

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 86-CI-1566
DIVISION NO. II

COMMONWEALTH OF KENTUCKY,)
NATURAL RESOURCES AND)
ENVIRONMENTAL PROTECTION)
CABINET,)

Plaintiff,)

vs.)

ROCKWELL INTERNATIONAL)
CORP., TIM SHOOK and,)
RICHARD L. MONTGOMERY,)

Defendants.)

COPY

Deposition of Witness,
THOMAS M. BISTLINE
Taken on Behalf of the Plaintiffs

July 23, 1993

Reported by
Kimberly A. Anderson
RPR, CSR, CCR
of

A&E Reporting

REGISTERED PROFESSIONAL REPORTERS — NOTARIES PUBLIC
P.O. BOX 16104
ST. LOUIS, MISSOURI 63105
314/230-3366

COMMONWEALTH OF KENTUCKY
LOGAN CIRCUIT COURT
NO. 93-CI-00158

DONALD S. HOUCHENS,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
ROCKWELL INTERNATIONAL)
CORP., et al.,)
)
Defendants.)

COPY

Deposition of Witness,
THOMAS M. BISTLINE
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COMMONWEALTH OF KENTUCKY
LOGAN CIRCUIT COURT
NO. 93-CI-00159

ROGER BARNES, et ux.,)
)
Plaintiffs,)
)
vs.)
)
ROCKWELL INTERNATIONAL)
CORP., et al.,)
)
Defendants.)

COPY

Deposition of Witness,
THOMAS M. BISTLINE
Taken on Behalf of the Plaintiffs

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1 COMMONWEALTH OF KENTUCKY
2 FRANKLIN CIRCUIT COURT
3 CIVIL ACTION NO. 86-CI-1566
4 DIVISION NO. II

5 COMMONWEALTH OF)
6 KENTUCKY, NATURAL)
7 RESOURCES AND)
8 ENVIRONMENTAL)
9 PROTECTION CABINET,)
10 Plaintiff,)
11 vs.)
12)
13 ROCKWELL INTERNATIONAL)
14 CORPORATION, TIM SHOOK)
15 and RICHARD L.)
16 MONTGOMERY,)
17 Defendant.)

18 DEPOSITION OF Thomas M. Bistline taken
19 pursuant to Notice, being produced, sworn and examined
20 on the 23rd day of July, 1993, between the hours of
21 eight o'clock in the forenoon and six o'clock in the
22 afternoon of that day, at the Marriott-Airport Hotel,
23 I-70 at Lambert Airport, St. Louis, Missouri, before
24 KIMBERLY A. ANDERSON, a Certified Court Reporter,
25 Registered Professional Reporter and Notary Public
26 within and for the County of St. Louis, State of
27 Missouri, in a certain cause now pending in the
28 Franklin Circuit Court, Commonwealth of Kentucky,
29 between Commonwealth of Kentucky, Natural Resources
30 and Environmental Protection Cabinet, Plaintiff, and
31 Rockwell International Corporation, Tim Shook and
32 Richard L. Montgomery, Defendants.

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On Behalf of
Tim Shook and
Richard L. Montgomery

On Behalf of Rockwell
International Corp.

Also present:

Charles L. Cunningham, Jr.
Attorney at Law
304 West Liberty St.
Suite 200, Morrissey Building
Louisville, Kentucky 40202

1 S t i p u l a t i o n

2 It is hereby stipulated and agreed by and between
3 the parties herein that the signature of the witness,
4 Thomas M. Bistline, is hereby waived to his
5 deposition, and that said deposition of said witness
6 shall be of the same force and effect as though said
7 witness had read and signed said deposition.

8 -----

9 THOMAS M. BISTLINE
10 being produced, sworn, and examined on behalf of the
11 Plaintiffs, deposeeth and saith:

12 DIRECT EXAMINATION

13 BY MR. BOLZLE:

14 Q. Could you state your name for the record,
15 please?

16 A. My name is Thomas M. Bistline,
17 B-i-s-t-l-i-n-e.

18 Q. How old are you, sir?

19 A. I'm 44.

20 Q. And what's your occupation?

21 A. I'm an attorney and employed by Monsanto
22 Company as Assistant General Counsel, litigation.

23 Q. Do you hold any offices with the company?

24 A. I'm not an officer of the company, no.

25 Q. How long have you been with the company?

1 A. Since February of 1982.

2 Q. And what are the responsibilities of your
3 position as Assistant General Counsel of litigation
4 for Monsanto?

5 A. My responsibilities chiefly consist in
6 day-to-day management of various litigated matters in
7 which Monsanto is involved.

8 I've also got some administrative internal
9 Monsanto responsibilities relating to the law
10 department.

11 Q. What is the business of Monsanto Company?

12 A. Monsanto is a diversified manufacturer of
13 chemicals, pharmaceuticals, agricultural products, and
14 I think we still have some separation equipment
15 manufacturing.

16 Q. At some point in its manufacturing history did
17 Monsanto manufacture a product called Pydraul? That's
18 p-y-d-r-a-u-l.

19 A. My information is yes, it did.

20 Q. What is Pydraul?

21 A. It's a -- was a Monsanto trade name for a
22 hydraulic fluid. It's a family of products.

23 Q. What was it used for, do you remember?

24 A. Generally, it's a hydraulic fluid for whatever
25 purposes hydraulic fluids would be used for.

1 Q. Did Pydraul contain PCBs?

2 MR. GOEBEL: I'm going to object to any
3 additional questions about the chemical makeup of
4 Pydraul until you lay a foundation with this witness.

5 Q. (By Mr. Bolzle) Did Pydraul contain PCBs?

6 A. Some Pydrauls did according to the information
7 I have available to me.

8 Q. What is that information, sir?

9 A. I have looked at documents in the possession
10 of Monsanto Company, and spoken to employees of
11 Monsanto, present and former employees.

12 Q. Is part of the litigation for which you are
13 responsible in terms of day-to-day management
14 litigation involving PCBs?

15 A. It is.

16 Q. And as part of that day-to-day management
17 responsibility and that litigation, is it part of your
18 responsibility and have you, as a result of that, come
19 by knowledge of in what products Monsanto used PCBs?

20 A. I'm aware of some of that, yes, and basically,
21 I know where to find the information if I need it.

22 Q. Do you know why PCBs were put in Pydraul?

23 A. I know what I have been told.

24 Q. And what is that, sir?

25 MR. GOEBEL: Objection, calls for hearsay. He

1 has no personal knowledge.

2 Q. (By Mr. Bolzle) Go ahead, sir.

3 A. PCBs were employed specifically in hydraulic
4 fluids; is that your question?

5 Q. Yes.

6 A. Because of their thermal stability and their
7 resistance to degradation, fire protection, fire
8 safety, I guess, would be the best way to put it.

9 Q. Is it your understanding that that information
10 is in fact set forth in some of the documentation
11 you've brought with you here today?

12 MR. GOEBEL: I object to the form.

13 THE WITNESS: Yes, it is.

14 Q. (By Mr. Bolzle) When did Monsanto begin
15 manufacturing Pydraul?

16 A. I don't know the answer to that question.

17 Q. Do you know when it stopped?

18 A. Pydrauls containing PCBs?

19 Q. Yes, sir.

20 A. In 1971.

21 Q. Before I get into anymore questioning, let me
22 go ahead and establish for the record some things.
23 Now sir, you are here pursuant to Notice of Deposition
24 as well as a Subpoena Duces Tecum; is that not
25 correct?

1 A. That's correct.

2 MR. BOLZLE: And for that reason, Kim, I would
3 like to have marked the subpoena as well as the
4 notices requiring Mr. Bistline to attend the
5 deposition today. And I think those would form
6 Exhibit's 1 through 4 to the deposition.

7 (Plaintiffs' Exhibit Numbers 1, 2, 3 and 4
8 marked.)

9 Q. (By Mr. Bolzle) Okay. Mr. Bistline,
10 referring, specifically, to Exhibit 1 to your
11 deposition, which is the Subpoena Duces Tecum with
12 which you were served in this case, it asks that you
13 produce any and all correspondence between Monsanto
14 Company and Rockwell International Company concerning
15 the composition, proper handling, use, disposal, and
16 potential hazards and/or dangers of Pydraul, Aroclor,
17 a-r-o-c-l-o-r, and/or polychlorinated biphenyls, PCBs,
18 specifically including but not limited to agreements
19 and product labels and warnings. Have you brought
20 documentation responsive to that question with you
21 here today?

22 A. Yes, I have.

23 Q. And I believe before we began the deposition
24 you actually tendered those documents to me; did you
25 not?

1 A. Yes, I did. Part of them, in any event. Part
2 of them I believe you were already familiar with.

3 Q. Who is the custodian of the documentation
4 you've brought with you today?

5 A. I'm the custodian of those records.

6 Q. Of all of the records that you have here?

7 A. Yes.

8 MR. GOEBEL: Just for the record, Greg, the
9 subpoena asks for all correspondence between Monsanto
10 and Rockwell, and some of these documents, it's my
11 understanding, that he brought here today would not
12 have been correspondence to Rockwell International.

13 MR. BOLZLE: Such as?

14 MR. GOEBEL: Well, I think you identified in
15 Numbers 140 to 266 that those were pulled out of files
16 that were not actually in any file designated a
17 Rockwell file.

18 MR. BOLZLE: Well, as I understand, these are
19 product labels that would have been affixed to product
20 packages sent to Rockwell, so that in that sense, I
21 agree with Mr. Bistline's interpretation of the
22 production request and production of these documents.

23 MR. GOEBEL: He hasn't said on the record that
24 those were documents that were sent to Rockwell
25 International.

1 MR. BOLZLE: Well, we'll find out about that.

2 MR. GOEBEL: Yeah, I think that's what we need
3 to do because what you've represented on the record
4 and what the subpoena asks for are two different
5 things.

6 Q. (By Mr. Bolzle) I think you've said that
7 you're the custodian of the documents you've brought
8 here today.

9 A. That is correct.

10 Q. And where are the documents you've brought
11 here with you today kept?

12 A. They're kept at Monsanto's world headquarters
13 in St. Louis.

14 Q. Are they kept in any particular office or
15 location?

16 A. Yes.

17 Q. What office is that, sir?

18 A. It is the litigation groups document archive
19 in N, as in Ned, Building.

20 Q. And under whose supervision are those
21 documents kept and maintained?

22 A. Mine.

23 Q. Do you know when Monsanto sold Pydraul to
24 Rockwell for use at its facility in Russellville,
25 Kentucky?

1 A. I don't know from my recollection, no.

2 Q. Why don't we use the stack of documents you
3 have because I think those are all --

4 A. This, I believe -- we're off the record.

5 (Discussion off the record.)

6 (Plaintiffs' Exhibit Number 5 marked.)

7 Q. (By Mr. Bolzle) Mr. Bistline, the documents
8 that you have brought with you today include a letter
9 dated March 14, 1988, from Mr. Richard Duesenberg,
10 Senior Vice President and General Counsel and
11 Secretary of Monsanto Corporation, to Charles H.
12 Harff, H-a-r-f-f, Senior Vice President and General
13 Counsel and Secretary of Rockwell International
14 Corporation, together with exhibits or items that were
15 attached to Mr. Duesenberg's letter. If you would
16 check that and make sure that I've accurately
17 described that on the record, sir.

18 A. That's correct.

19 MR. BOLZLE: Can we mark this, Kim, Exhibit 6?

20 (Plaintiffs' Exhibit Number 6 marked.)

21 Q. (By Mr. Bolzle) Let me back up just a little
22 bit. Mr. Bistline, let me show you what's been marked
23 Plaintiffs' Exhibit 5 to your deposition; can you
24 identify that for the record, please?

25 A. This is a copy of a letter which was addressed

1 to and received by Mr. Richard Duesenberg. There's a
2 signature which purports to be that of Charles Harff.
3 The letter is dated February 4, 1988.

4 Q. And just for purposes of the record, if you
5 would identify what has been marked Plaintiffs'
6 Exhibit Number 6.

7 A. Exhibit 6 is an exhibit which contains a
8 letter dated March 14, 1988, addressed to Charles
9 Harff, Senior Vice President, General Counsel and
10 Secretary of Rockwell International Corporation, which
11 is signed by Richard W. Duesenberg, Senior Vice
12 President General Counsel and Secretary of Monsanto
13 Company. And there are exhibits or attachments to the
14 letter bearing numbers ROCW 00001 through 109.

15 Q. What do those numbers refer to?

16 A. These numbers were placed on the attachments
17 to Mr. Duesenberg's letter by members of my staff at
18 my direction and each page that was attached to Mr.
19 Duesenberg's letter bears a separate number. We put
20 them on there so we could identify them.

21 Q. Is there any litigation between Rockwell and
22 Monsanto Corporation at present concerning Monsanto's
23 manufacture and sale of Pydraul to Rockwell?

24 MR. GOEBEL: Objection on the basis of
25 relevancy.

1 THE WITNESS: There's none that I'm aware of.

2 Q. (By Mr. Bolzle) Is there any or has there
3 been any indemnification agreement executed by
4 Rockwell on behalf of Monsanto Corporation in -- as a
5 result of its use or purchase of Pydraul, to your
6 knowledge?

7 MR. GOEBEL: Objection, relevancy.

8 THE WITNESS: No.

9 Q. (By Mr. Bolzle) At the present time, is there
10 any -- are there any proceedings between Rockwell and
11 Monsanto concerning the Russellville litigation or the
12 Russellville PCB contamination?

