

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 78 C 1004
	)	
OUTBOARD MARINE CORPORATION	)	
and MONSANTO COMPANY,	)	
	)	
Defendants.	)	

The continued deposition of NORMAN T. JOHNSON, called by the Defendant Outboard Marine Corporation for examination, pursuant to notice and agreement and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Thea L. Urban, a Notary Public in and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said State, at the offices of Kirkland & Ellis, 200 East Randolph Drive, Room 5800, Chicago, Illinois 60601, on the 17th day of February, A.D. 1982, commencing at 10:00 o'clock a.m.

PRESENT:

MS. ELIZABETH STEIN,
(Pollution Control Section
Land & Natural Resources Division
Department of Justice
Washington, D.C. 20530),
appeared for United States
of America;

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PRESENT: (Continued)

MR. MICHAEL A. POPE,
MS. CAROL DORGE,
(Phelan, Pope & John, Ltd.
30 North LaSalle Street
Chicago, Illinois 60602),

appeared for Outboard Marine Corporation;

MR. JAMES H. SCHINK,
(Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601),

appeared for Monsanto Company.

ALSO PRESENT:

MR. HUGH THOMAS.

- - -

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WITNESS:

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NORMAN T. JOHNSON

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E X H I B I T S

Johnson-OMC Deposition
Exhibit

Marked for ID

No. 10 - 23	216
No. 24	284

Johnson-USA Deposition
Exhibit

No. 25	328
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— — —

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(Johnson-OMC Deposition Exhibits
Nos. 10 through 23, inclusive,
marked for identification,
2/17/82, TLU.)

NORMAN T. JOHNSON,
called as a witness herein, having been previously duly
sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. POPE:

Q Good morning, Mr. Johnson. Do you understand
you are still under oath from yesterday?

A Yes.

Q I would like you to take a look at some docu-
ments the court reporter has marked as Exhibits 10
through 23, most of which are multi-page documents,
along with three documents we previously have marked as
Tippey Deposition Exhibits 1, 2 and 3.

These are some documents that were pro-
duced by Monsanto as part of this case. I understand
that there has been some information that has been taken
out of the document that was produced, but what I would
like to do is have you take a look at these and see if
you can tell me what they are and what the purpose of
their being made was within Monsanto.

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If you want to categorize them in one pile and certain of them in another pile, please feel free to do so.

A You have accounting documents and you have sales forecast documents and you have cost reports.

Now, how can I help you?

Q One of Mr. Schink's associates has advised us that you might be a person who would know what those documents are intended to reflect, how they were generated and how they were maintained at Monsanto.

Perhaps if we could separate what is what we would be in a better position.

Tippey Exhibit 1 is a sales forecast, is that right?

A Right.

Q And these are different, Tippey 2 and 3?

A This one is a quarterly.

Q No. 1 is a quarterly sales forecast, all right.

A Yes.

Q Can you tell me when that normally would have been prepared?

A I think it is better if we go through the whole sequence of forecasting and you can pick this one up as part of it. Let us take a look at these documents like

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this.

Q Tippey Exhibit 3?

A This document was generated through the computer in about May of the previous year.

Q Can you tell from that --

A So what I am saying --

Q May of 1970?

A My belief would be that this was as stated here on the date, would have been generating a five-year forecast. I don't understand why '71 is on there. A five-year forecast, that would have as '71 forecasting for the next five years. Now, you are saying --

Q Including '71?

A You are showing -- something is missing in between.

Q There is not enough information on the document you have in front of you to answer the question?

A Right. This has to be spread out.

Q This is a spread sheet?

A This is a spread sheet and the months are indicated for the current year and then the five years are indicated on the far right. And that gets generated, would go out to salesmen in the middle part of a given year. He would go through by customer which he would get

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in by customer and by product. That would then come back to St. Louis in about August, would be fed back into the computer and we in the Product Group then would get a generation of those numbers that he had forecasted by month and for five years out on the requirements of that product by customer.

We would then look at the numbers and modify the number accordingly before it went back into the computer and then over to Production Planning and Inventory Control.

Q On the basis of this document you have in front of you, Tippey Exhibit No. 3, are you able to tell where along the process this document was generated?

A This is generated all the way at the very end when it comes back to the Product Group, by product.

Q Would that document then contain the estimates that salesmen picked up from their various customers and to what those customers' needs for the particular fluids would be?

A Right.

Q And that would be needs that those customers perceived for '71 through '75, is that right?

A Actually more concerned with per month, which you don't know.

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Q I know it appears January is shown on this Exhibit 3, but no other month, is that right?

A Right.

Q That is, the original document before it was excised contained --

A All twelve.

Q -- all twelve months; for which year would that be, '70 or '71?

A It would show the month. That date is correct.

Q February 16, '71?

A It would be for '72 forecasting. It almost looks like you have the wrong page relative to that.

Q The information with regard to Pydrauls here, would this information, as far as you can tell from looking at this document with the information on this document, would this information be projections for the entire country for the five-year period?

A That is for the entire country and what you are showing is the forecast for Pydraul A-200 was dead. It all went to zero. They are showing A-200 and all going to zero and the forecast for the entire country on that product.

Q A-200B?

A With these numbers, five years out.

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Q What are these indications here?

A The first number is pounds.

Q Zero one and pounds?

A Right. And that's dollars.

Q 264, is that \$264 million?

A No, 26.4 cents per pound.

Q 26.4?

A That is 26.4 cents per pound.

Q For 1971?

A Wait a minute, I am sorry. That is price.

The price was .235 cents per pound and this would have been the dollar, \$264,000. So it is that number times this price, should give you the \$264,000.

Q That is revenues?

A Revenues, yes.

Q Gross?

A Gross.

Q Reflecting a total of, that is 1,500,000 pounds?

A Correct.

Q By 19 --

A '75.

Q Well, '72, '73, '74 and '75, right.

A Actually showing no growth.

Q Of Pydraul A-200B?

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A Right.

Q Does this document indicate to you that the projections as of the date it was prepared, February 1971, indicated that the company projected sales of 1,500,000 pounds of Pydraul as of about that date?

A Correct.

Q On the original of this document, do I correctly understand there would also be projections for each of the 12 months that does not appear here?

A Correct.

Q Turning to Tippey Exhibit No. 4 which is attached in my copy to Tippey Exhibit 3, can you tell me what that document does? It is indicated on the Monsanto numbering system as 11080.

A I would suspect one refers to bulk and one refers to drums, okay? Let me clarify the two.

Q The identification, product description identification of 4595-200-11-03-2 as opposed to the previous one which was 01?

A 1.

Q That tells you that would be a bulk shipment?

A Would be bulk.

Now, let me go back and clarify where this comes from since '71 is here. The data that is

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generated in this report would have been initially produced by the salesmen in May of 1970 and go through the sequence and finally fed back and what is showing here is that it was finalized and out of the computer for product planning in February of '71.

One of the problems you are going to have with this period is the salesmen really never knew in the period of '70, what it was we were going to be selling because we were changing so fast, so you get the condition where they would be forecasting amounts we would tell them, forecast whatever it is by that customer you are going to be selling in pounds by the existing products. And we always translate that then to the real product when the time comes.

But they are giving us the basic numbers so we would have it for Production Planning.

Q How do you put these two documents together, Tippey Exhibit 3 and Tippey Exhibit 4?

A One seems to indicate that as to Pydraul A-200B, there were no sales for that five years, and the second one seems to indicate that for Pydraul A-200, there would be substantial sales up to 1,300,000 pounds for the years '72 through '75.

I cannot explain being this Page 69 and

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this being 144.

The only thing I can see here is that they ran everything that would be in bulk and then they ran all the products that were being sold in drums, so sequentially the drum forecast showed up on Page 144 and the bulk shipments showed up on 69.

Q Bulk being tank car shipments?

A Tank trucks.

Q Is there anything in your recollection that would support the notation that was projected that there would continue to be shipments of Pydraul A-200 in drums at a point when there was going to be no shipment of Pydraul A-200 in bulk?

A Only because the men would have forecasted by what the customers were currently using because that is what would have showed up on the report that they would have received. It is based, was based on the historic data and we didn't have the new products to insert nor the new codes certain, so we were just saying to the salesmen, okay, if the customer was buying Pydraul A-200 and you feel the business is going to continue, just forecast the Pydraul A-200 by that customer and we will accumulate it and then change the product nomenclature as we change the products.

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Q I understand that, but was it your recollection that the general trend of the sales of Pydraul A-200 was going in the direction of no more bulk shipments but yet substantial amounts of shipments in drums?

A No.

Q In fact it was really the reverse trend, more shipments in bulk and less shipments in drums if there was any predictability to such a market at all?

A I think you are making too much of an issue of bulk versus drums or drums versus bulk on products that were going to be discontinued or were in the process of being discontinued. And you have to look back to the initial data for this which was generated early in 1970 and it was 1970, we went through the throes of the eliminating of PCBs, going to PCTs and then finally ending up with a phosphate ester so that you can't take products here --

Q Listed on Exhibit 3?

A And except anything out of the five years because it just wasn't going to happen except we were going to be selling some pounds, some pounds of something.

Q I understand that and that figure appears to be here on Exhibit 4 with the projections leading up to

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1,400,000 pounds of A-200.

A Right.

Q By 1975 does it not?

A But don't take the numbers as A-200.

Q But what I am trying to determine is can you explain these two documents that have been produced for us? Can you explain why they both have the same date from what appears to be a computer run or portion of a computer run on shipments of A-200 and there seems to be a projection of zero and from another place on Page 144, a substantial projection?

A Because there was only one customer buying A-200 in bulk.

Q And who was that?

A Johnson Motors.

Q And were there several --

A Several customers.

Q -- buying --

A Buying in drums.

Q Purchasing approximately a million pounds in drums?

A Or export business.

Q Does Exhibit 4 in the original one that was used by the company have the same spread sheet that you

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described for Tippey Exhibit 3, namely, the months for January through December as well as the five-year forecast?

A Yes.

Q It would make more sense to take this Tippey Exhibit 2 next to follow this forecasting?

A Who did this?

Q Beats me. This was produced by the Monsanto attorneys as a document. It bears their number 11076, 77 and 78 which to me indicates they went together, but I cannot tell what they are, nor who prepared them, nor what purpose they performed. That is why I asked you.

The document is entitled Sales Forecast and Captive Use Production, that seems to say.

A Captive Use Production, yes.

Q All three pages appear to be handwritten.

A Here is the codes again, A-1s and 2s.

Q On the left side?

A Here is the code again where you have the 1s and then the 2s, so somebody had projected the 1s which is this, indicating all to zero and showing the 2s as remaining, so the columns are projected out to what looks like 1975.

Q The 1s and 2s you are referring to are drum

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shipments, is that it?

A Either bulk shipments or either export versus domestic. I am not sure how those numbers were, but keep in mind again when this is projected at this point in time, this is showing the year, '71; showing the months for '71. It was generated back in the early part of 1970 and nobody really knew what was happening to the products as we went along.

Q Would you suspect then that this was generated, Tippet Exhibit 2, when Johnson had already changed over from Pydraul A-200 over to another substance?

A Well, what I saw yesterday suggests that the first shipments went in the Fall of 1970 and therefore, data generated early in 1970 was superfluous because it would not have been A-200. It would have been Pydraul A-200B and the numbers would follow that it would have been Pydraul A-200B.

Q Would the sales forecast projections reflect what the customer was currently using at that time in terms of where the projection went as to A-200, A-200A or A-200B, is that the way the process worked?

A What the salesmen received was actually information on his run that showed the previous year sales, current year, sales to date and then the ability to project

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out to the future. This document which shows a collection of all this information, again, will show January through December, 1971 plus the total for '71, plus the year '72 through '75.

Q And that would show that under the category of whatever the salesmen's customers were then currently using?

A And he had projected.

Q Right.

A Yes, and if he had projected a customer that we lost a big chunk of business, then it would show up that we lost a large piece of business and he was not forecasting for the year '71 or on out. At the same time, if he was anticipating he was going to sell a piece of business, he would have projected the requirement and he would have shown that by June of that year he anticipated a supply of 5,000 pounds per month and would have projected it. That would have been fed into the computer and would have come back by product.

