

2009-08-26 Paton, Cumming Depo in Appleton

00001

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 GREEN BAY DIVISION

4 -----
5 APPLETON PAPERS INC. and
6 NCR CORPORATION,

7 Plaintiffs,

8 vs. Case No. 08-CV-16-WCG

9 GEORGE A. WHITING PAPER COMPANY, ET AL.,

10 Defendants.
11 -----

12 NCR CORPORATION,

13 Plaintiff,

14 vs. Case No. 08-CV-0895-WCG

15 KIMBERLY-CLARK CORPORATION, ET AL.,

16 Defendants.
17 -----

18 Video Deposition of CUMMING PATON, Ph.D.
19 Wednesday, August 26th, 2009

20 9:01 a.m.

21 at

22 HUSCH BLACKWELL SANDERS LLP
23 190 Carondelet Plaza, Suite 600,
24 St. Louis, Missouri

25 Reported by Constance L. Bauer, RPR/RMR/CRR

00002

1 Videotape deposition of CUMMING PATON,
2 Ph.D., a witness in the above-entitled action, taken
3 at the instance of the Defendants, pursuant to the
4 Federal Rules of Civil Procedure, pursuant to notice,
5 before Constance L. Bauer, RPR/RMR/CRR and Notary
6 Public, State of Wisconsin, at HUSCH BLACKWELL
7 SANDERS LLP, 190 Carondelet Plaza, Suite 600,
8 St. Louis, Missouri, on the 26th day of August, 2009,
9 commencing at 9:01 a.m. and concluding at 2:10 p.m.

10 A P P E A R A N C E S:

11 SIDLEY AUSTIN, LLP, by
12 Mr. Eric Ha

13 One South Dearborn
14 Chicago, Illinois 60603

15 Appeared on behalf of the Plaintiff
16 NCR Corporation

17 DeWITT, ROSS & STEVENS, S.C., by
18 Mr. Dennis P. Birke
19 Two East Mifflin Street, Suite 600

Page 1

16 2009-08-26 Paton, Cumming Depo in Appleton
17 Madison, Wisconsin 53703
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5 Appeared on behalf of the witness and Monsanto
6 Company

1 DAVIS & KUELTHAU, S.C., by
2 Mr. Jeremy R. McKenzie
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4 Milwaukee, Wisconsin 53202
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6 Neenah-Menasha Sewerage Commission
7
8 BALLARD SPAHR ANDREWS & INGERSOLL, LLP, by
9 Mr. Ronald M. Varnum
10 1735 Market Street, 51st Floor
11 Philadelphia, Pennsylvania 19103-7599
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20 Corporation
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00004 Appeared via teleconference on behalf of the
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3 Ms. Kelly Noyes
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5 P.O. Box 3262
6 Milwaukee, Wisconsin 53201
7 Appeared via teleconference on behalf of the
8 Defendant CBC Coating, Inc.

21 ALSO PRESENT: Mr. John Niehaus, Videographer, Midwest
22 Litigation

23
24
25
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1
2 BY
3 Ms. Conlin

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(Original exhibits attached to original transcript. Copy
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(No previously marked exhibits referenced.)

R E Q U E S T S

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1 TRANSCRIPT OF PROCEEDINGS
2 (Paton Exhibit No. 971-A marked for
3 identification.)
4 VIDEOGRAPHER: We are on the record.
5 Today's date is August 26th, 2009, and the time is
6 9:01 a.m. This is the videotape deposition of
7 Dr. Cumming Paton in the matter of Appleton Papers
8 Inc. et al. verse George A. Whiting Paper Company,
9 Case 208-CV-00016-WCG [sic] in the U.S. District
10 Court for the Eastern District of Wisconsin, Green
11 Bay division.
12 This deposition is being held at Husch
13 Blackwell Sanders in St. Louis, Missouri. The
14 reporter's name is Constance Bauer. My name is John
15 Niehaus, here on behalf of Gramann Reporting.
16 Will Counsel please introduce themselves
17 for the record.
18 MS. CONLIN: Jan Conlin, counsel for
19 Georgia-Pacific.
20 MR. MCKENZIE: Jeremy McKenzie, counsel for
21 the Neenah Menasha Sewerage Commission.
22 MR. HA: Eric Ha for NCR Corporation.
23 MR. BIRKE: Dennis Birke for Appleton
24 Papers.
25 MR. MILLER: Adam Miller on behalf of

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1 Dr. Cumming Paton and Monsanto Company.
2 CUMMING PATON, PH.D., called as a witness
3 herein, having been first duly sworn on oath, was
4 examined and testified as follows:
5 EXAMINATION

6 BY MS. CONLIN:
7 Q Good morning, sir.
8 A Good morning.
9 Q Could you state your full name for the record?
10 A Yes. My full name is Cumming, C-U-M-M-I-N-G, Paton,
11 P-A-T-O-N.
12 Q And what's your current address, Dr. Paton?
13 A It's 13300 Fairfield Circle Drive, Town and Country,
14 Missouri, 63017.
15 Q Are you retired, sir?
16 A Yes.
17 Q And when did you retire?
18 A I retired around the end of 1991.
19 Q And from whom did you retire?
20 A Monsanto Company.
21 Q I've handed you, Dr. Paton, what's been marked as
22 Exhibit 971-A, which is a notice of videotape
23 deposition of you and attached to it is a subpoena.
24 A Yes.
25 Q Do you see that?

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1 A Uh-huh.
2 Q Do you understand that you are here today because of
3 the subpoena that's been issued?
4 A Yes.
5 Q Okay. Now, did you meet with me before your
6 deposition?
7 A Yes.

8 Q And did you meet with Mr. Birke and Mr. Ha, counsel
9 for plaintiffs?
10 A Not -- I think just Mr. Birke.
11 Q Okay. Where were you born, sir?
12 A I was born in Aberdeenshire, Scotland.
13 Q And when was that?
14 A It was on the 24th of September, 1933.
15 Q And could you describe your educational background
16 for us?
17 A Yes. I went to the University of Aberdeen in 1951,
18 got a BSC honors in chemistry in 1955, and then I
19 stayed on and did research under a scholarship to get
20 a Ph.D., and I got a Ph.D. -- I graduated -- attended
21 the graduation ceremony for the Ph.D. at Aberdeen
22 University in 1959.
23 Q And what is the subject area of your Ph.D.?
24 A It had to do with block copolymers, which were really
25 basically building blocks for plastics, and looked at

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1 it from a standpoint of producing them, analyzing
2 them, and testing and so on. It was really the
3 plastics industry was just getting under -- just at
4 that time, and so there was a lot of interest in that
5 type of research.
6 Q Could it also be described as polymer science?
7 A Polymer science would be a very good, succinct
8 description.
9 Q Okay. Thank you. And then did you go to work at
10 Monsanto after that?
11 A Yes.
12 Q Okay.
13 A I went to work for them in -- in early 1959, and I
14 was with them until sometime in 1962 in Wales.
15 Q And where did you go in 1962?
16 A In 1962 I left to become the head of a customer
17 technical service laboratory for Geigy Company,
18 G-E-I-G-Y, which was a Swiss chemical company, in
19 Manchester.
20 Q Did there come a point in time when you rejoined
21 Monsanto?
22 A Yes. I stayed with the Geigy Company for two years
23 but I -- I wanted to get -- well, I don't know what
24 drove me to it, but I decided that I wanted to look
25 outside the United Kingdom for a job, and I got

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1 interviewed by several companies, and I was hired by
2 a company called Diamond Alkali, which I believe at
3 that time was headquartered in Pittsburgh,
4 Pennsylvania. It had operations in Cleveland and in
5 a place called Painesville, Ohio, east of Cleveland,
6 and I went there in the end of 19- -- in November of
7 1964, again, to do work on development and customer
8 service, technical service, on a new range of what
9 were called poly mercaptan, which were really poly
10 sulphites. The plan was to use them in sealants.
11 And there were two things about that that
12 weren't too good. One, when I arrived there, I found
13 out when I went to work on Monday morning that the
14 man who had hired me had been fired on the Friday.
15 So I wondered whether -- I was single, so all my
16 belongings were on the high seas between England and
17 New York, but they assured me there was a job.
18 But then very quickly I found out that

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 19 they -- they had commercialized this new development
 20 far too quickly, so it had a very high overhead. And
 21 when I started going out to customers, we found it --
 22 the samples that they were getting didn't work. You
 23 know, they didn't work in a consistent manner.
 24 so there was a lot of problems still with
 25 the manufacturing process. And so it was apparent
 00012
 1 after about a year that this project really wasn't
 2 going to go anywhere, and I decided to look around.
 3 Some of my colleagues I had made said,
 4 yeah, they couldn't see any future for it. And
 5 although I was worried about jumping jobs too
 6 quickly, they assured me that it really wouldn't be a
 7 problem for me in the states.
 8 And I saw an application, job application,
 9 in a magazine somewhere for Monsanto, and I applied,
 10 and the work I had done at Ciba Geigy fit in well in
 11 what they were looking for at the time, and they
 12 hired me, and that was in November of 1966.
 13 Q And were you located in St. Louis?
 14 A I came to St. Louis.
 15 Q Okay. What was your first job at Monsanto?
 16 A It was as a -- what they call a technical service
 17 specialist in the plas- -- division -- plasticizer
 18 division of the organic chemicals division.
 19 Q And when was your first experience with PCBs?
 20 A PCBs probably didn't come until sometime in the '68,
 21 early '69 time period.
 22 Q Okay. What is the plasticizer group?
 23 A well, the plasticizer group, it's a -- plasticizer
 24 products that you take to add to resins to give you
 25 different properties in performance.
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 1 The most common use of plasticizers was in
 2 polyvinyl chloride, because it would soften the --
 3 polyvinyl chloride is a hard -- if you just extruded
 4 it or made it on its own, it would be very hard and
 5 brittle. So by giving you the plasti- -- by adding a
 6 chemical known as a plasticizer, you'd give it
 7 flexibility and therefore can greatly expand the
 8 normal -- the number of applications you can have.
 9 Q Did Monsanto sell PCBs under the trade name Aroclor?
 10 A Yes.
 11 Q And were there certain uses for Aroclors that fell
 12 within the umbrella of the plasticizers group?
 13 A Yes -- yes and no. Later, as I got into another --
 14 in the same plasticizer division, but as I say, in,
 15 like, in '88 -- in 1988, I believe -- '68, rather.
 16 '68, they were used, Aroclors were used, very widely
 17 in the NCR no carbon required or carbonless copy
 18 paper business.
 19 They would have also been used in resins
 20 which were used in this coatings and sealants area.
 21 Q So was the NCR use of Aroclor in its CCP or
 22 carbonless paper product within the umbrella of the
 23 plasticizers group?
 24 A It was in the -- in the umbrella of the plasticizer
 25 group.
 00014
 1 Q Now, you mentioned that when you started, you were a
 2 technical service specialist --
 3 A Yes.

4 Q -- is that right?

5 A Uh-huh.

6 Q And then did there come a point in time when you
7 became a senior product specialist for all
8 plasticizers?

9 A Yes, and that was a sort of transition. The first
10 six or eight months or so that I was with Monsanto in
11 St. Louis, I would have been going out with salesmen
12 to visit customers and help with whatever technical
13 issues that that customer was having using our
14 products.

15 Then after that, I was brought more into --
16 a product specialist meant that you also got involved
17 in some of the commercial aspects of our products, of
18 selling them and so on and so forth. And so I did
19 some of the same thing, but then I also had more of a
20 commercial focus as to, you know, pricing them and
21 that kind of thing.

22 Q Did your job at that time involve at all acting as a
23 technical liaison between Monsanto and NCR?

24 A The -- my relationship with NCR probably wouldn't
25 have started until sometime in the -- in the late

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1 19- -- in late '68 or early '69.

2 Q At that point did you have involvement with acting as
3 a technical liaison between Monsanto and NCR?

4 A I wouldn't say it was so much technical, because I
5 relied back on the -- our technical -- our research
6 department to help out. But I would have been one of
7 the -- I would have been the -- the focal point for
8 field sales would have come to me with whatever
9 issues were going on at NCR; and then it would have
10 been my job to try to find out who best was able to
11 give any detailed information that was needed; and my
12 job would have then been to communicate that back to
13 the sales force.

14 Q Did your job involve meeting with NCR on occasion?

15 A On occasion, yes.

16 Q And did it involve communications with NCR?

17 A I'm not -- I'm not sure that I've got -- most of my
18 communications probably would have been between --
19 from me to the salesman and the division -- the
20 regional manager, who then would have passed it on.

21 Now, there would have been cases maybe when
22 I did, you know, in vying for a meeting, done some,
23 but in general we'd like to try to funnel our
24 communications through the sales office.

25 Q And who was the NCR salesman to NCR at that time?

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1 A Well, it was -- there were two, as I recall. At one
2 time I think the man was a man called Fred Sutton,
3 and then there was anot- -- he came to St. Louis
4 headquarters, had a job there. And then there was a
5 man called Pete Maier.

6 Q Would that -- would he also be known as P. K. Maier?

7 A I guess -- yes, I think that's right.

8 Q Okay. And was Mr. Maier's boss Mr. Wilde?

9 A Yes.

10 Q Okay. And who was Mr. Farrar --

11 A Martin Farrar --

12 Q -- at that time?

13 A Martin Farrar, Dr. Farrar, was the research director
14 for the plasticizer division.

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15 Q And was there also a Mr. Waychoff?

16 A Yes. Walt Waychoff was my boss.

17 Q Was your boss?

18 A Yeah.

19 Q Now --

20 A He was a product manager for plasticizers.

21 Q Did there come a time when you switched from being a

22 senior product specialist of all plasticizers to a

23 market manager?

24 A Yes.

25 Q And when was that?

00017

1 A That was in the '6- -- in the '68 -- I think maybe

2 sometime in '68.

3 Q Okay. And what was your duties and responsibilities

4 at that point?

5 A Well, then the duties were commercial, as well as

6 technical. My job would have been to prepare budgets

7 for the products, to give recommendations on how we

8 should price them, to be responsible bringing in, you

9 know, a certain profit level from every -- you know,

10 from these products, and to give commercial direction

11 to the field sales force as to what -- you know, we'd

12 work with them in their regions as to what their

13 budgets -- you know, what they thought they could

14 sell, and it would be backwards and forwards so we

15 could establish a budget. And it was my job to try

16 to help them to make those budgets, either helping

17 them commercially or helping them with whatever

18 technical support they required.

19 Q Did you come to be aware at a certain point of the

20 reports that were being issued about PCBs in the

21 environment?

22 A I guess I got into that, I became knowledgeable,

23 somewhat knowledgeable, of that sometime in very

24 early 1969. Well, I had known about it -- I'd have

25 known something about that maybe in late '68, but it

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1 was brought home to me in early '69 -- '69.

2 Q You might have known about it before what --

3 A Yeah, I -- well, I'm trying to think.

4 Q Let me do it this way, sir.

5 A Sorry.

6 Q I know it's been a long time.

7 A Yeah.

8 Q I'm going to have the court reporter mark that.

9 A Sorry.

10 (Paton Exhibit No. 971-B marked for

11 identification.)

12 BY MS. CONLIN:

13 Q I've handed you, Dr. Paton, what's been marked as

14 Exhibit 971-B --

15 A Uh-huh.

16 Q -- which is a one-page document bearing Bates

17 GPF0X30575. It is a February 23rd, 196 [sic]

18 memorandum from a Mr. Hardy to a Mr. Richard, and

19 copied to a number of people.

20 Do you see that, sir?

21 A Yeah, uh-huh.

22 Q Okay. And are you one of the recipients of this?

23 A Yes. And that tells me that it had to be early 1968

24 when I became market manager. That's what it tells

25 me.

00019

- 1 Q Okay.
2 A But yes, uh-huh.
3 Q All right. And in this memorandum, it is written in
4 the first paragraph, "With reference to your letter
5 to Mr. Baxter we note that your available quantities
6 of di- and trichlorobiphenyl isomers are very small
7 indeed. As you know, we have already provided
8 samples for Jensen and Widmark (Stockholm),
9 Richardson (Shell, England) and Tatton (Government
10 Laboratory, England)."
11 Do you see that?
12 A Yes.
13 Q Now, does this refresh your recollection that it
14 would have been sometime in early '68 that you might
15 have become aware --
16 A Yes, absolutely.
17 Q -- of the environmental issues --
18 A Yes.
19 Q -- related to PCBs?
20 A Yes.
21 Q Okay. And would it be fair to state that Monsanto
22 was keeping track of the information regarding PCBs
23 as they came to light?
24 A Yes, I think that's -- that's accurate.
25 Q Now, at the second-to-last paragraph in this

00020

- 1 memorandum, it indicates, "However, I was in
2 correspondence with Richardson in November, 1967
3 (copies herewith) which showed that he was satisfied
4 with the octochlorobiphenyl was present and that his
5 results are substantially in line with those of
6 Tatton et al. You will also note that he believes
7 that the contamination of bird life is in the valley
8 of our River Witham."
9 Do you see that?
10 A Yes.
11 Q Okay. Then it goes on to state, "I have judiciously
12 followed up this clue with a view to locating the
13 source of contamination. There appears to be no
14 operation of any size involving Aroclors within the
15 Witham valley. The nearest is at Kings" --
16 "Lynn."
17 Q -- "Lynn with usage for electrical purpose."
18 And then Mr. Hardy goes on to write, "As
19 NCR represents the greatest off-take of Aroclor and
20 as there is likely to be at least some wastage in the
21 process, my suspicion is that it is either in the
22 making NCR or possibly in dealing with scrap that the
23 contamination arises."
24 Do you see that?
25 A Yes.

00021

- 1 Q Do you recall that in 1968, Monsanto was starting to
2 look at whether NCR's use of its Aroclor 1242 might
3 be posing issues in the environment?
4 A It would seem so. I can't -- you know, this -- you
5 know, to this point in time I can't remember all the
6 details of that, but it looks as though, yes.
7 Q Did there come a point in time where you recall,
8 Dr. Paton, talking with NCR about the PCB issues?
9 A I think the first time that I can recall is an
10 occasion in 19- -- in terms -- I think it was in

11 2009-08-26 Paton, Cumming Depo in Appleton
12 February of 1969 that I was in the San Francisco
13 area, and it had nothing to do with PCBs or NCR, as I
14 recall. It had to do with distributors, because I
15 had responsibility for our distributors at that time.
16 And -- but I -- when I was in
17 San Francisco, I saw an article in the paper of the
18 San Francisco Chronicle that had on its front page,
19 as I recall, a statement from a Professor Risebrough
20 and -- about PCBs. And I bought a copy, or maybe
21 several copies, because I realized it had
22 implications for Monsanto, obviously, and also NCR.
23 Because at the time, in my job, NCR would have been
24 one of our biggest customers for Aroclor in that
25 particular section, you know, of plasticizers.
MS. CONLIN: Can who's ever typing mute

00022

1 their phone, please?
2 BY MS. CONLIN:
3 Q Now, do you recall having a meeting, then, with NCR
4 regarding this?
5 A Well, I think what the process would have been at
6 that -- in fact, I would have come back to St. Louis,
7 talked to two people. One would have been Walt
8 Waychoff, my boss, to led them to this newspaper
9 article. The second would have been Emmet Kelly, who
10 was responsible -- he was the medical director, but
11 that encompassed a broad, you know, range of
12 functions.
13 And it was at that time that I started to
14 learn more about, you know, Jensen and Widmark,
15 which, you know, were unheard of. You know, I didn't
16 know anything about them at the time, you know, in
17 '66, because I hadn't even joined Monsanto then. So
18 I got brought up to speed by these -- by Emmet Kelly
19 a little bit about -- and I think he mentioned, I
20 believe -- it seemed as though there had been
21 knowledge in Monsanto about, you know, the issue of
22 PCBs with the Jensen and Widmark papers, but then it
23 was agreed that we should send this, you know,
24 arrange to send this newspaper or -- to NCR or to
25 meet with them to do so.

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1 And as I recall, there was a meeting
2 shortly -- February sometime, maybe in March,
3 certainly a short time after getting back from
4 San Francisco, it was a meeting arranged to give this
5 to NCR and they were -- at the time I remember they
6 said they were very grateful we brought it to their
7 attention.
8 (Paton Exhibit No. 971-C marked for
9 identification.)

