S31696

CERTIFIED COPY

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKESVILLE DIVISION

EQUITABLE RESOURCES ENERGY COMPANY, a West Virginia Corporation,

Plaintiff,

vs. No. 91-441

MONSANTO COMPANY, a Delaware Corporation,

Defendant.

Deposition of NORMAN T. JOHNSON, called as a witness by the Plaintiff, pursuant to the provisions of the Federal Rules of Civil Procedure pertaining to the taking of depositions, before Gary L. Sonntag, C.S.R., R.P.R., a Notary Public in and for the County of DuPage, State of Illinois, taken in the offices of the Sheraton Suites, 121 Northwest Point Road, Elk Grove Village, Illinois, on the 30th day of August, A.D. 1993, at the hour of 10:45 a.m.

WATER_PCB-SD0000043492

PRESENT:

MC COY, BAKER & WEST, by

MR. CHARLES E. BEAL, II,

309 North Broadway
P. O. Box 1660
Lexington, KY 40592-1660
(606) 254-6363

appeared on behalf of Plaintiff; and

VAN ANTWERP, MONGE, JONES & EDWARDS, by

MR. GREGORY L. MONGE,

Fifth Floor
1544 Winchester Avenue
Ashland, KY 41101
(606) 329-2929

appeared on behalf of Defendant.

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TESTIMONY OF NORMAN T. JOHNSON

EXAMINATION BY
MR. BEAL: 5

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(The witness was thereupon duly sworn.)

MR. BEAL: Mr. Johnson, my name is Charles Beal, and I'm an attorney from Lexington, and I represent a company called Equitable Resources. They have a division in eastern Kentucky called Kentucky Hydrocarbon.

We're up here today to take your deposition concerning some product that a company you formerly worked for, Monsanto, sold to Kentucky Hydrocarbon from 1957 through 1971.

I want to ask you a series of questions today, and I do have a whole stack of documents I'm going to ask you to read through and identify.

If I ask you a question that you don't understand, or if, for some reason, I don't pronounce something clearly, please say so and I'll try to rephrase the question.

Otherwise, if you want to talk to Mr. Monge or step out or anything like that, just say so and we'll take a break at any time.

I want to make this as least intrusive

as possible.

NORMAN T. JOHNSON

called as a witness by the Plaintiff, pursuant to the provisions of the Federal Rules of Civil Procedure pertaining to the taking of depositions, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BEAL:

Q Would you please state your full name.

A Norman T. Johnson.

Q What is your current address?

A 601 Huntington Commons Road, Mt. Prospect, Illinois, 60056.

Q Your Social Security number?

A 356-66 -- no, wait a minute -- 22 -- 356-22-6657.

Q Are you currently employed?

A Nope.

Q I take it you're happily retired?

A Absolutely.

Q Could you tell me a little bit about your background. Where is your hometown?

A Chicago. I was born and raised in Chicago.

Q High school, too?
A Yes.
Q Did you have college?
A Yes.
Q Where did you go?
A I went to Wright Junior College in Chicago for two years, and then two-and-a-half years at the University of Illinois in Champaign.
Q What type of degree did you get?
A Degree in marketing and economics.
Q I hate to ask you this, but when was that degree?
A '54.
Q Did you have any postgraduate education?
A No.
Q Did you immediately enter the job market in 1954?
A No. I went into the United States Army.
Q Did you do what, two, four years?
A Two years; draftee.
Q So that would take us up to 1956?
A '56, right.
Q What --
A I came back and I went to work for a company

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called Royal-McBee here in Chicago.

Q What was your position there?

A Sales.

Q What was the product?

A Accounting systems on the McBee side of the company, the Royal side was the typewriter people.

Q How long did you work for that company?

A About two years.

Q Was it all in Chicago?

A All in Chicago.

Q And all in a sales position?

A All in sales.

Q So that would take us up to about 1958?

A Yeah.

And then I went with a company called Mead and Wheeler here in Chicago selling various office equipment and office suites.

Q How long did you stay with Mead and Wheeler Wheeler?

A About a year-and-a-half.

Q Where was your next stop?

A Monsanto.

Q What position were you originally hired in at

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Monsanto?

A Sales trainee.

Q When was that?

A The fall of '59.

Q Was that in their Chicago office?

A No; in St. Louis.

Q It was in St. Louis.

What were your duties when you originally hired in with them?

A Went through a sales training program for six months. The first three months was really orientation, and the second three months was working in purchasing at the Queeny plant in downtown St. Louis.

Q What did you do after your sales training program?

A I was assigned as a salesman to Indianapolis.

Q Did you have a particular product that you were responsible for?

A A whole bunch. Sold fine chemicals, intermediates, the fire-resistant fluids, paint resins, plasticizers. I'm sure I'm missing some.

I think I worked for about five or six

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different product groups.

Q How long were you in Indianapolis?

A Four years.

Q To approximately 1964?

A Right.

Q Was that all in just a -- what was your title when you worked in Indianapolis?

A Sales representative --

Q Sales representative?

A -- probably.

Q Were you promoted in 1964?

A Went to New York.

Q Okay.

A I don't know if I was promoted.

Q You were moved?

A I was moved.

Q And New York City?

A You got it.

Q Did you have the same position there?

A I was called industrial sales representative, I believe, and I was selling primarily to plasticizers, to the PVC users, in Brooklyn, Queens, Long Island and the environments of New Jersey and whatever.

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(Indicating.)

Q How long did you stay in that position?

A Two-and-a-half years.

Q So 1967?

A Right.

Q Okay.

A Came back to St. Louis.

Q That was a promotion, I would assume?

A (Indicating.)

Q It was a movement?

A It was a movement.

Q What was your position then?

A I was field sales manager for the functional fluids group --

Q What --

A -- or functional products group maybe they called it.

Q What did you do as a field sales manager?

A I managed, on a functional basis, the -- I believe it was nine salesmen covering the country for the sale of dielectric heat transfer hydraulic fluids.

Q Turbinol?

A Yes.

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Q Pydraul?
A Pydraul.
Q And all the other assorted --
A All the dielectrics which had the trade name of Innerteen, Pyranol, Santovac.
Q You said you had nine --
A Nine salesmen in the field at that time, yeah.
Q For the entire country?
A Right.
Q This was 1967?
A Right.
Q Who was your immediate supervisor?
A George Buchannon.
Q What was his title?
A He was a product manager of the oil additives and functional fluids group.
(Indicating.)
Q Do you remember which salesperson would have been responsible for Kentucky at that time?
A No, I don't. I don't know whether the salesman worked out of Cincinnati or out of the Pittsburgh office.
Q But it would have been one of the two?

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A Should have been, yes.
Q Do you have any recollection of the names of any salespeople that worked out of Pittsburgh and Cincinnati during that period of time?
A No, I don't.
Q How long did you stay as field sales manager?
A Some time in '68, late '68, or '69, I was still field sales manager, but now I was a part of a business group.
Q Which business group was that?
A Functional fluids group.

And now as a group, we had our own research and product development assigned to our business group.

Q How did that change your job responsibilities?
A Had a direct working relationship with product development and research and the field salespeople.
Q Was there an expansion in the non-field salespeople during that period of time? I mean, were more hired, was --
A No, we were still nine in the field -- no, that's -- no, no. We ended up picking up three individuals to become regional managers,

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and I guess, yes, you're right, the sales force probably increased to about 12 or 13.

Q Do you know who the regional manager would have been for Kentucky?

A I believe it would have been Jack Fallon at that time.

Q Do you know where he would have been based?

A Detroit.

Q How long did you stay with your responsibilities as field sales manager in the business group?

A Stayed in the business group, but then the responsibility changed to have total responsibility for industrial fluids.

Q When did that happen?

A I'd say '69, early '69.

Q And by "industrial fluids" --

A Primarily Pydraul.

Q In all of its various formulations?

A Right.

Q Do you have any recollection what size market in dollars you were doing in Pydraul?

MR. MONGE: At what time?

MR. BEAL: 1969

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A Probably a million-and-a-half.
BY MR. BEAL:
Q How did that compare with the rest of --
A Industry?
Q -- Monsanto's total sales?
A Oh, very insignificant.
Q Less than one percent --
MR. MONGE: If you know.
BY MR. BEAL:
Q -- if you know?
If you don't --
MR. MONGE: If you don't, just tell him you don't know.
A I don't know.
BY MR. BEAL:
Q How long did you hold this responsibility?
A I would say about a year-and-a-half.
Q 1970?
A Yeah.
And then in 1970 we were merged with the paper chemicals group --
Q Okay.
A -- and I went back into the position as field sales manager for both the paper chemicals

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group and the industrial fluids.

Q How long did that last?

A Till late '72, early '73.

Q What position did you assume then?

A What did I do then?

Q Yes, sir.

A I was to become director of commercial development.

Q You say you were to become?

A I left the company in, I believe it was, April of '73.

Q Why did you leave Monsanto?

A I had a very interesting opportunity with a company called Davis & Young, and I also recognized that there may not be a future in terms of the fluids group, and so when I saw the opportunity, I decided to make a career change and move.

Q Did that bring you back to Chicago, that move?

A No. It kept me in St. Louis.

Q What were you doing at Davis & Young?

A Director of marketing.

Q What kinds of products were you --

A Industrial maintenance products.

Q Did you stay in sales from 1973 on --

A Always.

Q -- until you retired?

A You bet.

Q When did you retire?

A You asked me that this morning, and I think it's got to be '87.

Q Briefly, I mean, if there are any other companies between --

A There were.

Q Okay. Just for --

A I went to a company called Allied Tube and Conduit here in Chicago. I was with them for a couple of years, and then I also was with another company that was a part of Houghton Elevator, that was in the energy management field, and then I joined Henkel Corporation -- God, what year -- '78, '79, and then retired in '87.

(Indicating.)

Q Did you ever sell any industrial chemicals after leaving Monsanto?

A Oh, yeah. Henkel was industrial chemicals.

Q What types?

A Primary products were polyamides and acrylics, an isocyanate.

These were used as reactants with epoxies.

(Indicating.)

Q I seem to have heard that you have given depositions before concerning Pydraul or concerning your position at Monsanto; is that true?

A True.

Q Do you know how many times?

A This is the third time.

Q Have you ever testified at a trial?

A No, I have not.

Q Do you have any type of agreement with Monsanto or with any other law firm concerning compensation for giving these depositions?

A No.

Q Are you receiving any kind of retirement from -- any kind of payoff from Monsanto?