Q And in St. Louis your department and your people would have taken the numbers even if they knew there was going to be a reformulation of products and new product identification number, would you still run your computer run with the projections and what was

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currently being used by customers at that time regardless of possibility of reformulation and renumbering of products?

A Correct.

Q What was the purpose of that? What was the projection used for?

A Product planning was one facet and then we used the data to project our sales forecasts' volume for the coming year. Then your expense budgets were all predicated on what you had going to sell, what the gross profit was going to be, what was the bottom line profit and at this point in time, with everything up in the air, you didn't really know what costs were going to be. You didn't really know what selling prices were going to be.

The most important thing that we were projecting was pounds and from there try to extrapolate where we were going to be.

Q Do you have any idea why projections on Tippey Exhibit 4 as to price projected lower in '72 than they were in '71? Is that an 8 or a 3, can you tell?

Can you tell me why there was a change in the projection as to price of Pydraul A-200 on Tippey Exhibit 4?

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A No. There is no way of knowing why.

Q Would that be a number that would be put into the calculations by someone in St. Louis as opposed to the salesmen in the field?

A Well, the salesmen never put in price.

Q The price is controlled out of St. Louis, is it not?

A Yes, not enough data to tell you why. I don't know.

Q Do I understand correctly that these documents we have been looking at consisted in the original, what are they, spread sheets that go off two feet wide for the company's entire line of products?

A Yes.

Q Would it be your best estimate that this date of February 16, 1971 on these two documents constitutes the final sales forecast for that year as opposed to a draft, or do you have enough data on these documents to answer that?

A It's hard to know. There were times we just wouldn't get computer time and the computer did not give us the data of what you would classify the beginning of a coming year and this printout may have come out on the 16th of February.

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We may also have had problems in the inputs of our data which delayed the output of final information.

Q Was it the goal to get it as close to January 1 as possible?

A Absolutely.

Q Your forecasts were on a calendar year basis, is that right?

A Yes.

Q Well, we will get to some of these.

Can you separate out by function among these remaining documents that I have submitted to you to determine which has what purpose?

A This is more the document that salesmen would have filled out and it may actually be a direct to --

Q Referring now to Johnson Exhibit 10 for identification?

A That is a report that would exist in the Product Group that would have the name, the product as you are showing here, Pydraul A-200, and then would list the customers down below. It would indicate the potential we had assigned relative to that accounting, the sales for the previous year, the current goal for the current year, the sales to date, which in this case was published

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in December 1969, and would have shown the sales by month reflected in that total volume.

It is more a sales analysis than anything else, an analysis of our forecasting of projected sales.

Q When you say potential, what kind of thing would be under potential?

A We would define a given account as worth 50,000 pounds of product a year or so and we would indicate a potential 50,000 pounds per year and we would compare how well we had done relative to that potential.

Q And that document would be listed by that customer as listed on that A-200 sample?

A Yes.

Q Who would determine the sales goal?

A Salesmen.

Q Salesmen themselves would select their own goals?

A Yes. We might change them.

Q Perhaps up them?

A Well, it all depends. Sometimes we'd up them, sometimes we'd drop them. The time frame from when we recreated this document in May and the final publication was coming out at the end of the year, things could have happened in September that would cause us to adjust the

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number up and down.

Q Was the salesman's compensation determined by the extent to which he reached or exceeded his goal on sales?

A There was a period of time we had an incentive compensation plan that reflected objectives and then also sales by various product groups.

Q Could you tell me generally when that period of time was?

A The Fluids Group had a lot of trouble with an incentive compensation program. Some of the other groups had one and finally we instituted one, probably '68, and I would believe it lasted, it only lasted about two years because we felt it was not a good program to administer and not fair to the salesmen.

Q Why was that?

A Hard to measure contribution. In many instances we were selling multiple accounts. It is hard to trace back who really did the work and made the effort to get the account and we'd have more fights and feuds for compensation and sales quota, so we had to do away with it.

Q On the far right-hand side of this Johnson Exhibit 10 for identification, there appears to be a

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customer ID number of some kind.

A The same number is over here.

Q 4595-200-11?

A It would have continued, I'm sure it didn't appear on the Xerox. All products had a code. All customers had a code, so this, depending at that point where it says A-200, there would have been the A-200 code, product code. Then if it listed a customer, the customer ID number would be there.

Q And does that appear on there?

A No.

Q On that document?

A No. Here's some, too.

Q Are you able to tell here on the fourth page of Johnson Exhibit 10 what is shown there?

A I would suspect that what you are looking at here is the product code up here, something obliterated, and there would have been a listing of customers. Here is the customer ID number and then the numbers in here indicating --

Q Potential?

A -- last year's sales, current year, year-to-date sales and that would have been a summation of those numbers. And that ID number would have referred to a

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customer number.

Q You can't tell what that customer is from this document?

A No, no way.

Q Then the documents, Johnson Exhibit 11, Johnson Exhibit 12, are these the same as Johnson Exhibit 10 for the years 1970 and 1971?

A Right.

Q And they received the same treatment with regard to excising of various information, is that correct?

A Correct.

Q Under the indication sales goal for current year, are there some numbers that appear under that column as opposed to the rest of the page? Are those particular goals for particular customers?

A Yes.

Q Customers who are nameless on this sheet?

A Yes.

Q The same with the second page. The third page, what is that, a measurement, thousands of pounds, 57,000 pounds?

A Thousands of pounds and dollars. I don't remember whether that number refers to pounds or to

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dollars.

Q On the fourth page of this exhibit is an indication for Johnson Motors. Does that tell you whether it is dollars or pounds as of December of 1970?

A I would believe all these to be pounds.

Q A document such as this which is dated December '70, are these projections by month for 1970 or for 1971, referring now to Page 77.

A This refers to the numbers in 1970.

Q So that is an ongoing updated forecast, is that right?

A Every month it comes out.

Q So by 1970, it is less a projection than it is a report on what has taken place?

A Taken place. You see, there you are showing --

Q Referring to the last page of this exhibit?

A I would say this is 10,800 pounds of Pydraul A-200B shipped in December of 1970.

Q All right.

A So essentially that might have been the first shipment we made of A-200B to Johnson Motors for their testing of a die cast machine on that fluid.

Q If this page of documents is to be believed that would also tell you, would it not, there was no

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shipment of A-200A during 1970?

A It was a question that we did not resolve yesterday. I don't remember a Pydraul A-200A.

Q But my question is as to this page of this document or at least what we have been provided with here, which bears the Monsanto number at the bottom 11044, that would tend to indicate to you if you didn't know anything else that there were no shipments of A-200A made to Johnson Motors during 1970, would it not?

A Correct. I don't think we made the product.

Q I understand.

Then we have Johnson Deposition Exhibit No. 12 for identification which appears to be the same sort of document as the previous two, namely, a product-customer sales report, this one being for December of 1971, is that correct?

A Correct.

Q The same kind of indication of product A-200 with various customers obliterated out, a sales goal listed for various customers, right?

A Right.

Q The second page, the same thing, and the third page appears Johnson Motors, Outboard Marine,

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Gale Products.

Would you assume those are on the right-hand side, are customers?

A Customer codes.

Q Does that indicate that A-200 was being shipped in January of 1971 to Johnson and to Gale Products in the amount of 78,000 pounds?

A Correct.

Q The next page, apparently being both A-200 and beginning of A-200B, but no indications at all as to that.

The next page having some information on A-200B to Johnson Motors again, is that right?

A Correct, and that is showing the previous year which is the number you had over here.

Q Without any projection or forecast or references to sale of A-200B during 1971, is that right?

A Correct.

Q If you had only this document to go by, you would conclude, would you not, that Johnson Motors bought 78,000 pounds of Pydraul A-200 during January of 1971 and that it was for 1971 as to A-200 and that as to A-200B, they purchased some shipments during 1971?

A The numbers are obliterated. There is no way

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of knowing.

Q A feeling I've had myself.

Now, we have the next group of materials that appear to be entitled Monsanto Cost Reports, is that right?

A Right.

Q Can you tell me what these documents are and what they were for within the company, who prepared them, why were they maintained, that kind of thing?

A I would never see these kind of documents. This would have been in the manufacturing area and you are showing plants. It is more plant documentation in terms of their production and costing.

Q You never dealt with these documents?

A No.

Q Now we are referring to Johnson Exhibits 13, 15, 16, 17, 18, 19 and 20 and not to be forgotten, Johnson Exhibit 21. Those appear to show both Krummrich and Queeny?

A Correct.

Q Johnson Exhibit 22, can you tell me if that is a sales summary of investment by Production Department for the year 1971?

A I wouldn't see a document of this type either.

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That is a plant document.

Q You never dealt with that?

A No.

Q Exhibit 23 is entitled MICC Specialty Products.

A Correct.

Q For December 1972.

Is this in effect the same type of document we looked at before?

A Correct.

Q In actual sales during a particular year?

A One year later.

Q And we have information or lack of information regarding A-200B, shows some sales to Johnson Motors, correct?

A Correct.

Q This document, the second page, it would appear to me to advise the reader that A-200B during 1971, a total of 240,000 of A-200B was sold to Johnson Motors, is that correct, for the previous year, 1971?

A Let's go back.

There is no way of comparing.

Q Why is that?

A Because the data is not here. This is just showing, this is showing the sale in December 1970 and

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that number, whatever sales were then in '71.

Q Which should be on the original of Johnson Deposition Exhibit 12 that was obliterated?

A Correct, obliterated.

Q And some of that information after 1972 does appear on Johnson Exhibit No. 23 for identification, but you say you are unable to compare the number for the past year sales because the other information has been obliterated?

A Correct.

Q The last page of this Exhibit No. 23 has some kind of total for product in both pounds and dollars, is that right?

A Correct.

Q Would that be the way the computer runs would show the bottom for every year?

A Correct.

Q Can you tell?

A Wait, okay, continue.

Q Can you tell what these totals are on this page, whether that is a total for A-200, A-200A or A-200B?

A If there was no product in between here where it's been obliterated, that would indicate that A-200B

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sales by total sales by product were down to 723,000 pounds. And the product died as of the 1st of July.

Q 1972?

A Right, so the phosphate esters probably then went in to replace it or they used a competitive product, but it was dead at that point.

Q Were totals like this run for each product by product?

A Yes.

Q Can you tell from this page whether this product refers to A-200B as opposed to some other product?

A I would have to look back at these numbers. This was the total for the product and this shows the dollars of 195,000 and total of 723,000 pounds.

Q Can you tell me what kind of information was on here that was obliterated?

A Customers, would have listed A-200B and then the customers that were potential buyers of it. Where you are seeing numbers is where somebody had projected a volume for them. Others that would have been on here, there was no volume projected at all.

Q This symbol down here at the bottom of 01828A represents what?

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A Based on, represents dollars.

Q On what?

A I don't know.

Q The computer has that information?

A Yes.

Q Now, we have Johnson Deposition Exhibit No. 14 for identification. Can you tell me what this document is, who prepared it and what its purpose was?

A It looks like a document that was prepared by the accountant for the Functional Fluids Business Group. If you ask me his name, I can't remember.

Q I won't ask.

When would such a document be prepared? Would this be prior to the preparation of the 1970 sales budget?

A Accounting would start to generate documents like this and since this is saying 1970 sales budget, probably generated in March of the previous year, March of '69, someone would start work on this data.

Q Was it unusual within the company to prepare a sales budget for "products with Aroclor content"?

A Ask the question again.

Q Was it unusual to prepare a document like this which is a sales budget broken down by "products with

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Aroclor content"?

A No.

Q Had that been done in the early '60s?

A Sure.

Q Mid-'60s?

A Your big problem is that this is the base plant from which many things were fed with raw materials and I don't remember to what extent we had gotten into the computer, but you had to look at all the containing products of Aroclor and then go back to find out what your requirements would be for the base raw material. It is what is typically called a bill of material planner.

Q In order to handle inventory control and how much manufactured goods you would need to make?

A Correct, how much raw materials are going to be involved.