10 BY MS. CONLIN:

11 Q Before I get to that --
12 MS. CONLIN: What's the number on that?
13 COURT REPORTER: 971-C.
14 MS. CONLIN: 971-C.

15 BY MS. CONLIN:

16 Q Before I get to that --

17 A Yeah.

18 Q -- let me ask you another --

19 A Uh-huh.

20 Q -- question, Dr. Paton.

21 Is it fair to state that between 1968, when

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22 you were learning about the Jensen, Widmark, and
 23 other studies --
 24 A Uh-huh.
 25 Q -- and 1969, that you were attempting to keep abreast
 00024 of what was happening scientifically regarding PCBs
 1 in the environment?
 2
 3 A Yes.
 4 Q Okay. And was there any -- ever a point in time in
 5 which you had determined to keep that information
 6 from any of the customers that were using the
 7 products, such as NCR?
 8 A No. No.
 9 Q Now, I'd like to direct your attention to what's been
 10 marked as 971-C --
 11 A Yes.
 12 Q -- which is a memorandum by you dated April 18th,
 13 1969 and comprises Bates MONSFOX80385 through 80389.
 14 Is this a memorandum that you prepared some
 15 time on or before April 18th of 1969?
 16 A I'm certain it is.
 17 Q Okay. And does this report on a visit to NCR in
 18 Dayton, Ohio of March 27th, 1969?
 19 A It does.
 20 Q Okay. Now, you had mentioned -- is this the meeting
 21 that you recall where you brought the Risebrough
 22 article to the attention of NCR?
 23 A Yeah. This -- yes.
 24 Q And who was present for NCR is reflected on 971-C?
 25 A Yes.
 00025 1 Q Was Mr. Lauer, Thacker and Fitzpatrick there for NCR?
 2 A To the best of my recollection, yes.
 3 Q And P. K. Maier, Mr. Wilde, and yourself --
 4 A Yes.
 5 Q -- there for Monsanto?
 6 A Uh-huh, yes.
 7 Q Now, I'd like to direct your attention to the first
 8 paragraph, "Pete Maier, in setting up this visit, had
 9 indicated we wanted to discuss (1) recent publicity
 10 on Aroclors as pollutants, and (2) research efforts
 11 to find an Aroclor 1242 replacement."
 12 Do you see that?
 13 A Yes.
 14 Q Okay. And Mr. Maier was the salesman for NCR --
 15 A Yes.
 16 Q -- from Monsanto --
 17 A Yes.
 18 Q -- at that time?
 19 A Yes.
 20 Q Okay. Now, did you, in fact, inform NCR at this
 21 meeting regarding the recent publicity on Aroclors?
 22 A Yes.
 23 Q Do you believe, sir, that you timely and fully
 24 informed them of the publications as they arose
 25 related to the PCB environmental issues?

00026 1 MR. BIRKE: Object to form.
 2 BY MS. CONLIN:
 3 Q You can answer.
 4 A I think, yes. I think I would and at the time we --
 5 I picked up the article in late February and we
 6 arranged the meeting in March.

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7 Q Okay. Now, in the first paragraph it says, "The
8 meeting began by referring to previous publicity on
9 Aroclors being identified in birds (Jensen and
10 Widmark's work of three years ago). At that time a
11 Dr. Thomas (not a medical doctor) of NCR had
12 contacted E. Wheeler. Lauer did not know what had
13 been said between those two, but it evidently allayed
14 NCR's fears."

15 Do you see that?

16 A Yes.

17 Q Was that reported to you by NCR at the meeting?

18 A It must have been.

19 Q And do you have any understanding of what was said
20 between those two individuals?

21 A No, I don't.

22 Q Okay. Now, it goes on to state, "We presented a copy
23 of the SFO" -- is that the San Francisco Chronicle?

24 A Yes.

25 Q -- "article and gave Monsanto's position on the
00027 article."

1 Do you see that?

2 A Yes.

3 Q Okay. And did you at that time talk with them about
4 what you were uncovering relative to PCBs and the
5 environmental issues?

6 MR. HA: Object to form.

7 THE WITNESS: Yes, I think so. There
8 was -- I would have -- can I read all of it and
9 see -- to refresh my memory?

10 BY MS. CONLIN:

11 Q Sure, absolutely.

12 A Okay. Maybe if you could repeat the question --

13 Q Sure.

14 A -- you asked me.

15 Q Sure. Does this memorandum dated -- Strike that.
16 Let me start over.

17 Does this Exhibit 971-C refresh your
18 recollection that as of March 27th, 1969, at a
19 meeting with NCR, you discussed with them the
20 Risebrough publication and the issues related to PCBs
21 in the environment?

22 A Yes.

23 Q Okay. Now, you go on to write here, "We presented a
24 copy of the SFO Chronicle article and gave Monsanto's
00028 position on the article. NCR said it seemed
1 provocative and [some] jumping to conclusions were
2 apparent. They agreed that nothing would be gained
3 by Monsanto's entering into a public controversy with
4 the reporter on some of his statements."

5 And then you wrote, "NCR were very grateful
6 that we brought this to their attention. They want
7 to be kept informed of future developments."

8 A Yes.

9 Q Did you, sir, keep them informed of future
10 developments as a result of their request?

11 A Yes, as -- to the best of my knowledge, we did
12 everything we could to keep them informed.

13 Q Okay. Then it goes on to say that, "Lauer said NCR
14 would take no action unless a second article appeared
15 specifically naming their paper as a source of the
16 pollution."

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Do you see that?

18
19 A Yes.
20 Q And was that a statement made by Mr. Lauer at the
21 meeting of March 27th, 1969, as reflected in this
22 memorandum?
23 A Yes.
24 Q Then it goes on to state, "Such an article could play
25 into the hands of 3-M's Action paper."

00029

1 Do you see that?
2 A Yes.
3 Q Was 3-M a competitive product at the time?
4 A I would -- yes, I believe it was.
5 Q Now, how would you go about preparing a memorandum
6 following a meeting with a customer such as NCR?
7 A Well, I would have kept a lot of notes, handwritten
8 notes, as the meeting was going along. Pete Maier
9 would have probably kept some notes.
10 I would have then written it up, sent it,
11 and if there was any question in my mind on any
12 point, I would have called Pete Maier or Gene Wilde
13 to -- you know, to make sure that what I was -- what
14 I was generally saying and was to get input, and then
15 I would send it out.
16 And I would have copied in all the people
17 that would -- should -- you know, needed to be kept
18 up with it: Farrar in research; Maier the salesman,
19 obviously; Waychoff, my boss; Emmet Wheeler in the --
20 in the medical sense; environmental, Gene Wilde; and
21 Jim Wright was the sales manager, he was Gene Wilde's
22 boss; and Joe Darby was a section leader in -- in
23 research under Martin Farrar. So then that they all
24 knew exactly what was going on, you know, in this --
25 Q Okay. Thank you. Now, prior to the meeting of March

00030

1 27th, you were looking at issues internally related
2 to PCBs or Aroclors and the environmental issues,
3 correct?
4 A Yes.
5 Q If you could hand that to the court reporter, please.
6 (Paton Exhibit No. 971-D marked for
7 identification.)
8 BY MS. CONLIN:
9 Q I'd like to direct your attention, Dr. Paton, to a
10 memorandum which bears your name as the author dated
11 March 25, 1969, to a Mr. W. R. Richard --
12 A Yes.
13 Q -- and copied to a number of people. Do you see
14 that, sir?
15 A Yes, uh-huh.
16 Q And it bears Bates No. PHGNCR-2005252 through 5256.
17 Do you want to take a moment and look at
18 it? That's fine.
19 A Yes.
20 Q Okay. And this, for the record, has been marked as
21 Exhibit 971-D.
22 Is this a memorandum that you authored on
23 or about March 25th of 1969?
24 A I'm sure it is.
25 Q Okay. Now, it says under No. 1, "No carbon required

00031

1 paper. NCR," is that "6.0 million pounds of
2 Aroclor"?

3 A No, that -- yes, that is million, yeah.
4 Q Okay. Of Aroclor 1242?
5 A Yes.
6 Q Was Aroclor 1242 the specific Aroclor that NCR was
7 using in its carbonless paper?
8 A At that time, to the best of my knowledge, yes.
9 Q Okay. And then you write, "Until mid-1968, only NCR
10 plant was at Dayton, Ohio. There is now a plant at
11 Portage, Wisconsin on a stream."
12 Do you see that?

13 A Yes.
14 Q Do you recall whether you were putting together this
15 information, in part, as a result of the Risebrough
16 article?

17 And I direct your attention, sir, to the --
18 Page 4 of the memorandum.

19 A Yes.
20 Q Would this have been shortly after the Risebrough
21 article came out?
22 A Yes, it would have been a month afterwards.
23 Q Okay. And you state in the last paragraph on Page 5,
24 "I estimate that the coastline of the water within
25 the confines of the Golden Gate Bridge is 150 to 200

00032 1 miles. One would expect tides to reduce the level
2 substantially below 1 part per million and,
3 furthermore, the 48 million pounds were sold over the
4 full year."

5 Do you see that?
6 A No, I think that's 48,000, because it's got an M
7 without the thing over it.

8 Q Okay.
9 A Now, I would use K for thousand and M for million,
10 but in those days, it seemed to be that it was more
11 common to do it the other way around.

12 Q Fair enough. So the 48,000 pounds were sold over a
13 full year. Do you see that?

14 A Yes.
15 Q So does this suggest to you that perhaps this was put
16 together, in part, as a result of the Risebrough
17 article talking about PCBs being found in the bay
18 area?

19 A Yes, I think it probably is a relationship.
20 Q And if we can take a look at Page 2, please.

21 A Yes.
22 Q Under "Miscellaneous."

23 A "Miscellaneous," yes, uh-huh.

24 Q No. 7. You write, "1968 sales of chlorinated
25 biphenyls were," and it shows NCR as 6.0 million

00033 1 pounds; is that right?
2 A Yes.

3 Q Does that show NCR is the largest customer that
4 you've listed here in connection with chlorinated
5 biphenyls?

6 A Yes.
7 Q Now, was NCR an important customer for Monsanto?
8 A Yes, they were.

9 Q And did they occupy somewhat a unique relationship?
10 MR. HA: Object to form.

11 THE WITNESS: Well, I think we tried to
12 treat all -- we tried to treat all customers in -- in
13 a good manner, but NCR clearly used a lot of

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14 material. There was obviously a lot of contact
 15 because of that, and yes, we had a high regard for
 16 them as a company --

17 BY MS. CONLIN:
 18 Q Was the --
 19 A -- and a customer.
 20 Q Were most of the plasticizer uses, outside of NCR,
 21 for sealants or other issues?
 22 A Yes, I think most of them probably were, because the
 23 distributors were selling in -- you know, maybe one
 24 drum at a time or five drums at a time or something
 25 like that to small customers, and these customers, in
 00034
 1 turn, would have been using them in sealants and
 2 coatings. Because that -- you know, there's
 3 literally hundreds and hundreds of people in that
 4 kind of business -- or were. Of course, they aren't
 5 using Aroclors now.
 6 Q And how -- would you describe the NCR paper,
 7 carbonless paper, as an open application?
 8 A And how would you de- -- I mean, can -- what's your
 9 definition of open?
 10 Q Well, in that it had widespread disbursement, as
 11 opposed to being contained to a particular area?
 12 MR. HA: Object to form.
 13 THE WITNESS: Yes. I -- you know, I would
 14 think that's probably a fair question, because
 15 paper -- I mean, certainly no carbon required or
 16 carbonless copy paper was, you know, very common in
 17 those days because that's how you dealt with credit
 18 cards and whatnot.
 19 (Paton Exhibit No. 971-E marked for
 20 identification.)
 21 BY MS. CONLIN:
 22 Q I've handed you, Dr. Paton, what's been marked as
 23 Exhibit 971-E. It comprises Bates PHGNCR-200743
 24 [sic] through 7052.
 25 The top memorandum is from a Mr. Waychoff
 00035
 1 to a Mr. Schalk. Do you see that?
 2 A Yes.
 3 Q And indicates that he's attaching a copy of Paton's
 4 suggested plans for Aroclors if the worst were to
 5 happen and we began to lose sales rapidly as our
 6 customers take the easy way out and discontinue them.
 7 Do you see that?
 8 A Yes.
 9 Q And attached to it, sir, starting on Page 2, is this
 10 a memorandum that you prepared entitled, "Future
 11 Plans for Aroclor Plasticizer"?
 12 A Yes.
 13 Q And was this a plan that you put together as a result
 14 of the publications which were coming to the
 15 forefront regarding PCBs and the environment?
 16 A Yes.
 17 Q Now, I'd like to direct your attention to Page 2 of
 18 your memorandum where you write, "Our efforts on
 19 chlorinated biphenyls should be concentrated in order
 20 of priority."
 21 Do you see that?
 22 A Yes.
 23 Q And No. 1 is, "No Carbon Required Paper"?
 24 A Yes.

25 Q Is that the NCR paper?
00036
1 A Yes.
2 Q Okay. And then 2 is "Coatings" and 3 is
3 "Sealants" --
4 A Yes.
5 Q -- do you see that? Do you recall why you were
6 prioritizing the no carbon paper first?
7 A I can't recall it -- it now, why I put them in that
8 order, but the no carbon copy paper was clearly the
9 largest use, and we had begun a program there of
10 looking at replacements in coatings and sealants. We
11 hadn't got a, you know, there might -- I -- we hadn't
12 got around to looking at replacements there for them
13 yet.
14 Q Now, if we can take a look at Page 3 --
15 A Uh-huh.
16 Q -- under "Action", you have, No. 1, "(NCR) High level
17 MC" --
18 what does "MC" stand for?
19 A Monsanto Company.
20 Q Okay. "/NCR contact to determine, a) their reaction
21 to Aroclor publicity," and "b) if NCR are alarmed, to
22 emphasize our action to help them find a replacement
23 product if NCR deemed this necessary."
24 Do you see that?
25 A Yes.
00037
1 Q And that was the plan that you articulated in March
2 of 1969?
3 A Yes.
4 Q And if we take a look back, sir, at the memorandum,
5 Exhibit 971-C, which you have in front of you.
6 A This -- this one -- (witness indicates)?
7 Q Yes. Did the meeting with NCR that you attended at
8 Dayton occur several weeks after you wrote this
9 memorandum?
10 A Yes.
11 Q Okay. And would this be the type of high-level
12 MC/NCR contact to determine their reaction to Aroclor
13 publicity as you set forth in your action plan,
14 Exhibit 971-E?
15 A Yes, partially. It would have been for us to present
16 it to as high a level in NCR as was appropriate from
17 their standpoint, and -- but it would also -- it
18 meant -- it might have implied at some point, you
19 know, higher executives in Mon- -- in Monsanto might
20 want to talk to their equivalents in NCR. I'm not
21 sure. I can't recall that distinction now.
22 Q Okay. Now, if we can take a look at Page 9 of this
23 memorandum.
24 A Yes, uh-huh.
25 Q Under "Communications on Aroclor Publicity," do you
00038
1 see that?
2 A Yes.
3 Q And you wrote there, "It is recommended that with the
4 exception of NCR, we do not bring this publicity to
5 the attention of our Aroclor customers."
6 Is the publicity the very scientific
7 reports that were emerging?
8 A Yes.
9 Q Okay. And it says, "With the exception of NCR and

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 10 distributors, we have only eight customers who buy
 11 over 140,000 pounds of chlorinated biphenyl a year,"
 12 right?
 13 A Yes.
 14 Q Okay. So you, in fact, did, consistent with this
 15 memorandum, bring the publicity to the attention of
 16 NCR; isn't that right, Doctor?
 17 A Yes.
 18 MR. BIRKE: Object to form.
 19 BY MS. CONLIN:
 20 Q And would that be consistent with the meeting that we
 21 saw and the notes that you had of that March 27th
 22 meeting?
 23 A Yes.
 24 Q And to the best of your knowledge, while you were
 25 involved with PCBs or Aroclors, Dr. Paton, did you
 00039 attempt to keep NCR informed as Monsanto learned
 1 things?
 2 A Yes.
 3 Q Did you ever withhold information of a scientific
 4 nature as you were learning it on PCBs as it related
 5 to NCR's use?
 6 A No.
 7 Q Did you ever instruct anyone working with you or
 8 under your control to withhold from NCR the
 9 information that Monsanto was learning on PCBs in the
 10 environment?
 11 A No.
 12 Q Now, at this meeting of March 27th -- which is
 13 reflected in Exhibit 971-C, if you could pull that
 14 one back out, again, Dr. Paton.
 15 At that meeting, you actually -- did you
 16 discuss with NCR possible replacements for 1242?
 17 A Yes.
 18 Q Okay. And was that, again, consistent with your
 19 action plan, to raise the issue of replacements with
 20 NCR, as reflected in your March 12th Aroclor action
 21 plan?
 22 A Yes. I think there had been -- prior to this, there
 23 had been some discussions, through sales and
 24 purchasing and things, as to what other -- because
 00040 products might be available to be looked at in that,
 1 but this --
 2 Q And following this meeting of April 18th -- strike
 3 that.
 4 Following this meeting of March 27th, 1969,
 5 where you and others visited Mr. Lauer and others at
 6 NCR, did Monsanto and NCR undertake to evaluate
 7 possible replacements for Aroclor 1242?
 8 A Yes, I think that's true.
 9 Q And if you take a look --
 10 A I mean, you mentioned -- but I'm -- you mentioned
 11 what, a March article?
 12 Q No, I was talking about this March meeting.
 13 A Oh, okay.
 14 Q Dr. Paton, turning back to Exhibit 9- --
 15 971-C.
 16 A -- 71-C --
 17 Q Okay.
 18 A -- and if you take a look at the second page, is
 19 there not a discussion, or do you set forth a
 20

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21 discussion you had with NCR at that meeting of March
22 27th regarding a replacement for Aroclor 1242?
23 A Yes.
24 Q And did that work continue between the companies in
25 1969?
00041
1 A Yes.
2 MR. HA: Object to form.
3 (Paton Exhibit No. 971-F marked for
4 identification.)
5 BY MS. CONLIN:
6 Q I've handed you, Dr. Paton, what's been marked as
7 Exhibit 971-F, which is a two-page document bearing
8 Bates PHGNCR-2008175 through 176.
9 Is this a memorandum that you prepared on
10 or about April 29th of 1969?
11 A Yes.
12 Q And copied to a number of people at --
13 A Yes.
14 Q -- at Monsanto?
15 A Yes.
16 Q And is it describing a telephone conversation that
17 you had with Gordon Taylor of NCR?
18 A Yes.
19 Q And what was the date of that call?
20 A Date of the call was April the 28th, 1969.
21 Q Okay. It says, under the Details, "Gordon Taylor was
22 in Japan when I visited NCR in March with Pete Maier
23 and Gene Wilde."
24 Do you see that?
25 A Yes.
00042
1 Q Okay. And then in the second paragraph you write,
2 "He called to find out what action was being taken
3 within Monsanto as a result of the article on
4 Aroclors in the SFO Chronicle."
5 Do you see that?
6 A Yes.
7 Q And was this consistent with the type of
8 communication that you were having with NCR at the
9 time regarding the publications that were arising
10 regarding PCBs in the environment?
11 A Yes. From time to time I would have had these kind
12 of conversations, but usually they were initiated by
13 NCR.
14 Q Okay. Then the next -- and what do you write in the
15 next sentence there, in the second paragraph?
16 A "He called" -- "He said he regarded this as just
17 another in the series of articles on the toxicity of
18 PCBs and viewed them with patience. In the light of
19 Nader's" -- oh, I'm sorry. That's as far as you
20 wanted me to go, "with patience."
21 Q And is that what he reported to you --
22 A Yes.
23 Q -- on this telephone call --
24 A Yes.
25 Q -- of April 28th of 1969?
00043
1 A Yes.
2 Q Okay. And then did you indicate to him in response
3 that Monsanto's actions were twofold?
4 A Yes.
5 Q Okay. And what were the two actions, as set forth in

971-F?

A well, the first one was the analytical research and medical work that had begun to establish what the truth is in the allegations that were being made about PCBs in the environment. Because I found, after the Jensen/widmark article, there were quite a number of researchers and universities and other places, Risebrough as well, obviously, who were starting to do studies as to whether this was -- you know, what exactly was it that Jensen and widmark had found.

Jensen and widmark's article indicated that the way -- that there was some possibility that the material was a chlorinated benzene of some sort that would have been used as a pesticide. The other was that it might have been, you know, some other chlorinated biphenyl.

But the tech- -- the detection methods in those days, on chromatography and mass spectrometry, which are means that you can -- that are very

00044

prevalent today and later in terms of identifying these, were again still -- it was an evolving science, if you will, and so it was by no means clear what exactly they had found.

And we had started -- and what I learned at some point was that Monsanto had been in touch with Jensen and widmark; that we worked with the researchers that were doing it because we had an interest in finding out exactly how best you analyze these. And we got many requests for samples from university and research sources for samples that they could do their work, and we always supplied these, and I would have notified people like Martin Farrar and Emmet wheeler where they went.

Q And was Monsanto also undertaking to do its own analysis under Scott Tucker --

A Yes --

Q -- and others?

A -- absolutely. Absolutely.

Q Now, was there any point in time when Monsanto, to your knowledge, was limiting its research or review or investigation into higher chlorinated Aroclors, such as 1254 and 60 only?

A No, I don't think so. I think we -- at some point they were all being looked at.

00045

(Paton Exhibit No. 971-G marked for identification.)

BY MS. CONLIN:

Q I've handed you, Dr. Paton, what's been marked as Exhibit 971-G, which is a one-page document bearing Bates MONSFOX97062.

Is this a memorandum that you prepared on or about June 18th of 1968?

A Yes.

Q Okay. And was this in response to a call that you received from the U.S. Bureau of Commercial Fisheries?

A Yes.

Q And what were they studying?

A It says they were studying pollutants in Lake Michigan and believed they had found PCBs.

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17 Q Okay. And does it also indicate that they had read
18 Jensen and Widmark's papers?
19 A Yes.
20 Q Okay. And then what do you direct Mr. Richard to do?
21 A I asked him, or someone in his department, because he
22 was research director in fluids, but they also --
23 they had Aroclor-type products in their product line,
24 and so there must have been some organizational
25 reason why I sent to it him rather than Martin

00046

1 Farrar. But that's neither here nor there.
2 But what I was asking was that his
3 department send samples of 1221, 1232, 1242, 1254 and
4 1260, together with a bulletin, and send them to --
5 to someone at the address of the U.S. Bureau of
6 Commercial Fisheries.
7 Q Was the sending of Aroclors 1221, 1232, 125- -- 1242,
8 1254 and 1260 consistent with your recollection that
9 Monsanto was looking at all Aroclors in connection
10 with the PCB environment issue?
11 A Yes.

