

IN THE MATTER OF:

**TENNESSEE GAS PIPELINE COMPANY
vs.
MONSANTO COMPANY**

Cause No. 94-CI90145

*Deposition of DONALD A. OLSON
OCTOBER 18, 1995*

***Gore & Perry Reporting Company
100 North Broadway, Suite 1175
Saint Louis, Missouri 63102
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COMES NOW THE WITNESS, DONALD A. OLSON, and having
 read the foregoing transcript of the deposition
 taken on the 18th day of October, 1995, acknowledges
 by signature hereto that it is a true and accurate
 transcript of the testimony given on the date
 hereinabove mentioned.

Donald A. Olson --

DONALD A. OLSON

Subscribed and sworn to me before this
14th day of November, 1995.
 My Commission expires: Jan 5, 1997

-- *John G. Yoch* -----

Notary Public

JOHN G. YOCH
 Notary Public
 Notary Seal
 STATE OF MISSOURI

rg

JOHN G. YOCH
 Notary Public -- Notary Seal
 STATE OF MISSOURI
 St. Louis County
 My Commission Expires: Jan. 5, 1997

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Page 11 Line 22 Should read: eliminate "and"

Reason for assigned change:

Page 17 Line 2 Should read: "pun"

Reason for assigned change:

Page 25 Line 6 Should read: "Skydrol"

Reason for assigned change:

Page 29 Line 8 Should read: "Kanaka"

Reason for assigned change:

Page 37 Line 19 Should read: "Kanaka"

Reason for assigned change:

Page 37 Line 22 Should read: "Kanaka"

Reason for assigned change:

Page 39 Line 21 Should read: "say"

Reason for assigned change:

Page 60 Line 13 Should read: "false"

Reason for assigned change:

Page 86 Line 11 Should read: "biphenyl"

Reason for assigned change:

Page 100 Line 18 Should read: "effect"

Reason for assigned change:

Page 100 Line 21 Should read: "effects"

Reason for assigned change:

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Page 105 Line 5 Should read: "Skydrol"

Reason for assigned change:

Page 105 Line 7 Should read: "Skydrols"

Reason for assigned change:

Page 145 Line 15 Should read: "Norm"

Reason for assigned change:

Page 156 Line 8 Should read: "Helila"

Reason for assigned change:

Page 156 Line 8 Should read: "Pullman"

Reason for assigned change:

Page 209 Line 11 Should read: "Aroclor"

Reason for assigned change:

Page Line Should read:

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1 COMMONWEALTH OF KENTUCKY

2 ROWAN CIRCUIT COURT

3 CIVIL BRANCH

4
5 TENNESSEE GAS PIPELINE COMPANY,

6
7 Plaintiff,

8
9 vs.

NO. 94-CI90145

10
11 MONSANTO COMPANY,

12
13 Defendant.

14
15 Deposition of DONALD A. OLSON, taken on behalf
16 of the Plaintiff, at the offices of Thompson &
17 Mitchell, One Mercantile Center, in the City of St.
18 Louis, State of Missouri, on the 18th day of
19 October 1995 before Ronald A. Gore, Registered
20 Professional Reporter and Notary Public.
21
22
23
24
25

Gore & Perry Reporting Co. St. Louis, Missouri
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1 DONALD A. OLSON,
2 of lawful age, having been first duly sworn to
3 testify the truth, the whole truth, and nothing but
4 the truth in the case aforesaid, deposes and says in
5 reply to oral interrogatories propounded as follows,
6 to-wit:

7 EXAMINATION

8 QUESTIONS BY MR. ROEDER:

9 Q: Good morning, sir.

10 A: Good morning.

11 Q: My name is Steven Roeder, and I represent
12 the plaintiff in this case, Tennessee Gas. We've not
13 met before today, have we?

14 A: No, we haven't.

15 Q: You have testified before?

16 A: Yes.

17 Q: Let's state your name for the record,
18 please?

19 A: Donald Albert Olson.

20 Q: Mr. Olson, where do you reside?

21 A: Number 3 Old Colony, O-l-d, Colony, St.
22 Louis 63131.

23 Q: And what do you do for a living, sir?

24 A: I am chairman of a company called
25 Benchcraft, Inc., which is a material storage

1 distributor.

2 Q: You've tendered to the court reporter a
3 card, Benchcraft, Inc., which is on Ashby Road in
4 St. Louis?

5 A: Yes.

6 Q: Can you describe what a --

7 A: Products that are used primarily in a
8 warehouse, such as shelving and pallet rack,
9 mezzanines, carousels. And we both sell equipment
10 and install.

11 Q: How long have you been chairman of
12 Benchcraft?

13 A: Since October 1988.

14 Q: When did you join Benchcraft?

15 A: October 1988.

16 Q: You joined as chairman?

17 A: Yes.

18 Q: Did you form the company?

19 A: No. It had been in existence since 1950.

20 Q: Are you a member of its board of directors?

21 A: I am its board of directors.

22 Q: Do you own the company?

23 A: I am -- I own 50 percent, but the founder
24 is a major shareholder. It was founded in 1950.
25 And there are a couple of other minor shareholders.

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1 Q: Are you being represented here today by
2 counsel?

3 A: Yes, I am.

4 Q: Who is your attorney?

5 A: Mr. Chambers.

6 Q: Did you request that Mr. Chambers represent
7 you?

8 A: As a -- no, sir. You mean by name? I
9 don't --

10 Q: Yes, by name.

11 A: No, I did not.

12 Q: Did you request that an attorney represent
13 you?

14 A: I believe it was discussed in my first
15 conversation with Monsanto, where they said there
16 could be one available.

17 Q: If you wanted one?

18 A: I don't remember how it came up. But it
19 certainly was acceptable to me.

20 Q: You're not compensating Mr. Chambers for
21 representing you here today?

22 A: No, I'm not.

23 Q: Monsanto is?

24 A: I don't know that. I hope somebody is.

25 Q: You haven't agreed to pay his bill?

1 A: No.

2 Q: Do you own stock in Monsanto?

3 A: Very minor now. It's probably less than 150
4 shares.

5 Q: Do you draw a pension?

6 A: Yes, I do.

7 Q: You were a long standing employee of
8 Monsanto?

9 A: 25 years.

10 Q: Let's get a little bit of your background,
11 sir. Let's go back on an educational basis and then
12 work up until the time that you joined Benchcraft as
13 its chairman. Okay?

14 A: Okay. Allow me the liberty of guessing on a
15 few dates. Okay?

16 Q: Okay. I think I've got a document that was
17 provided by Monsanto that purports to have some
18 dates, but I can't put my hands on it.

19 A: I can come up with most of them.

20 Q: Okay. Where did you go to college, sir?

21 A: I have a chemical engineering degree from
22 the University of Michigan.

23 Q: When did you get your degree?

24 A: February of 1956. And then I have a
25 master's in business administration from Harvard.

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1 Q: Let me stop you there. What is the
2 discipline of chemical engineering? What do
3 chemical engineers do?

4 A: They're primarily concerned with process
5 operations.

6 Q: When you say process, process of operations
7 or --

8 A: Process operations.

9 Q: Process operations. What does that mean to
10 a layman like me?

11 A: Okay. It's where you start with whatever
12 base chemicals you're going to begin with, you're
13 trying to get to an end product, and so it is all
14 the vessels and the operations you have to go
15 through from the time you first put ingredients in
16 until you get the final product. It could be
17 drying, it could be centrifuging, it could be
18 heating; anything they have to do to make the final
19 chemical.

20 Q: Assuming you would take -- can I use the
21 word base chemicals?

22 A: Sure.

23 Q: How you mix them, heat them, process them to
24 come up with some product at the end?

25 A: Right.

1 Q: Okay. And in 1956 when you got your degree
2 from the University of Michigan, did you intend to
3 work as a chemical engineer?

4 A: Yes, I did.

5 Q: And how long did you work as a chemical
6 engineer?

7 A: With Monsanto? I don't mean to --

8 Q: What I'm looking for is prior to the time
9 you went to Harvard.

10 A: None. No, that's not right. Pardon me. I
11 worked a few months for Midwest Research Institute
12 in Kansas City, Missouri, maybe six months or
13 something like that, while I was waiting to go into
14 the Air Force.

15 Q: Was it always your intention to go to
16 Harvard?

17 A: At that time, no. No.

18 Q: And so after you were discharged from the
19 service, you went to Harvard?

20 A: Well, I worked -- I worked in Kansas City
21 for Butler Manufacturing, the Butler Building
22 people, and while I was applying to the various
23 graduate schools. And then I guess I started there
24 in January of '58, and then I went to school in
25 September of '58, so whatever the period was.

1 Q: So at least from the time you left the
2 service you had intended to go to a business school?

3 A: Yes.

4 Q: And then you applied and you were accepted
5 by Harvard, so you went to Harvard?

6 A: Yes.

7 Q: When did you get your MBA?

8 A: 1960.

9 Q: And then did you join Monsanto shortly after
10 graduation?

11 A: Yes, I did.

12 Q: And what was your first position at
13 Monsanto?

14 A: I was a technical service engineer at the
15 Queeny plant, so I did practice as a chemical
16 engineer.

17 Q: Now, was that track, if I can use that word,
18 is that a chemical engineering track or a management
19 track?

20 A: I'll tell you what I thought I wanted to do
21 at that time.

22 Q: All right. Why don't you tell me that,
23 then?

24 A: My goal was to be a plant manager, you know,
25 of a large chemical -- one of their plants, so,

1 yes, at that time I was on a manufacturing or
2 engineering track.

3 Q: At some point to become a plant manager you
4 had to work in the plant and understand how the
5 plants were set up and working?

6 A: Yes.

7 Q: It was with that in mind that you accepted
8 the position at the Queeny plant?

9 A: Yes.

10 Q: Is that in St. Louis?

11 A: Yes, it is.

12 Q: On the Missouri side or the Illinois side?

13 A: Missouri. It's the original Monsanto plant.

14 Q: That still functions today?

15 A: Yes.

16 Q: Well, did your goal in Monsanto change at
17 any time?

18 A: During that time that I was at the Queeny
19 plant.

20 Q: And how did that change?

21 A: Because the biggest day of the year was when
22 the marketing person would come down and tell us
23 what was going on, so I just felt that the real --
24 you know, that the excitement and the heart of the
25 company was more in the commercial area than in the

1 manufacturing area.

2 Q: The action was in the --

3 A: Yes, that's the best word, that's where the
4 action was.

5 Q: The action was in the selling and the --

6 A: And marketing.

7 Q: Rather than simply producing a product?

8 A: To me it was, yes.

9 Q: So how did your shift in focus evidence
10 itself first? Did you change your position from
11 Queeny?

12 A: Yes. I was there approximately two years.
13 Several of these are two years. My next position
14 was in the commercial development department of the
15 organic division.

16 Q: Now, at Queeny, let me just step back for a
17 second, as a technical service engineer, would it
18 have been your duty simply to assist in processing
19 the product?

20 A: You would do such things as undertake
21 studies to improve the yield, you would work on
22 expansions, new pieces of equipment, if they needed
23 it.

24 Q: Expansion meaning --

25 A: Of that one operation.

1 Q: So instead of having one machine to make the
2 product, you might need two?

3 A: That's right.

4 Q: So you'd be there assisting the installation
5 of that and getting that new equipment on line?

6 A: Right. And you would probably have
7 specified or designed the equipment, unless it was
8 very large.

9 Q: And in the commercial development department
10 of the organic division in approximately 1962, I
11 think that would take us to, what did you do?

12 A: The commercial development was the group
13 that developed new products, so it's kind of in
14 between manufacturing and marketing. And I was
15 involved with finding new products.

16 Q: What new products would you have assisted in
17 developing or finding?

18 A: Probably the major one, I was responsible
19 for the commercial introduction, not the finding,
20 but the commercial introduction of lactic acid.

21 Q: What is lactic acid?

22 A: It's a food acid, it's used in emulsifiers.
23 Mother's milk has lactic acid in it. And this was
24 the first synthetic lactic acid plant in the world.
25 It had always been by fermentation before.

1 Q: So you synthesized it rather than --

2 A: Rather than fermenting it.

3 Q: Rather than growing it as such?

4 A: Yes.

5 Q: Any other types of things you can recall
6 that you would have been involved with in that time
7 period?

8 A: Oh, I did studies in the flavoring market,
9 food flavorings.

10 Q: And how long were you in the commercial
11 development department?

12 A: Around two years.

13 Q: That brings us to about '64?

14 A: '64, '65, somewhere in there.

15 Q: Give or take a year?

16 A: Right.

17 Q: At this point I'm not that concerned about
18 the specific dates, but --

19 A: Sure.

20 Q: What happened then?

21 A: Then lactic acid was ready to be turned over
22 to the -- was established and ready to be turned
23 over to the marketing department. I went with it,
24 and --

25 Q: Your baby, so to speak?

1 A: Yes.

2 Q: No punn intended.

3 A: All right. I caught it. So I became a
4 product specialist in food ingredients.

5 Q: Okay. Was that the title that you had, a
6 product specialist?

7 A: I believe it was.

8 Q: And how long did you hold that title?

9 A: Approximately two years.

10 Q: So by --

11 A: I'll tell you, let's see, this is probably
12 until the middle of '66, I would guess, somewhere
13 about there.

14 Q: And at about that time did you change your
15 position?

16 A: Yes, sir.

17 Q: How did your position change?

18 A: I became -- I went to New York as a field
19 manager to manage a sales group in New York.

20 Q: I think I found the document that I was
21 thinking of. Sales director, or product manager,
22 food and fine chemicals?

23 A: No, before that.

24 Q: Industry manager, food and fine chemicals?

25 A: That would have been it.

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1 Q: Okay.

2 A: Which was a selling job.

3 Q: So, you were now off of the development
4 side, you were dealing particularly and directly
5 with customers?

6 A: Right. I was off of the marketing side and
7 into the selling side, yes.

8 Q: How do you understand the difference between
9 marketing and selling?

10 A: The sales organization has the direct
11 responsibility for customers, of customer sales.
12 The marketing, to my mind, is the development of
13 pricing, the focal point for working with other
14 groups on demand, the budgeting, the advertising,
15 various marketing plans, the writing of the
16 marketing plan.

17 Q: More the support functions and the inside
18 workings as opposed to the man dealing particularly
19 with the customer?

20 A: Right.

21 Q: Okay. Was that an understanding that you
22 believed that Monsanto had at that time as to the
23 functions between sales and marketing?

24 A: Certainly, it was mine.

25 Q: Then in 1968 you became a product manager

1 for food and fine chemicals?

2 A: Yes.

3 Q: And that would be here, then, in St. Louis?

4 A: Yes, sir.

5 Q: What was involved in particular with that
6 function?

7 A: I was responsible for all of the products
8 that were in the food and fine group from a
9 marketing standpoint.

10 Q: So you came back from sales into marketing
11 again?

12 A: Exactly.

13 Q: Was that a step up?

14 A: Yes.

15 Q: You had that function for approximately a
16 year?

17 A: Six months.

18 Q: Six months.

19 A: Something like that, six or seven.

20 Q: And, then, what's your best recollection --
21 I am interested in a more precise recollection, if
22 you have it. So for six or seven months in 1968 you
23 held that function. And then what happened next? I
24 mean, what was your next position?

25 A: Then I became the director of -- I forget

1 what they call it, director of sales for functional
2 fluids, sales director.

3 Q: Seems like a very quick move into the
4 functional fluids; what prompted that quick move?
5 Was it that a new position opened up or did you --

6 A: I believe -- now, I believe that Howard
7 Bergen had been the sales director and he was
8 promoted to business director. I'm not positive
9 about that, but I think that's right. And,
10 therefore, there was an opening for the sales
11 director.

12 Q: Had you known Mr. Bergen prior to this time?

13 A: Yes. I had known him, yes.

14 Q: Had you reported to him before this?

15 A: No.

16 Q: Was it typical in Monsanto that people who
17 were in management would change positions every two
18 or three years?

19 A: That's kind of fast, I think.

20 Q: You were on a quicker track than you had
21 seen other people on?

22 A: Yes.

23 Q: So Mr. Bergen, did he request that you take
24 the position that he had previously held?

25 A: I don't know.

1 Q: How did you come to learn that you were
2 under consideration for the position?

3 A: When it was offered to me.

4 Q: You didn't interview for it?

5 A: No.

6 Q: Who offered you the position?

7 A: Mr. Bergen.

8 Q: What was your reaction when he offered you
9 the position?

10 A: I was very pleased.

11 Q: Accepted it immediately?

12 A: Sure. As long as it's doesn't involve a
13 move you can do that, but --

14 Q: Moves take a little more discussion?

15 A: Yes. You've got to handle them differently.

16 Q: By this time you had just made it back from
17 New York, so, presumably, you didn't want to move
18 any further?

19 A: Right.

20 Q: What were your duties as sales director for
21 functional fluids when you accepted that position?

22 A: Both sales and marketing and all the people
23 who were in one or the other parts -- who were in
24 either one, sales or marketing.

25 Q: When you say both, does that mean everyone

1 reported to you who was in that function?

2 A: Yes. Within fluids, yes. Not directly,
3 obviously, but --

4 Q: But ultimately, correct?

5 A: Yes.

6 Q: And then would you have reported to Mr.
7 Bergen?

8 A: That's correct.

9 Q: And he was the senior-most manager in that
10 division, correct, or that group?

11 A: In that group, yes.

12 Q: And Mr. Bergen would have reported to whom?

13 A: At the time the head of the organic
14 division, I believe, was Howard Minckler, I believe.

15 Q: Mr. --

16 A: M-i-n-c-k-l-e-r. And I don't know whether
17 John Mason was there at the beginning in between
18 Bergen and Minckler.

19 Q: All right.

20 A: I just don't -- he was in there sometime
21 during that period, but I don't know when.

22 Q: Above Minckler?

23 A: Probably the president.

24 Q: Okay. So you were two or three rungs
25 removed from the presidency at that point in terms

1 of reporting authority, at least steps up?

2 A: Seemed like a a long way to me.

3 Q: It always does. But is that fair in terms
4 of the different reporting relationships?

5 A: Yes. I don't know, there might have been
6 one more intermediary between the president and --

7 Q: Did you consider yourself as being part of
8 management at that point?

9 A: Yes.

10 Q: And approximately how many people reported
11 to you as sales director, directly or indirectly?

12 A: I'd have to guess, I really don't know.

13 Q: But more than 30?

14 A: I was going to say 25 or 30, that's what I
15 was going to guess, but I don't know. It could be
16 more than 30.

17 Q: Were you salaried?

18 A: Yes.

19 Q: Was there a bonus that you would be eligible
20 for depending upon the productivity and profits that
21 the functional fluids group were able to achieve in
22 a given year?

23 A: No.

24 Q: Were there options available at any point
25 based upon performance that you would have as a

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1 sales director?

2 A: Stock options?

3 Q: Yes. Any type of compensation that would be
4 tied to how well your group performed.

5 A: I've got to say two things.

6 Q: Okay.

7 A: First, I don't know when I got stock
8 options. I did get some, and I really have no
9 idea. And it is not my belief that when I did get
10 them that it was based upon the function of a group,
11 you know, of a small group, it was more -- I'm sure
12 it was probably based upon the results of some
13 larger entity.

14 Q: Now, at the time that you went into the
15 functional fluids group you had not really been
16 involved in functional fluids?

17 A: No, I had not.

18 Q: Okay. Was that true as well during your
19 time at the Queeny Plant? I mean --

20 A: Some of the functional fluids were made
21 there, but I do not recall that I worked in any of
22 them. I worked mostly in some of the pharmaceutical
23 products.

24 Q: So this was a new area for you?

25 A: Yes, it was.

1 Q: What were the functional fluids in general
2 that you were involved in selling?

3 A: There were four different groups.

4 Q: Okay.

5 A: There were the dielectrics, heat transfer,
6 the industrial fluids, and Skydraul.

7 Q: Did you consider it a large amount of new
8 information to process concerning these products
9 when you took over the job?

10 A: Well, I knew nothing, so I don't know how to
11 measure large, but, yes, I had had no real hands-on
12 knowledge of any --

13 Q: Was it a profitable group when you joined
14 it?

15 A: I believe so, yes. Yes, it was.

16 Q: And do you have a recollection of the profit
17 margins in general that were associated with the
18 products that you were selling?

19 A: No, I don't.

20 Q: Okay. When, approximately, in 1968 did you
21 accept the position?

22 A: I think June.

23 Q: Okay. Well, it was early in 1968, was it
24 not, sir, that there were some initial studies or
25 reports concerning PCBs that were reported?

1 A: I don't recall.

2 Q: You do recall, don't you, toward the end of
3 1968 being concerned about reports, for example,
4 arising out of Sweden concerning PCBs?

5 A: I have to answer differently, if I may. The
6 first recognition that I recall about that there was
7 an environmental problem was the San Francisco
8 Chronicle article.

9 Q: And that occurred -- that's Dr.
10 Risebrough's article?

11 A: No. February '69.

12 Q: Okay. You were also concerned toward the
13 end of '68, were you not, sir, with an incident in
14 Japan arising in, I think it's Kyodo?

15 A: I can only recall that there was an
16 incident. I did not recall when it was until
17 yesterday when I looked at some documents. And I
18 know when it was and I know the specifics of it, but
19 all I remembered was that there was an incident.

20 Q: Well, in looking at the documents that Mr.
21 Chambers showed you -- by the way, how long did you
22 meet with Mr. Chambers yesterday?

23 A: Nine-thirty to two, something like that.

24 Q: Was anyone else in attendance?

25 A: No.

1 Q: But what do you recall now that your memory
2 has been refreshed concerning that incident?

3 A: I recall now -- I don't recall now. I can
4 tell you what I read. Okay? And I'm not
5 playing --

6 Q: I know. But I thought you just said you
7 didn't recall it, then you looked at it and then you
8 remembered?

9 A: No, then it told me when it was. Okay?

10 Q: Okay. What do you recall?

11 A: I don't recall.

12 Q: Okay. Well, let's do this, then.

13 (Plaintiff's Exhibit 168
14 marked for identification).

15 MR. ROEDER: For the record, 168 is a copy,
16 and I apologize for the quality of it, but that's
17 the way it was produced to us, dated December 9,
18 1968. Regarding the subject, it's hard to read, but
19 it's "Bran oil poisoning by Kanoclor". The Bates
20 number is TRAN 57833. And it's to you, correct,
21 sir?

22 A: Yes, it is.

23 Q: Okay. I'm not going to ask you to try to
24 read through this poor copy, but when you look at
25 this, you recognize that there was an incident in

1 Japan with respect to PCBs that were used in
2 producing, I think it was rice bran, correct?

3 A: Bran oil?

4 Q: Bran oil poisoning, but it was a rice --

5 A: Rice bran, yes.

6 Q: It was a rice product?

7 A: Yes.

8 Q: I'll show you what has previously been
9 marked as Exhibit 80. I think I have additional
10 copies for you.

11 MR. CHAMBERS: Thank you.

12 (Plaintiff's Exhibit 169
13 marked for identification).

14 MR. ROEDER: Before you look at 80, let me
15 show you Plaintiff's Exhibit 169, which is a several
16 page document which has Bates numbers TRAN 57088
17 through TRAN 57092. And what I'm interested in more
18 particularly is the third page of this document,
19 which is a memorandum from you to W.R. Richard,
20 dated December 4, 1968. And if you'll take a moment
21 to review this. Is this one of the documents you
22 looked at in preparation for your testimony?

23 A: Yes, it is.

24 Q: Okay. For the record, you're indicating
25 that you've had the opportunity to look at it?

1 A: Yes.

2 Q: It's a memorandum to you from W.R. Richard
3 dated December 4, 1968. Who was W.R. Richard?

4 A: He was my counterpart in research, so he was
5 the director of research for fluids.

6 Q: All right. You were advising Mr. Richard
7 through this memorandum regarding a competitive
8 chlorinated byphenyl manufactured by Keneka, which
9 was a Japanese company that you would have competed
10 with through a Monsanto joint venture in Japan, is
11 that correct?

12 A: Yes.

13 Q: And is it also correct, sir, that there was
14 a serious accident at an edible rice bran oil
15 manufacturing plant, which edible oil leaked through
16 stainless steel piping; that's what you were telling
17 Mr. Richard, correct?

18 A: That's what this report from our Japanese
19 people said, yes.

20 Q: Okay. And you passed it on to Mr. Richard
21 because you thought he might want it for his meeting
22 with Calandra; that's what it says, isn't it?

23 A: Yes.

24 Q: Who was Calandra?

25 A: He was the head of Industrial Bio-Test,

1 which was the testing -- a testing group in
2 Chicago, I believe, that did testing, animal
3 testing.