A Yes.

Q That was from your what, 14 years?

A Right.

Q When did you first hear -- the best of your

recollection, when did you first hear the term "polychlorinated biphenyl"?

A 1959.

Q That's when you first came on with Monsanto?

A (Indicating.)

MR. MONGE: You have to say yes or no so he can --

A Yes.

I can't nod my head.

MR. MONGE: Well, we haven't figured out how to pick that up yet on the machine.

BY MR. BEAL:

Q Do you have any personal knowledge of any toxicity studies that were conducted on PCB's by Monsanto?

A When?

Q In 1959 through 1964.

A No, not to my knowledge.

Q What about 1960 through 1970?

A I may have been aware of toxicity studies that were underway in '68 through '70.

(Indicating.)

Q How would you have been aware of those?

A Somebody might have said something to me from research.
Q But that wasn't really your department and --
A No, it wasn't my department at all.
Q Do you remember when you first heard about any problems with PCB's concerning bioaccumulation or biodegradation?
A The first time I heard about it was when Bill Richard and Scott Tucker came back from a meeting with some scientists in Sweden.
Q What exactly was said?
A To me?
Q To you.
A That apparently the Swedish scientists had determined that PCB's were showing up in the environment.
Q Do you remember when that was?
A I assume some time in '68.
Q What was the occasion for them discussing this with you?
A We used to have weekly business meetings, and at one of those business meetings, Bill Richard reported on his trip to Sweden.
Q What was Monsanto's reaction to that

information?

MR. MONGE: Let me object just to the term "Monsanto's reaction."

I'm not sure that he's totally in a position to express what Monsanto's reaction is, but to the extent that he can answer, I'll so let him.

A I'd say my concern -- I can't speak for Monsanto -- my concern was that if it were true that this was showing up in the environment, then it was something that we must deal with.

BY MR. BEAL:

Q Do you remember if any increased testing was ordered or if the research department was involved in trying to see if this information was correct?

A No question about it. Bill Richard was doing work along with Scott Tucker.

Q Anyone else that would come to mind of being directly involved in --

A People in the medical department, like Dr. Kelly, Elmer Wheeler, Jack Garrett, they might have been. They're in a position to know.

(Indicating.)

Q Your position -- you were -- were you -- I'm trying to go by my hurried notes.

You were still the field service manager at that time, correct, in 1968?

A Right.

Q Was there any decision made to inform your customers concerning the information received from Sweden?

A Yes.

Q Who made that decision?

A Collectively the decision would have been made by that business group.

Q Who would have been the main decision-makers?

A Howard Bergen was in charge of the group from a marketing point of view, and Aganastopolis -- I can't remember his first name -- was the --

Q Anyone else?

A Certainly Bill Richard.

Q Would this have been approximately 1968?

A I believe so.

Q Do you remember how and what was going to be said to the customers?

A The effort was to explain what P -- that PCB's had been found in the environment by the Sweden scientists, and it could be almost simultaneously with the information on the Risebrough work out of San Francisco.

Q How was this information disseminated to the customers?

A Through the salespeople, through memos going out.

(Indicating.)

Q Would it have been a memo to the salesperson and then they would do oral contacts with the customers?

A Correct.

And later, I believe, we ended up sending copies of reprints to the salespeople for ultimate distribution to customers.

Q Was it possible to have oral contact with all of your customers at that time?

A No.

MR. MONGE: Objection to the form of that question, but you can go ahead and answer it.

A (Continuing.) Not for me.

(Indicating.)

BY MR. BEAL:

Q Do you have any idea how many customers you had using PCB-containing fluids at that time?

A Like 4 or 500, maybe more.

Q Did you continue to have access to business group decisions concerning PCB's after 1968?

A Yes.

Q Was a decision eventually made to cease producing PCB's?

A Yes.

Q When was that made?

A '72 or '73.

Q Was there a -- prior to 1972 -- or between 1968 and 1972, was a decision made to cut back on sales of PCB-containing products?

A Yes.

Q Was that a business group decision?

A Yes.

Q What was the plan on reducing the sales?

A Well, the initial plan was to try and modify the products by using chlorinated terphenyls, with the ultimate goal to produce new phosphate ester intermediates for producing a

phosphate ester resin or phosphate ester fluids.

Q Why was the decision made to not go forward with the PCT's prior to using the phosphate esters?

A A lot of work was required for us to get to a phosphate ester, and initially we thought, by eliminating the higher chlorinated -- chlorinated biphenyls, we would reduce the amount going into the environment and, of course, that conclusion failed, because there were always minute parts per million quantities of higher chlorinated biphenyls in the various mixtures.

Q So there were always PCB's in the PCT products?

A Right.

Q Do you have any knowledge about what type of toxicity testing was conducted on the PCT's before they were used?

A No, I don't.

Q Do you know if there was any testing on the bioaccumulation of PCT's in the environment?

A No, I don't.

Q Do you know when the decision was made to switch to the PCT's?

A Could have been in the latter part of '69 or in 1970.

Q Who would have made that decision?

A The group.

Q The business group again.

Have you ever heard of an ad-hoc committee called the --

A That's it.

Q Is that the same group?

A In essence, yes.

Q Can you name the members of that ad-hoc committee, to the best of your knowledge?

A Well, you would have the business director, who by that time, I believe, was Howard Bergen, then Don Olson, Bill Richard, myself, maybe Paul Benignus. You might have some of the group leaders from research, which was John Herber and Lou Stark. From development, maybe Kurt Early was around at that time. I don't know.

Q Have you ever heard of a Mr. William Papageorge?

A Yes.
Q Was he a member of this group?
A I don't know exact timing that Bill Papageorge came on board, but once he had moved from Anniston up to St. Louis, he would have been a part of the group, yeah.
(Indicating.)
Q What was the task that was given to this ad-hoc committee?
A "How do we deal with the problem of PCB's?"
Q Do you remember when it was formed?
A Probably we need to clarify something.
The -- the business group and an ad-hoc group could have, in essence, been the same people, and the ad-hoc group would meet to talk specifically about these problems, where our business meeting might talk about broad areas of our business, whether it be accounting or sales analysis, all the other problems.
When the ad-hoc group would get together, there would be this overlap, because we'd talk about it in the business meeting and then when the ad-hoc group would get together,

the specific conversation would be about PCB's.

Q Do you remember when the ad-hoc group was specifically formed?

A Probably late '68, '69.

Q At whose direction was it formed?

A Oh, I suspect under Howard Bergen's control.

Q Were you a member of it from its initial formation?

A I don't really remember.

I just remember going to a lot of meetings, but whether they said, "You're the" --

Q Did this group continue in existence until you left Monsanto?

A Yes.

Q Were you a member of it for that five-year period?

A If I was in town, I could certainly go to their meetings, but they didn't make a point, toward the end more of the period there, because I was doing so many other things, to invite me to it.

(Indicating.)

Q Now we can start with the documents.
A God.
Q You should feel sorry for me to have to read all of these. They sent me 19,000 pages.
Here we go. I'm handing you a document that's been marked as Plaintiff's Exhibit 68, and it's a memorandum dated December 11, 1969.
(Indicating.)
Can you identify the names on the top of that?
Have you ever seen this document?
A Probably saw it.
Q Are you listed as an addressee on it?
A No, I'm addressed as receiving a copy of it.
Q If you would turn to the second page of that document, and there is a heading there it says, "3. Industrial."
A Uh-huh.
Q That would have been the group that you would have been specifically dealing with at that time, is that correct, industrial fluids?
A Yeah, yeah.
Q This would have been your major responsibility; is that correct?

A Right.
Q The memorandum states, "We are taking two basic approaches: Reformulate with terphenyls" -- that's the PCT's?
A Right.
Q -- and, "Develop a straight phosphate ester"?
A Yes.
Q Had any research been done, prior to 1969 on developing phosphate esters?
A Yes.
Q Do you remember when that research was conducted?
A When you say "research," Monsanto made phosphate esters made in plasticizers.

Those phosphate esters could not be used in industrial fluids.
Q Do you know why they could not?
A They didn't have the viscosity characteristics that we would need to make fire-resistant hydraulic fluid.
Q But it was eventually determined that they could be converted or altered to use higher resistance hydraulic fluids?
A Phosphate esters are based on a precursor.

there was not enough of the precursors in the world to supply our needs, so work was done to synthesize the nonyl and cumyl materials to then esterify to a phosphate ester which would give us the viscosity characteristics that we could use to blend the various Pydrauls.

Q Was that an expensive process?

A Expensive and time-consuming.

Q Would it have cost more to use that type of product than the PCB-containing Pydrauls?

MR. MONGE: Object to the question.

When?

MR. BEAL: We'll start with 1968.

A Every product costs a lot of money when you start to make something.

I would say the first phosphate ester we made for this application probably cost us $20 to $25 a pound, and we were going to be selling it for 25 cents, so you see the magnitude of the cost, but that's the cost of getting in business.

BY MR. BEAL:

Q Was it more expensive to produce this product

in 1968 than it would have been to produce the PCB-containing Pydraul?

A Didn't have the chemistry.

Q In 1970, were you capable of producing it?

A I think we were really capable about 1971.

Q Was it more expensive than the PCB-containing Pydraul in 1971?

A If we had our costs under control, it probably wouldn't have cost any more.

Q Does this document -- and if you could, review that situation -- or everything that's written under the heading 3.

A Uh-huh.

Q Does this accurately represent the plan for switching to the PCT's and then to the phosphate ester products as you remember it?

A It's very broad.

Q This is a basic framework?

A Right.

Q Who was D. A. Olson?

A He was director of marketing at the time.

Q Do you recognize the handwriting on that last page?

A Sure.

Q Is it yours?
A Sure.
Q So this would have probably been your copy of this memo that made it to the files?
A God, I don't know.
It has my initials, so it's got to be close.
THE WITNESS: Let me go to the john.
MR. BEAL: Off the record.
(There followed a discussion outside the record.)
MR. BEAL: Back on the record.
Could we give that to the Reporter so he can keep in touch with these.
MR. MONGE: Do you want to call that something?
MR. BEAL: I've got them premarked as trial exhibits. I want to keep them the same.
MR. MONGE: I don't care. I just want to know what we've just gone through.
If you're going to put that in --
MR. BEAL: 68.

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MR. MONGE: -- what you have there is 68?

MR. BEAL: Yes.

MR. MONGE: That's fine.