12 MR. HA: Object to form.

13 BY MS. CONLIN:

14 Q Now, following your meeting with NCR in March of '69
15 and your conversation with Gordon Taylor in April, if
16 we could direct your attention back to 971-F, which
17 was the memorandum we were looking at just a moment
18 ago.

19 A Yes, uh-huh.

20 Q Okay. Now, you had indicated that Monsanto's actions
21 were twofold, and the first was the analytical and
22 research method.

23 What was the second action, as you set
24 forth in your memorandum of April 29th of 1969?

25 A Well, it was -- I stated it was an insurance policy,

00047

1 that could we ask the chemist in our application
2 research labs to give attention to the type of
3 plasticizers that might be alternatives to Aroclor
4 1242 in NCR systems.

5 Q And do you indicate there that it would be an
6 extension of your past efforts to supply samples to
7 NCR for evaluation?

8 A Yes.

9 Q Okay. And you also write here, I -- you also write
10 here, "This is not being undertaken in any degree of
11 panic but because we'd rather be 'safe than sorry' if
12 the worst happened."

13 Do you see that?

14 A Yes.

15 Q And was that relayed to Mr. Taylor on April 28th?

16 A Yes.

17 Q Okay. And then you said, "I pointed out that our
18 efforts would be best helped by good feedback from
19 NCR on the extensive list of current products just
20 submitted."

21 And is this consistent with your prior
22 testimony that you discussed alternatives at the
23 April -- I'm sorry, at the March 1969 meeting with
24 NCR?

25 A Yes.

00048

1 MR. BIRKE: Object to form.

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(Exhibit No. 971-H marked for
identification.)

BY MS. CONLIN:

Q I've handed you, Dr. Paton, what's been marked as
971-H and bears Bates PHGNCR-2008193 through 8208 --
oh, sorry -- through 2008210, which is a memorandum
by a Kern Sears to a Mr. Farrar.
Do you see that?

A Yes.

Q Okay. I'd like to direct your attention, Dr. Paton,
to the second page of this --

A Yes.

Q -- which is entitled, "Possible Aroclor 1242
Replacements for NCR Paper."

A Yes.

Q Okay. It's written here, "Eventually it may be
desirable to replace Aroclor 1242 in NCR paper
because of objectionable odor of the Aroclor and
because it does not readily burn but persists through
incineration to pollute the air."
Do you see that?

A Yes.

Q Do you recall at that time having done any -- or
having Mr. Tucker or others do any tests where NCR

00049

1 paper was set on fire?

A I don't recall that specifically, but that's not to
say it didn't happen. It probably did.

Q Do you recall there being any discussions about
Aroclor 1242 "persists through incineration"?

A well, that's not -- I can't recall the details of
that, but obviously they must -- for research to be
sending this kind of memo, they obviously had thought
it was an issue they should look at, and it would
have been sent to me as -- you know, for information
purposes.

Q Okay.

(Paton Exhibit No. 971-I marked for
identification.)

BY MS. CONLIN:

Q I'm handing you, Dr. Paton, what's been marked as
Exhibit 971-G which bears GPFOX578 -- Strike that --
bears Bates GPFOX58736 through 37.

Is this a memorandum that you prepared on
or about November 17th of 1969?

A Yes.

(Discussion was held off the record.)

MS. CONLIN: Correction for the record.

This exhibit is 971-I.

00050

BY MS. CONLIN:

Q Is this a memorandum that you prepared, Exhibit
971-I, on or about November 17th of 1969?

A Yes, I'm sure it is.

Q And if you take a look under research, the last line
there, what do you have written?

A "Preliminary incineration data on Aroclor 1242 and
NCR paper."

Q Okay.

A So obviously at some point I knew more about it than
I do now.

Q Okay. So would that be consistent with what you saw

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13 on 971-H, that there had been incineration data on
14 Aroclor 1242 and NCR paper --
15 A Yes.
16 Q -- performed?
17 A Yes.
18 MS. CONLIN: Okay. Why don't we take a
19 break there.
20 VIDEOGRAPHER: We're going off the record
21 at 9:59 a.m.
22 (A recess was taken.)
23 VIDEOGRAPHER: We're back on the record on
24 Tape 2 at 10:09 a.m.
25

00051

1 BY MS. CONLIN:
2 Q I'd like you to turn back, Dr. Paton, to Exhibit
3 971-I, which was the exhibit that we were talking
4 about --
5 A Oh, yes, yes.
6 Q -- right before the break. And this is a memorandum
7 that you authored on November 17th of 1969?
8 A Yes.
9 Q Okay. And what is the subject matter of the first
10 paragraph?
11 A It's -- we have a meeting scheduled with Howard
12 Lauer, NCR's carbonless carbon paper general manager
13 for -- on December the 16th, and this was to set out
14 a proposed agenda and also who should be there --
15 Q Okay. Now, you also --
16 A -- on Monsanto's side.
17 Q -- you also write in that first paragraph, "The
18 purpose is to let Dick" --
19 A Onians.
20 Q -- "Onians, our new marketing manager for
21 plasticizers in Europe, meet with NCR personnel since
22 NCR is also an important customer in Europe"; is that
23 right?
24 A Yes.
25 Q And did Mr. Onians attend?

00052

1 A Yes.
2 Q Okay. And then what do you set forth in the second
3 paragraph of Exhibit 971-I?
4 A Well, then I indicated to Martin Farrar and Emmet
5 Wheeler that I'd like medical and research personnel
6 to be there.
7 Q Okay. For what purpose?
8 A To discuss the Aroclor 1242 and its replacement.
9 Q Okay. And did you then set forth what areas you
10 wanted to discuss at this upcoming meeting with
11 NCR --
12 A Yes.
13 Q -- on December 16th?
14 A Yes.
15 Q And what did you list there?
16 A I listed the areas that I've considered in medical.
17 Q And what did those include?
18 A Effluent analysis at the Portage plant, which was in
19 Wisconsin, I understand. Progress on the -- by
20 degradation of Aroclor 1242 and NCR plant cleanup.
21 Q Okay. And what did you then list under "Research"?
22 A Monoisopropylbenzene economics and availability.
23 Q Is that also known as MIPB?

24 A Yes.
25 Q And what else did you list?
00053
1 A The tests on CVL solubility of various research
2 replacements for Aroclor 1242 based on a sample of
3 CVL that we got from NCR sometime before.
4 Q And what are the last two points you list?
5 A And it was to introduce any other promising Aroclor
6 1242 replacements, and then preliminary incineration
7 data on Aroclor 1242 and NCR paper.
8 Q Okay. And this memorandum's dated November 17th of
9 1969; is that right?
10 A Yes.
11 Q Okay.
12 (Paton Exhibit No. 971-J marked for
13 identification.)
14 BY MS. CONLIN:
15 Q I've handed you, Dr. Tucker [sic], what's been marked
16 as Exhibit 971-J, which is a two-page document
17 bearing GPFOX30664 through 30665, which is a
18 memorandum from Scott Tucker reporting on burning of
19 NCR paper dated March 4th.
20 Do you see that?
21 A Yes.
22 Q Okay. If we could turn to the second page of this
23 document, under "Conclusions," Mr. -- Dr. Tucker has
24 written, "Under the conditions of this experiment:
25 1. Aroclor is easily volatilized when NCR paper is
00054
1 burned," and, "2. Aroclor undergoes little, if any,
2 decomposition when burned. 3. Unfortunately it
3 appears that significant air pollution can occur via
4 burning of NCR paper or other Aroclor-containing
5 materials, even under more strenuous conditions."
6 Do you see that?
7 A Yes.
8 Q Okay. And this memorandum was prior to the time that
9 you set forth your proposed agenda for the December
10 16th meeting in 1969; is that right?
11 A You think -- I see. You see that memo as being a
12 reference to this point in point 4 on Page 1, item 2,
13 is that what you are --
14 Q Let me -- let me try to rephrase it.
15 The date of Mr. Tucker's memorandum where
16 he reports on the burning of NCR paper is dated March
17 4th --
18 A Uh-huh.
19 Q -- 1969?
20 A Yes.
21 Q Okay. And that is prior to the memorandum that you
22 put together in November of 1969 in connection with
23 the upcoming NCR meeting, correct?
24 A It would be one of the references, yes, I guess.
25 Q Okay. Now, one of the other items that you have for
00055
1 topic of discussion at the upcoming December 16th,
2 1969, meeting with NCR is effluent analysis in
3 Portage; is that right, sir?
4 A Yes.
5 (Paton Exhibit No. 971-K marked for
6 identification.)
7 BY MS. CONLIN:
8 Q I've handed you, Dr. Tucker [sic], what's been marked
Page 24

9 2009-08-26 Paton, Cumming Depo in Appleton
 10 as Exhibit 971-K, which is a memorandum by Dr. Tucker
 11 dated December 3rd, 1969, comprising Bates
 12 PHGNCR-2005278 through 291.
 13 And this is copied to you and Mr. Garrett;
 14 is that correct?
 15 A Yes.
 16 Q And what is Mr. Tucker reporting on in this
 17 memorandum of December 3rd?
 18 A It seems to be the results of some work that was done
 19 to determine the biodegradability of 1242.
 20 Q And do you have a recollection that this -- well,
 21 I'll represent to you that Mr. Tucker testified that
 22 this represented his analysis from the Portage
 23 effluent.
 24 Do you have any reason to --
 25 A I have no reason --
 00056 Q -- to dispute that?
 1 A I have no reason to dispute that.
 2 Q Okay. And if you see under subject matter, it's
 3 called, "Aroclor - wildlife, NCR Water Samples."
 4 Do you see that?
 5 A Yes.
 6 Q So this was sent to you in December 1969?
 7 A Yes.
 8 Q And that would have been prior to the meeting on
 9 December 16th, 1969, with NCR?
 10 A Yes.
 11 Q And do you see here that Dr. Tucker indicates, "The
 12 electron capture fingerprints of the extracts from
 13 each sample do not show any indication of
 14 biodegradation"?
 15 A Yes.
 16 Q And he concludes that it could be possible that the
 17 high level of fresh Aroclor has masked any
 18 degradation. Do you see that?
 19 A Yes.
 20 Q Do you recall any discussions with Mr. Tucker or
 21 others on that issue?
 22 A I might have had some discussions, but it would have
 23 been to understand what all this really meant --
 24 Q Okay.
 25 A -- but I can't recall now.
 00057
 1 Q Now, you indicated that you, in fact, met with NCR on
 2 December 16th of 1969?
 3 A Yes.
 4 Q Where was that meeting held?
 5 A It was held in Dayton. I think it -- yeah, I'm sure
 6 it was.
 7 (Paton Exhibit No. 971-L marked for
 8 identification.)
 9 BY MS. CONLIN:
 10 Q I've handed you, Dr. Paton, what's been marked as
 11 Exhibit 971-L, which is a multi-page document bearing
 12 Bates PHGNCR-2007927 through 934.
 13 A Yes.
 14 Q Okay. And I will represent to you, sir, that it is
 15 my understanding that these notes reflect Pete K.
 16 Maier's notes regarding the December 16th meeting.
 17 And what I'm going to do is take you through and see
 18 if any of these refresh your recollection as to the
 19 contents of the meeting.

20 A Yes.
21 Q Okay. Now, at the top it has listed Gordon Taylor
22 and Ned Thacker. Do you see that?
23 A Yes.
24 Q Do you recall, or does this refresh your
25 recollection, that those individuals attended on
00058
1 behalf of NCR?
2 A I think so, yes.
3 Q Okay. And also is listed Mr. Farrar, Garrett,
4 Onians, yourself, Wilde and Maier --
5 A Yes.
6 Q -- do you see that? And do you have a recollection
7 that those are the individuals who attended the
8 meeting on behalf of Monsanto?
9 A Yes.
10 Q Now, I would like to direct your attention to No. II,
11 which is listed, "Publicity - Update" on the first
12 page there.
13 Do you see that?
14 A Yes.
15 Q And it says, "Copies of current article to Gordon
16 Taylor (MC to furnish)."
17 Do you see that?
18 A Yes.
19 Q Okay. And then it lists an environment article,
20 Nature and Daily Telegram headings with certain
21 notations.
22 Do you see that?
23 A Yes.
24 Q Do you have a recollection that you would have been
25 apprizing NCR, in December of 1969, as to additional
00059
1 reports, if any, that had issued regarding PCBs in
2 the environment?
3 A That's what it appears like, yes.
4 Q Okay. Now, if we direct your attention down to the
5 bottom of the first page, it's written here, right
6 here, Dr. Paton, "1242 contains many PCBs,
7 principally tri, some mono-di, tetra and penta."
8 Do you see that?
9 A Yes.
10 Q Okay. Do you have a recollection of talking with
11 NCR -- does this refresh your recollection of having
12 talked to NCR about the certain properties of 1242?
13 A Yes.
14 Q Now, at this point in time had Monsanto undertaken
15 certain tests regarding biodegradation of certain
16 Aroclors?
17 A I think so, yes.
18 Q Okay. And at that time had Monsanto determined that
19 the penta and hexa chlorines were more persistent in
20 the environment than the lower chlorine molecules?
21 A I think so.
22 Q And at this meeting, you all- -- you talked about
23 certain replacements; is that right?
24 A Yes.
25 Q Okay. If we could take a look at the page -- and the
00060
1 last three numbers there, if you look down at the
2 bottom, Dr. Paton, 932.
3 A Yes --
4 Q Okay.

5 A -- got it.
6 Q And at this point in the notes it's referring an -- a
7 discussion on Monsanto alternatives to 1242; is that
8 right?
9 A (No verbal response.)
10 Q If you look at the previous page, it's listed
11 Monsanto alternatives?
12 A Oh, yes. Uh-huh.
13 Q Okay. And if we can then turn back to Bates Page
14 932 --
15 A Yes.
16 Q -- there's a notation, "Aroclor 1232 - odor was prime
17 problem. Now can mask better," what's that a
18 reference to?
19 A Well, it would be one of the replacements that were
20 being thought of as possible, and 1232 would be lower
21 chlorinated than 1242. Apparently at one point odor
22 was a problem, but the feeling was, and I don't know
23 if this was NCR's findings or our findings, that it
24 could be masked better.
25 Q Okay. And then underneath that it's written,
00061 "Aroclor 12" -- does the "A" stand for Aroclor there?
1 A Yes.
2 Q Okay. "Aroclor 1238 or 1239 would be recommended.
3 Virtually no tetra or penta content, so all would be
4 biodegradable."
5 Do you see that?
6 A Yes.
7 Q And what reference is that to in connection with your
8 meeting with NCR?
9 A Well, that would indicate that the studies that we
10 were doing showed that there was some
11 biodegradability of the lower chlorinated Aroclors.
12 Q And would that -- well, let me ask it a different
13 way.
14 At this meeting you were actually talking
15 with them about replacing 1242?
16 A Yes.
17 Q Okay. And one of the recommendations was possibly
18 1238 or 1239?
19 A It was a -- it was a possibility, and so I think it
20 was some of the ones that we had talked about earlier
21 that should -- we would look at.
22 Q Does this reference in Mr. Maier's notes suggest to
23 you that as of December 16th of 1969, Monsanto would
24 have been reporting to NCR that the tetra or penta
00062 content might be persistent in the environment, as
1 reflected here?
2 MR. HA: Object to form.
3 THE WITNESS: Could you repeat that,
4 please?
5 BY MS. CONLIN:
6 Q Sure. Does this -- looking at this notation --
7 A Uh-huh.
8 Q -- which reads, "Aroclor 1238 or 1239 would be
9 recommended. Virtually no tetra or penta content, so
10 all would be biodegradable."
11 My question is, does this refresh your
12 recollection that as of November -- December 16th of
13 1969, Monsanto would have been reporting to NCR that
14 tetra or penta might persist in the environment?
15

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16 MR. HA: Same objection.

17 THE WITNESS: I don't know about persisting

18 in the environment, but that they would be much less

19 biodegradable.

20 BY MS. CONLIN:

21 Q And does 1242 contain tetra, penta or hexa chlorines?

22 A I think it did contain some small -- small

23 percentages, as I recall.

24 Q Okay. Now, I'd like to direct your attention back to

25 the second page of this document bearing Bates 928.

00063

1 Under Aroclor 1242 biodegradation -- do you see that?

2 A Yes.

3 Q Okay. And it's written, "No Aroclor 1242 found in

4 any environmental sample," and then underneath is

5 written, "water, animals. Fine distribution expected

6 from 1254 and 1260."

7 Do you see that?

8 A Yes.

9 Q At the time of this meeting in December of 1969, had

10 Aroclor 1242 been specifically named in any of the

11 research publications, such as Jensen, Widmark,

12 Risebrough, or others?

13 A I don't think so but I'm not entirely sure. But I

14 don't think so.

15 Q Okay. And if we look back at Exhibit 971-C,

16 Dr. Paton --

17 A 971-C.

18 Q -- which is the meeting notes of your March 27th,

19 1969 --

20 A Oh, here it is.

21 Q Okay. And directing your reference down to the last

22 sentence on this first page, where at this meeting of

23 March 27th, 1969, Mr. Lauer of NCR states that, "NCR

24 would take no action unless a second article appeared

25 specifically naming their paper as a source of the

00064

1 pollution."

2 Do you see that?

3 A Yes.

4 Q And is it your recollection that as of April 18th,

5 1969, NCR had not been listed specifically in any

6 paper or article?

7 MR. HA: Object to form.

8 THE WITNESS: Yes. As far as I knew, I

9 think that's right.

10 BY MS. CONLIN:

11 Q Okay. And your recollection as of the date of this

12 December 16th, 1969 meeting, which follows the March

13 meeting by, I guess, seven months, do you recall any

14 interim articles naming NCR as a specific source of

15 potential contaminants?

16 MR. HA: Object to form.

17 THE WITNESS: I don't think so. There was

18 reference to the Nature and Daily Telegram in the

19 U.K., but I don't see anywhere that seemed as -- that

20 they had actually named NCR.

21 BY MS. CONLIN:

22 Q Okay. And to your recollection, had they

23 specifically named Aroclor 1242 in any of the

24 publications listed on the first page of Exhibit

25 971-L?

00065

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1 A That's something that I can't recall at all, but it
2 doesn't seem likely because the notes say that it --
3 the incident cleared PCBs, and the Daily Telegram, I
4 think, cleared too small -- cleared PCBs.

5 Q Now, if we take a look at the next portion -- let me
6 ask you another follow-up question to that.

7 At that point in time, though, as of
8 December 16th of 1969, Monsanto had actually tested
9 the effluent at Portage, correct, as reflected in
10 Mr. Tucker's memorandum of December 3rd, Exhibit
11 971-K?

12 A He talks about a Hamilton Street station, and that
13 could well have been Portage because I -- I don't --
14 I can't recall having visited the Portage plant, but
15 if --

16 Q I wasn't asking you if you had -- I'll rephrase the
17 question, Dr. Paton.

18 A Uh-huh.

19 Q As of the December 16th, 1969, meeting, Mr. Tucker
20 had reported to you on the results of the effluent
21 testing at Portage, as reflected in 971-K, correct?

22 A Well, he reported samples. I don't think he said
23 that he -- where the samples had come -- where the
24 sampling had been done. But if you -- if there's
25 information that its Portage --

00066

1 Q I'll represent to you that Dr. Tucker testified that
2 those were the Portage samples.

3 A Then I wouldn't -- I obviously can't dispute.

4 Q So with that clarification, you would agree with me
5 that as of December 16th, that Monsanto had tested
6 NCR's effluent at its Portage --

7 A Yes.

8 Q -- plant, correct?

9 A Yes.

10 Q Now, at the bottom of this -- or, I'm sorry, at the
11 middle of this first page of Exhibit 971-L, there's a
12 notation here, "U.K. Ministry of Health."

13 A What page are you on now?

14 Q The very first page.

15 A Oh, the very first page. Okay.

16 Q Okay.

17 A And you're asking me?

18 Q I just -- I just wanted you to take a moment and read
19 that, okay?

20 A Okay. Okay, sure.

21 Q And noted there is a reference that the U.K. Ministry
22 of Health had made an inquiry regarding PCBs?

23 A Yes.

24 Q Okay. And it says, "We lean toward telling re:
25 Aroclor 1254/60 only what would NCR like? They need

00067

1 to reply," and do you see there's an arrow, it says,
2 "(NC [sic] reply) January 1, 1970"?

3 A Yes.

4 Q Okay. And I'd like to direct your attention to --
5 (Paton Exhibit No. 971-M marked for
6 identification.)

7 BY MS. CONLIN:

8 Q I'd like to direct your attention to 971-M, which is
9 a one-page document from Mr. Garrett to yourself
10 bearing Bates PHGNCR-2007926 dated December 22nd,
11 1969.

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Do you see that?