13 MR. GOEBEL: Same objection.

14 THE WITNESS: None that I'm aware of.

15 Q. (By Mr. Bolzle) Is there any agreement
16 between Rockwell and Monsanto Company concerning
17 Monsanto's involvement in this litigation or your
18 deposition in this litigation?

19 MR. GOEBEL: Same objection.

20 THE WITNESS: No.

21 MR. BOLZLE) Kim, let's mark this Plaintiffs'
22 Exhibit 7.

23 (Plaintiffs' Exhibit Number 7 and 8 marked.)

24 Q. (By Mr. Bolzle) Mr. Bistline, let me hand you
25 what's been marked Plaintiffs' Exhibit 7 to your

1 deposition, and if you would, please, identify those
2 documents for the record?

3 A. Exhibit 7 is a multi-page document bearing
4 numbers ROCW 00110 through 00139. The page marked 110
5 is a document which was prepared by members of my
6 staff at my direction and is in fact a summary of the
7 information contained on pages 111 through 139.

8 Q. What does that information included in
9 Plaintiffs' Exhibit 7 show?

10 A. This is a summary of Monsanto's records of the
11 sales of PCB-containing products by Monsanto to
12 Rockwell Manufacturing at Russellville, Kentucky.

13 Q. And let me show you Plaintiffs' Exhibit Number
14 8, have you identify that for the record, please.

15 A. Exhibit 8 is again a collection of documents
16 from files in my custody numbered ROCW 00140 through
17 266. These are labels, that's pages 140 through 147,
18 and technical bulletins, pages 148 through 266,
19 relating to the products Pydraul F-9, Pydraul 312, and
20 Pydraul 312A.

21 Q. Let me show you Plaintiffs' Exhibit 5 and what
22 I want to do now is walk back through these documents
23 and talk to you a little bit about each of them. Is
24 that document kept and maintained in the regular
25 course of Monsanto's business?

1 A. Well, this is a document that we received.
2 It's not a Monsanto document but it's one that is
3 contained in a file that I maintain.

4 Q. Okay. And is that file kept and maintained
5 under your supervision?

6 A. It is, yes.

7 Q. And is that file kept and maintained as a
8 regular course of Monsanto Company's business?

9 A. Well, to the extent litigation-related
10 activities would be considered in the regular course
11 of business, the answer is yeah.

12 Q. Is Exhibit 5 a true and accurate copy of the
13 letter you have in your files?

14 A. Yes, it is.

15 Q. Let me refer you, Mr. Bistline, just to a
16 statement in the middle of the first paragraph of that
17 letter. And that is the statement that Pydrauls,
18 after the parenthesis PCBs, that Pydrauls "were sold
19 by Monsanto to Rockwell between 1956 and 1972 for use
20 in its aluminum die-casting facility in Russellville,
21 Kentucky." Do you have any information that
22 particular statement is inaccurate?

23 A. The only information that I have relating to
24 that statement, Mr. Bolzle, would be reflected on
25 Exhibit -- what was it -- 7 which is the sales summary

1 and that Exhibit 7 would contain the information
2 available to Monsanto from its records as to when
3 sales of products containing PCBs were made to the
4 Russellville Rockwell plant.

5 Q. Okay, sir. Let me show you Plaintiffs'
6 Exhibit Number 6 which you've already identified.

7 A. Yes.

8 Q. First of all, are the documents included in
9 Plaintiffs' Exhibit Number 6 true and correct copies
10 of the documents that appear in the files that are
11 maintained under your supervision?

12 A. Yes, they are.

13 Q. And are the documents contained in Plaintiffs'
14 Exhibit Number 6 business records of the Monsanto
15 Company?

16 A. Just let me --

17 Q. Sure.

18 (Witness reviews exhibit.)

19 A. With the exception of a document which is a
20 copy of an article appearing in the scientific
21 literature, document 00091 through 103, yes. This is
22 a scientific article. I don't know whether that would
23 constitute a business record or not.

24 Q. Why don't we pull that out and just get an
25 exhibit number to that just so we're clear on the

1 record.

2 MR. GOEBEL: It's already a part of the
3 exhibit.

4 (Discussion off the record.)

5 (Plaintiffs' Exhibit Number 6-A marked.)

6 THE WITNESS: We should just note that there
7 are attachments -- there are attachments to a couple
8 of the letters that are included within Exhibit 6 that
9 are reprints of magazine articles or excerpts from the
10 Federal Register, which, again, I don't know whether
11 under Kentucky rules they would be considered business
12 records or not.

13 Q. (By Mr. Bolzle) Mr. Bistline, let me show you
14 what we've marked Plaintiffs' Exhibit 6-A to your
15 deposition.

16 A. Yes.

17 Q. Now, can you identify that for the record,
18 please?

19 A. This is a copy of an article which appeared in
20 the Annual Review of Pharmacology and Toxicology
21 authored by Renate, R-e-n-a-t-e, D. Kimbrough,
22 K-i-m-b-r-o-u-g-h, who was at that time an official of
23 the Centers for Disease Control.

24 Q. What's the name of that article?

25 A. The name of the article is Human Health

1 Effects of Polychlorinated Biphenyls (PCBs) and
2 Polybrominated Biphenyls (PBBs).

3 Q. Now, as I understand your testimony before
4 this Exhibit 6-A was marked, although this was an
5 attachment that was included with Mr. Duesenberg's
6 letter which has been marked Exhibit 6, Exhibit 6-A is
7 not a document that was produced or written by
8 Monsanto Company.

9 A. That's correct.

10 Q. And it is not a business record of Monsanto
11 Company.

12 A. Well, that's kind of a legal conclusion. I'll
13 let you guys involved in this case figure out for your
14 own purposes but this is not a Monsanto business
15 record, correct.

16 Q. Okay. That's what I was getting at. Okay.

17 Turning to Exhibit 6, with the understanding
18 that the attachments in Exhibit 6 include documents
19 not generated by Monsanto, and with the exclusion of
20 Exhibit 6-A which is not a document generated by
21 Monsanto, let me ask you the following questions: Are
22 the documents as I've just described them, in Exhibit
23 6, kept in the regular course of Monsanto's business?

24 A. Yes, they are.

25 Q. And Monsanto's business is a regularly

1 conducted activity; is it not, sir?

2 A. Yes, sir, it is.

3 Q. The documents included in Plaintiffs' Exhibit
4 6, were these documents made at or near the time of
5 the events discussed therein?

6 A. To the best of my knowledge and information,
7 yes.

8 Q. And is it a regular practice of Monsanto
9 Company, both at the time these documents were
10 generated and even until today, to maintain these
11 records as part of its regularly conducted activity?

12 A. Yes.

13 Q. All right, sir. Is Mr. Duesenberg's letter,
14 which is the first document on top of Plaintiffs'
15 Exhibit 6, a response to Mr. Harff's letter which has
16 been marked Plaintiffs' Exhibit 5?

17 A. Yes, sir, it is.

18 Q. And what is discussed in Mr. Duesenberg's
19 letter to Mr. Harff?

20 MR. GOEBEL: I want to object and ask a
21 preliminary question of the witness.

22 Is there anything you can tell us about this
23 letter other than just read what's there? I mean you
24 did not author the letter.

25 THE WITNESS: Yes, I did.

1 MR. GOEBEL: You did author it?

2 THE WITNESS: Yes.

3 MR. GOEBEL: I'll let him answer that
4 question.

5 MR. BOLZLE: Thanks.

6 MR. GOEBEL: Go ahead.

7 THE WITNESS: In general, Mr. Bolzle, what's
8 discussed in this letter is a point by point response
9 to the matters set forth in Mr. Harff's letter to Mr.
10 Duesenberg.

11 Q. (By Mr. Bolzle) Just so it's clear, who
12 authored the text of the letter signed by Mr.
13 Duesenberg to Mr. Harff?

14 A. I was responsible for drafting the response.
15 Mr. Duesenberg made some minor changes in it and
16 signed the letter.

17 Q. Who asked you to prepare that response?

18 A. Mr. Duesenberg.

19 Q. Were you also involved in the collection of
20 the exhibits that were attached to Mr. Duesenberg's
21 letter?

22 A. Yes, I was.

23 Q. How so?

24 A. I directed a member of my staff at Monsanto to
25 obtain from Monsanto's files the documents that are

1 attached here, the various letters or items of
2 correspondence between Monsanto and Rockwell and the
3 other attachments here.

4 Q. Now Mr. Harff's letter of February 4, 1988,
5 which has been marked as Plaintiffs' Exhibit 5 deals
6 specifically with problems arising as a result of PCB
7 use in a plant in Russellville, Kentucky; does it not?

8 A. It does.

9 Q. And the March 14, 1988 letter which you
10 authored on behalf of Mr. Duesenberg deals
11 specifically with refuting the claims that Mr. Harff's
12 letter as they related only to the Russellville
13 facility; is that correct?

14 A. Well, they encompass the Russellville facility
15 but I believe it's somewhat broader than that.

16 Q. My question for you is whether you know, Mr.
17 Bistline, if Monsanto has received other letters
18 similar to Plaintiffs' Exhibit 5, Mr. Harff's letter,
19 making similar allegations about other Rockwell
20 facilities in other places?

21 A. To my knowledge we have not received letters
22 similar to Exhibit 5 from Rockwell.

23 Q. Concerning other Rockwell facilities?

24 A. That's correct.

25 Q. Have you participated in preparing, drafting,

1 authoring any letters or correspondence to Rockwell
2 similar to Mr. Duesenberg's March 14, 1988 letter
3 which concerned other Rockwell facilities than the
4 Russellville site?

5 A. No, sir.

6 Q. Now, when Mr. Duesenberg asked you to prepare
7 the letter that's marked Plaintiffs' Exhibit Number 6,
8 at that time did you have personal knowledge of the
9 factual bases for the statements you set forth in that
10 letter?

11 A. I had general knowledge of the kinds of
12 correspondence that might exist in Monsanto's files
13 relating to letters that were sent to Pydraul
14 customers. I did not know at that time until I had my
15 staff do the document collection, whether letters had
16 been sent to Rockwell. That I discovered after we
17 conducted a search of our files.

18 Q. You were anticipating my next question which
19 is going to be what investigation research did you
20 perform in order to prepare the document that's been
21 marked Plaintiffs' Exhibit 6?

22 A. I asked a member of my staff to review
23 Monsanto's files and to provide me with a copy of all
24 correspondence relating to PCBs, Pydrauls, or really
25 any correspondence with Rockwell International or any

1 other Rockwell entity, really, relating to PCBs.

2 Q. And did you review that information that was
3 collected for you by your staff before drafting the
4 letter marked Plaintiffs' Exhibit 6?

5 A. Yes, sir, I did.

6 Q. Are the statements set forth in that letter
7 based on the information that was collected under your
8 supervision?

9 MR. GOEBEL: At this time I want to object to
10 any more questions about what's contained in this
11 letter. The letter speaks for itself. It's based on
12 documents apparently that are attached to the letter.
13 And just for purpose of the record, I'm going to go
14 ahead and make that objection.

15 Q. (By Mr. Bolzle) Do you remember my question?

16 A. If you would repeat it again I would
17 appreciate it.

18 Q. I think what I asked you was whether the
19 statements set forth in Plaintiffs' Exhibit 6 were
20 based upon your review of the documentation collected
21 for you by your staff?

22 A. The statements in the letter are based upon
23 all of the documents that are attached to the letter.
24 Some of that documentation, specifically the Kimbrough
25 article, Exhibit 6-A, and the document attached which

1 is entitled, Polychlorinated Biphenyls, PCB's, A
2 Report on Uses, Environmental Health Effects and
3 Disposal, which is pages 1 through 33, were not
4 specifically collected by my staff for purposes of
5 this letter. These were documents that I had in my
6 possession already.

7 Q. All right, sir. This deposition is being
8 taken for purposes of a trial that is scheduled to
9 take place on October 4th in Franklin Circuit Court in
10 Kentucky. For that reason I want to review some of
11 these letters with you as well as some of the
12 attachments to this letter. Referring specifically to
13 Plaintiffs' Exhibit 6, if you could take us through
14 that letter and, point by point, specifically as to
15 points one and two beginning on page 2 of that letter,
16 take us through your statements which you prepared in
17 order to refute Mr. Harff's suggestion that Monsanto
18 had failed to warn Rockwell about the hazards of PCB.

19 MR. GOEBEL: I also want to interpose an
20 objection that the question calls for legal conclusion
21 and also this letter postdates the date on which
22 Rockwell claims it received or had notice of PCBs in
23 the environment and is in response to threatened
24 litigation and it's really a position letter of
25 Monsanto with respect to that threatened litigation.

1 MR. BOLZLE: I understand.

2 Q. (By Mr. Bolzle) Go ahead, sir.

3 A. Actually, I think that the letter is pretty
4 self-explanatory if you look at it. What I did was
5 attach the report that I referred to earlier, pages 1
6 through 33, which gives an overview of Monsanto's
7 actions with respect to PCBs as environmental issues
8 emerged in the late '60s and early '70s. That
9 document, it's a general document and one that states
10 Monsanto Company's position with respect to PCBs. And
11 I then attached documents which reflected actual
12 correspondence between Monsanto and Rockwell to show
13 how Monsanto's communication with Rockwell
14 corresponded with the positions set forth in the
15 general report. So that's really point one.

16 Then in point two, it's just a reference to
17 federal regulations and Federal Register citations
18 relating to regulations dealing with PCBs in hydraulic
19 fluid, which have been part of the public record for
20 many years. That's point two.