4 Q: With respect to PCBs?

5 A: It was used by Monsanto in a lot of places.

6 Q: If there were going to be any issues
7 relating to testing, generally -- are we talking
8 toxicity studies?

9 A: Yes.

10 Q: If there was an issue relating to the
11 toxicity of a particular chemical, Industrial
12 Bio-Test would be doing the testing on it?

13 A: Could be.

14 Q: Okay. And Calandra was the guy that you
15 dealt with at Industrial Bio-Test?

16 A: Yes.

17 Q: Your memorandum to Mr. Richard says, "This
18 is most distressing". Why was it most distressing?

19 A: I can't recall the memorandum, so I don't
20 know how to answer it.

21 Q: So even reviewing the memorandum which
22 reflects that as many as twelve thousand people
23 suffered from intoxication, in addition to a great
24 number of chickens fed with the oil that died, you
25 don't remember why you thought that this report was

1 distressing?

2 A: I can't put myself -- when I don't
3 remember, I can't put myself back at that time.

4 Q: Well, do you recall at this time, sir, being
5 concerned as to whether or not Monsanto could
6 proceed in Japan to produce chemicals that had PCBs
7 in them?

8 A: I don't recall.

9 Q: Okay. Well, that was a purpose of MMK, as
10 it's reflected in this memorandum, correct?

11 A: I don't know if it was whether they should
12 -- you said whether they would -- I don't read
13 that part, whether they would manufacture in Japan.

14 Q: Certainly. Let me rephrase the question and
15 make sure I got it right. At some point there was a
16 joint venture that Monsanto had established or hoped
17 to establish in Japan to produce products with
18 polychlorinated biphenyls?

19 A: I don't recall.

20 Q: Well, what is MMK?

21 A: It was Monsanto's -- at one point in time
22 -- it was Monsanto's marketing organization, I
23 believe, in Japan, and at one point in time, then,
24 there became a joint venture with Mitsubishi, where
25 they did manufacture some products, but I don't

1 recall what the products were.

2 Q: Well, as sales director for functional
3 fluids you had world-wide responsibility, correct?

4 A: Yes, I did.

5 Q: So you would have been concerned at this
6 point in time, in December of 1968, with attempts
7 outside of the United States to sell functional
8 fluid products, correct?

9 A: Yes.

10 Q: Okay. Your memorandum to Mr. Richard
11 continues, "We should carefully evaluate whether
12 there is a significant risk in selling Therminol in
13 food applications, and what guidelines should be
14 used". Do you recall carefully evaluating whether
15 there was a significant risk in selling Therminol in
16 food applications?

17 A: No, I don't.

18 Q: At any point or just at this time?

19 A: I just don't recall.

20 Q: Okay. Therminol, that was one of the
21 functional fluids that was in the heat transfer
22 area, correct?

23 A: Yes, it was. The name of the heat transfer
24 fluid was Therminol.

25 Q: Well, in 1968, as you testified earlier,

1 when you took over this position, you had a little
2 bit of a learning curve, I think, you had to
3 probably surmount. I'm sort of paraphrasing your
4 testimony, but only to go into this next question.
5 What did you learn about the functional fluid
6 products that was particularly important for the
7 applications to which they were used? Do you
8 understand my question?

9 A: Not really.

10 Q: Okay. These products had a certain -- had
11 certain characteristics for the applications in
12 which they were used, correct?

13 A: Yes.

14 Q: Were they flammable?

15 A: No.

16 Q: Okay. That was one of the --

17 A: That was one of the major benefits.

18 Q: Major attributes that people would look for
19 when they purchased the product, correct?

20 A: That's correct.

21 Q: Were they stable?

22 A: Yes.

23 Q: And I might be getting out of my league
24 here, but --

25 A: I'm not far ahead of you.

1 Q: In a chemistry sense, if a product is
2 stable, it has what type of characteristics? What
3 do you consider a stable product?

4 A: One that will not -- this is -- again, this
5 is a real layman's. All right? One that will not
6 break down in the customer's operation, which is
7 where you're going to use it.

8 Q: So if you're using it as a lubricant --

9 A: You'd want it to be able to keep its
10 lubricant properties.

11 Q: So that means that, for example, it's
12 resistant to heat, correct, it will not break down
13 even if it's put in a high temperature setting?

14 A: Clearly -- I think the whole family was,
15 but I'm not sure of that.

16 Q: At this point I'm just talking about in
17 general.

18 A: All right. You'd expect it to perform in
19 the environment it was in.

20 Q: So one of the attributes, at least in some
21 of the functional fluids that you were able -- that
22 you took over the sales director responsibility for
23 was that these products, Therminol, for example, as
24 reflected in this letter, this memorandum, was
25 something that did not break down when heated at a

1 high temperature?

2 A: It was used as a heat transfer medium, so it
3 was the heat, I guess is the way to --

4 Q: Someone could heat it very -- to a high
5 temperature?

6 A: And then use that to heat something else.

7 Q: And then it would be processed through and
8 then heated again and processed through, right?

9 A: Right.

10 Q: So it was very stable in that respect,
11 correct?

12 A: Yes.

13 Q: Out of the functional fluids that you took
14 over the responsibility as sales director for there
15 are Aroclors, correct?

16 A: Not all.

17 Q: But there were Aroclors within them?

18 A: Yes.

19 Q: How would we define the term Aroclors so
20 that you, as a director in 1968, would know what
21 we're talking about?

22 A: It was chlorinated biphenyls.

23 Q: And different Aroclors, the numbers
24 associated with the Aroclors would relate to the
25 percentage of the Aroclor that was chlorine, right?

1 A: Yes, sir.

2 Q: So Aroclor 1254 was 54 percent chlorine?

3 A: Yes.

4 Q: And Aroclor 1260 was 60 percent?

5 A: Yes.

6 Q: And then there were a lower percentage of
7 chlorines in different formulations, correct?

8 A: Yes, sir.

9 Q: And all of the Aroclors are very stable,
10 tended to be stable with respect to heat, correct?

11 A: I believe that, yes.

12 Q: Okay. And this was something that you would
13 have learned early on as sales director, right,
14 because these were the principal attributes that
15 salesmen would be able to discuss concerning these
16 products, correct, that they were stable and they
17 were not flammable?

18 A: Yes. And in some cases they had lubrication
19 capabilities.

20 Q: Okay. Is that known as lubricity?

21 A: Yes.

22 Q: I'm learning a little bit. Anything else?

23 A: Not that I remember.

24 Q: What I'm looking at -- let me phrase it a
25 little differently. Suppose I'm the customer, and

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1 you wanted to sell me a product in an industrial
2 use, what qualities of your products would you think
3 an industrial user would want to know?

4 MR. CHAMBERS: I object to the hypothetical
5 form of the question. But if you can respond to it,
6 you're welcome to.

7 A: Basically, what we've just discussed.

8 MR. ROEDER: Okay. Well, as sales director
9 for functional fluids, you would also have been
10 concerned, wouldn't you, sir, with any adverse
11 publicity that could be related to a product that
12 you wanted to sell, isn't that correct?

13 A: Well, say it again.

14 Q: Sure. As sales director, wouldn't you want
15 to be aware of any adverse publicity concerning one
16 of the products that you would sell?

17 A: Yes.

18 Q: Okay. So, even though the chlorinated
19 byphenyl manufactured by Keneka was not a product
20 Monsanto manufactured, Monsanto manufactured
21 chlorinated biphenyls that would have the same
22 characteristics as the one Keneka manufactured,
23 correct?

24 A: That's correct.

25 Q: Okay. Now, you have in front of you your

1 memorandum which is dated December 4, 1968, and then
2 Plaintiff's Exhibit 80, the memorandum from E.P.
3 Wheeler to you, dated December 23, 1968. Do you see
4 that document, sir?

5 A: I do.

6 Q: For the record, Exhibit 80 has production
7 numbers TRAN 6445 through TRAN 6447. Who is E.P.
8 Wheeler?

9 A: I don't know his title. He was in the
10 medical department.

11 Q: He was a medical doctor, wasn't he?

12 A: I think he was. I'm not positive, but I
13 believe he was.

14 Q: He was the guy you would call if you had
15 questions concerning the toxicity of the Aroclors,
16 right?

17 A: Right.

18 Q: Do you recall discussing at any point toward
19 the end of 1968 with Mr. Wheeler this incident in
20 Japan?

21 A: No, I don't.

22 Q: You do recall, don't you, having discussions
23 with Mr. Wheeler regarding the toxicity of the
24 Aroclor products?

25 A: Not specifically.

1 Q: Well, in general, you would have attended
2 meetings where Mr. Wheeler attended as well, isn't
3 that correct?

4 A: But I don't know if they were about toxicity
5 or about --

6 Q: About pollution?

7 A: Yes. Or about -- you know, about the
8 environmental -- I don't know which -- I'm not
9 sure which would be discussed.

10 Q: Okay. But in any event, Exhibit 80, that's
11 a document you reviewed yesterday as well?

12 A: No, it's not.

13 Q: It doesn't surprise you that Mr. Wheeler
14 would have sent back a response to a memo regarding
15 bran oil poisoning that you had written?

16 A: No, it does not.

17 Q: Okay.

18 A: Except for the fact that I didn't send it to
19 him.

20 Q: Well --

21 A: But it does said my memo.

22 MR. CHAMBERS: Well, it refers to a memo of
23 December 9, 1968, and that is the date of Exhibit
24 168, but the other, Exhibit 169, is dated December
25 4, so --

1 MR. ROEDER: Fair enough. So, Plaintiff's
2 Exhibit 80 is in response to Exhibit 168. And if
3 you look at 168, sir, there's a handwritten notation
4 to Elmer Wheeler. Do you know whose handwriting
5 that is?

6 A: No.

7 Q: But apparently somebody at Monsanto sent
8 your memorandum to Mr. Wheeler, who responded to
9 you?

10 A: Yes, sir.

11 Q: All right. It would have been your
12 practice, wouldn't it, sir, to have reviewed a
13 memorandum that had been sent to you in response to
14 one of your memorandums?

15 A: To have reviewed it?

16 Q: Yes.

17 A: Yes.

18 Q: Okay. So, even while you may not have a
19 recollection of reviewing this particular
20 memorandum, it would have been your practice to have
21 reviewed it when it was sent to you or delivered to
22 you at Monsanto?

23 A: Yes. To review something, it depends upon
24 its value or interest. I would see it, there would
25 be nothing sent to me I would believe that I did not

1 look at.

2 Q: For the record, I was referring to
3 Plaintiff's Exhibit 80, and that's what you were
4 referring to in connection with that answer,
5 correct?

6 A: Yes, sir.

7 Q: Well, at or about this time, did you become
8 concerned that the new position that you had
9 obtained may, in fact, have some problems in
10 connection with the products you wanted to sell?

11 A: I don't recall.

12 Q: Okay. Do you recall, sir, in 1968 if the
13 functional fluids group met its sales goals?

14 A: I don't know.

15 Q: Okay. Well, more generally, do you recall
16 if in the first six months or so of your tenure as
17 sales director that things looked like they were
18 going -- I mean, you don't recall a calamity
19 hitting?

20 A: I don't recall any disasters.

21 Q: Okay. Now, again, sir, would you look at
22 Exhibit number 169. There's some handwriting on the
23 left-hand side of the first page, and the first page
24 also contains a copy of what appears to be a
25 newspaper article entitled "Bran oil poisoning,

1 patient dies". Looking at this document, sir, does
2 this refresh your recollection at all about this
3 Japanese incident?

4 A: No, it does not.

5 Q: All right. The left-hand side, the
6 handwriting, if I can point out, approximately
7 two-thirds down the page, there is handwriting
8 which, tell me if I read this the way you read this,
9 it says "I wonder if our Therminol labels are clear
10 enough on the point (for civil cases, that is".

11 A: That is the way I would read it.

12 Q: Whose handwriting is that?

13 A: I don't know.

14 Q: Do you recognize the signature at the
15 bottom?

16 A: No. No, I do not.

17 Q: Do you recall having a concern as to whether
18 or not the labels on Therminol were clear enough for
19 civil litigation purposes?

20 A: I don't recall.

21 Q: Okay. But that would have been something
22 that you would have wanted to have known as sales
23 director, isn't that correct?

24 MR. CHAMBERS: I object to the form, it
25 calls for speculation.

1 A: What's that mean?

2 MR. CHAMBERS: Forgive me. I'm just noting
3 an objection for the record. You're welcome to
4 respond to his question, if you're able to.

5 A: He can overrule it?

6 MR. ROEDER: At this point, unless he
7 instructs you not to answer, I think you have to
8 answer.

9 A: Okay. Fine.

10 MR. CHAMBERS: If you're able to.

11 A: I don't recall.

12 MR. ROEDER: Let me see if I can rephrase
13 the question. When there are issues with respect to
14 labeling, you would be consulted, for your products,
15 correct?

16 A: It would have been -- whether I would be
17 personally, I'm not sure. But it would have been
18 within the product function to be involved with
19 labeling decisions.

20 Q: And depending upon what the label says, some
21 customers may be more inclined or less inclined to
22 buy a product, correct?

23 A: Could be.

24 Q: So, it would have been -- is it fair to say
25 it would have been something that you would have

1 concerned yourself in?

2 A: Yes.

3 Q: If you thought it would have affected your
4 ability to sell the product?

5 A: Right.

6 Q: And is it something, also, that you would
7 have concerned yourself in if you had thought it
8 might have affected the profitability of your sales
9 of the product?

10 A: No, I don't think I would consider labeling
11 decisions from a profitability standpoint.

12 Q: Okay. From a liability standpoint?

13 A: That would be logical.

14 Q: You would have considered it from that
15 standpoint?

16 A: That would be logical.

17 Q: That's all I have for these documents right
18 now.

19 (Discussion off the record).

20 (Plaintiff's Exhibit 170.

21 MR. ROEDER: Take a moment, sir, to look at
22 Plaintiff's Exhibit 170, which bears production
23 numbers TRAN 57683 through 57684. And for the
24 record, it's a memorandum from W.R. Richard, dated
25 December 30, 1968. The subject is "Aroclor,

1 wildlife". And you are listed as a carbon copy
2 recipient.

3 A: That's correct. Okay.

4 Q: Sir, this is a document that you would have
5 received in the ordinary course at Monsanto, isn't
6 that correct?

7 A: My name was there, yes.

8 Q: W.A. Kuhn, who is he?

9 A: He was the manufacturing representative to
10 the fluids group.

11 Q: What particular function did he serve in?

12 A: He served as liaison between the -- the
13 business groups did not have manufacturing under
14 them, so he was in the manufacturing organization
15 and served as liaison between the business group and
16 the manufacturing organization.

17 Q: So he was the guy that was to make sure the
18 product was made according to your specifications?

19 A: Well, so that the people at the plants would
20 be, too. But, yes, any changes, or if we wanted to
21 work on expansions, he might be very heavily
22 involved.

23 Q: Okay. Well, Mr. Richard's memorandum to Mr.
24 Kuhn indicates that Bill wanted to become more
25 familiar with the legal and political problems

1 facing Aroclor with regard to pollution and the
2 accusations in the literature that chlorinated
3 biphenyls are poisoning and killing wildlife.
4 Having seen that, does this refresh your
5 recollection as to whether toward the end of 1968
6 there was increasing publicity concerning PCBs?

7 A: No, it does not.

8 Q: All right. On the second page of the
9 memorandum -- which is the first page of the
10 exhibit?

11 A: Yes.

12 Q: Mr. Richard says, "The third step is to
13 minimize exposure of Aroclor to reduce air and water
14 pollution, to restrict Aroclor to uses which can be
15 controlled. This is the only way I see to
16 survive". Did I read that correctly?

17 A: Yes, you did.

18 Q: Did you agree with that assessment?

19 A: I don't -- when? Then or now?

20 Q: Right.

21 A: Then? I have no idea.

22 Q: And looking at this document doesn't refresh
23 your recollection?

24 A: No, sir, it does not.

25 Q: Now, at this point, where were the Aroclors

1 manufactured, what plants at Monsanto?

2 A: The actual Aroclors were manufactured in
3 Anniston, Alabama and at the Krummrich plant across
4 the river here.

5 Q: On the Illinois side?

6 A: Yes.

7 Q: In Sauget?

8 A: Yes.

9 Q: Now, did you have concerns yourself at that
10 time as to whether or not the plants that were
11 manufacturing the Aroclors were emitting PCBs in
12 their manufacturing operations?

13 A: I don't recall.

14 Q: Mr. Richard writes, "I believe we should
15 make sure that our plants have minimum air or stream
16 pollution. I believe Anniston is vulnerable and
17 that off-gas HCL" -- that's hydrogen chloride?

18 A: Yes.

19 Q: -- "and Aroclor should be a hundred percent
20 controlled. Krummrich may also need help". Did I
21 read that correctly?

22 A: Yes, you did.

23 Q: Okay. You don't recall having any
24 discussions concerning those issues?

25 A: No, I don't.

1 Q: Okay. Now, at the last paragraph Mr.
2 Richard writes, "We probably have six months to one
3 year while we fight out the DDT case. I want to use
4 this time to minimize our exposure. We'll need your
5 help in sending TSD targets". What are TSD targets?

6 A: TSD is the technical service group, the same
7 kind of group that I joined Monsanto in at the very
8 first job.

9 Q: Technical service --

10 A: At the plants.

11 Q: Okay. In other words, targets, for example,
12 to minimize pollution?

13 A: They could be on anything.

14 Q: All right. Well, do you recall -- does
15 reading this refresh your recollection that you were
16 in a window of opportunity to at least come up with
17 an alternative time -- you have a minimum amount of
18 time with which to deal with this problem?

19 A: I don't recall.

20 Q: Okay. You don't recall that being a
21 concern?

22 A: No.

23 Q: Now, I think you said the first time you
24 recall there being an issue with respect to PCBs was
25 the San Francisco Chronicle article?

1 MR. CHAMBERS: Let me object to the form, I
2 think that mischaracterizes the testimony, that he
3 became aware that there was an issue.

4 MR. ROEDER: Well, let me rephrase it. The
5 first time you became aware that the PCBs could be
6 an environmental issue was on learning of the
7 publication of the San Francisco Chronicle article?

8 A: The first time as I sit here today that I
9 recall being aware was the San Francisco Chronicle
10 article.

11 Q: Did you read that article?

12 A: I read it.

13 Q: Okay. Was it sent to you promptly upon its
14 publication?

15 A: I don't have any idea.

16 Q: You don't recall whether someone quickly
17 sent it in so that everyone could see it or mailed
18 it in?

19 A: No, I don't know what happened.

20 Q: What do you recall about the article?

21 A: Well, all I recall is that they had found
22 that PCBs were in the environment and that the fish
23 were eating them and peregrine falcons were eating
24 the fish and getting thin eggshells and there was
25 concern about extinction of the peregrine falcon.

1 Q: So that what the researcher found is that
2 the eggshells were so thin that the eggs were not
3 hatching, correct?

4 A: That's right.

5 MR. CHAMBERS: I object to the form.

6 MR. ROEDER: And by extension, then, was
7 there not a concern that literally higher up the
8 food chain PCBs may appear?

9 A: I don't recall.

10 Q: Okay.

11 A: As I sit here, to me, the emphasis was this
12 was the first real knowledge to me that they were in
13 the environment and they were not degrading.

14 Q: Did Mr. Wheeler at any time in this time
15 frame -- well, let's see if we can lay a foundation
16 for the time frame. When you read the San Francisco
17 Chronicle article, do you recall when you read it?

18 A: No, I don't.

19 Q: And you don't recall if you read it --
20 would you have read it around the time it was
21 published, give or take a month or two?

22 MR. CHAMBERS: I object to the form, it's
23 been asked and answered. He said he didn't recall
24 when he read it.

25 MR. ROEDER: I'm just trying to see if --

1 MR. CHAMBERS: Fair enough. Go ahead.

2 A: It would be logical, yes, I would have read
3 it within a month.

4 Q: It's your expectation that within a
5 reasonable amount of period after its publication it
6 would have been brought to your attention because of
7 its importance, correct?

8 A: Yes.

9 Q: Okay. At or about this time do you recall
10 Mr. Wheeler ever suggesting to you that he had
11 thought that the research being done on -- let me
12 rephrase the question. At or about this time did
13 Mr. Wheeler tell you that he thought the research
14 that had suggested that PCB products persisted in
15 the environment was valid?

16 A: Not that I recall.

17 Q: Would you recall that if he had said that?

18 A: No.

19 (Plaintiff's Exhibit 171
20 marked for identification).

21 MR. ROEDER: The court reporter has handed
22 you Plaintiff's Exhibit 171. If you'll take a
23 moment to review that, sir, and I'll identify it for
24 the record. Exhibit 171 is a memorandum from D.A.
25 Olson to Kazuo Hoshino, dated January 14, 1969. And

1 it has a production number of TRAN 58450.

2 A: I've read it.

3 Q: Okay. Is this a document you looked at in
4 preparation for your testimony today?

5 A: Yes.

6 Q: Who is Kazuo Hoshino?

7 A: I don't know.

8 Q: MMK, though, was the Monsanto sales
9 organization in Tokyo?

10 A: Yes.

11 Q: And this document relates to bran oil
12 poisoning, correct?

13 A: Yes.

14 Q: Okay. The memorandum from Mr. Wheeler to
15 you was the memorandum that's referenced in Exhibit
16 171, I'm talking about Plaintiff's Exhibit 80, isn't
17 that correct?

18 A: Without having it attached, I would -- it
19 is logical it would be, but I don't know for sure
20 that it was.

21 Q: Well, the conclusion that there are few
22 regulations and little information on human toxicity
23 is consistent with what Mr. Wheeler told you in his
24 memorandum which is Plaintiff's Exhibit 80, correct?

25 A: Yes, it is.

1 Q: And also the statement that you have from
2 Mr. Hoshino that there's little justification for
3 the expense of toxicity testing which would be
4 required; that was consistent with what Mr. Wheeler
5 had written to you in his memorandum, correct?

6 A: Yes, it is.

7 Q: So, those factors make you believe that this
8 could, indeed, be the memorandum enclosed to Mr.
9 Hoshino?

10 A: Yes.

11 Q: Your memorandum to Mr. Hoshino concludes
12 that, "We, like you, are vitally concerned that no
13 governmental action in Japan be taken which would be
14 harmful to Aroclor". Was that your position in
15 1969?

16 A: I just don't remember.

17 Q: Well, this would be a memorandum you
18 prepared?

19 A: Yes.

20 Q: You wouldn't have written it if you thought
21 it were incorrect?

22 A: And I did say that.

23 Q: Okay. And it's also true that you had hoped
24 that the information you had enclosed would
25 alleviate the concern that governmental action be

1 taken in Japan that would be harmful to Aroclor,
2 isn't that correct?

3 A: That is what I wrote.

4 Q: Did Japan ultimately ban Aroclors?

5 A: I don't know.

6 Q: Would it surprise you if I suggested that
7 they did?

8 MR. CHAMBERS: I object to the form. Go
9 ahead and answer.

10 A: Would it surprise me?

11 MR. ROEDER: Yes.

12 A: No.

13 Q: Okay. Let's move on.

14 A: Did they?

15 Q: They did.

16 A: Okay.

17 Q: I'll tell you on the record, Mr. Benignus
18 has testified that they did, and would you rely on
19 Mr. Benignus' testimony on that subject?

20 A: Yes, I would.

21 (Plaintiff's Exhibit 172
22 marked for identification).

23 MR. ROEDER: Take a moment to review exhibit
24 172, sir.

25 A: Okay.

1 Q: For the record, Exhibit 172 is a memorandum
2 from W.R. Richard to E. Wheeler. It has the
3 production number TRAN 58343 through TRAN 58345.
4 You are listed as a recipient on this memorandum,
5 sir?

6 A: Yes, I was.

7 Q: The memorandum is entitled "Aroclor wildlife
8 Accusations", correct?

9 A: Yes, it is.

10 Q: And it relates a recent paper in the
11 periodical Nature from Professor Risebrough, right?

12 A: Yes.

13 Q: In it, as recounted by Mr. Richard to Dr.
14 Wheeler, Dr. Richard indicates that Risebrough is
15 suggesting that chlorinated biphenyls is a toxic
16 substance endangering man himself, do you see that?

17 A: Yes, I do.

18 Q: Do you recall considering that issue when
19 you received this memorandum?

20 A: No, I don't. I don't recall receiving the
21 memorandum.

22 Q: But you would have received it in the
23 ordinary course of Monsanto, correct?

24 A: Yes.

25 Q: You have no reason to believe you didn't?

1 A: No.

2 Q: In or about this time in March 1969, was it
3 your view that the issue relating to environmental
4 contamination of PCBs was becoming an important
5 issue regarding Aroclors?

