
12 products, they would be much less likely to
13 change.

14 Q: Do you know who D.F. Smith is?

15 A: Yes, ma'am.

16 Q: Who is he or she?

17 A: He was marketing manager for
18 synthetic fluids. I don't know the whole
19 scope of his job. Marketing manager in the
20 synthetic fluids area.

21 Q: Was there a policy or practice at
22 Monsanto during '63 to '68 to copy the
23 development person on memoranda that
24 involved products on which they were
25 working?

1 A: Yes.

2 Q: Would that practice lead you to
3 believe that you're copied on this memo
4 because you were working in some way on
5 MCS-153 at this time?

6 MR. MAYER: Objection, calls for
7 speculation as to the author's intent.

8 A: Shall I answer?

9 MR. MAYER: Yes, you may.

10 A: Roger Hatton -- this is C.L.
11 Early/R.E. Hatton, and Roger Hatton had
12 worked with Dale with this product before I
13 joined Monsanto. One of us was copied as a
14 courtesy, the other one had some
15 responsibility here.

16 MS. GRADY: You think it was Mr.
17 Hatton that had the responsibility?

18 A: Yes, I think.

19 Q: How do you know that Mr. Hatton
20 worked with Mr. Smith prior to your joining
21 Monsanto on the MCS-153 product?

22 A: I don't know that. Roger Hatton
23 was in the commercial development
24 department of functional fluids, Mr. Smith
25 was in the marketing department of

1 functional fluids, and we were all a
2 family, so -- I do not recall specifically
3 Roger's role in MCS-153, nor Dale's.

4 Q: Do you have any general
5 recollection of Mr. Hatton's role, if any,
6 with regard to MCS-153?

7 A: I vaguely recall that this product
8 was developed before I joined the company,
9 and Roger was involved in its development.

10 Q: Did you have any conversations
11 with Mr. Hatton about MCS-153?

12 A: I don't recall any such
13 conversations.

14 Q: Did you have any conversations
15 with Mr. Hatton about an industrial
16 lubricant for use in gas compressor
17 turbines?

18 A: With Mr. Hatton?

19 Q: Yes.

20 A: I don't recall discussions of that
21 type.

22 Q: During 1963 and 1968 were you
23 aware of any customers -- let's put Texas
24 Eastern to one side -- other customers
25 purchasing Monsanto lubricants for use in

1 natural gas compressors?

2 A: I'm not familiar with other
3 customers who purchased synthetic
4 lubricants from Monsanto for gas
5 compressors.

6 Q: Are you familiar with gas
7 compressors in any way other than through
8 this one call you remember making to Texas
9 Eastern?

10 A: Yes.

11 MR. MAYER: Well, objection. The
12 question lacks foundation and assumes facts
13 not in evidence. Go ahead.

14 A: I was working on low cost
15 fire-resistant fluids, primarily for
16 industrial applications, and in that
17 context some of the fluids I developed
18 might have application in gas turbine
19 lubricants, and I did make some efforts in
20 that regard, not with MCS-153.

21 MS. GRADY: You did make some
22 efforts?

23 A: Yes, ma'am.

24 Q: What efforts did you make in that
25 regard?

1 A: I made calls to a few companies
2 who were in the business of transporting
3 gas.

4 Q: What companies?

5 A: I don't recall specifically the
6 names of the companies, except the main
7 focus was in Canada.

8 Q: Do you recall any sales calls you
9 -- not sales calls, but do you recall any
10 sales that you made in the United States to
11 gas compressor lubricant potential users?

12 A: I remember one call to El Paso
13 Natural Gas. I remember going there, but I
14 don't remember the meeting or the results.

15 Q: Who did you go there with?

16 A: Norm Johnson, a marketing manager
17 from Monsanto, and a field representative,
18 whose name I don't remember.

19 Q: What year was this?

20 A: I don't recall.

21 Q: Sometime prior to 1968?

22 A: In the '63 to '68 period.

23 Q: Did you cite the experience of
24 Texas Eastern's use of Monsanto's
25 industrial lubricants to El Paso Natural

1 Gas?

2 A: I do not recall.

3 Q: Do you recall whether El Paso
4 Natural Gas purchased lubricants subsequent
5 to your visit?

6 A: I think they did not.

7 Q: Do you recall why they did not?

8 A: No, ma'am.

9 Q: Can you tell me anything else that
10 you recall about natural gas lubricants and
11 El Paso Natural Gas?

12 A: No.

13 Q: What about the companies in
14 Canada, who did you visit in Canada?

15 A: I don't remember the names of the
16 companies.

17 Q: Do you remember anything that was
18 said in your visit to El Paso Natural Gas?

19 A: No. It's just a blank.

20 Q: Okay. And what product was
21 discussed at that meeting?

22 A: One of our low cost fire-resistant
23 hydraulic fluids that could be used for
24 lubrication. I don't remember which one.

25 Q: It was your recollection it was

1 not MCS-153, is that correct?

2 A: It was not MCS-153.

3 Q: Is there some reason you're sure
4 it was not MCS-153?

5 A: To the best of my recollection, I
6 was not involved with MCS-153, that having
7 been developed prior to my joining
8 Monsanto, and Roger Hatton and Dale Smith
9 having shared responsibility for it.

10 Q: Is it your best recollection that
11 the product that was discussed with El Paso
12 Natural Gas was a newly developed product?

13 A: Yes.

14 Q: Is it your best recollection that
15 it was not a reformulation of an existing
16 product?

17 A: I would class it as a new product.

18 Q: Was it one of the Pydraul
19 products?

20 A: Yes.

21 Q: Do you recall which one?

22 A: No, ma'am.

23 Q: How did the Pydraul products
24 differ from MCS-153?

25 A: The Pydraul products,

1 predominantly hydraulic fluids, having
2 developed a product called Pydraul for
3 hydraulic applications, it might also be
4 suitable for something else lubricating a
5 bearing, so I worked primarily on Pydrauls
6 for hydraulic applications and only
7 peripherally in lubrication. I was not
8 there when MCS-153 was developed, and do
9 not know the primary purpose for its
10 development.

11 Q: What about the chemical
12 formulation of the Pydrauls versus MCS-153,
13 were there differences in the chemical
14 formulation?

15 A: I don't -- I don't recall the
16 composition of 153. The Pydrauls, most of
17 them were Aroclor-containing fluids.

18 Q: Do you recall whether the Pydraul
19 that was discussed with El Paso Natural Gas
20 contained Aroclors?

21 A: I'm sure they did.

22 Q: When you distinguish between
23 MCS-153 and the Pydrauls, are you focusing
24 on the end uses for which they were
25 marketed?