BY MR. BEAL:

Q I want to hand you something that's been previously marked as Plaintiff's Exhibit No. 20, and that's a form letter from Mr. Olson with an attached article from Chemical Week magazine.

(Indicating.)

Do you recognize this document?

A Not specifically.

Q Do you remember if you had anything to do with its formulation?

A Oh, I'm sure.

Q Do you know what its purpose was?

A It was to provide information to the customers.

Q Would this have been the initial disclosure about the Swedish information to the customers in writing?

A I doubt it. I think there were things before this.

Q Were they letters, booklets, pamphlets? I mean the ones that were before this.

A Letters, along with reprints of articles from either Chemical Week or Wall Street Journal or wherever --

Q Where --

A -- OPD.

Q Where would you have gotten the addresses for mailing the customers at this time?

A Sales analysis.

Q Would it have had every customer on there?

A The system we used would have had every customer we sold to in the past three years.

Q What type of system was this?

A Well, we kept sales analysis by product, we kept it by salesman, and we analyzed all of them, and so we knew we were covering a period of three years.

Q Was this computerized in 1970?

A Yes; oh, yes.

Q Where would the actual computer have been located?

A St. Louis.

Q Which building, or do you know?

A No, I don't.
Q Do you know how often this mailing list would have been reviewed to add new customers, deletes, and active ones?
A There was no such thing as an inactive customer in this program, and any new customer would have automatically been added to the list.
Q You stated earlier that the system used would have had an address for each customer who had purchased the product in the last three years.
A Right.
Q If, in February of 1970, a customer hadn't purchased a product since 1966, would their name and address still be on a customer list at Monsanto?
A No, it would not.
Q It would have been deleted?
A It wouldn't have been picked up.
Customers were picked up based on their purchases, not any effort to delete them.
Q The evidence has demonstrated that Kentucky Hydrocarbon purchased approximately 200 gallons of Pydraul AC and Pydraul ACA in the

period of 1957 through 1971.

A Right.

Q Based upon your knowledge of the sales, would that have been a rather insignificant customer in Monsanto's view?

A When it came to the PCB problem, there were no insignificant customers.

Q Would it have been a small customer volumewise?

A Yes.

Q Would it have been possible that no salesman had ever visited Kentucky Hydrocarbon personally?

A Yes.

What year do you show a record of purchase?

Q I've got those in here.

(Indicating.)

A Okay.

Q We'll get into those a little bit later.

MR. BEAL: Okay. I'll have this admitted as Plaintiff's Exhibit 20.

(Indicating.)

BY MR. BEAL:

Q I want to hand you something that's marked as Plaintiff's Exhibit 66.

(Indicating.)

I want to state to everyone involved that that handwriting on the left is mine, and it got picked up on the copy for me to bring it down here.

MR. MONGE: Is that considered your work product?

MR. BEAL: I'm not waiving any privilege --

MR. MONGE: Oh, okay.

MR. BEAL: -- okay -- but, yes, that is considered my work product, and I apologize for it.

BY MR. BEAL:

Q Do you recognize this document, Mr. Johnson?

A It says I wrote it.

Q Do you deny writing it?

A No.

Q I bet you wish you could at times.

MR. MONGE: Object to that.

BY MR. BEAL:

Q This is a memorandum. It's dated February 16,

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1970, and it has a whole list of addressees on it, starting with P. Craska, C. Clay.

Are these individuals the sales force for your department on that date?

A These would be my salesmen, plus the salesmen assigned to Jack Fallon, who you've got circled here on the right.

(Indicating.)

Q Your salesmen at this time would have been industrial fluids?

A Right.

Q What would Fallon's have been?

A Heat transfer fluids.

Q That would have been the addressees.

People who received copies, why would they have received copies of this memo?

A The people on the right?

Q Yes, sir.

A These were product group people and also international people involved in fluids sold overseas.

Q Out of the people that this is being addressed to, can you identify one of those who you would think would have had sales

responsibility for a customer in Kentucky?

A One of two people that would. It would have been John Heilala, who is shown here in Akron, but actually lived in Pittsburgh, and Carl Clay out of St. Louis.

Q Do you have any idea where John Heilala is nowdays?

A No, no.

Q What about Carl Clay?

A No.

Q What was the purpose of this memorandum?

If you would like to take a second to review it.

A Yeah. Okay.

Q Okay. Back to my question:

What was the purpose of this memorandum?

A To alert these people in terms of the things that were going on relating to the PCB's and the fact that they were showing up in the environment, and the thought that the big problem was the higher chlorinated materials.

Q Getting to my handwritten scribble there, did Papageorge help you in drafting the answers which are attached to this memorandum?

A I would have suspected that Bill Papageorge plus Elmer Wheeler from the medical department, Jack Garrett, would have been involved in this.

Q If you could go back to that first page, these are directions to your sales force; am I correct?

A Correct.

Q The second sentence says, "You can give verbal answers; no answer should be given in writing."

A Right.

Q Why was that?

A Our salesmen were salesmen. They were not chemists, they were not environmentalists, and if questions were raised by the customers, they were -- our salesmen were encouraged to take their credit cards, place a call to St. Louis to talk to Bill Papageorge or to the medical department and let them get proper answers from proper people.

Q So they did not have authority to answer some questions; correct?

A Based on the information stated here, they

obviously could converse with the customer, but if they were talking with an environmentalist, or an environmentalist in the position of General Motors, and he wanted to talk in depth about the subject, it wasn't wise for him to talk to the salesman. He would have been far better off to get on the phone and talk direct to Bill Papageorge.

Q In the second paragraph --

A Right.

Q -- it states, "We want to avoid any situation where a customer wants to return fluid."

Had there been any discussions about providing incineration services to your customers at this time?

A I don't remember. I doubt it.

Q Why did you want to avoid having fluid returned?

A We didn't say we didn't want it. We said we would want to avoid.

We didn't know what we'd do with it. We can store it in drums if the customers could -- could supply it in drums, and at this point, I have to believe we didn't have the

approval on building the incinerator, so as a product group here, we wouldn't know what to do with it.

(Indicating.)

Q If you didn't know what to do with it, did you tell your customers how to dispose of it?

A Prior to this period, we encouraged customers to maintain very tight systems. We provided information for them to reclaim fluid and reuse it.

I believe that we were still in the position of believing that if we eliminated 1254 and 1260 from the formulations, we were greatly reducing the problem Aroclors from the environment.

Q The third from the last sentence in that paragraph says -- it's talking about switching to the ACA products, the PCT products?

A Right.

Q You state, "He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system."

A Uh-huh.

Q Did you have any idea where it would be if it

was out of your customer's system?

A Probably refers to just normal leakage, which, hopefully, he could handle and probably put into a chemical landfill.

MR. BEAL: I would like to have that marked as Plaintiff's Exhibit 66 and introduced.

BY MR. BEAL:

Q Did you ever have any -- can I get back to that one second.

Did you ever have any feedback on that second paragraph on the February 16, 1970, memo from your superiors, "We don't want to take fluid back," specifically that comment?

A "We want to avoid."

Q Well, at one point on there it does specifically state, "We don't want to take fluid back"; is that correct?

A Yes.

Q Did that ever have any negative effect upon your career with Monsanto --

A No.

Q -- this memorandum?

A No.

Q Did you ever have any negative comments from Mr. Papageorge or any other person concerning this paragraph?

A No.

Q Save you one.

(Indicating.)

A Good man, Chuck.

Q Thank you. It's nice to be appreciated.

I'm going to hand you something that's marked as Plaintiff's Exhibit 39.

MR. BEAL: Do you have a stapler with you?

THE NOTARY: No, I do not.

BY MR. BEAL:

Q It's a three-page document. I've given you all three pages. Unfortunately, they won't stay together too well.

(Indicating.)

You are not listed as an addressee on this.

Have you ever seen this document before?

A I don't know.

Q It's dated April 9, 1970, and it says -- in Paragraph 4B it states about finding PCB's in

WATER_PCB-SD0000043535

cows milk in Ohio.

Did you ever receive any information on that incident?

A No.

Q You have no recollection of that incident?

A No.

Q What was the corporate management committee?

A I would not be a good judge of that one. I -- I don't think I could answer you on that.

Q Okay. That's fair enough.

MR. BEAL: Since he can't identify that, I'm not going to ask to have it attached.

THE WITNESS: We had committees and committees.

BY MR. BEAL:

Q I'm going to hand you something marked as Plaintiff's Exhibit 21, and it's a letter dated June 11, 1970.

(Indicating.)

Is that your signature on it?

A I think so. Nobody could forge it.

Q If you could, would you take a second and review that.

MR. MONGE: Off the record.

(There followed a discussion outside the record.)

MR. BEAL: Back on the record.

BY MR. BEAL:

Q The second paragraph of this letter talks about replacement products.

A Yes.

Q It's my understanding that these replacement products are the ones that contained PCT's; correct?

A Yes.

Q When did you originally determine that they also contained amounts of PCB's?

A When did I know?

Q Yes, sir.

A Probably within a month before this letter went out.

(Indicating.)

Q Were these replacement products specifically designed to be compatible with the PCB-containing products?

A Ask the question again.

Q Was it a goal of Monsanto, in designing the

PCT-containing products, to make them interchangeable and compatible with the PCB-containing products?

A The intent was to make a fire-resistant product that would perform similar to the old Pydrauls and not contain the higher chlorinated PCB's and be compatible, yes.

(Indicating.)

Q So you could just add it to the machine that contained Pydraul -- you could add Pydraul ACA to a machine that had Pydraul AC in it?

A True.

Q Were any of your customers ever told, either verbally or in writing, that they needed to drain their machines of Pydraul AC prior to using the Pydraul ACA?

A That was discussed.

Q Do you remember when it was discussed?

A During this time frame; but most customers would not entertain any thoughts about draining equipment and refilling it with new.

(Indicating.)

Q So it was not only discussed inside Monsanto, but it was discussed with customers?

A Outside.
Q What was the substance of the suggestions inside Monsanto about draining?
A If a customer were to drain and replace with the new, the percentage of 1254, 1260, would be greatly reduced, and those were the products at this point in time which were considered the most detrimental to the environment.
Q Did you advise your customers to drain and refill with the PCT-containing products?
A We verbally talked, through the salespeople, and achieved negative results.
Q How come that was done verbally?
A Customers are customers. You can't go out and say, "You've got to do this," or, "If you don't do this, we're not going to do this."

They are customers, and the customer is theoretically always right. We can suggest, but we can't demand.

Q I understand, I mean, you have to suggest to them about doing that.