21 Q. In the second paragraph of page 2 let me read
22 a section and correct me if I read it incorrectly.
23 Beginning at the top of that paragraph it says,
24 "Specifically as to Rockwell, beginning as early as
25 1960, Monsanto provided a detailed response to a

1 request for information relating to the toxicity and
2 safe handling of our hydraulic fluids. In addition,
3 these products were clearly labeled and your technical
4 personnel were provided with product information
5 setting forth relevant safe-handling instructions.
6 Thereafter, beginning at least in 1970, Monsanto sent
7 no less than four written notices to the Russellville
8 plant specifically calling attention to environmental
9 concerns relating to PCBs and the consequent need for
10 responsible disposal practices. In 1973, a written
11 notice directed to the Russellville plant advised
12 Rockwell of the high temperature incineration service
13 provided by Monsanto for the disposal of
14 PCB-containing liquids." Did I read that section
15 correctly?

16 MR. GOEBEL: Would you give me an objection,
17 same as I made on the last objection, so I don't have
18 to keep repeating?

19 MR. BOLZLE: Sure. Yeah.

20 THE WITNESS: Yes, that's an accurate reading
21 of what the letter says.

22 Q. (By Mr. Bolzle) Tell me about the Monsanto's
23 high temperature incineration service.

24 A. Well, I believe that the reference would be to
25 an attachment here in the materials attached to

1 Exhibit 6. My information is, and again, this
2 predates my tenure at Monsanto, my information is that
3 Monsanto operated a high temperature incineration to
4 dispose of liquid, liquids containing PCBs. That was
5 at our W-G-Krummrich plant, w-g-k-r-u-m-m-r-i-c-h.

6 Q. Working through the attachments to Mr.
7 Duesenberg's letter, I think the first attachment is
8 what is described in the letter as a White Paper on
9 Monsanto's involvement with PCBs; is that correct?

10 A. That's correct.

11 Q. What is Aroclor, a-r-o-c-l-o-r?

12 A. Aroclor is a trade name of Monsanto Company
13 for a family of products which included products
14 containing PCBs.

15 Q. Would that have included Pydraul?

16 MR. GOEBEL: Which Pydraul?

17 Q. (By Mr. Bolzle) Pydraul, period. Any
18 Pydrauls?

19 A. Some Pydraul products contained Aroclors but
20 Pydrauls as a family of products are different from
21 the Aroclors.

22 Q. Okay. So Aroclors would have been a component
23 of some Pydrauls?

24 A. That's correct. Some Aroclors were components
25 of some Pydrauls.

1 Q. Would Pydrauls having PCBs as a component have
2 Aroclors in them?

3 MR. GOEBEL: Just for the record, I know
4 you're becoming frustrated with my objections, but
5 just for the record, there are different Aroclors that
6 were in the Pydrauls that Rockwell Russellville plant
7 used, and really, I'd like for you to specify those,
8 if you can.

9 Q. (By Mr. Bolzle) Well, do you know what they
10 are? I know you all used Aroclor 1248s in you all's
11 Pydrauls. Did you use anything else? I've got an
12 outstanding discovery request on it. That's why.

13 MR. GOEBEL: I think whatever we used is
14 contained in these documents. But these documents
15 mention some Aroclors that we didn't use and I think
16 for the record, to be relevant, your discussion about
17 the Aroclors that we did use, you'll have to specify
18 those.

19 Q. (By Mr. Bolzle) Well, let's jump ahead just
20 briefly and we're going to do that. Let me show you
21 what's been marked Plaintiffs' Exhibit 7 to your
22 deposition. Is that a true and accurate copy of the
23 documents that you have in your files under your
24 supervision?

25 A. Yes. These are accurate copies of those

1 documents.

2 Q. And are these documents marked as Plaintiffs'
3 Exhibit 7 kept and maintained in the regular course of
4 Monsanto's business?

5 A. Yes, they are.

6 Q. And were these documents made at or near the
7 time of the information being generated therein by
8 people with knowledge of that information?

9 A. Well, we're talking about two different
10 categories of documents here, I think as I testified
11 earlier. The first page of Exhibit 7 which is ROCW
12 110, was created by my staff sometime in March or
13 February or March of 1988. And the documents upon
14 which that page is based were generated from time to
15 time between, I guess, 1958 and 1971 or '72.

16 Q. The first page of Plaintiffs' Exhibit 7 is a
17 summary of the documents that are underneath it?

18 A. That's correct.

19 Q. The documents that are underneath the first
20 page, was the information set forth in those documents
21 made at or near the time that information was
22 generated?

23 A. Yes.

24 Q. Is it the regular practice of Monsanto Company
25 to maintain such records as part of its regularly

1 conducted business activities?

2 A. Yes, it is.

3 Q. Mr. Bistline, referring just to the top page
4 of Plaintiffs' Exhibit 7, I believe that shows that in
5 the years 1954 -- excuse me, 1958 through 1971,
6 Rockwell's Russellville facility basically purchased
7 two types of Pydraul, Pydraul F-9 and Pydraul 312; is
8 that correct?

9 A. Yes, that's correct.

10 Q. Do you know what the PCB content is of either
11 Pydraul F-9 or Pydraul 312?

12 A. I don't know -- I'm sorry, go ahead.

13 MR. GOEBEL: Did you mean PCB or Aroclor?

14 MR. BOLZLE: PCB.

15 THE WITNESS: I don't know from memory what
16 that content is. I would have to consult with records
17 at Monsanto to determine that.

18 Q. (By Mr. Bolzle) Do you know what the Aroclor
19 content of either Pydraul F-9 or Pydraul 312 is?

20 A. My answer would be the same. I don't know
21 from memory. I would have to consult records at
22 Monsanto.

23 Q. If I represented to you that the Aroclor
24 content of Pydraul 312 was -- or that the Aroclor
25 component of Pydraul 312 is Aroclor 1248, would you

1 have any information that would contradict that?

2 MR. GOEBEL: Calls for speculation on the part
3 of this witness.

4 THE WITNESS: I have nothing in my memory, Mr.
5 Bolzle, that would contradict that.

6 Q. (By Mr. Bolzle) Okay. Is Monsanto a member
7 of the American National Standards Institute?

8 MR. GOEBEL: Currently?

9 Q. (By Mr. Bolzle) Currently.

10 A. I don't know whether we are currently. We
11 were at one time, I know, but whether we are
12 currently, I don't know.

13 Q. Referring specifically to the White Paper,
14 section 1, page 1, at the top paragraph, I believe it
15 states that Monsanto entered the chlorinated biphenyls
16 business in 1935; is that correct?

17 A. That's my information, yes.

18 Q. Also it states that in 1977 Monsanto ceased
19 production and distribution of chlorinated biphenyls
20 in cooperation with the electrical industry and that
21 chlorinated biphenyls were banned in the United States
22 in 1979; is that right?

23 A. Again, that's my information.

24 Q. Can you turn to section 1, page 4, sir?

25 A. Yes. I have it.

1 Q. The second full paragraph sets forth therein,
2 I'll read that to you, it says, "High operating
3 pressures cause hydraulic systems to leak. Monsanto
4 therefore alerted users to manage wastes to eliminate
5 PCB discharge to the environment. As new hydraulic
6 fluids were developed in 1971, we" Monsanto,
7 "terminated sales of those containing PCBs." Did I
8 read that correctly?

9 A. Yes, sir.

10 Q. Was part of Monsanto's program of alerting
11 users to manage wastes to eliminate PCB discharges to
12 the environment the letters that are also included as
13 attachments to Plaintiffs' Exhibit 6?

14 MR. GOEBEL: I'm going to object to that
15 question on several grounds. First, you haven't
16 established any foundation about his knowledge of the
17 White Paper which you just read from. And that
18 document actually speaks for itself. And I think the
19 latter part of your question was did the
20 correspondence attached to the other attachments to
21 the Duesenberg letter, was that what the
22 correspondence that was sent to Rockwell; is that your
23 question?

24 MR. BOLZLE: Well, I don't know that you
25 completed your sentence.

1 Q. (By Mr. Bolzle) My question was, the report
2 states that Monsanto alerted users to manage wastes to
3 eliminate PCB discharge to the environment; my
4 question was, was part of that program for alerting
5 users to manage wastes to eliminate PCB discharge to
6 the environment the mailing of letters to consumers
7 and users that are attached to Mr. Duesenberg's
8 letter?

9 MR. GOEBEL: Well, you haven't established
10 that the letters attached to Duesenberg's letter were
11 actually mailed to Russellville.

12 MR. BOLZLE: Uh-huh. I know. That's coming.

13 MR. GOEBEL: But your question assumes that it
14 did.

15 MR. BOLZLE: No. All my question is the
16 letters that are attached to Mr. Duesenberg's letter
17 which purported to have been mailed to Rockwell
18 International, were those part of Monsanto's program
19 to alert users to manage wastes to eliminate PCB
20 discharges to the environment.

21 MR. GOEBEL: My objection is that you have not
22 established a foundation for the question because you
23 haven't established that these letters were mailed to
24 Russellville.

25 MR. BOLZLE: Okay. Fine. Can you answer that

1 question, sir?

2 THE WITNESS: Mr. Bolzle, I don't have
3 personal knowledge of what occurred back -- here at
4 Monsanto back in the time period referred to in this
5 letter. My information is that the letters that are
6 attached to Mr. Duesenberg's letter were part of that
7 program notification of Monsanto's customers, yes.

8 Q. (By Mr. Bolzle) Could you turn to section 4,
9 page 1, sir, of the White Paper. That's near the back
10 and it's section or it's page 00024.

11 A. Yes, I have it.

12 Q. Does that page include a section that
13 describes the PCB incineration program that was
14 provided to Monsanto's customers?

15 A. Yes, under the heading, Monsanto Provided PCB
16 Disposal Assistance to Customers.

17 Q. And can you tell me from your review of that
18 section when that disposal was offered by Monsanto?

19 A. According to this section and my best
20 information, the incinerator operated from roughly May
21 of 1971 until sometime in 1978, I believe, '77 or '78.

22 Q. Is there also a discussion on that page of
23 label warnings?

24 A. Yes. There is a notation of label warnings.

25 Q. And can you read what that particular section

1 states? I think it's very short.

2 MR. GOEBEL: Document speaks for itself.

3 THE WITNESS: The section says, "In 1970
4 Monsanto modified the labeling of PCB packages to
5 emphasize the need to keep it from the environment.
6 Subsequently, labels on drums were written in seven
7 languages."

8 Q. (By Mr. Bolzle) Okay, sir, let me ask that
9 you move onto some other attachments to Mr.
10 Duesenberg's letter. Specifically on that, the page
11 that's numbered 00058.

12 A. I have it.

13 Q. Could you tell me the date of that letter?

14 A. This letter is dated February 9th, 1970.
15 That's page 00059.

16 Q. Can you tell me the subject of that letter?

17 A. This letter deals in general with the topic of
18 PCBs and environmental concerns and attaches an
19 article from Chemical Week magazine, the issue of
20 October 29th, 1969.

21 Q. I think that speaks specifically to certain
22 Aroclors; does it not?

23 MR. GOEBEL: I want to object to him
24 testifying about the content of a letter that he
25 obviously did not author and the letter really speaks

1 for itself. He can tell you that it was in the
2 Monsanto records. He's the custodian of the records.
3 But now you're going in and asking him, you know, what
4 the letter says and the jury can read it, same as he
5 can.

6 Q. (By Mr. Bolzle) Let me ask you two quick
7 questions. Where is Mr. Duesenberg today?

8 A. I don't know where he is today.

9 Q. Is he still with Monsanto Company?

10 A. He's still Monsanto's General Counsel, yes.

11 Q. Referring specifically to the letter we were
12 just talking about, who is the author of that letter?

13 A. This letter was authored by Mr. Donald Olson,
14 O-l-s-o-n.

15 Q. Is he still employed by Monsanto?

16 A. No, he's not.

17 Q. Do you know where he is today?

18 A. He is -- he lives here somewhere in the St.
19 Louis area, to my best recollection.

20 Q. What do Monsanto records show as to whether
21 this February 9, 1970 letter from Mr. Olson was sent
22 to Rockwell?

23 A. Our records indicate that this letter was sent
24 to Rockwell.

25 Q. And what records are those?

1 A. That would be the import of the document label
2 00058.

3 Q. And what does that document show?

4 A. Well, it shows three Rockwell addresses.

5 Q. And those are the addresses to whom or to
6 where the February 9, 1970 letter from Mr. Olson was
7 mailed?

8 A. That's correct.

9 Q. Where were these addresses that appear on page
10 00058 taken from?

11 A. 00058 is a page taken from a larger list of
12 Monsanto Pydraul customers.

13 Q. And what was that list used for in relation to
14 the February 9, 1970 letter?

15 A. My best information on this, Mr. Bolzle, is
16 that the list from which 00058 was taken is a list of
17 those to whom this letter, the February 9th, 1970
18 letter, was addressed.