6 A: I can't put it in a time frame.

7 Q: At some point it did, though?

8 A: Yes.

9 Q: On the second page of the memorandum, sir
10 Dr. Richard writes, "Under identification and
11 control of exposure we will be able to identify and
12 analyze residues as well or better than anyone in
13 the world". Do you see that?

14 A: I do.

15 Q: That was correct, wasn't it?

16 A: I don't know.

17 Q: Well, Monsanto was the leading manufacturer
18 of PCBs in the world at this point, wasn't it?

19 A: I believe Monsanto was the largest
20 manufacturer.

21 Q: Certainly, the only manufacturer of PCBs in
22 the United States?

23 A: Right.

24 Q: And the leading manufacturer world-wide?

25 A: I think the largest, yes.

1 Q: And it's also fair to say, isn't it, sir,
2 that as of this date in 1969 Monsanto knew as much
3 about PCBs collectively, Mr. Richard, Mr. Wheeler,
4 as anyone else?

5 A: I've got no way to judge that.

6 Q: Well, wouldn't you agree with me that you
7 had more experience in producing Aroclors as a
8 corporate entity than any other corporate entity?

9 MR. CHAMBERS: I object to the form.

10 A: Monsanto had produced more than anybody,
11 yes.

12 MR. ROEDER: And originally PCBs were
13 developed by Swan Chemical which Monsanto purchased,
14 correct?

15 A: They did purchase Swan, and -- I don't
16 recall it, but I bow to your statement, yes.

17 Q: All right. And the Anniston plant was the
18 originally Swan Chemical plant, right? Do you know?

19 A: I don't know.

20 Q: Okay. Well, do you recall disagreeing with
21 Mr. Richard's statement?

22 A: I don't recall the memo.

23 Q: All right. Now, let's move on further down
24 this memorandum. On page 2 Dr. Richard writes,
25 "Since Risebrough's paper in Nature, December 1968,

1 has just been published, it is timely, perhaps
2 imperative that this paper and its implications be
3 discussed with certain customers. This is a rough
4 one because it could mean loss of business on empty
5 and false claims by Risebrough". Did I read that
6 correctly?

7 A: Yes, you did.

8 Q: Did you discuss the paper and its
9 implications on or about this time with customers?

10 A: I have no recollection of that, of doing it
11 or not doing it. I have no recollection, period.

12 Q: Well, at some point you did discuss it with
13 certain customers, correct, at least the
14 implications of the PCB contamination in the
15 environment, correct?

16 A: Our organization did, yes.

17 Q: And you personally, you at least were in
18 meetings where it was discussed with customers,
19 weren't you?

20 A: I'm not sure. The only one that I can even
21 think of was a meeting with GE, and I'm not sure
22 that I was there.

23 Q: Well, we'll get to that.

24 A: If I was, fine. I just don't know.

25 Q: Okay. You certainly don't recall making a

1 decision as of this date, the receipt of this
2 memorandum, that it was imperative to discuss the
3 implications of Dr. Risebrough's memorandum with
4 certain customers?

5 A: I don't recall.

6 Q: Okay. Well, looking at this document right
7 now, you would agree with the statement that Dr.
8 Richard has, that if Risebrough were wrong and if
9 the claims were false, you would have risked losing
10 business by discussing these issues with customers,
11 isn't that correct?

12 MR. CHAMBERS: I object to the form.

13 A: I don't quite know how to answer. Say it
14 again.

15 MR. ROEDER: Sure. I'll try it again.

16 A: Thank you.

17 Q: Dr. Richard writes, after he says it's
18 imperative that the implications of Dr. Risebrough's
19 papers be discussed with certain customers, that
20 "This is a rough one, because it could mean loss of
21 business on empty and false claims by Risebrough".
22 Okay. Let's use that as a reference for the
23 question. Okay?

24 A: Okay.

25 Q: If, in fact, the claims by Risebrough were

1 empty and false, you would agree with Dr. Richard
2 here, wouldn't you, that it could be serious and a
3 rough issue to discuss with customers, who might
4 then decide not to buy your product?

5 A: Well, read it again, I don't know where --
6 I'm trying to be good.

7 Q: I'm trying to be good, too. Maybe I could
8 do it better.

9 A: Okay.

10 Q: I thought I did it okay, but you're
11 indicating difficulty with the question, so let me
12 give it another try. I want you to assume that the
13 claims Risebrough made were empty and falls.

14 A: Okay.

15 Q: I don't think that's what happened, but just
16 for the purpose of this question assume that.

17 A: All right.

18 Q: If that were true and the claims that he had
19 regarding the falcons and the pollution weren't
20 true, wouldn't it have risked losing business on
21 Monsanto's part if they were to raise these issues
22 with customers?

23 A: It could be either way. It could be either
24 way. Some customers, you could end up with a much
25 closer relationship because you worked with them

1 early, you know, and sell them something else. So
2 there are some, though, that, yes, you could risk
3 it, that they would prematurely take the product
4 out.

5 Q: You certainly don't recall sending out
6 letters to customers with respect to the Nature
7 article in 1968, correct?

8 A: In 1969?

9 Q: 1969.

10 A: No, I do not.

11 Q: And you don't recall discussing this, in any
12 event, with any customers except possibly GE?

13 A: That's correct.

14 Q: Let's go down toward the bottom of that
15 page. It says "Well prepared discussions with Ind.
16 Bio-Test, Monsanto biochemists", and then there's a
17 blank, "must take place now". This is a question
18 for you, Mr. Chambers. Is there a redaction?

19 MR. CHAMBERS: I don't know.

20 MR. ROEDER: Okay. If I count correctly, it
21 would appear that the word legal is redacted, just
22 based upon the number of letters that would have
23 otherwise been typed there. Can you confirm whether
24 something has been redacted or not redacted with
25 respect to that document?

1 MR. CHAMBERS: I cannot confirm that today.

2 MR. ROEDER: Not today, but at some point.

3 I want to make that request.

4 MR. CHAMBERS: Sure. I'm surprised there's
5 not some other unredacted copies floating around,
6 given all the paper that's out there.

7 MR. ROEDER: If there is, I haven't found
8 it. If there is an unredacted copy, if you can
9 direct me to it, that would be fine. But it appears
10 as though something is redacted. My guess is the
11 word legal is redacted.

12 MR. CHAMBERS: I don't know if your guess is
13 right. I don't know, either, if your guess is
14 wrong. Maybe there's something else that --

15 MR. ROEDER: I don't know what other
16 department we'd be talking about. Do you recall
17 engaging in discussions with the medical and legal
18 departments at or about that time regarding the
19 environmental pollution question as it related to
20 PCBs?

21 A: I would have been in meetings and
22 discussions throughout the whole period, but I don't
23 recall any of them specifically or what the subjects
24 were.

25 Q: Okay. Well, these meetings or discussions

1 that you would have participated in, did they happen
2 on any regularly scheduled basis?

3 A: No. I think they would tend to be around a
4 subject, whenever that subject --

5 Q: So after the next negative publicity issue
6 there would be a meeting, for example?

7 A: There could. I don't know what happened,
8 but there could, yes.

9 Q: At the end of the memorandum Mr. Richard
10 asks for comments, and just so my record is clear,
11 you don't recall giving him any comments with
12 respect to this memorandum, do you?

13 A: No, I do not.

14 MR. ROEDER: We've been going about an hour
15 and twenty minutes, hour and a half, or something
16 like that, time for a break?

17 MR. CHAMBERS: Very good.

18 (Recess).

19 (Plaintiff's Exhibit 173
20 marked for identification).

21 MR. ROEDER: For the record, sir, you've
22 been handed Exhibit 173, which is a memorandum from
23 Dr. Richard, again, to file, relating to Aroclor
24 analysis in pesticide residues, visit to Professor
25 G. Widmark, U of Stockholm in May of 1969. And this

1 is, I presume, a copy that would have been sent to
2 you?

3 A: I presume so, yes.

4 Q: It looks as though there's an arrow
5 stamp --

6 A: It looks like it's through mine. This would
7 have been my copy.

8 Q: That would indicate this would be the one
9 sent to you?

10 A: Yes.

11 Q: And is this a document that you looked at in
12 preparation for your testimony yesterday?

13 A: I believe so.

14 Q: Okay. Would you take a moment to review
15 it.

16 A: Okay.

17 Q: Now, this is a document, sir, a memorandum
18 that Dr. Richard prepared based upon his visit to
19 Professor Widmark at the University of Stockholm May
20 5, 1969; that's what it reports, isn't that correct?

21 A: Yes, it does.

22 Q: What I'm not sure, and perhaps you can also
23 confirm that, Mr. Chambers, is there any redaction
24 on this as well?

25 MR. CHAMBERS: Again, I can't confirm that

1 with you today. I just don't know.

2 MR. ROEDER: I'd ask if you could.

3 MR. CHAMBERS: I assume you're referring to
4 that portion right below the title block and so
5 forth?

6 MR. ROEDER: Right. It looks like there's a
7 large space. Maybe that's just what it is, but I
8 can't tell. Do you recall reviewing or discussing
9 with Dr. Richard the trip that he had with Professor
10 Widmark in Stockholm?

11 A: No, I do not.

12 Q: Okay. The second page indicates Keller and
13 Wheeler should have a more complete report. We know
14 who Wheeler is. Who is Keller?

15 A: I'm not positive, but he could have been a
16 -- I don't know who he is. I don't know who he
17 is.

18 Q: Is it your best understanding that he was
19 someone who worked with Dr. Wheeler?

20 A: I really don't know who it is.

21 Q: Well, do you have a recollection that people
22 from Monsanto went to visit Professor Widmark to
23 discuss his research?

24 A: Yes.

25 Q: And did you participate in discussions

1 concerning these visits?

2 A: I don't know.

3 Q: Well, periodically, though, when you did
4 have discussions concerning PCB related issues,
5 environmental issues, people who would attend these
6 meetings would bring out new information that they
7 had acquired, wouldn't that be fair to say?

8 A: It would be logical.

9 Q: Right. Now, can you decipher something for
10 me with your chemical engineering background?
11 Toward the end of the --

12 A: Keller might be a person who was in the
13 analytical laboratory.

14 Q: Okay. You say that based upon the --

15 A: Yes, I kind of halfway remember it that
16 way. That could be who that is.

17 Q: Would he report to Dr. Wheeler or would his
18 function be separate?

19 A: No, his function would be separate. Pardon
20 me. Go ahead.

21 Q: There is an R. Keller who's listed as a
22 recipient of this memorandum.

23 A: Right.

24 Q: Toward the end of the memorandum on the
25 second page of the document, Dr. Richard writes, "We

1 could also expect that CL3", and what's that, a zero
2 with a line through it?

3 A: It's a chemical symbol.

4 Q: Is that a symbol for the ring?

5 A: It might be, yes.

6 Q: "Might go undetected based upon Widmark's
7 evidence; and apparently chlorinated paraffin and
8 chlorinated terphenyl have so far escaped detection
9 and are absent in the tissues of birds or fish". Do
10 you recall any discussion of this issue?

11 A: No, I don't.

12 Q: How about right before that in the paragraph
13 it talks about Aroclor 1242 which could have been
14 destroyed by the $\text{HNO}_3/\text{H}_2\text{SO}_4$. That's sulfuric
15 treatment and what is HNO_3 , is that nitric acid?

16 A: Yes.

17 Q: This would be a treatment that Widmark may
18 have been using as part of his research concerning
19 this that could have been destroying Aroclor 1242
20 before his analysis, is that what this says?

21 A: That's what this says.

22 Q: So, in fact, Aroclor 1242 may, in fact, be
23 persisting, but in the particular research that
24 Doctor -- the procedures that Dr. Widmark was
25 employing may, in fact, have been destroying what

1 otherwise would have been there; that's the
2 suggestion, correct?

3 A: I believe that's what this says.

4 Q: Okay. Again, you don't -- I take it you do
5 not have a specific recollection of discussing this
6 memorandum?

7 A: No, I don't.

8 Q: Or of discussing with anyone anything
9 further than what you testified regarding visits
10 with Dr. Widmark?

11 A: No.

12 Q: But is it also fair to say, though, sir,
13 that this is a document you would have had access
14 to; in fact, did receive?

15 A: Yes.

16 Q: And, in fact, that's true of everything
17 we've got so far that is addressed to you, it's a
18 document that you had received at Monsanto on or
19 about the time that the document was prepared?

20 A: Yes.

21 (Plaintiff's Exhibit 174
22 marked for identification).

23 MR. ROEDER: Exhibit 174, sir, has been
24 handed to you, and for the record is a letter dated
25 November 17, 1969 to Mr. Fred Comar, I believe,

1 Chief Mteallurgist, Chevrolet Motor Division, and
2 it's from N.T. Johnson and you're listed as a carbon
3 copy recipient.

4 A: Yes.

5 Q: Did you review this document in preparation
6 for your testimony?

7 A: Yes.

8 Q: Who is N.T. Johnson?

9 A: Norm Johnson.

10 Q: He was the marketing manager?

11 A: Yes, at that time.

12 Q: He reported to you?

13 A: Yes.

14 Q: Did he report to you directly?

15 A: Yes.

16 Q: And the date on the document, I don't know
17 if I got it in the record, but it's November 17,
18 1969. Would you have reviewed a letter like this
19 prior to the time it was sent out?

20 A: That's very doubtful.

21 Q: This is a document that discusses
22 chlorinated biphenyls and whether they were or were
23 not highly toxic to aquatic life, correct?

24 A: Yes.

25 Q: As of November 17, 1969, was Mr. Johnson

1 authorized to send out correspondence like this?

2 A: I don't know what -- I don't know what
3 "like this" is.

4 Q: Correspondence that discusses whether or not
5 products are or are not highly toxic to aquatic
6 life?

7 A: It would be logical for him to be writing to
8 customers, which is what this is.

9 Q: Chevrolet Motor Division was a large
10 customer of Monsanto's industrial fluids at that
11 time, wasn't it?

12 A: It was a customer. I don't know its size.

13 Q: Well, General Motors was certainly one of
14 the largest customers of the industrial fluids
15 products, isn't that correct?

16 A: I remember Ford more.

17 Q: You remember Ford more?

18 A: Yes.

19 Q: But would this be an extraordinary letter,
20 in your view?

21 MR. CHAMBERS: I object to the form, vague.

22 A: Extraordinary that he would be writing the
23 customer, extraordinary in what it says or --

24 MR. ROEDER: Let me rephrase the question.

25 A: The subject or --

1 Q: Let me rephrase the question, in light of
2 your comments. This is apparently in response to a
3 letter from Chevrolet regarding whether or not the
4 products that it purchases from Monsanto have
5 chlorinated biphenyls, correct?

6 A: Yes.

7 Q: And as of November 1969 do you remember any
8 other customers contacting Monsanto and asking
9 questions with respect to the chlorinated biphenyl
10 nature of the products that they were buying from
11 Monsanto which were part of your division?

12 A: Not that I recall. I don't recall.

13 Q: Okay. If it were happening a lot, then
14 you'd say this is something that was just happening
15 and you would have a recollection of it happening,
16 is that fair to say?

17 MR. CHAMBERS: I object to the form.

18 A: I don't know.

19 MR. ROEDER: But you're listed as a carbon
20 copy; did Mr. Johnson normally carbon you on
21 correspondence that he had with customers?

22 A: Not all. But certainly some. I don't
23 know. I can't --

24 Q: You could expect that he would list you --

25 A: If it was something he wanted me to see, he

1 would.

2 Q: Or if it dealt with an important customer
3 you'd want to see it, right?

4 A: Yes.

5 Q: R.W. Ehrhardt, who is that?

6 A: He was in New York, and he was -- he was
7 not part of our -- he was sort of a sales
8 correspondent, I believe, in the New York office.

9 Q: With respect to General Motors?

10 A: I don't recall.

11 Q: How about G.R. Graham?

12 A: Randy Graham was a sales representative.

13 Q: For General Motors?

14 A: In that area.

15 Q: Okay.

16 A: I believe he probably would be.

17 Q: Who is Jack Garrett, the other carbon copy
18 recipient?

19 A: I don't remember.

20 (Plaintiff's Exhibit 175
21 marked for identification).

22 MR. ROEDER: Exhibit 175 is another letter
23 written to General Motors Division, dated November
24 20, 1969 from Mr. Johnson. It has production number
25 TNGS 7484. Just so the record is clear, Exhibit 174

1 has production number TNGS 7483. On this one, sir,
2 there is a reference at the top, is there not, "PCB
3 customers"?

4 A: Yes, it does say that.

5 Q: Is this another document you looked at
6 yesterday?

7 A: Yes.

8 Q: Now, Pontiac Motor Division is a division of
9 the same company as the Chevrolet Motor Division,
10 they're both part of General Motors?

11 A: Yes.

12 Q: This is only three days after the other
13 letter was sent?

14 A: Correct.

15 Q: Was Mr. Johnson authorized to write this
16 letter?

17 A: I don't know how to -- there is not an
18 issue of -- I mean, I didn't have you're authorized
19 to do this or you're authorized to do that. The
20 fact that he would write the customer I find very
21 logical.

22 Q: Okay. Let me ask the question this way, did
23 you have a concern as of November 1969 that
24 communications to major customers relating to the
25 polychlorinated biphenyl nature of the products only

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1 come out of St. Louis?

2 A: I don't recall.

3 Q: Do you recall having a concern that St.
4 Louis control the precise information with respect
5 to PCBs in the Monsanto products that were given to
6 its customers at or about this time?

7 A: I can't put a time frame on it. Okay? But
8 I do recall in general that -- of the feeling that
9 it is better for the information to come from St.
10 Louis where we would be sure that it would be
11 accurate than to have all kinds of people giving
12 whatever opinions they want to give.

13 Q: Okay. Now, we've looked at a few of these
14 memoranda regarding the meeting in Stockholm, Dr.
15 Richard's memorandum regarding the press, the Nature
16 article by Dr. Risebrough; what I want to know, sir,
17 is, at or about this time in November 1969 it's fair
18 to say, isn't it, that the PCB contamination issue
19 was not decreasing, if anything, it was just
20 becoming a bigger issue?

21 A: Yes, that's fair to say.

22 Q: Okay. So there was no letup, no one said
23 PCBs are clear, you guys go ahead?

24 A: No.

25 Q: In 1969 did you form a belief yourself that

1 the PCB environmental issue was a very significant
2 issue with respect to the potential sales of the
3 products under your responsibility?

4 A: Again, at some point in time I reached a
5 conclusion that they were, indeed, persisting in the
6 environment and we needed to be very careful to let
7 our customers know exactly what was happening. I
8 don't know that I would put it just only in the vein
9 of sales, which I thought your question did.

10 Q: So at some point in time you reached a
11 conclusion that perhaps what Dr. Risebrough was
12 writing was valid, for example, at least -- let me
13 rephrase the question. At least it wasn't a group
14 of wild-eyed environmentalists who were just
15 suggesting in a Chicken Little fashion that the sky
16 is going to fall, this is a real serious issue,
17 correct?

18 A: Yes.

19 Q: Now, is it fair to say that there was a
20 concern early on, by early on I'm referencing back
21 toward early '69, late '68, that, in fact, this may
22 be sort of an environmentalist type issue, perhaps
23 not to be taken seriously, but people may not
24 understand the true uses of PCBs?

25 A: I just don't recall.

1 Q: You don't recall?

2 A: No.

3 Q: Do you recall anyone else discussing that
4 concept, that early on as the stories began to
5 percolate in the press that these are just a bunch
6 of sort of liberal environmentalists that we've got
7 to deal with?

8 A: I don't recall.

9 Q: Mr. Benignus never said anything like that?

10 A: I don't recall.

11 Q: I was was just trying to see if that
12 refreshed your recollection. So, by the end of
13 1969, is it fair to say that you had at least formed
14 that belief, that these materials were persisting in
15 the environment?

16 MR. CHAMBERS: Objection. Strike my
17 objection.

18 A: At some point in time, yes, I arrived in my
19 own mind at the conclusion that the higher Aroclors
20 were persisting in the environment.

21 Q: Higher Aroclors being what?

22 A: 54 and 60.

23 Q: Okay. Aroclor 1254 and Aroclor 1260?

24 A: Yes.

25 Q: What did you do internally with respect to

1 your belief? Did you act upon it internally?

2 A: I don't know.

3 Q: Was there a presentation made at any point,
4 for example, to the corporate management committee
5 or the corporate -- am I saying it correctly, any
6 --

7 A: CMC.

8 Q: Yes. Anybody internally concerning looking
9 for direction as to how we proceed strategically in
10 the future with respect to these materials that were
11 persisting in the environment?

12 A: I have no recollection, but I've read some
13 documents that imply that there was some --

14 Q: Did you ever make a presentation at the
15 corporate management committee?

16 A: No.

17 Q: Who would have made that presentation?
18 Would it be Mr. Bergen?

19 A: Probably John Mason.

20 Q: It would be the man who reported to Mr.
21 Minckler?

22 A: Yes.

23 Q: Did you ever discuss it with Mr. Mason?

24 A: I don't recall. I wrote him once, a status
25 report on certain things.

1 Q: So that he could use it in preparation --

2 A: For something. Again, I --

3 Q: All right. Well, perhaps as we go through,
4 it will assist you.

5 Q: So, as of November 1969, as you reviewed
6 Plaintiff's Exhibit 174 and 175, you don't recall
7 disagreeing with anything Mr. Johnson had written to
8 the customers, do you?

9 A: I don't recall the letters.

10 Q: But as you look at them now, did you
11 disagree with anything that was in those letters?

12 A: Do I now? I don't recall what I did at that
13 time.

14 Q: Well, do you now?

15 A: Now I know that some of the lower Aroclors
16 also were persistent, so that the inference on 312
17 is probably not correct.

18 Q: So the record is clear, Plaintiff's Exhibit
19 175 contains a statement which says, "Pydraul 312
20 does contain chlorinated biphenyl, however, we have
21 no evidence that the particular chlorinated
22 biphenyls used in Pydraul 312 are highly toxic to
23 aquatic life". Your testimony is you now know that
24 the chlorinated biphenyls used in Pydraul 312 do
25 persist?

1 A: Yes.

2 Q: And did you take issue with -- do you now
3 take issue with any other statement in Plaintiff's
4 Exhibit 175?

5 A: I believe that in -- in 175, no. I don't
6 take any issue with it.

7 Q: How about 174?

8 A: Pydraul A-200, I believe, also -- I don't
9 remember its exact makeup, but I believe that it had
10 Aroclors that also were persistent, so today I would
11 have to say that that's probably -- that that's
12 incorrect.

13 Q: Okay. Knowing what you know now, you
14 wouldn't have let the letters go out this way?

15 A: Of course not.

16 MR. CHAMBERS: I object to the form.

17 A: Of course not.

18 MR. ROEDER: And that's because it was
19 important to give customers as much information as
20 you possessed?

21 A: That's because it was incorrect.

22 Q: Right. But you at least wanted to make sure
23 that you kept the customers aware of what you knew
24 regarding the potential environmental issues
25 relating to the use of PCBs, correct?

1 A: Well, it's a whole lot of gray in there. I
2 would want the customers to know anything that would
3 -- that they would feel would be important to
4 them. There might be a lot of things that Monsanto
5 has worked on and found that don't necessarily go to
6 the customer, they don't want to know everything
7 that we're doing. But I think that I want to be
8 certain that we would have them want to be aware of
9 the major facts as they occurred.

10 Q: And so I understood, your answer to the
11 question said there is a lot of gray in there?

12 A: Well, I don't know how --

13 Q: Tell you what, I'll just have him read back
14 the answer.

15 A: What I was saying was in response to your
16 question.

17 (The requested portion of the
18 record read by the reporter).

19 MR. ROEDER: Did he get it down right?

20 A: Yes. I thought I heard you say that we
21 would want them to be aware of all the information
22 of -- I don't know that I heard that.

23 Q: Okay. You don't feel you need to change the
24 answer in any way?

25 A: No.

1 Q: Now, let me show you what has previously
2 been marked as Plaintiff's Exhibit 66.

3 (Discussion off the record).

4 A: Okay.

5 Q: For the record, Exhibit 66 is a memorandum
6 from D.A. Olson to H.S. Bergen, and it has Bates
7 number TNGS 8700 to TNGS 8701. It's dated December
8 11, 1969. Is this a document you looked at in
9 preparation for your testimony yesterday, sir?