But why was that information -- or why was that exchange done verbally instead of in

writing?

A Probably just absent the thought in terms of saying to them in a letter like this, "Just a" -- "the best thing you could do would be to drain and refill with new." Most -- the question would come again, "What do you do with the material you take out?"

Q At that time --

A We didn't have an incinerator to -- to operate with.

I believe at this time Bill Papageorge was looking for other incinerators around the country to entertain that possibility, but these are very high-temperature materials, and I don't know how many incinerators could even handle the materials.

(Indicating.)

Q The second page has a list of Monsanto regional sales offices.

A Right.

Q Would one of these offices have been responsible for all the customers in Kentucky?

A I would believe it would have been the Akron office.

Q If they were selling to a company located in Pittsburgh, which office would it have been?

A Akron.

Q Do you have any idea who would have been in that office in 1970?

A John Heilala would have worked out of that office covering that area, and Rollie Garcia would have been the regional manager there.

MR. BEAL: I ask that be entered as Plaintiff's Exhibit 21.

BY MR. BEAL:

Q I hand you something that's marked as Plaintiff's Exhibit 22. It's a letter dated April 15, 1971. It's signed by C. Larry Bradford.

(Indicating.)

Have you ever seen this document before?

A Probably.

Q What was -- obviously I'm taking Mr. Bradford's deposition tomorrow.

What was his position as a product manager for hydraulics and lubricants? How would that compare with your position in 1971?

A I was moved over to field sales manager for

the combined groups and Larry was put in -- in as product manager for industrial fluids.

He calls it hydraulics and lubricants.

Q It's the same thing?

A Yeah.

Q Was that effectively your job up until you were moved over?

A True.

Q Where was he prior to that move, or do you know?

A He was in the Los Angeles office as a regional manager.

Q Did you ever hear of a situation where a company, one of your customers, had tested your PCT-containing fluids and found PCB's?

A No.

Q Did you ever hear about Ralston Purina finding PCB's in a PCT-containing fluid?

A Ralston Purina, to my knowledge, purchased heat transfer fluids. I don't remember them as a customer for hydraulics and lubricants, and I don't remember any work that came back suggesting that there were PCB's in the PCT's.

Q You stated you thought you probably had seen

this letter before.

A (Indicating.)

Q Have you had an opportunity to read it right here?

A Uh-huh.

Q Did you have any discussion with Mr. Bradford before this letter went out?

A Probably.

Q Was this about the time that the switch was being made to the phosphate ester products?

A No. The work was underway on the phosphate ester products. We were still probably providing the PCB -- or the PCT hydraulic fluids.

Q In our case, that would have been Pydraul ACA?

A Right.

Q The second paragraph of that letter says, "There are now no PCB's in any of our Pydraul fluids."

A Right.

Q Is that correct to the best of your knowledge?

A On this date, that is correct.

(Indicating.)

Q Okay.

A Okay?

Q Can you explain that answer?

A Larry Bradford, myself, all included, believed that the PCT-containing products broadly did not contain the PCB's which were felt to be a problem in the environment, and that's what Larry is really saying.

Q On this date?

A (Indicating.)

Q Now, previous they had, previously they had?

A Yes, when 1254 and 1260 were being used, then they were considered the environmental contaminants.

Those products were now out of the formulations and we had now gone to a PCT-containing product, which had monochlorobiphenyl, and our belief, from a marketing point of view, is that we had no polychlorinated biphenyls present in the Pydraul fluids.

Q From a chemical point of view, was that correct?

A Yes.

Q I mean --

A Poly and mono are two different things.
Q But there were no PCB's on this date in that product, correct, in the Pydraul ACA?
A We blended no PCB's intentionally into the product.
Q Well, unintentionally were there some PCB's in the product?
A That's what we found out after this date.
Q When did you find that out?
A Probably somewhere in the next two months.
Q Do you remember how you found out?
A Bill Richard.
Q Do you know how he found out?
A He just thought through the whole structure of these fluids and concluded there was no way that we could use a monochlorobiphenyl or a terphenyl that on a bell-curve evaluation would have parts per million of polychlorinated biphenyls in them, so when you get to parts per million, yeah, there would be parts per million present --
Q Okay.
A -- so we were stuck.
Q Okay.

A Our efforts did not succeed.

Q So the stopgap effort with the PCT products was unsuccessful?

A True.

MR. BEAL: I ask to have that admitted as Plaintiff's 22.

BY MR. BEAL:

Q I'm going to hand you something that's marked as Plaintiff's 47. It's a memorandum I think you and Mr. Bradford wrote --

(Indicating.)

A Uh-huh.

Q -- on November 17, 1971.

We'll just take a few moments and read through that.

A Yes.

Q You do recognize this document?

A Yes.

Q Who is T. L. Gossage?

A He was our director of marketing.

Q What's the purpose of this memorandum?

A Larry wrote it, and he was making an analysis of all the products for which he was responsible for in that industrial area, and

evaluating not only where we stood out there in the industry, where we understood on testing, where we stood on replacement products.

Q On Page 2, there's a heading, "Pydraul & Miscellaneous Industrial Fluids."

A Correct.

Q The third paragraph discusses total cessation of use of PCT-containing fluids.

Was that discussed, that Monsanto stop making industrial fluids at this time until you finally --

A The third paragraph?

Q I'm sorry. The third sentence in the first paragraph under "Pydraul."

It starts, "If we stop using PCT's."

Did you find where I was referring to?

A Yeah, yeah.

I'm thinking through what he's referring to.

Okay. Go ahead.

Q Was it ever discussed in Monsanto to stop formulating PCT-containing fluid at this time?

A Yes.

Q Why was that not done?

A We didn't have the NC esters to switch the people to.

Q Was it ever discussed to stop and not have a product until the NC esters were available?

A Yes; but there wasn't enough product out there in the marketplace from our competition to satisfy the industrial need.

Q And Monsanto would have lost a lot of money?

A Well, the hell with the money. That wasn't -- wasn't really considered.

We had a lot of customers and we had a lot of industries that were very, very dependent on Pydraul. After all, we had a substantial portion of the business.

As I related to you earlier, the cumyl and nonyl phenol precursors were very important in that if Monsanto, broadly, said, "We're not going to make any more chlorinated biphenyls," we would have shut down the electrical industry for capacitors and fire-resistant transformers, we would have shut down NCR, there would have been no more NCR paper, we would have shut down installations

within General Motors, we would have shut down Texas Eastern as a pipeline, we would have been sued.

Monsanto may be in court now, but we would really have been in court.

(Indicating.)

Q The next page, under a heading entitled "Replacement Fluids" --

MR. MONGE: Just a second.

MR. BEAL: Off the record.

(There followed a discussion outside the record.)

MR. BEAL: Back on the record.

BY MR. BEAL:

Q Page 3, the second paragraph down, says, "For the air compressor lubricants we recommend replacing free of charge approximately 25,000 gallons of fluid now out in the industry and incinerating that amount at our own expense."

A Okay.

Q When did the incineration alternative become available?

A When we had an incinerator.

Q So between 1970 and November of 1971,

incineration wasn't an available alternative?

A Yes.

Q What happened to the recommendation to incinerate free of charge?

A Well, initially we didn't have an incinerator that would go up to 2,000 degrees, and if I remember right, there wasn't anybody in the country that was willing to run that hot to destroy chlorinated biphenyls.

When we reached this point and we either had the incinerator onsite or it was being built, Monsanto then recognized the capability of doing it ourselves, and when you looked at some of these things, from our own point of view, we were trying to take positive steps to get the PCB's out of the environment, and air compressors, more than anything else -- I suspect you're also looking at products that contain the 1254, 1260 in this combination, that we were prepared to go ahead and incinerate.

Q Do you know what happened to the recommendation to incinerate these products free of charge?

A I do remember customers calling us and inquiring about making the return and where could they get drums and how would they ship it, where would they ship it to.

How much was received, I don't remember.

Q Do you know if the offer to incinerate free of charge was ever made to all of your customers?

A No, I don't remember.

Q The third paragraph on that page, Page 3, this talks about topping off fluids, and the second sentence says, "This, of course, would mean gradual loss to the environment of all PCB's and PCT's in our current customers' systems."

Did you ever warn your customers, if they tried to dispose of these products, that could be avoided?

A Yes.

Q How was this warning made?

A Most likely verbally, but most customers were not interested in draining their systems. I don't remember one customer that was interested in draining his system.

Q This mentions an alternative of replacing the current fluid, giving them new fluid, and

incinerating the old at Monsanto's cost.

A Uh-huh.

Q Was that alternative ever discussed?

A I don't remember.

Q Would that alternative have been expensive?

A Cost was not a consideration.

It probably would cost 20 cents a pound to incinerate, and I know at one point we had offered to do it for 3 cents.

MR. BEAL: I would like to have that marked as Plaintiff's 47.

BY MR. BEAL:

Q I'm going to hand you something that's marked as Plaintiff's 46.

(Indicating.)

You might want to take a few moments to look through that. It's quite a lengthy document. It's 14 pages.

Do you recognize this document?

A Anything this big, I would have read. Wow.

Okay.

Q On the first page, there's a list of people that copies were sent to.

Your name is first.

The rest of these people on that list, what were their positions at this time?

A I don't recognize all of them.

Roger Hatton was in product development at one time for industrial fluids; and Jim Savage was responsible for our manufacturing. Solari, I don't know him. Herber was involved in creating the nonyl and cumyl phosphate esters; Lou Stark was handling industrial fluids from a research point of you; and Bollinger I don't know.

Q This lists the authors of this memorandum as being Larry Bradford, and I think is that Jerry Davidson?

A Yes.

Q What was Davidson's position?

A He was a product specialist under Larry.

Q This discusses your market for industrial fluids.

A Right.

Q Would it be fair to say that the market was made up of a small number of large customers that were a major percentage of your business?

A True.

Q These customers, such as General Motors, Johnson Motors, Armco Steel, Alcoa -- are these customers your sales force would have day-to-day contact with?

A Not day-to-day; month-to-month contact.

Q Personal contacts?

A Yes.

Q If you would turn to Page -- it's marked on the bottom EQU 2047.

MR. MONGE: 47?

MR. BEAL: Yes, yes.

A Yep.

BY MR. BEAL:

Q It has a list of your customers.

That is thousands of pounds of product that they have used in the third column; is that correct?

A Yes.

Q Roughly how much -- I don't know the specific gravity of Pydraul, but how much would 200 gallons weigh?