19 Q. Okay, sir. Let me ask you to move to the
20 attachment that's first page is marked 00067?

21 A. Yes, I have it.

22 Q. What is the date of that letter, sir?

23 A. April 15th, 1971.

24 Q. And who was its author?

25 A. C. Larry Bradford, B-r-a-d-f-o-r-d.

1 Q. Is Mr. Bradford still employed by Monsanto?
2 A. No, he is not.
3 Q. Do you know where he is?
4 A. I believe he resides in the Chicago area now.
5 Q. Could you read for me the first sentence of
6 that letter?
7 MR. GOEBEL: Same as my other objections, the
8 jury can read this.
9 MR. BOLZLE: Well, let me make clear what I'm
10 doing.
11 Q. (By Mr. Bolzle) Could you read for the jury
12 the first sentence of that letter?
13 MR. BOLZLE: I don't think either you or I
14 want to sit around in trial in October while the jury
15 sits and reads letter by letter. I want to introduce
16 it through this witness.
17 Q. (By Mr. Bolzle) So if you would just go ahead
18 and read that first sentence.
19 A. First sentence says, "Over the past year or so
20 we have written you several letters concerning
21 polychlorinated biphenyls and have urged that care be
22 taken to prevent the escape of hydraulic fluids
23 containing PCBs into the environment."
24 MR. GOEBEL: If he's going to read part of it,
25 I'd like for him to read it all because it doesn't

1 make it complete.

2 MR. BOLZLE: No. I'm not going to have him
3 read it all because we'll be here two weeks from now.
4 If you have anything else in there that you think is
5 relevant that he should read in the record beyond
6 purposes of just wasting our time, you can have him do
7 it on cross.

8 MR. GOEBEL: Well, I think it's unfair to have
9 him read excerpts of a letter without reading the
10 entire letter.

11 Q. (By Mr. Bolzle) Again, what do Monsanto's
12 records show as to whether or not that letter was sent
13 to Rockwell Manufacturing Company?

14 A. My information is that our records indicate
15 this letter was sent to the Rockwell address shown on
16 page 00067.

17 Q. I think that shows that it was specifically
18 mailed to Rockwell Manufacturing in Russellville,
19 Kentucky.

20 A. That's what that says, yes.

21 Q. Let me direct your attention to the document
22 marked 00104.

23 A. Yes, I have it.

24 Q. What is the date of that letter, sir?

25 A. This letter is dated January 31st, 1972.

1 Q. And who was the author of that letter?

2 A. Mr. Howard Bergen, B-e-r-g-e-n.

3 Q. Is Mr. Bergen still employed by Monsanto?

4 A. Mr. Bergen is deceased.

5 Q. Let me read you the first two sentences of

6 that letter. "We are writing to tell you that

7 effective June 30, 1972, all Pydraul fluids will be a

8 new formulation. We have decided to stop using

9 polychlorinated terphenyls as a component in our

10 fluids." Did I read that correctly?

11 A. Yes.

12 Q. Okay. Sir, if you turn to the document marked

13 00106?

14 Oh, I'm sorry. I'm sorry, Mr. Bistline. Let

15 me back up to 104. What do Rockwell's records show as

16 to whether or not Mr. Bergen's letter of January 31,

17 1972 was mailed to Rockwell?

18 A. I assume you mean Monsanto's records.

19 Q. What does Monsanto's records show as to

20 whether the letter was mailed to Rockwell?

21 A. Well, page 104, my information is that page

22 104 indicates that this letter of January 31, '72 was

23 sent to the two Rockwell addresses noted on page 104.

24 Q. And where were the addresses on page 104

25 obtained from?

1 A. Where were those addresses obtained from?
2 Q. Yes, sir.
3 A. From records in my possession, records of
4 Monsanto.
5 Q. Customer list?
6 A. It's a customer list, yes.
7 Q. All right, sir. Now, let's move to 106. What
8 is the date of that letter and who was its author?
9 A. Letter is dated March 15, 1972 and its author
10 is Mr. Howard Bergen.
11 Q. And am I correct that that letter includes an
12 attachment of the new Pydraul formulations?
13 A. Yes, that's correct.
14 Q. Referring back to Plaintiffs' Exhibit 7, it
15 reflects that Pydraul F-9 and Pydraul 312 were sold to
16 Rockwell by Monsanto between 1958 and 1971?
17 A. That's correct.
18 Q. Referring to the attachment to Mr. Bergen's
19 letter, does Pydraul F-9 equate to the Pydraul F-9-A
20 under the Old Product column for Selector 1?
21 MR. GOEBEL: Let me ask a preliminary
22 question. Is Pydraul F-9-A the same as Pydraul F-9?
23 THE WITNESS: My information is no, it is not.
24 Q. (By Mr. Bolzle) Okay. Is Pydraul 312 the
25 same as Pydraul 312 A?

1 A. Again, my information is that it is not.

2 Q. Is Pydraul 312 the same as Pydraul 312 C?

3 A. No, sir. My information is that they are not
4 the same product.

5 Q. What do Monsanto's records show as to whether
6 this document was mailed to Rockwell International
7 Corporation?

8 A. It is my information that this document was
9 sent to the Rockwell location noted on page 106.

10 Q. And as with the other letters we've discussed,
11 the entry that appears on the pages preceding the
12 letter is taken from the customer list to whom those
13 documents were mailed?

14 A. That's my understanding, yes.

15 Q. Okay, sir. Can you refer to the document that
16 has the number 00069?

17 A. I have it.

18 Q. What is the date of that letter, sir, and who
19 is its author?

20 A. That letter bears the date August 3, 1973, and
21 its author was Dr. Cumming Paton, C-u-m-m-i-n-g,
22 P-a-t-o-n.

23 Q. Is Mr. Paton still with Monsanto?

24 A. He's retired from Monsanto.

25 Q. Do you know where he lives today?

1 A. I believe he still lives here in the St. Louis
2 area.

3 Q. Now, included with that letter, I believe,
4 were excerpts from the Federal Register Rules and
5 Regulations, polychlorinated biphenyls.

6 A. That's correct.

7 Q. Also included with that letter was a
8 description of Monsanto's incineration service for
9 Pydraul fluids; is that correct?

10 A. That's correct. Well, it's a letter which
11 describes that service, that's correct, or describes
12 what steps need to be taken to take advantage or
13 available in -- avail one's self of the service.

14 Q. The fourth paragraph of the incineration
15 service letter, first sentence says, "Incineration
16 charges for Pydraul fluids are five cents per pound."
17 Is that correct?

18 A. That's what it says. That's page 00073.

19 Q. And finally, I think attached to Mr. Paton's
20 letter was a list, an attachment which listed Pydraul
21 fluids containing chlorinated ingredients.

22 A. That's correct.

23 Q. Am I correct that listed under Pydraul fluids
24 which contained chlorinated ingredients are Pydraul
25 F-9 and Pydraul 312?

1 A. That's correct.

2 Q. What do Monsanto's records show as to whether
3 this document with its attachments were mailed to
4 Rockwell International Corporation?

5 A. Our records would show that as indicated on
6 page 00069, this letter was sent to the two Rockwell
7 locations noted thereon.

8 Q. And that would include the Rockwell location
9 in Russellville, Kentucky, specifically; would it not?

10 A. That's what's shown on that page, yes.

11 Q. Those are entries taken from the customer list
12 to whom the list of customers -- to whom the letter
13 was mailed?

14 A. That's my information, yes.

15 Q. Mr. Bistline, let me refer you to four
16 separate documents. They are 00085, 86, 87, and 89.

17 A. Yes, I have them.

18 Q. Beginning with the document with page number
19 00085 on it, what was the date of that document and
20 who is its addressee?

21 A. The document bears the date August 28, 1975,
22 and it bears the address, Rockwell International,
23 P.O. Box 464, Golden, Colorado.

24 MR. GOEBEL: I'm going to object to the
25 relevancy of this letter.

1 Q. (By Mr. Bolzle) Is there a name of an
2 individual to whom this letter is being sent to the
3 attention of?

4 A. Attention Mr. D. M. Hogan.

5 Q. How about the document page number 00086?

6 A. That is a letter dated January 27th, 1976,
7 addressed to Rockwell International, P.O. Box 464,
8 Golden, Colorado, Attention Mr. D. M. Hogan.

9 Q. How about document page numbered 00087?

10 MR. GOEBEL: With respect to all of these I
11 want to object to the relevancy as not pertaining to
12 the Russellville facility.

13 THE WITNESS: 00087 is a letter dated July
14 28th, 1976, addressed to Rockwell International,
15 Columbia Aircraft Division, P.O. Box 1259, Columbus,
16 Ohio, Attention G. Rips, R-i-p-s.

17 Q. (By Mr. Bolzle) And I believe, does the
18 second page of that reflect the author of the letter?

19 A. It bears the signature C. R. Field,
20 Supervisor, Customer Service Center.

21 Q. And can you give me the same information for
22 document page number 00089?

23 A. That document is a letter dated July 18th
24 1977. The addressee is Mrs. B. J. Faris, F-a-r-i-s,
25 Rockwell International Company, Rock Flats Plant, Post

1 Office Box 464, Golden, Colorado.

2 Q. Now, taking those four documents together, and
3 referring specifically to the first sentence of those
4 four documents, those documents purport to confirm, do
5 they not, telephone conversations concerning
6 incineration of Askarel and Pydraul fluids.

7 MR. GOEBEL: Object to relevancy and also
8 you're asking him about something that you haven't
9 laid a foundation to show that he has knowledge that
10 telephone conversations were made.

11 MR. BOLZLE: I didn't ask him if he knew about
12 the telephone conversations. I asked him what the
13 letter purported to state.

14 Q. (By Mr. Bolzle) And is it not correct, sir,
15 that they purport, the letters purport to confirm
16 telephone conversations concerning the incineration of
17 Askarel fluids and Pydrauls?

18 A. Three purport to concern telephone
19 conversations relating to Askarel and one purports to
20 relate to incineration of Pydraul F-9.

21 Q. And each of those letters provides information
22 concerning reshipment of the Pydrauls or Askarel waste
23 back to Monsanto for incineration; do they not?

24 A. That's the purport of the letter, yes.

25 Q. Now, Askarel -- let me spell that,

1 A-s-k-a-r-e-l, is a generic name for fire-resistant
2 dielectric fluids including those containing PCBs; is
3 it not?

4 MR. GOEBEL: Objection, relevancy.

5 THE WITNESS: Yes. That's my understanding.

6 Q. (By Mr. Bolzle) Last but not least, Mr.
7 Bistline, the document with the page number 00090?

8 A. Yes, I have it.

9 Q. What is that document?

10 A. My information is that this is a copy of a
11 label which was sent to Monsanto's customers to be
12 affixed to a barrel containing PCB fluids to be
13 incinerated at Monsanto's incinerator.

14 Q. Do those, does that label discuss any of the
15 hazards of the contents?

16 MR. GOEBEL: Objection, document speaks for
17 itself.

18 THE WITNESS: There are two paragraphs on this
19 label which speak to the need to prevent entry of PCBs
20 into the environment and also to avoid physical
21 contact with the fluid.

22 Q. (By Mr. Bolzle) When was this document sent
23 to Rockwell, do you know?

24 MR. GOEBEL: When you say to Rockwell, can you
25 be more specific?

1 MR. BOLZLE: No, no, and that's -- I'm not
2 going to be more specific because the defendant in
3 this case is not and has never been Rockwell's
4 Russellville facility. It is Rockwell International
5 Corporation.

6 Q. (By Mr. Bolzle) So my question is do you
7 know, sir, when that particular document was mailed to
8 Rockwell?

9 A. I don't know from my own knowledge, Mr.
10 Bolzle.

11 Q. What is your information as to when this was
12 mailed to Rockwell?

13 A. My information is that it would have been an
14 attachment to the four letters that we previously
15 discussed.

16 Q. Now, you've --

17 A. And that it was -- I'm sorry -- that it was
18 also, I believe, attached to Dr. Paton's 1973 letter.

19 Q. Now you've answered several questions, and I
20 understand your circumstances, you answered several of
21 my questions based upon your information.

22 A. That's correct.

23 Q. From whom have you obtained that information
24 and how did you obtain that information?

25 A. That information I obtained from several

1 individuals, retirees, from Monsanto Company.

2 Q. But these are individuals that are no longer
3 with Monsanto?

4 A. They are not now with Monsanto, that's
5 correct.

6 Q. Can you identify these individuals?

7 A. Yes.

8 Q. Who are they?

9 A. Principally, Mr. William Papageorge, Mr. Paul
10 Benignus, B-e-n-i-g-n-u-s, and Dr. R. E. Kelly.

11 Q. And they're employees of Monsanto here in the
12 St. Louis area?

13 A. They are all currently retired employees of
14 Monsanto, all living in the St. Louis area.

15 Q. Do you have the addresses and telephone
16 numbers of these individuals if we needed to contact
17 them?

18 A. I have them at my office, yes. Don't have
19 them in my hand.

20 Q. I understand. All right, Mr. Bistline, we've
21 discussed, I believe already, Plaintiffs' Exhibit 7,
22 which is the Sales Summary that was -- and attached
23 document that was prepared at your request.

24 Let me hand you Plaintiffs' Exhibit 8, and
25 have you identify those documents for the record?

1 A. These are documents which can generically be
2 described as product labels for Pydrauls F-9, 312, and
3 312 A, and that would be pages 140 through 147, and
4 technical bulletins relating to Pydraul products which
5 are comprised of pages 148 through 266.

6 Q. Now, what are technical bulletins?

7 A. Technical bulletins are documents prepared by
8 Monsanto as an aid both to our sales representatives
9 and our customers that provide certain technical data
10 relating to, in this case, Monsanto's Pydraul
11 hydraulic fluids.

12 Q. Now, are the documents contained in
13 Plaintiffs' Exhibit 8 to your deposition business
14 records of Monsanto Company?