12
13 A Yes.
14 Q Okay. Now, this would have been following the
15 meeting you had had with NCR on December 16th; is
16 that right, sir?
17 A Yes.
18 Q Okay. And what did Mr. Garrett report to you --
19 well, first of all, what was the content of this
20 memorandum?
21 A Well, what Jack Garrett was reporting was that on the
22 19th of December, 1969, Gordon Taylor of NCR had
23 called him to tell him -- to tell Jack Garrett that
24 NCR feels that we should answer the British ministry
25 in respect to NCR's usage of PCBs, and he suggested

00068

1 what should be said.
2 Q And what is that?
3 A That, "The PCB used goes into a paper product
4 manufactured in South Wales. The paper contains an
5 additive which in turn contains the PCB. This
6 additive is manufactured in a London area plant."
7 This additive --
8 Q "It is located"?
9 A "It is located in the Thames River shed."
10 Q Okay. And that is what Mr. Taylor reported as the
11 response to the request by the U.K. Ministry of
12 Health?
13 A Yes.
14 Q Okay. And do you know if -- by the way, in that
15 statement, is there any reference specifically to NCR
16 as the source --
17 A No --
18 Q -- of the paper product?
19 A -- there is no reference to NCR as the source.
20 Q And is there any reference to Wiggins Teape?
21 A No.
22 Q Okay. Now, at the bottom of it, it's indicated,
23 "Mr. Thacker asked me some additional questions which
24 I answered concerning the Portage operation. In
25 general I believe our discussions held on the 16th of

00069

1 this month were fruitful particularly in respect to
2 the problem at the Portage plant."
3 Do you see that?
4 A Yes.
5 Q Okay. Now, I'd like to direct your attention back to
6 the notes of the meeting one last time, Dr. Paton.
7 A Sure.
8 Q And if you could take a look at the third page.
9 A Yes.
10 Q Under "Effluent information" --
11 A Uh-huh.
12 Q -- it says -- well, let me ask it to you a more
13 general way.
14 Do you recall having discussion with NCR
15 regarding the fact that its effluent was showing high
16 levels of PCBs, as reported by Dr. Tucker?
17 MR. HA: Object to form.
18 THE WITNESS: I -- I can't recollect that,
19 but I wouldn't disagree with the notes that are on
20 here.
21 BY MS. CONLIN:
22 Q Okay. And one of the references here is, "Effluent

2009-08-26 Paton, Cumming Depo in Appleton
 23 is toxic to immediate discharge area."
 24 Do you see that?
 25 A Yes.
 00070
 1 Q And then it goes on to describe the Portage plant and
 2 some various cleanup possibilities?
 3 A Yes.
 4 Q Including trap in drain with PCBs --
 5 A Yes.
 6 Q -- et cetera? Okay. Now, did you ever tell NCR at
 7 this meeting of December 16th, 1969, that 1242s were
 8 not a problem?
 9 A I don't think I did.
 10 Q Okay. And would the fact that you were suggesting
 11 measures to clean up their Portage operation suggest
 12 to you that you were indicating to them that PCBs in
 13 1242 might be a problem?
 14 MR. HA: Object to form.
 15 THE WITNESS: I personally probably
 16 wouldn't have been the one saying -- talking about
 17 this issue at the meeting. I'd have left that to
 18 either someone from research or -- or medical or
 19 whoever else were there that had -- you know, they
 20 would have taken -- they would have said something
 21 about these.
 22 BY MS. CONLIN:
 23 Q Do you have any rec- --
 24 A But I have -- but I have no -- I'd have no reason to
 25 dispute what they did say.
 00071
 1 Q okay. And would the fact that they were suggesting
 2 possible cleanup operations for the Portage plant be
 3 consistent with NCR's position that Monsanto was
 4 telling them 1242 wasn't a problem?
 5 MR. HA: Object to form.
 6 THE WITNESS: Well, I -- I'm not quite sure
 7 how to address that because I'm not sure what -- I
 8 haven't seen anything to say that NCR's saying 1242
 9 is not a problem, so.
 10 But it would certainly -- this to me would
 11 say that, yes, that they -- we -- whoever did the
 12 testing, and I guess it was Scott Tucker, had found
 13 some there and which -- and someone was -- from the
 14 Monsanto side was suggesting, Here's things that
 15 might be done to prevent that being a problem.
 16 BY MS. CONLIN:
 17 Q okay. But you do recall there being a discussion at
 18 the meeting regarding replacing 1242, right?
 19 A Yes.
 20 Q And would that be consistent with the notion that
 21 1242 was being identified as a potential risk at that
 22 time?
 23 MR. HA: Object to form.
 24 THE WITNESS: Well, it's more of a risk
 25 given that it's got the 54 and 60 in it.
 00072
 1 BY MS. CONLIN:
 2 Q And by that you mean the 5 and 6 chlorines?
 3 A Yes.
 4 Q Now, turning back to the Exhibit 971-M, which was the
 5 relating of the call by Gordon Taylor to you by
 6 Mr. Garrett.
 7 A Yes.

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8 Q Okay. Now, you had mentioned that Mr. Onians was at
9 the December 16th meeting; is that right?

10 A Yes.

11 Q And if I recall, one of the reasons he was there was
12 to insure that the folks in Europe knew what was
13 going on here in the United States --

14 A Yes.

15 Q -- is that fair?

16 A Yes.

17 (Paton Exhibit No. 971-N marked for
18 identification.)

19 BY MS. CONLIN:

20 Q I've handed you, Dr. Paton, what's been marked as
21 971-N, which is a multi-page document dated -- or,
22 I'm sorry, bearing Bates PHGNCR-2001880 through 883.
23 And if you look at the "Copies to," there
24 is, in that first column, an "R. A. Onians -
25 Brussels."

00073

1 Do you see that?

2 A Yes.

3 Q And is that the same individual who was at the
4 meeting on December 16th of 1969, that you attended
5 with NCR?

6 A Yes.

7 Q Now, if you take a look at the first and second
8 sentences there, the summary reads, "Both NCR and
9 Wiggins Teape."

10 Do you know who Wiggins Teape is?

11 A Yes.

12 Q Who is that?

13 A Wiggins Teape was a U.K. company that I believe
14 manufactured carbonless copy paper.

15 Q "Both NCR and Wiggins Teape are very concerned about
16 the developing PCB residue situation, even though it
17 is the higher chlorinated compounds that are
18 currently being found in nature. They asked that we
19 did not identify NCR paper as a major outlet for
20 Aroclor at our forthcoming meeting with the Ministry
21 of Agriculture."

22 Do you see that?

23 A Yes.

24 Q And is that consistent with what Mr. Garrett relayed
25 to you in his memorandum of December 22nd, not -- not

00074

1 listing NCR specifically --

2 A Yes.

3 Q -- in the content?

4 A It appears to be consistent, yes.

5 Q Now, following this meeting in December of '69, did
6 NCR and Monsanto continue to evaluate possible
7 replacements?

8 A As best I can recall, yes.

9 (Paton Exhibit No. 971-O marked for
10 identification.)

11 BY MS. CONLIN:

12 Q I've handed you, Dr. Paton, what's been marked as
13 Exhibit 971-O, which is a one-page document from a
14 Mr. Farrar to Mr. Sears dated May 9, 1969, and bears
15 Bates PHGNCR-2008174.

16 Do you see that?

17 A Yes.

18 Q And if you want to take a moment and review it. My

2009-08-26 Paton, Cumming Depo in Appleton
19 question is, does this refresh your recollection that
20 you continued to explore possible replacements for
21 1242 in NCR's carbonless paper following the December
22 16th meeting?
23 A It probably does. I mean, the memo's dated May the
24 9th, so that must refer to an earlier meeting. But,
25 yes, it would be a continuation.

00075
1 Q Okay. And what does Mr. Farrar report in that first
2 paragraph?
3 A Well, Dr. Farrar thinks -- thought that Kern -- Kern
4 Sears had done a -- written a comprehensive report on
5 the replacement for NCR, and it was, you know, an
6 excellent piece of insurance research work in a very
7 important area.
8 Q And what does Mr. Farrar describe as the next step?
9 A He was going to -- he's going to suggest that he --
10 that Kern and himself, Martin Farrar, would meet with
11 Walt Waychoff and me to bring them up-to-date and
12 decide what we do next by -- in terms of sending
13 samp- -- more samples to NCR.
14 And then he would also like someone called
15 Bob Mahley to join us in order to keep the patent
16 department informed and get their assistance on the
17 program.
18 Q Now, in 1969 and 1970, did Monsanto continue to look
19 at the PCB issue as it relates to its Aroclors?
20 A Yes.

21 (Paton Exhibit No. 971-P marked for
22 identification.)
23 BY MS. CONLIN:
24 Q I've handed you, Dr. Paton, what's been marked as
25 Exhibit 971-O, which bears Bates No. PHGNCR-2003933

00076
1 through 36222 --
2 MR. MILLER: Jan, this is P, I believe.
3 BY MS. CONLIN:
4 Q Actually, we're going to split these up into two.
5 Do you have the -- I'm going to strike and
6 start over.
7 I've handed you, Dr. Paton, what's been
8 marked as Exhibit 971-P, which is a one-page document
9 bearing Bates PHGNCR-2003933, which is a memorandum
10 from a William Papageorge to yourself and others
11 dated March 30th of 1970?
12 A Yes.
13 Q Okay. Do you recall -- well, who was Mr. Papageorge?
14 A Mr. Papageorge had been the plant manager at
15 Anniston, and he was brought to St. Louis, and his
16 assignment was to sort of coordinate what was going
17 on in PCB within Monsanto and our plants. Because
18 there was the plasticizer division and the fluids
19 division that both had Aroclors involved, and then we
20 had several plants, and we were also, I think, in --
21 so he was a -- sort of a coordinator from an
22 environmental and -- standpoint, as best I can
23 recall --
24 Q Okay.
25 A -- his title.

00077
1 (Paton Exhibit No. 8971-Q marked for
2 identification.)
3 BY MS. CONLIN:

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4 Q I've handed you, Dr. Paton, what's been marked as
5 Exhibit 971-Q, which bears the Bates MONSFOX36211
6 through 36222, and it's entitled, "Rough Draft,
7 Management Plan, Polychlorinated Biphenyl
8 Environmental Problem."
9 Do you see that?

10 A Yes.

11 Q Do you recognize this as the draft report that
12 Mr. Papageorge circulated some time in March of 1970?

13 A I have no reason to dispute it, so I would say yes,
14 it is.

15 Q Now, if we take a look at the third page of this
16 under "Objectives," it says, "The overall objective
17 of this plan is to manage the PCB pollution problem
18 to prevent it from adversely affecting the
19 established Return-on-Investment objectives of the
20 Functional Fluids and Plasticizers Groups, while
21 maintaining the corporate image of Monsanto as a
22 responsible and respected member of the industry
23 worldwide."
24 Do you see that?

25 A Yes.

00078

1 Q Okay. And some of the objectives, the first is to
2 "Reduce and effectively control the PCB content of
3 all effluent from Monsanto plants."
4 Do you see that?

5 A Yes.

6 Q And was Monsanto attempting to do that as of March of
7 1970?

8 A I am absolutely sure they were.

9 Q Okay No. 2 is, "Informing customers of the PCB
10 problem and the importance of preventing
11 environmental pollution at their plants or by their
12 products."
13 Do you see that?

14 A Yes.

15 Q Okay. And did that happen as it relates to NCR,
16 based on your review of the documents and your
17 recollection of the events?

18 A Yes.

19 Q "Develop products" -- the third objective is to
20 "Develop products to replace Aroclors for those uses
21 in which Aroclors have been demonstrated to be
22 harmful to the environment and cannot be prevented
23 from escaping into the environment."
24 Do you see that?

25 A Yes.

00079

1 Q And as of March of 1970, had you had discussions with
2 NCR about replacing Aroclor 1242 in its product?

3 A Yes.

4 (Paton Exhibit No. 971-R marked for
5 identification.)

6 BY MS. CONLIN:

7 Q I've handed you, Dr. Paton, what's been marked as
8 Exhibit 971-R, a two-page document bearing Bates
9 PHGNCR-2004652 through 53, which is a memorandum from
10 a J. E. Springgate to yourself and others dated April
11 28th of 1970.
12 Do you see that?

13 A Yes.

14 Q Okay. And who is Mr. Springgate?

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15 A As best I can recall, he was the -- the general
16 manager or the director of the plasticizer division.
17 Q Okay. And I would like to direct your attention down
18 to the second bullet point. "Assume we will
19 discontinue sales of PCBs on August 31, 1970," and
20 then it lists the products?
21 A Yes.
22 Q And one of those is Aroclor 1242?
23 A Yes.
24 Q Okay. Now, down under No. 6, Mr. Springgate writes
25 to you, Mr. Schalk and Mr. Waychoff, "NCR -- give NCR

00080

1 necessary time to change products but expedite
2 changeover. H. L. Minckler to visit NCR-Dayton to be
3 assured of urgency."

4 Do you see that?

5 A Yes.

6 Q Do you recall in your discussions with NCR that
7 Monsanto was attempting to move them along in terms
8 of their replacement?

9 MR. HA: Object to form.

10 THE WITNESS: That's what I would gain from
11 this memo.

12 BY MS. CONLIN:

13 Q If NCR had taken the position in this case that
14 Monsanto never expressed any urgency to them, would
15 that be consistent or inconsistent with the
16 statements on this Exhibit 971-R?

17 MR. HA: Object to form.

18 THE WITNESS: It would be inconsistent.

19 BY MS. CONLIN:

20 Q And do you know if NCR was given additional time past
21 August 31st of 1970, to go into a replacement
22 product?

23 MR. HA: Object to form.

24 THE WITNESS: I'm not sure because it was
25 about that time, I think, that this memo came to me a

00081

1 few days before I took up a position in Monsanto's
2 international division, which I think was May the
3 1st -- the effective date was May the 1st of 1970,
4 as I recall.

5 BY MS. CONLIN:

6 Q And that is when you moved out of work that related
7 to Aroclors; is that right?

8 A Yes, that's right.

9 Q Okay. And you went to Latin America; is that right?

10 A I -- well, I was still based in St. Louis, but I was
11 the -- appointed the area marketing manager for Latin
12 America, and my -- for all of the organic division,
13 organic chemical division products.

14 And so I was no longer in the -- in the
15 product manag- -- product specialist type dealing
16 with Aroclors, per se.

17 Q I'd like to direct your attention --

18 COURT REPORTER: Hold on.

19 MS. CONLIN: Oh. Sorry.

20 (Paton Exhibit No. 971-S marked for
21 identification.)

22 BY MS. CONLIN:

23 Q I've handed you a document, what's been marked as
24 971-S and bears Bates PHGNCR-2007877, which is a
25 telegram from a P. K. Maier to you.

00082

1 Do you see that?

2 A Yes.

3 Q Okay. And is it reporting on a conversation that
4 Mr. Maier had with a Mr. Taylor of NCR on April 27th
5 of 1970?

6 A Yes.

7 Q And what did Mr. Taylor request, as reflected in this
8 exhibit?

9 A He wanted a compilation of the toxicity analysis and
10 degradation information for 1242, HB-40, and MIPB, as
11 available.

12 Q Okay. And would Monsanto have complied with this
13 request?

14 A I'm absolutely certain they would.

15 Q Okay. And what does the last paragraph reflect?

16 A The very -- the last sentence of the --

17 Q Yes.

18 A Yeah. "Taylor charged" -- well, Taylor apparently
19 was charged in NCR -- "with compiling available
20 information for NCR use to reply to any future
21 publicity questions. Would like" -- he would like
22 the information that he had requested within a month,
23 preferably within a week.

24 Q Okay. And do you have any reason to believe that
25 request was not complied with?

00083

1 A I have no reason to believe that it wasn't complied
2 with.

3 (Paton Exhibit No. 971-T marked for
4 identification.)

5 BY MS. CONLIN:

6 Q I've handed you, Dr. Paton, what's been marked as
7 Exhibit 971-T, which is a two-page document bearing
8 Bates 0217527 through 0217528.

9 Is this a memorandum that you prepared on
10 or about April 3rd of 1970?

11 A Yes.

12 Q Okay. And you write here, "Many of you have asked
13 about the availability of Bulletin PL-306 which
14 covers all Aroclors and all applications. It has
15 been out of print for some time."

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q And what is a PL-306?

20 A Well, PL would stand -- I think that stands for
21 Plasticizer No. 306. So it would be -- it's some way
22 of coding bulletins within the Monsanto system.

23 Q And --

24 (Paton Exhibit No. 971-U marked for
25 identification.)

00084

1 BY MS. CONLIN:

2 Q -- I've handed you, Dr. Paton, what's been marked as
3 Exhibit 971-U, which is a multi-page document bearing
4 Bates NCR-FOX-528363 through 528377.

5 would this be an example of a PL-306?

6 A Yes.

7 Q Okay.

8 A Although it could be -- the PL-306A would be the
9 revised edition of -- is that -- this is the 306A
10 you've given me.

11 Q okay. So would that be --
12 A The replacement.
13 Q would that be the replacement --
14 A Yes.
15 Q -- to the PL-306 that you reference in your memo of
16 April 3rd of 1970?
17 A Yes.
18 Q Okay. I'd like to direct your attention to the
19 second page of this. At the bottom of the page it
20 says, "Caution: See sections entitled Toxicity and
21 Safe Handling, and Environmental Hazards on Page 12"?
22 A Yes.
23 Q Do you see that?
24 A Yes.
25 Q Okay. If we take a look at Page 13 of this
00085
1 document --
2 A Yes.
3 Q -- is there a heading entitled, "Environmental
4 Hazards"?
5 A Yes.
6 Q And does it list Aroclor 1242, among other Aroclors,
7 as containing PCBs of various types and in very --
8 and in varying amounts?
9 A Yes.
10 Q And does Monsanto go on to state, "PCB residues in
11 small amounts have been found in the environment and
12 some studies have indicated that they may be harmful
13 to certain forms of animal life"?
14 A Yes.
15 Q And does Monsanto also warn in this PL-3 -- PL-306A
16 that, "Extreme care should therefore be taken by all
17 users of PCB-containing products to prevent any entry
18 into the environment"?
19 A Yes.
20 Q Okay. And then in the last paragraph, does Monsanto
21 also war -- warn, "Some specific applications where
22 the use of PCB should definitely be avoided are in
23 paints and sealants for swimming pools, paints and
24 waterproofing agents in silos and other buildings
25 where food products for humans or animals are stored,
00086
1 and as a component of any container or wrapping used
2 in the packaging of food products"?
3 A Yes.
4 Q And was this the type of revised warning that
5 Monsanto set forth following your suggestions on
6 April 3rd of 1970?
7 MR. HA: Object to form.
8 THE WITNESS: Yes.
9 (Paton Exhibit No. 971-V marked for
10 identification.)
11 BY MS. CONLIN:
12 Q I've handed you, Dr. Paton, what's been marked as
13 Exhibit 971-V, which is a one-page memorandum bearing
14 Bates GPF0X41206. It is a memorandum from the --
15 Mr. Papageorge to yourself and others dated April
16 13th of 1970. Do --
17 A Yes.
18 Q -- you see that?
19 A Yes.
20 Q Okay. And Mr. Papageorge indicates that during your
21 April 3rd meeting, the subject of modifying the

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22 labels on the Aroclor packages was reviewed?

23 A Yes.

24 Q And did Mr. Papageorge then set forth the possible

25 paragraph to be added to the existing wording on

00087

1 Aroclor labels?

2 A Yes.

3 Q And what does Mr. Papageorge set forth there?

4 A "This product contains polychlorinated biphenyls,

5 which some studies have shown may be an environmental

6 contaminant. Care should be taken to prevent any

7 loss into the environment through spills, leakage,

8 disposal, evaporation or otherwise."

9 Q And where -- which products does Mr. Papageorge

10 suggest this additional wording should be used?

11 A "This additional wording is intended for packages

12 containing Aroclors 1242, 1248, 1254, 1260, 1262,

13 1268, 4465, and Montars 1, 2, 3, 4 and 7."

14 (Paton Exhibit No. 971-W marked for

15 identification.)

16 BY MS. CONLIN:

17 Q I've handed you, Dr. Paton, what's been marked as

18 Exhibit 971-W, which bears Bates PHGNCR-2000958

19 through 959.

20 Do you recognize that as a version of an

21 Aroclor 1242 label?

22 A Yes.

23 Q Okay. And how would these labels accompany products?

24 A They would go on -- well, there would be various --

25 they would go on the drums, they would go on tank

00088

1 cars and trucks, they probably would have gone -- in

2 the case of tank cars and trucks, I think they went

3 into -- you know, you'd have sort of slots or

4 somewhere on the truck, and these would have been

5 inserted into --

6 Q How did NCR --

7 A In some cases we would have had tank cars, I think it

8 might have been, in dedicated service.

9 Q Okay. How did NCR receive its Aroclor 1242

10 shipments?

11 A I think it would have been tank car, but --

12 Q Okay. And would there be any type of place on the

13 tank car for insertion of any warnings that you had?

14 A I'm sure there would have been.

15 Q Okay.

16 A Yes, I think, because I remember having -- when this

17 came, I remember --

18 Q By "this," you're referencing --

19 A The Papageorge memo.

20 Q Of -- Exhibit 971-V?

21 A Yes.

22 Q Okay.

23 A There would have been discussion before with the

24 order processing people and the -- and processing

25 part, because the head of processing -- the head of

00089

1 order processing would have been the one that would

2 have been expected to take care of how it got shipped

3 to customers and what labels should be used, because

4 there were, you know, various regulations by various

5 agencies as to what kind of labels were required in

6 some cases.