A About 12 pounds per gallon.

Q So it would be 2,400 pounds, maybe.

So that would be fairly insignificant

compared to the customers on this list?

A True.

Q Page 2040, to skip back -- it says Page No. 3 at the top, also -- has a heading entitled "Reclamation" --

A Yes.

Q -- and discusses working with Findett Service Company.

A Yes.

Q What exactly was this program?

A Findett was an independent contractor located, I guess, in St. Charles, Missouri, and Findett used to reclaim other products, and I can't remember what year got involved in reclaiming Pydrauls, mainly for a plant over in Bedford, Indiana, which was a General Motors plant, and as time went on, we encouraged other people to collect material, and if they couldn't reclaim it themselves, that they would send it to someone like Findett Service, who would reclaim it, send it back to them, so that not only did you have a cost savings for the customer, but you were also keeping material out of the environment.

MR. BEAL: Ask to admit that as Plaintiff's 46.

(Indicating.)

BY MR. BEAL:

Q I hand you something that's marked Plaintiff's 48, and this is a memorandum. It's dated January 25, 1972, from Larry Bradford; is that correct.

(Indicating.)

A Yes.

Q Do you remember seeing this document previously?

A I'm sure.

Q The people who are sent copies of this, the copies on the right-hand side starting with Mr. Bergen, is that basically the ad-hoc committee right there?

A Could have been.

I don't think Mr. Corey would have been on there. I don't think Pho Sin Park would have been on.

The rest could have been in that committee, but --

Q Do you know who the addressees are?

A Salespeople.
Q Would this have been the sales staff for industrial fluids at this time?
A It's sales staff plus research staff plus product development areas.
Q Can you identify, of those persons, who would have been responsible for sales in Kentucky?
A This list does not contain salesmen's names. It's only managers within St. Louis and managers in internationally. When I say "Americas," it's broadly.
Q Page 2 of this document contains a chronology of the replacement program; is that correct?
A Yes. Okay.
Q It states that -- this is 1972?
A '2, correct.
Q It says, "January 31st, mail out customer notification," under "Pydraul." I'm sorry.
A Okay.
Q What would that have been notification of specifically?
A Going to the phosphate ester.
Q Once again, where would the customer lists --
A Would have been the lists generated a couple

of years earlier, plus any new customers that were added to our sales analysis in the years '70, '71, '72.

(Indicating.)

Q Who would have been responsible for keeping this customer list?

A Any time an order is placed, the sale gets credited somewhere, either on a product list or a salesman's list, and then there is a composite of all of that, and we would receive that from our accounting people -- computer people.

(Indicating.)

Q Was there any one person in that ad-hoc committee that was delegated the task of keeping track of who had used Monsanto's PCB products?

A I can't say there was one person. I think everybody was knowledgeable on any new customer that came on would fall into the criteria to receive any mailout on customer notification.

Q You say you can't say one person.

I mean --

A Right. In other words, there were people over in customer service, because we had gone to centralized customer ordering. The regional office no longer functioned as order entry points, everything was now in St. Louis, and we had one, two girls over there that took all the orders from across the country.

If a new customer was acknowledged and wasn't in our data base at that point, it would be flagged as another new customer that we would have to keep track of, and that information would come back to the product group and we would get it on our mailing list.

(Indicating.)

Q When did you make the switch to the centralized customer ordering?

A I don't remember, Chuck. Exact timing I don't remember. Probably some time in '71, '72.

Q Previously orders would have been placed regionally?

A Correct, the regional offices around the country had the capability of order entry. The 800 number changed everything.

MR. BEAL: Ask that that be

admitted as Plaintiff's 48.

THE WITNESS: Save it for Larry.

BY MR. BEAL:

Q When you were doing the conversion program for the industrial fluids, did anyone ever suggest to try to get written confirmation from your customers that they had received the information that you were sending them about PCB's?

A At one point, there was a thought about sending registered letters. I can remember conversation, but the point was raised that that didn't necessarily mean that it was going to get the degree of concern on the part of the customers because we sent something registered.

Our main concern and our main belief was that the three-year period that we were covering would cover all customers on industrial fluids.

If we had had access to older sales analysis, we would have gone back to them, but basically every two years things were thrown out.

(Indicating.)

Q So the registered mail was not done?

A No, no.

We did have -- at one point, we sent out something, and I can remember all the green cards came back and we filed those, but I don't remember the nature of the letter in which that was done.

Q Was that dealing with PCB's?

A I don't know if it was -- yeah, I think it was PCB's, but it may have been hold harmless letters send to the electrical industry. I don't remember.

Q But basically you did not send the registered letter because you did not think that would ensure that the customers would be warned?

A It would not ensure that they would pay any more attention to it because it was registered or just sent to the office of the president.

Q Did you have any occasion to know what they were doing in heat transfer?

A Yes.

Q Do you know that they required written confirmation for some products that were

dealing with food service uses?

A Could have. I don't remember the details of it.

Q I'm going to show you what's been marked as Plaintiff's 77. This is an example of a letter that was sent out by Mr. Paton.

(Indicating.)

A Okay.

Q Did you ever have any contact with -- was it Paton or Paton?

A Paton.

Q Paton.

Did you ever have any contact with Mr. Paton?

A Oh, sure.

Q Was it ever discussed that you do this with your customers in industrial fluids?

A No.

This probably resulted from the incident in Japan and also the incident with Holly Farms.

Q Which both happened --

A To involve food.

Q But it was never discussed to even do this

with industrial fluids?

A No. Our products never came in contact with food.

MR. BEAL: Let me just take that back. I don't think we need to introduce that one.

(Indicating.)

BY MR. BEAL:

Q Is it just because there was no food involved that you did not want to do that?

A No. I don't think there was -- when we say we did not want to do it, it was just not something that was considered.

(Indicating.)

Q Okay.

A I think you have to understand there was no cutting corners, there were no cost considerations.

If somebody came up with an idea that would possibly communicate better with our customers out there, wherever they were, cost was not a factor. We would do it.

We weren't making any money. We were making phosphate esters for $25 a pound and

selling them for 30 cents.

When you start looking where the money was going, another thousand or $10,000 didn't mean a thing.

(Indicating.)

No one, management of Monsanto, ever said, "You can't spend that money."

Q I'm going to hand you something that's been marked as Plaintiff's 23.

(Indicating.)

That's a letter dated January 31, 1971, and signed by Howard Bergen?

A Right.

Q Have you seen this document before?

A I am sure.

Q Obviously this is a form letter because it's not addressed, and we have gotten this from Monsanto's files.

In the third paragraph it says, "In the meantime we will make every effort to contact each of you, our customers, individually."

Was there a concerted effort made to have personal contact with each Monsanto customer?

A Absolutely.
Q Was there a checklist check to ensure that each customer was contacted?
A No.
Q Was there ever any representations made by the regional sales directors of, "Hey, we've contacted every person" -- "every customer in the western sales district"? Was that ever required of you in this period of time?
A No; but every customer on the sales analysis was either contacted personally or by telephone, big or small, to convey the information about what was taking place on PCB's, so a customer even buying only 200 gallons, our salespeople should have reached them by telephone. Did not drive all the way down to a small town in Kentucky.
Q Do you have any personal knowledge of any contact by someone from Monsanto with Kentucky Hydrocarbon?
A No, I don't.
Q Or Equitable Resources?
A No, no, I don't.
MR. BEAL: Move to enter that as

Plaintiff's 23.

BY MR. BEAL:

Q Would this have been the same procedure for getting the mail list for that letter that you had mentioned earlier, three-year customer list?

A Right, but now we were adding additional years, so we would have been adding any customers that came in in '71, '72, so now you would have been dealing with a time frame of five years.

(Indicating.)

So if your client ordered in that five-year period, he should have turned up in the sales lists --

Q Okay.

A -- if he ordered from us.

Q Is it possible that they could have gotten it from someone else?

A Yes.

Q If they would have gotten it from a mid-level distributor, would Monsanto have knowledge of where they were located?

A We would have known the distributor, and the

letters that we sent out, we contacted distributors to -- we contacted them by telephone and we sent copies of all communications that were to go out to customers directly to the distributor and asked him to forward those to their customers.

In some cases, the customer might buy from a distributor and also direct from us, so he ended up getting two letters.

Q I hand you another letter from Mr. Bergen. It's dated March 15, 1972. It's marked as Plaintiff's 24.

(Indicating.)

A Uh-huh.

Q Have you seen this document previously?

A I'm sure.

Q Would you have been integrally involved in the drafting of a letter of this type on March 15, 1972?

A Not for Mr. Bergen. Mr. Bergen could do it himself.

Q Okay. But you would have seen it --

A Yes --

Q -- either --

A -- or I would have known the nature of what we were going through.

Q This states that, "The new Pydraul products are compatible with present fluids."

These are the ester products; right?

A Right.

Q So these products contained no chlorinated biphenyls --

A Right.

Q -- or terphenyls?

A Right.

Q But yet you can add them to your existing stock; is that correct?

A With some reservation.

Q So you can top it off?

A Not necessarily.

Q Okay. Could you explain that?

A You might have -- because you do have compatibility problems, the individual recommendation to a customer may be that you've got to drop your reservoir down to, let's say, 45 percent of its normal capacity, and then top off, because there were certain characteristics with phosphate esters relative

to the PCB or PCT-containing products that could cause incompatibility, and if you caused incompatibility, all you did was plug up all those hydraulic lines, so each individual product, based on individual uses here, had to be considered.

In the case of Pydraul AC, I suspect that Pydraul 90 E would have just been compatible and you could have dumped it in, but there were some others that you had to be very careful about.

(Indicating.)

Q Earlier, when we were discussing the change from Pydraul AC to Pydraul ACA --

A Right.

Q -- you stated that none of your customers wanted to drain and refill.

A True.

Q Was that verbally recommended at the same time this letter went out, to drain the ACA and refill with the 90 E product?

A Some cases, yes. I don't -- you take specifically Pydraul A and Pydraul AC, I don't know if it was -- I don't remember if it was

specifically done in that case, but compatibility was a question on some of these fluids.

(Indicating.)

Q Do you have any recollection of whether it was recommended to your customers that used Pydraul ACA to drain their systems?

A I don't remember any letter going out to that effect, but, again, verbally salespeople would have suggested, depending upon the nature of the situation, that the customer consider that as a good alternative.

Q Why was that done verbally?

A I don't feel sending out a letter dealing with a lubrication engineer is going to communicate much to him. He needs somebody who understands what the compressor's all about.