15 A. Yes, they are.

16 Q. And are they true and correct copies of the
17 documents that you have in your file and custody?

18 A. Yes, they are.

19 Q. Are those documents, were those documents made
20 and are they maintained in the regular course of
21 Monsanto's business?

22 A. Yes.

23 Q. And is Monsanto's business a regularly
24 conducted activity in which these documents are kept
25 and maintained?

1 A. Yes.

2 Q. And were these documents prepared and the
3 information set forth therein by persons having
4 knowledge of that information at or near the time of
5 those events?

6 A. That's my information, yes.

7 Q. All right, sir. Have you spoken with any
8 representatives or attorneys of Rockwell International
9 Corporation before this deposition today and
10 specifically about this deposition?

11 A. Specifically about this deposition, no. I
12 don't recall ever speaking to a Rockwell attorney, on
13 any topic.

14 Q. When you talk about Rockwell attorneys are you
15 including in that description people like Mr. Goebel
16 who are outside attorneys employed by Rockwell?

17 A. Yes, that's correct. I don't think -- I know
18 I said when I came in that I thought I recognized Mr.
19 Goebel but I don't think he and I have ever met
20 before.

21 Q. I don't have any further questions for you at
22 this time, sir. Thank you.

23

24

25

1 Counsel with Monsanto? I understand you're in the
2 litigation section; any particular type of litigation
3 for Monsanto?

4 A. I am responsible for all of our cases
5 involving polychlorinated biphenyls, PCBs. That is
6 part of my responsibility but I have other areas for
7 which I am responsible as well.

8 Q. But you're the man, when it comes to, if
9 someone contacts Monsanto about PCBs, that's going to
10 come across your desk at some point.

11 A. Not necessarily. If someone contacts Monsanto
12 about PCB litigation, I would be involved.

13 Q. Okay. I'm sorry. Good point. How long have
14 you been the individual primarily responsible for the
15 litigation of PCB-related events at Monsanto?

16 A. Since approximately January of 1985.

17 Q. May I safely assume that by subpoenaing you to
18 bring to this deposition today those records that you
19 have in the archive that you have described, that we
20 have tapped the best source in Monsanto for
21 information relating to communications between
22 Monsanto and Rockwell historically concerning PCBs?

23 A. Yes, that's my believe.

24 Q. Would I be safe in assuming that Rockwell is
25 not the only entity in the last 10 years that has

1 written letters such as I believe it's Exhibit Number
2 5, Mr. Harff's letter to Mr. Duesenberg? Is this
3 something that's happened before in other context to
4 Monsanto?

5 A. We have received other such letters, yes.

6 Q. In fact, have there even perhaps been
7 litigation where you've actually been a named
8 defendant or third party defendant where allegations
9 have been made that Monsanto should be legally
10 responsible for clean-up costs or compensation costs
11 arising out of the contamination of the environment or
12 toxic effects on individuals caused by their PCBs?

13 A. Yes, that's correct.

14 Q. Has Monsanto, however, actually been adjudged
15 liable in any of that sort of litigation other than on
16 the basis of say strict liability as opposed to -- I
17 guess what I'm looking for, anything that would arise
18 to a judgment that Monsanto was liable for failure to
19 warn its customers or in any way was guilty of any
20 sort of or found liable for any sort of fraud or
21 deception?

22 MR. GOEBEL: Object to the relevancy of the
23 question.

24 THE WITNESS: I can only speak for the period
25 of time for which I've been responsible for these

1 cases. We had one case in Milwaukee, Wisconsin, Stroh
2 Die-casting Company was the plaintiff, in which we
3 were found liable and assessed punitive damages but
4 that jury verdict and adjudgment was reversed on
5 appeal.

6 Q. S-t-r-o-h?

7 A. S-t-r-o-h.

8 Q. Okay. And in all other instances, Monsanto's
9 conduct as far as keeping its customers advised
10 historically has passed muster with juries when it's
11 come to that point?

12 A. I can only respond that since 1985, that's the
13 only verdict that's been entered against it in a PCB
14 case.

15 Q. One thing I was a little curious about. On
16 these 5 and 6, the salutations, one opens with "Dear
17 Dick" and the response starts with "Dear Charles". Do
18 you have any reason to know whether or not Mr. Harff
19 and Mr. Duesenberg knew each other?

20 A. Mr. Duesenberg told me that he knows Mr.
21 Harff.

22 Q. What is the nature of that relationship as far
23 as you know?

24 A. I don't know, Mr. Cunningham.

25 Q. Am I correct in understanding from in your

1 earlier testimony there's never been any actual filing
2 of any sort of litigation between Rockwell and
3 Monsanto concerning PCB use at their Russellville
4 facility or any other Rockwell facility; correct?

5 A. Not to my knowledge.

6 Q. Looking at letter number, your number, Exhibit
7 Number 6, which is the letter you drafted for Mr.
8 Duesenberg in response to Mr. Harff's letter, you make
9 a statement in there towards the end of page 2 and
10 beginning of page 3 regarding allegations regarding
11 the case of Smith v. Rockwell. That would not seem to
12 be readily apparent from the documentation that is
13 attached to the letter and I'm curious as to what
14 additional information or sources of information you
15 may have tapped in preparation, if nowhere else, at
16 least in that part of your letter?

17 A. Counsel employed by Monsanto consulted the
18 court record in that case, prior to my drafting the
19 letter.

20 Q. It's my understanding that case has been
21 resolved for two years now.

22 MR. GOEBEL: Object to the relevance.

23 Q. (By Mr. Cunningham) Ever been contacted
24 regarding that particular lawsuit?

25 A. Not to my knowledge.

1 Q. I wanted to try to just clarify the
2 terminology here and if I'm taking you beyond your
3 understanding, then that's fine, but I have this sense
4 that you probably do understand this stuff and may be
5 helpful to the jury.

6 PCBs or polychlorinated biphenyls are a
7 substance of synthetic organic chemical. It's a
8 family of different types of isomers; is that not
9 correct?

10 MR. GOEBEL: I'm going to object. You haven't
11 laid a foundation that he does know that chemical
12 makeup. He's a records custodian and he's an
13 attorney. Now you're asking him technical questions.
14 And may I ask a preliminary question, sir?

15 MR. CUNNINGHAM: Sure.

16 THE WITNESS: Sure.

17 MR. GOEBEL: Would William Papageorge be the
18 person who would be qualified to give a technical
19 answer about the chemical makeup of PCBs?

20 THE WITNESS: Mr. Papageorge is a chemical
21 engineer. I would assume he has that knowledge, yes.
22 In fact, I know he does.

23 Q. (By Mr. Cunningham) We all have that
24 knowledge, too. I'm just trying to get in the record,
25 and if you don't know what PCBs are, you just happen

1 to be the guy who's been in charge of PCB litigation
2 since 1985, but you haven't got a clue what they are,
3 then that's fine; tell us so. But I'm trying to get
4 this simplified for the jury. We're using a lot of
5 different terminology. I don't think it's really that
6 complex.

7 When one speaks of PCBs, one is talking about
8 the family of organic synthetic chemicals; correct?

9 MR. GOEBEL: Same objection.

10 THE WITNESS: That's my information, yes.

11 Q. (By Mr. Cunningham) When one speaks of
12 Aroclors, conversely, that is the trade name that
13 Monsanto used for the PCB fluids that it manufactured;
14 correct?

15 A. The Aroclor family of products included more
16 than just PCB products.

17 Q. But that is what the PCBs were. I mean it
18 contained other compounds but it also -- that's what
19 the PCBs went into?

20 A. Well, certain Aroclors contained PCBs, but as
21 I think we've discussed earlier today, other Monsanto
22 products also contained PCBs and those products were
23 sold under names other than Aroclor.

24 Q. And the specific products we're talking about
25 here with regard to Rockwell were Pydrauls which were

1 hydraulic fluids?

2 A. As a family of products, yes, these were
3 hydraulic fluids.

4 Q. Whereas Aroclors has a broader base of
5 application in industry than just hydraulic fluids,
6 particularly as dielectric fluids?

7 A. Certain Aroclors were components of dielectric
8 fluids, yes.

9 Q. When one talks about an Aroclor 1248 or an
10 Aroclor 1254, the principal difference between those
11 two substances was degree of chlorination in the
12 molecule; correct?

13 A. That's my information, yes.

14 Q. The principal significant difference therein
15 was the viscosity of the fluid?

16 A. I'm not sure I understand what you mean by the
17 principal difference. Are you talking about --

18 Q. Chemical characteristic of property.

19 A. I'm not sure I'm qualified to speak to that.

20 Q. Am I correct in understanding that Monsanto
21 was the exclusive domestic United States manufacturer
22 of polychlorinated biphenyls?

23 A. No. We were not the exclusive manufacturer of
24 PCBs.

25 Q. Do you know what your market share was for say

1 1956 to the early 1970s?

2 A. I don't know.

3 Q. Can we safely say that it was the vast
4 majority of those products?

5 A. I think we could say that Monsanto
6 manufactured the majority of PCBs during that period
7 of time, yes, domestic manufacturer of PCBs.

8 Q. Okay. In your review of the extensive
9 documents available in the archives at Monsanto, did
10 you ever find any information or documentation that
11 would indicate that Monsanto advised its customers
12 that it was appropriate to discharge Pydrauls,
13 hydraulic fluid, out into the open environment as a
14 disposal mechanism?

15 MR. GOEBEL: Objection; no evidence that that
16 happened in this case. No basis for the question.

17 THE WITNESS: I've seen no document that
18 contains that advice.

19 Q. (By Mr. Cunningham) I did see some references
20 in some of the attachments in Number 6 to a service
21 offered by Monsanto to test and evaluate the PCB
22 contents to various fluids it may have sold its
23 customers. Have you, again, in your research of the
24 extensive archives of Monsanto's records, ever found
25 any documentation that would seem to indicate that

1 Monsanto tested fluid provided by the Russellville
2 Rockwell facility and advised that facility that its
3 sample did not contain PCBs?

4 A. I have not seen any record which would
5 indicate that we did any testing of samples for the
6 Russellville facility.

7 Q. But you did offer that service to your
8 customers if they had doubts or concerns; at least the
9 records reflect that.

10 A. The records reflect that testing services were
11 offered, yes.

12 Q. The oldest documents that I saw in the
13 attachments were 00027 and --

14 A. 27?

15 Q. -- 27 and those attached to it, which I'm
16 reading as under date of August 29, 1960.

17 THE WITNESS: Off the record for a second?

18 (Discussion off the record.)

19 THE WITNESS: Okay. I have document number
20 00027, yes.

21 Q. (By Mr. Cunningham) And the date on that I
22 read is August 29, 1960, and I'm presuming you have no
23 information to suggest that date is inaccurate.

24 A. I have no information one way or the other,
25 Mr. Cunningham.

1 Q. And can you tell me whether or not the
2 archives that are available to you in your document
3 searches and to your staff in their document searches
4 at your insistence go back at least then, therefore as
5 far as 1960?

6 A. I have seen documents in our archives much
7 older than 1960.

8 Q. And in reading the response to that request
9 about the composition and characteristics of Pydrauls
10 supplied for Rockwell's facility in Russellville, I
11 take it that is the letter 00028 and 29 with
12 attachments, and it seems to describe what was then
13 known about the toxic effects both in animal studies
14 and in humans of the fluid, have you seen anything in
15 the archives that would indicate that when asked about
16 the toxic or health hazards of this substance, that
17 Rockwell refused to provide this information to any
18 customer?

19 A. Monsanto refused to provide?

20 Q. Monsanto refused.

21 A. I have seen no document that indicates that
22 Monsanto refused to communicate such information.

23 Q. That's all I have.

24 MR. GOEBEL: Can we take a short break?

25 MR. BOLZLE: Mr. Bistline, couple things I

1 neglected to ask you come to mind.

2 REDIRECT EXAMINATION

3 BY MR. BOLZLE:

4 Q. Do Monsanto's records reflect that there was
5 any response from Rockwell to the letter you prepared
6 on behalf of Mr. Duesenberg that's marked Plaintiffs'
7 Exhibit 6? Did you ever get a response to that letter
8 from Rockwell?

9 A. I never received one. I don't know whether
10 Mr. Duesenberg ever received a response. If he did,
11 he didn't communicate it to me.

12 Q. Do you have any such response in the records
13 in your custody?

14 A. No, sir, I don't.

15 Q. Do you have any documents in your custody that
16 are letters or correspondence you were sent by
17 Rockwell taking issue with any of the statements set
18 forth in the letters attached to Mr. Duesenberg's
19 letter?

20 A. Other than Mr. Harff's letter of February 4,
21 1988, no.

22 Q. No further questions.

23 MR. GOEBEL: Let's just go ahead.

24

25

1 CROSS-EXAMINATION

2 BY MR. GOEBEL:

3 Q. All right. For the record, I'm Tony Goebel.
4 I represent Rockwell International Corporation.

5 Mr. Bistline, you've never visited the
6 Russellville, Kentucky Rockwell site; is that correct?

7 A. That's correct.

8 Q. And you've never spoken to anyone at the
9 Russellville Rockwell Manufacturing facility about
10 anything we've talked about today.

11 A. That's correct.

12 Q. Are you aware of the operations that were in
13 existence at the Russellville, Kentucky manufacturing
14 facility?

15 A. Only to the extent that they were discussed in
16 Mr. Harff's letter.

17 Q. All right. Were you aware of any reclamation
18 system that was in place at the Russellville facility
19 to reclaim the Pydraul fluid?