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7 So I would have initiated the action, but
8 there would have been a lot of discussion, I'm sure,
9 before Papageorge issued his -- his decision -- or
10 not his decision, his recommendation to get it done.

11 Q And --

12 A This is obviously what resulted.

13 Q Okay. And --

14 A Or one example of what resulted.

15 Q I was going to ask you, if you look at the language
16 on 971-W, on the right-hand side, could you read that
17 into the record? Up on the Aroclor label.

18 A "This product contains polychlorinated biphenyls,
19 which some studies have shown may be an environmental
20 contaminant. Extreme care should be taken to prevent
21 any entry into the environment through spills,
22 leakage, use, disposal, vaporization or otherwise."

23 Q Okay. And is that the same -- exact same language
24 which we just looked at on -- in the Papageorge
25 memorandum of April 13th, 1970, Exhibit 971-V?

00090

1 A Well, I think we've added "extreme" to the care.
2 "Extreme care" we're saying now, should be taken.
3 And we've added "use" before "leakage" or -- or "use"
4 after "leakage."

5 "Disposal, vaporization" -- yes, we've
6 add -- we've added a couple of words which I think
7 make it a stronger statement.

8 MS. CONLIN: Okay. Thank you. I have no
9 further questions.

10 VIDEOGRAPHER: We're going off the record
11 at 11:02 a.m.

12 (A recess was taken.)

13 VIDEOGRAPHER: We're back on the record on
14 Tape 3 at 11:15 a.m.

15 EXAMINATION

16 BY MR. BIRKE:

17 Q Dr. Paton, my name is Dennis Birke. I'm an attorney
18 representing Appleton Papers in this lawsuit.

19 Sir, are you being compensated for your
20 time here today?

21 A No.

22 Q Now, you testified earlier that at some point in
23 1970, you -- you moved into a different position --

24 A Yes.

25 Q -- is that correct? And I think you testified that

00091

1 was May 1, 1970?

2 A Yes.

3 Q After that point, did you have further involvement
4 with respect to NCR's usage of Aroclor 1242?

5 A Yes, I did. Well, not -- not 1242, because when I
6 came back into another -- into a product managing --
7 manager job, NCR's use of 1242 had stopped
8 apparently. So it had stopped somewhere between May
9 of '70 and August of 1971, because it was August '71,
10 that I recall that I came back into the -- I think by
11 then it was called Monsanto Industrial -- Industrial
12 Chemicals Company, and I went into a group known as
13 Fluids and picked up on their products.

14 Q But at that point in time, NCR's usage of Aroclor
15 1242 had ended?

16 A Yes.

17 Q All right. Let's jump back in time.

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18 A Sure.
19 (Paton Exhibit No. 971-X marked for
20 identification.)
21 BY MR. BIRKE:
22 Q Dr. Paton, I've put in front of you a one-page
23 document marked as 971-X. It's Bates labeled
24 MONSFOX00097422.
25 Now, you became a senior product specialist
00092
1 sometime in 1968 --
2 A Yes --
3 Q -- is that correct?
4 A -- that's right, yeah.
5 Q And in that position, you started having some
6 dealings with PCBs; is that correct?
7 A Yes.
8 Q I'd ask you to take a minute and review 971-X,
9 please.
10 A Yes.
11 Q Have you had a chance to read it?
12 A Yes.
13 Q Do you recall sending this memo?
14 A I have no reason -- yes. I mean, obviously I sent
15 it.
16 Q I believe you testified earlier that Dr. Richard was
17 the research director?
18 A In the fluids area, yes.
19 Q And who was Drs. Kelly and Wheeler?
20 A Emmet Kelly was Monsanto's medical director. Emmet
21 Wheeler was in that department reporting to
22 Dr. Kelly.
23 Q And Dr. Keller?
24 A Dr. Keller, as I recall, was in the research
25 analytical area.
00093
1 Q This memo refers to an article published in the New
2 Scientist publication on December 15, 1966.
3 Now, this memo is dated July 31, 1968. Do
4 you see that?
5 A Yes.
6 Q And you indicate in the first paragraph, "The New
7 Scientist is an English periodical given over to
8 'Popular' Science. On its inception about 16 years
9 ago, I thought it was given over more to sensation
10 than to strict regard to scientific accuracy. I am
11 sorry to see that it has not changed over the years.
12 "Their article on 'PCB' is the most
13 opinionated we have seen so far on Aroclor toxicity
14 and I'm -- and I am sure their omission of the word
15 Aroclor has prevented even greater repercussions."
16 Now, as I understand that last sentence,
17 what you're saying there is that Aroclor was not
18 mentioned in this article?
19 A (Nods head.)
20 Q And that --
21 A Apparently not.
22 Q And that what was being discussed there was really
23 PCB toxicity?
24 A I assume so, yes.
25 Q Okay. Now, from reading this article, would it be
00094
1 fair to characterize your view then as being somewhat
2 skeptical about the views being expressed in the

article?

A Yes, because I had -- well, going back 15 years is 1953, and I was a student at that time but I read the New Scientist, and it was a kind of Popular Science journal, as I say. As I said in here, it didn't always stay strictly on scientific fact. It would have opinions and hypotheses which I didn't always agree with, and some I knew were flat out wrong.

So this wording may look, you know, tough now, in retrospect, but that's how I felt.

Q And based on your interactions with people at Monsanto like Dr. Richard or Dr. Kelly, Mr. Wheeler, would you say that that skepti- -- that skepticism being expressed in some of these articles was shared by others?

MR. MILLER: Objection, calls for speculation.

THE WITNESS: No, it wouldn't.

MS. CONLIN: Same. Foundation.

THE WITNESS: I'm sure it wouldn't because based on how I know that Dr. Richard, Bill Richard and Emmet Kelly and Wheeler and Keller were -- well, let's deal with Bill Richard, Emmet Kelly and Emmet

wheeler, they would not have been -- you know, they would not have given a lot of credence to this. They would have disregarded it and gone on about looking at whatever situations they were doing.

BY MR. BIRKE:

Q They would have been looking into the science underlying the allegations?

A Yes, exactly.

Q Now, the Jensen and Widmark article came out in late 1966. As of the summer of 1968, when this memo was prepared, to the best of your knowledge, had Monsanto begun research into the allegations being made in the articles regarding environmental risk associated with PCBs?

A Yes.

MS. CONLIN: Lack of foundation.

THE WITNESS: Yes.

BY MR. BIRKE:

Q And when did that work begin?

A I can't -- I can't testify to the exact date, but I do know, based on I got into this, that I think they had in -- sometime in '68, I think, people from Monsanto, St. Louis, had gone -- or people from Monsanto had gone to Jensen and Widmark to learn more about, you know, what they found and how they had

found it.

And I know that Scott Tucker, for example, who has testified before you, I believe, had spent a lot of time trying to work -- to cooperate with various people that were looking at this issue so that we could, you know, share information, that we could develop techniques and so on, that -- that would be reliable.

Because there was still a great deal of confusion regarding the accuracy of -- you know, what they really had found. Not necessarily the accuracy, but what they had really found, and there was also a great deal of confusion in what it -- as I said, the

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14 test methods in those days were still fairly
15 primitive.

16 I mean, I know as a student, back in the
17 late 1950s, that the whole system of trying to
18 identify by chromatography or mass spectrometry was
19 in the very, very early stages.

20 Q You mentioned that there was confusion about the
21 results that were being reported. Can you elaborate
22 on that? Can you explain exactly what was the
23 confusion?

24 A Well, I think there -- it was confusion from the
25 standpoint that after Jensen and Widmark's paper was
00097 published -- and I picked up this, you know, later on
1 after I got involved -- was that there were other
2 researchers that were doing this work that came up
3 with different results and different conclusions, and
4 that's why there was -- there was some uncertainty as
5 to what was what.

6 Now, the scientific community within
7 Monsanto, and itemized by these groups here that got
8 this memo, were seriously trying to sort out what was
9 what. It was critical for us to find out what was
10 accurate and what wasn't.

11 Q Would you say that it was the development in -- or
12 the advancement in the kinds of technology and
13 analytical techniques that became available in the
14 1960s that made it possible to make the kind of
15 discoveries that were made by Drs. Jensen and Widmark
16 in their study?

17 A I think it might have even been a bit late -- yes, it
18 would have been beginning in the late '60s. It would
19 have continued on and probably improved in the '70s.

20 (Paton Exhibit No. 971-Y marked for
21 identification.)
22

23 BY MR. BIRKE:

24 Q Dr. Paton, I've given you what's been marked as
25 971-Y. It's a one-page memo with Bates No.
00098

1 MONSFOX00097672. This is a November 27, 1968, memo
2 that you prepared.

3 Do you recall this memo?

4 A It's undoubtedly mine.

5 Q In the first sentence, you make reference to "our
6 proposed program on metabolic studies with various
7 Aroclors."

8 Do you see that?

9 A Yes.

10 Q What were the metabolic studies that you were
11 referring to here?

12 A At this point in time, I can't recall exactly what
13 they were.

14 Q But these were metabolic studies involving Aroclors?

15 A Yes.

16 Q And am I correct in reading this to mean that these
17 metabolic studies were just being proposed at that
18 point in time?

19 A I guess -- I guess that must have been the case.

20 Q Were other studies regarding Aroclors being started
21 at about this time?

22 A I think there might have been studies started even
23 earlier than this. I -- I can't recall.

24 Q Okay. And when would those studies have been

25 2009-08-26 Paton, Cumming Depo in Appleton
00099 started?

1 MR. MILLER: I'm sorry, which ones?

2 MR. BIRKE: The ones he just referred to.
3 The earlier ones he referred to.

4 THE WITNESS: Well, if it was a proposed
5 program on metabolic studies, it hadn't started.
6 Other studies had started on trying to identify --
7 you know, how you could identify PCBs in the
8 environment and things like that --

9 BY MR. BIRKE:

10 Q And would those --

11 A -- and some degra- -- by degradation was also talked
12 about.

13 Q Were the studies designed to measure PCBs in the
14 environment begun in 1968?

15 A No, I -- well, I'm not -- I really -- I really can't
16 answer that with certainty.

17 Q I believe you testified earlier that the PCB issue
18 was brought home to you when you were in
19 San Francisco and you ran across this -- the
20 San Francisco Chronicle article reporting on
21 Dr. Risebrough's article?

22 A Uh-huh.

23 MS. CONLIN: Objection to form.
24 (Paton Exhibit No. 971-Z marked for
25 identification.)

00100

1 BY MR. BIRKE:

2 Q I've handed you what's been marked as Exhibit 971-Z.
3 It's a memo dated March 3, 1969, and it bears Bates
4 Nos. MONSFOX00097467 through 472.

5 This was a memo from Tom Ford. Who was
6 Mr. Ford?

7 A I -- I cannot recall him at all. I have no idea.

8 Q Now, you're not shown as a recipient --

9 A No, that's right.

10 Q -- of this article. Do you recall seeing this
11 before?

12 A No.

13 Q Now, this article refers to an article that had been
14 published in the San Francisco Chronicle.

15 Do you see that in the first paragraph?

16 A Yes.

17 Q And in the third paragraph, it refers to a more
18 detailed reply to these charges.

19 Do you see that?

20 A Yes.

21 Q If you'll turn in two pages, there's a -- indicates
22 that it's a statement from Monsanto Company,
23 St. Louis, Missouri.

24 Do you see that?

25 A Yes.

00101

1 Q Could you read through that for me, please, to
2 yourself?

3 A Yes.

4 MS. CONLIN: Object --

5 THE WITNESS: To myself?

6 MS. CONLIN: Objection, foundation. The
7 witness has said he's never seen this before.

8 BY MR. BIRKE:

9 Q Dr. Paton, do you recall seeing this statement from
Page 43

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10 Monsanto from March 3, 1969?

11 A No, I don't. That statement, no.

12 MS. CONLIN: Is there a question pending?

13 MR. BIRKE: I'm asking the witness to

14 review the document.

15 MS. CONLIN: Oh, okay. Sorry. I missed

16 that.

17 THE WITNESS: Okay. I've read.

18 BY MR. BIRKE:

19 Q Okay. If you'll turn to the second page of the

20 statement?

21 A Yes.

22 Q And in the middle of the page, the paragraph begins,

23 "Dr. Risebrough's more recent work reports the

24 identification of PCB, along with DDT and DDE

25 pesticides, in the tissue of birds and fish on the

00102 West Coast. These conclusions" -- I'm sorry.

2 "The conclusions of these scientists are

3 puzzling from several respects. Polychlorinated

4 biphenyls are stable chemical compounds which are

5 essentially insoluble in water. Their use does not

6 make them easily released into the natural

7 environment."

8 The -- would you agree that at -- based on

9 what you knew at the time, the results that were

10 being published by Dr. Risebrough and others were

11 puzzling?

12 MS. CONLIN: Objection, foundation.

13 THE WITNESS: Well, I think they were not

14 necessarily -- it was hard to know, you know, how

15 accurate they were because there was this talk that

16 they were along with DDT and DDE pesticides, and it's

17 hard -- you know, so I at the time would say I was --

18 I was somewhat maybe puzzled, too --

19 BY MR. BIRKE:

20 Q Now, you --

21 A -- of how accurate they were.

22 Q Over your years with Monsanto, did you have occasion

23 to participate in the preparation of a statement like

24 the one you're looking at now?

25 A No.

00103

1 Q okay. If you'll turn to the next page of the

2 statement, which --

3 A which page are we on now? 3?

4 Q 3, yes. The last paragraph on that page reads, "To

5 our knowledge, polychlorinated biphenyls are not

6 sprayed or dusted on crops, woodlands or other areas,

7 as are pesticides. It is, therefore, not only

8 puzzling, but extremely difficult to conceive how

9 commercially produced PCB can show up in wildlife in

10 the quantities reported. This raises the question of

11 whether the substances identified in the Swedish

12 work, and now in California, are actually PCBs -- or

13 whether they are compounds which, due to the

14 metabolism of other materials in the marine

15 environment, appear to be PCBs."

16 Now, going back to the second sentence of

17 that paragraph, based on what you knew at the time,

18 do you agree that it was extremely difficult to

19 conceive how commercially produced PCBs can show up

20 in wildlife in the quantities reported?

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MS. CONLIN: Objection, foundation and

form.

THE WITNESS: I didn't really have enough
fact -- you know, I wouldn't have had enough facts at
my disposal to be able to agree or disagree with that

statement.

BY MR. BIRKE:

Q All right. In the next sentence, it raises the
questions of whether what was being detected was
actually PCBs.

Was -- was that a view that was shared by
people at Monsanto in their internal discussion? In
other words, was there real questions as to whether
what was being detected was actually PCBs?

A I think -- I think there was a genuine desire, an
honest desire, to find out if there really were. I
think there was -- as I've said earlier, we were
still trying to find out what it was and to find --
and we wanted -- we were aware that a variety of
people had done testing, but simply to find out, you
know, were they all -- were we all using the same
type of equipment, the same type of methodology and
so on, so that you could get a real comparison, and
that was really missing at that time.

Q If you'll turn to Page 4, the last paragraph --

A Yes.

Q -- it says, "The source of the marine life residue
identified as PCB is not yet known."

Based on what you knew at the time,
would -- do you agree that at that point in time,

that is, in March 1969, the source of the substance
that's being detected and reported by Dr. Risebrough
and others was not known?

A I think that's -- I would tend to think that was
accurate.

(Paton Exhibit No. 971-AA marked for
identification.)

BY MR. BIRKE:

Q Dr. Paton, I've handed you what's been marked as
Exhibit 971-AA. It's a one-page letter Bates labeled
MONSFOX00090896. It's a March 24, 1969 letter from
Jack Garrett.

Do you know Jack Garrett?

A Yes.

Q And who was Jack Garrett?

A Well, it says he was in the medical -- medical
department, and that industrial hygiene was one of
his functions and pollution abatement apparently
another. That's the title he had.

Q And did you have interactions with Mr. Garrett during
this period of time?

A I would have had interactions, yes.

Q Now, this is a letter that Mr. Garrett is sending to
a Mr. Harry Chatfield at the Los Angeles County Air
Pollution Control District.

Do you see that?

A Yes.

MS. CONLIN: Can we do some voir dire to
find out if there's any foundation for this document?

BY MR. BIRKE:

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6 Q Dr. Paton, do you recall seeing a copy of this
7 document at or about the time it was issued?

8 A No.

9 Q All right. Now, if you'll --

10 MS. CONLIN: I'm going to object on
11 foundation then.

12 BY MR. BIRKE:

13 Q If you look at the second paragraph, it says, "We at
14 Monsanto cannot understand the origin of the
15 materials reported in the recent newspaper articles
16 on the West Coast. These compounds are utilized
17 generally in enclosed systems, and very little would
18 normally be expected either in the air or in the
19 liquid discharge from a using -- from a using
20 industry."

21 Did -- do you share -- based on what you
22 knew at the time, do you share the view being
23 expressed here by Mr. Garrett that Monsanto can't
24 understand the origin of the materials being
25 detected?

00107

1 MR. MILLER: Object to form.
2 You can go ahead and answer.
3 MS. CONLIN: Same.

4 THE WITNESS: Well, I -- you know, I didn't
5 write this -- this memo. I haven't seen it before.
6 So I don't feel I'm in a position to make any comment
7 one way or another as to what the meaning of the
8 context was.

9 BY MR. BIRKE:

10 Q I've handed you an exhibit we looked at earlier this
11 morning, 971-C. This is your April 18, 1969, memo
12 reporting on your March 27, 1969, meeting with
13 representatives of NCR; is that correct?

14 A Yes.

15 Q Now, it's my understanding that this meeting was
16 initiated by Monsanto; is that correct?

17 A Yes.

18 Q In the second paragraph, it indicates that, "We
19 presented a copy of the San Francisco Chronicle
20 article and gave Monsanto's position on the article."
21 would the position -- well, do you recall
22 what position you articulated, that is do you recall
23 what position Monsanto's representatives articulated
24 at that meeting regarding the Chronicle article?

25 A Well, we presented the article, and don't give our

00108

1 position on the article. I can't recall now what
2 exactly we would have -- we said.
3 It -- certainly it appears that I got
4 something from my superiors and so on as to what some
5 kind of a position was, and I don't articulate that.
6 At this point in time I can't remember what I would
7 have said, and it's likely that I would have been the
8 one that would have been talking about that at that
9 time.

10 Q You would have been the person?

11 A Yes, because Pete Maier was the salesman, Gene Wilde,
12 the region manager -- and the -- and the sales
13 manager, and they would not have got into -- you
14 know, I'd have told them what the position was, but
15 I'm sure I would have been the one saying what I
16 said.

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But I don't -- I didn't in here put down what I did say, and I now can't remember.

Q Now, the statement that we reviewed a few minutes ago indicated that NCR had -- I'm sorry, that Monsanto had the view at the time that statement was issued that it was unclear whether the substances being detected were, in fact, PCBs.

Do you recall telling NCR anything inconsistent with that at your meeting?

00109

MS. CONLIN: Objection. What are you referencing, Counsel?

MR. BIRKE: I'm referencing the statement we looked at in Exhibit 971-Z.

MS. CONLIN: Well, I'm going to object on lack of foundation.

THE WITNESS: You mean this -- which one? This one from --

BY MR. BIRKE:

Q From March of '69.

A I -- I can't recall having seen that until you showed it to me now, because none of this, this Ford, Bennett, Linton von Beroldingen, whoever -- however you pronounce that name, none of that persists -- you know, it's -- but I might have had this article with me. I just cannot recall.

Q So your testimony today is that you can't recall what you told NCR regarding Monsanto's position on the reports being published at that time?

A Not really -- no, I can't -- you know, I can't recall in words what I would have said. This -- you know, this might have been a basis of some of it -- (witness indicates) -- since it was issued March the 3rd, but I don't know whether it was still internal in Monsanto at one -- at that time or whether I was

00110

given it to take with me. I really can't remember.

Q Well, as you sit here today, do you have any recollection of telling NCR that the materials being reported in those articles were, in fact, PCBs?

A I -- I would have probably said -- and again, I don't want to speculate, but the thing that was -- at that point in time we were doing was to try to determine to what extent it was pesticide or PCB sort of thing. And we were doing everything we could to kind of understand that. And I would have indicated that, but I couldn't have said for sure it wasn't PCB or was PCB.

Q So were you reporting to NCR on the studies that were you -- you were -- that is, Monsanto was initiating at that point in time?

A I'm sure -- I'm sure I would have done that because I -- I think by then, that might have also been -- you know, yes, I'm sure I was saying that we were trying to get to the bottom of it.

Q And at that point in time, is it correct that Monsanto hadn't determined whether, in fact, the materials being detected were commercially produced PCBs?

MS. CONLIN: Objection, lack of foundation.