Howard Bergen wouldn't know what a compressor does.

(Indicating.)

Q Was it ever recommended that your customers drain their systems and incinerate the Pydraul ACA?

A It was suggested. Again, I have no

recollection.

I do remember that we started to get products back at the Krum plant.

Where they came from and who made the decisions to do it, I don't know.

I don't know if there's even any records of who shipped material back.

Q Do you have any memory about who was paying for the incineration?

A Well, you showed me a letter that suggested it was free. I remember the term 3 cents a pound.

MR. BEAL: Move to enter Plaintiff's 24.

BY MR. BEAL:

Q I'm going to hand you something that's marked Plaintiff's 63.

(Indicating.)

I don't know if you've been personally -- you don't remember seeing this document before?

A No.

(Indicating.)

Q The facts of the document are -- I mean, it's

written -- what I specifically want to ask you about is what it meant -- this is written by Jerry Davidson, and at the end of Paragraph 2, it talks about people who -- plants which have used Pydraul, and Davidson discusses a list from the No. 4 IBM run.

A Uh-huh.

Q Do you have any familiarity with what this No. 4 IBM run was?

A We had different sales analysis runs.

Off the top of my head, a No. 1 run might be product customers by salesmen; a No. 2 run might be product by salesmen; a No. 3 run may be product by customer; and No. 4 could be all customers and the products they purchased.

To my knowledge, all customers and the products they purchased was a No. 4 run.

Q That was available from your computer system?

A Right.

Q And in 1972?

A And that would have been created by the order entry of a shipment.

Q Would that have been a primary place to look

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for customer lists for a product?

A Absolutely. That's what we used for the basis of the letters way back.

Q Would it have been the accounting department that would have been responsible for maintaining the IBM system with the customer addresses?

A No. We had a -- I think they called them MIS computer people that really ran all the -- the computer data -- the data stream.

Order entry was handled by an order entry department, and then that material would just feed itself to the accounting system for sending out an invoice, and off to the side you'd have the sales analysis creation based on the data received.

Q Do you have any knowledge about any person who would have been involved in maintaining that list, any person in the MIS section or --

A To say there was somebody maintaining it -- it was an automatic feed --

Q Okay.

A -- so every time an order was entered, the data on that order went over into a data base,

which, at the end of 30 days, somebody would run the month of June, you know, like push the button and say, "Tell us everybody we sold to in the month of June," and out would come paper until you couldn't stand it anymore.

(Indicating.)

Q Okay.

A And what we always saved was the year ends. We would discard January through November, because everything was included on the December run.

(Indicating.)

So that was the basis on which our communications with customers would generate, and we had always saved, for those years involved, the December run as the data base for letters.

(Indicating.)

Q I'm going to hand you something that's marked Plaintiff's 58. That is memorandum from W. B. Papageorge, and you're listed as an addressee.

(Indicating.)

Do you remember seeing this document previously?

A I'm sure.

Q If you would look to, at Page 4, at the top, it's an outline of what's called "PCB-PCT Action Plan for Industrial Fluids."

Have you found that page?

A Uh-huh, yeah.

Q These tasks it has a column assigned to, "target date," "actual date." It's got "CLB."

Is that Larry Bradford?

A Uh-huh.

Q Okay.

A This is a takeoff on that other piece of paper you had.

Q This is more --

A It's more spread out.

Q More spread out.

But it's basically the same --

A As what Larry Bradford had generated, yeah.

Q "212," which is listed on Page 5, it says, "Incinerate any remaining PCT fluids," and the date for that is June 30, 1972; am I correct?

A Yes.

Q Were you going to stop selling the PCT fluids May 30th?

A Changes from PCT fluids to phosphate esters were phased in in that we did not have all the products all at one time.

Q Okay.

A We never wanted to have any sizable inventory of PCT fluids, because we were always getting to the phosphate ester and getting it.

A typical balance -- production run of a given fluid might be 5,000 gallons or 10,000 gallons, and toward this transition, we would move to a point that we wouldn't want them to make more than 500 gallons in the plant, and they would say, "We can't even wet the bottom of the kettle if we make 500 gallons."

This is also why you recognize we talked about 30 to 60 days phase in, because in some cases, we had no material, we had cut the inventory down to zero, and went to the phosphate ester.

We might have some fluid in some warehouse some place, and ultimately, when we could handle the whole thing, anything that was out there that contained PCT's was brought back and incinerated, but if we didn't have a

phosphate ester fluid in Seattle and a customer needed material to run his equipment, we would supply him out of the warehouse.

(Indicating.)

Q Okay.

A If he'd wait five days, we'd have phosphate ester fluid, but sometimes they don't want to wait.

MR. BEAL: I won't introduce that.

THE WITNESS: A big one.

You tell Larry he wrote too much.

BY MR. BEAL:

Q I'm going to give you another one of Mr. Bradford's productions. This is marked as Plaintiff's 54.

(Indicating.)

THE WITNESS: Look at what the Xerox machine did to us.

MR. MONGE: We ran so many copies, and we had to run triplicate copies.

BY MR. BEAL:

Q This is a memorandum dated March 1, 1972, and you're listed as receiving a copy of this. It concerns the Pydraul Transition Program, which

is what it's entitled.

(Indicating.)

A Uh-huh.

Q Are you familiar with this document?

A I'm sure.

Q Who are the addressees of this document, the people in the left column?

A Again, the management people, research people.

Q District salespeople or regional?

A No. Regional sales managers, but not salesmen.

Q Can you ID the person who would be responsible for Kentucky?

A There was no salesman here, but the regional manager who would have had responsibility would have been Elliott Shimley, E. L. Shimley.

Q In what office?

A Out of Akron.

Q What about Pennsylvania?

A He would have covered Pennsylvania, too, to Pittsburgh, and there would have been a line somewhere over in the middle of Pennsylvania which would have been the responsibility of

the eastern region.

(Indicating.)

Q What regional office was that? I mean, did it have a name, just --

A Wilmington -- the eastern?

Q No. I'm sorry. The -- the --

A Akron. We would just refer to it as the Akron sales office.

MR. BEAL: Move to have that introduced as Plaintiff's 54.

BY MR. BEAL:

Q I'm going to hand you something that's marked as Plaintiff's 67. This is something from Mr. Paton, and you are listed as an addressee. It's dated July 17, 1972.

(Indicating.)

Do you have any idea why it was only addressed to the 6 of you, Mr. Davidson, Gossage, Bergen, Stapleton, Papageorge and you?

A I don't remember.

Q Do you remember seeing this document?

A I don't know. I probably saw it, you know --

Q If you would, take a few minutes --

A -- 21 years ago.

Q I know, I know.

If you could take a few minutes --

A I will.

Q -- and look at that.

A Okay.

Q Does that help you remember this document any?

A Yeah.

Q It mentions, in the -- it's the large paragraph on the first part of the page that starts, "We know," it states, "that certain other customers have tried to" -- let me quote the letter -- "tried to pin the cost of conversion and related problems on Monsanto because of alleged failure to properly warn them on need for system clean-out," et cetera.

Do you know of any instances where someone had not been contacted or had not been warned and had tried to pin conversion costs on Monsanto?

A It was not a question, in my mind, as to whether they were warned. The question was always, "Why didn't we tell them about a problem in 1949 or '45?"

Nobody knew that this was a problem until 1968, and in 1968, they all were informed as quickly as we could get the information out.

(Indicating.)

All these people were told. They're arguing about the timing.

Q Okay.

A They say we should have known about it a lot earlier.

Science has its course.

Q So you're saying that they were warned. It's just a question of when they were warned?

A Right.

Q Okay.

A Many people would say, "Monsanto should have known about this in 1936 when Swan Chemical developed the product."

Well, it wasn't even Monsanto at that time, it was Swan Chemical.

Q This memorandum goes on to state, "Since we have not alerted food-related users of PCB Pydrauls in a special way like we did Therminol FR users, we may be leaving

ourselves open to future claims."

Was it ever discussed -- I mean, besides the food-related users, was it ever discussed to try to get written confirmation of warnings for the Pydraul users?

A Not to my knowledge.

Q Is that this special manner of warning that Mr. Paton is talking about in this letter?

A The one you had a copy of, yeah, must have been the paper.

Q That's the written confirmation?

A Right.

Q This list of Paul Gann -- or Mr. Paton proposed that Paul Gann handle the mechanics of the customer product usage and mailing.

Who was Paul Gann?

A I don't remember, I don't remember.

Q The sentence that starts at the bottom of Page 1 and continues, it says, "Also, he should enlist field sales to identify any customers we may have missed."

A Okay.

Q Is it possible that customers were missed during the warnings?

A Not to my knowledge, and I'm sure not to Paton's knowledge, but it was always a concern.

MR. BEAL: Move to introduce this as -- move to introduce this as Plaintiff's 67.

We're getting close.

THE WITNESS: Good, very good.

BY MR. BEAL:

Q I'm going to hand you something that's marked Plaintiff's Exhibit 62. This is a document entitled "1972 Pydraul Marketing Plan."

(Indicating.)

Do you recognize this document?

A Sure.

Q Did you help draft it?

A No. This would have been done by Larry Bradford.

Q But you would have received the document?

A This would have been a part of the total marketing plan for the group. It would have covered the air -- Skydrol-type product, dielectrics, everything that was involved in the product group.

Q It's got some goals listed for the group on Page 2, 1972 goals.

The first one is, "Sell all inventory of chlorine containing Pydraul fluids by June 30, 1972."

Is that consistent with a --

A This document would have been created in the fall of '71.

Q Okay.

A I would say, based on where we were on phosphate esters, what he really was saying is, "We will sell no more chlorinated-containing Pydrauls by June 30, 1972, or sooner."

Q That doesn't mean Monsanto wanted to sell all our chlorine-containing --

A Oh, God, no --

Q -- Pydrauls?

A -- absolutely not.

Q So, therefore, it would be consistent with the PCB-PCT action plan that I showed you earlier?

A We wanted out.

I'm sure Larry would have loved to have revised this number in early '72 and said,

"Everything is sold, gone. Everybody is on phosphate ester."

MR. BEAL: I move to introduce that as Plaintiff's 62.

BY MR. BEAL:

Q One --

A A million names.

Q One question on that.

Why didn't that say, "Incinerate all chlorine-containing product"?

A Well, he said it in the other document. This is his marketing plan for '72.

At this point in time, the only reason we would be selling Pydraul fluids containing PCB's or PCT's is we didn't have the alternative in place to sell it.