20 A. No, Mr. Goebel, I'm not. I'm not.

21 Q. You don't know if there was one or not?

22 A. I have no knowledge one way or the other on
23 that.

24 Q. Are you aware of whether the Russellville
25 facility sent its Pydraul off-site for reclamation?

1 A. I have no information one way or the other.

2 Q. You've identified some, the incineration
3 service available at Monsanto to incinerate PCBs; to
4 your knowledge, were there other facilities around the
5 country that were available to incinerate PCBs?

6 A. I believe there were.

7 Q. And you're not aware of whether Rockwell
8 utilized any other facility other than the Monsanto
9 facility?

10 A. No, sir. I'm not.

11 Q. How does Monsanto keep its records with
12 respect to former customers who had used
13 PCB-containing fluids?

14 A. I'm not quite sure what you mean.

15 Q. Is it by facility? Is it by the Russellville
16 plant? Is it kept by Rockwell generically?

17 A. There are probably several different ways that
18 those records would be kept. It would be more by
19 category of document. In some instances, for example,
20 sales records are kept as a group. They're not
21 segregated or broken down by customer. There may be
22 files that were kept by Monsanto employees relating to
23 questions received from a particular customer that
24 would be in a customer file. As far as inquiries
25 relating to health and safety matters, those would be

1 kept in what the medical department at the time called
2 product files. So there would be a file on Pydraul
3 F-9 that would contain inquiries received from anyone
4 on the matter related to health and safety for that
5 product.

6 Q. You've identified several documents today that
7 you have testified were actually mailed to Rockwell,
8 one of its facilities.

9 A. That would be what our records indicate, yes.

10 Q. And the documents that you have testified were
11 actually mailed had a cover page on them, did they
12 not, showing that it was mailed to a particular
13 facility?

14 A. There was a portion of a list associated with
15 each of those letters, yes.

16 Q. Would the documents that did not contain that
17 list and the designation of those, of any Rockwell
18 facility, is there any evidence that any of these
19 other documents were actually mailed to Russellville,
20 Kentucky?

21 A. I'm not sure I'm following your question.

22 Q. Well, let's take -- you've identified and have
23 produced some documents, Bates stamped 140 through
24 266.

25 A. Oh, I understand what you mean. You're

1 referring to the collection of documents in Exhibit 8.

2 Q. Yes.

3 A. And you're asking whether they were mailed to
4 or otherwise provided to Rockwell?

5 Q. Yes.

6 A. Yes. I have no record indication of that.
7 All I can say is that a product, it's my understanding
8 that Monsanto's policies and practices, that the
9 labels that are contained, product labels that are
10 contained in Exhibit 8, were affixed to those products
11 when they were sent to any customer and that the
12 technical bulletins contained in Exhibit 8 were of a
13 type which were generally provided by Monsanto sales
14 people to Monsanto's customers.

15 Q. But specifically, whether these technical
16 bulletins were sent to Russellville, Kentucky,
17 Monsanto has no list showing that they were actually
18 sent.

19 A. Other than what might be reflected in the
20 exhibits we talked about today, no. I think maybe one
21 of these letters reflects that a technical bulletin
22 was sent to the insurance company that acquired them
23 on Rockwell's behalf.

24 Q. In 1960?

25 A. In 1960.

1 Q. Could I have this marked, please?

2 (Defendants' Exhibit A marked.)

3 Q. Let me hand you what's been marked as
4 Defendants' Exhibit A and ask you if you've ever seen
5 that document before?

6 A. This appears to be a copy of Monsanto
7 technical literature related to Pydraul F-9. I
8 believe I've seen this document before, yes.

9 Q. And it wasn't one of the F-9 bulletins that
10 you produced today, was it?

11 A. I don't believe this is in the collection, no.

12 Q. I thought I had an extra copy for myself but
13 let me refer to this.

14 A. Sure.

15 Q. On page 18 of that document there's a
16 Section X entitled, Toxicity and Safe Handling
17 Information.

18 A. Yes, I see that.

19 Q. Does it mention anywhere in there about the
20 environmental -- or first of all, does it mention
21 PCBs?

22 A. No. I've seen this write-up before and the
23 write-up does not specifically state PCBs.

24 Q. Well, not --

25 A. Or even generally states PCBs. Mentions

1 Pydrauls.

2 Q. Do you know about the vintage of this
3 document, when it was generated by Monsanto?

4 A. I don't know as I sit here.

5 Q. F-9 from the other records it appears was
6 discontinued at about what year?

7 A. Pydraul F-9 would have been discontinued in
8 approximately, I think, 1971. I believe we sold it
9 until '71. The last sale to the Russellville plant,
10 Rockwell Russellville plant is reflected in our
11 records as 1966.

12 Q. And on page 18 of Defendants' Exhibit A, the
13 only harms identified by Monsanto or discussed are
14 harms from exposure to the skin, the eyes, and from
15 inhalation; is that right?

16 A. That's correct.

17 Q. And it does not say that Pydraul poses a
18 danger to the environment, does it?

19 A. Not on page 18, no, sir.

20 Q. Does it state that anywhere else in the
21 document?

22 A. I don't believe it, the environmental
23 concerns, are discussed anywhere in this technical
24 bulletin.

25 Let me go off the record for one second.

1 Q. Sure.

2 (Discussion off the record.)

3 Q. During our little break you have now come up
4 with generally the time frame this document may have
5 been produced.

6 A. Yes. It appears to me from referring to page
7 19, the St. Louis address for Monsanto is 800 North
8 12th Boulevard St. Louis 1, Missouri. That would
9 indicate that this bulletin was produced probably in
10 the early to mid-1950s since after about 1957, '56 or
11 '57, our sales office moved to 800 North Lindbergh
12 Boulevard in St. Louis which is our current world
13 headquarters address.

14 Q. All right. I think that helps us. Thank you.

15 Let's refer to the documents attached to Mr.
16 Duesenberg's letter and let's start with the one Bates
17 stamped 00027, which is a letter dated August 29th,
18 1960?

19 A. Yes, I have it.

20 Q. All right. In that letter there is a request
21 that Monsanto provide the composition of Pydraul --
22 that says F-200. I believe the product manufactured
23 was A-200; is that right?

24 A. My information is the product is A-200, yes.

25 Q. And it asks that they be provided with

1 information on the health and fire hazards and the
2 toxic nature of Pydraul A-200 -- or they say F-200?

3 A. That's correct.

4 Q. And the response is apparently contained in
5 the document dated September 1st, 1960, Bates stamps
6 00028 through 33; is that correct?

7 A. I believe that's correct.

8 Q. Actually, it may be --

9 A. It may be more. I'd have to track the
10 numbers. The attachments to the letter are listed on
11 page 00029.

12 Q. I think it may be through Bates stamp 00048,
13 if you'll check.

14 A. That would -- I think that's correct. I think
15 it's through 00048.

16 Q. Let's look at the cover letter dated September
17 1st, 1960, Bates stamped 28.

18 A. Yes.

19 Q. In the second paragraph of that letter, it
20 discusses the dangers associated with Pydraul A-200;
21 does it not?

22 A. Yes, it does.

23 Q. And it talks about accidental ingestion of the
24 fluid, about midway down?

25 A. Yes.

1 Q. And what does it state about accidental
2 ingestion?

3 A. That sentence reads, "Our interpretation of
4 this data is that accidental ingestion of the fluid is
5 not a hazard in view of the high oral lethal dose."

6 Q. And then in the next sentence it states that
7 prolonged and repeated skin contact should be avoided;
8 is that correct?

9 A. That's correct.

10 Q. And then in the first sentence, next
11 paragraph, it says that Monsanto recommends that vapor
12 inhalation be prevented when the fluid is at elevated
13 temperatures; correct?

14 A. That's correct.

15 Q. This letter does not mention any environmental
16 dangers associated with Pydraul A-200, does it?

17 A. That's correct.

18 Q. And it does not mention that Pydraul contained
19 PCBs, does it?

20 A. It does not refer to PCBs.

21 Q. And it also does not say anything about
22 preventing leakage of Pydraul into the environment,
23 does it?

24 A. No. That specific cautionary language was not
25 part of our -- part of Monsanto's warning, to my

1 information, until approximately 1970.

2 Q. My question was -- I'll move to strike your
3 last answer as being unresponsive.

4 But in this letter, none of that language
5 appears; is that right?

6 A. That's correct.

7 Q. Let's refer to the first attachment. It's a
8 document entitled Pydraul A-200.

9 A. Yes, page 00030.

10 Q. Yes, sir. That's one of the technical
11 bulletins that you described before, correct?

12 A. This -- yes, this is one of the technical
13 bulletins, that's correct.

14 Q. On the last page which is Bates stamped 00033,
15 it discusses the handling and storage of Pydraul
16 A-200; does it not?

17 A. Yes.

18 MR. BOLZLE: Let me interject here. I mean
19 obviously I discussed with him the contents of these
20 documents and I think you're entitled to do so, but if
21 you intend to object to my discussion with Mr.
22 Bistline of the contents of these documents, I'm going
23 to need to object to your discussion.

24 MR. GOEBEL: That's fine. You went ahead and
25 asked your questions, so I feel obligated to.

1 MR. BOLZLE: If you'll give me a running
2 objection.

3 MR. GOEBEL: That's fine.

4 Q. (By Mr. Goebel) On that page 00033 it
5 discusses repeated and continuous skin contact should
6 be avoided and inhalation of the vapors at elevated
7 temperatures should be prevented and then further down
8 it states that eye irritation studies after using the
9 material full strength showed it to be a mild irritant
10 with no permanent damage to the eye tissues. Is that
11 what is contained in the handling and storage portion
12 of this brochure?

13 A. Yes, that's what it says.

14 Q. This brochure, and I'll have you review it,
15 does not warn about any of the environmental dangers
16 of, first of all, Pydraul, or second, PCBs; does it?

17 A. No, there is no information on environmental
18 concerns in this brochure. That predates those, our
19 knowledge of those.

20 Q. In fact, this brochure does not even mention
21 PCBs, does it?

22 A. I believe that's correct. I haven't read
23 every word in here but it would be consistent with our
24 literature from that time period. It would not refer
25 specifically to PCBs.

1 Q. Let's take the next brochure which was the
2 second attachment to the September 1st, 1960 letter
3 entitled, Monsanto Fluids for Specialized Engineering.

4 A. Yes, I have that.

5 Q. It's Bates stamped 00034 through 38.

6 A. Yes.

7 Q. On Bates stamped 00036 Pydraul F-9 is
8 identified and I think the title of the page is
9 Summary of General Properties of -- and it appears to
10 be some of the Pydraul products, does it not?

11 A. Summary of General Properties of -- and then
12 the rest of it is cut off. I presume it's continued
13 on page 37 but --

14 Q. Appears to say Selected Functional Fluids,
15 right?

16 A. If in fact it does continue, that's what the
17 caption is, yes.

18 Q. Again, this document doesn't mention that any
19 of these Pydrauls contained PCBs, does it?

20 A. No, sir, it does not.

21 Q. And it does not warn about the environmental
22 potential harm to the environment as a result of these
23 products, does it?

24 A. That's correct.

25 Q. Let's take the final attachment, 00039,

1 entitled, Know Your Hydraulic Fire Hazards.

2 A. Yes.

3 Q. Why don't you look through that document and
4 my question is does it mention anywhere in the
5 document or does Monsanto mention anywhere in the
6 document that Pydraul contains PCBs?

7 A. No, sir, it does not.

8 Q. And Monsanto does not warn about any potential
9 harm for the environment as a result of using this
10 product, does it?

11 A. Not in this write-up, no, sir.

12 Q. Let's go to the next document in Exhibit
13 Number 6 which I believe is Bates stamped 00049.

14 A. Okay. I have 49.

15 Q. All right. Do you know, in the first sentence
16 it discusses some newspaper and magazine articles that
17 have been published about polychlorinated biphenyls;
18 do you know what newspapers or magazines that refers
19 to, which articles?

20 A. No, I don't.

21 Q. In the second paragraph it states that it is
22 claimed that the PCBs found in the environment
23 referred to in the earlier paragraph strongly resemble
24 chlorinated biphenyls containing 54 percent and 60
25 percent chlorine by weight. Products which were sold

1 by Monsanto under the trade names Aroclors 1254 and
2 1260 contained chlorinated biphenyls. That's what the
3 document says?

4 A. That's correct.

5 Q. In the final paragraph on that page beginning,
6 "We would like to point out the following additional
7 facts," in subparagraph number 2, would you read that
8 for the jury, please?

9 A. Subparagraph number 2 states, "PCBs with a
10 chlorine content of less than 54 percent have not been
11 found in the environment and appear to present no
12 potential problems to the environment."

13 Q. And you've already testified that you don't
14 know if Pydraul 312 or F-9 contain less than 54
15 percent chlorine content by weight.

16 A. I don't know what Aroclor was used in either
17 of those hydraulic fluids from my memory.

18 Q. Assuming that Mr. Bolzle is correct and that
19 it was Aroclor 1248 that was contained in those
20 fluids, would you agree that the portion of the letter
21 you just read states that those products would not
22 pose a problem to the environment?

23 A. That would be an inference that could be drawn
24 from that paragraph.

25 Q. Let's move on to the next letter which is

1 dated February the 9th, 1970, beginning at Bates
2 stamped 00059.

3 A. I have 59.

4 Q. Through 66.

5 A. Yes.

6 Q. It's somewhat similar to the letter we just
7 reviewed; is it not?

8 A. Yes, they're quite similar, the two letters.

9 Q. At the bottom of that page it said, "We would
10 like to point out the following additional facts," and
11 it states that products such as Pydraul, and it lists
12 a number of Pydraul products, but two of those listed
13 are 312 and F-9, are not formulated with Aroclor 1254
14 or 1260; is that what it says?