1 A: I'm saying I don't know what -- I
2 really was not involved with MCS-153, and
3 don't know the answer to that.

4 Q: I'll tell you what I'm doing, I'm
5 trying to figure out whether you define in
6 your own mind the products that you recall
7 working on in terms of their end uses. So,
8 for example -- this is all preamble, this
9 is not a question. So, for example you
10 testified that you worked on Pydrauls for
11 hydraulic applications, not lubricants. So
12 here's the question. Do you make a
13 connection in your mind between MCS-153 as
14 a lubricating fluid rather than a hydraulic
15 compressor fluid as the reason that you
16 think that you didn't work on MCS-153?

17 MR. MAYER: Objection,
18 mischaracterizes his prior testimony. Go
19 ahead.

20 A: No, I don't think that's
21 accurate. More or less older commercial
22 fluids were the domain of marketing, if you
23 like. Dale Smith. And this one, despite
24 its designation MCS, fell in that
25 category. I was looking to the future for

1 new and different fluids as opposed to
2 application orientation.

3 Q: Do you recall any discussion
4 within Monsanto about why MCS-153 was not
5 presented to El Paso Natural Gas as a
6 lubricating fluid during your visit there?

7 A: I don't recall.

8 Q: Do you recall if there was
9 competition between MCS-153 and the Pydraul
10 series?

11 A: There was, in the sense that the
12 Pydraul that I was working on cost less
13 than the earlier versions. We didn't make
14 an effort to push our existing products out
15 of the application.

16 Q: The next exhibit I'd like to use
17 was marked in the deposition of Mr. Hatton
18 as Exhibit 17, so it's a prior marked
19 exhibit. I ask you to take a look at this,
20 Mr. Early, and it's going to be the same
21 question, whether you've seen Exhibit 17
22 prior to today?

23 MR. MAYER: Sir, you may respond
24 with respect to having seen it before other
25 than with respect to the documents which

1 may have been shown or not shown to you by
2 counsel.

3 A: I wrote it, so I must have seen
4 it.

5 MS. GRADY: That's your signature
6 at the bottom?

7 A: Yes, ma'am.

8 Q: You, in fact, drafted Exhibit 17,
9 is that correct?

10 A: I presume so. I don't recollect
11 doing it, but my signature is on it, I
12 presume I did.

13 Q: And Exhibit 17 is the kind of
14 document that you drafted as part of your
15 job duties at Monsanto, is that correct?

16 A: Yes.

17 Q: Was Pydraul 312 one of the
18 products that you were working on
19 developing?

20 A: Yes, ma'am.

21 Q: What was Pydraul 312?

22 A: You mean composition-wise?

23 Q: No. Let me clarify. What were
24 the intended end uses for Pydraul 312?

25 A: Primarily, hydraulic fluids for

1 industrial applications such as die
2 casting, steel mill rolling mills, hot
3 metal ignition sources and coal mine
4 applications where fires are an absolute
5 disaster.

6 Q: Was it being marketed for
7 hydraulic uses in coal mines?

8 A: Yes, ma'am.

9 Q: What's a hydraulic use?

10 A: The machinery in coal mines -- do
11 you mean in coal mines?

12 Q: Yes.

13 A: In coal mines, most of the
14 machinery is hydraulically actuated, and
15 they are at higher pressures than many
16 industrial applications, so the -- so the
17 cutting machines and things like that are
18 powered by hydraulic machinery.

19 Q: And what was the Pydraul-312's
20 function in this?

21 A: The hydraulic system contained
22 Pydraul-312. You would have a pump that
23 would build up pressure, Dennison pump, for
24 example, and this pump would suck in the
25 fluid on one end, pressurize it and push it

1 out the other end, and it would do work
2 downstream in cutting the coal or powering
3 the machinery.

4 Q: So, was the Pydraul-312 the liquid
5 that was subjected to the pressure?

6 A: Yes, ma'am.

7 Q: Who's Mr. Davis?

8 A: He was a marketing manager in the
9 functional fluids group.

10 Q: Do you recall discussing with Mr.
11 Davis the issue of odor and toxicity of
12 chlorinated hydrocarbons?

13 A: I don't recall the discussion.

14 Q: Do you have a general recollection
15 of that issue with regard to Pydraul 312?

16 A: It was not a specific, unique
17 issue in terms of mining applications any
18 more than die casting or some other
19 application. The -- as indicated here,
20 there were many difficulties in introducing
21 a product of this type, or of any type to
22 the mines, and it took several years. But
23 the product had been evaluated by our
24 medical department for the intended use
25 when these memos were written. Any unusual

1 toxicity for that application, as I
2 indicated, would have been addressed in due
3 course. But the mining people that I
4 talked to did not raise this as a new
5 issue.

6 Q: What did you mean by any unusual
7 toxicity issues would be resolved in due
8 course?

9 A: The only thing that would be
10 unique or unusual is the fact that the
11 mines are confined and you have, perhaps,
12 more limited air ventillation than you
13 would have in, say, a die casting plant, so
14 if you had to minimize leakage in the
15 machine to keep the air concentration down,
16 that's the kind of thing a field trial
17 would help you determine.

18 Q: During your work at Monsanto
19 between '63 and '68 was there any
20 discussion of the persistence of PCBs in
21 the environment?

22 A: Not to my knowledge.

23 Q: Do you recall any discussion
24 concerning finding PCBs in the effluent
25 from coal mines in England?

1 A: No, ma'am.

2 Q: The next exhibit I will mark as a
3 new exhibit today is Exhibit 623, which
4 I'll describe for the record as a
5 multi-page document entitled "Synthetic
6 Fluids And Their Applications by C.L.
7 Early, Monsanto Company," Bate's range
8 TW2-2004555 through 4614. And there may be
9 two documents here, which is what I'm
10 trying to find, the second of which may
11 start at TW2-2004595 with the title
12 "Industrial and ASTM Fluid Fire Test
13 Programs," author, C.L. Early and R.E.
14 Hatton. It's stamped "Appendix." Mr.
15 Early, do you recognize Exhibit 623,
16 including its constituent parts?

17 A: I wrote it, but I've completely
18 forgotten it. I don't recall having
19 written it.

20 Q: What is ASTM?

21 A: American Society for Testing
22 Materials.

23 Q: And do you recall preparing any
24 publications on behalf of Monsanto to be
25 either presented to or in conformance with

1 ASTM standards?

2 A: Please repeat that.

3 Q: Sure. Do you recall preparing any
4 papers for an annual meeting of the
5 American Society of Lubrication Engineers?