Q It appears that this document was going to be submitted to Mr. Bergen, Olson, Griddy and who else?

A Ledbetter.

Q Who is he?

A In charge of accounting for the Organic Division at that time.

Q Who was Mr. Griddy?

A I don't remember.

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Q On this first page, is this a projection of sales?

A In 1970.

Q For 1970?

A For 1970.

Q Is that two million pounds?

A 2,200,000 pounds.

Q What does this indicate over here?

A Probably dollars.

Q 517 --

A Thousand dollars.

Q And that is a sales figure, right?

A I would assume so on the projection written here with the breakdown Domestic, U.S. Export and Ex-U.S.A.

Q What does that mean?

A It means products produced outside the United States but still credited to our Product Group.

Q Would this be the type of document that you would have input to yourself in your position in March of 1969 and thereafter?

A Actually the data on the projected sales probably came from an old five-year forecast.

In other words, you did this every year

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so you are constantly working, reworking a five-year forecast, so Accounting could pick up a number based on the five-year forecast as the most current number projected for '70, pick up that number and start to do their work.

Q In connection with the decisions which were being made by the Business Group with regard to phasing out PCB products, did anyone come to you or members of your department and ask you the effect on sales of such a decision?

A We never made a study of what the effect would be based on dropping products or whatever because our whole intent was we were going to find the replacement products to be able to substitute.

Q So there would be no loss of sales?

A The sales, if we were going to lose some, yes, there were probably going to be some customers who were unhappy. There were many customers that were unhappy, they didn't believe it. They didn't accept it. They didn't understand why we were shoving this down their throat, so it is a constant struggle and we get into these situations and they say, "The hell with you, Monsanto. We are going to buy from one of your competitors and don't come back," so we lose business.

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Q Is it your recollection that at some point along that decision passed, there was a quantified study made up of the economic impact upon the company?

A No.

Q Meaning yes, it is your recollection that there was no such report ever made?

A Correct.

Q Do you know whether anyone suggested a report like this be made and someone else determined that that would not be done?

A No.

Q If such a report would be made, it would really have had to come through your desk someplace or other, would it not?

A We would have had to come up with the numbers.

Q By we, you mean your department?

A My group.

Q Yourself and your salesmen, right?

A Yes.

Q We talked yesterday about two trips you took personally to the Johnson Plant in Waukegan.

A Correct.

Q Were there any others?

A Not to Johnson Motors. I met with John Nevill

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here in Chicago at what I believe was a die cast convention and that was about the time we were switching from the terphenyl to the phosphate ester and had described again the problem that terphenyls were not the solution. We had to go one step further which made Johnson unhappy, very unhappy because the price was going to go up. Phosphate ester costs more, but we continued to stress that we recognized the fact there were still PCBs in that plant and there were PCBs as a result of the PCTs and that they had to be concerned about what we had defined as effluent getting out of that plant.

Q This was in your discussion with Mr. Nevill?

A Yes.

Q Here in Chicago?

A Yes, he was down here for a die cast show.

Q Do I correctly understand that decision to phase out or discontinue the terphenyl, that is the A-200B, is that right?

A Right.

Q That decision was made unilaterally by Monsanto?

A Yes.

Q And like the earlier decisions, that was a matter of simply explaining to your customers what you had done, trying to get them to go along with it, but

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the decision had been made by Monsanto.

A Yes.

Q Did you discuss with Mr. Nevill, here at your meeting in Chicago at the convention, Monsanto's findings that there was PCB getting out of the effluent at Johnson Motors?

A Yes.

Q What was the discussion you had with him?

A Well, the basic question was that it was now defined that there was material getting out and the PCBs were certainly defined as a problem and even Pydraul A-200B contained some PCBs. Therefore, it was important that they take the steps to prevent that material from getting out into the North Ditch.

Q Was that the first time Mr. Nevill learned that there were PCBs in the A-200B as far as you could determine?

A No.

Q Can you tell me why you say that, why did you think that that was not?

A After seeing the data on the sales, A-200B survived seven months; in other words, that was the first shipment.

Q So according to the document you just looked at --

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A Well, according to the documents, we shipped 7,000 pounds in December and then made shipments to them until the end of June and then the product was dead, so it is a total of seven months.

If you go back and talk about pump testing and trialing, it almost assumes that Pydraul A-200B came into existence in August or September of the previous year. It didn't even survive a year from the point of creation and testing, selling and discontinuing, and that was a very dramatic thing in terms of what was going on.

But Johnson was informed and was told through the field people to the major accounts that we had a problem with PCTs and the PCTs were not going to be the answer for us and we were stuck and we had no alternative but to continue working to find a solution which would be going to a new phosphate ester.

Q When was your meeting as best you recall with Nevill here at the Trade Show in Chicago?

A I would suspect it was something like March or April of '72, if I put the projections right.

Q So at that stage according to the chronology as you recall it, a replacement fluid for A-200B had already been in place for nine months?

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A No, it hadn't. We dropped the sales according to that.

Q That, being the documents we looked at a few moments ago?

A Yes, the sequence, then it's a year early, then I am wrong on the year.

MR. SCHINK: Why don't you look at those again.

(Brief pause.)

BY THE WITNESS:

A Yes, that would be correct. It would be in say March of '72 or April of '72, so it was just after.

BY MR. POPE:

Q We have the three computer printouts there, for sales reports for '70, '71 and '72, do you not?

A I have to correct something. The first shipment of A-200B went to Johnson Motors in December of 1970. They were obviously using --

Q 10,000 pounds?

A Correct.

They were using A-200B through 1971.

Q That you presume was excised off of --

A Correct.

Q -- Johnson Exhibit 12?

A Correct, which would have been based on this

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data here.

Q Namely, Johnson Exhibit No. 23?

A Was 924,000 pounds.

Q That would have been listed on the December '71 report in the original, is that right, by month?

A Correct. si that somewhere in this year, in December of '71 or early in '72, the meeting had to have taken place with John Nevill.

Q It was an early 1972 meeting?

A Or latter part of '71. I would have to look, there is a way to go back and check.

Q What is that way?

A A very close friend died, so if I can go back and pin down.

Q What show was it, do you remember, or what convention?

A It was either the American Society of Lubrication Engineers or the Society of Die Casters. It would be either one of those two that met here in Chicago.

Q I take it you have not reviewed these documents and sales reports since you left the company, have you?

A Absolutely not. I've never seen them.

Q Referring your attention to the document we looked at yesterday, Johnson Exhibit 8 for identification,

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being a call report from Mr. Overall dated April of 1971, I call your attention to the bottom remarks there under things to do.

A Okay.

Q There is a reference to having a meeting with you and Mr. Bensing. Is that Mr. Bensing?

A Yes.

Q And Bill Richard as to what action should be taken by Commercial Development Department on this specific job.

Did such a meeting ever take place so far as you know?

A Not to my knowledge. Peter Bensing left the company right about that time.

Q Did a meeting take place with some of these people regarding what action should be taken within Monsanto on that project?

A I don't remember.

Q Did you ever meet with Dr. Richard regarding the OMC Plant?

A Bill Richard was certainly present at meetings where we may have talked about Outboard Marine.

Q Was his view or expertise sought in any fashion with respect to Outboard Marine or the subject referred

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to in that memorandum?

A Really this call report is basically back to the question of was Johnson Motors going to install the interceptor pits or undertake the program that was talked about to EnviroChem and their pointing out we had pinned down the fact that there was effluent, that there was loss of fluid and the proposal to Johnson Motors to install a system to control various materials and collect the hydraulic fluids either as a liquid or in floor absorbent material.

As I told you yesterday, I don't remember and I don't know what happened to that whole project with EnviroChem, whether it was ever installed. There is no question that there was fluid to pick up.

Q My question is whether you recall anyone soliciting the views or expertise of Dr. Richard in connection with that particular situation referred to in the memorandum or with regard to Johnson Motors generally?

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

Q With regard to engineering work to be performed by EnviroChem, would that be something that Dr. Richard normally would devote himself to?

A No.

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Q At your meeting with Mr. Nevill in late 1971 or early 1972, it took place at a time when Johnson Motors was using A-200B, did it not?

A Correct.

Q Do I understand you to say that you talked with Mr. Nevill about containing PCB leakage from the plant?

A I discussed the fact that the data showed there were PCBs getting out of the plant.

Q Was that data that you were referring to data that had been collected after the company began using A-200B?

A No, it was used based on data that Pogue generated.

Q This was prior to that when Johnson was using A-200, is that right?

A Right.

Q As far as you know, did Monsanto have any data regarding PCBs escaping from Johnson's plant when Johnson was using A-200B?

A Not to my knowledge. I don't know that any tests were done.

Q Did you ever discuss with anyone at Johnson Motors the question of escape of PCBs from the plant while Johnson was using A-200B?

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MR. SCHINK: You are talking about other than the discussion with Mr. Nevill which he has already testified to?

MR. POPE: Yes.

BY THE WITNESS:

A The only thing that I am aware of from the documentation is the fact that Gossage then went up to Johnson Motors and I didn't talk to them and I don't know the timing of that.

BY MR. POPE:

Q Do you know whether Johnson Motors topped off its machines with A-200B, machines that had previously contained at that time A-200?

A They did not drain and fill.

Q How do you know that?

A I don't know of anybody who drained and filled. I would just make the assumption they topped off.

Q That was the recommendation the salesmen were making to the customers?

A It was compatible.

Q As of the time that Johnson Motors was using A-200B, to your knowledge, did they have any reason to believe there were PCBs continuing to escape from the plant?

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MR. SCHINK: Do you want him to go over the conversation he had with Nevill again?

MR. POPE: No, I don't, Mr. Schink. I have a very clear question. I don't need help from you.

The witness understands the question.

MR. SCHINK: Do you understand the question now, Mr. Johnson?

THE WITNESS: Yes.

BY THE WITNESS:

A I firmly believed once we defined we had PCBs in the PCT fluid that that was communicated to the customers.

BY MR. POPE:

Q How much before, that same question?

A We didn't know.

Q I understand that. I am talking about what Johnson knew. Prior to the time that someone from Monsanto came to them and said the new product, A-200B, we have determined does contain PCBs. Before that?

A They knew there were PCBs in their fluid.

Q Right, in the effluent?

MR. SCHINK: The effluent? It is a different question then. I don't want him to go back over the testimony he gave with regard to Stenberg.

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BY MR. POPE:

Q Mr. Johnson, if it will help you, I will rephrase the question.

During the period of time that Johnson Motors was using A-200B terphenyl, prior to that time, somebody from Monsanto came to them and told them that that fluid may contain PCBs.

During that period of time, do you have any reason to believe that Johnson knew that there were PCBs escaping from their plant?

A They knew there were PCBs escaping from their plant based on the A-200 that had been in the plant.

Q And that was information that your people had provided to them after Pogue took --

A Right, right.

Q -- the samples?

A Right, right.

Q And is it your testimony that change of fluid with A-200B did not affect that in any way, that is, the PCBs discharged or the escape of PCBs from the plant?

A In time it would reduce it because PCT was a bigger component of the new fluid.

Q And that was known certainly by Monsanto as to what its customers would do if they topped off with the

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new fluid, is that right?

A Right.

Q When was it first discovered to your knowledge that A-200B contained PCBs?

A I can only remember the incident; I don't remember the timing.

Q Give us the incident.

A The incident was when Bill Richard walked into my office and started swearing, okay? And he essentially said that all of our work had gone down the drain because we had minute quantities of biphenyl left in the terphenyl and therefore as we chlorinated the terphenyl, we would be chlorinating some of the biphenyls and we did not see the possibility of getting 100 percent of biphenyl out of the terphenyl.

Q Was this at a point in time after the A-200B was already on the market?

A Yes.

Q To your knowledge, how was that discovered?

A I don't know.

Q How long after that meeting was it before customers such as Johnson Motors were advised of that fact?

A Almost instantaneous.

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Q To your knowledge, was that communicated by Mr. Gossage to Johnson Motors?

A No, I don't know. I don't know and I don't remember.

Q I take it it was Marketing's problem?

A You betcha.

Q By this time were you out of the responsibility for Field Sales?

A No.