15 A. That's what it says, yes.

16 Q. The next paragraph is identical to the one
17 that you just read us. It says, the "PCBs with a
18 chlorine content of less than 54 percent have not been
19 found in the environment and appear to present no
20 potential problem to the environment." That would
21 include Pydrauls 312 and F-9; correct?

22 A. That would be the inference that one could
23 draw from that, yes.

24 Q. And those were two of the products that were
25 used at Russellville?

1 A. That's what the information on Exhibit 7 would
2 show. That's correct.

3 Q. Let's refer both -- to both letters, the one
4 beginning at 00050, and the one beginning at 59.

5 A. I have those.

6 Q. Generally speaking, it is a letter warning
7 about PCBs with a chlorine content of greater than 54
8 percent; correct? Have I accurately described that?

9 A. That would be the thrust of these two letters,
10 that's correct.

11 Q. And the two paragraphs that appear at the
12 bottom or the paragraphs that appear at the bottom of
13 both, on the first page of both documents, is saying
14 that products with less than 54 percent actually pose
15 no threat at all to the environment.

16 A. Well, I think that perhaps overstates it. It
17 says they appear to present no potential problems to
18 the environment.

19 Q. It's certainly not a warning about products
20 with less than 54 percent chlorine by weight; would
21 you agree with that statement?

22 A. I think you have to interpret the letter as a
23 whole and not take out any one part.

24 Q. You don't agree with that statement?

25 A. I would say that you have to read the letter

1 as a whole, rather than taking out one part of it, and
2 overall, I would say it's a caution about PCBs in
3 general with qualifications that were current.

4 Q. The qualifications being that the products
5 with less than 54 percent posed no potential problem
6 to the environment?

7 A. Had not been discovered in the environment at
8 that time.

9 Q. Posed no potential problems?

10 A. Had not been discovered in the environment at
11 that time, and the language is, appear to present no
12 potential problem to the environment.

13 Q. Let's go on to the next letter which is dated
14 April 15th, 1971.

15 A. You have the number on that?

16 Q. It's Bates stamped 00068.

17 A. Yes, I have it.

18 Q. The second sentence of that letter states that
19 "certain Pydraul hydraulic fluids did contain PCBs;"
20 does it not?

21 A. Yes, that's what it says.

22 Q. If certain hydraulic fluids did, does that
23 letter imply that certain hydraulic fluids did not
24 contain PCBs? Would you agree with that statement?

25 A. In fact, certain hydraulic fluids did not

1 contain PCBs. That's an accurate statement.

2 Q. And it doesn't identify which of the Pydraul
3 fluids actually contained PCBs, does it?

4 A. This letter does not, that's correct.

5 Q. And it does not even mention the Pydraul
6 fluids that we know Russellville used, that being
7 Pydrauls 312 or F-9; correct?

8 A. I believe this letter doesn't refer to any
9 specific Pydraul.

10 Q. Let's go to the next letter. It would be
11 00070, dated August 3rd, 1973.

12 A. Yes, I have it.

13 Q. For the benefit of the jury, do you know if
14 chlorinated components refers to something other than
15 just PCBs?

16 A. Yes, it does. It also refers to
17 polychlorinated terphenyls.

18 Q. What is a terphenyl?

19 A. I'm going to have to defer you to Mr.
20 Papageorge for a description of that, but I will tell
21 you that I understand them to be a chlorinated
22 compound with three benzene rings rather than the two
23 in chlorinated biphenyls, but talk to Mr. Papageorge
24 about that.

25 Q. Do you know if PCTs, which is what I believe

1 they're known as --

2 A. That's correct.

3 Q. -- have been found in the environment?

4 A. Do I know if they've been found? I don't

5 know.

6 Q. Do you know if they're hazardous to the

7 environment?

8 A. Again, I don't know the answer to that

9 question.

10 Q. Mr. Papageorge would be the person?

11 A. I would refer you to Mr. Papageorge.

12 Q. Attached to that letter is a list of Pydraul

13 fluids which contained chlorinated ingredients.

14 A. That's correct.

15 Q. And you've told us that chlorinated

16 ingredients can be something other than PCBs; correct?

17 A. That's correct.

18 Q. So when there is a reference to Pydraul 312

19 and Pydraul F-9, according to this document, it

20 contains chlorinated ingredients.

21 A. That's correct.

22 Q. It does not state which of the Pydraul

23 products contain specifically PCBs, does it, and I'll

24 ask you to refer to the whole document?

25 A. Right. This letter does not distinguish

1 between those fluids which were formulated with PCBs
2 and those which were formulated with PCTs.

3 Q. And I believe -- and I've spoken with Mr.
4 Papageorge at another deposition. Do you know what
5 the designations after the numbered letter are?

6 A. My understanding is that designation A after a
7 number indicates that that was a fluid formulated with
8 PCTs.

9 Q. All right. But in this particular document,
10 they're lumped altogether as a chlorinated ingredient,
11 a product containing chlorinated ingredients.

12 A. That's what this document does, yes, that's
13 correct.

14 Q. Let's go to the next document which is Bates
15 stamped 00105, a letter dated January 31st, 1972, from
16 Mr. Howard Bergen.

17 A. Yes, I have that.

18 Q. All right. That letter states that Monsanto
19 has decided to stop using polychlorinated terphenyls
20 as a component in our fluids and that our fluids will
21 contain no chlorinated components after a particular
22 date, that being June 30, 1972; does it not?

23 A. That's correct.

24 Q. Again, it does not mention which of the
25 Pydraul products or formulas contained terphenyls or

1 biphenyls, does it?

2 A. This letter does not, that's correct.

3 Q. Let's go on to the next letter which is 00107.

4 A. Yes, I have it.

5 Q. March 15, 1972 letter from Mr. Bergen.

6 Attached to that letter is another chart; is it not?

7 A. Yes, captioned Conversion.

8 Q. And it identifies an old product and the

9 convertive new product; does it not?

10 A. That's correct.

11 Q. It doesn't state which of the old products

12 contained PCBs, does it?

13 A. No, sir, it does not.

14 Q. Let's refer to the Bates stamps 00087 through

15 89.

16 A. Yes, I have it.

17 Q. None of these letters were sent to Rockwell

18 Manufacturing at Russellville, Kentucky, were they?

19 A. This letter was not. This letter is addressed

20 to Rockwell International in Columbus, Ohio.

21 Q. I'm sorry. I identified four different

22 letters.

23 A. Oh, you said 87 through 89. That's really

24 two.

25 Q. I'm sorry.

1 A. 85, 86, 87, 89.

2 Q. These are the ones I meant to refer to. None
3 of those four letters are addressed to the
4 Russellville facility, are they?

5 A. No. None of them were addressed to
6 Russellville, Kentucky.

7 Q. And you have no knowledge as to whether anyone
8 at Russellville has seen these?

9 A. These particular letters?

10 Q. Yes.

11 A. I have no knowledge on that topic one way or
12 the other.

13 Q. In Exhibit Number 6 there is a reference to
14 the White Paper and I think we've already identified
15 it today as Bates stamped 0001 through 26.

16 A. That's correct.

17 Q. As with the technical bulletins that I asked
18 about earlier, this document in Monsanto's archives or
19 in its records, there's no indication that this
20 document was ever mailed to anyone at Rockwell; is
21 that right?

22 A. Other than Mr. Harff in 1988, that would be
23 correct.

24 Q. All right. Let's go off the record.
25 (Discussion off the record.)

1 Q. (By Mr. Goebel) Let me come back to the White
2 Paper in a moment.

3 Am I correct in my understanding that the
4 labels that are identified in Bates stamped 00140
5 through 147 are the labels that would have appeared on
6 the two different Pydraul products that Rockwell had
7 purchased over the years from Monsanto?

8 A. Yes. Those are the printed labels that we
9 affixed to the containers or my understanding is that
10 those are the labels that were affixed to the
11 containers.

12 Q. And there's nothing in the Monsanto records
13 that would indicate that any labels other than these
14 labels were actually affixed to any of the products
15 that Rockwell purchased at the Russellville plant?

16 A. Well, with one caveat, I guess, and that is
17 this: After about May of 1970 there was an additional
18 stick-on label that was added to all of our
19 PCB-containing products before the then printed supply
20 of labels ran out and was reordered and that contained
21 the warning about environmental consequences. That
22 was a separate stick-on label. In the case of Pydraul
23 products, because we discontinued PCB-based Pydrauls
24 in '71, we did not have a printed Pydraul label
25 containing the environmental warnings. That was

1 contained in a separate stick-on label.

2 Q. What is the reason why you didn't produce one
3 of those today?

4 A. Because I overlooked it, and I apologize, and
5 I didn't -- it just occurred to me when we were going
6 through these labels that that stick-on label had not
7 been copied and provided to you.

8 Q. But the labels produced today are the ones
9 that pertain to Pydraul F-12 and the 312, right?

10 A. F-9 and 312, yes. These are the preprinted
11 labels pertaining specifically to F-9 and 312. And I
12 do apologize for that oversight.

13 MR. CUNNINGHAM: Appreciate you remembering
14 when you did.

15 Q. (By Mr. Goebel) Is it your understanding that
16 Monsanto began to put -- let me ask this: Did
17 Monsanto ever include any warning on its invoices?

18 A. Yes.

19 Q. In the invoices that you have produced today,
20 there is no environmental warning on those invoices,
21 is there?

22 A. That's correct. That was a rubber stamp that
23 was put on a customer's copy of the invoice. It
24 wasn't put on our file copy.

25 Q. So in your records you have no evidence of

1 what that label or warning label was, and at least on
2 the invoices in your file, that warning label does not
3 appear.

4 A. I have in my files a copy of the rubber stamp
5 impression but I do not have a copy of any invoice
6 sent to Rockwell that bears that rubber stamp
7 impression.

8 Q. All right. Do you know whether waste waters
9 which contained PCBs could have been disposed of in a
10 holding pond?

11 A. I'm sorry, you're out of my area and knowledge
12 of expertise.

13 Q. Mr. Papageorge would be the one to ask?

14 A. Mr. Papageorge would be knowledgeable in that
15 area.

16 Q. I think that's all I have at this time. Thank
17 you.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. BOLZLE:

20 Q. Sir, let me just ask you some basic
21 bookkeeping questions. First of all, you said there
22 was a stick-on label?

23 A. That's correct.

24 Q. What was that stick-on label applied to again?

25 A. The product container.

1 Q. Container of the products sent to Monsanto's
2 customers?

3 A. That's correct.

4 Q. You inadvertently failed to produce that
5 today; is that correct?

6 A. That's correct.

7 Q. Would you be willing to send a copy of that
8 label to the court reporter and so that we can mark
9 that as the next exhibit number?

10 MR. GOEBEL: Well, I wouldn't have a chance to
11 cross-examine him about it so I would object to just
12 attaching an exhibit that I haven't seen yet.

13 MR. BOLZLE: Well, maybe when we come back to
14 talk to Mr. Papageorge --

15 MR. GOEBEL: Maybe we can introduce it there.

16 Q. (By Mr. Bolzle) But if you would go ahead and
17 provide a copy just to the court reporter so that we
18 could see that it would be attached and marked
19 Plaintiffs' Exhibit 9.

20 MR. GOEBEL: I object to it being attached to
21 this deposition unless I have a chance to
22 cross-examine this witness about it.

23 MR. BOLZLE: Well, your objection is
24 preserved.

25 Q. (By Mr. Bolzle) Would you be willing to send

1 a copy of that to the court reporter?

2 MR. GOEBEL: I don't think you can introduce
3 an exhibit that's not here today.

4 MR. BOLZLE: I think I can introduce anything
5 I want to because it's my deposition. As to whether
6 it's going to be admissible in court is another
7 question, but this is, to this extent, whether this is
8 a trial deposition or discovery deposition as it
9 relates to this document we're talking about now is
10 something we can argue about later, but I want to get
11 the document.

12 MR. GOEBEL: We're going to be coming back and
13 talking to --

14 MR. CUNNINGHAM: But this is a gentleman who's
15 here to authenticate and speak as to when particular
16 documents are generated and issued and you have every
17 opportunity to cross-examine as to whether or not this
18 document irrespective of its language would have been
19 transmitted to Rockwell.

20 MR. GOEBEL: Mr. Papageorge will be able to.

21 MR. CUNNINGHAM: He won't have knowledge
22 whether or not it went to Rockwell as this person
23 might, as far as when they started using it and so on.
24 The language, yes, but as to what that document was
25 affixed to and when, I think this gentleman probably

1 has a better idea.

2 THE WITNESS: I would disagree with that. Mr.
3 Papageorge is very knowledgeable. In fact, he has
4 personal knowledge on these topics.

5 Q. (By Mr. Bolzle) Mr. Bistline, all I'm asking
6 is would you be able to make a copy of that label and
7 send it to the court reporter so she can mark it
8 Plaintiffs' Exhibit 9 and attach it to this
9 deposition.

10 A. If that's what the consensus is.

11 MR. GOEBEL: That's not what --

12 THE WITNESS: I would be willing certainly to
13 provide all of this counsel in the room but I'm not
14 going to get into a fight about whether or not it's
15 appropriate to mark it or not.

16 Q. (By Mr. Bolzle) That's not a fight you need
17 to get into. It's between us. It's my deposition and
18 I'm just asking you would you be willing to send a
19 copy of that to the court reporter?