(Indicating.)

The intent was to create no inventory, and if there was an inventory -- as the other document indicated, if we ended up with any left over, it was to be incinerated.

(Indicating.)

So once the phosphate ester was ready, then the inventory out there was dead.

Even said in one item there, "Concentrate all the inventory in one location to minimize the amount." We pulled out of warehouses and whatever, so we really had no inventory of PCB-containing products at the very end.

We were not interested in having a big inventory and then having to incinerate a lot. We just didn't create it --

(Indicating.)

Q Okay.

A -- we didn't manufacture it.

Q I'm going to hand you something that's marked as Plaintiff's 25. It's a letter from Bill Papageorge dated April, 1972. It's a form letter.

(Indicating.)

A Uh-huh.

Q Did you have any input on the drafting of this letter?

A I doubt it.

Q Do you remember seeing this document before?

A Okay.

Q Have you seen this document before?

A I'm sure.

Q Page 2 of the letter, the first paragraph, has some language about "preventing PCB's from escaping into the environment."

Do you know of any other documents prior to this date which would have warned about preventing escape of PCB's into the environment?

A There were documents that were sent out through that period '69, '70, '71, promoting reclamation. We promoted actually a closed system that people could use to reclaim fluid and prevent it getting into the environment.

The transition from the 1254, 1260 products was, again, a step to reduce the amount of polychlorinated biphenyls that were showing up in the environment from increasing, and those products were phased out, and ultimately we phased out everything to the phosphate ester.

Q Beside those, you cannot think of any -- can you think of any document that specifically said, "Dear customer: This stuff contains PCB's, and you should not allow it to escape

into the environment," or anything to that effect?

A Yeah, I think there were letters going to customers specifically stating our concern based on the Risebrough data, based on the Swedish data, that we are dealing with a very serious problem, and we must have closed systems.

(Indicating.)

There was an effort throughout Monsanto looking at heat transfer as ultimately a very closed system, and that if they kept tight controls, they should have had no leakage at all.

A capacitor was considered a closed system. The concept of something being closed finally becomes very difficult to enforce.

If somebody replaces a capacitor in a fluorescent light bulb, where does the capacitor go? It goes into a garbage dump and the guy runs over it with a tractor, and all of a sudden you would begin to leach out the PCB's that were in that capacitor.

So the thought of a closed system was

really disappearing. It just wasn't -- wasn't possible in our industrial makeup today or then.

(Indicating.)

Q Do you have any idea when Monsanto realized that a closed system wasn't possible?

A Probably 24 hours after the concept was thought of.

You know, someone was at home shaving, looking in the mirror, and said, "Hey, the secret is a closed system." He comes in that morning and he says, "We're going to have a closed system," until you start describing the hands-on situation of going into an industrial plant -- and, you know, there were people at Monsanto who haven't the foggiest notion of what a capacitor looks like for a big die-cast machine or a continuous caster, and they start talking about a closed system; and I can only describe one event with Republic Steel.

One time when I went in with a salesman, and we were talking about fire-resistant fluids, he says, "For what?" He says, "Look out there. The whole Goddamn place is on

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fire. How do you think you make steel?"

Closed system, it's nice to talk about, but it's not practical in the industrial environment in which we live.

MR. BEAL: I move to enter that as Plaintiff's 25.

BY MR. BEAL:

Q I'm going to hand you another letter that's dated August 3, 1973. It's marked as Plaintiff's Exhibit 26.

(Indicating.)

Have you ever seen this document before?

A No. I was gone from the company at this point.

Q That's what I thought.

You stated at the start of the deposition -- if you just hand that back to me -- that you saw that your alternatives or your possibilities were becoming limited in 1973, and that's part of the reason you moved on.

Would that have any relationship to the PCB problem?

A There wouldn't be a product group. We were so

heavily dependent on PCB's as a raw material until we went to phosphate ester, the dielectrics were going to be gone completely, because Monsanto chose not to seek an alternative to it.

Skydrol remained. Pydrauls I think -- I don't even know if Monsanto makes them anymore. We may have sold off the business or whatever has happened; and I could see the handwriting on the wall.

There may have been other opportunities for me within Monsanto, but I was certainly weighing a course of action in terms of what are the alternates within Monsanto versus going outside the company.

(Indicating.)

Q Did you ever receive any kind of comments from your superiors concerning your part in the ad-hoc committee and your part in the PCB-PCT action plan that led you to leave Monsanto?

A No, no, not at all.

As far as I was concerned, everybody was pleased with all the craziness I went through.

It may have cost me a marriage, because

I was never home.

MR. BEAL: If we could take a little break, I've got a few other ones I want to get out and wrap things up here.

(Whereupon, a recess was had, after which the deposition was resumed as follows:)

BY MR. BEAL:

Q I want to hand you something, if we can go back on the record, that's marked as Plaintiff's Exhibit 30.

(Indicating.)

MR. BEAL: Greg, I don't have any copies of this.

MR. MONGE: Okay. I'll just look on.

MR. BEAL: Sorry.

BY MR. BEAL:

Q Do you recognize this document?

A Uh-huh.

Q Does it look familiar?

A Uh-huh.

Q Is this one of the sales printouts you were talking about?

A Uh-huh, uh-huh.
Q Now, this document lists -- it's got a number, and it says, "Kentucky Hydrocar," H-Y-D-R-O-C-A-R, "Langley," and then "K."
A Kentucky.
Q But, yet, it doesn't have an address.
Would there have been a more complete address available at some time?
A Right. Based on that code, there would have been a "ship to" location with a total address.
Q And that the 391053 number, is that the code?
A Right.
There was December of 1959; right?
Q Yes.
A Okay. Page 471, and it was a product run.
Q So this would have been a No. 4 run?
A Oh, boy, you're asking tough questions.
No, this was a product sales by customer for the organic division, so it was a No. 2 run.
Q So the information request would have been, "Tell me what we sold to Kentucky Hydrocarbon"?

A No --

Q No.

A -- it wouldn't.

Under "Pydraul AC," it would have listed every customer would bought Pydraul AC --

Q Okay.

A -- in the year 1959, and it would have contained the information on any sales in 1958, the year before, also.

Q Okay.

A So, obviously, we didn't sell them anything the year before.

That was -- oh, maybe we sold them in '57 --

Q Okay.

A -- but then they came back on in '59; and that's the way the sales summaries all work.

(Indicating.)

MR. BEAL: Ask to admit that as Plaintiff's 30.

BY MR. BEAL:

Q Let me give you one from a couple years later. This is marked as Plaintiff's 32.

(Indicating.)

Do you recognize this document?

A Yeah, uh-huh.

Q Is this the same type of a --

A Yeah, only now there was a printout by year.

Q Okay.

A It was a rolling 12 months and various other factors that came into existence, so it was a direct No. 2 run.

So it would be the same as this, only in a little slightly different format.

(Indicating.)

MR. MONGE: Will the record reflect he was pointing to your Plaintiff's 30 --

MR. BEAL: No. 30.

MR. MONGE: -- Exhibit 30.

THE WITNESS: Right.

MR. BEAL: Right.

THE WITNESS: Now, the name has changed here --

MR. BEAL: Okay.

THE WITNESS: -- in that here it's Kentucky Hydrocarbon, Langley, Kentucky, and now we're talking Equitable Gas Company. I

don't know the location.

It's conceivable this company bought products under different names.

BY MR. BEAL:

Q If that happened, when you got involved in the PCB-PCT action plan, would letters have been sent to both addresses?

A If they were both on the run, yeah, in '68.

MR. BEAL: Ask to admit that as Plaintiff's 32.

BY MR. BEAL:

Q I'll give you something that's marked Plaintiff's Exhibit 34, December, 1968. It's barely legible, but it does say "Kentucky Hydrocarbon Company" --

(Indicating.)

A Uh-huh, uh-huh.

Q -- although the code number is something I cannot read.

A I agree.

Q Do you recognize this document?

A Right.

Q Is this the same type of printout that was give to you in Plaintiff's 30 and --

Plaintiff's Exhibits 30 and 32?

A Something's not consistent.

Q Okay.

A This was an old format.

(Indicating.)

MR. MONGE: Identify what you mean by "this," Norm, what number you're referring to --

MR. BEAL: By the number.

MR. MONGE: -- so the record --

A (Continuing.) 30 was an old format, which was changed to a new format, obviously, in 1965 for sure.

(Indicating.)

MR. MONGE: He's pointing to Exhibit 32.

MR. BEAL: 32.

THE WITNESS: 32.

MR. BEAL: Okay.

A (Continuing.) And this was for -- December of '68 is back to the old format on 30, and it doesn't make sense that this form even existed. We would have functioned with this kind of a breakdown.

(Indicating.)

BY MR. BEAL:

Q You are pointing to 32?

A 32, as the working document from which we would have picked up the customer.

(Indicating.)

Q So you're saying that the -- what I've given you that's marked as Plaintiff's 34 --

A Yeah.

Q -- is inconsistent with --

A With what we have used.

Q -- with your knowledge of --

A Of what we used.

Q -- of sales summaries from Monsanto in 1968?

A Yeah.

Q It's because that is on the wrong format --

A Right.

Q -- for information --

A It's the old format.

Q Do you have any explanation for that?

A God, no.

See, this gave us far more information, because we had documented here shipment by month. We knew exactly the number of pounds

per month, where this is just a sales re year to date and sales last year.

(Indicating.)

This could have been a year-end run that somebody would make, but it wouldn't have been the working document that the creation of our mailing list would have had.

We would have been working from this document.

(Indicating.)

Q So by looking at Plaintiff's 34, you can't make any kind of determination whether this information would have ended up on your mailing list?

A Boy, it should have, it should have been on the same document as this published in December, 1968.

(Indicating.)

Q So it should have been in the same format as Plaintiff's 32; correct?

A Right.

Q You have no idea why it's not?

A No, I don't, not at all.

When you're dealing with the same data

base, it's got to be there or things don't add up.

(Indicating.)

Q Is it possible that someone at Monsanto would have been using the old format by mistake?

A Could have been, could have been.

See, this says "Organic Division 2," this is Direct 2, so this is more product run.

Q Is there any way you can look at one of these documents and tell who the salesperson was?

A Oh, boy, can I?

Yeah, the second two digits here, 31, refers to a salesman's number, so where you have your No. 32, Salesman 31 would have been the one who received the sales credit for the sale to Equitable Gas.

Q What about on my No. 30?