10 A: Yes, I did.

11 Q: Your memorandum to Mr. Bergen begins with
12 the statement that, "Our action plan for
13 discontinuing sale of Aroclors 1254 and 1260 is as
14 follows". Did I read that correctly?

15 A: Yes, you did.

16 Q: So, is it fair to say that there had been a
17 decision made by December 11, 1969 to discontinue
18 the sale of Aroclors 1254 and 1260?

19 A: I don't know. I don't know that that's true.

20 Q: Okay.

21 A: I don't recall that that's true.

22 Q: Would you have prepared an action plan for
23 discontinuing the sale of a product for which a
24 decision had not been made to discontinue it?

25 A: Sure, you could.

1 Q: Did Mr. Bergen ask you to prepare this plan?

2 A: I don't remember.

3 Q: Do you recall discussions toward the end of
4 1969 about terminating or discontinuing the sale of
5 Aroclors 1254 and 1260?

6 A: I don't recall the timing, no.

7 Q: You recall that decision was made at some
8 point, right?

9 A: Right.

10 Q: And this is your signature on the second
11 page, isn't it?

12 A: Yes, sir.

13 Q: With respect to the industrial uses on page
14 3, the strategy was, was it not, of two basic
15 approaches; A, to reformulate the Pydraul products
16 with terphenyls and, B, to develop a straight
17 phosphate ester?

18 A: Yes.

19 Q: Were those strategies implemented?

20 A: I don't know that the phosphate esters ever
21 worked out. I just don't know. I don't remember.
22 Certainly not while I was there, anyway.

23 Q: How about the terphenyls?

24 A: There were the pydrauls were -- some of
25 them were reformulated with terphenyls while I was

1 there.

2 Q: As you look at this memorandum, do you
3 disagree with anything that was written in the
4 memorandum?

5 A: Oh, man --

6 MR. CHAMBERS: Take whatever time you need.

7 A: Okay. Well, 25 years later I would not
8 really consider selling products outside the U.S.

9 Q: So, the suggestion in your memorandum is
10 that sales, if I can quote it, "outside of the U.S. .
11 posed a different situation". Is that, sir, because
12 there might be competitors outside the U.S. who
13 would not refuse to sell 1254 and 1260?

14 A: I think that was the premise. What I said
15 in here that I now don't really agree with is that
16 we may desire to continue manufacture at least at
17 one location to support export sales.

18 Q: Okay. Why would you no longer agree with
19 that?

20 A: I hate to see the cigarette companies do
21 it. It's the same principle, if it's not good here
22 --

23 Q: Why should you sell it there?

24 A: Yes, sir.

25 Q: Was your suggestion implemented with respect

1 to selling outside of the United States?

2 A: I have no idea.

3 Q: Now, with respect to the dielectrics, we
4 really haven't discussed that much today in your
5 testimony.

6 A: I forgot to mention the properties of the
7 products.

8 Q: Well, they were of particular use, Monsanto
9 believed, for capacitors and transformers, correct?

10 A: Yes.

11 Q: General Electric was the largest user,
12 largest customer, correct?

13 A: I believe that.

14 Q: In general, do you recall what percentage of
15 all of the functional fluids products General
16 Electric comprised?

17 A: No, I don't.

18 Q: But it was far and away the biggest?

19 A: It was the biggest.

20 Q: Now, you earlier testified that you thought
21 that you met with General Electric and discussed the
22 concerns with respect to PCBs; do you recall that
23 testimony?

24 A: I think what I said was that I believe there
25 was a meeting with GE on it, but I don't remember

1 for sure whether I was there or not.

2 Q: Before we go into that, let me just follow
3 up on more foundational testimony. Showing you
4 what's been marked as Plaintiff's Exhibit 85, and it
5 is a document which bears production number TRAN
6 21762 to 21771. And I'll point out, I think your
7 name is listed there, then there's a line put
8 through it next to number 3, do you see that?

9 A: Yes, I do.

10 Q: Would this have been a document that would
11 have been circulated to you?

12 A: Apparently, yes.

13 Q: And it is a Monsanto Chemicals Limited
14 document entitled "Product toxicology-Aroclors", a
15 report summarizing present knowledge concerning
16 chlorine-containing residues in wildlife and visits
17 to organization implicated therewith during the
18 period of April 28 through May 1, 1969, do you see
19 that?

20 A: I do see it.

21 Q: And it's by D.V.N. Hardy. Who was he?

22 A: Well, I don't recall him, but I think it
23 defines him down below.

24 Q: Formerly the research services manager for
25 Monsanto Chemicals Limited, and at this point a

1 consultant in the area of product toxicology?

2 A: Yes.

3 Q: That's what it says. If you'll turn to the
4 second page, sir, on the introduction in the third
5 paragraph it discusses the work of Soren Jensen at
6 the Institute for Analytical Chemistry, and Gunnar
7 Widmark, and there's a statement there, sir, and
8 tell me if I read it correctly, it says "Using a
9 combined gas chromatograph mass spectrometer, it was
10 shown that the peaks are due to polychlorinated
11 biphenyls PCBs. The evidence and reasoning are
12 available and the conclusion can hardly be in
13 doubt". That's what it says?

14 A: Yes.

15 Q: It does say that.

16 Q: This is referring to the persistence of PCBs
17 in the wildlife specimens that Doctors Jensen and
18 Widmark examined, correct?

19 A: I don't know what they examined. Maybe it
20 says somewhere. I've never seen this before, so --

21 Q: Well, I'm referring up there.

22 A: I would believe that's what it's says, yes.

23 Q: Okay. So this was another piece of
24 information that was distributed to you as of the
25 end of 1969, correct?

1 A: I'm just looking for a date.

2 Q: On the first page there's a date reference
3 6/5/69.

4 A: Yes.

5 Q: Turn to the next one. Plaintiff's Exhibit
6 86 is a memorandum from R.H. Munch to Dr. Richard,
7 and you are a carbon copy recipient, right?

8 A: Yes, I am.

9 Q: The production number is TRAN 58300 to TRAN
10 58301. The first paragraph of -- it's Dr. Munch,
11 correct?

12 A: Yes.

13 Q: -- Dr. Munch's memorandum reads, "Don Olson
14 has asked how we should go about reaching our
15 objective of being the world leader in the Aroclor
16 business". Was that your objective?

17 A: I don't recall.

18 Q: You certainly don't disagree with it today,
19 though, that this was your intention then, isn't
20 that correct?

21 A: I can't disagree, no.

22 Q: All right. It continues, "Under present
23 conditions this question should probably be changed
24 to: how should we go about achieving maximum profit
25 from dielectric fluids or dielectrics in general?

1 There are two reasons for changing the question.
2 One is the environmental pollution problem. The
3 other is that technological needs in the dielectrics
4 area are changing with ever increasing rapidity.
5 Both are compelling reasons". That's what it says?

6 A: Yes, sir.

7 Q: You received a copy of this memorandum,
8 didn't you?

9 A: Yes.

10 Q: Do you recall ever disagreeing with any of
11 the statements in this memorandum?

12 A: I don't recall seeing it.

13 Q: And it's fair to say, isn't it, sir, in 1969
14 that you did want to achieve maximum profit from
15 dielectric fluids and dielectrics in general?

16 A: I don't know how -- I don't know what frame
17 of reference he's coming from. Okay? But that's
18 kind of a blanket statement. There are other --
19 yes, you want to make a profit, you want to be a
20 healthy business, but there are other things that
21 you want to have -- want to do, too. You want to do
22 it responsibly, which I feel very strongly. Which
23 means I'm arguing with the word maximum. I'm
24 arguing with the word maximum.

25 Q: So you don't know if that was true?

1 A: No, I don't know if that was true.

2 Q: Could you read back my question?.

3 (The requested portion of the
4 record read by the reporter).

5 MR. ROEDER: The answer is you don't know?

6 A: The answer is I have trouble with the word
7 maximum, because I don't know what that means. And
8 I can see a lot of other factors that would be
9 involved where you would not reach what could be a
10 maximum profit. That's all I'm --

11 Q: All right. The memorandum continues, "In
12 the dielectrics business" -- I'm reading from the
13 third paragraph -- "In the dielectrics business
14 area we have reached a situation where it is
15 necessary to have a more and more detailed knowledge
16 of how our fluids will be used by our customers in
17 order to promote the sale of our products". Is that
18 correct?

19 A: That's correct.

20 Q: "This led Don to ask whether our capacitor
21 technical facilities are adequate or whether
22 equipment additions are necessary". Do you recall
23 making such a suggestion or statement?

24 A: No.

25 Q: Is that a type of statement that would be

1 consistent with what you understood your duties to
2 be?

3 A: I'm just -- knowing the capacities and
4 things and how the facilities are would be something
5 I'd be interested in. I don't know how to tie that
6 with the sentence above it.

7 Q: All right. Let me ask you the question this
8 way, you agreed that in the dielectrics business
9 area it was a situation where it's necessary to have
10 more and more detailed knowledge of how your fluids
11 would be used by your customers; wasn't that true of
12 other uses of your fluids beyond the dielectrics
13 area?

14 MR. CHAMBERS: I object to the form.

15 MR. ROEDER: Do you understand it?

16 A: Try it again.

17 (The requested portion of the
18 record read by the reporter).

19 MR. CHAMBERS: I object to the form of the
20 question, it assumes facts not in evidence. If
21 you're able to respond to that question, you may.

22 A: You know, that wasn't my statement. Okay?

23 Q: I understand that. But wasn't it true?

24 A: It was true that as this thing was evolving
25 there is a point in time when we felt we needed to

1 provide further information to customers.

2 Q: That wasn't my question. My question really
3 related to the statement that you just agreed a
4 minute ago with, and that is, in the dielectrics
5 business area we have reached a situation where it
6 is necessary to have a more and more detailed
7 knowledge of how our fluids will be used by our
8 customers in order to promote sale of our products.
9 That's the statement you agreed with. What I wanted
10 to know is --

11 MR. CHAMBERS: I object to the form.

12 MR. ROEDER: What I wanted to know, wasn't
13 it true, in business areas outside of the
14 dielectrics area, that you needed to have more and
15 more detailed knowledge of how your fluids would be
16 used in order to promote the sale of your products?

17 MR. CHAMBERS: I object to the form,
18 mischaracterizes what the witness's prior testimony
19 has been.

20 MR. ROEDER: It certainly doesn't. But the
21 record will show what the record will show.

22 A: Well, to me, a customer is a customer. All
23 right? And I would not differentiate one
24 marketplace from another. I guess I'm answering you
25 that if there is data that is available, it should

1 be made available. You know, if it's -- if you
2 feel it's important enough to get it to them, then
3 you ought to get it to all of them. So I would
4 encompass others.

5 Q: I'm not sure that's answering my question,
6 though. Would you like it read back?

7 A: I'm trying to.

8 MR. CHAMBERS: I object to the form of the
9 question, vague and ambiguous and confusing.

10 MR. ROEDER: Wasn't it true? It really
11 calls for a yes or no.

12 A: I'm not sure I agree with this statement.
13 That's okay, too?

14 MR. CHAMBERS: That's fair enough.

15 MR. ROEDER: The record will show what the
16 record will show. You're not changing your
17 testimony, are you, sir?

18 A: No.

19 Q: I'll move to strike the answer because I
20 don't think it responds to my question, sir. It
21 really calls for a yes or no answer. And if you'd
22 like, I'll ask Mr. Gore to read the question back.
23 Would you like that?

24 A: Yes.

25 (The requested portion of the

1 record read by the reporter).

2 A: In many of them -- this is a different
3 question. In many of them I don't know -- I don't
4 know but what we had good detailed -- I believe we
5 had good detailed knowledge of the products to begin
6 with.

7 Q: So, is your answer no?

8 A: My answer is I don't remember, first of
9 all. Okay? So I'm sitting here now trying to say.

10 Q: Well, is your testimony you cannot testify
11 whether you needed to have a more and more detailed
12 knowledge of how your fluids would be used by your
13 customers in order to promote their sale?

14 A: We can start this all over again, but I'm
15 having trouble with -- I don't know where -- I'm
16 not sure I fully understand this first statement.
17 Okay? I'm trying to understand what he's saying and
18 then whether I would today agree with that. All
19 right? I'm trying to put it back in the frame of
20 reference of then. And I don't know what the
21 situation -- I don't know what the situation was
22 which would require this in order to promote the
23 sales. That's where I'm having difficulty. I
24 thought we had a pretty good knowledge of -- we had
25 a fair knowledge of the customer applications to

1 begin with.

2 Q: Well, if you look at the first paragraph,
3 Dr. Munch said, as he reconstituted your objective
4 of being the world leader in the Aroclor business to
5 how should we go about achieving maximum profit from
6 dielectric fluids or dielectrics in general, he gave
7 two reasons for changing the question, correct? One
8 was the environmental pollution problem, and you see
9 that in the memorandum?

10 A: Yes.

11 Q: And the other reason he gave is that
12 technological needs in the dielectrics area are
13 changing with ever increasing rapidity. He gave
14 that, right?

15 A: Okay.

16 Q: So you agreed with both of those at the
17 time, right?

18 A: I read them. All right? I read them.

19 Q: You don't recall disagreeing?

20 A: No, I don't.

21 Q: You don't recall writing a letter to Dr.
22 Munch saying he's full of baloney, I totally
23 disagree with this memorandum, correct?

24 A: No, I don't.

25 Q: I think we'd have it, if you did.

1 A: I think you would, too.

2 Q: And if they produced it, I hope we found it,
3 but I don't think they did. But my question was,
4 wasn't it true as a general proposition that you
5 needed to know more and more about how your
6 customers were using your products to effectively
7 market them?

8 A: That would be the goal of any marketing
9 person.

10 Q: Okay.

11 A: That's all I'm really -- I wouldn't
12 differentiate.

13 Q: All right. So, then, the answer really is
14 yes to the question, isn't it? If the question is
15 hadn't you reached a situation where it was
16 necessary to have more and more detailed knowledge
17 of how your fluids would be used by your customers
18 in areas beyond the dielectrics area to promote
19 their sale, isn't the answer to that yes?

20 A: Yes. It's a generic question, really.

21 Q: Right.

22 A: It's a generic question that relates to any
23 time. That's the way I'm responding. It's not to a
24 situation in one area. You would always want to
25 have better information on your customer's

1 applications.

2 Q: Right. How would you go about acquiring
3 that information, as a general proposition?

4 A: Talk to them.

5 Q: Call them up and visit them? You're nodding
6 your head, is that yes?

7 A: Yes. I'm sorry.

8 Q: You go out and visit them and see how
9 they're using it?

10 A: Sure. Yes.

11 Q: You'd make your own observations as to how
12 they're using it, correct?

13 A: Perhaps.

14 Q: You might offer suggestions as to how they
15 might use their products for your benefit and their
16 benefit, correct?

17 A: Possibly, yes.

18 Q: And that was something that Monsanto did for
19 some customers, right?

20 A: Yes.

21 Q: Let's go to the next document, Plaintiff's
22 Exhibit 87. This is the one that we got sidetracked
23 that we were going to originally. Plaintiff's
24 Exhibit 87 bears production number TRAN 22030
25 through 22039. And it lists you as a representative

1 of a meeting held in St. Louis with General Electric
2 Company January 21 and 22, 1972.

3 A: That's correct.

4 Q: Now, looking at this document, this would
5 suggest that you attended the meeting, correct?

6 A: Yes, it would.

7 Q: And you remember meeting Mr. Edward Raab,
8 don't you?

9 A: Yes, I do remember meeting him.

10 Q: He was the GE representative from
11 Pittsfield, Massachusetts?

12 A: Yes.

13 Q: And the other names on the Monsanto side
14 you're familiar with, right? Mr. Bergen, correct,
15 yourself, Dr. Wheeler, Dr. Richard, Dr. Munch, Dr.
16 Keller?

17 A: I don't recall Dr. Tucker.

18 Q: Okay. Mr. Papageorge you remember?

19 A: Yes.

20 Q: How about Mr. Bryant?

21 A: Yes.

22 Q: And Mr. Benignus you remember, he reported
23 to you?

24 A: Yes.

25 Q: Do you recall at or about this time General

1 Electric was concerned that you would cease
2 producing Aroclors that it had used for dielectric
3 purposes, correct?

4 A: Yes. I'm sure, yes. Yes.

5 Q: And General Electric had requested that you
6 continue to produce those products for it, isn't
7 that also true?

8 A: Yes.

9 Q: At whose suggestion did you first bring up,
10 you being Monsanto, bring up the idea that you would
11 stop producing Aroclors for dielectrics?

12 A: I have no idea.

13 Q: Do you recall that issue being discussed?

14 A: No, I don't.

15 Q: What do you recall General Electric telling
16 you on this issue?

17 A: I recall a concern that we had -- I don't
18 know if it was just from General Electric, I recall
19 a great concern that we had an industry that did not
20 have a replacement product because it was -- there
21 was nothing else that had the fire resistance, and I
22 recall that we were dealing with a pretty major
23 industry in trying to sort out what is the right way
24 to balance all the factors that are encompassed in
25 it. General Electric certainly would have been at

1 the forefront of that.

2 Q: Now, other than the dielectric uses in
3 transformers, what else would be used in
4 transformers other than dielectrics? What were the
5 potential market alternatives?

6 A: I don't believe there was one that was fire
7 resistant. There were others, I don't recall what
8 they are. There were others, but I do not believe
9 there were any of them that were fire resistant.

10 Q: Mineral oil, is that one of them?

11 A: Yes.

12 Q: Do you know what's used in transformers
13 today?

14 A: I don't know.

15 Q: You don't know if it's mineral oil?

16 A: No.

17 Q: Would that be something that would be more
18 particularly within Mr. Benignus' competence than
19 yours?

20 A: Yes.

21 Q: I'd like to turn your attention to page 8 of
22 that document. There is a -- it really carries
23 over from the previous page, and there's a letter K
24 that says "Facts as agreed by those in attendance".
25 Do you see that?

1 A: Yes, I do.

2 Q: One of the facts agreed to by those in
3 attendance on page 8 and the next page is number
4 21. It reads, "Monsanto Company is convinced that
5 analytical techniques and data from some
6 laboratories investigating PCBs are reliable and
7 that the conclusions being formulated are valid".
8 Do you recall that being discussed?

9 A: No, I don't.

10 Q: But that's true, isn't it, at or about this
11 time, Monsanto was convinced that the analytical
12 techniques and data from some of the laboratories
13 investigating the PCBs were reliable and that the
14 conclusions that they formulated were valid?

15 A: Yes.

16 Q: And, in fact, the facts as agreed to by
17 those in attendance relate to those conclusions,
18 don't they? For example, there is PCBs affect rat
19 reproduction, conclusion 15, do you see that?

20 A: Yes, I do.

21 Q: Some PCB affects leghorn chicken
22 reproduction, that's conclusion 16, right?

23 A: I see that.

24 Q: So there was some suggestion that Monsanto
25 had accepted as of this time that the scientific and

1 analytical techniques were reliable and the
2 conclusions formulated were valid and they impacted
3 the products that you sold for Monsanto, correct?

4 MR. CHAMBERS: I object to the form. You
5 can answer.

6 A: Yes.

7 MR. ROEDER: Paragraph L, if I could turn
8 your attention to page 9, "What GE desires". Would
9 you take a moment and review that. By the way, is
10 this a document you reviewed in preparation for your
11 testimony?

12 A: I don't think I've ever seen it.

13 A: Okay.

14 Q: All right. Under "What GE desires", what
15 I'm particularly interested in, sir, is desire
16 number 4. "In reply to Monsanto's legal question
17 whether with continued use of Aroclor 1254 and 1260
18 GE would assume sole and complete liability, Mr.
19 Raab answered no! ". Do you see that?

20 A: Yes, I do.

21 Q: Was that, in fact, GE's position?

22 A: I don't know.

23 Q: Okay. You don't recall them making very
24 clear that they would not accept sole and complete
25 liability for the continued used of 1254 and 1260?

1 A: No, I don't.

2 Q: Was that an issue that concerned you,
3 though, the liability issue concerning the continued
4 use of these products?

5 A: Sure, it would be. I don't recall,
6 individually, but, yes, that's logical, that would
7 be an issue.

8 Q: In what way would it be logical that it
9 would be an issue for you?

10 A: Because that's just -- that's part of the
11 business risk.

12 Q: The liability associated with the use of the
13 product?

14 A: Yes.

15 MR. ROEDER: It's now 12:30, this is
16 probably as convenient a time as any to take a
17 break.

18 (Noon Recess).

19 (Plaintiff's Exhibit 176
20 marked for identification).

21 MR. ROEDER: Exhibit 176 is a memorandum
22 dated January 26, 1970 from Mr. Bergen to Mr.
23 Durland, Tokyo, and you're carboned on it. It has
24 production number TNGS 8679 through 8682. This is a
25 document you would have received, correct?

1 A: Yes.

2 Q: Is this a document you reviewed yesterday in
3 preparation for your testimony?

4 A: I believe so.

5 Q: I'd like to draw your attention to the
6 second page, the top of it. It talks about a
7 meeting, quote, recently was had with General
8 Electric on the whole subject of Aroclor 1260 and
9 transformers. And it says, "They made a good case
10 for why we could not discontinue manufacture of this
11 product". Do you see that?

12 A: Yes.

13 Q: That's at that meeting that we were
14 discussing prior to the break, wasn't it?

15 A: Yes, sir.

16 Q: And Mr. Bergen's memorandum continues, "We
17 have recently received indications from both Bayer
18 and Prodelac". Those are European manufacturers,
19 right?

20 A: Yes. I had forgotten about Bayer, but
21 Prodelac is.

22 Q: "That they are feeling little or no pressure
23 to discontinue production of these products and that
24 they will be extremely reluctant to do so and only
25 with much more viable proof. With these two

1 producers taking this position, it obviously would
2 make it difficult for us to stop supplying countries
3 such as Latin America, Australia, India and other
4 world areas because Bayer and Prodelac will simply
5 pick up the business at our expense". Were those
6 Mr. Bergen's views at the time?

7 A: I assume so.

8 Q: That's what he wrote?

9 A: Yes.

10 Q: This is what we discussed earlier that you
11 would not agree with now, the idea that you could
12 continue to manufacture and distribute the products
13 outside the United States that you couldn't
14 distribute in the United States?

15 A: Yes.

16 Q: The third paragraph of this memorandum
17 references a letter "we intend to send out to all of
18 the U.S. functional fluids customers by February
19 1". Do you see that?

20 A: Yes.

21 Q: That's a letter that you had participated
22 yourself in formulating, isn't that correct?

23 A: That's the letter I signed, yes.

24 Q: Tell me a little bit about that letter,
25 sir. With respect to that letter --

1 A: I don't think -- I don't know if he phrased
2 it right. It doesn't matter.

3 Q: How would you phrase it differently?

4 A: I don't know -- it didn't go to the
5 Skydraul users, and I would have put them in the
6 broad context of functional fluids.

7 Q: Because the Skydrauls did not contain PCBs?

8 A: Yes, sir.

9 Q: Anyway, with that caveat, a decision to send
10 a letter like this out to customers would have been
11 an important decision that Mr. Bergen had to
12 approve, correct?

13 A: I would assume so. I did not -- I really
14 do not remember. But I would certainly assume so.

15 Q: The letter that you signed was a letter that
16 various people had looked at, isn't that correct?

17 A: I assume so, because I'm -- I think there
18 were people who contributed to not just looking at
19 it, but to writing it.

20 Q: Okay. I'm going to show you Exhibit 63.
21 Exhibit 63, sir, is a draft of a letter. Up at the
22 top in parentheses is the term "Functional fluids".
23 Would you take a moment to review this document.

24 A: Yes, sir.

25 Q: There are a few pages to this document, and

1 your counsel has just turned you to the second draft
2 of "Functional fluids". Is this second draft that's
3 part of this Exhibit 63, does it contain your
4 handwriting?

5 A: No, it does not.

6 Q: Do you know whose handwriting that is?

7 A: No, I don't.

8 Q: There's a third draft, yet, that's part of
9 the same exhibit?

10 A: Yes, sir.

11 Q: If you'd look -- do you have that in front
12 of you?

13 A: I'm on the third one.

14 Q: I'm looking at one that has Bates numbers
15 TRAN 22346.

16 A: I've got two -- what did you say?

17 Q: Right there.

18 A: There is two others before that in mine.

19 Q: There's the fourth one?

20 A: There is. There's two others.

21 Q: This is the fourth one. The first draft is
22 part of this exhibit --

23 MR. CHAMBERS: I think it's the fifth?

24 A: Which one are we going to?

25 MR. CHAMBERS: Let's go by Bates number.

1 MR. ROEDER: That's what I thought I just
2 did, but perhaps you're right,. There is one draft
3 which is Bates numbered TRAN 3240. The second draft
4 which starts at Bates number TRAN 3242. There's the
5 third draft that's Bates numbered TRAN 42666.
6 You're absolutely right, there is a fourth one --
7 fourth or fifth -- fifth one, 24996, and then
8 another one starting at TRAN 22346. Do you have
9 that one in front of you?