20 A. I'll send a copy to the court reporter.
21 Whether it's appropriate to mark it or not is
22 something you would have to fight about.

23 Q. Okay. If you would agree to send a copy of
24 that label to the court reporter, I would appreciate
25 it, and as I understand it, you have agreed to do so

1 on the record.

2 And I'll ask the court reporter to mark that
3 as Plaintiffs' Exhibit 9 and then we can argue about
4 that with the judge.

5 MR. GOEBEL: Show my objection.

6 Q. (By Mr. Bolzle) Likewise, as I understand it,
7 you've discussed with Mr. Goebel a rubber stamp
8 concerning a warning that was applied to invoices sent
9 to Monsanto customers. And you have an impression of
10 that rubber stamp; do you not, sir?

11 A. Yes, I do.

12 Q. Could you send a copy of that rubber stamp
13 impression to the court reporter?

14 MR. GOEBEL: I should be permitted an
15 opportunity to cross-examine this witness about
16 something in his possession, including the labels that
17 you've asked her to attach as 9, and including a copy
18 of this impression that I assume you're going to ask
19 her to mark as Exhibit 10.

20 MR. BOLZLE: Uh-huh.

21 MR. GOEBEL: And it is -- it's unfair to
22 introduce an exhibit at a deposition that neither
23 party has seen, none of the parties has seen, and
24 without an opportunity to cross-examine.

25 MR. BOLZLE: I'm just trying to save your time

1 and mine, Mr. Bistline.

2 MR. GOEBEL: Well, this is not a timesaving --
3 question of saving time. It's whether it's
4 appropriate under the rules and I believe you know
5 it's not.

6 Q. (By Mr. Bolzle) Would you be willing to send
7 a copy of that impression of that rubber stamp to Kim,
8 our court reporter?

9 A. I will send a copy of it to the court
10 reporter.

11 Q. Thank you, sir.

12 A. As well as to counsel. I mean if you want a
13 copy of it, I'll send it to you, too.

14 Q. I think to minimize hassle to you, you can
15 send it to Kim.

16 MR. GOEBEL: I would like a copy of both.

17 THE WITNESS: I'll send you a copy.

18 MR. BOLZLE: And I'll ask the court reporter
19 to mark that as Exhibit 10.

20 Q. (By Mr. Bolzle) When was that rubber stamp
21 used?

22 A. I'm going to have to defer to Bill Papageorge
23 on that for precise date. My understanding is in the
24 '70 and '71 time period.

25 Q. And what was the impression put on?

1 A. It was the copy of the Monsanto invoice sent
2 to Monsanto's customers.

3 Q. For what products?

4 A. For all products containing PCBs.

5 Q. And that would include Pydraul 312?

6 A. It would, yes.

7 Q. Do you recall what it says?

8 A. Not precisely, no.

9 Q. Can you give me the gist of that?

10 MR. GOEBEL: At this time you're asking him to
11 guess what it says?

12 THE WITNESS: I would prefer not to. I prefer
13 just to provide you with a copy of it so you can see
14 for yourself exactly what it says.

15 MR. GOEBEL: I'm going to object to it on the
16 additional basis that you haven't laid a foundation to
17 even admit it if it were sitting here today.

18 Q. (By Mr. Bolzle) Just so we're clear and I
19 want to make sure we're clear on the record, let me
20 look at Plaintiffs' Exhibit 8. Is that in front of
21 you, sir? Okay. Can you tell me, and I apologize if
22 I asked you this question before, but can you tell me
23 the coded page numbers of the labels in Plaintiffs'
24 Exhibit 8 as opposed to the technical?

25 A. The labels are numbered ROCW 00140 through 147

1 and the technical bulletins are ROCW 00148 through
2 266.

3 Q. Let me refer you to -- back to one of the
4 attachments to Mr. Duesenberg's letter. This would
5 bear -- this would be attached to the letter having
6 the first page number 00069.

7 A. Yes, I have that.

8 Q. Let me ask that you turn to page number 00072.
9 As I understood your testimony before, the products
10 listed under the heading Pydraul Fluids Which
11 Contained Chlorinated Ingredients listed products
12 which contained either PCBs or PCTs; is that right?

13 A. That's correct.

14 MR. GOEBEL: I was going to object it was a
15 mischaracterization but now that you said it's not.

16 Q. (By Mr. Bolzle) And as I understood your
17 testimony before, those that contained PCT have a
18 suffix of capital A?

19 A. My understanding is that those fluids with the
20 capital A contain PCTs.

21 Q. And those without the suffix capital A contain
22 PCBs?

23 A. I believe that's correct. That's my
24 information, in any event.

25 Q. Did your staff's research of available

1 documentation and correspondence between Rockwell and
2 Monsanto turn up any documents from Rockwell to
3 Monsanto asking for an explanation of the distinction
4 between those product numbers or names?

5 A. No.

6 Q. Did that investigation or that research turn
7 up any documents from Rockwell to Monsanto asking any
8 questions about the PCB contents of it, the product it
9 was purchasing from Monsanto?

10 A. Other than the request for product composition
11 on the letter from the insurance company from 1960,
12 no.

13 Q. Turning back to the letter that was attached
14 to Mr. Duesenberg's letter, first page number of which
15 is 00058.

16 A. Yes, I have that.

17 Q. Now, that letter discusses, does it not, a
18 number of Aroclor and Pydraul formulations including
19 1254, 1260, Pydraul 312 and Pydraul F-9; does it not?

20 A. Yes. Those four items are mentioned in this
21 letter, among others.

22 Q. Let me ask you to turn to the next page of
23 that letter. In the paragraph that says, and I quote,
24 "We feel that all possible care should be taken in the
25 application, processing and effluent disposal of these

1 products to prevent them" --from -- "becoming
2 environmental contaminants." Is there any limitation
3 of that general warning to any one of the products
4 mentioned on the preceding page?

5 MR. GOEBEL: Object to the characterization.

6 THE WITNESS: Mr. Bolzle, I think you have to
7 take the letter and interpret it as a whole and
8 obviously you'll draw whatever inferences from it you
9 want.

10 Q. (By Mr. Bolzle) All I'm asking is that
11 paragraph, from the second page of that -- is there
12 any limitation of that general warning in that first
13 sentence to Aroclors 1254 and 1260?

14 MR. GOEBEL: He just answered your question.

15 Q. (By Mr. Bolzle) No?

16 A. That paragraph does not specifically refer to
17 1254 -- Aroclor 1254 and 1260.

18 Q. Also the last sentence of that paragraph I
19 believe says that this article, the Chemical Week
20 article attached to that letter, reflects that "good
21 manufacturing practice in the future may require that
22 no products used by any company should find their way
23 into waterways." Do I read that correctly?

24 A. That is what that sentence says, correct.

25 Q. Now, there was discussion with regard to

1 Defendants' Exhibit A as well as attachments to the
2 1960 letter concerning PCBs.

3 MR. GOEBEL: Excuse me. It did not refer to
4 PCBs.

5 MR. BOLZLE: I'm sorry. You're right.

6 Q. (By Mr. Bolzle) Concerning Pydrauls, the fact
7 that those attachments did not, in so many words, make
8 any reference to environmental hazards or
9 environmental concerns. Those attachments did make
10 reference, did they not, to irritability to the eyes
11 and skin?

12 MR. GOEBEL: I object to the form of the
13 question.

14 THE WITNESS: That is what they say, Mr.
15 Bolzle. I think it talks about irritation to the eyes
16 and potentially to the skin on repeated and excessive
17 contact, some formulations like that.

18 Q. (By Mr. Bolzle) In any event that's not
19 something that you would ingest, would it?

20 A. I would not ingest any industrial chemical.

21 Q. No further questions.

22 MR. CUNNINGHAM: None.

23

24

25

1 RECROSS-EXAMINATION

2 BY MR. GOEBEL:

3 Q. Let's go back to letter 00072. It is the
4 attachment to a letter dated August 3rd, 1973. The --
5 I'm going to call it chart, which states that --
6 identifies the Pydraul fluids which contain
7 chlorinated ingredients. Mr. Bolzle asked you which
8 ones contained PCTs and which ones contained PCBs by
9 the letter designation. But looking at this, in 1973,
10 person receiving that, not knowing what the
11 designations were, would not know which ones contained
12 PCBs, would they?

13 A. Not without further information or unless that
14 person knew already.

15 Q. And in none of the documents we've seen so far
16 today, they've -- have made the distinction between
17 which Pydraul fluids contained PCBs and which ones
18 contained PCTs, have they?

19 A. I don't think any of the documents, without
20 looking back at everything we've got here, I don't
21 think any of the documents that we've got here make
22 the distinction between which Pydrauls were PCB and
23 which fluids were PCT fluids.

24 Q. Let's refer back to 00058.

25 A. I have it.

1 Q. Mr. Bolzle asked you to draw some conclusions
2 about the last paragraph of that letter. The focus of
3 this letter, is it not, is to respond to some
4 newspaper articles about the claims made about
5 polychlorinated biphenyls containing 54 to 60 percent
6 chlorine by weight; is that correct?

7 A. That is the reference in the first and second
8 paragraphs, yes.

9 Q. I believe you've testified today that the
10 exhibit that will be attached to this deposition as
11 Exhibit Number 10 which will be the impression of the
12 rubber stamp, that you don't really know the actual
13 dates when that was used by Monsanto?

14 A. The specific date, no.

15 Q. And it would have taken someone in a clerk's
16 office that mailed out the invoice to actually put the
17 stamp on the customer's copy of the invoice, right?

18 A. That's my understanding.

19 Q. And in the documents that we have, the copies
20 of the invoices that Monsanto has in its records
21 today, that stamp doesn't appear on those invoices.

22 A. That's correct. It was not affixed to
23 Monsanto's copy of invoices.

24 Q. I think that's all I have.

25 MR. GOEBEL: You want to read and sign?

1 THE WITNESS: Yes.

2 (Whereupon the deposition was concluded and
3 the witness was excused.)

4 (Plaintiffs' Exhibit Numbers 9 and 10 marked.)

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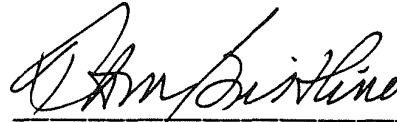
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ORIGINAL

1 I, Thomas M. Bistline, do hereby state that I
2 have read the foregoing questions and answers
3 appearing in this transcript of my deposition, Pages 1
4 through 101; that this is a true and accurate
5 (corrected) report of said answers given in response
6 to the questions appearing herein.

7
8
9 

Thomas M. Bistline

10

11

C E R T I F I C A T E

12

STATE OF MISSOURI)

13

)

ss.

14

COUNTY OF ST. LOUIS)

15

16

Before me personally appeared Thomas M. Bistline to me known to be the person described in and who executed the foregoing instrument and acknowledged to and before me that she executed the said instrument in the capacity and for the purpose therein expressed.

17

WITNESS my hand and official seal this 14th

18

day of September, 1993.

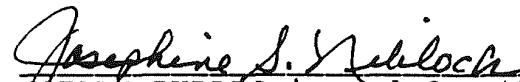
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My Commission expires _____

JOSEPHINE S. NIBLOCK
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 15, 1995

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NOTARY PUBLIC in and for the
State of Missouri

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NOTARIAL CERTIFICATE

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

I, Kimberly A. Anderson, a Certified Court Reporter and Registered Professional Reporter of A & E Reporting, a Notary Public in and for the State of Missouri, do certify that pursuant to Notice at the Marriott-Airport, I-70 at Lambert Airport, on July 23rd, 1993, in St. Louis, Missouri,

THOMAS M. BISTLINE

came before me, was by me duly sworn to testify the whole truth of his knowledge of the matters in controversy aforesaid, was examined and his examination then written in shorthand by me and afterwards transcribed, having the signature of the witness and said deposition is returned herewith.

I further certify that I am not counsel, attorney, or relative of either party, or clerk or stenographer of either party, or of the attorney of either party, or otherwise interested in the event of this suit.

I further certify that Plaintiffs' Exhibit Numbers 1 through 10 and Defendants' Exhibit A retained by me and attached to the original transcript to be filed with the court.

GIVEN under my hand and notarial seal at my office in said city and state, this 17th day of August, 1993.

My commission expires October 15, 1996.

Kimberly A. Anderson
Notary Public - State of Missouri
County of St. Louis

WITNESS: THOMAS M. BISTLINE
CORRECTION SHEET

In Re: Commonwealth of Kentucky, et al.,
v. Tim Shook, et al.,
#86-CI-1566

Upon reading deposition and before subscribing thereto, deponent indicated the following changes should be made:

Page 27 Line 3 Should read: incinerator

Reason assigned for change:
misspoke or typo

Page 49 Line 19 Should read: head

Reason assigned for change:
misspoke or typo

Page 52 Line 16 Should read: Simpson Thacher &
Bartlett

Reason assigned for change:
typo

Page 52 Line 23 Should read: Thacher

Reason assigned for change:
typo

Page 55 Line 4 Should read: judgment

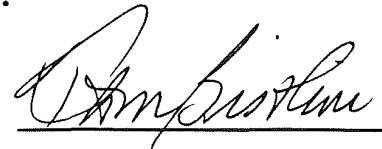
Reason assigned for change:
typo

Page 53 Line 23 Should read: belief

Reason assigned for change:
typo

Page 60 Line 7 Should read: manufacture

Reason assigned for change:
misspoke or typo



KAA

Deponent