Q What role did Mr. Gossage hold at the time that this occurred?

A Director of Marketing.

Q Did that make him your boss?

A Yes.

Q Was a decision made to have someone other than the normal salesman call on at least some good customers about this bad news?

A I don't remember.

MR. SCHINK: I object to the form of the question.

MR. POPE: I will strike it.

BY MR. POPE:

Q Was this viewed by people in Marketing as bad news to Johnson?

A No. As a group, if you felt you wanted to take

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on a mission, you can take on the mission and it was at that time he decided he wanted to go to Johnson Motors and I was involved in MICC.

Q My question was whether the discovery that A-200B contained PCBs, was that bad news?

A Certainly it was.

Q As a matter of fact, by that stage Monsanto had told its customers that A-200B did not contain PCBs, hadn't it?

A Yes. There was also a letter that had gone out stating that.

Q And the salesmen had been encouraged to pass that information on to customers in order to ease the transition from other products to A-200B, is that right?

A Correct.

Q Mr. Gossage decided to go himself to Johnson Motors, is that what you said?

A Yes.

Q Did you discuss with him that decision or the overall --

A No.

Q -- marketing approach to this --

A No.

Q -- change?

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A At that point, Larry Bradford was in charge of the Industrial Fluids area. I had no longer had that responsibility.

Q What were your duties?

A I was in Field Sales.

Q How would this decision not affect Field Sales?

A Oh, it would. It would, but Larry Bradford was now the Product Manager which I previously had responsibility for and now I had responsibility for the Paper Chemicals people as well as the Fluids people.

Q As Dr. Richard came to your office, told you about this discovery, was there a general meeting of people at the higher levels of the marketing area of Functional Fluids to discuss what to do next?

A Yes.

Q Can you remember basically the people principally who were in attendance?

A I don't know that I was in that meeting, but logically Mr. Bergen would have been there and Mr. Gossage and Bill Richard. Our Manufacturing man, and maybe some of the people from the Medical Department would have, I don't know.

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Q I take it the decisions facing the company at that stage related to how to advise its customers of this fact and how to develop a substitute fluid once again, is that correct?

A Correct.

Q I presume we are talking about what took place sometime during the seven months that Johnson Motors was using A-200B. Is that a fair assumption?

MR. SCHINK: Wait a minute. I object to the form of that question. The witness corrected his testimony based on review of documents and indicated that Johnson Motors had purchased A-200B for a period longer than seven months.

THE WITNESS: Correct.

BY MR. POPE:

Q Is that correct?

A Yes.

Q Although we don't have the numbers on the report for 1971, you concluded on the basis of the report for 1972 where it says prior year's sales --

A Yes.

Q -- that there were more sales than are shown on that sheet, is that right?

A Correct.

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Q In other words, your answer to me is that doesn't really help you pin this into a point of time, is that correct?

A No.

(Brief recess had.)

BY MR. POPE:

Q Mr. Johnson, let me show you a document we have marked as Papageorge Exhibit 54 for identification, being a letter dated January 31, 1972.

Is that the letter you referred to a few moments ago that went out to customers regarding the anticipated change of A-200B to another non-chlorinated fluid?

A Yes.

Q With that as a point in reference on timing, can you estimate for me when you learned from Dr. Richard that there was a problem with the A-200B in connection with amounts of PCBs in there?

A I really have no recollection of the timing on the meeting. I can never forget because Dr. Richard --

MR. SCHINK: The question is the time. Do you remember when it happened?

BY MR. POPE:

Q Why can you never forget?

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A Because Dr. Richard is not one to swear until that meeting.

Q You testified a few moments ago that it was decided to advise customers as soon as possible after that discovery was made. I may have one thing in mind of as soon as possible that may be different from yours.

Would it be safe to say we are talking about approximately a two to three-month period prior to the January 31, 1972 letter?

A I just don't know.

Q When these meetings were held regarding what to do about this problem of A-200B, had the situation changed any from what you described for us yesterday and regarding the availability of alternative products?

A There was no alternative to go to coal tar acids and in research there was thought about the creation of a new phosphate ester based on different chemistry and the problems of raw material availability in processing and making minute quantities of those products and testing them to see if they would perform as lubricants. But there was no way to go to coal tar acids.

Q Was the process you are describing a form of a synthetic replacement for the coal tar acids that were no longer available in any kind of supply?

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A No. It was different chemistry, based on different raw materials.

Q Is the process you are describing what ultimately came to be the manufacturing process for 50E?

A Correct.

Q Am I correct this was a process that research on this process was ongoing long before any discovery was made about PCBs in A-200B?

A No.

Q Once it was discovered that there were PCBs in A-200B, the Research people then began to work to find a new solution or reformulation of A-200B, is that right?

A Correct.

Q And that Research ultimately produced the manufacturing process for 50E?

A Correct.

Q Do you know who came up with the solution to that problem?

A Dr. Herber.

Going back to the timing of when Dr. Richard would have related to me that PCBs were in the PCT-containing fluids and I don't know that date. I don't know if Monsanto was working on this for six months and I know that simultaneously with attempting to make the two esters

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which you needed two esters to do this, two separate esters, there was a question about could we even get the raw materials in the quantity we wanted because there was only one supplier in the United States for that material. And he was not presently extracting it.

So simultaneous with the research work, process work, was contacting that company to find out if they would be willing to extract what we needed from a stream as a base raw material for these esters and all of that went on simultaneous and it was a zoo.

Q And did all of that process that you just described go on prior to the time Monsanto advised its customers that A-200B contained PCBs?

A I don't believe so. I don't believe so.

Q Was it your recollection that customers were told of the presence of PCBs in A-200B before Monsanto was able to recommend replacement?

A Yes.

Q And that is based on your own personal discussion with customers?

A Yes.

Q Did that include Pydraul customers?

A Yes.

Q Do you know of your own personal information

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whether that was told to Johnson Motors prior to the time the replacement fluid was developed?

A Yes.

Q What is the basis of that?

A Mr. Gossage related some of that information to them because as we were developing it, we were going to find people to trial it, and obviously Johnson would be the logical people to get them to trial the ester.

Q Was there phosphate ester available for trial as of the time Mr. Gossage went to Johnson Motors?

A I don't know.

Q Is it your recollection at the time that Mr. Gossage went to Johnson Motors that Monsanto was pretty clear that phosphate esters were the area they were going to try as substitute for A-200B?

A I believe so.

Q Did Mr. Gossage talk with you about the background for the personalities of any of the people at Outboard Marine before he went to visit them?

A I don't doubt that that took place, but I don't remember the discussion.

Q Had Mr. Damiani already left the employ of Monsanto at this time?

A I would think so.

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Q Was there a period of time during which Monsanto suspected or later learned that Mr. Damiani, while still in the employ of Monsanto, was marketing his own company?

A No.

Q Was there a period of time when he was setting up his waste reclamation company, RADCO during the period of time he was still in the employ of Monsanto?

A I have no knowledge of that.

Q Did you ever hear any discussion of that subject matter?

A My assumption is when Mr. Damiani quit, he started his business and whether he had been working to acquire equipment prior to leaving Monsanto or acquiring a site or whatever, I had no knowledge of it and I don't believe that anybody in Monsanto knew of it.

Q Did he leave of his own accord at the end?

A Yes.

Q Did you ever have any dealings with him after --

A No.

Q -- after he left the employ of Monsanto?

A No.

Q Do you know whether after he left the employ of Monsanto, he called on Monsanto customers?

A I had heard he was doing reclamation for one of

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the steel companies in this area.

Q Was there as far as you knew, any restrictions in any kind of contract that your salesmen such as Mr. Damiani had with regard to calling on Monsanto's customers after he left the company?

A Nothing prevented him from doing it.

Q You haven't talked to him, have you, since he left the company?

A No.

Q With regard to Mr. Gossage's visit, you do not remember who accompanied him, do you?

A No, I don't. I'm sure the salesman was there.

Q Whoever the salesman was at that time. Was it Weyland, to the best of your recollection?

A Weyland, yes.

Q Is it your recollection that Mr. Gossage's visit was the first time somebody from Monsanto had advised OMC that there were PCBs in A-200?

A I doubt that. I would say that Johnson Motors probably was told before then.

Q What form would you expect they had been told?

A Communication by either Mr. Damiani, if he was still there, or then by Mr. Weyland.

Q Would it have been oral?

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A Yes, I would assume so.

Q That was going on throughout the company, namely, the salesmen were advised of the situation and encouraged to tell their customers?

A Yes.

Q How was that fact communicated to your salesmen?

A Either verbally talking to them or there were internal company communications that went out.

Q Do you recall, yourself?

A Again, that was not my responsibility to issue that kind of thing. This would have been coming from Larry Bradford and then Larry Bradford left our group and Cuming Paton took over and you're going back to the Jerry Davidson situation. And I don't know if Jerry sent anything out or not.

Q Were the salesmen selling Pydraul working for you?

A Yes, 30 of them.

Q At that time?

A Yes.

Q If there had been a written directive from whomever in the company advising the salesmen that contrary to past statements there was in fact PCB in A-200B and giving them some direction in how to deal with the

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problem, would that have crossed your desk, such a memorandum?

A Sure.

Q You have no recollection of anything in writing?

A No.

Q Would it have been consistent with Monsanto's general practice, assuming there was general practice for such a discovery and the means for communicating that discovery to the customers, for that to have been handled orally as opposed to in writing?

A Sometimes things went out by wire. Sometimes they went just in the chain of talking to the Regional Managers and having them advise all their salesmen on their next call or get on the telephone and communicate information to the appropriate parties at the accounts.

Q Who would have made the decision you are talking about in the period in late 1971 or early '72? Who would have made the decision as to how this particular question or communication should be handled with regard to A-200B?

A I would think at that time it might have come from Mr. Bergen's level or even above.

Q He would have made the decision of both what the customer should be told, what the salesmen should be

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told as to how to tell them and the means by which those two items would be conveyed to the salesmen, is that right?

A True.

Q What was your experience with regard to the reaction of customers to this announcement?

A Very disturbed.

Q In what sense?

A Well, a number of senses: One, the PCT fluid did not solve their problem; two, it meant if we couldn't use PCTs the whole Pydraul 312 series of products were dead, so economically they were facing a price increase from \$2 a gallon to about \$3.65 a gallon on phosphate ester and that is a substantial increase in cost.

Obviously they were going to have the problem of trialing the product again, so customers were still not accepting the fact that polychlorinated biphenyls or even in minute quantities were a problem to the environment. They had been receiving all the letters from us, the instructions to watch effluent, watch all discharges, to contain everything and yet there were people out there who don't necessarily believe what you tell them.

Now we come in and tell them we're going to discontinue those products and they say, "Oh, no, you

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can't discontinue those products."

And we said, "Well, they are just not going to be available and that's it."

So all you have is the alternative of either using a phosphate ester from one of your competitors, or where possible you might consider a water glycol fluid which is not a good solution for a great many of them, or you're going to go to 50E.

Q This was a phosphate ester?

A This was a phosphate ester, too.

Q Was it clear to Monsanto and made clear to the customers at this time this announcement was made to them that 50E was going to cost more than 312 or A-200B?

A Absolutely, yes.

Q Was that because of the inherent manufacturing process?

A Actually what we were doing was establishing a price that was competitive with what phosphate esters sold in the industry and at no time did we ever in the time that I was with Monsanto, ever even approach making it for that price. It was costing us four times the amount to make.

Q 50E?

A Yes.

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MR. POPE: Would you read back the answer?

(Answer read.)

BY MR. POPE:

Q Was that being treated as a loss leader of the company?

A The feeling was we would get our manufacturing costs under control and that eventually we would be able to produce these and be competitive and generate some kind of profit.

Q Were these facts that you just related with respect to the possibilities and with the customer, were they related or conveyed to the customer at the time you told them about their --

A Our cost?

Q No, the choices the customer had?

A Yes, including 50E.

Q It was going to cost whatever was relevant to the market, competitive with the market?

A Yes.

Q Right?

A Yes.

Q Did you ever learn in your years with Monsanto of any agreements that people at Monsanto made with Federal Government agencies regarding taking PCBs off the

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market?