6 MR. MAYER: That's a different
7 question.

8 A: That's different.

9 MS. GRADY: It is a different
10 question.

11 A: Very vaguely, I recall giving a
12 paper at an ASLE meeting on functional
13 fluids. It's very vague.

14 Q: Who were the members of the
15 American society of Lubrication Engineers?

16 A: Thousands of members involved with
17 industrial lubrication, steel mills,
18 aluminum companies, automotive companies,
19 chemical companies. A broad spectrum of
20 industrial American had representation in
21 this -- it wasn't a trade group as much as
22 it was a technical society.

23 Q: Do you recall ever attending
24 meetings of a group called the American
25 Turbine Users Association?

1 A: No, ma'am.

2 Q: This other document that I pointed
3 out that's stamped "Appendix," which I've
4 now --

5 MR. MAYER: It's TW2-2004595.

6 MS. GRADY: Did you author a paper
7 called "Industrial and ASTM Fluid Fire Test
8 Programs," Mr. Early?

9 A: Yes. Roger Hatton and I
10 co-authored the paper.

11 Q: And do you recall a national ASTM
12 symposium on test methods where you
13 presented a paper?

14 A: Yes, I recall that.

15 Q: Were you representing Monsanto in
16 the presentation of the paper at the ASTM
17 symposium?

18 A: Yes, ma'am.

19 Q: What was the purpose, as you
20 understood it, of Monsanto presenting a
21 technical paper at an ASTM symposium?

22 A: Well, any such meetings with ASTM
23 was educational in nature, to keep abreast
24 of technologies and the like in your
25 field. This specific instance, fire

1 testing, was an art, not a science, not
2 everyone would agree on how to conduct fire
3 tests, so Roger and I accumulated
4 information on many different methods that
5 people had used or proposed and merely
6 summarized them and told people what they
7 were about. Strictly an educational type
8 of thing.

9 Q: Who was Roger Hatton?

10 A: He was a project manager in
11 commercial development at Monsanto.

12 Q: And were you and he on the same
13 level as project managers?

14 A: Essentially.

15 Q: What do you mean, essentially?

16 A: I'm not sure I had quite as high a
17 grade level as he did.

18 Q: Is a grade level -- does that
19 determine the compensation at Monsanto?

20 A: To a degree, it helps.

21 Q: Do you recall a product called
22 Pydraul 135?

23 A: Vaguely, yes.

24 Q: What do you recall about it?

25 A: It was a lower temperature version

1 of Pydraul 312.

2 Q: What do you mean by lower
3 temperature version?

4 A: It could be used in areas where
5 the temperature dropped. These fluids and
6 oils get thicker at low temperatures and
7 thinner at high temperatures, Pydraul 312
8 was limited in low temperature properties
9 for some applications, for example, in
10 Canada, so we would provide a lower cost
11 viscosity grade.

12 Q: And were you responsible for
13 developing Pydraul 135?

14 A: Yes, I believe I was.

15 Q: Do you remember how you got the
16 idea for lowering the temperature
17 acceptability of Pydraul 312?

18 A: I recall a steel company in
19 Canada, and I can't recall their name, was
20 one of the first companies who rejected
21 Pydraul-312 and said we have to have lower
22 temperature properties in this area. But
23 there were others I don't recall.

24 Q: What did you do to Pydraul-312 to
25 lower the temperature range?

1 A: This gets into compositional
2 information. Is that confidential?

3 MR. MAYER: You raise a good
4 point, sir. If you can explain your answer
5 without divulging any Monsanto trade
6 secrets or proprietary information, you may
7 do so.

8 MS. GRADY: Even if you can't,
9 though, we have a protective order in this
10 case.

11 MR. MAYER: I'll accept your
12 statement to that effect. I'm not aware of
13 it. But go ahead.

14 A: There are several things that
15 might have been done, I can't recall
16 precisely. We used a very heavy oil in
17 Pydraul-312 to help get the cost down,
18 along with Aroclors, and we could have
19 backed off somewhat on that heavy oil,
20 which would have reduced the viscosity and
21 we could have added chlorinated benzenes
22 instead of chlorinated biphenyls. I think
23 we did both of those things.

24 Q: Was Pydraul 135 a lower cost
25 version, in addition to having different

1 temperature specs?

2 A: I don't think so. Similar. I
3 don't recall exactly. I'm sorry, now, I
4 may not have answered that. It was a lower
5 cost fluid than the straight synthetics.
6 It was a similarly priced fluid to the low
7 cost line, of which Pydraul-312 was the
8 first.

9 Q: Okay. And you're making a
10 distinction between the synthetic line and
11 the reformulated Pydraul line. What is the
12 chemical difference between the two that
13 caused the price to go down?

14 A: The inclusion of a special heavy
15 mineral oil in the low cost line that was
16 not in the original Pydrauls.

17 Q: Let me show you what we'll mark
18 today as Exhibit 624, which, for the
19 record, contains two documents. The first
20 is Bates numbered Tran 056741, the second
21 is Tran 056746 through 47. The first page
22 of Exhibit 624 purports to be a memorandum
23 from Elmer P. Wheeler to T. Denton-Roberts,
24 with a list of cc's, including Mr. Early.
25 The title of the memorandum is "Toxicity of

1 Pydraul-135, Steel Company of Wales. Your
2 memo to R. Davis 7/19/66." The second
3 document that makes up Exhibit 624 is on
4 Monsanto Company stationery and is headed
5 "Pydraul-135 Toxicity and Safe Handling
6 Information," and it is dated on the last
7 page August 2, 1966 and includes R. Emmet
8 Kelly's name. And I'd ask you to take a
9 look at Exhibit 624, Mr. Early, and tell me
10 if you've seen either or both of its
11 constituent parts prior to today?

12 A: I've read the first one. Do you
13 want me to read the second one?

14 Q: Yes. I'm basically interested in
15 the form of the second one.

16 A: All right, I've scanned the second
17 one.

18 Q: Have you seen Exhibit 624 prior to
19 today?

20 MR. MAYER: Other than with
21 respect to documents which may or may not
22 have been shown to you by counsel, sir, you
23 may respond.

24 A: I do not recall seeing these
25 documents.

1 MS. GRADY: Were you shown the
2 first page of 624 by counsel in preparation
3 for this deposition?

4 MR. MAYER: You may not answer
5 that question, sir, under the terms of
6 attorney work product protection.

7 MS. GRADY: You're instructing him
8 not to answer?

9 MR. MAYER: I am instructing him
10 not to answer.

11 MS. GRADY: And you're accepting
12 that instruction, sir?

13 A: Certainly.

14 Q: What about the next two pages,
15 were you shown that in preparation for your
16 deposition?

17 MR. MAYER: Same instruction,
18 sir.

19 A: I don't recall seeing this
20 document.

21 MS. GRADY: Do you recall if there
22 were toxicity concerns about Pydraul-135
23 expressed by Steel Company of Wales?

24 MR. MAYER: Objection, the
25 question calls for speculation. It also

1 lacks foundation. Go ahead.