THE WITNESS: It would have been difficult

00111

to say they were Aroclor because there were at least

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 2 three producers in Europe, and so it always has been
 3 a source of question with me whether we were really
 4 talking about Monsanto material.
 5 But, I mean --
 6 BY MR. BIRKE:
 7 Q Have you finished your answer?
 8 A well, I'm trying to think back, and I don't want to
 9 be -- not to answer, but I'm also at a loss to know
 10 how to answer.
 11 Q All right. The last sentence on that page reads,
 12 "Lauer said that NCR would take no action unless a
 13 second article appeared specifically naming their
 14 paper as a source of pollution."
 15 Do you see that?
 16 A Yes.
 17 Q At the time Mr. Lauer expressed this view, did you
 18 disagree with the course of action he was proposing?
 19 A No, I'm sure I didn't.
 20 Q Based on what you knew at the time, that did not seem
 21 like an inappropriate thing to do?
 22 MR. MILLER: Object to the form.
 23 MS. CONLIN: Same.
 24 THE WITNESS: Well, that -- if he said
 25 that, that was his position. I was in no position to
 00112 tell him I disagreed with him.
 1 BY MR. BIRKE:
 2 Q At the meeting, did Monsanto tell NCR that NCR should
 3 discontinue use of Aroclor 1242 immediately?
 4 Where are you now in the --
 5 A I -- I'm not looking at anything in particular in
 6 this document.
 7 A You're asking -- please repeat it then, please.
 8 Q My question was, at this meeting, did Monsanto tell
 9 NCR that NCR should discontinue use of 1242
 10 immediately?
 11 A I don't think we told them that.
 12 Q Based on what you knew at the time, did you and other
 13 representatives of Monsanto have grounds for
 14 recommending that NCR discontinue use of Aroclor
 15 1242?
 16 MR. MILLER: Let me just object to form.
 17 I'm not -- it's vague.
 18 THE WITNESS: well, that would have been an
 19 NCR decision, not a Monsanto decision. We were
 20 talking about a program to find replacements.
 21 BY MR. BIRKE:
 22 Q Now, later on Monsanto issued warnings and labels
 23 that were put on Aroclor products --
 24 A Yes.
 00113 Q -- is that right? At this point in time Monsanto
 1 hadn't made those decisions; is that correct?
 2 A well, they were -- let's see. I thought there were
 3 some -- we looked at labels and things. When was the
 4 date of that?
 5 Q well, that's a question that I was going to get to
 6 later.
 7 A Okay.
 8 Q The -- if you'll look at 971-V, this is
 9 Mr. Papageorge's memo indicating that labels were to
 10 be put on Aroclor packages --
 11 Uh-huh.
 12 A

13 Q -- do you see that?
14 A Yes.
15 Q And this memo was dated April 13, 1970.
16 A Uh-huh.
17 Q So this decision was made some time later, more than
18 a year later --
19 A Uh-huh.
20 Q -- after this March 1969 meeting; is that correct?
21 A Yes.
22 Q At the time of this March 1969 meeting, had Monsanto
23 made any decisions about issuing any kind of warnings
24 with respect to the use of Aroclor?
25 MR. MILLER: Object to the form. Calls for

00114

1 speculation. Mr. -- or Dr. Paton is here ---
2 THE WITNESS: I --
3 MR. MILLER: Hold on a second, Doctor.
4 THE WITNESS: Sorry.
5 MR. MILLER: Dr. Paton is here subpoenaed
6 on his own behalf and not on behalf of Monsanto
7 Company. To the extent he knows, he can answer.
8 BY MR. BIRKE:
9 Q To your knowledge, had Monsanto issued any warning
10 with respect to Aroclor 1242 as of March of 1969?
11 MR. MILLER: Let me also object. You mean
12 a written warning in a form that we've seen with
13 respect to the on-product label, or are you talking
14 about some other --
15 MR. BIRKE: Or an oral warning that may
16 have been given at this meeting.
17 THE WITNESS: I don't think we would have
18 given definite oral warnings, because as I've said
19 earlier, in my mind at least, there was still some
20 confusion as to what the facts really were.
21 But at the same time we had to look at a
22 kind of a worst scenario if, in fact, Jensen,
23 widmark, or some of the other researchers were
24 accurate, then we needed to take some action and to
25 help our customers get some alternatives.

00115

1 BY MR. BIRKE:
2 Q Now, one of the other things discussed at this
3 meeting was an alternative to Aroclor 1242; is that
4 correct?
5 A Yes.
6 Q If you look at the second page of your memo here, it
7 says, "We then got down to a discussion of -- a
8 discussion of the technical needs of the dye solvent.
9 There are two needs: (i) Aroclor 1242 replacement
10 in existing products," and "(ii) solvents for
11 specialty requirements."
12 It then says, "NCR are always anxious to
13 find the replacements to Aroclor 1242 to get a lower
14 cost, second source of supply and lower orders -- and
15 lower odor."
16 Where did you get the information that you
17 reported on in that paragraph?
18 A That would have come from somewhere in -- present
19 from NCR's side at the meeting.
20 Q You think that NCR expressed that issue?
21 A Yes, I'm sure they did.
22 Q In the next paragraph it goes on to say, "In the
23 U.S., NCR are now locked into a resin system for both

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24 the dye-encapsulated coating and the receiving paper
25 coating. In the U.S., they have switched in

00116

1 Attapulugus clay. The resins now used are a PV," I
2 guess that's "MM"?
3 A Yes, polyvinyl methyl methacrylate, I think.
4 Q "From PP&R is an alternative and a phenolic resin."
5 was it your understanding at that time that
6 NCR had prior to that switched from using a
7 clay-based coating on the -- at the second sheet of
8 the coating, front of the second sheet in the
9 carbonless paper?
10 A I wouldn't have known it before they told me at that
11 meeting.
12 Q But in fact that's what you were told at that
13 meeting?
14 A Yes.
15 Q And do you recall NCR explaining that that change in
16 the coating was motivating a need to replace Aroclor?
17 A I can't remember if it was worded in exactly these --
18 that light.
19 Q Well, what do you recall with respect to that
20 discussion?
21 A I remember that they gave us -- gave me for the first
22 time more information, how it was used and what their
23 situation was with regard to different clays. And so
24 it gave us some insight as to the type of work they
25 might have to do, given that there was also changes

00117

1 going on or had gone on in their own system.
2 Q Is it correct to say that NCR came to that meeting
3 with the plan to replace Aroclor 1242 based upon the
4 changes in the coating used on the second sheet of
5 paper?
6 MS. CONLIN: objection, calls for
7 speculation.
8 MR. MILLER: Join.
9 THE WITNESS: No, I -- I don't recall that
10 I would have tied it necessarily to that because they
11 made it -- they had, you know, a lower-cost second
12 source of supply in Lura Luda [phonetic], and that I
13 could, you know, very clearly relate to.
14 The others, I didn't know enough about
15 their system and I would have had to report this back
16 to our technical people, when I get back to them, to
17 see if they understood it better than I did.

18 BY MR. BIRKE:

19 Q But is it correct to say that NCR came to that
20 meeting with and explained the need to replace
21 Aroclor 1242; is that correct?

22 MS. CONLIN: Same objection. Calls for
23 speculation.

24 THE WITNESS: I think they were interested
25 in seeing if there were alternatives. I don't know

00118

1 if they had made a firm decision that they had to get
2 Aroclor 1242. I think at that time they hadn't --
3 they didn't state it that forcefully to me. It was
4 more the interest in looking at alternatives.

5 BY MR. BIRKE:

6 Q Based on your recollection of what you were told at
7 that meeting, was this decision to explore
8 alternatives to 1242 based upon the reports of the

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 9 environmental issues surrounding Aroclor?
 10 A It would have had -- yes, there's a relationship,
 11 because if it was found to be wrong, the facts, as
 12 we -- not the facts.
 13 If indeed there was truth to the
 14 allegations that were being made, then it was an
 15 insurance-type policy. If they were proven to be
 16 right, then at least we gained some time to get
 17 started on a program.
 18 Q What was your understanding of what would be required
 19 to find a replacement for Aroclor 1242?
 20 MR. MILLER: I'm sorry, by whom?
 21 MR. BIRKE: By Monsanto and NCR.
 22 THE WITNESS: Well, Monsanto, I think, had
 23 already identified products that might be
 24 possibilities and were prepared to go ahead and do
 25 more work, and that was why we were looking to them
 00119
 1 to give us some guidance as to what the screening
 2 tests would be, so that we could then run some trials
 3 based on what you told us would be early indicators,
 4 and we could narrow the list and work together
 5 backwards and forwards to see if we could narrow down
 6 the list.
 7 BY MR. BIRKE:
 8 Q Do you have any recollection at this time how many
 9 candidates there were as replacement products?
 10 A I think -- I think Monsanto -- I mean, our research
 11 people had a whole list of potential candidates based
 12 on -- because we had a very broad range of
 13 chemical-type products in the plasticizer division.
 14 Q And at the meeting, did you discuss a -- a process or
 15 a plan for moving forward with reviewing these
 16 various alternatives?
 17 A Well, I would have to read this to see if -- I'm sure
 18 we indicated that we were willing to do this, and one
 19 of the purposes was to try to find out what were the
 20 best ways to try to screen them out so we didn't --
 21 because on the next page, on Page 3, there is a
 22 section which says that -- that indicates the kind
 23 of -- what they had said of the various products that
 24 we had given them, which ones looked promising and
 25 which ones didn't.
 00120
 1 Q Do you recall a -- a time line, that is a length of
 2 time, that was anticipated for making a decision
 3 about a replacement product for Aroclor 1242?
 4 A I'm not sure that I did at that particular time,
 5 because it would have -- it would have varied widely
 6 depending what NCR came back and told us. Some might
 7 be fairly quick; others might take quite a bit
 8 longer.
 9 Q Based upon what you knew at the time, did you believe
 10 that NCR's continued use of Aroclor 1242, until an
 11 alternative could be found, was a commercially
 12 reasonable course of action?
 13 MS. CONLIN: Objection, calls for
 14 speculation.
 15 THE WITNESS: You mean -- when you say
 16 "commercially feasible," how are you looking at this?
 17 Are you thinking that we wanted to keep on selling
 18 NCR Aroclor 1242 regardless, or -- or was this -- you
 19 know, what do you mean by that term, "commercially"?

20 BY MR. BIRKE:
21 Q Well, you were in business for many years and you
22 made decisions about what products were properly sold
23 to customers and products that should not be sold; is
24 that correct?
25 A Yes.

00121
1 Q All right. Now, based upon that kind of judgment you
2 had to make in your business life, did you view the
3 continued use of 1242 as an inappropriate thing for
4 NCR to do based upon what was known at the time?
5 MS. CONLIN: Same objection. Calls for
6 speculation.
7 THE WITNESS: I -- you know, I can't --
8 given -- if you're trying to say we had a -- an
9 inbuilt commercial interest to keep on selling
10 Aroclor 1242 as long as we could, that -- no, that
11 wouldn't be necessarily true.
12 We were prepared to, if we could
13 substantiate some of the questions that were still
14 out there. If we found that indeed the Aroclor -- or
15 the PCB rather was going to be a problem, yes, we
16 would have gone as quickly as we could to get out of
17 it.

18 BY MR. BIRKE:
19 Q And I'm not trying to suggest anything to the
20 contrary.
21 A Oh, okay.
22 Q My question to you is, based upon what you knew at
23 the time, did you believe that it was inappropriate
24 to continue using an Aroclor 1242 in the production
25 of carbonless copy paper?

00122
1 MS. CONLIN: Same objection.
2 THE WITNESS: Well, I wasn't quite at the
3 stage to be able to tell NCR what was inappropriate.
4 I think they were -- they had enough information or
5 we tried to give them enough information that they
6 could make that decision for themselves.
7 And if they -- if they had made that
8 decision, we'd have, you know, accepted it and
9 then -- but if it was to find a replacement, we were
10 working as hard as we could to find a replacement.

11 BY MR. BIRKE:
12 Q At a certain point in time in the future, Monsanto
13 made the decision to discontinue selling various
14 Aroclor products based upon what the science was
15 showing at that point --
16 A Yes.
17 Q -- in time; is that correct?
18 A Uh-huh.
19 Q Those kinds of decisions had not been made as of
20 March of 1969; is that correct?
21 A I don't think so.
22 MS. CONLIN: Object.
23 THE WITNESS: There might have been
24 discussions at higher levels in Monsanto but, you
25 know, what ifs, what ifs, and that sort of thing, but

00123
1 that -- it hadn't been finalized then.
2 BY MR. BIRKE:
3 Q Were you a party to any conversation of that nature?
4 A Within Monsanto?

5 Q Yes.
6 A I may have been. I can't -- I can't recall, but I
7 wasn't at the level that, you know, that would have
8 signed off on that decision or --
9 Q So that was -- you were not a party to any
10 conversations of that nature?
11 A Well, I can't recall now whether I was or I wasn't.
12 Q Okay.
13 A But I certainly wasn't trying to -- in no way did I
14 ever try to mislead NCR or its people. That I
15 thought, and to the best of my knowledge would still
16 think, that you were a fine company -- it was a fine
17 company. The people I met with were honest, sincere,
18 capable people, and -- and I was trying my best to
19 help them as best I could.
20 (Paton Exhibit No. 971-BB marked for
21 identification.)
22 BY MR. BIRKE:
23 Q Dr. Paton, I've handed you what's been marked as
24 Exhibit 971-BB. This is labeled MONSFOX00034402
25 through 410.

00124

1 This consists of basically two documents.
2 A -- what appears to be a memo in the first four
3 pages, followed by a statement from Monsanto Company
4 dated October 29, 1969.
5 A Uh-huh.
6 Q Do you see that?
7 A Yes.
8 Q Well, first focusing upon the first couple of pages,
9 this is entitled, "Executive Summary, PCB Pollution."
10 Do -- do you recall seeing this document
11 before?
12 A No, I don't.
13 Q Okay.
14 A But that's not to say I didn't, but I just cannot
15 recall it now.
16 Q Okay. And then the statement that is attached, do
17 you recall seeing that statement before?
18 A It seems very similar to one that I think I saw, that
19 you showed me earlier. It seems to have a lot of the
20 similar type wording, I think.
21 Q Now, if you'll turn to the first page of the
22 Executive Summary --
23 A Yes.
24 Q -- it says, "Monsanto confirmed the presence of PCBs
25 in mid-1969 and confirmed the adequacy of Widmark and

00125

1 Jens- -- of Widmark and Jensen and others -- a
2 worldwide ecological problem."
3 Do you see that?
4 A Yes.
5 Q Is it your recollection that about by mid-1969
6 Monsanto had confirmed that, in fact, PCBs had been
7 detected in the work of Widmark and Jensen?
8 A I can't -- this has refreshed my memory. I couldn't
9 have given you an exact date, but I certainly
10 wouldn't dispute this.
11 Q That seems right to you?
12 A That seems right to me.
13 Q Okay. So it was at that point in time that Monsanto
14 got confirmation that, in fact, what was being
15 detected was Mon- -- was PCB?

16 A Yes.
17 Q In the next heading it says, "Analysis indicates
18 environmental presence of 5 and higher chlorinated
19 biphenyls (similar to Aroclors 1254 and 1260)."
20 Now, this memo was dated October of 1969.
21 A Uh-huh.
22 Q Was testing regarding the biodegradability of the
23 Aroclor products ongoing at that point in time?
24 A I think it was.
25 Q And at that point in time, had -- was the research
00126 indicating that it was the higher chlorinated
1 biphenyls that were not biodegrading?
2 A I think that's true. I think. They certainly were
3 the more -- the most difficult.
4 Q And those were the ones that were being detected in
5 the sampling that was --
6 A Yes.
7 Q -- being performed, or at least PCBs of a similar
8 composition of 1254 and 1260 --
9 A Yes.
10 Q -- is that correct?
11 A Yes.
12 Q To your recollection, was 1242 being detected in the
13 biological or environmental samples that were being
14 tested during that period of time?
15 A I don't think Aroclor 1242 was, except -- well, I
16 mean, you continue it.
17 Q Well -- and did you have a hypothesis or an
18 understanding of why Aroclor 1242 was not being
19 detected in the samples being tested?
20 A Well, I think if we had been -- the 1242 contained
21 some of the 54 and 60. I think my own belief was
22 that if you could somehow move towards lower
23 chlorinated materials, the odds of biodegradation
24 increased greatly.
00127 1 1242 seemed to be in that -- the fact that
2 it didn't show up would indicate that it did
3 biodegrade to some extent, but the practical problem
4 was without manufacturing, didn't distinguish between
5 that, and ---
6 Q And is that because 1242 contained some of 5 and 6 --
7 A Yes.
8 Q -- chlorines?
9 A Yes.
10 Q Were those chlorines a small fraction of the total
11 1242 product?
12 A I can't remember right -- you know, the fractions
13 now. But I've heard numbers of 6, 7 percent, in that
14 general area. And what that would -- you know, if
15 they had been -- you know, if you could have somehow
16 fractionated them, then the -- we would have had this
17 material that would have caused problems, you know,
18 we would have had to take care of or use elsewhere,
19 it would have increased the costs, you know, which
20 was one of the things that NCR was saying they wanted
21 to get down.
22 So you'd have increased the cost by a
23 significant amount, which would have probably
24 precipitated a change to something else anyhow, so.
25 But it is true to say that I don't think
00128

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1 1242 was in -- you know, it hadn't been found in the
2 environment, and you could speculate that yes, there
3 was some biodegradation.
4 Q Let's turn to the statement that's a few pages in.
5 MS. CONLIN: What page are you on, Counsel?
6 MR. BIRKE: I'm looking at the first page
7 of the statement.
8 MS. CONLIN: What's the Bates number?
9 MR. BIRKE: MONSFOX00034406.
10 MS. CONLIN: I'm going to object on
11 foundation. I thought he said he hasn't seen this.
12 THE WITNESS: Well, I just saw it a few
13 minutes ago, I think, because it's very similar to
14 something which had John Ford's name on it. It's
15 that -- the ones we saw just a few minutes ago.
16 MS. CONLIN: Let me -- let me do a short
17 voir dire, then, Doctor.
18 VOIR DIRE EXAMINATION
19 BY MS. CONLIN:
20 Q You haven't seen this exhibit, 971-BB, until today;
21 is that right?
22 A That's right. That's right.
23 Q You've never seen it before?
24 A No. No, it doesn't -- it doesn't ring a bell at all.
25 Q All right. And that's the same with respect to
00129 971-Z, which is, I think, what Counsel showed you a
1 few minutes ago?
2 A Yeah, this looks like it.
3 Q Do you have 971-Z?
4 A Yes, I do.
5 Q Okay. And have you seen that document before today,
6 Dr. Paton?
7 A No, no. That doesn't ring -- that doesn't ring a
8 bell at all.
9 MS. CONLIN: I'm going to continue to
10 object on foundation.
11 EXAMINATION CONTINUED
12 BY MR. BIRKE:
13 Q Turning back to Exhibit 971-BB.
14 A Yes.
15 Q Now, over the course of your tenure at Monsanto, were
16 you familiar with Monsanto's practice of from time to
17 time issue -- issuing corporate statements of this
18 nature?
19 A Well --
20 MR. MILLER: Object to the form.
21 MS. CONLIN: Same. Lack of foundation.
22 THE WITNESS: -- Monsanto certainly issued
23 corporate statements, and I wouldn't necessarily have
24 been the one that initiated that or had a hand in
25 preparing them.
00130 1 preparing them.
2 BY MR. BIRKE:
3 Q Were statements of this nature the type of thing that
4 would have been provided to your customers?
5 MR. MILLER: Object to the form.
6 MS. CONLIN: Same.
7 THE WITNESS: I really can't say. It would
8 depend on circumstances, I think.
9 BY MR. BIRKE:
10 Q Turning to Page 3 of the memo, it reads, "Therefore,
11 conclusions as to the source of PCB found in the

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12 environment are difficult to make. Some qualified
13 scientists, using the latest laboratory equipment,
14 have correctly identified the substances" --
15 A Oh, you're looking at the actual --
16 Q I'm sorry.
17 A -- attachment, Page 3. I see. Okay.
18 Q All right. It's the middle paragraph. "Therefore,
19 the conclusions as to the source of PCB found in the
20 environment are difficult to make. Some qualified
21 scientists, using the latest laboratory equipment,
22 have correctly identified the substances as being
23 PCB. However, most scientists are not yet willing to
24 indict commercially produced PCB as a pollutant."
25 Based on your knowledge at the time, was

00131

1 this a correct statement?

2 MR. MILLER: Object to form.

3 MS. CONLIN: Calls for speculation.

4 THE WITNESS: I -- I don't know whether
5 it's -- where it came from. I -- I didn't have a
6 hand in preparing it and -- and I don't know if I had
7 enough information to know whether that statement was
8 true or not, but I -- so I can't really make a
9 comment one way or the other.

10 MR. BIRKE: Okay.

11 VIDEOGRAPHER: We're going off the record
12 at 12:17 p.m.

13 (A recess was taken.)

14 VIDEOGRAPHER: We're back on the record on
15 Tape 4 at 12:54 p.m.

16 BY MR. BIRKE:

17 Q Dr. Paton, this morning you were asked questions
18 about your meeting with NCR representatives in
19 December of 1969.

20 Do you remember that?

21 A Yes.

22 Q Now, prior to that meeting, you had sent a memo to
23 certain Monsanto people in preparation for that
24 meeting. Remember that?

25 A Yes, uh-huh.

00132

1 Q And you indicated that you wanted to bring along some
2 medical and research people.

3 What was the purpose for bringing those
4 people along?

5 A Just so that we'd have people there that could speak
6 more accurately about their areas of expertise.

7 Q And were these medical and research representatives
8 intended to speak to the ongoing research regarding
9 PCB's impact on the environment, or -- or were they
10 to be present for discussions regarding replacement
11 of 1242?

12 A Well, the medical representative would have been able
13 to talk very specifically about how -- the various
14 analytical or studies on biodegradation and all that
15 sort of thing, he could have talked about that.