A I was not aware of any, no.

Q Did you have any knowledge at the time you were with Monsanto with regard to the way the company handled the electrical and dielectric customers of its PCB-bearing fluids?

A Yes.

Q Was that within your area in terms of sales and marketing?

A Yes.

Q Can you tell me what discussions were had with those customers?

A Well, the basic problem facing both the transformer and capacitor manufacturers is that they basically had no alternatives. Monsanto's decision was to get out of the business and stop producing PCBs for the electrical industry and their obligation to take every step they could to contain the material up until that point.

And then came the issue, I guess initiated by General Electric and Westinghouse, that they had no alternative and they had to have the material and they initiated the hold harmless letter which in essence said Monsanto would supply and General Electric, Westinghouse and all the other capacitor and transformer manufacturers

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would hold Monsanto hold harmless in any action by the Federal Government.

Q That was what was used by General Electric and Westinghouse?

A All the dielectric customers.

Q They were required to sign such a letter?

A Before we would ship.

Q Beyond such a date, before you would ship?

A If they did not sign the letter, we did not ship.

Q I take it they signed?

A Eventually. Some shut down and then finally signed, yes.

Q Was there any discussions to your knowledge with the Department of Defense regarding that decision as it applied to electrical users?

A I am not aware of it, but I don't doubt that it took place because it was a serious decision.

Q Do you know if that decision and that procedure was communicated to the U.S. EPA or its predecessor?

A I don't know.

Q When Mr. Gossage returned from his visit to Outboard Marine in connection with the transfer of fluids from A-200B to replacement fluid, did he discuss with you

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what took place?

A I don't remember any discussion.

Q At any point in time, were you apprised of what took place in any form from any person?

A The only thing I can remember is that eventually we got Johnson Motors' cooperation to evaluate 50E.

Q And this was of benefit to the entire marketing of 50E to determine what problems they would encounter in the marketplace and in actual plants, right?

A Yes.

Q Have you described for me everything you can recall about all your contact with Johnson Motors until you left the company?

A The best of my knowledge, we have talked about all the meetings that I have had up there or had met with Johnson Motors people. We did not talk about the fact that they were down in St. Louis one time for fire testing where they evaluated the 312 series of products versus the A-200.

Q That was the decision that had already been made prior to your going up there the first time, is that right?

A Yes.

Q Do you remember who came to St. Louis?

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A John Nevill certainly came up, but I don't remember the other people.

Q Was this a relatively routine proposition for potential customers to come to St. Louis, determining or examining tests of various products?

A Yes.

Q Was the thrust of the test so far as you know to study the fire-resistant characteristics of 312 as opposed to what they were currently using at the time?

A Yes.

Q The decision was then made to stay with the other fluid on the basis or the expressed basis of fire-resistance capability?

A Right.

Q At your meeting with Mr. Nevill in Chicago, who else was present?

A Probably Bob Damiani, one of the salesmen. Salesmen are always present.

Q Was this on the floor of a convention or dinner or --

A We met at an exhibit and then went to dinner from there at the Italian Village.

Q That is the three of you so far as you remember?

A Nevill had his wife with him, John Nevill.

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Q I see. As best you recall, exactly what was said with regard to PCBs escaping from Johnson Motors?

A Johnson obviously knew PCBs were now getting out as we knew and the question was still unresolved in terms of what Johnson had decided to do relative to that plant, what position EnviroChem had relative to the installation of facilities, and then also the situation that we were faced with as far as the terphenyls not resolving the transition to a more environmentally acceptable fluid.

There were other communications after that that I recall in terms of phenolic content that may generate from a phosphate ester and problems of phenol content that related to, I believe, a problem Johnson had once before and whether this ester would contribute to that problem.

I know some work was done in St. Louis relative to those esters and their propensity to generate a phenol content on degradation.

Q That discussion that had been going on with Monsanto people and Outboard Marine people was still going on at the time you had your meeting with Mr. Nevill, is that right?

A No. I would think that was prior to the

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introduction of sample material to Johnson Motors. It was before the phosphate ester was supplied up there for a trial.

Q It arose out of Johnson's use of A-200B, is that right?

A No, it arose out of the fact that something else was being used in the plant.

Q Okay.

A That had caused this generation of phenols. Phosphate ester caused an acceleration of that problem.

Q The phenol problem that employees of Monsanto and employees of Johnson Motors talked about occurred during a period of time when Johnson was using the terphenyl, A-200B, is that right?

A True, good.

Q Did you learn about those discussions either prior to Monsanto going out to Johnson or after they went out there?

A It came back as information into St. Louis and I assume by way of a salesman as a concern on the part of Johnson Motors, if they had to go to a phosphate ester from the chlorinated terphenyl.

Q Let us make sure we are talking about the same thing.

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A Okay.

Q Is it your understanding that either through an inquiry from the State of Illinois or some other source, Johnson was asking Monsanto if the fluid that was being used at that time would produce a phenolic effect?

A No.

Q Would you tell me your understanding of what was going on and those discussions?

A Some other material, not hydraulic fluid, but used in the plant was causing the generation of some free phenol, phenolic compounds.

Where they came from, I don't know, whether it was die lubricant or whatever that was used in the plant, I don't know, but everyone knows that phosphate esters can on degradation free up phenols, so you have that situation where Johnson Motors is saying, we really don't want to go to a phosphate ester because that might contribute and create more of a problem on generation of phenol.'

Q Had that phenolic problem been resolved prior to the time that Monsanto began talking about the phosphate ester substitute?

A Was it resolved as far as Johnson Motors was

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concerned with the State of Illinois?

Q Yes, sir.

A Yes.

Q And then I understand what you are saying is Mr. Nevill's concern was, are we going to erase this problem which we thought had been solved, is that right?

A Right, right.

Q What was your response?

A Apparently the work was done in Research on degradation of products and it was not going to contribute to degradation of phenol and that was presented to Johnson Motors.

Q Other than the two meetings that you had at Waukegan and this meeting with Mr. Nevill, did you ever have any other telephone conversations or meetings with anybody else at Outboard Marine Company during the period of time you were employed by Monsanto?

A To my knowledge, no.

MR. POPE: Miss Reporter, if you would mark this document as Exhibit 24 for identification, being a copy of a one-page memorandum dated July 6, 1972 from Mr. Davidson to Mr. Savage.

(Johnson-OMC Deposition Exhibit
No. 24 marked for identification,
2/17/82, TLU.)

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BY MR. POPE:

Q Mr. Johnson, I am going to tender you Deposition Exhibit No. 24 for identification and ask you to take a look at it and tell me if you received a copy of this memorandum on or shortly after July 6, 1972.

I will advise you that that document has been excised by Kirkland & Ellis.

Obviously my question is whether you received the unexcised version in 1972.

A I would suspect I received a copy.

Q Do you remember the incident being referred to there?

A No, I don't.

Q Do you ever remember any incident in a General Motors plant regarding PCB contamination of the new Pydraul fluids?

A I don't remember it, no.

Q Were you ever aware of any Monsanto customers of PCB fluids which Monsanto decided to cut off from supply because of the way the customer was using the fluid?

A You say PCB fluids?

Q Right.

A You are saying Pydraul or just PCB fluids?

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Q PCB fluids.

A Yes.

Q Can you tell me what you recall from that incident, what facts were known to Monsanto?

A It involved the Therminol going into a heat transfer system that was being used to process fish meal, fish protein, and somehow, and I don't remember the sequence, Monsanto learned that there was contamination of fish meal with PCBs and later traced down that the company was in Wilmington, North Carolina and was a total converter working for the Peruvian Government, and found out he was using the fluid and had a leak in what was called a Helo light unit and apparently didn't care that he was contaminating the fish meal, because we asked him to shut down and he refused to shut down and said he would continue to run so long as he had fluid.

And we wanted the fluid back and wanted him to shut down and he said he owned it and that was the end of it. And eventually he ran out of the fluid and shut down and never got any more from us.

Q Do you remember what time frame?

A Oh, no, somewhere in the '70s, '69, '70, somewhere in there.

Q Was the information with the use of this fluid

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conveyed back to the company by the salesman?

A Which information?

Q As to how the customer was using or misusing the fluid?

A Somebody got on the telephone, and I don't remember who, and I do remember the Legal Department was involved and God himself and they were trying to trace down how to get this guy to shut down and the Peruvian Government being involved and some operator up in Connecticut who was representing the Peruvian Government and every way we tried, we could not get him to shut down.

Q Is that the only time Monsanto took an action such as cutting off a customer under those circumstances, to your knowledge, involving PCB fluids?

A I know we had a question with Reliance Electric on shutting them down which goes back to the 1254 issue. Obviously there were some problems relative to some of the other Therminol customers, but I don't remember the details.

Q Did Reliance Electric sign an indemnity agreement, to your knowledge?

A I don't remember the status on that one.

Q Was there a period of time when they did not

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wish to?

A Probably.

Q At any period of time when you were employed by Monsanto up to the end, did you come upon any information that would indicate that PCBs are a hazard to human health?

A In terms of the kind of information we label?

Q No, just come upon any information, oral or in writing.

MR. SCHINK: Are you talking now about environmental exposure or the industrial exposure?

BY MR. POPE:

Q I agree as you said yesterday, it is not a cup of coffee. We are talking about any kind of long term adverse effect on human life.

A There was also the question of chloracne in long term exposure and the label indicated if you put your hands in it, to go wash them; if you get it on your clothes, don't put your clothes back on, wash them.

It would defatten the skin, just as household detergents will defatten the skin, but it will cause irritation and you must wash with soap and water.

Q How about any adverse human health effects beyond that such as from long term permitting PCBs to be

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in the air, the water?

A No.

Q You never came across any?

A Well, the incident as far as Japan which referred to PCBs and from what I read recently, may not have been caused by PCBs.

Q So far as you can recall now, the Japanese incident would be the only information that you learned of during your employ at Monsanto of adverse human health effects from PCBs beyond the traditional toxic effects that have been known for a long time?

A Well, I will go one step further. You raised the question of being in fish, being in chickens, the effect on eggs and this fitting into the food chain, but I never saw any evidence that supports what the media says that this is a carcinogen, that it is a highly toxic material because it is not. And it is extremely unfortunate that the Government has permitted the media and some of the environmentalist groups to make such a big issue about this thing without any evidence.

MR. SCHINK: The question is what else do you know, what did you see about human health effects while you were at Monsanto.

BY THE WITNESS:

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A Nothing.

BY MR. POPE:

Q When you were in the employ of Monsanto and studies such as the bird studies or the egg studies came along, was that actual information conveyed directly to customers?

A I don't remember the mechanics. I am aware that information as supplied was in turn supplied out to the customers. That data was interpreted by our people to confirm the validity of it and our salesmen were advised of it and encouraged to discuss those things, if it were brought up or if it were meaningful to the customers.

Q Through what medium were your salesmen advised of such developments and encouraged to discuss?

A Through the sales meetings.

Q Pardon?

A Through the sales meetings in '70.

Q We talked yesterday, I believe, about the meeting in early 1970, the sales meeting. What about the second one that took place in 1970? This was an unusual event, I take it? You usually had only one annual meeting, is that correct?

A Correct.

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Q What was the subject matter of the second sales meeting in 1970?

A The move to the terphenyl.

Q Do you know who was present or who addressed the salesmen other than yourself and other people in the marketing area?

A I know that Bill Richard was there, Lou Stark, Bill Papageorge was on the scene at the time. He would have been there; very possible Jack Garrett, Elmer Wheeler. I don't remember Kelly ever having been at the meeting.

Q During 1970 were your salesmen made familiar enough with PCBs to explain to customers what those substances were and what the claims were that were being made that they were being found in the environment?

A The salesmen certainly knew the chemistry of the chlorinated biphenyl. They understood what percent chlorine referred to and how these were on the benzene rings and the same point relative to the terphenyl.

Q Were they made knowledgeable about the non-degradation of PCBs in the environment?

A Yes.

Q When did that take place?

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A Certainly it started to take place once 1254 and 1260 were of concern.