2 A: I do not recall specifically the
3 Steel Company of Wales asking for this kind
4 of information.

5 Q: Do you recall advising customers
6 or potential customers of Pydrauls that the
7 fluid should be used in systems as free
8 from leaks as possible?

9 A: As a matter of good housekeeping,
10 yes.

11 Q: Why was that?

12 A: It's good business to have a good
13 clean house. It had a slight odor, and --
14 I don't recall making an issue of this, but
15 I'm sure we recommended good housekeeping
16 procedures and avoid leaks.

17 Q: And how are you using the term
18 good housekeeping?

19 A: Clean it up if you spill it. If a
20 hydraulic line breaks and sprays it on the
21 machine, clean it up so the employee isn't
22 exposed to the material on the machine.

23 Q: Did you provide -- when I say you,
24 I mean you, Mr. Early, did you provide any
25 advice to customers or potential customers

1 on cleanup techniques?

2 A: Not specific instructions.

3 Q: Did you provide general
4 instructions?

5 A: Just as I've described.

6 Q: And what was that?

7 A: Keep your place clean, wipe up
8 spills.

9 Q: Any instructions that you recall
10 concerning how to dispose of spilled
11 materials?

12 A: No, I don't recall any.

13 Q: Do you recognize the form of the
14 second two pages of Exhibit 624?

15 A: Yes. It's an internal memo, yes.

16 Q: Was a document that looked like
17 this produced for each of the products that
18 you worked on that eventually was sold to
19 customers?

20 A: A toxicity and safe handling
21 memorandum from the medical department
22 would be given to me for use in my
23 technical bulletins, and I would use it.
24 This one is specific to this Steel Company
25 of Wales, I think, and we would not have a

1 specific letter for each customer
2 application.

3 Q: So, in your work in product
4 development you received directly from the
5 medical department some sort of information
6 concerning toxicity and safe handling?

7 A: Yes.

8 Q: Was that information provided to
9 you on a form?

10 A: I don't think so. I think it was
11 handled by memo.

12 Q: And you mentioned a technical
13 bulletin, what did you mean by technical
14 bulletin?

15 A: When I took a new product to the
16 market I had to tell the customer something
17 about it, and I would describe the product
18 and its properties in a technical bulletin;
19 viscosity, fire-resistant tests we had run,
20 that type of thing.

21 Q: And am I correct that you would
22 use the toxicity and safe handling
23 information provided to you by the medical
24 department in your technical bulletins?

25 A: I did. I was required to and I

1 did.

2 Q: Was there a form in which the
3 toxicity bulletins were prepared?

4 A: They were not separate bulletins.
5 They were a page, or whatever was required,
6 within the technical bulletin, and they
7 were written out in this form. They
8 weren't numbers plugged into a form, if
9 that's what you mean.

10 (Recess).

11 MS. GRADY: I'd like to mark our
12 next exhibit as Exhibit 625, which I will
13 describe for the record as a two page
14 document with Bates range TW2-2004920
15 through 4921. It purports to be a letter
16 from Mr. Early to Walter Woods at Texas
17 Eastern Gas Transmission Company, dated
18 July 19, 1966. Mr. Early, please read
19 Exhibit 625 so that you can answer the
20 question if you have seen it prior to
21 today?

22 A: All right. I've read it.

23 Q: Have you seen Exhibit 625 prior to
24 today?

25 MR. MAYER: Other than with

1 respect to documents which may have been
2 shown or not shown to you by your attorney,
3 sir, you may respond.

4 A: I don't recall seeing it.

5 MS. GRADY: Was Exhibit 625 one of
6 the documents that was shown you in
7 preparation for your deposition, Mr.
8 Early?

9 MR. MAYER: I must instruct you
10 not to answer the question under the
11 protection of the attorney work product
12 doctrine.

13 MS. GRADY: And you will follow
14 your Counsel's instruction?

15 A: Yes, ma'am.

16 Q: Was Exhibit 625 one of the
17 documents that you mentioned earlier
18 refreshed your recollection about your
19 connection with MCS-153?

20 MR. MAYER: Objection,
21 mischaracterizes his testimony.

22 MS. GRADY: You may answer that
23 question.

24 MR. MAYER: I don't believe he
25 testified to that effect. Go ahead, sir.

1 **A:** Please ask the question again.

2 **MS. GRADY:** Was Exhibit 625 one of
3 the documents that you were shown in
4 preparation for your deposition that
5 refreshed your recollection about your
6 connection with MCS-153?

7 **MR. MAYER:** Same objection. A
8 different question this time. And, again,
9 I'll assert the work product doctrine
10 protection, instruct you not to answer the
11 question, sir, as to any documents that
12 were shown or not shown to you with respect
13 to your preparation for the deposition.

14 **MS. GRADY:** And, counsel, are you
15 familiar with the law in California?

16 **MR. MAYER:** I absolutely am.

17 **MS. GRADY:** That I'm entitled to
18 all documents that refreshed Mr. Early's
19 recollection?

20 **MR. MAYER:** You normally would be,
21 counsel, if a request were made for those
22 in a depo notice and it didn't invade the
23 attorney work product doctrine. However,
24 we know that attorney/client privilege and
25 work product doctrine are sacrosanct, and I

1 believe that the privilege and the doctrine
2 protect the identity of documents shown to
3 the witness during the course of depo
4 preparation, particularly where no
5 foundation has been laid that this document
6 actually did refresh the witness's
7 recollection as to any issue.

8 MS. GRADY: I just asked him that
9 and you instructed him not to answer. How
10 do you propose that I lay a foundation
11 since, in fact, I am entitled under
12 California law to all documents that
13 refreshed Mr. Early's recollection of
14 events?

15 MR. MAYER: I think the way you do
16 it, counsel, is you ask him the first
17 question, you ask it without asking him
18 whether it was shown to him in preparation
19 for the deposition.

20 MS. GRADY: I did ask that.

21 MR. MAYER: What you did is you
22 mischaracterized his testimony. I think if
23 you ask him did this document refresh his
24 recollection as to anything, I can let him
25 answer that, but you assumed -- just a

1 minute -- you assumed that this document
2 refreshed his recollection on 153, which he
3 never testified to.

4 MS. GRADY: This is a ridiculous
5 colloquy. We'll take this up with the
6 judge. So we may be coming back for this
7 deposition, unfortunately, Mr. Early.