16 And then at the research side, they would
17 also talk about analytical and also be able to talk
18 about and understand what NCR was saying from a
19 technical standpoint, what they were looking for, and
20 then be able to come back to get into a discussion
21 about, okay, here's what we've got. Now how do we go
22 about doing it?

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23 Q Now, at the meeting itself, do you recall the
24 discussion about the medical aspects, that is, the
25 review of the ongoing research?

00133

1 A I -- I can't recall a lot of that. I tended not to
2 get too deeply into that because it -- you know, I
3 didn't always understand it myself. I went with what
4 they said and could get kind of a summary of it, but
5 I relied on them to be presenting that and getting
6 into a discussion.

7 Q Now, there were testing -- there was animal testing
8 going on for toxicity --

9 A Yes.

10 Q -- of PCBs; is that correct?

11 A That's correct.

12 Q And Monsanto was also doing research regarding
13 attempting to collect data on the extent to which
14 PCBs were being found in the environment --

15 A Yes.

16 Q -- is that correct?

17 A Yes.

18 Q And there was also research going on with respect to
19 the biodegradability of the various --

20 A Uh-huh.

21 Q -- Aroclor formulations; is that correct?

22 A Yes.

23 Q Had Monsanto reached any conclusions with respect to
24 any elements of its ongoing research as of December
25 of 1969?

00134

1 MR. MILLER: Object to form.
2 MS. CONLIN: Yeah, object to the form and
3 foundation.
4 THE WITNESS: I'm not sure, but I seem to
5 recollect just this morning I was shown something
6 that indicated in -- was it June of '69? That they
7 had reached a conclusion that some of these facts
8 were correct --

9 BY MR. BIRKE:

10 Q Right.

11 A -- right? So --

12 Q I think we did see a document to that effect.

13 A Okay. So if I saw a document to that effect, that
14 had to be the case.

15 Q Do you recall what the status of the research with
16 respect to biodegradability was as of December of
17 1969?

18 A That seemed to be a little less clear, as I recall,
19 because I saw something today that was obviously
20 intended from -- from Mike [sic], I think, Garrett
21 and somebody else indicating that -- let me refresh
22 my memory as to what it was.

23 Q I believe you're referring to Exhibit 971-AA.

24 A It could be. That would be the one that would be
25 right at the bottom. Here it is.

00135

1 Q No, it would be in this stack.
2 A This stack here. I thought there was one where --
3 maybe it was Scott Tucker. There was a table of
4 numbers on -- I think it was something that you
5 showed me.

6 Q Are you referring to this -- (indicates) --

7 A Yeah.

8 Q -- exhibit?
9 A Yeah, that. Yeah.
10 Q And what conclusions do you draw from that exhibit?
11 And we're looking at Exhibit 971-K.
12 A Uh-huh. Well, what it -- the first thing it says is
13 this -- whatever tests were done on this, it didn't
14 seem to show any indication of biodegradation of
15 1242, but then it went on to say -- yeah, because it
16 says it might have been due to dilution and
17 absorption of the Aroclor or then there was the thing
18 that fresh Aroclor might have completely masked any
19 degradation, so it was a kind of --
20 Q would you agree you can't really reach any
21 conclusions with respect to the biodegradability of
22 1242 from the results reported on 971-K?
23 A Well, that -- at this stage of the -- whatever the
24 testing was at this time, it would appear so.
25 Q Okay. And do you recall any other biodegradability
00136 test results that you would have had available to you
1 at the time of the December of 1969 meeting?
2 A I can't recall, but since that was -- the date of
3 that was December the 3rd, we were meeting on the
4 16th, presumably that was the latest, you know,
5 information that we had.
6 Q And -- and is it your testimony that this information
7 was inclusive with respect to the biodegradability of
8 1242?
9 MS. CONLIN: Objection as to form and calls
10 for speculation.
11 THE WITNESS: Well, I think at some point
12 there was discussion about, you know, effluent and so
13 on and so forth. So if this had been taken anywhere
14 near an effluent, that might explain why, you know,
15 it was fresh stuff coming in and covering it up.
16 But that's why I would have had somebody
17 from research and medical there, to kind of go into
18 the details of that discussion.
19 BY MR. BIRKE:
20 Q Okay. You also indicated that the -- the time at the
21 December 1969 meeting was devoted to discussing
22 replacements for Aroclor; is that correct?
23 MR. MILLER: Object to the form. The time
24 at the meeting?
25 00137 MR. BIRKE: At the time -- I'll strike that
1 and we'll try again.
2 MR. MILLER: Thanks.
3 BY MR. BIRKE:
4 Q Was the topic of the replacement of Aroclor 1242
5 discussed at the December of 1969 meeting?
6 A Yes, it was. I think there was a lot of time spent
7 on getting information as to what we could present as
8 alternatives and understanding the type of tests that
9 NCR thought were applicable to give an indication of
10 what was going to possibly work or not work.
11 (Paton Exhibit No. 971-CC marked for
12 identification.)
13 BY MR. BIRKE:
14 Q I'm showing you what's been marked as Exhibit 971-CC.
15 It's a one-page memo Bates numbered MONSFOX00097943.
16 This is a -- a memo from you to someone that's name
17 has been obstructed.
18

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19 In the first -- under -- in numeral 1, it
20 indicates that, "In March/April we submitted 22
21 standard plasticizers to NCR for evaluation. They
22 were all" -- is that esters or ester?
23 A Esters.
24 Q -- "esters with the exception of HB-40 and
25 represented each of the ester classes we produced.

00138
1 They were all turned down by NCR on the basis of no
2 color development."
3 So it looks as if there had been work
4 ongoing since March --
5 A Uh-huh.
6 Q -- with respect to finding a replacement for Aroclor?
7 MS. CONLIN: Objection, leading.
8 BY MR. BIRKE:
9 Q Is that correct, sir?
10 MS. CONLIN: Same objection.
11 THE WITNESS: Well, I think it's fair to
12 say that we did submit the 22 standard samples, and
13 so I have no reason to believe that this is incorrect
14 information.
15 BY MR. BIRKE:
16 Q At the time of the December of 1969 meeting, was
17 MIPB, as a replacement for Aroclor 1242, the subject
18 of discussion?
19 A At the 19- -- at December 16th? Yes, I think it was.
20 Q Okay. And what do you recall regarding the status of
21 the research regarding MIPB's suitability?
22 A I think at that -- the best of my recollection, I
23 think it was considered a viable candidate.
24 Q At the end of this page, it says, "NCR wants to know:
25 A. Do we have facilities to produce MIPB now? B.

00139
1 what is the toxicity of MIPB? And c. Can biphenyl
2 be" -- is that "aromatically substituted"?
3 A Uh-huh.
4 Q Okay. Now, these were questions that were put to --
5 it looks like these were questions that NCR had
6 discussed with Pete Maier?
7 A Well, they would have -- yes, that Maier was
8 presumably reporting this to me, and then I was
9 notifying the people that would be in the best
10 position to give the answers within Monsanto.
11 Q Did you have an understanding as to why NCR was
12 asking Monsanto regarding the facilities they had to
13 produce MIPB?
14 A Well, it indicated to me that they -- this was a
15 product that showed some potential as a replacement,
16 and they were then going the next step to say, Well,
17 if it is, then are you able to produce it? And what
18 is the toxicity likely to be? Which are logical
19 questions for them to ask.
20 Q Were you able to provide the answers to these
21 questions at the December of 1969 meeting?
22 A I don't know if we had been able to provide answers
23 to all of them. We would have -- we would have
24 probably been able to give some indication on some of
25 them, because the people copied in here, John Smith

00140
1 was in charge of manufacturing, so he should have
2 been able to answer No. a, and also to some extent
3 No. c. And Jack Garrett certainly would have been in

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4 a position to know what the situation was with regard
5 to toxicity of monoisopropyl biphenyl, MIPB.
6 Q To your recollection, did Monsanto then have
7 facilities capable of producing the MIPB?
8 A I can't recall absolutely. We -- obviously we had
9 the facilities for biphenyl, but whether or not -- I
10 don't think that we would have made the -- done the
11 isopropylation in the same facilities as we had done
12 the chlorination.
13 It would have probably had to have had
14 different -- the biphenyl would have been the same.
15 And this is the question: Can biphenyl be
16 aromatically substituted as well as chlorinated?
17 well, I think the answer is, yes, it can, because
18 we -- we ultimately made it.
19 Q Was MIPB a product that Monsanto was then producing
20 in large quantities for its customers?
21 A MIPB?
22 Q Correct.
23 A I don't think so. No, because it was looked at as a
24 product down the -- in dielectrics as a potential
25 substitute, but we hadn't got to the stage with
00141 dielectrics of being as active as we were with the
1 NCR situation.
2 Q And did -- at this point in time had Monsanto
3 performed any toxicity testing with respect to MIPB?
4 A I think that they had. Maybe -- I believe I've seen
5 in some of the memos that have been passed in front
6 of me a number of times I've been here that I've seen
7 some indications that, yes, they did have some
8 information on toxicity.
9 And if we had it, that would have been, I
10 am sure, given at the December 16th meeting, because
11 this was always -- you know, this was related to
12 getting prepared for the meeting.
13 Q At the December 1969 meeting, did Monsanto tell NCR
14 that NCR should discontinue use of Aroclor 1242
15 immediately?
16 A I doubt if we did.
17 Q The documents seem to indicate that you were working
18 with NCR to try to find a suitable alternative to
19 1242 --
20 A That's right.
21 Q -- is that correct?
22 A That's right.
23 Q At the time of the December 1969 meeting, do you
24 recall having any discussion regarding what was the
00142 expected time line for completing the process for
1 selecting an alternative?
2 A I don't think we got that far. We were trying to
3 work it -- you know, move towards that as quickly as
4 we could, but I don't think any time line had been
5 set. Not that I can recall.
6 Q Now, do you recall at some point Monsanto sending
7 letters out to users of at least certain -- certain
8 formulations of Aroclor regarding the reports of
9 environmental issues?
10 A There were -- certainly were quite a number of
11 letters sent out over a period of time, and I think
12 there was one probably that came from -- well, one or
13 two maybe came from the -- the division, and I think
14

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15 I've seen some in the cases here, there was one in
 16 February or something.
 17 Q of 1970?
 18 A I think so.
 19 Q Okay. Were you involved in preparing those letters?
 20 A No, I can't recall that I was.
 21 (Paton Exhibit No. 971-DD marked for
 22 identification.)
 23 BY MR. BIRKE:
 24 Q Sir, I'm showing you what's been marked as Exhibit
 25 971-DD.

00143

1 A Yes.
 2 Q It's a February 9, 1970, letter on Monsanto
 3 stationery. The letter is from Donald A. Olson,
 4 Director of Sales, Functional Fluids Groups -- Group.
 5 Did you have dealings with Mr. Olson?
 6 A Indirectly, yes, because they were in the -- in a
 7 sister group. Don Olson was in the area of
 8 dielectrics and hydraulic fluids and things like
 9 that, whereas I was in the area of, you know,
 10 plasticizer, carbonless copy paper and things like
 11 that.
 12 But, you know, the -- they were similar --
 13 they were using similar products to what we were
 14 under -- and they had different trade names and so on
 15 and so forth at times.
 16 Q And do you recall letters to customers in your
 17 plasticizer group being sent out at about this time?
 18 MS. CONLIN: Objection, lack of foundation.
 19 THE WITNESS: I'm not sure if there were or
 20 there weren't, to be honest.
 21 BY MR. BIRKE:
 22 Q Okay.
 23 A But there were so many later on it, I think,
 24 particularly when I came back into the -- into the
 25 chemical company, after my stint in the international

00144

1 division, it seemed as though they were going out a
 2 great deal more often.
 3 Q And at that point in time you were working in the
 4 dielectric division?
 5 A Exactly. Well, I -- initially in the heat transfer
 6 area, because it had a lot of -- you know, it had
 7 issues with -- and we -- and then later I got --
 8 about three years after I came back -- no, two years
 9 maybe, then the dielectrics and Pydrauls and
 10 everything was added to my responsibility.
 11 Q And at that point in time, that is a few years down
 12 the road in 1972, 3, 4 --
 13 A Yes.
 14 Q -- you were focusing upon working with the Monsanto
 15 customers that had been using Aroclor products or PCB
 16 products in electrical transformers and the like?
 17 A Yes.
 18 Q And you were working with them to find alternatives;
 19 is that correct?
 20 A Yes. And that was probably the most difficult part
 21 of the whole operation.
 22 Q And that was work outside the plasticizer division --
 23 A Yes.
 24 Q -- that you had worked in up to 1970?
 25 A Yeah. It was clear they moved everything that had

00145

1 anything to do with PCB, hydroplasticizers, because
2 plasticizers were no longer really involved in it.
3 And they sent even the non-PCB container --
4 containing product that was used in carbonless copy
5 paper got moved into that area as well. But -- so
6 there was about four or five different product lines
7 all in that division --
8 Q And --
9 A -- come '7- -- come '74.
10 Q Referring back to Exhibit 971-DD --
11 A Uh-huh.
12 Q -- do you recall seeing this letter at about the time
13 it was issued --

14 MS. CONLIN: Asked and answered.

15 BY MR. BIRKE:

16 Q -- that is, December of 1970?
17 A I must have seen it, but I cannot recall it and --
18 but I -- it probably would have got around.
19 Q And what do you mean by getting around?
20 A Well, it would have probably got to me eventually
21 because there was -- someone like a Bill Papageorge
22 would have got it and probably would have talked
23 about it and so on, and I would have maybe seen what
24 they were saying.
25 Q In the second paragraph it says, "It is claimed that

00146

1 [the] PCBs found strongly resembled chlorinated
2 biphenyls containing 54 percent and 60 percent
3 chlorine by weight. Products which are sold by
4 Monsanto under the trade names Aroclor 1254 and 1260
5 do not contain chlorinated biphenyls."
6 MS. CONLIN: You read that wrong.
7 MR. BIRKE: I'm sorry, "do" --
8 THE WITNESS: "Do contain."

9 BY MR. BIRKE:

10 Q "Products which are sold by Monsanto under the names
11 of Aroclor 1254 and 1260 do contain chlorinated
12 biphenyls."
13 And if you jump down to the next sentence
14 there, it says, "As your supplier of 1254 and 1260,"
15 and then it goes on from there.
16 So it looks as if this letter was being
17 sent out to customers who were purchasing Aroclor
18 1254 and 1260 products?
19 A This would have been going to customers that would
20 have used Pydraul hydraulic fluid and therminol heat
21 transfer fluid. To the best of my knowledge, the
22 fluids -- that functional fluids group didn't sell
23 Aroclor 1254 and 1260 as individual -- you know, as
24 distinct products, I don't think.
25 Q Well, why would this division then have been sending

00147

1 out a letter --
2 A Well, because they're sending it to their customers.
3 They were in the business of industrial hydraulic
4 fluids and industrial heat transfer fluids, and the
5 formulations in -- in the industrial hydraulic fluids
6 and the -- the product -- the -- there were PCBs in
7 both, and they were the 1254 and 1260.
8 Q Okay.
9 A So they -- so that -- am I making myself clear?
10 Q I think I understand what you're saying.

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11 A I'm saying that 1254 and 1260 Aroclor was not sold
12 directly by this division, but these products were
13 part of what they were selling as heat transfer or
14 hydraulic fluid.

15 Q Okay. Now --

16 A The hydraulic fluid would have had more in it. The
17 therminol would have just been one of -- would have
18 been 1260, Aroclor 1260, and they would have had
19 NFR -- it would have had different ones. The Pydraul
20 as well as having PCB in it, it had phosphate esters.
21 So they -- they were formulations.

22 Q The last paragraph on this Page 1 --

23 A Uh-huh.

24 Q -- reads, No. 2, "PCBs with a chlorine content of
25 less than 54 percent have not been found in the
00148 environment and appear to present no potential
1 problem to the environment."
2
3 Do you see that paragraph?
4 A Yes.
5 Q Does that -- is that sentence consistent with what
6 you understood the state of knowledge to be within
7 NCR at that time?
8 MR. MILLER: Object to form.
9 MR. HA: Object to form.
10 THE WITNESS: I didn't write it. If I had
11 written it, I would think I would have put a -- a
12 period after "have not been found in the
13 environment." I would not have stated, "appeared to
14 present no potential problem in the environment,"
15 because at that time I really wasn't sure.

16 BY MR. BIRKE:
17 Q Okay.
18 A But I didn't -- I didn't write the letter. I'm just
19 giving you what I would have done if I had written
20 it.
21 Q And you weren't sure because the research had not
22 been concluded with respect to that issue yet?
23 A Well, not, I don't think, to everyone's total
24 satisfaction. We made a lot -- I think we made quite
25 a few strides because there were some indications to
00149 indi- -- you know, that they -- we had reached some
1 kind of a conclusion. But I wouldn't have gone out
2 and said there was no problem.
3 Q Okay. Now, when I asked you that question a minute
4 ago, I may have misspoke. And I asked --
5 Okay.
6 A Okay.
7 Q -- if this reflected NCR's knowledge about. I meant
8 to ask did this represent Monsanto's knowledge.
9 Does that change the answer you gave?
10 MR. MILLER: Same objection. Object to
11 form.
12 MS. CONLIN: And lack of foundation again.
13 THE WITNESS: I would -- no, I'd just leave
14 the statement I made.

15 BY MR. BIRKE:
16 Q Okay. Can you find Exhibits 971-P and Q?
17 A P and Q. Okay. We're getting closer now. N. Q.
18 Here we are.
19 Q I'm putting before you Exhibits 971-P and Q that you
20 looked at this morning.
21 A Uh-huh.

22 Q 971-P is a memo from Mr. Papageorge dated March 30,
23 1970, to a number of people including yourself. Do
24 you see that?
25 A Yes, uh-huh.

00150
1 Q And you were asked some questions regarding 971-Q,
2 which was attached to -- which was apparently
3 attached to Mr. Papageorge's memo.
4 A Uh-huh.
5 Q If you'll turn to Page 2 of the -- of Exhibit 971-Q,
6 the paragraph on the bottom half of the page says,
7 "Early reports had indicated that polychlorinated
8 biphenyls with 5 and 6 chlorines were being
9 identified in environmental samples. From this
10 information it was surmised that the lower
11 chlorinate -- the lower chlorinated biphenyls were
12 being degraded and probably were not a problem.
13 Consequently, a decision was made to discontinue the
14 manufacture of 1250- -- of Aroclors 1254 and 1260.
15 Recent data, although still very preliminary,
16 indicates that not enough information is available to
17 justify this decision. It appears that in those uses
18 where control of spillage and disposal can be rigidly
19 exercised and the Aroclors are in sealed containers;
20 e.g. transformers, the manufacture of 1254 and 1260
21 should be continued."
22 Do you have any recollection about this --
23 the decision making with respect to the -- apparently
24 the decision to discontinue the manufacture of 1254
25 and then the resumption of that manufacture?

00151
1 A I wouldn't have been involved in a discussion of
2 that, for Aroclors in transformers at that time,
3 because I wouldn't have been in -- you know, I
4 wouldn't have been necessarily in the loop. I was
5 not, you know, had anything to do with the dielectric
6 side of the business, so I wouldn't have participated
7 in any decisions that were taken there.
8 Q Let's pull out 971-T.
9 A T?

10 MR. MILLER: D or T?
11 MR. BIRKE: T.

12 BY MR. BIRKE:
13 Q I've put before you, Dr. Paton, Exhibit 971-T, an
14 exhibit we looked at this morning, and this was a
15 memo concerning PL-306 --
16 A Yes.
17 Q -- a particular Monsanto bulletin?
18 A Yes.
19 Q And then later we discussed Monsanto -- I'm sorry,
20 Exhibit 971-U, which you indicated was Technical
21 Bulletin O/PL-306A.
22 A Uh-huh.
23 Q And you indicated that 306A was, I believe, the
24 updated version of the technical bulletin?
25 A Yes.

00152
1 Q When was 306A prepared?
2 A It was prepared, I think, in the March -- I think I
3 noticed somewhere March 1970 timetable.
4 Q Okay.
5 A I think right on the very last page here, at the very
6 bottom here, you'll see under Monsanto's office

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 7 addresses, 63166, the zip code for Monsanto's
 8 headquarters, 3/70. So preparation would have
 9 started probably before 3/70, but it was in a
 10 final -- final version.
 11 Q And is that consistent with your recollection about
 12 the updating of 306A?
 13 A Yes. And because at some point it appeared to me
 14 that we were getting questions about, well, gee, we
 15 need, you know, an updated version of our Aroclor
 16 bulletins to print, and it didn't -- given the flux
 17 we were in, it didn't make sense to be trying to go
 18 at, you know, promoting a lot of new customers and
 19 new uses, if, you know, a few months later you were
 20 going to, or whenever time later you were going to
 21 come and say, Hey, hold it, we're going to stop
 22 making them. That was going to generate far more ill
 23 will than pushing it out.
 24 But yet there was -- people were still
 25 using them, and there was information that was
 00153 valuable to them just continuing their work to know
 1 what the physical properties and other things were,
 2 and that was, you know, what -- what the purpose of
 3 that was.
 4 Q Thank you.
 5 A Not to create more problems for ourselves than we
 6 already had.
 7 (Paton Exhibit No. 971-EE marked for
 8 identification.)
 9 THE WITNESS: And it did, as you can see --
 10 MR. MILLER: Wait. There's no question
 11 pending.
 12 MS. CONLIN: There's no question pending.
 13 BY MR. BIRKE:
 14 Q Dr. Paton, I've put before you Exhibit 971-EE, Bates
 15 numbered PHGNCR-2006634. This appears to be a
 16 telegram or a message from you dated 11/24/1971.
 17 Do you recognize this?
 18 A Well, again, clearly I sent it. It doesn't ring a
 19 bell, no.
 20 Q Are you familiar with a company named Riverside
 21 Paper?
 22 A No, I'm not, but -- no, I'm not.
 23 Q Okay. And do you have any reco- --
 24 A It must have been something that came in to -- that
 00154 was asked to -- or about it.
 1 Q But as you sit here today, you just have no memory --
 2 A No.
 3 Q -- of this?
 4 A Yeah.
 5 MR. BIRKE: I may be done. Let's take a
 6 short break.
 7 VIDEOGRAPHER: We're going off the record
 8 at 1:29 p.m.
 9 (A recess was taken.)
 10 VIDEOGRAPHER: We're back on the record at
 11 1:33 p.m.
 12 EXAMINATION CONTINUED
 13 BY MS. CONLIN:
 14 Q Good afternoon, Dr. Paton.
 15 A Good afternoon.
 16 Q During questioning by Mr. Birke, the two of you were

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18 discussing that it was sometime in 1969 that Monsanto
 19 confirmed the work of Jensen and Widmark.
 20 Do you recall that testimony?