Q By the second sales meeting in 1970, was Monsanto aware that the lower chlorinated Aroclors had been discovered in the environment: 1242, 1248, the lower?

A I would feel the recognition was there sometime during that period if there was a portion of higher chlorinated in the product like the 1242 and when you are dealing with parts per million and parts per billion, that is going to be present in a 1242 and 1260 or a 1254.

Q During the years that your people were selling Pydraul A-200, what were the salesmen told as to how they should refer to the substance?

A Chlorinated hydrocarbon.

Q Did that ever appear in writing?

A It appeared on the label.

Q The term chlorinated hydrocarbon?

A Yes.

Q Was that as long as you were with the company?

A Yes, appeared on all price sheets, too.

Q Did the label also refer to A-200 as chlorinated biphenyl?

A I don't believe so.

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Q Do you know if labels were to be attached to tank car shipments that a customer like Johnson Motors would receive?

A The best of my knowledge, there wouldn't be a label but it would probably have to appear on the bill of lading in terms of clearing the transport for shipment of a chlorinated hydrocarbon.

Q The term would appear on the bill of lading?

A I don't know. I would almost think so based on the classification of chemical that you are shipping, the carrier has to know what he is carrying, the trucker has to know.

The trucker also must know that he has to put flammable or inflammable warnings on his tank truck, kinds of cautionary information he has to have in transporting in case something occurs with it.

Q So far as you know, in shipments of A-200 by tanker, there were no special labels set on the side of the tank, were there?

A The best of my knowledge, none.

Q And the bill of lading would have been the only document that would act in lieu of a label on a drum, would it not?

A It would advise the carrier what he's got.

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Q During the period of time that you were at Monsanto, was the label for A-200 changed?

A It may have been changed in color, may have been changed in layout, but it would never be changed in terms of its information.

Q Why is that?

A Because that is controlled by the label people, the Label Committee.

Q Of Monsanto?

A Right, and they've got to comply with the Government regulations in terms of what is on that label.

Q Let me show you a document that we have previously had marked as Papageorge Exhibit 58 for identification. Would you look that over and tell me if you received a copy of that on or shortly after the date it bears?

A Yes.

Q What was the purpose of that memorandum?

A PCB control.

Q Was the term "close the loop" a term that was used within Monsanto?

A It became an expression, yes.

Q What did it have to do with it, what does the expression mean?

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A Essentially, totally recycling PCBs.

Q What do you mean by recycling?

A In other words, if there is a leak, the material is collected and reclaimed and put back into the system so there is no discharge.

Q Did you meet with the people that are listed on that memorandum to discuss this proposal?

A I would expect so, yes.

Q Do you remember meeting with them to discuss this?

A I don't remember the document which you are referring to, but I do remember various discussions in terms of the expression closing the loop and could we do it and that generated some of the work that Pogue did where he wanted to go out and confirm for himself, was this installation, were they operating in such a manner that fluid was not getting in.

Q With respect to the three-page memorandum attached to that exhibit, were those suggestions or recommendations ever circulated to your customers, either in this form or substantially the same form?

A I don't remember that being circulated to customers. I remember the discussions going on at the sales meetings relative to the whole concept of could

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we close the loop.

Q What was the conclusion?

A The conclusion at that point was that if we were not able to close the loop, obviously we had to be out of the PCBs.

Q Do I take it from that a determination was made that you could not close the loop and you are taking the alternative step of getting out of the PCB business?

A Right.

Q Were the suggestions or proposals on this three-page memorandum conveyed in writing to salesmen?

A Probably were. I just don't remember.

MR. POPE: We may be finished. I would like to look my notes over. It makes sense that we let Ms. Stein proceed. I think I am finished.

(Brief recess had.)

CROSS EXAMINATION

BY MS. STEIN:

Q Mr. Johnson, do you have any plans to move in the next year?

A Boy, I'd sure love to, 50 miles away.

Q You would have to get out of the State of Illinois.

A That's about 50 miles across the border into

Wisconsin.

No, I do not.

Q Have you ever had your deposition taken before with respect to polychlorinated biphenyls?

MR. SCHINK: Have you sat down with a court reporter? This is a deposition.

BY THE WITNESS:

A No.

BY MS. STEIN:

Q Since the time that you left Monsanto have you had any contacts with anyone from Outboard Marine Corporation?

A Yes.

Q Has there been more than one contact?

A Two.

Q Would you please describe for me when those contacts were and with whom?

A I sent a letter to Johnson Motors, I don't remember the year, but it was after they found themselves in trouble and I met with Hugh Thomas. We had dinner and then I would say a year or year and a half later, I met with him again and Mike and there was a girl present.

MR. POPE: The brains of the operation.

MS. STEIN: Does that mean Roseann?

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MR. POPE: It certainly does.

BY MS. STEIN:

Q Do you recall where you were working at the time that you wrote a letter to Johnson Motors?

A Maybe at Allied Tube.

Q Do you recall the reason for writing the letter?

A I always had high regard for the people at Johnson Motors and I felt that they were having problems and maybe needed some information or some background that I would be able to offer to help them.

Q Was this letter written on your own or had someone asked you to write the letter?

A I wrote it on my own.

Q How did you happen to hear that Johnson Motors was having trouble?

A The newspaper.

Q What did you write to them?

A Related that I had been involved with fluid sales to them and had met with people at Johnson Motors on occasion in the period of somewhere in '67 through '73.

Q Was it basically an offer of assistance?

A An offer to meet with them and talk about what I knew of their use of fluids, the changes in fluids.

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t5 Q And this related to problems you heard about in the newspaper regarding Johnson Motors having problems with PCBs?

A I believe the Government was on their back at this point.

Q About PCBs?

A PCBs.

Q Did you keep a copy of that letter?

A I found a copy and I thought I gave it to Jim. I don't know if I have a copy now. I would have to go look.

MS. STEIN: Jim, do you have a copy of it?

MR. SCHINK: I don't know.

MS. STEIN: In response --

THE WITNESS: I will check.

MR. SCHINK: You don't have to do anything at this point. The Court has ruled absent from some instruction from the Court, there is to be no more document production. That is in fact already in a motion.

MS. STEIN: I am asking you if you have a copy of the letter that Mr. Johnson referred to.

MR. SCHINK: Why don't you go on with the Johnson deposition.

BY MS. STEIN:

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Q You gave a copy of the letter to Kirkland & Ellis?

A Yes. Let me say this: I believe I gave them a copy because I went to look for it and I seem to remember that I found one and I made a copy of it.

Q With respect to the first meeting with Mr. Thomas, can you recall when that was?

A No, I don't.

Q Do you know where you were working at the time?

A I think it initiated when I was working with Allied Tube, so it's got to be back in the period '75, '76.

Q Tell me, please, what you discussed at that first meeting with Mr. Thomas.

A Reviewed their use of fluids in terms of Pydraul A-200, the transition of Pydraul from A-200 to Pydraul A-200B and eventually the transition to Pydraul 50E.

Q Did you specifically discuss whether or not PCBs were in OMC's effluent?

MR. SCHINK: When?

BY MS. STEIN:

Q Did you discuss at that meeting whether or not there were PCBs or evidence of PCBs in OMC's effluent?

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A I don't remember a discussion relating back to the things we have discussed here and the Pogue report, the data, but at that point obviously there was PCB in the effluent because that is what the newspapers said.

Q Well, did Mr. Thomas acknowledge that there were PCBs in their effluent at the time he met with you?

A I would say he acknowledge he had a problem based on what the newspapers had reported that there were PCBs in the effluent.

Q How long were you together?

A We had dinner, hour and a half.

Q Did you discuss volumes of fluid that had been purchased by Outboard Marine from Monsanto?

A No.

Q Did you discuss the timing of the transition from one product to another?

A Tried to reconstruct the transition in terms of time.

Q What do you recall of your understanding of the timing of that transition at the time of that meeting with Mr. Thomas?

MR. SCHINK: You are asking what does he recall that he told Thomas at that meeting?

THE WITNESS: That's tough.

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BY MS. STEIN:

Q If you don't recall, you can't tell me, but whatever you remember of your understanding of the timing of the transition as it was discussed at that meeting with Mr. Thomas.

A Obviously what we discussed at that time could not be as precise in terms of dates and timing as it has been here because the data is here to look at. So all I could relate is that we were talking about that period of 1970, 1971 and into 1972, but as far as specific months or whatever, that would have been by guess or by God.

Q Do you recall any discussions of any people from Monsanto who might have been involved in the transition?

A Probably only Bob Damiani, I'm sure would have come up because he was the salesman there for most of that problem.

Q Now, you said you had a subsequent meeting with Mr. Thomas at which Mr. Pope and Ms. Oliver were present. Can you tell me what you recall of that meeting?

A Basically a review of the same kind of data.

Q When was that meeting, do you know?

A Probably a year and a half later, '76, maybe

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'77, '78; somewhere in there.

Q So you discussed OMC's use of fluids and the transition from A-200A to A-200B and then after that to 50E?

A Correct.

Q And again you tried to pin down the timing of the transition?

A Yes.

Q Was there a discussion at that meeting about PCBs in Outboard Marine's effluent?

A I don't remember ever talking about the Pogue report.

Q I am not talking about the Pogue report specifically; your understanding of whether or not there were PCBs in Outboard Marine's effluent at any time.

A I don't remember a discussion specifically about PCBs in effluent, no. PCBs in the Harbor at Waukegan, yes.

Q Was there any conversation about how it might have gotten there?

A Obviously that was under discussion.

Q One of the theories was that it had come from Outboard Marine's plant in Waukegan?

A Correct.

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Q Had that been discussed with Mr. Thomas also at the first meeting you had with him?

A Most likely.

Q I believe in the period late 1969 to 1971 when you were talking about Pogue working on reclamation, you said originally that was not the intent to have him work full time on reclamation.

Was there something else he was supposed to be doing or people intended he was going to do?

A Working potentially on other fluid applications.

Q You mean developing new uses for the existing fluids?

A No, I am talking about new chemistry, looking for different markets.

Q Developing wholly new products?

A Yes.

Q Developing wholly new industrial fluids?

A Yes, for tractor transmissions.

Q Do you recall whether or not those new applications would have involved products with PCBs in them?

A They were not.

Q Yesterday in response to a question from Mr. Pope, you were talking about procedures that were developed to communicate information relating to PCBs

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and you said these were procedures that I believe was the Product Group, is that correct, developed on its own in consultation with the Legal Department?

A Yes, for communication out to the customers.

Q Can you tell me specifically what those procedures were?

A Yes. We in a desire to reach all potential customers who had purchased PCBs, had access to sales analyses for the current year and the two previous years and it was agreed with the Legal Department that if we could reach those customers by ship-to location and discussion at that point was do we send it to the president, do we send it to the director of purchasing, who do we mail it to?

It was finally resolved we send it to the president even if it didn't exist as to a ship-to location and we brought in two girls from the outside who did nothing but tie the customer number which was referred to earlier today to an address and the girls typed up envelopes. Later as we did mailings, they typed labels which we put on these envelopes and as time went on, I believe we started to send them out registered mail.

Q Do you recall the time frame we are talking about here now?

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A Every one of the letters that we have seen here that went out to a Pydraul F-9 customer or Pydraul 625 customer followed that criteria, so as those letters went, whenever they were generated, in 1970, 1971, they went under that criteria.

Q You are referring now to the February 9, 1970 letter?

A Of Don Olson?

Q Yes.

A Correct.

Q And the subsequent letters that you wrote?

A After, yes.

Q After that?

A Yes.

Q Do you recall when the transition was from just sending letters regular mail to sending them by registered mail?

A No, I don't remember the timing, but I do remember we did that. We were getting some letters coming back because the Post Office would say address unknown and what have you and then we would try to track down another address and ultimately that was certainly an indication that a letter didn't get to where it ought to go. And we tried to track down whether the

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company was out of business or had moved or whether we had an incorrect address and to resend it.

Somewhere in 1970, latter 1970 or '71, we decided to send them registered mail and all the blue cards came back signed by the recipient and those were turned over to the Legal Department.

Q Do you recall how long before Monsanto sent out Don Olson's February 9, 1970 letter these procedures were instituted? How much lead time was involved?