10 A: Yes.

11 Q: Now, does that contain your handwriting?

12 A: No, it does not.

13 Q: Do you see your handwriting on any of these
14 documents?

15 A: No, I do not.

16 Q: There was one point that was announced where
17 there had been discussion and approval of this
18 particular letter before it was sent out; I mean,
19 you had made sure that legal passed on it, correct?

20 A: Yes.

21 Q: And you would have made sure that at least
22 Mr. Bergen was aware that it was going out?

23 A: Yes.

24 Q: And you would have made sure that the letter
25 were carefully worded?

1 A: Yes.

2 Q: And so when you reviewed it, all of these
3 procedures had been put in place, correct? I mean,
4 all these -- not procedures. Let me rephrase the
5 question. When you prepared it to be sent out --

6 A: When I signed it.

7 Q: Yes. It had been reviewed, it had been
8 approved, legal had looked at it, other people had
9 looked at it and comments were solicited to ensure
10 that no one had any objection to the wording of the
11 letter?

12 A: Everything but the last I know. The last
13 part of that, I don't know.

14 Q: All right. And the purpose was, was it not,
15 to provide the best information at that time to
16 customers of other Pydraul products with respect to
17 the PCB issue?

18 A: The purpose was to notify all of the PCB
19 customers that the 54 and 1260 had been found in the
20 environment. I think a second purpose was to point
21 -- to talk about the -- to show which ones had
22 been found and which of the products that they
23 bought had not been found, and then also to let them
24 know that the ones with the lower chlorine had not
25 been found in the environment. Those were both

1 purposes. There was also a purpose to remind them
2 to -- that any chemical, they should be careful
3 about how they discharge and how they capture it in
4 their own facility. That was the reason for the --
5 general reason for the letter.

6 Q: Can I have the question and answer
7 repeated?

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

10 MR. ROEDER: Did you give a deposition in a
11 case entitled United States of America versus
12 Outboard Marine Corporation?

13 A: Yes, sir.

14 Q: And that was a deposition that was taken in
15 Chicago on November 24, 1981?

16 A: Yes.

17 Q: I'm reading from page 42. Ms. Oliver: "I
18 am asking what the intent of the letter was". And
19 the answer, "I cannot be any clearer. Let me try to
20 restate it and see if I will state it differently.
21 I'm saying the letter was to inform customers of 54
22 and 60 that it had been found in the environment.
23 The other purpose was to provide our best
24 information at that time to customers of other
25 Pydrauls and the intent. I think I've said it as

1 precisely as it can be". Did you give that answer to
2 that question?

3 A: Yes, I did. I must have.

4 Q: You wanted to tell the truth at that
5 deposition?

6 A: Of course.

7 Q: Was this letter --

8 MR. CHAMBERS: Let me object to the form
9 just for a moment. Would you refer me to that
10 page?

11 MR. ROEDER: Page 42.

12 MR. CHAMBERS: Sorry to interrupt.

13 MR. ROEDER: The letter that you were
14 sending to your customers was an important event for
15 your functional fluids division, wasn't it?

16 A: Yes, it was.

17 Q: Okay. And your letter was intended, was it
18 not, to give them the benefit of the most
19 significant information that you had concerning PCBs
20 in your Pydraul products as of that date, wasn't it?

21 A: I don't know what you mean exactly. Because
22 the letter was primarily to tell them which ones had
23 been found in the environment and which ones had
24 not.

25 Q: Well, I'll tell you what, did you discuss

1 the letter at all with Phocion Park?

2 MR. CHAMBERS: I object.

3 MR. ROEDER: Did Mr. Park review it?

4 MR. CHAMBERS: Objection.

5 A: I don't remember.

6 MR. ROEDER: You're confident that it was
7 reviewed by someone in the legal department?

8 A: Yes.

9 Q: Okay. I think it's exhibit 22 is the --
10 that is the exhibit itself, the letter. Let's turn
11 our attention to that. Is that the first letter,
12 Exhibit 22, Plaintiff's Exhibit 22 the first
13 customer letter that was sent to customers of
14 Pydraul by Monsanto that related to the PCB
15 environmental problem?

16 A: To my knowledge.

17 Q: Why was it sent to them?

18 A: That date, I don't think there's any
19 reason. That's when it was ready. I don't believe
20 there's a reason for it.

21 Q: But the letter was sent after you had the
22 opportunity to review your proposed policy, you,
23 Monsanto, to review your proposed policy with
24 General Electric, correct?

25 A: It was sent after the General Electric

1 meeting.

2 Q: Do you recall if this letter was discussed
3 in the meeting with General Electric?

4 A: I don't recall.

5 Q: Let's look at Exhibit 22. And for the
6 record, that is your signature, isn't it, sir?

7 A: Yes, it is.

8 Q: Exhibit 22 bears production numbers TNGS
9 8899 through TNGS 8906. It begins "Dear sir,
10 recently several newspaper and magazine articles
11 have been published indicating that polychlorinated
12 biphenyls, PCBs, have been discovered at some points
13 in some marine, aquatic and wildlife environments".
14 Let me stop right there. Which newspaper or
15 magazine articles were these several articles that
16 were being referred to here?

17 A: I don't know.

18 Q: It would have been easy, wouldn't it, sir,
19 to have set forth in this letter which newspaper and
20 magazine articles you were referring to?

21 A: Would it be possible to? Yes.

22 Q: Now, the statement that the articles have
23 been published indicating that polychlorinated
24 biphenyls have been discovered, I'd like to impact
25 that a little, if I can, sir. At this point

1 Monsanto had confirmed that the research with
2 respect to the PCBs in the environment was valid,
3 correct?

4 A: Yes.

5 Q: With that in mind, sir, why was the word
6 "indicating" used?

7 A: I don't know.

8 Q: "Indicating" is not as strong a word, is it,
9 sir, as demonstrating or establishing or concluding?

10 MR. CHAMBERS: I object to the form, it's
11 argumentative.

12 MR. ROEDER: Is it or is it not?

13 A: I would agree with what you said.

14 Q: But if this set forth Monsanto's view with
15 respect to the research on this issue accurately,
16 isn't it fair to say that the letter would have used
17 a stronger term rather than "indicating"?

18 MR. CHAMBERS: I object to the form.

19 A: Could have.

20 Q: Next, as we go through the letter, it
21 indicates that PCBs have been discovered at some
22 points in some marine, aquatic and wildlife
23 environments. Isn't it true by this time, sir, you
24 knew where the PCB problem had been identified as
25 reflected in the newspaper and magazine articles?

1 A: I don't know that I can answer that.

2 Q: But in looking at the research that we
3 looked at this morning that was in the memoranda
4 that was addressed to you, it would have been
5 easy --

6 A: Which one?

7 Q: We can go through --

8 A: No, I don't want to go through, I'm not
9 trying to do that.

10 Q: For example, the report from Dr. Hardy that
11 summarized the research in England and Europe. That
12 was information available to you and others at
13 Monsanto, correct?

14 A: Yes.

15 Q: The memoranda from Dr. Richard which
16 summarized his conversations with Dr. Widmark in
17 Sweden, that was available to you?

18 A: Yes.

19 Q: Okay. The article in Nature magazine that
20 Dr. Richard summarized that was written by Dr.
21 Risebrough, that was available, correct?

22 A: Yes.

23 Q: The results of the testing by Dr. Joseph
24 Colandra, that was available to the extent it was
25 completed, isn't that correct?

1 A: Yes. I'm not sure about that.

2 Q: But that was within Monsanto's control
3 because they were paying for it?

4 A: I'm just not sure at what stage it was at.

5 Q: But everything we looked at earlier today in
6 your testimony, the Aroclor wildlife accusations,
7 for example, Plaintiff's Exhibit 172, let me show
8 you that again, or it's in front of you, that
9 discussed --

10 A: I've got it.

11 Q: That discussed Dr. Richard's view or
12 analysis of Dr. Risebrough's paper in Nature,
13 correct, that was available?

14 A: Yes.

15 Q: Okay. And this is the memorandum where Dr.
16 Risebrough indicates it is timely, perhaps
17 imperative that this paper and its implications be
18 discussed with customers?

19 A: Dr. Richard?

20 Q: Dr. Richard.

21 MR. CHAMBERS: I object to the form.

22 MR. ROEDER: That's where Dr. Richard makes
23 that --

24 A: He did make that, yes.

25 Q: That was available?

1 A: Yes.

2 Q: Okay. This was in March 1969, right, the
3 date of that memorandum?

4 A: Yes.

5 Q: So all of this information was available to
6 you, and by this time Monsanto had concluded that
7 this research was valid, isn't that correct?

8 A: Yes. On the higher Aroclors, yes.

9 Q: And the marine and aquatic and wildlife
10 environments that were reflected in the research
11 available to Monsanto which it had copies of could
12 easily have been identified?

13 A: Could have, yes.

14 Q: Don't you agree with me, sir, that using
15 language that says PCBs have been discovered at some
16 points in some marine, aquatic and wildlife
17 environments suggests that it's not a prevalent
18 problem?

19 A: I don't draw any conclusion.

20 Q: If we can look back at the drafts of this
21 letter which were part of Exhibit 63, at least
22 somebody wanted to cross out -- right here.

23 A: Thank you.

24 Q: I'll show you my copy. At page -- the
25 document which is identified as TRAN 22346, someone

1 identified it -- an editor wanted to line out "at
2 some points"?

3 A: Yes, sir.

4 Q: That didn't make it though, did it?

5 A: It doesn't appear to.

6 Q: The next sentence in the first paragraph
7 says, "The quantities detected are said to be in the
8 parts per million and parts per billion category".
9 That's what the document says, correct?

10 A: Yes, sir.

11 Q: It's written in a passive voice, isn't it?

12 A: If I remember my English properly, yes.

13 Q: It doesn't identify who said it?

14 A: That's true.

15 Q: And it doesn't identify what particularly
16 the people who said it said, right?

17 A: That's correct.

18 Q: That could have been done, couldn't it?

19 A: It could have.

20 Q: The next line, the next paragraph, "It is
21 claimed that the PCBs found strongly resemble
22 chlorinated biphenyls containing 54 percent and 60
23 percent chlorine by weight". That's what your
24 letter says, right?

25 A: Yes, sir.

1 Q: Who was doing the claiming?

2 A: I don't know.

3 Q: But at this point Monsanto had already
4 accepted the research as accurate with respect to
5 the persistence of PCBs in the environment, right?

6 A: Yes.

7 Q: Why would you use the term "claimed", then?

8 A: I don't know.

9 Q: Because you knew it was true, right?

10 A: I don't know.

11 Q: Well, Monsanto had accepted that research as
12 being true, correct?

13 A: Yes, sir.

14 Q: Do you agree with me --

15 A: I can't speak for Monsanto on anything.

16 Q: For example, we looked at the minutes of the
17 meeting with GE where it is summarized as everyone
18 agreed that that research and those conclusions were
19 valid, correct?

20 A: Yes, sir.

21 Q: So when the term claimed is used, doesn't
22 that suggest you don't agree with it in?

23 MR. CHAMBERS: I object to the form.

24 A: It doesn't suggest that to me. It doesn't
25 suggest to that to me.

1 MR. ROEDER: Do you think that could be a
2 reasonable conclusion that someone could reach?

3 MR. CHAMBERS: I object to the form. That
4 calls for this witness to speculate about what
5 somebody else would do.

6 MR. ROEDER: Well, you can answer the
7 question. Let me state it completely. Do you
8 believe it could be reasonable for someone who reads
9 this -- let me lay a further foundation. Strike
10 that. You are writing this letter so that people
11 who would receive it will either do or not do
12 something, correct?

13 A: So they will have information, yes.

14 Q: And you understand that people who get your
15 letter will rely upon your letter in forming their
16 on conclusions about what they will or will not do?

17 MR. CHAMBERS: I object to the form.

18 MR. ROEDER: Isn't that also true?

19 A: That's logical.

20 Q: Okay. That's why you're sending it out,
21 right?

22 A: Yes.

23 Q: Because if they wouldn't be impacted by it
24 one way or the other, why send it, right?

25 A: Right.

1 Q: Well, isn't it true that in the normal
2 everyday sense of the term, when someone says
3 someone else claims, quote, unquote, that something
4 happens, that the person who uses that term is not
5 indicating he agrees with them?

6 MR. CHAMBERS: I object to the form, the
7 question is vague and ambiguous, argumentative. If
8 you're able to respond, you're welcome to.

9 A: No. At least not to me. Not to me, it does
10 not say that.

11 MR. ROEDER: Let's move on. "The PCBs found
12 strongly resemble chlorinated biphenyls". There was
13 no doubt in your mind that they were chlorinated
14 biphenyls, aren't they?

15 A: Yes.

16 Q: So --

17 A: Yes, as a non-technical -- non-scientist,
18 yes.

19 Q: Why not write that the PCBs were chlorinated
20 biphenyls?

21 A: I don't know.

22 Q: Let's continue. "Chlorinated biphenyls
23 containing 54 percent and 60 percent chlorine by
24 weight". Weight is an important concept in
25 determining what is or is not -- what type of

1 chemical compound one might find, isn't that
2 correct?

3 A: I'm sorry, I don't --

4 Q: Let me see if I can rephrase it. When you
5 are trying to determine what a particular compound
6 is made of in chemistry, isn't the weight of the
7 compound itself useful for you to determine, based
8 upon your knowledge of chemistry and chemical
9 engineering, what that compound is?

10 A: Yes.

11 Q: So when you know the weight of a particular
12 compound in relation to other chemical
13 characteristics, you can determine for your own
14 satisfaction to a degree of certainty that you find
15 acceptable that it is, in fact, the compound that
16 you would expect to find if you went and did the
17 chemical equations and reactions that you would get
18 from chemistry, isn't that correct?

19 MR. CHAMBERS: I object to the form.

20 A: Boy, I'm not -- you know, I'm not a
21 scientist. All right?

22 MR. ROEDER: You're a chemical engineer.

23 A: Non-practicing. Non-practicing. And I'm
24 not sure exactly where to go. I think it was said
25 by weight because there is normally two ways to do

1 things, by weight or by volume, and I think by
2 putting it by weight, that's telling how these
3 products were classified, so that anybody would
4 know.

5 Q: But in any event, you, yourself, didn't
6 dispute and accepted the fact that the PCBs found
7 were chlorinated biphenyls that contained 54 percent
8 and 60 percent chlorine by weight?

9 A: That's correct.

10 Q: The next line says "Products which are sold
11 by Monsanto under the trade names of Aroclor 1254
12 and 1260 do contain chlorinated biphenyls". That's
13 what that says, correct?

14 A: Yes, sir.

15 Q: In fact, isn't it true that Aroclor 1254 and
16 1260 contain chlorinated biphenyls that are 54
17 percent and 60 percent respectively chlorine by
18 weight?

19 A: Yes.

20 Q: It doesn't say that, though, does it?

21 A: No, it doesn't.

22 Q: Any reason why it didn't?

23 A: I don't recall.

24 Q: In fact, there's no reason that you could
25 not have specifically indicated in this letter that

1 the PCBs found were Aroclor 1254 and 1260, is there?

2 MR. CHAMBERS: I object to the form.

3 A: Not to my layman's view.

4 MR. ROEDER: The letter goes on, "In
5 addition to Aroclor 1254 and 1260, Monsanto sells
6 certain functional fluids containing Aroclor 1254.
7 These include Pydraul 625, Pydraul AC, Pydraul AC
8 Winter Grade, Pydraul 540, Therminol FR-3 and
9 certain dielectric formulations". That's what that
10 says, right?

11 A: Yes, sir.

12 Q: By this statement were you attempting to
13 indicate that these other Pydraul and Therminol and
14 dielectric formulations contain Aroclor 1254?

15 A: Yes.

16 Q: At this point, sir, you could have indicated
17 in this letter, couldn't you, that use of any of
18 these additional pydrauls, Therminol or dielectric
19 formulations would contain the same PCBs that were
20 persisting in the environment?

21 A: Could have.

22 Q: The next sentence says, "Several other
23 companies around the world also produce products
24 containing chlorinated biphenyls". That was true,
25 correct?

1 A: That is correct.

2 Q: But it's also true that the only one that
3 was producing chlorinated biphenyls in the United
4 States was Monsanto, right?

5 A: That's correct.

6 Q: So it's also true, is it not, sir, that the
7 only PCBs that could have been found in the United
8 States were produced by Monsanto?

9 MR. CHAMBERS: I object to the form.

10 A: No.

11 MR. ROEDER: Let me rephrase the question.
12 Unless PCBs were imported, the only PCBs that could
13 have been found in the United States were produced
14 by Monsanto?

15 MR. CHAMBERS: I object to the form.

16 A: Unless they get some from some other source,
17 which I know nothing about.

18 MR. ROEDER: To your knowledge, then. Let
19 me amend the question.

20 A: Yes.

21 Q: The answer to that is yes, to your
22 knowledge?

23 A: Yes.

24 Q: What importance did you believe a customer
25 would place upon the statement that several other

1 companies around the world also produce products
2 containing chlorinated biphenyls?

3 A: I don't remember.

4 Q: It wouldn't matter to them because they're
5 not buying from those, isn't that correct, to your
6 knowledge?

7 A: To my knowledge, yes. Although some of them
8 may have overseas facilities where they might.

9 Q: None of these were sent to overseas
10 facilities, none of these letters, correct?

11 A: Correct.

12 Q: They were all sent to locations in the
13 United States?

14 A: To my knowledge.

15 Q: So --

16 A: Maybe Canada. I don't know that. I don't
17 have any idea about that.

18 Q: But as for the United States, at least, it
19 was immaterial to your customers whether anyone else
20 around the world also produced these products unless
21 those customers also had overseas operations?

22 MR. CHAMBERS: I object to the form, it
23 calls for this witness to speculate about what was
24 material or immaterial to somebody else. Subject to
25 that, you can answer.

1 A: I'm not quite sure what the relevancy would
2 be.

3 MR. ROEDER: Let me rephrase the question.
4 When you wrote this letter to your customers, I
5 think we've established you hoped that they would
6 use this information in their business operations,
7 correct?

8 A: Yes.

9 Q: If those business operations did not extend
10 overseas, then the information that other companies
11 also produce products containing chlorinated
12 biphenyls around the world would have no usefulness
13 for those customers, correct?

14 A: Not that I can think of.

15 Q: And this letter doesn't tell them that
16 you're the only source in the United States for this
17 product, does it?

18 A: It doesn't state -- no, it doesn't state
19 that.

20 Q: You knew that fact when you signed it in
21 February 1970, didn't you?

22 A: Yes.

23 Q: The next sentence, sir, the next paragraph,
24 "As your supplier of Aroclor 1254 and 1260
25 formulated products containing 1254, we wish to

1 alert you to the potential problem of environmental
2 contamination as referred to in the newspaper and
3 magazine articles". In your mind, sir, it wasn't a
4 potential problem any more, was it?

5 MR. CHAMBERS: I object to the form.

6 A: There was a period in which I did, myself,
7 believe that the two were -- that they were in the
8 environment, yes.

9 Q: But didn't we establish earlier that you had
10 formed the conclusion in 1969 that these Aroclors
11 were persisting in the environment?

12 A: Yes.

13 Q: So it wasn't a potential problem any more,
14 was it, it was a problem?

15 MR. CHAMBERS: I object to the form.

16 MR. ROEDER: Correct?

17 A: To me, yes.

18 Q: And it was a problem of environmental
19 contamination, isn't that also correct?

20 A: Yes.

21 Q: You could have told your customers at this
22 point, could you have not, sir, that we wish to
23 alert you to the real problem of environmental
24 contamination?

25 A: Could have been worded differently.

1 Q: And you could have said that, right?

2 A: We could have said -- I've forgotten
3 exactly what you said, but it could have been worded
4 differently.

5 Q: And that would have been consistent -- if
6 you had worded it that way, that would have been
7 consistent with what you thought was the true
8 nature?

9 A: Yes.

10 Q: "We would like to point out the following
11 additional facts". I'm continuing on in the
12 letter. "Products such as Pydraul 90, 135, 230,
13 312, A-200, F-9, 150 and 60, Therminol 153 and
14 Therminol FR-1 and FR-2 are not formulated with
15 Aroclor 1254 or 1260". That's what that says,
16 correct, sir?

17 A: Yes, sir.

18 Q: And you wouldn't have meant any of that
19 today, that statement?

20 A: You mean if I was signing this letter
21 today?

22 Q: Right. This particular paragraph.

23 A: No, I would not.

24 Q: The next sentence --

25 A: No, no, that one I would. Because they were

1 not formulated with 1254 or 1260.

2 Q: That's what I mean. So you would not change
3 that?

4 A: I would not change that.

5 Q: What about the next one, "PCBs with a
6 chlorine content of less than 54 percent have not
7 been found in the environment and appear to present
8 no potential problem to the environment", that would
9 be changed?

10 A: Yes, it would.

11 Q: And you knew, did you not, sir, that it
12 wasn't even clear to the researchers at Monsanto as
13 to whether or not PCBs with a chlorine level of less
14 than 54 percent were persisting in the environment?

15 A: At that time?

16 Q: Yes.

17 A: I don't know that.

18 Q: Do you recall looking at an exhibit earlier
19 today where Dr. Richard indicates that perhaps Dr.
20 Widmark's own procedures are obliterating and
21 removing the PCBs with a chlorine contents of less
22 than 54 percent?

23 A: I do recall that. That was a supposition,
24 though, that wasn't a -- as I read it, that was not
25 a fact at that time.

1 Q: But it was a risk and a concern that was
2 discussed inside Monsanto at the time, isn't that
3 correct?

4 A: It was in that letter, yes. That's all I
5 remember.

6 Q: And you have no recollection if anyone did
7 anything to determine whether or not it was the
8 analytical procedures that Dr. Widmark was using
9 that accounted for his failure to find PCBs with a
10 chlorine content of less than 54 percent in the
11 environment?

12 A: I have no recollection one way or the other.

13 Q: Never directed anyone to do it?

14 A: Not to my recollection.

15 Q: Never heard anyone suggest that we ought to
16 follow up on this with Dr. Widmark?

17 A: I don't remember.

18 Q: You don't recall?

19 A: No.

20 Q: In fact, though, you would change this
21 sentence now, wouldn't you?

22 A: Yes, sir.

23 Q: Because PCBs with a chlorine content of less
24 than 54 percent did persist in the environment,
25 isn't that correct?

1 A: That's correct.

2 Q: And they did present an actual environmental
3 problem, right?

4 A: Yes.

5 Q: Not even a potential one?

6 A: Yes, sir.

7 Q: So the statement that's in the letter that
8 they appear to present no potential problem would be
9 amended now based upon what you know, that they
10 present a real problem in the environment, correct?

11 MR. CHAMBERS: I object to the form.

12 A: I don't know what real means. But it does
13 present a problem to the environment.

14 Q: Real as distinct from potential.

15 A: Okay. Yes.

16 Q: Actual.

17 A: I agree with that.

18 Q: The second page of your letter indicates,
19 "We have developed and are now testing new
20 formulations to replace the Aroclor 1254 and 1260
21 components in our Pydraul products". Had those
22 formulations been developed by that date?

23 A: I don't know.

24 Q: Was this letter held at any point so that
25 you could represent to your customers that you have

1 developed new formulations?

2 A: I don't remember.

3 Q: Who would know that answer?

4 A: I don't know.

5 MR. CHAMBERS: I object to the form.

6 A: I don't know. I wouldn't. I just don't
7 remember.

8 MR. ROEDER: "The new products appear to be
9 equal in performance and to have similar physical
10 properties". What was the basis for that statement?

11 A: Again, can I just tell you how I think it
12 was? I mean, I don't remember.

13 Q: You don't remember is the answer?

14 A: I don't remember.

15 Q: Do you think someone told you it did?

16 A: I don't know.

17 Q: You next indicated that, "We feel that all
18 possible care should be taken in the application,
19 processing and effluent disposal of these products
20 to prevent them becoming environmental
21 contaminants", correct?

22 A: Yes.

23 Q: Didn't you indicate earlier on the previous
24 page that PCBs with a chlorine content of less than
25 54 percent had not been found in the environment and

1 appeared to present no potential problem to the
2 environment?