A I have a feeling that No. 27 referred to a salesman's number or a district office, and the 05 was the other part of it.

Q What about 32?

A I can't read the number.

Q That's understood. That's okay.

A Or 34 I can't read.

MR. MONGE: 34 he can't read. 32 he did read.

THE WITNESS: Yeah, 32 I did read.

MR. BEAL: Okay.

THE WITNESS: Oh, boy.

MR. BEAL: Papers, papers.

BY MR. BEAL:

Q Let me give you another one. This is marked as Plaintiff's 31 -- and, actually, I've got it out of order -- I didn't mean to -- but that's December, 1966.

(Indicating.)

Is this the old format or the new format?

A Old.

Q The 31 would refer to a salesman, the two-digit number?

A I would believe so.

Q Should this format have been in use in December of 1966?

MR. MONGE: Let me object to the form of that question.

"Should have been in use," I'm not sure what you mean by that.

MR. BEAL: Let me rephrase that.

BY MR. BEAL:

Q In December of 1966, based upon your knowledge and understanding of the sales analysis that -- or sales summaries from the IBM computer system, were they using a new format?

A I would say there could have been people in the company who wanted the data presented this way even in December of 1966, and for their benefit, it was run off the machine, because they were only interested in year-end sales and dollars in December, where we -- as this December run for '65, No. 32, we, as salespeople, wanted to see sales by month, and this was a rolling 12 month-type presentation.

(Indicating.)

MR. BEAL: Move to enter Plaintiff's 31.

I've got another one.

THE WITNESS: Okay.

BY MR. BEAL:

Q This is December, 1967. It's marked as Plaintiff's 33.

(Indicating.)

Do you recognize that document?

A See, now we're back to a run sales by month again.

Q So this printout for December, 1967, is one of what you've described as the new format?

A New format, yeah.

We may have been in the transition in '65, '66, '67, in terms of what kind of presentations of data was going on, and it may have also been changing by groups in that organic may be changing or organic might not, or fluids may be changing and fine chemicals might not, so the data processing people would print whatever you wanted if they had the data and the paper forms to turn it out.

Q That code number also starts with the two-digit number 27.

A Right.

Q To the best of your knowledge, does that reflect the salesman responsible?

A Up here, 30 represents the salesman.

(Indicating.)

Q Okay.

A The upper left-hand corner, the second box

says "salesman," so, therefore, if you take it all the way down, either that's a 30 or a 38.

Q Okay.

A I'm not sure if the first two digits is a district office or whatever, which would be 27, and, God, what is that G?

Q Yes.

A I don't know. I should have brought a magnifying glass.

Q I'm just going on what they gave us.

A I --

MR. MONGE: If I had any better, I'd have given it to you.

A (Continuing.) That's product group. Okay.

BY MR. BEAL:

Q What would G mean for product groups?

A I don't know --

Q Okay.

A -- other than -- rather than using numbers, they were using letters.

Q Okay.

A G could have been the fluids group.

MR. BEAL: I move to enter

Plaintiff's 33.

BY MR. BEAL:

Q I want to give you something that's marked as Plaintiff's 29, and this is an invoice -- or a copy of an invoice.

(Indicating.)

Do you recognize this document --

A Uh-huh.

Q -- or the style of this document?

A Uh-huh.

Q That reflects a date of April, 5, 1971?

A Uh-huh.

Q Would this order have ended up on one of the sales summaries?

A Absolutely.

Q Is there any kind of number on here that would give you some type of knowledge about a salesman who may have been responsible for this transaction?

A I know it's here, but I don't remember the sequence of numbers here on the right-hand side.

Q That's the 02-020-391045?

A Right.

And then the same thing of the sequence of -- of numbers and letters below that.

Q That's the 0211-071-16 --

A 0-A-400 -- 1004 4022.

Q But there is some way to break those numbers down --

A Right.

Q -- and find out a salesperson?

Would it be possible to find out how the order was placed? I mean, what should these numbers tell you, if you can remember?

A I don't.

Q What does the "booked through" section on Plaintiff's Exhibit 29 refer to?

A I don't know that one; but I can relate this -- 391045 is the same number that was given to Kentucky Hydrocarbons down here in the sales analysis report, so that's customer number.

Q 391045 is the customer number?

A Right, right, right, right.

Q Okay.

A Now, backing up from that, 02 and 020, I don't know if that meant the sales office and the salesman or what.

Boy, the mind does go blank after 20-some years.

Q But the address of Kentucky Hydrocarbon Company, Langley, Kentucky, 41643, should have been on a sales analysis at some time?

A Right.

And a letter should have been sent, and probably was.

Q Do you have any personal knowledge of whether it was sent or not?

A Rarely did we ever ship something to someone -- and I know of no situation where we missed any customers.

I mean, you're relating the only situation that's come to light, in my mind, of somebody we missed, and I -- and I question that we missed it. I think correspondence was sent.

Whether it was sent to Langley, Kentucky, or to Maytown, Kentucky, this was always a concern when you talked about "ship to" and "sold to" locations. When the letter arrived there, what did people do with it? How could you ensure that the appropriate

party got the information we sent?

MR. BEAL: Move to admit Plaintiff's 29.

Two or three more things.

THE WITNESS: Oh, my God, labels.

BY MR. BEAL:

Q I give you something marked Plaintiff's 12. (Indicating.)

Do you recognize this document?

A Yep.

MR. MONGE: Now, there's a series of labels there, so you want to look at each one.

You're calling this collectively 12, Chuck?

MR. BEAL: Yes.

That was, I think, how you provided them to us. I mean, I think they were all Pydraul AC labels that were provided in the same -- one of your production folders.

BY MR. BEAL:

Q I want to ask you a real hard question about each page.

A Okay.

Q Start with Page EQU 1375.
A All right.
Q Do you know what date this label was used on Pydraul AC products or dates inclusive?
A No, I don't.
Q Would you have any better chance with Page EQU 1376?
A No.
Q What about 1377?
A No.
Q 1378?
A No.
Q 1379?
A No.
Q 1380, the label referring to Pydraul ACA?
A I guess, based on the information we were talking about, this was implemented some time in 1970, and, therefore, this label had to meet that criteria.
Q Okay.
A This would have been the new label for Pydraul ACA.
Q 1381, were you around when 90 E was beginning to be marketed?

A Yeah; but, again, whether that was in '72, this was the straight phosphate ester.

Q Did they ever ask for your input on making these labels, the sales department?

A No.

Q Okay.

A They had to meet certain criteria in terms of labeling to comply with government regulations, and there was a standard procedure that they went through, and we accepted whatever the label was.

Q I want to give you something that's marked as Plaintiff's 15, and ask if you -- actually, once again -- here, let me give this one. This one's stapled all the way through.

(Indicating.)

A Okay, yeah.

Q Do you recognize that?

A Uh-huh.

Q What is it?

A It was a handout given to customers who either purchased or were interested in purchasing Pydraul AC, and it was just a quick book for them to gain information on the product.

Q Do you have any recollection of when this booklet would have been used?

A I would say this -- this product existed during the -- during the '50's, and was later replaced by a full brochure on Pydraul AC.

Q Did the sales department have any function in drafting of brochures and fact finders such as this?

MR. MONGE: Let me just say it depends on when that was drafted, and his testimony is that he wasn't even with the company until almost 1960, and I'm not sure he can answer that question, but if he can, I'll let him do it.

A I wouldn't know who specifically did it.

BY MR. BEAL:

Q Did you ever assist in drafting any sales literature for Pydraul AC when you were with Monsanto?

A We would critique literature and we'd have the input from research, sales, advertising, and later the environmental people would be there, and sometimes the law department.

Q I'll give you something that's marked as

Plaintiff's 19 and ask you if you recognize that.

(Indicating.)

MR. MONGE: We are going to have an extra copy of that?

MR. BEAL: I'm sorry.

A Okay.

BY MR. BEAL:

Q Have you ever seen this document before?

A I'm sure.

Q Do you have any idea when this document was used by Monsanto chronologically?

A It was generated some time in the 1960's.

Q What was its function?

A To inform customers.

I don't consider it a sales brochure. I consider it more of a -- providing the technical information needed by the customer if he was considering to use Pydraul AC or any Pydraul product in his hydraulic applications.

Q Prior to today, had you ever heard of a company known as Equitable Gas Company?

A No, I did not.

Q Equitable Resources Energy Company?

A No.
Q Kentucky Hydrocarbon?
A No.
Q Kentucky-West Virginia Gas Company?
A No.

MR. BEAL: If you give me a few minutes, I think I might be done.

(Whereupon, a recess was had, after which the deposition was resumed as follows:)

MR. BEAL: Can we go back on.

BY MR. BEAL:
Q You stated you had given three prior depositions?
A No.
Q Two prior depositions?
A And this is the third.
Q Do you know what cases those were involved with, or do you remember?
A Outboard Marine and Texas Eastern -- Texas Western --

MR. MONGE: Transwestern.

A (Continuing.) -- Transwestern.
All these names.

MR. BEAL: Thank you very much.

THE WITNESS: Thank you.

AND FURTHER DEPONENT SAITH NOT

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I have read the above and foregoing, and it is a true and correct transcript of my deposition given on the day and date aforesaid.

_____
NORMAN T. JOHNSON

Subscribed and sworn to before me this _____ day of _____, 1993.

_____
Notary Public

My Commission Expires

_____.

WATER_PCB-SD0000043616

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, Gary L. Sonntag, Certified Shorthand Reporter No. 84-1003, Registered Professional Reporter, a Notary Public in and for the County of DuPage, State of Illinois, do hereby certify that previous to the commencement of the examination of the said NORMAN T. JOHNSON, he was duly sworn by me to testify the truth in relation to the matters in controversy herein insofar as he should be interrogated concerning the same; that the said deposition was taken in the offices of the Sheraton Suites, 121 Northwest Point Road, Elk Grove Village, Illinois, on the 30th day of August, A.D. 1993; that the testimony given by said witness was reduced to writing by means of shorthand and thereafter transcribed into typewritten form; and that the foregoing is a true, correct and complete transcript of my shorthand notes so taken as aforesaid.

I further certify that there were present at the taking of the said deposition

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the persons and parties as indicated on the appearance page made a part of this deposition.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit nor am I in any way interested in the outcome thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial seal this 27th day of September, A.D. 1993.

Notary Public

My Commission Expires
September 9, 1995.

"OFFICIAL SEAL"
GARY L. SONNTAG
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/09/95

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