A Ask your question again, please.

Q Prior to February 9, 1970, which is the date of Don Olson's letter --

A Right.

Q -- how long did it take for Monsanto to set up these procedures?

A Two weeks.

Q So you had these two people come in from the outside?

A Right.

Q About two weeks before that letter?

A Two, three weeks. They came in and we started generating the letters, in preparation for the letter. We knew the letter was going to go. The letter didn't mean anything if we couldn't get it to the customers.

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Q Do you recall whether or not any letters came back from Johnson Motors as undeliverable?

A I am not aware of any of those, no.

Q Would they have come back to your office?

A They would have come back to the girls I was supervising who were doing that job, yes.

Q Yesterday I believe you said it was your understanding that the functional fluids were used in closed systems.

A Yes.

Q Isn't that correct?

A Yes.

Q But you had been a salesman for a number of years and you had called on several die casting customers, hadn't you?

A Yes.

Q In your experience as a salesman, had it ever come to your attention that there was leakage out of the die casting machines?

A Yes.

Q Do you recall when you first learned that die casting machines leaked hydraulic fluids?

A The first plant I was ever in was down at the General Motors Plant in Bedford and there they had the

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interceptor pits and they had the troughs in which fluid was going and those were going out into those ponds and eventually we did reclaim fluid from those ponds and recycled it back into the machines. Frequently customers caused to put trays and contain whatever they could under the machines when there was a leak until the Maintenance Department could get over and correct the fitting that was leaking.

Q Did you have any training when you first came to Monsanto in 1959?

A In fluids?

Q Yes.

A About two days.

Q And did your training involve any kind of familiarization with some of the kinds of customer operations?

A Yes.

Q To which you would be selling?

A Yes.

Q Did that include any familiarization with die casting?

A Yes.

Q Do you recall whether or not you were told at that training whether or not the die casting systems

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leaked hydraulic fluids?

A Yes.

Q Were you told that?

A Yes.

Q And that training was given by Monsanto personnel, isn't that correct?

A Yes.

Q Yesterday I believe you said the sales of Aroclor 1254 and 1260 in and of themselves was relatively small, is that a correct characterization?

A Yes.

Q What were the uses for 1254 and 1260, the smaller uses?

A I don't remember a use for 1260.

Q Was it a highly viscous fluid?

A 1260 is almost a solid.

Q And 1254?

A That was used in Therminol 3, was used by Reliance Electric in its motor application, and other than that, I don't remember. For 1254, very small.

Q I believe you testified yesterday that there was a management group that was set up to discuss PCBs and although you were not a member of that management group, I guess committee, you sometimes got verbal reports,

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is that correct?

A Correct.

Q Can you tell me what you remember having reported by any of the members of this management group?

A My boss was also a member of that group.

Q Was that Don Olson at that time?

A Don Olson and that was not, I wouldn't classify it as a PCB group. I would classify it as a business group and they would meet to typically on a Monday morning, once a week, reviewing all kinds of information that came in plus reviewing sales and production, re-search activities and certainly as the PCBs became a problem, it became, I would say, a good portion of the conversation and the meetings reflected the PCB problem.

Q Mr. Bergen was a member of this group, is that correct?

A He was the Business Director.

Q Dr. Richard was also a member?

A Yes.

Q And they gave you direction as to the timing of the transition?

A Yes.

Q From one fluid to the next?

A Yes.

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Q Did they also give you direction as to the marketing approach that was to be taken?

A Yes.

Q Including the kinds of information and the timing of information that would go to customers?

A Yes.

Q I believe you testified yesterday that Monsanto had some contact with people at Lester in Cleveland, is that correct, manufacturers of die casting --

A Machines.

Q -- machines?

A Yes.

Q Do you recall the names of any people with whom you had any dealings at Lester?

A No.

Q Who would have been most involved in the contact with Lester?

A Dave Hall or Dale Smith.

Q Did they ever report to you on their --

A Would have, yes.

Q Was it Monsanto policy to discuss with customers the question of the compatibility of various components of die casting machines with hydraulic fluids?

A Yes.

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Q Was that done on a regular basis with the customers?

A Yes.

Q Do you know whether or not Monsanto sales personnel ever inspected customer operations to see whether or not those recommendations were being followed?

A Customers didn't necessarily let you in their plant.

Q Do you know whether or not Johnson Motors let sales people come in?

A Yes.

Q The sales people had access to the die casting floor?

A Yes.

Q They could see the Johnson Motors die cast operation?

A Yes.

Q Did you ever get any reports from the salesmen who went to Johnson Motors about compatibility or compatibility problems with respect to the fluid and any of the components of the machines?

A There was always a question in terms of packing materials, hoses and what material of construction you used that would be best in retaining fluid and retaining

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leaks and that was always an ongoing discussion with some people preferring to use a Vyton rubber or a Bunn rubber or a neoprene rubber and what kind of construction of hoses.

We had certain recommendations in terms of our efforts to look at component suppliers and say, the ABC Company makes a good hose. If you are not satisfied with the one you are using, we would suggest you try this hose.

Those are the kinds of things we would be talking about with the Die Cast Superintendent or the Maintenance Superintendent in a manner such that they would get better performance out of their fluid, less chance of leakage, less chance of blowing hoses. You are dealing with very high pressure.

Q Do you know whether or not Johnson Motors packings, hoses or O-rings or seals or gaskets were those that Monsanto felt were compatible with the fluids that were used?

A Best of my knowledge, they did an outstanding job.

Q And they were compatible?

A Yes.

Q So there was not a problem of degradation of

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hoses from --

A From fluid?

Q -- from fluid?

A No.

Q Seals were tight, is that your understanding?

A The problem of a piece of equipment like a die casting machine is that it moves.

MR. SCHINK: The question was did they use seals you felt were okay.

BY THE WITNESS:

A Yes.

BY MS. STEIN:

Q Do you recall the number of customers from whom Monsanto took effluent analyses for PCBs in the period from 1969 to 1971?

A No, I don't.

Q Do you know if it was more than five?

A Could have been.

Q Who would have been in charge of that?

A Pogue.

Q He reported to you?

A Yes.

Q Do you remember that he came to you with reports --

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A Yes.

Q -- and samples?

MR. SCHINK: Let her finish the question.

BY MS. STEIN:

Q Was he finding PCBs with some regularity from effluent from customers from whom they had taken samples?

A Yes.

MR. SCHINK: I object to the form of the question. You've answered.

BY MS. STEIN:

Q Were you ever shown the laboratory results that were performed on these samples from customer plants?

A Yes.

Q Can you describe to me, was there a specific procedure for assuring that those effluent analyses were communicated to the affected customer?

MR. SCHINK: Customer?

MS. STEIN: Yes.

BY THE WITNESS:

A I can only say that when a customer was co-operative in permitting us to take samples, it was our obligation to supply the information we derived back to him. Therefore, once the analyses were run by Scott Tucker and communicated back to Pogue, Pogue would either

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have taken that out calling with the salesman or would have transmitted the information to the salesman for communication to the customer.

BY MS. STEIN:

Q Was that a standard procedure?

A Yes.

MS. STEIN: I have no further questions.

REDIRECT EXAMINATION

BY MR. POPE:

Q Mr. Johnson, I have one or two questions.

The use that Johnson was making of fluid during the period of time you were at Monsanto and directly or indirectly in charge of sales to Johnson, were they increasing their sales year to year?

A They were buying more.

Q Did you always assume that the purchase of new machines was the basic source for sales of Pydraul to Johnson Motors?

A Recognize their losses in a plant that goes to Oil-Dri, whether it is deposited on aluminum which is reprocessed and burnt and there is a requirement for makeup fluid.

Going back to the discussion with Stenberg was the opinion that any effluent from that plant was

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going to the Metropolitan Sewer District. That later proved not to be true.

Q There has been some suggestion in this case that people at Johnson Motors during this period of time were very sloppy in their handling of Pydraul. Do you share that impression based on your experience?

MR. SCHINK: I object to the question in that I don't think it properly characterizes the testimony in the case. In fact, I think the testimony in this case is just the opposite, that they were very careful.

There has been uniform testimony of all your witnesses.

BY THE WITNESS:

A As I said earlier to the question she raised, we were constantly looking for O-rings, packings and hoses and Johnson was very cooperative in evaluating materials that we found an improvement over what had been used in the past and basically Johnson was running a very quality die cast department.

BY MR. POPE:

Q That was based on your experience with other die casters around the country, is that correct?

A Correct.

Q Was Johnson fluid purchase abnormally high

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compared to other die casting customers?

A Not in terms of size.

Q On the question of whether customers should be encouraged to top off with the new fluids, the A-200B and the 50E, did Dr. Richard express to you any opinions on that subject?

A Not to my knowledge. The desire was always to come up with a compatible system.

Q Did you ever hear Dr. Richard express the opinion that if you were going to come up with a non-PCB fluid that customers should be encouraged not to top off but rather should clean out their machines to get rid of the PCBs?

A I can remember a comment of that type, yes.

Q From him?

A Yes.

Q I take it that opinion was outvoted by other members of the business group?

A No, it was not outvoted. It was always a possibility if the customer wanted to go that route.

Q Were the possible or anticipated adverse effects of topping off discussed with your customers generally with regard to the new fluids?

A Yes.

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Q That was a regular practice?

A Yes.

Q Was that discussed in any written materials that went to the customers?

A That was more critical going to the phosphate ester because there were some levels of incompatibility based on ratios of old fluids and new fluid.

To clarify, and don't hold me to numbers, but you could reach a point at 45 percent, let us say, phosphate ester versus terphenyl-based fluid where you had a level of incompatibility.

If you would go to 55 percent phosphate ester, the other fluid, the incompatibility went away, but you could be at a bridge point in compatibility.

Q You mean a level of incompatibility? Do you mean a level at which the machinery would not operate properly?

A No, in which the fluid would separate on standing. If you cycled the machine, turned the pump on, you would bring the fluids back into compatibility, but this was developed in research when you were just looking at versions of '65, '35, '45, what have you, and we just noticed this.

Q In connection with the transfer of customers

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from A-200B terphenyl to 50E, do you know whether any of your customers had discussions with Monsanto salesmen regarding the advisability of cleaning all their machines out from the old fluid and going to 50E?

A I don't remember that question raised by anyone, no.

Q Do you know if any of your customers did follow that practice?

A No, I don't.

Q If they had, would you have known it at that point in time?

A I would think so.

Q Your Pydraul users were not requested to sign hold harmless agreements, were they?

A No, they were not.

Q Was that because of a perception by Monsanto that those customers were not as sophisticated with regard to the effect of PCBs as the electrical users?

A No.

Q As far as you understand the reason why those customers were not asked to sign hold harmless agreements was because Monsanto was going to change the fluids they were using to non-PCB bearing fluids, is that true?

A That's true.

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Q Was the decision to eliminate the sale of PCB-bearing fluids made by the Board of Directors of Monsanto to the best of your knowledge?

A I would assume they concurred with the decisions that were made at lower levels.

Q Was it your assumption that on this question, the Board of Directors was consulted?

A Yes.

Q Prior to 1968 did Monsanto run long term environmental-type impact tests on any of its environmental fluids, to your knowledge?

MR. SCHINK: I object to the form of the question. You may answer.

BY THE WITNESS:

A Not to my knowledge.

BY MR. POPE:

Q Was that done later?

MR. SCHINK: I object to the form of that question as well insofar as it refers to the previous question and the ambiguity of that question.

MR. POPE: Namely, a long term environmental-type test?

MR. SCHINK: Right. I don't know what that means.

BY MR. POPE:

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Q Do you know what that means, Mr. Johnson?

A No.

Q In the 1970s were any tests run on environmental fluids that had not previously been run?

MR. SCHINK: You are talking about the types of tests now?

MR. POPE: Right.

MR. SCHINK: All right.

MR. POPE: You are absolutely right, absolutely right.

BY THE WITNESS:

A The type of tests?

MR. POPE: Yes.

MR. SCHINK: I object to the form of the question. You can answer.

BY THE WITNESS:

A To the best of my knowledge, they supported the testing that was being done by WARF.