3 A: Yes.

4 Q: So even though your letter indicates that
5 PCBs with a chlorine content of under 54 percent did
6 not pose an environmental problem, you still wanted
7 your customers to prevent their entry into the
8 environment?

9 A: I don't remember.

10 Q: Isn't that the natural supposition?

11 MR. CHAMBERS: I object to the form, calls
12 for speculation.

13 MR. ROEDER: Let me rephrase it. If you
14 told the customers that PCBs with under 54 percent
15 did not appear to present an environmental problem,
16 why would they prevent their entry into the
17 environment?

18 MR. CHAMBERS: I object to the form. Go
19 ahead, you can answer, if you're able to.

20 A: My reaction is it's a prudent thing for any
21 company to do, regardless of what it is that they're
22 making or using. You don't want any of -- you want
23 to be prudent in your facility and keep anything
24 from any of the discharges.

25 MR. ROEDER: Water, for example?

1 A: Yes, sure. From water disposal, yes.

2 Q: You should not discharge water?

3 A: You ought to reuse it.

4 Q: So you should never discharge water?

5 A: To the degree you can.

6 Q: To the degree you can't, what do you do with
7 it then?

8 A: Then it is probably -- then it's
9 discharged.

10 Q: If water is not an environmental
11 contaminant, you don't have any problem if the
12 company discharges it, right?

13 A: Correct. Depends upon the temperature.

14 Q: Are there other products that are used in
15 manufacturing that are not environmental
16 contaminants?

17 MR. CHAMBERS: I object to the form.

18 A: I don't know.

19 MR. ROEDER: You can't conceive of any?

20 A: I just don't know.

21 MR. CHAMBERS: I object to the form.

22 MR. ROEDER: Okay. So, then, you wouldn't
23 know, you'd have no opinion as to whether or not if
24 it's not an environmental contaminant a company
25 should or should not discharge it?

1 MR. CHAMBERS: I object to the form.

2 A: You're better off not discharging anything,
3 because that means -- I'm not used to the word --
4 just the word discharge. I'm talking about if it
5 doesn't matter if it's acid or not, if something is
6 going somewhere, that's part of the yield of your
7 process, so putting the good -- you're losing
8 things that you should be keeping by not being as
9 efficient a manufacturer of whatever it is.

10 Q: I move to strike the answer because it's not
11 responsive. Do you have an opinion or not?

12 A: May I hear the question again?

13 (The requested portion of the
14 record read by the reporter).

15 A: I tried to answer that, and my answer was
16 no, that they should not. I was trying to give some
17 reasons.

18 Q: Okay. I thought the answer called for a yes
19 or no, it did or it did not. But your view is that
20 -- let me continue on with your letter. You
21 attached the Chemical Week article regarding water
22 pollution standards set by each state in the union.
23 Is there anything in the attached Chemical Week
24 article, sir, that relates to polychlorinated
25 biphenyls?

1 A: By name?

2 Q: Yes.

3 A: I haven't read it closely. I don't believe
4 so.

5 Q: Okay. And your letter finishes up or
6 concludes with a statement that this article
7 reflects that good manufacturing practice in the
8 future may require that no products used by any
9 company should find their way into waterways. Did I
10 read that correctly?

11 A: Yes.

12 Q: The statement does not say, does it, sir,
13 that good manufacturing practice today requires that
14 no products used by any company should find their
15 way into waterways?

16 MR. CHAMBERS: I object to the form. I
17 mean, the sentence says what -- it reads what it
18 says.

19 MR. ROEDER: I'd like the admission.

20 MR. CHAMBERS: The document says what it
21 says.

22 MR. ROEDER: I'm entitled --

23 A: Say again.

24 (The requested portion of the
25 record read by the reporter).

1 A: No, it does not say that.

2 Q: As I understand your testimony, that's what
3 you thought was good manufacturing practice, the
4 one --

5 A: The one here?

6 Q: No, the one as amended.

7 A: Then I'm confused.

8 Q: You testified earlier that you thought good
9 manufacturing practice would require that nothing
10 that was used should be discharged?

11 MR. CHAMBERS: I object to the form,
12 mischaracterizes --

13 A: I did say that, yes.

14 MR. ROEDER: Is that how you felt when you
15 wrote this letter?

16 A: I don't recall.

17 Q: Do you recall whether you changed your
18 opinion over time?

19 A: No, I don't recall.

20 Q: But if you recalled that at the time you
21 signed this letter, if that was your opinion at the
22 time you signed this letter, then the statement did
23 not accurately reflect what you thought a good
24 manufacturing practice was, isn't that correct?

25 MR. CHAMBERS: I object to the form.

1 A: I'm missing something here.

2 MR. CHAMBERS: I object to the conclusion
3 that the witness is getting into. If we can
4 straighten it out, let's move on, but I think it's
5 unfair to confuse a witness.

6 MR. ROEDER: I'm trying not to confuse him.
7 Read the question back. And perhaps it's my
8 wording. But let me rephrase it, then.

9 A: Okay.

10 Q: If you hadn't changed your opinion between
11 then and now -- and you said today your opinion
12 today is that good manufacturing practice requires
13 that no products used by any company should find
14 their way into waterways, right?

15 A: Yes.

16 Q: If you hadn't changed it from then to now,
17 that would mean your opinion then was that good
18 manufacturing practice would require that no
19 products used by a company should find their way
20 into waterways, isn't that correct?

21 MR. CHAMBERS: I object to the form.

22 MR. ROEDER: If you haven't changed it it
23 would be then what it is today, right?

24 A: Yes. Okay. Yes.

25 Q: So, then, the statement that you signed

1 didn't accurately reflect what you believed to be a
2 good manufacturing practice?

3 MR. CHAMBERS: I object to the form.

4 A: I'm telling you how I feel today, or what I
5 think today.

6 Q: I know. But can you answer my question?

7 A: I'm not sure I can. Because I don't know
8 exactly -- I don't know -- I don't know what my
9 opinion was at that time.

10 Q: I understand that.

11 A: I don't know the state of regulations and
12 emphasis on the environment and everything else at
13 that time.

14 Q: I understand that, sir. But you also
15 testified you couldn't recall if you ever changed
16 your opinion?

17 A: Right.

18 Q: Right.

19 A: I can't recall whether I did or didn't.

20 Q: Right. So my question is, if you didn't
21 change your opinion and your opinion today was your
22 opinion then.

23 A: Okay.

24 Q: Then the statement you wrote and signed in
25 this letter, signed your name to, did not accurately

1 reflect what you thought was a good manufacturing
2 practice?

3 MR. CHAMBERS: I object to the form, assumes
4 facts not in evidence, very hypothetical and
5 speculative. If you're able to respond, you can try
6 to, but --

7 MR. ROEDER: Let me try it one more time.

8 A: I don't want to miss your emphasis. Are you
9 talking about in the future part? I really don't
10 know where -- I'm having a terrible time.

11 Q: You know, I understand you're saying you
12 have a terrible time, but I don't think it's that
13 complicated, and if it is, it's only my fault for
14 inartfully wording the question. I apologize.

15 MR. CHAMBERS: To the extent it makes a
16 difference, it's that complicated to me, so it's two
17 against one on that point.

18 MR. ROEDER: I'm not sure majority rules on
19 this one. You testified that this is not consistent
20 with what is your opinion today?

21 A: No, I don't think I have. I don't think I
22 have.

23 Q: Well, do you see any difference between that
24 and the statement that says good manufacturing
25 practice now requires?

1 A: That's a stronger statement. But -- and,
2 you know, I'm telling you what I think good
3 manufacturing practice is. Okay? It's not
4 required, though.

5 Q: Are you changing your testimony?

6 A: No, I'm really trying not to. No, I'm not
7 changing my testimony.

8 MR. CHAMBERS: He's trying to answer your
9 question.

10 MR. ROEDER: Right. I thought the question
11 was pretty straight forward. You said, you
12 testified that you believed good manufacturing
13 practices require that a company should not
14 discharge products it uses into waterways?

15 A: I don't know if I used that word, requires.

16 Q: The record will show.

17 A: It might. I just don't know that it says
18 that or doesn't.

19 Q: There is a difference in my mind, sir,
20 between a practice which requires something now and
21 something which may be required in the future. And
22 you can see that distinction, can't you?

23 A: Yes. Where I'm having my difficulty is, to
24 me, the requirements of something like this are
25 either from the company's own desires or they're

1 governmental.

2 Q: You're talking about good manufacturing
3 practices?

4 A: Which is a company's own -- you know,
5 that's their own -- they make their own decisions,
6 there's nobody requiring it. That's the word I'm
7 having difficulty with. I say it is good
8 manufacturing to not discharge into waterways,
9 that's good manufacturing practice.

10 Q: A good manufacturing practice, as you define
11 the term, is something that any company sets, right?

12 A: Some don't.

13 Q: Some don't. Some don't set any good
14 manufacturing practices?

15 A: Some are better than others and some
16 pollute, and companies are all over.

17 Q: My question is very straight forward.

18 A: So are my answers. Go ahead.

19 Q: You have a statement in a letter, you
20 testified in a manner which is inconsistent to the
21 statement in the letter, in my opinion, based upon
22 what the record will show.

23 MR. CHAMBERS: I object to the form and I
24 object to that characterization of the testimony.

25 MR. ROEDER: That's my view of what you

1 testified to, sir. What I want to know is if you
2 believed in 1970 when you signed this letter that a
3 good manufacturing practice then requires that no
4 products used by a company should find their way
5 into waterways?

6 MR. CHAMBERS: I object to the form.

7 A: Say it again.

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

10 MR. CHAMBERS: Objection, that's been asked
11 and answered.

12 MR. ROEDER: Actually, I don't think it has,
13 that's the problem.

14 A: Are you asking me what I thought in 1970?

15 Q: Yes.

16 A: I don't know. I don't remember.

17 Q: And you don't know whether you changed your
18 opinion in any way?

19 A: No.

20 Q: Is it your testimony that this statement
21 accurately reflected what you thought in 1970?

22 A: I don't know.

23 Q: Does the statement accurately reflect what
24 Monsanto thought in 1970?

25 A: I don't know.

1 Q: Did you know in 1970 whether Monsanto
2 believed that this statement was true?

3 MR. CHAMBERS: I object to the form.

4 A: Did I know? I don't know what Monsanto is,
5 again, but --

6 Q: Well, the people you dealt with.

7 A: I believe that people that I dealt with felt
8 that this statement was correct.

9 Q: Okay. Now, let's see if we can -- who do
10 you think thought that statement was correct?
11 You're shaking your head.

12 A: So I was. Sorry. Whoever would have
13 reviewed it.

14 Q: And you don't know who reviewed it?

15 A: I don't recall.

16 (Plaintiff's Exhibit 177
17 marked for identification).

18 A: Are you waiting for me?

19 Q: Yes, I am. Have you had a chance to look at
20 that?

21 A: Yes.

22 Q: For the record, sir, Exhibit 177 is a
23 memorandum from J.R. Fallon, F-a-l-l-o-n, to a
24 number of people, and the subject is "Pollution
25 letter", dated February 6, 1970, and production

1 number TNGS 8673 through 8676. And you're listed as
2 a carbon copy recipient, correct?

3 A: Yes.

4 Q: This would have come to you in the ordinary
5 course, wouldn't it?

6 A: Yes.

7 Q: Who is Mr. Fallon?

8 A: He was the marketing man in charge of
9 Therminol at that time, I believe.

10 Q: So that's why he indicates that the advice
11 is apropos to how we should react to inquiries from
12 our heat transfer customers, correct?

13 A: Yes.

14 Q: All right. The letter, the memorandum is
15 excerpted from a letter Don Johnson sent to the
16 Pydraul field salesman. And that's Plaintiff's
17 Exhibit 58. Let me show that to you. And that is
18 dated February 4, 1970, from Norm Johnson to a
19 number of people, and you are not on that letter.

20 A: I guess I'm not.

21 Q: Okay. Take a moment and see whether or not
22 Mr. Fallon accurately describes what Mr. Johnson
23 wrote to the Pydraul salesmen.

24 A: Except for the paragraph that doesn't relate
25 to these products.

1 Q: Right.

2 A: And the last paragraph.

3 Q: Right. Incidentally, the end of Mr.
4 Fallon's letter, memorandum, which is Exhibit 177,
5 concludes with, "If you have any questions, please
6 phone me", doesn't it?

7 A: Yes, it does.

8 Q: That's not a request that you made in your
9 February 9th letter that you sent out to the
10 customers, is it?

11 A: No, it isn't.

12 Q: Why not?

13 A: I don't know.

14 Q: Well, if you wanted somebody to follow up
15 with you if they had any questions or concerns
16 concerning the letter, wouldn't that be a statement
17 that you would put in the letter?

18 MR. CHAMBERS: I object to the form.

19 A: You could. They could also do it without you
20 doing it.

21 MR. ROEDER: If you look at Mr. Johnson's
22 memorandum, Exhibit Number 58, he has that same
23 request, doesn't he?

24 A: Yes.

25 Q: "If you have any questions, please phone

1 me". That was ordinary, normal in Monsanto, when
2 anyone wanted follow-up, that they could simply
3 request it in a memorandum, right?

4 MR. CHAMBERS: I object to the form.

5 A: These were people who worked for them and
6 they were just saying if you don't understand all of
7 it, call me, or drop over to see me.

8 Q: Well, would you agree with me that the
9 February 9th letter that was sent out, so-called
10 pollution letter, was an important document that
11 might not easily be understood on the first reading?

12 A: Yes.

13 Q: It would be the type of document that you
14 could expect people might not understand and would
15 have questions about?

16 A: Could.

17 MR. CHAMBERS: I object to the form.

18 MR. ROEDER: Was it a corporate decision not
19 to request that they call you with any questions
20 they may have?

21 A: I don't have any memory.

22 Q: Is there anything that would refresh your
23 recollection?

24 A: No.

25 Q: Let's look at Exhibit 177, sir. The fourth

1 paragraph of the quoted portion of it reads as
2 follows: "We recognize it would be impossible to
3 obtain names of individuals at each customer
4 location. The use of the A/R customer list" -- is
5 that accounts receivable customer list?

6 A: Yes.

7 Q: "Was the best list available. We realize
8 that most of your contacts will not receive this
9 letter. This is both good and bad. Unfortunately,
10 we have no alternative". Would you agree that it
11 was both good and bad that the majority of contacts
12 would not receive the pollution letter?

13 A: I don't recall.

14 Q: Can you conceive of any reasons why it would
15 be good that a majority of the contacts will not
16 receive the letter?

17 A: I don't recall.

18 Q: Mr. Johnson -- who reported to you, correct?

19 A: Yes, he did.

20 Q: The memorandum that you received that
21 incorporates his memorandum says, "We would prefer
22 you not send additional copies", and he's referring
23 to the pollution letter?

24 A: Where are you?

25 Q: The bottom of that paragraph, the last

1 paragraph on the first page. "One is enough", do
2 you see that?

3 A: Yes, I do.

4 Q: Was that the policy of Monsanto, to only
5 send one copy?

6 A: I don't have any -- I don't have any
7 recollection.

8 Q: Did you yourself form a belief that one
9 letter per customer was enough?

10 A: I don't recall.

11 Q: Well, would it be fair to say, sir, that in
12 Monsanto when you wanted the word to get to the
13 people who would need to know about it, that
14 additional people were carbon copied on any internal
15 correspondence? Let me rephrase the question. In
16 Monsanto people were not shy about sending carbon
17 copies of documents around, were they?

18 A: No, they were not.

19 MR. CHAMBERS: I object to the form.

20 A: Well, they weren't, though.

21 MR. ROEDER: If you look at Exhibit 177,
22 there are four carbon copy recipients and it's sent
23 to nine people, right?

24 A: Yes.

25 Q: So, in Monsanto they knew to get the word

1 across in an organization as big as Monsanto they
2 would send copies to everybody who conceivably had
3 an interest in the topic, isn't that correct?

4 MR. CHAMBERS: I object to the form,
5 over-broad, calls for speculation.

6 A: There was a good use of carbon copies to
7 people.

8 MR. ROEDER: Well, let me ask the question
9 this way, then. These exhibits we've been looking
10 at, if you'll pardon my expression, they're littered
11 with carbon copy recipients?

12 MR. CHAMBERS: I object to the form.

13 MR. ROEDER: Wasn't it the practice at
14 Monsanto that if someone had an interest in a
15 particular topic, it was clear that they would
16 receive a copy of a memorandum that related to that
17 topic?

18 MR. CHAMBERS: I object to the form.

19 A: Monsanto people used a lot of carbon copies
20 to people.

21 MR. ROEDER: That's an entirely different
22 focus and philosophy that Monsanto used internally
23 than the one they used with the pollution letter,
24 isn't it?

25 MR. CHAMBERS: I object to the form.

1 MR. ROEDER: I didn't hear the answer.

2 A: Say it again.

3 (The requested portion of the
4 record read by the reporter).

5 A: I don't remember any -- there are very few
6 internal orders -- memos that only went to one
7 person. Is that what you mean?

8 MR. ROEDER: Right. Well, I'll state it a
9 different way, too, just to be sure we're clear.
10 Was one ever enough at Monsanto in terms of a
11 memorandum?

12 A: Yes.

13 Q: On very infrequent occasions, right?

14 A: I'll accept that.

15 Q: Why was that?

16 A: Why were there so many people -- which way
17 -- why were --

18 Q: I'll take that as a suggestion that you'd
19 like me to make the question more precise.

20 A: Thank you, sir.

21 Q: At Monsanto -- let me ask the question this
22 way. People were in different buildings, right?

23 A: Yes.

24 Q: So you may be in a different building than,
25 say, Mr. Bergen is? I don't know if you were or

1 weren't.

2 A: I was in the same building.

3 Q: You were in the same building?

4 A: Same place.

5 Q: You would be in a different building than
6 Mr. Wheeler?

7 A: Yes.

8 Q: Were you in a different building than Dr.
9 Richard?

10 A: Yes.

11 Q: And Monsanto had how many different
12 buildings in its corporate headquarters?

13 A: Probably five. Five and then one -- the
14 big one across the road. Six. I'm still remembering
15 them. Six. And then the other research center.
16 Let's say my best recollection is seven and then one
17 across the road.

18 Q: It was a big organization?

19 A: Yes, sir.

20 Q: So that when there was any memorandum of
21 significance you wouldn't be sure if Dr. Wheeler
22 would hear about it in the ordinary course unless he
23 received a memorandum?

24 A: That's correct.

25 Q: And Dr. Wheeler or anyone else wouldn't be

1 sure you'd hear about it unless he sent a memorandum
2 directly to you, correct?

3 A: That's true.

4 Q: So you knew that when you wanted to get the
5 information across you would send copies to whoever
6 you believed had an interest in the topic under
7 discussion?

8 MR. CHAMBERS: I object to the form.

9 A: You would try to send it to the people who
10 you felt should know.

11 MR. ROEDER: Okay. Now, the pollution
12 letter was only sent typically one copy per
13 customer, right?

14 A: I don't remember.

15 Q: Well, you don't dispute that?

16 A: I don't dispute that, no.

17 Q: Okay. And some of these customers are very
18 large, weren't they, large organizations?

19 A: Yes.

20 Q: General Motors, a large organization?

21 A: Yes.

22 Q: In light of what you knew about how Monsanto
23 operated, did you take any steps to ensure that the
24 customers who received the letters or were sent the
25 letters by you took the letters they received and

1 got it to the appropriate people?

2 A: I don't recall.

3 Q: Okay. Is there anything that would refresh
4 your recollection?

5 A: No, sir. Not so far.

6 MR. CHAMBERS: Would you read that last
7 question back?

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

10 MR. ROEDER: Is it fair to say, sir, that
11 you would have expected that other large
12 organizations would have the same ability to
13 communicate or not communicate across departments as
14 Monsanto would have?

15 A: I don't know.

16 Q: Did you think Monsanto had a good ability to
17 communicate?

18 A: I thought Monsanto over-communicated.

19 MR. ROEDER: It's now about quarter of
20 three, why don't we take a couple minutes.

21 (Recess).

22 MR. ROEDER: Can you turn, sir, to Exhibit
23 Number 60.

24 A: Got it.

25 Q: All right. For the record, Exhibit 60 is a

1 memo from N. Johnson to a number of people, and you
2 are listed at the very end of the series of carbon
3 copy recipients?

4 A: Yes.

5 Q: Did you examine this document in preparation
6 for your testimony?

7 A: Yes.

8 Q: This is a memorandum Mr. Johnson wrote to
9 the salesmen, correct, which gave the salesmen a
10 list of questions and answers that they may be asked
11 by customers who received the Aroclor PCB letter?

12 A: He wrote to the salesmen in his group, plus
13 some out of the country that were related.

14 Q: All right. Mr. Johnson writes, "You can
15 give verbal answers, no answers should be given in
16 writing". Was that the policy of Monsanto with
17 respect to this pollution letter?

18 A: I don't recall.

19 Q: Mr. Johnson reported directly to you?

20 A: Yes, he did.

21 Q: Do you recall anyone expressing any
22 disagreement with that directive?

23 A: I don't recall, no.

24 Q: And all the people, the salesmen from P.
25 Kratzka on down to R. Giles, did they all report to

1 Mr. Johnson?

2 A: No.

3 Q: Which ones reported to Johnson?

4 A: Everybody except for the two in Melbourne,
5 Australia.

6 Q: That's everybody on the right-hand side --
7 the left-hand side, Kratzka, Clay, Davidson, Damian,
8 Fague, Garcia, Leila, Irwin, Puhlman and Roder,
9 R-o-d-e-r, right?

10 A: I would assume so.

11 Q: All right. Remember earlier I asked if it
12 was the policy that Monsanto would answer questions
13 from St. Louis and you didn't recall. Do you recall
14 that testimony?

15 A: Yes, I did.

16 Q: Now, if you look at the second sentence,
17 third sentence of the first paragraph, it reads, "If
18 the customer asks a question you can't answer or if
19 he wants an answer in writing, send his questions to
20 me and we will answer from here". Do you see that?

21 A: Yes, I do.

22 Q: Does that refresh your recollection that the
23 policy was to send written responses to customers'
24 questions from St. Louis?

25 A: I don't recall the letter, so -- no.

1 Q: But, I mean, about the policy.

2 A: No. If I don't recall the letter, I can't
3 get to the policy.

4 Q: In the next line Mr. Johnson says "We want
5 to avoid any situation where a customer wants to
6 return fluid". And then it's underlined later. "We
7 don't want to take fluid back. Sell him the
8 replacement". Is that consistent with your policy?

9 A: I don't remember.

10 Q: Do you remember objecting to it?

11 A: No, I don't.

12 Q: On the second page of the document it says,
13 "We have no replacement products for Aroclor 1254
14 and Aroclor 1260. We will continue to make these
15 products. However, customers will have to use their
16 own judgment on continued use". Do you see that?

17 A: Yes, I do.

18 Q: Is that statement accurate?

19 A: Seems to -- where's the letter?

20 Q: That would be Exhibit 22.

21 A: To my knowledge, it was true.

22 Q: That you had no replacement products, is
23 that correct?

24 A: Yes. The reason I'm saying that is I'm
25 talking about products which could be sold at that

1 time to the customer, which had been through enough
2 testing and reformulation to be ready.

3 Q: Well, this statement that we have no
4 replacement products for Aroclor 1254 and Aroclor
5 1260 is inconsistent, is it not, sir, with the
6 statement in your February 9th letter that says we
7 have developed and are now testing new formulations
8 to replace the Aroclor 1254 and 1260 components in
9 our Pydraul products?

10 A: No.

11 MR. CHAMBERS: I object to the form.

12 A: No, it's not inconsistent.

13 MR. ROEDER: You say it's not inconsistent
14 because they may have been developed, but they
15 weren't ready for sale?

16 A: No.

17 MR. CHAMBERS: I object to the form.

18 MR. ROEDER: How were they consistent?

19 A: I interpret this as talking about Aroclor
20 1254 and Aroclor 1260 as products. Which is quite
21 different than a Pydraul using Aroclor 1254 as a
22 component.

23 Q: So you see no inconsistency with the
24 statement that says we have developed and are
25 testing new formulations to replace the Aroclor 1254

1 and 1260 components in our Pydraul products?

2 A: That is correct.

3 Q: Now, the pydrauls did not get Aroclor 1254
4 or 1260, isn't that correct?

5 MR. CHAMBERS: I object to the form.

6 A: Yes, but I don't know if there were
7 industrial customers for Aroclors per se.

8 Q: Right. So the only customers you knew for
9 Aroclors per se, 1254 and 1260, were the dielectric
10 uses, right?

11 A: I don't know whether -- I know there were
12 some industrial customers for Aroclors, I don't
13 recall whether any of those were 1254 and 1260.