8 MR. MAYER: I doubt it.

9 MS. GRADY: Is that your
10 signature, Mr. Early, on the second page of
11 Exhibit 625?

12 A: Yes, ma'am.

13 Q: And did you draft Exhibit 625?

14 A: I presume I did. I don't recall
15 drafting it, but I signed it.

16 Q: I'm sorry?

17 A: Because I signed it, I presume I
18 wrote it.

19 Q: Who is Walter Woods?

20 A: I do not remember Walter Woods.

21 Q: How was Pydraul-135 lower in cost
22 compared to MCS-153?

23 A: I don't recall the exact numbers,
24 but, roughly, the 153 would be in the three
25 dollar a gallon range and the 135 in the

1 two dollar a gallon range.

2 Q: Who is Mr. Worley who is cc'd on
3 the second page of Exhibit 625?

4 A: I don't know.

5 Q: Who is Mr. Fletcher?

6 A: I don't recall.

7 Q: Do you recall anyone named Earl
8 Farmer?

9 A: No, ma'am.

10 Q: Do you recall anyone from Texas
11 Eastern visiting Monsanto?

12 A: No, ma'am.

13 Q: Down at the bottom of page 1 of
14 Exhibit 625 you state, "I believe it" --
15 I'm reading from the second sentence here,
16 Mr. Early. "I believe it would be
17 worthwhile to hold a meeting near one of
18 your pumping stations with various Texas
19 Eastern people present, as well as G.E. and
20 Monsanto representatives." Was such a
21 meeting ever held?

22 A: I'm looking for that. All right.
23 I do not recall.

24 Q: Did you meet with General Electric
25 at any time concerning MCS-153?

1 A: I met with General Electric on two
2 or three occasions. I don't recall if it
3 was specific to Pydraul-135.

4 Q: Was it specific to MCS-153?

5 A: I'm sure it was not.

6 Q: And why are you sure of that?

7 A: Because I didn't have any
8 significant involvement with MCS-153.

9 Q: Does this exhibit refresh your
10 recollection in any way about anyone at
11 Texas Eastern who you ever discussed
12 lubricating fluids with?

13 A: As I testified earlier, my only
14 recollection of a visit to Texas Eastern
15 was at the invitation of Dale Smith, Texas
16 Eastern was his customer, to make them
17 aware that we were developing lower cost
18 fire-resistant fluids. Apparently, they
19 took us up on using some of these fluids,
20 from this memo. I do not recall that, that
21 follow-on activity.

22 Q: And do you recall, does this
23 Exhibit 625 refresh your recollection in
24 any way about anyone at Texas Eastern with
25 whom you had communications of any type?

1 A: No. I don't recall any further
2 contact with Texas Eastern after that
3 meeting with Dale Smith.

4 Q: How many people were at the
5 meeting?

6 A: I do not remember.

7 Q: All right. The next exhibit I'll
8 mark is 626, which I will describe for the
9 record as containing two Bates numbers, one
10 of them is TW2-2006664 through 6665. It
11 purports to be a letter to Mr. W.M.
12 Stephens, S-t-e-p-h-e-n-s, from C.L. Early,
13 cc E.P. Farmer, dated November 2, 1966. I
14 ask you to read Exhibit 626, Mr. Early.

15 A: Okay.

16 Q: Have you ever seen Exhibit 626
17 prior to today?

18 MR. MAYER: Other than with
19 respect to documents which were shown or
20 may have been shown to you or not shown to
21 you by counsel, sir, you may respond.

22 A: I do not recall this document or
23 writing this document.

24 MS. GRADY: You're shown as the
25 author, although I can't tell from this

1 copy whether you signed this or not. Who
2 is BMF? And I'm looking at the secretary
3 designation down at the bottom of the
4 second page above the word "Enclosures".

5 A: Oh, boy. I don't recall her
6 name. She would have been one of the
7 secretaries.

8 Q: Did your secretaries have
9 authority to sign memorandums for you?

10 A: Did our --

11 Q: Did your secretary have authority
12 to sign letters or memoranda for you?

13 A: Not without -- generally, no.

14 Q: Who is W.M. Stephens?

15 A: I don't recollect the name.

16 Q: Does this letter refresh in any
17 way your recollection concerning any
18 communications you may have ever had with
19 Earl Farmer?

20 A: No, ma'am.

21 Q: Did you ever meet Earl Farmer?

22 A: I don't recall having met him.

23 Q: Was Pydraul-135 ever sold as an
24 industrial lubricant?

25 A: Yes, I'm sure it was.

1 Q: Who was it sold to?

2 A: I'm reasonably sure it went to
3 some steel mill uses in Canada. I do not
4 recall any turbine oil applications.

5 Q: And the steel mill uses in Canada
6 that you recall were lubrication uses?

7 A: Hydraulic fluid.

8 Q: Do you recall any lubrication uses
9 of Pydraul-135?

10 A: No.

11 Q: The next exhibit I'd like to show
12 you has been marked in a previous
13 deposition as Exhibit 378. Please read
14 Exhibit 378, Mr. Early, and tell me if you
15 have seen it prior to today?

16 A: I've read it.

17 Q: Have you seen Exhibit 378 prior to
18 today?

19 MR. MAYER: With the exception of
20 documents which were shown or not shown to
21 you by counsel, sir, you may answer.

22 A: I do not recall this document.

23 MS. GRADY: Who is Walter Woods?

24 A: I don't remember the person.

25 Q: Does this Exhibit 378 refresh your

1 recollection in any way about any meeting
2 in Houston with representatives of Texas
3 Eastern?

4 A: I remember going to Houston and
5 meeting with Larry Bradford, our field
6 representative, in conjunction with a
7 technical association or trade association
8 meeting. I do not recall customer contacts
9 and meetings.

10 Q: You recall only going to Houston
11 once during your employment with Monsanto?

12 A: Oh, no, I went to Houston many
13 times.

14 Q: Is there some reason you're
15 associating this trade association trip to
16 Houston with possible contact with Texas
17 Eastern?

18 MR. MAYER: Objection,
19 mischaracterizes his testimony.

20 A: I went to the trade association
21 meeting. I have no recollection of a
22 meeting with Texas Eastern.

23 MS. GRADY: Why did you pick out
24 the trade association meeting that you
25 recall discussions with Mr. Bradford when I

1 asked you if you recalled meeting in
2 Houston with Texas Eastern?

3 A: I happen to remember that because
4 one of us got sick, and we were -- I think
5 Larry was very sick and, therefore, I
6 remember that visit. But I don't remember
7 the discussions.

8 Q: And just to make it clear, because
9 I'm kind of confused at this point, do you
10 recall meeting with Texas Eastern at this
11 meeting?

12 A: No, ma'am.

13 Q: Or on this trip?

14 A: No, ma'am.

15 Q: The next exhibit I'll mark as
16 Exhibit 627, and I will describe it for the
17 record as a two page document dated
18 February 24, 1967, to Mr. J.J. Ball, from
19 John R. Gilcrease, subject, "Effect of heat
20 on the viscosity of Pydraul-135," Bates
21 number range TW2-2006666 through 6667. And
22 the question I will pose to you, Mr. Early,
23 is whether you have seen Exhibit 627 prior
24 to today?