BY MR. POPE:

Q The outside consultant?

A The outside laboratory and how that was generated, who started it, I don't know, but certainly things were changing based on work being done by outside laboratories and the cooperation of Monsanto was given

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with those laboratories.

Q Were those tests of a nature to determine the long term effects of the fluids?

MR. SCHINK: Objection, no foundation.

BY MR. POPE:

Q On human health?

MR. SCHINK: Obviously no foundation.

BY THE WITNESS:

A I don't know how far you carry that.

BY MR. POPE:

Q I am not trying to carry it very far at all. I'm trying to determine how we can reach a common terminology to discuss the matter.

A Well, back to the WARF study, you're looking at the fact that PCBs were showing up in fish. Monsanto was supporting and cooperating with those people on that testing, and did that testing carry on, going into higher form of life, I don't know.

Q Was that a form of testing that had not been under way to Monsanto's knowledge prior to 1968?

A I would agree with that statement.

Q Was it your understanding that in the '50s and the 1960s that people at Johnson Motors were relying on Monsanto as their hydraulic fluid experts?

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MR. SCHINK: Objection, no foundation. The witness indicated his first contact with Johnson Motors was not until late into the 1960s.

BY THE WITNESS:

A Johnson Motors had evaluated competitive fluids all along. Whether that was water glycol fluid or phosphate ester fluid, and yes, we were the supplier.

BY MR. POPE:

Q During the period of time that you had contact with people at Johnson Motors, were they relying on Monsanto to keep them up to date on changes in hydraulic fluids?

A They were dealing with competitors, too.

Q With whom?

A Certainly Stauffer on phosphate esters; were certainly talking to Union Carbide on water glycol and if one of those companies came up with a fluid that they felt was of interest, they would evaluate it.

That didn't say they would change, but they would certainly have evaluated the fluid and may run a test in a machine.

Q To your knowledge were they using all their hydraulic fluid they were actually using in the plant from Monsanto?

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A If they were running a trial, they were purchasing fluid for that one machine from the competitor.

Q Absolutely, but were they purchasing all the fluid they were using in production from Monsanto?

A To the best of our knowledge, we were the supplier, yes.

Q How long had that been the case?

A I really don't know.

Q Did anybody ever tell you?

A You mean when Johnson Motors started up as a die caster and when they started buying fluids from Monsanto? I don't know the date of that.

Q But after you came in contact with them, somebody must have come to you at some point and given you some background on the company, is that right?

A Yes, but what the start-up was and how long we had been their total supplier, I can't give you the date. I know we were the supplier to Johnson Motors in 1960 when I joined the company.

Q As far as you knew at that stage, you were supplying virtually all the hydraulic fluid they were using?

A I would say we were their major supplier, but certainly not exclusively.

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Q When you say not exclusively, you mean in terms of trial, they would do trial runs with other substances, is that right?

A Yes.

Q And to your knowledge every time they would do a trial run, they would reject the other fluid and use the Monsanto Pydraul, is that right?

A Sometimes trials went on for years and one might be running on water glycol fluid for two or three years and Johnson Motors would evaluate the performance with a potential consideration if it proved positive to consider that kind of fluid for the whole plant.

To the best of my knowledge, those trials were ongoing and periodically might be rejected and then they might evaluate something else in the machine.

Q They might even be evaluating something right to this date, but to your knowledge, every time they conducted such a test, they continued to use Monsanto's fluid as opposed to any of these potential competitors'?

A We were their principal supplier.

MR. POPE: Subject to the statement I made at the beginning of the deposition, I have no further questions.

MS. STEIN: I have a few more.

I don't think this document has previously

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been marked. It is a two-page memorandum dated May 11, 1970 from Scott Tucker to Mr. Pogue entitled PCB Analysis Effluent Samples.

I would like to have it marked as Exhibit 25.

(Johnson-USA Deposition Exhibit
No. 25 marked for identification,
2/17/82, TLU.)

RE CROSS EXAMINATION

BY MS. STEIN:

Q Mr. Johnson, I show you Deposition Exhibit No. 25. There are a couple of question marks that I'm sure were not on the original, but with the exception of those question marks, I am going to ask you if you have ever seen that document before.

A Okay.

Q Have you ever seen that before?

A Probably, yes.

Q You are listed as a cc. Does that mean you would have normally received it on or about May 11 when it was written?

A Yes, ma'am.

Q From your recollection, do you know who the customer was that would have been where the deletion is

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on this document?

A No, I don't.

Q I am now going to show you a four-page document under the Kirkland & Ellis No. 165921662 dated May 20, 1970 and entitled Monthly Summary Details, April 1970, Functional Fluids-Research by Dr. Richard.

I notice that you are not on the list of addressees, but let me ask you if you would have ever seen a monthly summary from the Research Department?

A I would not.

Q Why not?

A It was within, that would go to Howard Bergen who was Bill Richard's boss and that might be circulated amongst the group reporting to him.

MS. STEIN: Let us mark that as Exhibit 26.

(Johnson-USA Deposition Exhibit
No. 26 marked for identification,
2/17/82, TLU.)

BY MS. STEIN:

Q Mr. Johnson, I don't see Mr. Bergen's name on the list here of people who would receive it.

A These are all Research people. I can only conclude this is Bill Richard's research report which gets circulated among his research people to inform the

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people of activity going on within his group and probably to some people in other departments within Research.

Q At the time of this document which was May of 1970, you were in charge of Field Sales for Pydraul, is that correct?

A Right.

Q Wouldn't you need to know what the research efforts were in order to make sales forecasts and otherwise handle your sales effort?

A We met with appropriate people in Research almost on a monthly basis and I would discuss various situations and did not receive a report from Bill Richard at all, so any discussions with regard to research were totally verbal.

Q This is another document from which an awful lot has been deleted.

I'm going to show you a document dated December 8, 1971 from L. C. Bradford/J. L. Davidson to Mr. Gossage under the Monsanto No. 10947 to 10965 previously marked as Bradford-Outboard Marine Deposition Exhibit No. 2 and ask you if you recognize that document.

A Okay.

Q Have you seen this before?

A I believe so.

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Q If you will look through it, please, there are a number of deletions and you can just read through and perhaps it will refresh your recollection as to the deleted materials.

A The whole page?

MR. SCHINK: The question is looking at it, do you remember what was deleted.

BY MS. STEIN:

Q I guess my question is would you have seen it in its original form without the deletions?

A I would believe so.

MR. SCHINK: Is there a question now pending?

MS. STEIN: That was the question. I've gotten the answer. I am waiting for him to have an opportunity to look at it.

I believe the question --

MR. POPE: The question is what was on Page 7.

BY MS. STEIN:

Q I believe the pending question was whether or not your brief review refreshes your recollection as to the matters that have been deleted?

A I don't know. There were truly papers? I mean these are --

Q Yes.

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A I know some of the deletions on these pages must have contained names of other customers.

Q I believe near the end there is a page that has a paragraph.

A That I wrote.

Q Yes, apparently signed by somebody else on your behalf.

A Yes.

Q And I believe starting at Page 4 and 5 for a previous version of those same pages, is that correct?

A Yes.

Q Do you happen to recall what those previous Pages 4 and 5 were? Do you know what the changes might be?

A I don't.

You believe that 1, 2, 3, and 4 and 5 went together?

Q No, I don't know. This is the way they were provided to us by Kirkland & Ellis, so I don't know what they originally looked like.

A Well, they do. Those pages all go together.

Q I have produced them for you in the chronology that --

A The order in which they came?

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Q As you can see by the stamp in the bottom right-hand corner --

A Well, if you read Page 3, it carries on to Page 4 and Page 5, so this was the document, 4.

Q Your memo refers to some changes in Pages 4 and 5.

A I see what you are saying. Mr. Bradford's memo substitutes Pages 4 and 5 for the original?

Q Yes.

A Are you asking me why I think this was changed?

Q No, what do you think the changes might have been or what you think the changes were, if you recall?

A I don't.

Q I am going to show you a two-page document --

A I put them back.

Q I will be able to figure out the page numbers, thank you.

I am now going to show you a document apparently written by you with the Kirkland & Ellis numbers, I believe it is 2046. I cannot read it very well and 2047 entitled Pydraul Meeting, January 10 and 11, dated January 3, 1971 and also previously marked at the OMC-Bradford deposition as Exhibit No. 1 and ask you if you recognize this document.

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MR. SCHINK: You might want to clarify, Ms. Stein.

That is a document the witness reviewed in preparation and advised me at the time that he thought the date should have been 1972 and there was a secretarial error at the turn of the year.

You might want to clarify that.

THE WITNESS: That's right, that the date of this really was January 3, 1972 instead of as it is typed, 1971.

Okay, yes, I am familiar with the document.

BY MS. STEIN:

Q And you prepared that?

A Yes.

Q There is a big blank space in the middle of the second page.

A Yes.

Q Do you know what was in there?

A Customer names.

Q Do you know who those customers were?

A If I were to --

Q Some of them, any one. Do you remember who they were?

MR. SCHINK: If you can remember other names that were there, answer the question yes or no. Don't give

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her names, if you remember.

BY THE WITNESS:

A I can't honestly be sure. It was obviously the major customers of our business.

BY MS. STEIN:

Q So you recall there were customer names, is that correct?

A Yes.

Q Do you recall who those customers were?

A Specifically without --

Q Yes.

A -- without unequivocation, no.

Q I am not saying all of them, any of them that you remember on that list.

MR. SCHINK: The question now, can you answer yes or no?

Do you remember unequivocally the names of other customers?

THE WITNESS: Yes.

MS. STEIN: I don't think I added the qualification.

MR. SCHINK: I'm sorry, I thought I heard that word.

MS. STEIN: I think the witness was hoping I had put that in, but I didn't.

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BY THE WITNESS:

A Since I can't be sure, I can't say.

BY MS. STEIN:

Q Was General Motors on that list?

MR. SCHINK: Ms. Stein, he answered the question. Furthermore, this is a document that the parties have reviewed with the Court. You weren't present at the time, but the Court has already considered the question of those deletions and ruled on the propriety of them.

MS. STEIN: Well, I understand that we have a continuing dispute on these documents.

MR. SCHINK: Not on these documents, Ms. Stein.

MS. STEIN: Yes, we do have a continuing dispute.

MR. SCHINK: Well, take it up with the Judge.

MS. STEIN: Fine, I will be happy to do so. I will leave this deposition open as to the documents.

MR. SCHINK: You can do whatever you want to as to that. You have known of this deposition for a month. You had an opportunity to present the information to the Court.

MS. STEIN: And we are filing a motion to compel production of documents.

MR. SCHINK: Fine, the deposition is about to be over as I understand.

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MS. STEIN: I am leaving it open.

MR. SCHINK: You may do whatever you wish, but we aren't.

MS. STEIN: I have no further questions at this time other than to ask Mr. Schink to respond to my previous question as to whether or not he in fact has a copy of the letter written by Mr. Johnson to Outboard Marine.

MR. SCHINK: I decline to respond to that. I suggest, however, if there is such a document, it would appear to me to have been responsive to the Government's request to OMC to whom it was directed.

Thank you.

MR. POPE: Thank you, Mr. Johnson.

(Witness excused.)

FURTHER DEPONENT SAYETH NOT. . .

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UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) SS:
STATE OF ILLINOIS)
COUNTY OF COOK)

I, Thea L. Urban, a notary public in
and for the County of Cook and State of Illinois, do
hereby certify that NORMAN T. JOHNSON was by me first
duly sworn to testify the whole truth and that the
above deposition was recorded stenographically by me
and was reduced to typewriting under my personal
direction, and that the said deposition constitutes
a true record of the testimony given by said witness.

I further certify that the reading and
signing of said deposition was not waived by the
witness and his counsel.

I further certify that I am not a
relative or employee or attorney or counsel of any of
the parties, or a relative or employee of such attorney
or counsel, or financially interested directly or
indirectly in this action.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal of office at Chicago,
Illinois, this _____ day of _____, A.D. 1982.

Notary Public, Cook County, Illinois.
My commission expires May 31, 1983.

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