14 Q: Do you know whether it was true that as of
15 February 9, 1970 Monsanto had actually developed new
16 formulations to replace the Aroclor 1254 and 1260
17 components?

18 MR. CHAMBERS: Objection, asked and
19 answered.

20 A: I don't recall.

21 MR. ROEDER: And do you know whether or not
22 it was true as of 1970, in February, whether any of
23 the Pydraul salesmen sold Aroclor 1254 or Aroclor
24 1260?

25 A: I don't recall.

1 Q: Mr. Johnson sold Pydrauls, that was his
2 area, correct?

3 A: He sold industrial fluids, and I believe
4 that the Aroclor sales were in that group. The
5 Aroclor non-dielectric sales.

6 Q: Mr. Johnson says "We can't afford to lose
7 one dollar of business". Do you see that in his
8 memorandum?

9 A: I do see it.

10 Q: Do you agree with that?

11 A: I don't recall.

12 Q: Do you recall disagreeing with it?

13 A: I don't recall.

14 Q: Now, if you'll look, sir, at the next page
15 of this exhibit, Exhibit Number 60, as part of the
16 possible customer questions on PCBs it lists in
17 detail the newspaper articles relating to the PCB
18 problem, doesn't it?

19 A: Lists a number of articles, yes.

20 Q: Okay. San Francisco Chronicle, San
21 Francisco Examiner, Hartford Times, correct?

22 A: Yes.

23 Q: And, again, since this information was
24 available to Mr. Johnson on February 16, 1970, do
25 you see any reason why you couldn't have put this

1 particular -- identify these particular articles in
2 your letter?

3 A: I see no reason it couldn't have been done.

4 Q: Did you approve the answers to the questions
5 that Mr. Johnson sent out to the salesmen?

6 A: I don't remember.

7 Q: Do you know if prior drafts were distributed
8 to you?

9 A: I don't know.

10 Q: Would it have been a practice of Mr. Johnson.
11 to distribute those?

12 A: I don't know.

13 Q: Can you identify the writing on the first
14 page of this document?

15 A: I believe that's Howard Bergen's.

16 Q: Now, as of this time, the beginning of 1970,
17 were you personally -- would this have been a
18 difficult time for you personally, a difficult
19 professional period? This is a real challenge, to
20 try to manage a product line that seems to be
21 potentially going out of business while you
22 introduce new products to fill the products you were
23 withdrawing from the market.

24 A: It was challenging, yes.

25 Q: That's a good word for it. You had never

1 experienced anything like that before, had you?

2 A: I had experienced a lot of challenges, but
3 not this specific kind of one.

4 Q: Was there anyone at Monsanto who had
5 experienced that type of challenge that you had
6 known of or discussed this with?

7 A: I don't recall of this kind of an
8 environmental problem coming up to that time.

9 Q: Were you concerned that this would affect
10 your own personal situation, if you were in charge
11 of sales of something that looked like it could go
12 right down the tubes?

13 A: No.

14 Q: I'd like to show you what's been marked as
15 Exhibit Number 5. It should be early on in this
16 booklet. Exhibit 5 is a functional fluids total
17 marketing plan for 1970. You would have been
18 involved in preparing this document, wouldn't you?

19 A: I assume so.

20 Q: You're listed as one of the distributees on
21 the first page, correct?

22 A: Yes.

23 Q: Now, earlier we had discussed, you know, the
24 profit margin on this product. Would you turn to
25 page 1 of the document, TRAN 3763.

1 A: Yes.

2 Q: And does that reflect a -- in your mind, an
3 attractive gross profit as a percentage of sales?

4 A: Yes, it does.

5 Q: For example, in 1969 the estimated gross
6 profit was 42 and a half percent on the functional
7 fluids that Monsanto sold, is that correct?

8 A: That's correct.

9 Q: And you were projecting a 41 percent profit
10 in 1970, correct?

11 A: That's what it says.

12 Q: During this time period, did you begin to
13 determine or decide by yourself whether you wanted
14 to continue in the functional fluids area?

15 A: Never thought about it.

16 Q: Never thought about it?

17 A: No.

18 Q: Were you the person or one of the people who
19 would decide what prices to charge for fluids in the
20 functional fluids group?

21 A: Yes, I was.

22 Q: For example, on page 27 of the document
23 where it says "Consider need to increase the price
24 of Aroclor", under "When", "Immediately", you are
25 listed as someone who had that responsibility, is

1 that correct?

2 A: That's correct.

3 Q: Did the price of Aroclors go up?

4 A: I can't put it in the context of this
5 timing, but, yes, the price of Aroclors did go up
6 sometime when I was there.

7 Q: You approved the price increases?

8 A: Yes.

9 Q: Did the costs go up?

10 A: I don't recall.

11 Q: Specifically, the prices that Monsanto would
12 charge to the dielectric users went up, correct?

13 A: That's what I'm thinking about, yes. And
14 that's what this refers to.

15 Q: If you look on page 29, you were also
16 supposed to immediately consider the possibility of
17 raising the price of transformer --

18 A: Yes.

19 Q: Did you do so to maintain your profit
20 margins?

21 A: I don't recall.

22 Q: That would have been one of the effects of
23 raising prices, wouldn't it?

24 MR. CHAMBERS: Objection, calls for
25 speculation.

1 A: It could have been.

2 MR. ROEDER: Now, did you give any
3 consideration at this time to completely phasing out
4 chlorinated biphenyls from the functional fluids
5 group?

6 A: I don't remember.

7 Q: Anything that would refresh your
8 recollection?

9 A: No.

10 (Plaintiff's Exhibit 178
11 marked for identification).

12 MR. ROEDER: Exhibit 178, sir, is a letter
13 that you signed, dated February 18, 1970, number
14 TRAN 4300 and 4301. That's your signature, correct?

15 A: Yes, it is.

16 Q: If you want, you can take a moment to review
17 that in comparison to --

18 A: The other one?

19 Q: Yes.

20 A: I don't need to.

21 Q: You know what's different about it?

22 A: Yes, I do.

23 Q: And that's only the last paragraph on the
24 second page?

25 A: That's correct.

1 Q: Exhibit 178 was directed to the dielectric
2 customers, correct?

3 A: Yes, it was.

4 Q: Now, there's a decision made, wasn't there,
5 not to notify purchasers of the equipment that your
6 customers manufactured of the potential
7 environmental contamination you described in your
8 letter, correct?

9 A: That's what this says.

10 Q: Who made that decision?

11 A: I don't know.

12 Q: Would you have been a part of that decision?

13 A: Probably.

14 Q: You also recommended that your customers,
15 your dielectric fluid customers notify the equipment
16 users of this problem, do you see that?

17 A: I do.

18 Q: Why was that recommendation made?

19 A: I don't know.

20 Q: Do you recall participating in that
21 decision?

22 A: No, I don't recall it.

23 Q: Were you concerned about liability at this
24 point, sir?

25 A: I don't know.

1 Q: Would this letter have been approved by
2 legal?

3 A: Yes.

4 Q: In fact, all letters that were going out to
5 customers in general were approved by legal at this
6 time, isn't that correct?

7 A: I don't know that. But I would certainly
8 say the key ones were -- may have been.

9 Q: This would be one of the key ones?

10 A: Yes.

11 Q: Because this has the same information as
12 Exhibit 22, the questions that I asked you with
13 respect to Exhibit 22 and the answers you gave would
14 be the same concerning this letter?

15 A: Yes, they would.

16 (Discussion off the record).

17 (Plaintiff's Exhibit 179
18 marked for identification).

19 MR. ROEDER: Exhibit 179 is a letter, it's
20 undated, but it bears Bates numbers TNGS 2626
21 through 2633. Now, this is a modification of the
22 document, your letter, sir, is it not, for the
23 plasticizers?

24 A: It appears to be.

25 Q: Who is W. E. Schalk, S-c-h-a-l-k?

1 A: He was my counterpart in plasticizers.

2 Q: Did you approve this document?

3 A: I have no recollection.

4 Q: Did you receive copies of it when it was
5 sent out?

6 A: I have no recollection.

7 Q: In fact, though, is it fair to say that this
8 repeats almost word-for-word your letter dated
9 February 9th?

10 A: Yes, except for it's aimed at the
11 plasticizer products rather than the fluids
12 products.

13 Q: So, for example, number one on the first
14 page references Aroclor 5060, 5442 and 5460 as
15 opposed to the fluids products, correct?

16 A: Yes.

17 Q: Other than that, it's the same letter?

18 A: Yes.

19 Q: Does this reflect Monsanto's desire to treat
20 plasticizers similarly in terms of how they would
21 notify the customer as they did with respect to PCBs
22 that were in the functional fluids group that you
23 supervised?

24 MR. CHAMBERS: I object to the form of the
25 question.

1 MR. ROEDER: Let me rephrase it. The same
2 letter goes out to the plasticizer customers as goes
3 out to your customers, correct?

4 A: Correct.

5 Q: Is this part of a similar policy or
6 consistent policy Monsanto had with respect to
7 notifying customers who used products that contained
8 PCBs?

9 A: I don't recall.

10 (Plaintiff's Exhibit 180
11 marked for identification).

12 MR. ROEDER: Exhibit 180 is a memorandum
13 from you to Norm Johnson, dated March 10, 1970,
14 regarding Colorado Interstate Gas, TNGS 8884. It's
15 your memorandum and your signature, correct?

16 A: It's my signature, yes.

17 Q: And this references a telephone call you
18 received from an employee of Colorado Interstate
19 Gas?

20 A: Yes, sir.

21 Q: Did you receive many phone calls like this?

22 A: My recollection is very few. Very few.

23 Q: Did Mr. O.K. Sharp indicate that he was
24 unclear as to what the PCB letter you had sent meant
25 for his company?

1 A: What I wrote of the conversation apparently
2 is that he wanted to know what it meant to them.

3 Q: And you explained it further?

4 A: Yes, seems like it.

5 Q: Did you follow up, yourself, with any other
6 interstate gas transmission companies?

7 A: No, not that I recall.

8 Q: You know that Tennessee Gas is an interstate
9 gas transmission company?

10 A: Yes I do.

11 Q: You never followed up in any way with
12 Tennessee Gas?

13 A: Not that I recall.

14 Q: Did you ever speak with anyone at Tennessee
15 Gas?

16 A: Not that I recall.

17 (Plaintiff's Exhibit 181
18 marked for identification).

19 MR. ROEDER: Exhibit 181, sir, is a letter
20 from you to Mr. Clifford, who was director of
21 purchases for Buick Motor Division, General Motors
22 Corporation. Now, you said to Mr. Clifford in the
23 first sentence of your letter you hope that you,
24 quote, clarify any uncertainties relating to your
25 February 9th letter, correct?

1 A: That's what it says, yes, sir.

2 Q: Okay. Did you believe as of March 1970 that
3 there were uncertainties relating to your February
4 9th letter?

5 A: I don't recall.

6 Q: But that's what you indicated to Mr.
7 Clifford, right?

8 A: This indicates that he thought there were
9 uncertainties.

10 Q: In your letter, in the third paragraph
11 didn't you represent to Mr. Clifford that there is,
12 quote, no problem with the product you are using,
13 close quote, and that was Pydraul 312?

14 A: This is a bad -- let me take a look.

15 Q: It's the best copy I've got.

16 A: Give me a minute, though. Whereabouts is
17 this?

18 Q: In the middle --

19 A: In the middle paragraph. Yes, it does say
20 that.

21 Q: That wasn't true then, ultimately, was it?

22 A: At that time it was.

23 Q: You thought it was?

24 A: I thought it was.

25 Q: But it turned out to not be true?

1 A: That's correct.

2 Q: Did you ever confirm to Mr. Clifford that
3 the statement was not correct?

4 A: I don't recall.

5 (Plaintiff's Exhibit 182
6 marked for identification).

7 MR. ROEDER: Before we go too far from
8 Exhibit 181, is there anything that would refresh
9 your recollection as to whether you confirmed to Mr.
10 Clifford that the statement you had in your letter
11 was not correct?

12 A: No, sir.

13 Q: Exhibit 182, sir, is a memorandum from W.B.
14 Papageorge to a number of people, including you, and
15 it attaches a copy of a rough draft of a plan for
16 managing the PCB problem, dated March 30, 1970. The
17 production numbers are TNGS 9643 through TNGS 9655.
18 This is a memorandum that you received, isn't it?

19 A: I'm on the list.

20 Q: What was the PCB problem that Mr. Papageorge
21 was describing?

22 A: I don't know.

23 Q: You don't know if it related to the
24 potential inability to sell the product because of
25 its environmental problems?

1 A: I don't know.

2 Q: Let's go to the second page. Mr. Papageorge
3 defines the problem there, doesn't he?

4 A: Yes.

5 Q: And that, in fact, what I just described
6 describes how Mr. Papageorge described the problem,
7 correct?

8 A: He doesn't say what you said.

9 Q: Well, he says the presence of materials
10 identified as polychlorinated biphenyls in marine
11 environments was first noted by Professors Widmark
12 and Jensen, correct?

13 A: Right.

14 Q: "Since then and with increasing frequency,
15 other investigators have identified PCB in marine
16 and animal life. Increasing evidence has been noted
17 that indicates PCB is ubiquitously present in the
18 environment and is resulting in damage to the
19 ecological system." That's the problem, right?

20 A: That's true.

21 Q: So that's what you understood the problem
22 with PCBs to be as of that date?

23 A: I will accept that.

24 Q: Now, the strategy, this is where I'm trying
25 to get back to where we discussed a little earlier.

1 We said it was a challenge. You, as a sales
2 director, you had to deal with a product which was
3 coming under environmental criticism, trying to
4 introduce new products, and here Mr. Papageorge is
5 indicating a basic strategy. Do you agree with the
6 strategy as he relates it in this document?

7 A: Do I today?

8 Q: Did you then?

9 A: I don't recall.

10 Q: Okay. Let me see if I can short-circuit
11 it. Mr. Papageorge says Monsanto, and I'm reading
12 from the bottom of Roman Numeral 2, must not take
13 premature action which would compromise its
14 responsibilities to its customers, shareholders or
15 employees. Do you see that?

16 A: You're putting two parts of the sentence
17 together.

18 Q: Sure, but that's the question I'm asking.
19 It indicates Monsanto should not take premature
20 action which could compromise its responsibilities
21 to its customers, shareholders or employees?

22 A: The latter part, it does say that.

23 Q: Now, what responsibilities did Monsanto have
24 to its customers in 1970?

25 A: Well, I don't recall. I don't know how to

1 answer. I'm not -- I don't remember this meeting,
2 even.

3 Q: Well, whether you remember or not, I'm just
4 trying to get a sense of what you thought you had as
5 a responsibility to your customers.

6 A: Well, I believe the first part of what he
7 said here, that we should respond in a responsible
8 manner.

9 Q: I appreciate that, but it's not answering my
10 question.

11 A: Give me an example of what you want to know.

12 Q: I'm just trying to find out -- my question
13 is pretty open-ended. Could you repeat it?

14 (The requested portion of the
15 record read by the reporter).

16 MR. CHAMBERS: I object to the form.

17 MR. ROEDER: Can you answer the question?

18 A: In what area? I mean, help me a little bit.

19 Q: I'm going --

20 A: We had a responsibility to have products be
21 there on time, pricing them properly. I mean, I
22 don't -- there's a whole world there.

23 Q: That's not what he's talking about here,
24 though, is he?

25 A: I don't know what he's talking about here.

1 Q: Okay. Did you believe you had a
2 responsibility to your customers to give them all
3 the information they would need to know to deal with
4 the environmental problem, as you understood it?

5 A: I don't recall what -- I don't recall at
6 that time.

7 Q: Okay. Well, let's continue on to Roman
8 Numeral 3, the objectives as outlined in the basic
9 strategy plan for managing the PCB problem that Mr.
10 Papageorge prepared. The overall objective, he
11 writes, of this plan is to manage the PCB pollution
12 problem to prevent it from adversely affecting the
13 established return on investment objectives of the
14 functional fluids and plasticizers groups, while
15 maintaining the corporate image of Monsanto as a
16 responsible and respected member of industry
17 world-wide. That's the objective?

18 A: That's what he says, yes.

19 Q: Did you agree with that objective?

20 A: I don't know.

21 Q: Do you know if you disagreed with it?

22 A: I don't know.

23 Q: Was it part of your objective to prevent the
24 PCB pollution problem from adversely affecting
25 Monsanto's established return on investment

1 objectives for the functional fluids group?

2 A: I don't recall.

3 Q: And we looked at the marketing plan a couple
4 of minutes ago, remember?

5 A: Right.

6 Q: And you were projecting a 41 percent gross
7 profit in 1970, correct?

8 A: That's correct.

9 Q: And this document was prepared on March 30,
10 1970, correct?

11 A: Right.

12 Q: Did you believe that would be a difficult
13 objective to realize, given the PCB problem that Mr.
14 Papageorge identifies here?

15 A: I don't recall.

16 Q: Would anything refresh your recollection?

17 A: No, sir. A different brain.

18 Q: A different brain. How did you believe in
19 1970 a customer would discharge PCBs into the
20 environment? What was in your scheme or
21 understanding of how that could happen?

22 A: How could they be discharged in the
23 environment?

24 Q: Yes. You were principally concerned with
25 waterways, weren't you?

1 A: Right. Some air.

2 Q: Waterways is the only thing that was
3 identified --

4 A: You're asking me how were they discharged?

5 Q: Yes. In your letter of February 9, 1970 the
6 only area of discharge that you identify is
7 waterways, correct?

8 A: That's correct.

9 Q: Is it fair to say that was the principal
10 focus of your concern?

11 A: I would assume that.

12 Q: Okay. If it were anything else, you would
13 have put it in the letter?

14 A: I would assume that.

15 Q: So as you conceived the problem, if a
16 customer used it in a manufacturing operation,
17 Monsanto saw it as a problem of discharge in the
18 waterways or else it could be included -- a PCB
19 containing material could be included in a product a
20 customer would manufacture, right?

21 A: I don't know how Monsanto saw it, but I
22 believe that's how I did.

23 (Plaintiff's Exhibit 183 & 184
24 marked for identification).

25 MR. ROEDER: In fact, 183 ought to be looked at

1 in the context of 184.

2 MR. CHAMBERS: For the record, I can't find
3 Exhibit 183, which has production number TRAN 088187
4 on the list of exhibits that was furnished in
5 connection with the case management order.

6 MR. ROEDER: I'll tell you what --

7 MR. CHAMBERS: I won't deny that it's not on
8 there, I can't find it.

9 MR. ROEDER: How about, is 8678, TNGS 8678?

10 MR. CHAMBERS: It sure is.

11 MR. ROEDER: They're really the same
12 document. I mean, if you want --

13 MR. CHAMBERS: That's fine. I don't think
14 there is any need to do that.

15 MR. ROEDER: If you wanted to confirm it.

16 MR. CHAMBERS: I agree, that's fine. I just
17 wanted to note that in light of the order that's in
18 place.

19 MR. ROEDER: Well, then, tell you what, why
20 don't we substitute it. I think it's the same
21 document, it just has a different production number,
22 that's what Mr. Chambers is talking about.

23 A: Okay.

24 Q: The same thing, right, that you were just
25 looking at?

1 A: I think so, yes.

2 Q: For the record, let's be sure we've got it
3 identified. Exhibit 183 is TNGS 8678 and Exhibit
4 184 is TRAN 88185. Exhibit 184, sir, really
5 predates 183 and it's dated April 13, 1970. It was
6 to you, among others, and relates to an additional
7 paragraph to be added to a label, right?

8 A: Yes, it does.

9 Q: All right. And Exhibit 183 is your response
10 to Mr. Papageorge on the issue, correct?

11 A: Yes.

12 Q: Unfortunately, I've got them out of sequence
13 in terms of --

14 A: That's okay. I'm with you.

15 Q: And you were in agreement with the proposed
16 label changes relating to electrical grade and
17 non-electrical grade Aroclors, but you did not want
18 to see, as you indicate in paragraph one, that label
19 adapted to the Pydraul line, right?

20 A: That's what that says.

21 Q: Why was that?

22 A: I don't recall.

23 Q: Your memorandum states, does it not, "I
24 think this is a reasonable approach since we are
25 going through a reformulation of all of our products

1 which over a period of time will eliminate the
2 necessity for this paragraph"?

3 A: Yes, it does.

4 Q: Was this suggestion adopted?

5 A: I don't know.

6 Q: You don't know if the Pydraul products did
7 not have the paragraph that the electrical grade and
8 non-electrical grade Aroclors with PCBs had?

9 A: I don't know.

10 (Plaintiff's Exhibit 185
11 marked for identification).

12 (See confidential transcript).

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1 (Plaintiff's Exhibit 186
2 marked for identification).

3 A: Okay.

4 Q: Exhibit 186, sir, is a memorandum from you
5 to John Mason, dated May 4, 1970, production number
6 TNGS 8677. This relates, sir, to non-electrical
7 Aroclors, correct?

8 A: That's correct.

9 Q: What does that definition include?

10 A: It would be Aroclors sold to non-electrical
11 users.

12 Q: So it would be the product that was entitled
13 Aroclor?

14 A: Yes. Not in a -- not compounded with
15 something else formulated.

16 Q: It wouldn't include Pydrauls, for example?

17 A: That's correct.

18 Q: Now, with respect to the decision here, it
19 says "With the exception of competitors, all
20 customers will be notified by personal contact or
21 letter by May 15 that we will no longer sell
22 non-electrical Aroclor after July 31, 1970", that
23 was the policy then with respect to customers of the
24 Aroclor product?

25 A: That they would be -- well, it says what it

1 says, yes.

2 Q: I just wanted to confirm again that this
3 relates to the Aroclor product?

4 A: Correct.

5 (Plaintiff's Exhibit 187
6 marked for identification).

7 (See confidential transcript).
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1 (Discussion off the record).

2 (Plaintiff's Exhibit 188
3 marked for identification).

4 MR. ROEDER: Exhibit 188, sir, is a
5 memorandum from you to J. Mason, dated May 5, 1970.
6 This is another exhibit, Mr. Chambers, if you can
7 determine whether something has been redacted. Look
8 at the top.

9 MR. CHAMBERS: Where?

10 MR. ROEDER: At the top. Under "J. Mason",
11 it looks like there's about an inch --

12 MR. CHAMBERS: Just from the face of it, I'd
13 be shocked if there's a redaction there, because
14 that just looks like part of the way the memo is put
15 together, but I'll check and see.

16 MR. ROEDER: Well, in general, there seems
17 to be some kind of prefatory comments.

18 MR. CHAMBERS: Where do you see that?

19 MR. ROEDER: Right here. I don't know, it
20 looks like there's a space or something.

21 MR. CHAMBERS: I see the space, but I don't
22 see --

23 MR. ROEDER: As I look at other memoranda,
24 you generally have something on there. But if
25 there's not, there's not.

1 A: Okay.

2 MR. ROEDER: Now, this is a memorandum to
3 Mr. Mason, who is directly under Mr. Minckler?

4 A: Yes.

5 Q: What was the purpose of this memorandum?

6 A: I don't recall.

7 Q: Did Mr. Mason or Mr. Minckler periodically
8 request information concerning where you were on the
9 product reformulation?

10 A: I believe we had -- I had one other time
11 when I wrote him, and I don't know -- but that was
12 about the -- that was about non-electrical
13 Aroclors. So I don't know.

14 Q: Mr. Mason or Mr. Minckler, were they
15 satisfied with the progress that was being made?

16 A: I don't know.

17 Q: You never heard anything to the contrary?

18 A: Not that I remember. No. No, I did not.

19 Q: As a follow-up, reviewing Exhibit 188 does
20 not refresh your recollection concerning
21 the --

22 A: No, it doesn't.

23 (Plaintiff's Exhibit 189
24 marked for identification).

25 MR. ROEDER: For the record, Exhibit 189 is

1 a letter from Mr. Ted Roback, Federal Pacific
2 Electric Company, dated March 11, 1970, and has
3 production numbers TNGS 2661 and TNGS 2662, and
4 there's a note to the blind carbon copies for this
5 document, sir, that says this letter was sent to all
6 transformer customers, correct?

7 A: Yes, sir.

8 Q: It was signed by you?

9 A: Yes, it was.

10 Q: So letters in this form were sent to all of
11 of Monsanto's transformer customers?

12 A: I would say that's true, yes.

13 Q: With respect to these customers, transformer
14 customers, Monsanto offered a program for proper
15 disposal of PCB materials, correct?