25 A: I do not recall.

1 **MR. MAYER:** Well, again, subject
2 to the prior admonition, sir.

3 **A:** I do not recall seeing this
4 document.

5 **MS. GRADY:** Do you know who J.J.
6 Ball is?

7 **A:** I don't remember him, no.

8 **Q:** Do any of the names on that
9 stamped list up at the top of the first
10 page look familiar to you?

11 **A:** I'll be darned. No.

12 **Q:** Why did you say "I'll be darned"?

13 **A:** I was looking for Monsanto names,
14 and I realized this is Texas Eastern
15 letterhead.

16 **Q:** I see.

17 **A:** I was wondering why I didn't
18 recognize somebody.

19 **MR. MAYER:** He did it to fool you,
20 counsel.

21 **MS. GRADY:** What are light ends in
22 reference to Pydraul-135?

23 **A:** I'll have to read this. I haven't
24 really read it.

25 **Q:** Before you read it, why don't you

1 tell me if you know what light ends are in
2 reference to Pydraul-135?

3 MR. MAYER: Well, objection. If
4 you're talking about what the author meant
5 by his use of the term, that calls for
6 speculation. If you have a general
7 understanding.

8 MS. GRADY: It certainly would
9 not, because I've made no reference to the
10 document and, quite properly under the
11 rules, I'm asking the question prior to the
12 time when I refreshed his recollection. So
13 the question is, what did light ends refer
14 to.

15 MR. MAYER: I'm just trying to
16 establish what we're talking about here.
17 Go ahead.

18 A: I can answer it, I don't need to
19 know what he says.

20 MR. MAYER: Sure.

21 A: Very few chemicals are pure, so if
22 you're looking at chlorinated biphenyls or
23 a phosphate ester or anything, you have a
24 range of molecular weights, and the
25 properties are based on the average, but

1 the light ends refer to the lower molecular
2 weight components of the formulation, and
3 they tend to be more volatile, often
4 referred to as light ends.

5 MS. GRADY: Are you familiar with
6 Aroclor 1242?

7 A: Yes, ma'am.

8 Q: Was Pydraul-135 made with Aroclor
9 1242?

10 A: I don't remember the exact
11 composition, but probably.

12 Q: And can you relate what you mean
13 by light ends with relationship to Aroclor
14 1242?

15 A: Only in the same context that I
16 described, Aroclor 1242 is a chlorinated
17 biphenyl containing 42 percent chlorine.
18 To get 42 percent chlorine you have to
19 chlorinate, I've forgotten, 4 carbon sites
20 on the biphenyl molecule. However, you
21 might have 5 chlorines on some and 3 on
22 another and even 2 on some. So the 2
23 chlorine material would be light ends.

24 Q: The next exhibit is Exhibit 628
25 that I'll mark here today, a two page

1 exhibit, Bates range TW2-2003953 through
2 54. Exhibit 628 purports to be a letter to
3 Walter Woods, dated March 14, 1967 from
4 C.L. Early. Please read Exhibit 628, Mr.
5 Early, so that you can answer the question
6 of whether you have seen it prior to today?

7 A: Okay.

8 Q: Have you seen Exhibit 628 prior to
9 today?

10 MR. MAYER: Subject to my prior
11 admonition, sir, you may respond.

12 A: I don't recall the document.

13 MS. GRADY: Is that your signature
14 on the second page?

15 A: Yes, ma'am.

16 Q: Do you have any reason to believe
17 that you didn't draft Exhibit 628?

18 A: No, ma'am.

19 Q: Does Exhibit 628 refresh in any
20 way your recollection concerning the
21 identity of Walter Woods?

22 A: I still don't recall Walter Woods.

23 Q: Does 628 refresh your recollection
24 about any other employees of Texas Eastern
25 with whom you had any communications?

1 A: I have a blank on Texas Eastern
2 people.

3 Q: Could you read the second and
4 third sentences in the first paragraph of
5 Exhibit 628 where you state, "We concur
6 with Mr. Gilcrease's analysis," et cetera?

7 A: The second and third sentences?

8 Q: Yes. The one also that starts
9 "Oxidation tests".

10 A: I've read that.

11 Q: What did you mean by "this
12 chemical makeup," "Oxidation tests showed
13 that fluids of this chemical makeup do not
14 oxidize significantly"?

15 A: These fluids were made up of
16 predominantly the Aroclors and heavy
17 thermally stressed mineral oil,
18 Pydraul-312, the basic product. And these
19 were quite stable to oxidation at elevated
20 temperatures. To get the viscosity down in
21 135, we had to add lower boiling
22 components. They wouldn't necessarily be
23 less thermally stable, they would still be
24 oxidation resistant, but they could
25 vaporize as opposed to oxidize. That is

1 what I meant.

2 Q: Did you receive any information
3 from Texas Eastern concerning the use that
4 they might put Pydraul-135 to?

5 A: I don't recall anything of that
6 nature with Texas Eastern.

7 Q: Does paragraph 2 of Exhibit 628
8 refresh your recollection in any way
9 concerning any information provided by
10 Texas Eastern or anyone else concerning the
11 machinery setup in which Texas Eastern was
12 going -- might use Pydraul-135?

13 A: No, ma'am.

14 Q: Are you familiar with the term
15 liquid seal as it relates to compressors?

16 A: I've heard it, but I don't know
17 what it means.

18 Q: Have you ever had any
19 communications with anyone about how liquid
20 seals work in heavy machinery?

21 A: I don't recall any such.

22 Q: What was the highly chlorinated
23 component in Pydraul-135?

24 A: Probably chlorinated benzene.

25 Q: Does this sentence in Exhibit 628

1 on the second page in the first paragraph
2 that states, "In order to achieve good low
3 temperature pumping characteristics, it is
4 necessary to include in the formulation a
5 highly chlorinated, but fairly volatile,
6 component" refresh your recollection in any
7 way concerning the formulation of
8 Pydraul-135 with respect to highly
9 chlorinated substances?

10 A: I'm reasonably sure it was
11 chlorinated benzene. I can't be -- I'm
12 not a hundred percent sure.

13 Q: Was there a policy or practice at
14 Monsanto between '63 and '68 concerning
15 what sort of support Monsanto was willing
16 to provide to a prospective customer for a
17 new product?

18 MR. MAYER: Objection, vague and
19 ambiguous as to support. Go ahead.

20 A: The question is, was there a
21 policy?

22 MS. GRADY: Or a practice as to
23 what kind of support you'd be willing to
24 provide to a prospective customer
25 concerning their evaluation of a new

1 product.

2 MR. MAYER: Same objection. Go
3 ahead.

4 A: A project manager in my position
5 had a fairly wide degree of flexibility to
6 decide how much service to give. It could
7 vary.

8 Q: Do you remember communicating to
9 potential customers that you were willing
10 to provide them reasonable support in
11 evaluating a new product?

12 MR. MAYER: Objection, vague and
13 ambiguous and argumentative as to
14 reasonable support. Go ahead.

15 A: I routinely offered support to
16 customers.

17 MS. GRADY: What kind of support?

18 A: It varied widely, but in many
19 cases the use of these fluids would require
20 changing the seals, so I would say if
21 you'll absorb the cost to change the seals,
22 we'll give you the fluid for a field
23 trial. I would obtain samples routinely
24 and do the analytical work in our
25 laboratories to monitor the progress of the

1 fluid in service. These are typical kinds
2 of service.

3 Q: Do you recall providing any such
4 services to Texas Eastern?

5 A: No, ma'am.

6 Q: Does the last paragraph in Exhibit
7 628 refresh your recollection in any way
8 concerning any follow-up services that
9 might have been provided to Texas Eastern
10 concerning their evaluation of Pydraul-135?

11 A: No, ma'am.

12 Q: Does the name Ted Harrison mean
13 anything to you?

14 A: No, ma'am.

15 Q: Did you review any technical
16 literature concerning compressors, gas
17 compressors in relation to the call you
18 made with Dale Smith to Texas Eastern?

19 A: I don't recall any such review.

20 Q: Are you familiar with any
21 technical information concerning Cooper
22 Bessemer compressors?

23 A: I'm aware of them, but I don't
24 recall any specific technical information.

25 Q: The next exhibit I'd like to show

1 you we will mark as Exhibit 632, which I
2 will describe as a one page document
3 bearing Bates number Tran 057590, which
4 purports to be a memorandum from W.R.
5 Richard to R. Davis, on Monsanto memorandum
6 paper, dated May 20, 1968, and includes a
7 list of cc's, among which is C. Early. And
8 I'll ask you to read Exhibit 632 and tell
9 me if you've seen it prior to today?

10 A: I don't recall the document.

11 Q: Do you recall any inquiries by the
12 FDA during your employment with Monsanto
13 when you were working with industrial
14 lubricants concerning Aroclors or PCBs?

15 A: No, ma'am.

16 Q: Do you recall any discussions with
17 Monsanto employees concerning preventing or
18 minimizing losses of Aroclors to the
19 environment?

20 A: No, ma'am.

21 Q: Are you familiar with someone
22 named Mr. Papageorge?

23 A: Yes.

24 Q: Do you recall Mr. Papageorge's
25 position at Monsanto during your employment

1 between '63 and '68?

2 A: No, I don't.

3 Q: Did you have any occasion to work
4 with Mr. Papageorge when you returned to
5 Monsanto in 1970?

6 A: I was in meetings with him
7 peripherally, but not directly.

8 Q: You attended meetings that he also
9 attended, is that what you mean?

10 A: Yes.

11 Q: I may have asked you this. If so,
12 I apologize. When you returned to Monsanto
13 in 1970, did you ever have any connection
14 with PCB issues facing Monsanto?

15 A: No.

16 MR. MAYER: You're right, asked
17 and answered.

18 A: No, I did not.

19 MS. GRADY: The next exhibit I'll
20 show you is Exhibit 633. 633 it bears
21 Bates number Tran 086253. It purports to
22 be a memorandum from Richard Davis to W.R.
23 Richard, dated May 23, 1968. Subject, "FDA
24 Aroclor inquiry." There is a list of cc's,
25 which includes C. Early. I ask you to look

1 at Exhibit 633, Mr. Early, and tell me if
2 you have seen it prior to today?

3 A: I don't recall seeing this
4 document.

5 Q: Do you recall seeing a document
6 that included the same information in a
7 different form?

8 MR. MAYER: Subject to my prior
9 admonition, sir, you may respond.

10 A: I vaguely remember the name
11 Findett in connection with reclamation of
12 fluids for commercial reasons or
13 environmental, I don't know.

14 MS. GRADY: Did you have any
15 involvement in any programs to reduce or
16 minimize plant effluent from Monsanto's
17 customers?

18 A: No.

19 Q: Do you recall any discussions
20 about PCBs in the environment just prior to
21 your leaving Monsanto in 1968?

22 A: The only recollection I have, and
23 it's vague and general, had to do with a
24 report of PCBs in birds in Norway. I don't
25 recall reading anything about it. I'm

1 aware some such report was, you know --

2 Q: Did you have any discussions with
3 Monsanto employees during this period '63
4 to '68 that were working on projects that
5 involved PCBs?

6 MR. MAYER: Can you that read
7 back?

8 MS. GRADY: I'll reformulate. Did
9 you have any discussions with Monsanto
10 employees during your employment there
11 between 1963 and 1968 about their
12 involvement with PCB issues with relation
13 to the environment?

14 A: I don't recall any such
15 involvement, no.

16 Q: Do the names Jensen and Vidmark as
17 researchers mean anything to you?

18 A: No, ma'am.

19 Q: Does research done in Sweden
20 concerning the presence of PCBs in its
21 environment in 1966 mean anything to you or
22 refresh your recollection in any way?

23 A: No. I don't recollect. As I
24 said, I vaguely remember a report, it may
25 have been Sweden instead of Norway, a

1 report on finding traces of PCB in birds.
2 I don't recall seeing any research reports
3 or documentation.

4 Q: Did you ever come to hold the
5 belief that Aroclors were not
6 biodegradable?

7 MR. MAYER: Objection, the
8 question lacks foundation.

9 A: Do I answer?

10 MR. MAYER: Yes, you do. Did you
11 ever hold such a belief?

12 A: Certainly, in recent years. But
13 in that time frame of '63 to '68, I don't
14 recall if it was on my mind or not.

15 MS. GRADY: The next exhibit I
16 want to show you is Exhibit 634, and which
17 I'll describe for the record as a
18 multi-page document bearing Bates range
19 Tran 063374 through 79, which purports to
20 be a memorandum on Monsanto letterhead from
21 Michael F. Baber to a long list of people,
22 one of which is C.L. Early. Subject:
23 Toxicity of halogenated polyphenyls. Dated
24 April 8, 1971. I ask you to take a look at
25 this, not necessarily reading it

1 word-for-word, unless you want to, and tell
2 me if you have seen Exhibit 634 prior to
3 today?

4 A: I don't remember seeing the
5 document.

6 Q: Can I direct your attention to the
7 second page of the document where there is
8 a paragraph called "Highly chlorinated
9 biphenyls," and ask you to read that.