16 A: Yes.

17 Q: These are the dielectric customers?

18 A: It just says transformer.

19 Q: You don't know if it also included
20 capacitors?

21 A: I don't know.

22 Q: Did you offer that program to other PCB
23 customers?

24 A: I don't know.

25 Q: So, as you sit here today, you don't know

1 whether you offered that program for proper disposal
2 of PCB materials to users of Pydraul that had PCBs
3 in them?

4 A: No, I don't.

5 (Plaintiff's Exhibit 190
6 marked for identification).

7 MR. ROEDER: Plaintiffs 190, sir, is a
8 memorandum from Mr. Papageorge to Mr. Sido?

9 A: Yes.

10 Q: How do you pronounce it, Sido? Dated May
11 27, 1970, and you received a carbon copy, correct?

12 A: Yes, I did.

13 Q: All right. TRAN 88210 is the production
14 number. Who was Mr. Sido?

15 A: He was the labeling specialist.

16 Q: He was the guy who made sure that the labels
17 were properly --

18 A: He was the one who would do the actual
19 putting of them together and writing them out.

20 Q: Set them up so that they could be printed?

21 A: I don't know if he actually did it, but he
22 would -- yes, he would be the person that would be
23 the focal point to getting the actual label done.

24 Q: So if you wanted a label change, Sido was
25 the guy you called?

1 A: Yes.

2 Q: Now, Mr. Papageorge states in the third
3 paragraph, "Pydraul labels will not be altered since
4 reformulations will be made". Correct?

5 A: That's correct.

6 Q: That means, does it not, that the paragraph
7 we saw earlier that Phocion Park had suggested was
8 not added to the Pydraul labels, correct?

9 MR. CHAMBERS: I object to the form.

10 A: I believe that, yes.

11 Q: Because since the pydrauls were going to be
12 reformulated, there would be no reason to add the
13 additional language relating to PCBs, correct?

14 A: I believe that's what I said previously to
15 Papageorge.

16 Q: And this memorandum from Mr. Papageorge
17 includes on the labels the following -- labels that
18 would be changed to, "Contact Monsanto
19 representative regarding disposal", correct?

20 A: That's correct.

21 Q: But that was not a change that would have
22 been made to the Pydraul labels, since they would
23 not be altered?

24 A: Certainly not -- this doesn't say include
25 that on Pydraul.

1 Q: So it's your understanding that Pydraul
2 labels stayed the same, they didn't get the
3 paragraph that related to PCBs and they didn't get
4 the sentence that said contact Monsanto
5 representative regarding disposal?

6 A: That's what this says.

7 (Plaintiff's Exhibit 191
8 marked for identification).

9 MR. CHAMBERS: We note that this is another
10 exhibit that's marked confidential.

11 (See confidential transcript).
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1 (Discussion off the record).

2 MR. ROEDER: Exhibit 22, which is your
3 February 9, 1970 letter, states that PCBs with a
4 chlorine content of less than 54 percent have not
5 been found in the environment and appear to present
6 no potential problem to the environment.

7 A: Yes, it does.

8 Q: As of May 27, 1970, just three months later
9 is it fair to say that there has now been a shift
10 and that the only Aroclors that are considered
11 biodegradable are Aroclor 1221 and the fractionally
12 distilled Aroclor 1242?

13 MR. CHAMBERS: I object to the form.

14 A: It definitely says those are the only ones.
15 It indicates to me that there's been more data
16 developed.

17 Q: That's what I mean. So between the time --

18 A: Not a shift in policy or anything, but more
19 data developed.

20 Q: So you got more data that would suggest that
21 the information that was communicated in paragraph
22 two of the February 9th letter now is incorrect?

23 A: That's correct.

24 Q: Do you know if any correction was sent out
25 with respect to this February 9th letter?

1 A: I don't know.

2 Q: You didn't recommend one, though?

3 A: I don't remember.

4 Q: Now, there had been documents that have been
5 produced in this case that refer to "close the
6 loop". And Mr. Papageorge defines it here. He
7 defines it as, "The expression close the loop refers
8 to our program of educating the customer regarding
9 the control and disposal of PCBs and providing a
10 service for the return of contaminated Aroclors for
11 recovery or eventual high temperature incineration
12 and stack gas scrubbing", do you see that?

13 A: Yes.

14 Q: Is that how you understood the term close
15 the loop?

16 A: I don't recall.

17 Q: You don't recall disagreeing with Mr.
18 Papageorge's statement on that, do you?

19 A: No, I do not.

20 Q: Sir, it's true, isn't it, that the service
21 of -- the providing of a service for the return of
22 contaminated Aroclors for recovery did not apply to
23 pydrauls, correct?

24 A: At the time of that letter that I sent to
25 the transformer --

1 Q: I'm talking about Pydrauls.

2 A: Yes. I'm saying, isn't that where -- I'm
3 trying to remember where it was that -- I don't
4 know, I guess. I don't know.

5 Q: The reason I asked the question that way is
6 because we just saw the memorandum regarding the
7 labeling.

8 A: Right.

9 Q: Which doesn't even suggest that the Pydraul
10 users ought to contact their Monsanto representative
11 regarding return of the product, correct?

12 MR. CHAMBERS: I object to the form.

13 A: That's correct.

14 MR. ROEDER: Because they were going to be
15 reformulated and wouldn't have PCBs, right?

16 A: Yes. But I don't remember the date of that.
17 I just don't remember.

18 Q: It was 190, Plaintiff's Exhibit 190.

19 A: Oh, same day. Okay.

20 Q: Instantaneous. So, close the loop, if it
21 requires the providing of a service for the return
22 of contaminated Aroclors, doesn't even relate to
23 pydrauls, correct?

24 A: I don't know whether they would have done
25 that for Pydraul customers or not.

1 Q: Okay. But if this is correct and there is
2 no suggestion that Pydraul customers would return
3 the product to Monsanto, and the close the loop
4 relates to the return of contaminated Aroclors for
5 recovery, then that doesn't relate to pydrauls,
6 right?

7 A: They're two separate subjects.

8 Q: That's what I mean.

9 A: They're two separate subjects, so I don't
10 know how to -- I mean, the fact that the label
11 wasn't going to change does not necessarily say that
12 they wouldn't go to Pydraul customers.

13 Q: Well, but if you're going to close the loop,
14 you're going to tell the customers as part of
15 closing the loop that if you have any contaminated
16 product, give it back to us and we'll process it for
17 whatever fee we charge, correct?

18 A: Correct.

19 Q: Okay. And that's not being said to the
20 Pydraul customers, right?

21 A: I don't know that.

22 Q: Well, certainly, that label is not being --
23 that message is not communicated on the labeling?

24 A: That is correct.

25 Q: Okay.

1 (Plaintiff's Exhibit 192
2 marked for identification).

3 MR. ROEDER: Sir, Exhibit 192 --

4 A: Okay.

5 Q: Exhibit 192, sir, is another letter you
6 signed to customers?

7 A: Yes, it is.

8 Q: And it relates to a letter dated February
9 27, 1970?

10 A: That must be the wrong date. Wasn't it the
11 -- wasn't it the February 8th or something like
12 that? I don't understand where this date came from.

13 Q: Wasn't that the date of your letter to the
14 plasticizers?

15 A: Oh, that I don't know. I was referring to
16 my letters. It's not dated. Found it, it's not
17 dated.

18 Q: All right.

19 A: I would not have written the plasticizer
20 customers.

21 Q: My notes say see 3/2/70 memo.

22 (Discussion off the record).

23 MR. ROEDER: You're not sure that the date
24 is correct?

25 A: I think it's -- I think it's incorrect.

1 Q: Again, this letter makes reference to being
2 a concerned and responsible member of the community,
3 "We've come to a decision to discontinue the sale
4 of PCB-containing products for industrial
5 applications effective August 30, 1970".

6 A: Yes, sir.

7 Q: That was the policy of Monsanto?

8 A: That was the decision made, to withdraw from
9 the Aroclor product sales.

10 Q: Did you disagree with that decision?

11 A: I'm sure I did not.

12 Q: Do you know what particular document this
13 refers to, what particular product?

14 A: What particular products?

15 Q: Right.

16 A: It's the Aroclor products that are
17 non-electrical and are not in the formulations.

18 Q: The straight Aroclor?

19 A: Yes.

20 Q: So, again, this would only have gone to the
21 Aroclor users?

22 A: That's my assumption.

23 (Plaintiff's Exhibit 193
24 marked for identification).

25 MR. CHAMBERS: This is a confidential

1 exhibit, too.

2 (See confidential transcript).

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1 (Plaintiff's Exhibit 194
2 marked for identification).

3 MR. ROEDER: For the record, Exhibit 194 is
4 a letter dated July 9, 1970 from you to Mr. Peer
5 Lorentsen, president of Chem-Trend, Incorporated,
6 and the production numbers are TNGS 6823 to TNGS
7 6824. This letter, sir, allows you to thank Mr.
8 Lorentsen for his letter and you then welcome the
9 opportunity to clarify the partial confusion that
10 apparently Mr. Lorentsen had, do you see that?

11 A: I see that.

12 Q: It says "Because there are a wide range of
13 applications for these products, some of our actions
14 have led to partial confusion, and I welcome the
15 opportunity to clarify them for you".

16 A: Yes, sir.

17 Q: Was there partial confusion concerning your
18 actions with respect to the wide range of
19 applications for PCB-containing materials?

20 MR. CHAMBERS: I object to the form, it
21 calls for speculation.

22 MR. ROEDER: You say there is, right?

23 A: I know what the letter says.

24 Q: That's what the letter says, right?

25 A: The letter would have been what I believed

1 at the time, yes.

2 Q: Did you believe that at the time?

3 A: I must have or I wouldn't have written it.

4 Q: I will confess to have been perhaps more
5 than partially confused, and I think, frankly, your
6 deposition testimony has helped straighten me out,
7 and I want to see whether I've got this confusion
8 taken care of.

9 A: Okay.

10 Q: Unconfused, as it were. You got Pydrauls
11 and the things you did with respect to pydrauls only
12 related to pydrauls, correct, so if there were
13 letters to customers that reference Pydrauls they
14 would go to the Pydraul customers?

15 A: The first letters went to all -- the very
16 first letter went to all PCB users.

17 Q: That would be the February 9th letter?

18 A: Yes, other than the dielectrics.

19 Q: The February 18th letter went only to the
20 dielectric users?

21 A: That's correct.

22 Q: That was capacitors, transformers?

23 A: That's right.

24 Q: People who made those products, right?

25 A: That's right.

1 Q: The letters that related to plasticizers
2 only went to the plasticizer users of Aroclor,
3 correct?

4 A: I don't know that. That one letter did.

5 Q: The one letter we saw that --

6 A: Yes. I think some -- I think some Aroclors
7 might have been used in plasticizer formulations,
8 and I don't know what they did with those.

9 Q: Anyway, if it were a letter that related to
10 Aroclor products, that would have gone to customers
11 who bought products that had the same Aroclor?

12 A: Yes.

13 Q: And if there were products or letters that
14 went out to Therminol customers, only customers of
15 the brand name Therminol would have got those
16 letters?

17 A: Yes. But I don't recall any.

18 Q: Because you withdrew PCBs from Therminol
19 applications pretty early on, correct? I think we
20 saw that.

21 A: That was the higher Aroclor, right? I don't
22 know when we -- I don't remember. I'm getting
23 confused. I don't remember the -- you mean
24 reformulation or what?

25 Q: What I'm trying to establish is that when

1 -- that at Monsanto, when notification went out to
2 customers, it went out based upon -- other than the
3 first letter that you discussed, the February 9th
4 letter, subsequent letters went out based upon the
5 product purchased, so any notifications relating to
6 Aroclors went to the people that you had in your
7 records who purchased Aroclors?

8 A: That's correct.

9 Q: And --

10 A: The first one went to everyone who purchased
11 any kind of Arochlor, either formulated or
12 otherwise, so it's the same principle, is what I'm
13 trying to say.

14 Q: Now I'm using Aroclors more narrowly.

15 A: I understand that. I used it broadly in the
16 general letter.

17 Q: In that last answer -- I think you did.
18 Just so we're clear, you can use the term Aroclor to
19 refer to a broad range of any of these products that
20 have the PCB-containing product in them?

21 A: That's correct.

22 Q: Or else you can you use it narrowly and
23 precisely to say if a customer purchased a product
24 that was Aroclor 1254, that was a precise product
25 that Monsanto manufactured and sold with the label

1 that said Aroclor 1254, correct?

2 A: That's correct.

3 Q: So when there are notifications that go to
4 the customer regarding Aroclors after the February
5 9th letter that you signed, those only went to the
6 customer who bought the product named Aroclor?

7 A: I believe that, yes.

8 Q: And so it was very precisely defined in
9 Monsanto as to what customers would get what letter,
10 depending upon the product they purchased, correct?

11 A: I would think so. You know, I really don't
12 recall, but --

13 Q: But that's your understanding of how the
14 process worked?

15 A: Yes, it was.

16 Q: Now, do you think that that process could
17 have led to the partial confusion that Mr. Lorentsen
18 was discussing?

19 A: I don't know.

20 MR. CHAMBERS: I object to the form.

21 A: I just don't know.

22 MR. ROEDER: You don't recall?

23 A: No.

24 Q: Other than what this letter said -- let's
25 continue on in the letter. You write, "The most

1 logical approach to this is to follow the sequence
2 of your questions. 1. The June 1 letter was sent to
3 all customers of our plasticizer marketing group and
4 stated that the sale of Aroclors 1232 through 1262
5 for plasticizer and modifier application will be
6 discontinued August 30, 1970". So you're telling
7 Mr. Lorentsen with respect to the June 1 letter that
8 as for customers of, number one, of your plasticizer
9 marketing group, and it relates to the sale of
10 Aroclors 1232 to 1262, and that would be a product
11 so named, correct?

12 A: Yes, sir.

13 Q: For plasticizer and modifier applications,
14 those would be for particular applications, then,
15 right?

16 A: Yes.

17 Q: And they will be discontinued August 30,
18 1970. So you were using that precisely in this
19 letter to him?

20 A: Yes.

21 Q: "The June 11 letter", I'm continuing in your
22 letter, "related to a separate and distinct
23 marketplace, that of industrial applications, which
24 encompasses your usage". So there would be another
25 letter that went out to Mr. Lorentsen dated June 11?

1 A: Must have been, yes.

2 Q: And we haven't seen it. All right? Because
3 I would have showed it to you if I had it.

4 A: I wish you had it. I mean, I wish you had
5 his letter.

6 Q: So the June 11th letter relates to a
7 distinct and separate marketplace, industrial
8 applications, which encompasses the uses that he had
9 for the letter he got on June 1?

10 A: Apparently.

11 Q: You continue, "Aroclor 1262 and other
12 products were not mentioned since we have no sales
13 of these to the industrial market". So you're
14 confirming to him why the June 11th letter didn't
15 refer to Aroclor 1262?

16 A: Didn't list it.

17 Q: Because it wasn't a product that was sold to
18 that particular marketplace?

19 A: That's right.

20 Q: You write, "The final policy has not been
21 evolved on Aroclor 1232" which is yet another
22 formulation of Aroclor, right?

23 A: It was another chemical, not formulation.

24 Q: It's an Aroclor --

25 A: It's a distinct chemical.

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1 Q: Would that be an Aroclor that had 32 percent
2 chlorine?

3 A: Yes.

4 Q: But, again, as you're using the term Aroclor
5 1232 there, that would be an Aroclor that would be
6 in a drum or package that would say Aroclor as a
7 name?

8 A: Yes, sir.

9 Q: Then you say "Sales for the products listed
10 will be discontinued August 30, 1970". So you're
11 trying to precisely draw Mr. Lorentsen's attention
12 to the particular definition of the product?

13 A: Yes.

14 Q: As a way to help him out of the partial
15 confusion --

16 A: Yes.

17 Q: -- he was apparently suffering under?

18 A: Yes.

19 Q: Then you write, "We will discontinue the
20 supply of all Aroclors from our U.S. plants to these
21 market applications, but not to certain applications
22 such as the electrical industry, where the product
23 can be controlled and contained". All right. So
24 you're telling him that Aroclors defined as Aroclors
25 will not be sold to him?

1 A: That's correct.

2 Q: But you don't want to misrepresent to him
3 that somebody else will be able to buy it, and
4 they're in the electrical industry?

5 A: That's correct.

6 Q: Now, on the next page, you will not import
7 from the European plant for applications that are
8 withdrawn from the market, and you're telling him
9 where, if he really wants to, he can go buy this
10 stuff?

11 A: Apparently he asked me to do that.

12 Q: Now, you write, "We obviously are very
13 closely aware of the relationship of the PCB problem
14 to segments of our Pydraul product line and have a
15 major program under way in this area". That was
16 what that says, right?

17 A: Yes, it does.

18 Q: "Our Pydraul products and their formulations
19 are proprietary information and we regret we cannot
20 disclose the specifics of our technological plans at
21 this time". So you were drawing a distinction
22 between the Pydraul line now and the Aroclor line,
23 correct?

24 A: Yes.

25 Q: Okay. Finally, you continue in your letter,

1 "We recognize that the situation causes
2 difficulties to a number of customers which,
3 regrettably, are unavoidable in view of the inherent
4 pollution problems". That's what that says, right?

5 A: Yes, it does.

6 Q: What are the difficulties which are
7 unavoidable in view of the inherent pollution
8 problems that you're referring to there?

9 A: I don't remember.

10 Q: Did you agree with Mr. Lorentsen that it was
11 somewhat confusing?

12 A: Yes. Partially.

13 Q: Partially. He was partially confused. You
14 weren't, but he was?

15 A: I can see where he was.

16 (Plaintiff's Exhibit 195
17 marked for identification).

18 MR. ROEDER: Exhibit 195, sir, is a
19 memorandum from Mr. Papageorge to you, among others,
20 dated July 14, 1970, and it bears the production
21 number TRAN 61669 and it relates to a PCB
22 environmental problem summary status report.

23 A: Okay.

24 Q: In the lingo of the time, Mr. Papageorge
25 refers to apparent communications gap at Monsanto?

1 A: Internally.

2 Q: Internally. In spite of all those memos
3 that were copied to everybody. In an effort to --
4 let's start at the beginning. Mr. Papageorge was
5 concerned that because of the larger number of
6 people involved, the many activities under way and
7 the rapid pace we must maintain to achieve
8 challenging target dates, it's been difficult to
9 properly communicate to all concerned the status of
10 our programs related to the PCB problem. Did I read
11 that correctly?

12 A: Yes.

13 Q: And you would agree that that was, in fact,
14 the case as of July 1970, wouldn't you?

15 A: I would accept what he wrote, he wrote it.

16 Q: No reason to disagree?

17 A: No.

18 Q: In light of the letter that you have from
19 Mr. Peer Lorentsen?

20 A: That's external, this is internal.

21 Q: But it's on or about the same date. That's
22 July 9th, this is only five days later you got
23 letters going out for separate products to separate
24 people that may, in fact, be people who purchased a
25 similar product, but under a different name, who

1 would be getting different information, correct?

2 A: Yes.

3 Q: So there was a concern inside Monsanto as
4 well that developments were occurring so quickly
5 that the people who needed to know about them
6 weren't able to keep them separate?

7 A: Apparently, yes.

8 Q: Did you agree with the idea of having an
9 environmental status report on a monthly basis?

10 A: I don't recall.

11 Q: And it's true, isn't it, that this came
12 pretty late in your tenure?

13 A: Yes. I think that I left in -- I don't
14 know exactly. I left in August or September,
15 somewhere in there, I think.

16 Q: Okay. And as best you recall, you did not
17 send out any additional major letters to customers
18 for any particular product other than what we
19 described today?

20 A: I don't recall any.

21 Q: So, approximately August, you think, or
22 September that you took a position as marketing
23 director, organic food and fine chemicals?

24 A: That's correct.

25 Q: And you held that position until 1975,

1 correct? Is that about right?

2 A: Yes, that is about right.

3 Q: And then you became director of marketing,
4 petroleum chemicals and polymers?

5 A: No, that's not the right title.

6 Q: Okay. What would be the right title?

7 A: I became director of marketing for
8 petrochemicals.

9 Q: Instead of petroleum, it should be
10 petrochemicals. Were you also involved as director
11 of marketing for polymers?

12 A: No.

13 Q: So the information contained on this
14 document, in any event, it would be correct except
15 as I've lined it out?

16 A: Yes, except -- the next line I've got a
17 comment on.

18 Q: All right. Why don't you make the changes
19 that you feel are appropriate.

20 A: The next, I was director of marketing for
21 the Chemical Intermediates Company, which was a
22 company rather than a group. It was a newly formed
23 company.

24 Q: Okay. And are the dates correct as
25 reflected on there, that you were director of

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1 marketing for the Chemical Intermediates --

2 A: Company.

3 Q: Through 1983?

4 A: Yes.

5 Q: And then what happened?

6 A: Until I left, sometime in 1983, I became
7 business director for fine chemicals and water
8 treatment.

9 Q: Again, at Monsanto?

10 A: Yes.

11 Q: Then in 1985 you took early retirement?

12 A: Yes, in November.

13 Q: Did you continue to serve as a consultant
14 for Monsanto after early retirement?

15 A: No, I did not.

16 Q: Did you work between 1985 and 1988?

17 A: Yes, sir.

18 Q: Where did you work?

19 A: I was president of General Med Ventures,
20 which is a group of medically related companies.

21 Q: Did you continue in that position until
22 1988?

23 A: Until the first part of 1988, yes.

24 Q: Then you joined Benchmark?

25 A: Benchcraft. I used to say it that way,

1 too. No, there was about a six month period in
2 between where I was trying to find a company that I
3 could purchase.

4 Q: And then you purchased your interest in
5 Benchcraft?

6 A: That's correct.

7 Q: And then became the chairman and CEO?

8 A: Chairman.

9 MR. ROEDER: I don't think I have any more
10 questions for you.

11 MR. CHAMBERS: I don't have anything.

12 (Discussion off the record).

13 MR. ROEDER: I have in front of me a copy of
14 what was attached to Monsanto's interrogatory
15 responses to Tennessee Gas, and I would just like to
16 mark this as the next exhibit, which contains the
17 witness's changes to the -- I don't know what you
18 call it, the CV of the witness.

19 (Plaintiff's Exhibit 196
20 marked for identification).

21 MR. ROEDER: With the excerpts that you made
22 on this, is this now accurate?

23 A: Yes, it is.
24
25

1 COMES NOW THE WITNESS, DONALD A. OLSON, and having
 2 read the foregoing transcript of the deposition
 3 taken on the 18th day of October, 1995, acknowledges
 4 by signature hereto that it is a true and accurate
 5 transcript of the testimony given on the date
 6 hereinabove mentioned.

7
 8
 9 -----
 10 DONALD A. OLSON

11
 12 Subscribed and sworn to me before this
 13 ____ day of _____, 1995.
 14 My Commission expires: _____

15
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 17 -----
 18 Notary Public

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 22 rg
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1 State of Missouri

2 SS.

3 City of St. Louis

4 I, Ronald A. Gore, a Notary Public in and for
5 the State of Missouri, duly commissioned, qualified
6 and authorized to administer oaths and to certify to
7 depositions, do hereby certify that pursuant to
8 Notice in the civil cause now pending and
9 undetermined in the Commonwealth of Kentucky, Rowan
10 Circuit Court, Civil Branch, to be used in the trial
11 of said cause in said court, I was attended at the
12 offices of Thompson & Mitchell, One Mercantile
13 Center, in the City of St. Louis, State of Missouri,
14 by the aforesaid witness; and by the aforesaid
15 attorneys; on the 18th day of October, 1995.

16 The said witness, being of sound mind and being
17 by me first carefully examined and duly cautioned
18 and sworn to testify the truth, the whole truth, and
19 nothing but the truth in the case aforesaid,
20 thereupon testified as is shown in the foregoing
21 transcript, said testimony being by me reported in
22 shorthand and caused to be transcribed into
23 typewriting, and that the foregoing pages correctly
24 set forth the testimony of the aforementioned
25 witness, together with the questions propounded by

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(314) 241-6750 621-4790

1 counsel and remarks and objections of counsel
2 thereto, and is in all respects a full, true,
3 correct and complete transcript of the questions
4 propounded to and the answers given by said witness;
5 that signature of the deponent was not waived by
6 agreement of counsel.

7 I further certify that I am not of counsel or
8 attorney for either of the parties to said suit, not
9 related to nor interested in any of the parties or
10 their attorneys.

11 Witness my hand and notarial seal at St. Louis,
12 Missouri, this _ _ _ _ day of
13 _ _ _ _ _ , 1995.

14 My Commission expires June 20, 1998.

15  _ _ _ _
16 Notary Public in and for the
17 State of Missouri