10 A: All right, I've read it.

11 Q: Does that refresh your
12 recollection in any way concerning any
13 involvement you had with PCB issues upon
14 your return to Monsanto in 1970?

15 A: No. And it doesn't change the
16 fact that I was not involved in chlorinated
17 biphenyls.

18 Q: Are you finished with your answer?

19 A: Yes.

20 Q: The next exhibit I'd like to show
21 you was marked in the Frederick deposition
22 as Exhibit 6. It was marked, apparently,
23 on 1/9/92. I ask you to look at Exhibit 6
24 and tell me if you've seen it prior to
25 today?

1 A: I do not recall the document.

2 Q: Do you recall any American Society
3 of Lubrication Engineers meeting in
4 Chicago?

5 A: I don't recall any specific
6 meeting.

7 Q: Do you recall hearing any papers
8 presented at any American Society of
9 Lubrication Engineers meeting about
10 Turbinol?

11 A: No.

12 Q: Do you recall at any such meeting
13 hearing any papers presented about Monsanto
14 fire-resistant synthetic fluids?

15 A: Yes, I'm sure there were meetings
16 of that type.

17 Q: What about papers concerning
18 Monsanto fire-resistant synthetic fluids
19 used in gas compressors?

20 A: I don't remember meetings of that
21 specific subject, or presentations.

22 Q: You mentioned earlier that natural
23 gas is a hydrocarbon, is that right?

24 A: Yes, ma'am.

25 Q: And you have a bachelor degree in

1 chemistry, is that right?

2 A: Yes.

3 Q: And your work at Monsanto required
4 you to apply your knowledge of chemistry,
5 is that right?

6 A: Somewhat.

7 Q: What would you expect to be the
8 chemical reaction between two
9 hydrocarbons?

10 MR. MAYER: Objection, the
11 question poses an incomplete hypothetical.

12 A: It depends on many conditions,
13 temperature and catalyst and everything
14 else. But no reaction at ordinary
15 temperatures.

16 Q: And what about at elevated
17 temperatures?

18 MR. MAYER: Same objection,
19 incomplete hypothetical.

20 A: In the refining process there is a
21 whole host of reactions that occur. I
22 can't begin to summarize the -- they can
23 polymerize small molecules and make big
24 ones, they can break big ones up and make
25 smaller ones, all different kinds of things

1 can be done. But at ordinary room
2 temperatures, pretty non-reactive.

3 Q: Where were Aroclors made during
4 1963 and '68?

5 A: Anniston, Alabama, I believe, was
6 the primary site. They may have been made
7 in the Queeny Plant in St. Louis.

8 Q: What about the Krummrich Plant?

9 A: They may have been made there, I'm
10 not sure.

11 Q: Are you familiar with a product
12 called Stauffer, S-t-a-u-f-f-e-r, Fyrquel,
13 F-y-r-q-u-e-l?

14 A: No.

15 Q: Did you play any role in
16 determining the text of labels that would
17 be placed on products during your
18 employment at Monsanto between '63 and '68?

19 A: Not the text, no.

20 Q: Anything about labels?

21 A: Not really.

22 Q: Is there some reason you're
23 qualifying your answer in that way?

24 A: Well, in a new product you had to
25 have a new label, so I can't swear that I

1 didn't have discussions with somebody about
2 labeling a new Pydraul-135 or 312, but it
3 wasn't my responsibility to develop labels.

4 Q: And you recall no such discussions
5 at this time, is that correct?

6 A: No, I don't, really.

7 Q: Was Pydraul-135 developed in
8 response to a customer request or inquiry?

9 A: My best recollection is that that
10 resulted from a visit to a steel company in
11 Canada who wanted a better low temperature
12 version of Pydraul-312.

13 MS. GRADY: That's all the
14 questions I have at this time.

15 MR. MAYER: No questions.

16 (Discussion off the record).

17 MS. GRADY: My understanding is
18 that the standard stipulation is that the
19 transcript will be sent to the witness, the
20 witness will have thirty days to review the
21 transcript and make any corrections as
22 appropriate and to sign it. If the
23 transcript is not -- and return the
24 transcript. If the transcript is not
25 returned, plaintiffs can use the transcript

1 as if it was signed, even if Mr. Early has
2 not returned it as signed. That was kind
3 of inartfully stated, but, in essence,
4 you've got thirty days to sign, if you
5 don't sign within thirty days we can use it
6 like you did sign it.

7 MR. MAYER: That was a much better
8 explanation. So stipulated.

9 MS. GRADY: Thank you.

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COMES NOW THE WITNESS, CURTIS LA
 VERNE EARLY, and having read the foregoing
 transcript of the deposition taken on the
 20th day of August, 1992, acknowledges by
 signature hereto that it is a true and
 accurate transcript of the testimony given
 on the date hereinabove mentioned.

CURTIS LA VERNE EARLY

Subscribed and sworn to me before this
 ___ day of _____, 1992.
 My Commission expires: _____

Notary Public

rg

1 State of Missouri

2 SS.

3 City of St. Louis

4 I, Ronald A. Gore, a Notary Public
5 in and for the State of Missouri, duly
6 commissioned, qualified and authorized to
7 administer oaths and to certify to
8 depositions, do hereby certify that
9 pursuant to Notice in the civil cause now
10 pending and undetermined in the Superior
11 Court for the State of California, for the
12 County of Los Angeles, to be used in the
13 trial of said cause in said court, I was
14 attended at the offices of Bryan Cave, One
15 Metropolitan Square, in the City of St.
16 Louis, State of Missouri, by the aforesaid
17 witness; and by the aforesaid attorneys; on
18 the 20th day of August, 1992.

19 The said witness, being of sound
20 mind and being by me first carefully
21 examined and duly cautioned and sworn to
22 testify the truth, the whole truth, and
23 nothing but the truth in the case
24 aforesaid, thereupon testified as is shown
25 in the foregoing transcript, said testimony

1 being by me reported in shorthand and
2 caused to be transcribed into typewriting,
3 and that the foregoing pages correctly set
4 forth the testimony of the aforementioned
5 witness, together with the questions
6 propounded by counsel and remarks and
7 objections of counsel thereto, and is in
8 all respects a full, true, correct and
9 complete transcript of the questions
10 propounded to and the answers given by said
11 witness; that signature of the deponent was
12 not waived by agreement of counsel.

13 I further certify that I am not of
14 counsel or attorney for either of the
15 parties to said suit, not related to nor
16 interested in any of the parties or their
17 attorneys.

18 Witness my hand and notarial seal
19 at St. Louis, Missouri, this 7 day of
20 Sept , 1992.

21 My Commission expires May 22, 1994.

22 Daniel A. Gore

23 Notary Public in and for the

24 State of Missouri
25