21 A Yes.
 22 Q Okay. By that you meant that they had confirmed the
 23 work through their own analytical testing and
 24 methods, correct?
 25 A I think that is correct. I can -- can I look at the
 00155
 1 thing again just to refresh my memory, the actual
 2 document? I think that's probably right.
 3 Q You didn't mean to suggest that other researchers had
 4 not confirmed the findings of Jensen and Widmark
 5 prior to that time, correct, sir?
 6 MR. HA: Object to form.
 7 MR. MILLER: I do not.
 8 THE WITNESS: I'm not sure I can. Let me
 9 look at the document and see.
 10 BY MS. CONLIN:
 11 Q If you look at Document 971-B.
 12 A 971-B.
 13 MR. HA: B as in boy? Jan?
 14 MS. CONLIN: B as in boy.
 15 THE WITNESS: Is it BB?
 16 BY MS. CONLIN:
 17 Q No, just B. It would be one of your early ones.
 18 MR. MILLER: Here, you can look at my copy.
 19 THE WITNESS: Okay.
 20 BY MS. CONLIN:
 21 Q This is -- you recall this was a memorandum from a
 22 Mr. Hardy to Mr. Richard dated February 23rd, 1968,
 23 copied to yourself and others?
 24 A Uh-huh.
 25 Q Okay?
 00156
 1 A Yes.
 2 Q And do you see under "(b) Tatton," it says, "Copies
 3 of a paper entitled 'Chlorinated Hydrocarbons in the
 4 British Wildlife' by D. C. Holmes," and others, "were
 5 passed to Messrs. Wilde and Buchanan with my letter
 6 of the 4th November, 1967."
 7 Do you see that under "(b)"?
 8 A Yes.
 9 Q And then it goes on to say, "This paper confirms the
 10 work of Jensen and in particular shows close
 11 similarity between gas-liquid chromatograms of (a),
 12 extracts of Kestrel liver oil and (b) a commercial
 13 polychlorinated [sic] biphenyl resin."
 14 Do you see that?
 15 A Yes.
 16 Q You understand that prior to Monsanto's own testing,
 17 there were other researchers that were confirming the
 18 work of Jensen and Widmark, correct?
 19 MR. HA: Object to form.
 20 THE WITNESS: Well -- well, what I'm
 21 reading is "(b)" and -- I mean, I know you're asking
 22 me "(b)," but then I read further down to Paragraph
 23 (c), which is Richardson, and he makes exactly the
 24 opposite conclusion.
 25 I mean, the research people are making a
 00157
 1 different conclusion, are they not?
 2 BY MS. CONLIN:

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- 3 Q Well, do you see underneath Richardson and the
4 "However"? "However, I was in correspondence with
5 Richardson in November 1967 (copies herewith) which
6 showed that he was satisfied that octochlorobiphenyl
7 was present and that his results are substantially in
8 line with those of Tatton et al. You will also note
9 he believes that the contamination of bird life is in
10 the valley of our River Witham"?
11 A Well, but octochloro? I'm trying to think what an
12 octochloro would be, because that's not one of the
13 ones -- you know, penta and hexa, yes.
14 Octochloro ---
15 Q Do you see there that Mr. Hardy writes that his
16 results are substantially in line with those of
17 Tatton, et al.?
18 A Yeah, but -- yes, but what I'm saying is that you've
19 satisfied that octochlorobiphenyl was present, but
20 that's the first time I've seen octochloro being even
21 mentioned. Of course, when you talk 54, I don't
22 think you are talking as high as octo, and nor do I
23 think it's 1260. But I may be wrong, I mean.
24 So I'm not really -- I wouldn't draw the
25 same conclusion that you --

00158

- 1 Q Well, you see that Mr. Hardy's reporting that, right?
2 A He's reporting that, but --
3 Q Okay. And then does he go on to indicate that he's
4 going to follow up to see where there might be a
5 source of contamination?
6 A Yes, that's true.
7 Q And he suggests that perhaps "As NCR represents the
8 greatest off-take of Aroclor and as there is likely
9 to be at least some wastage in the process, my
10 suspicion is that it is either in making NCR or
11 possibly in dealing with the scrap that the
12 contamination arises"?
13 A True, but I'm basing on the fact is it -- the
14 octochlorobi- -- it would have been more help- -- and
15 I'm talking about a former colleague, obviously. But
16 for me, it would have been more helpful, because I'm
17 not aware that we produced an octochlorobiphenyl or
18 had it under an octochloro name.
19 Q Are you aware that prior to the time that Monsanto
20 undertook its own analysis, there were other research
21 out there that was confirming the work of Jensen and
22 Widmark as reflected in Paragraph (b) regarding the
23 Tatton results?
24 A I knew there were other people doing work, but if I
25 saw the phrase "octochlorobiphenyl," my first

00159

- 1 indication would have been to say, well, that isn't a
2 Monsanto product. It may have been one produced by
3 the other producers in Europe, for example.
4 Q My question was a little different, Dr. Paton.
5 A Uh-huh.
6 Q Is it true that prior to the time that Monsanto
7 undertook its own analytical work, it is -- was
8 aware, you and others, that there were other
9 researchers out there that had confirmed the results
10 of Widmark and Jensen?
11 A As I recall, some had and some hadn't.
12 Q Okay.
13 A That's why there was a great deal of confusion.

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14 Q Are you aware that prior to 1968, there were
15 individuals within Monsanto who indicated that
16 without a doubt, what Widmark and Jensen had found
17 was Aroclor?

18 MR. HA: Object to form.

19 THE WITNESS: I'm not sure -- I'm not sure

20 I would agree with that, but I -- you know, so.

21 BY MS. CONLIN:

22 Q But you don't know because that wasn't within your
23 purview in 1967, right, sir?

24 A No, it wouldn't have been. It had nothing to do with
25 me in 1967.

00160

1 Q Okay. And in this memo, Mr. Hardy is suggesting that
2 perhaps NCR was the source of the contamination,
3 correct?

4 A Yes, I see that. Yes.

5 Q Now, Monsanto never told NCR not to undertake its own
6 analysis regarding the PCB issue, did it?

7 MR. HA: Object to form.

8 THE WITNESS: Monsanto never told NCR not
9 to?

10 BY MS. CONLIN:

11 Q Yeah.

12 A Do what?

13 Q Undertake its own PCB analysis.

14 A At the time frame you're talking about, I don't --
15 you know, are you talking 1967 again?

16 Q No, no. I'm sorry, Doctor. Let me rephrase the
17 question.

18 You're not aware of during the time that
19 you were acting as a liaison to NCR anyone at
20 Monsanto telling NCR, Don't worry about looking at
21 the PCB issue yourself?

22 MR. HA: Object to form.

23 THE WITNESS: That's -- Don't worry about
24 the PCB issue?

00161

1 BY MS. CONLIN:

2 Q Did you ever tell them not to undertake any research?

3 MR. HA: Object to form.

4 THE WITNESS: I don't --

5 BY MS. CONLIN:

6 Q Let me ask a different way. Did you ever --

7 A Well, I certainly didn't tell them not to do that.

8 Q Did anyone at any of the meetings you were at ever
9 tell NCR not to conduct its own research on the PCB
10 issue?

11 MR. HA: Same objection.

12 THE WITNESS: I don't think I can recall
13 that ever being given.

14 BY MS. CONLIN:

15 Q Would you ever have stated that to NCR?

16 A I don't think so. I mean, I'm puzzled as to -- no, I
17 don't -- I know I've never said that. And I don't
18 know if any- -- I can't recall anybody else who would
19 have been with me saying that either.

20 Q Now, if we can turn back to Exhibit 971-Z?

21 A 971-Z?

22 Q Yes. And you can pull out 971-J as well.

23 A Okay. Z as in zebra?

24 Q Correct. We're looking for Z and J.

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25 A I've got J. It doesn't seem to be in this stack
00162
1 here. I've got W, but that's --
2 Q Here you go. Here's a copy.
3 A Okay.
4 MR. MILLER: This is Z?
5 MS. CONLIN: Z, yeah.
6 BY MS. CONLIN:
7 Q Now, this morning Mr. Birke asked you some questions
8 about this March 3rd, 1969, memorandum. Do you
9 recall that?
10 A Yes.
11 Q And I think you indicated you had never seen it
12 before?
13 A No, I have never seen it before.
14 Q Okay. And if you take a look at the third page that
15 Mr. Birke directed you to, which bears the Bates 471?
16 A Yes.
17 Q And he directed you to the last paragraph, "To our
18 knowledge, polychlorinated biphenyls are not sprayed
19 or dusted on crops, woodlands or other areas, as are
20 pesticides. It is, therefore, not only puzzling, but
21 extremely difficult to conceive how commercially
22 produced PCB can show up in wildlife in the
23 quantities reported."
24 Do you see that?
25 A Yes, uh-huh.
00163
1 Q Okay. So, in fact, what Monsanto was stating there
2 is it was puzzled as to how PCBs were showing up in
3 the wildlife in the quantities reported --
4 MR. BIRKE: Object to form.
5 BY MS. CONLIN:
6 Q -- correct, Doctor?
7 MR. BIRKE: Object to form.
8 THE WITNESS: Well, that's what this says.
9 BY MS. CONLIN:
10 Q Right. It's not disputing that they were finding
11 PCBs in nature. Monsanto was indicating it wasn't
12 sure where or why or how spread the contamination
13 was, correct?
14 MR. HA: Object to form and
15 mischaracterizes the document.
16 THE WITNESS: Well, I'm not really in a
17 position to comment on this because I had no hand in
18 preparing it, and so I don't know what they were
19 basing their -- their statements on, so.
20 BY MS. CONLIN:
21 Q Now, if you -- the date of this is March 3rd, 1969 --
22 A Yes.
23 Q -- is that right?
24 A Uh-huh.
25 Q All right. If you take a look at 971-J, which you
00164
1 have in front of you.
2 A Uh-huh.
3 Q I don't think you have J.
4 A Oh, wait a minute. That's it. This one here --
5 (witness indicates).
6 Q And that's the memorandum of Scott Tucker reporting
7 on his burning of NCR paper that we talked about,
8 Doctor?
9 A Yes.

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10 Q Okay. And what's the date of that?

11 A That's March the 4th --

12 Q Okay. So that --

13 A -- 1969.

14 Q That would be one day after the March 3rd memo,

15 Exhibit 971-Z?

16 A Yes.

17 Q And in this report, Mr. Tucker concludes, under No.

18 3, "Unfortunately, it appears that significant air

19 pollution can occur via burning of NCR paper or other

20 Aroclor-containing materials even under more

21 strenuous conditions."

22 Do you see that?

23 A Yes.

24 Q So Mr. Tucker made that conclusion just a day after

25 the statement contained in March -- the March 3rd

00165

1 memo, right?

2 A Uh-huh.

3 Q Now, you were also asked about the -- finding the

4 presence of 1242 in nature.

5 Do you recall those statements?

6 A State your --

7 Q Do you recall Mr. Birke asking you about whether 1242

8 was being found in the environment?

9 A Yes.

10 Q Okay. In fact, Monsanto concluded at some point that

11 the penta and hexa portions of 1242 were not

12 biodegrading, correct?

13 MR. HA: Object to form.

14 THE WITNESS: I think that's right, yes.

15 BY MS. CONLIN:

16 Q Okay. And so when we're seeing things about 1254 and

17 60 showing up in the environment, there's a portion

18 of 1242, the pentas and the hexas, that actually

19 would replicate that 1254 and 60 Aroclor --

20 MR. HA: Objection --

21 BY MS. CONLIN:

22 Q -- correct?

23 MR. HA: Object to form and foundation.

24 THE WITNESS: I think that's correct.

25

00166

1 BY MS. CONLIN:

2 Q Now, if we take a look back at Exhibit 971-L -- well,

3 actually, let me ask you one other question on this.

4 Now we'll go -- we'll go to the notes of the December

5 16th meeting.

6 You recall some questioning this morning by

7 Mr. Birke --

8 You actually don't have to find anything,

9 Dr. Paton.

10 A Okay.

11 Q I'll direct you to it.

12 A Okay.

13 Q Do you recall some discussion by Mr. Birke this

14 morning regarding the fact that most scientists were

15 not yet willing to indict a commercially produced PCB

16 as a pollutant?

17 Do you recall him asking you about a

18 statement to that effect?

19 A I think so. I --

20 Q If you want to look, you can look at 971-BB.

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21 A Ah, here it is. Got it.
22 Q Okay. And if you take a look at the page marked at
23 the bottom, the last three numbers are 408. It says,
24 "However, most scientists" -- and I'm looking at that
25 middle paragraph is where he directed you to on Bates

00167

1 Page 408.

2 MR. MILLER: Here, I'll help you.

3 THE WITNESS: 408.

4 MR. MILLER: Yeah. She's referring to that
5 sentence -- (indicates).

6 BY MS. CONLIN:

7 Q Okay. So you have in front of you, sir, Exhibit
8 971-BB --

9 A Uh-huh.

10 Q -- and Bates Page 408, and you'll recall this morning
11 Mr. Birke directed you to the third paragraph of this
12 memorandum?

13 A Yes.

14 Q Okay. And he read you this statement, "Therefore,
15 conclusions as to the source of PCB found in the
16 environment are difficult to make. Some qualified
17 scientists, using the latest laboratory equipment,
18 have correctly identified the substances as being
19 PCB. However, most scientists are not yet willing to
20 indict a commercially produced PCB as a pollutant."

21 Do you see that?

22 A Yes.

23 Q Okay. Now, when you were working with NCR, they kept
24 the contents of their carbonless paper proprietary
25 from the world, correct?

00168

1 MR. HA: Object to form and foundation.

2 THE WITNESS: The best -- I mean, I think
3 so, but I don't know whether they did or they didn't
4 with other people. I don't know.

5 BY MS. CONLIN:

6 Q Well, you always kept the information proprietary,
7 right?

8 A Yes.

9 Q And is it fair to state that it took you some
10 meetings with NCR for them to come forward with
11 enough information that allowed you to start to
12 propose feasible solvents for them as substitutes for
13 Aroclor 1242?

14 MR. HA: Object to form.

15 THE WITNESS: I'm not sure I would go that
16 far. Are you -- no, I think they -- they came
17 forward and did tell us things. Certainly that
18 December 16th meeting they did.

19 BY MS. CONLIN:

20 Q Right. And in April of that year -- Strike that.

21 In March of that year, when you had had a
22 meeting with them, that's the first time that they
23 gave you details that allowed you to put together
24 possible replacements for Aroclor 1242?

25 MR. HA: Object to form.

00169

1 THE WITNESS: I think it -- well, I think
2 that may be so. I -- it would be helpful if I
3 could --

4 BY MS. CONLIN:

5 Q Look at the memo?

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6 A -- look and see what I replied to Mr. Birke, so that
7 could refresh my memory what I said to him.

8 Q Well, I'll approach it another way, because it'll
9 take us some time to go back in the transcript.
10 If you look back at Exhibit 971-C --

11 A Yes.

12 Q -- which is your memorandum of April 18th --

13 A 18th.

14 Q -- reporting on the meeting of the 27th of March,
15 1969, with NCR?

16 A Uh-huh.

17 Q And at this meeting, did NCR provide you with
18 information that allowed you to start to look for
19 replacement product?

20 A Yes.

21 Q Okay. And this was the same meeting where Mr. Lauer
22 stated that they weren't going to take any action
23 until a second article specifically naming their
24 paper as a source of the pollution?

25 A Yes.

00170

1 Q Now, in fact, NCR didn't want Monsanto to tell the
2 Univ- -- the Ministry of Health in England that NCR
3 paper had PCBs in it, as reflected in the December
4 1969 meeting notes, correct?

5 MR. HA: Object to form and foundation.

6 THE WITNESS: That's -- that's -- yes,
7 that's right.

8 BY MS. CONLIN:

9 Q Okay. And so even as of 1970, NCR didn't want their
10 paper named as having Aroclor in it, correct, Doctor?

11 MR. HA: Object to form and foundation.

12 THE WITNESS: Yes, except that we seem to
13 be going off -- excuse me for saying so, but this
14 seems to be a bit of a tangent to what's in this
15 document I'm reading.

16 BY MS. CONLIN:

17 Q Oh, I was moving off of that, Doctor. I was on to
18 something else.

19 A Okay. Because I'm looking at -- because you had
20 indicated -- because I'm looking here to show that
21 even though they told us things about the testing,
22 the screening tests that were used, in this document,
23 971-C that you're asking me to read, that in section
24 2 on Page 3, it says, "Of replacements for Aroclors
25 tested," and we list -- we talk about a whole number.

00171

1 So prior to the -- April the 18th, 1969,
2 Monsanto had already been doing work on potential
3 replacements --

4 Q I wasn't suggesting otherwise.

5 A -- and -- okay. So but I thought that the inference
6 was that nothing had been done 'til April of 1969.
7 That was how I -- the inference I drew from your
8 initial introduction and question to me.

9 Q Well, I'm -- I'm sorry if I was confusing. I wasn't
10 suggesting that.

11 A Okay. Well -- okay. So now --

12 Q My question --

13 A -- where are we now then in terms of what is it that
14 you want answered?

15 Q My -- well, I think you answered it, but my question
16 was you understood that NCR didn't want them named

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17 specifically in response to the inquiries by --
18 A Yeah.
19 Q -- the Ministry of Health?
20 MR. HA: Object to form and foundation.
21 THE WITNESS: Yes. At the same time I
22 would add that that didn't -- that we were going to
23 indicate, you know, what -- you know, that there -- I
24 think there was -- we didn't just not -- they gave us
25 some information to present to the Ministry of

00172
1 Health. And really it -- and it was best that the
2 information be what came from them to us to pass on,
3 because we certainly didn't manufacture a story for
4 us to present to in the Ministry of Health.
5 BY MS. CONLIN:
6 Q Right. You were looking to NCR for guidance?
7 A We were looking -- we got -- and we got guidance from
8 NCR, and that's what we did.
9 Q Would it be fair to state that one of the reasons
10 that Monsanto, and you in particular, were bringing
11 the environmental issues related to PCBs to NCR's
12 attention was so that NCR could assess any risks
13 associated with the use of Aroclor in its carbonless
14 paper?
15 MR. HA: Object to form.
16 THE WITNESS: They had -- you know, if we
17 told them this, I would have expected that they would
18 have made their own -- come to their own conclusions
19 about what they wanted to do.
20 VIDEOGRAPHER: One moment please. I have
21 to switch tapes. We're going off the record at 1:56
22 p.m.
23 (Discussion was held off the record.)
24 VIDEOGRAPHER: We're back on the record on
25 Tape 5 at 1:58 p.m.

00173
1 BY MS. CONLIN:
2 Q Dr. Paton, if you could direct your attention to
3 Exhibit 971-K, which we looked at earlier, which is
4 the Dr. Tucker memo of December 3rd, 1969. Mr. Birke
5 asked you some questions about this.
6 A Yes.
7 Q Okay. And I think I did, as well.
8 A Yes.
9 Q This memorandum, as I represented to you, is looking
10 at effluent testing at the Portage plant?
11 A I take that as being correct. It doesn't say the
12 plant, but I take it that's the correct plant.
13 Q There was other testing that Dr. Tucker had done
14 independent of the testing he did at the effluent
15 plant in connection with his analysis, correct?
16 MR. HA: Object to form and foundation.
17 MR. BIRKE: Objection.
18 THE WITNESS: It could be. I cannot --
19 recall --
20 BY MS. CONLIN:
21 Q Okay.
22 A -- because I really didn't get involved in the
23 details of the tests that he carried out.
24 Q Okay.
25 A I -- I looked at his results and he was a very

00174
1 capable analytical person and I accepted what he said

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2 as being accurate.

3 Q Okay. And if we look back one last time at the notes

4 of the December 16th meeting, 971-L?

5 A Yes.

6 Q And if we could look at the page bearing 932 at the

7 bottom. And looking at the second bullet point at

8 the top of the page, "Aroclor 1238 or 1239 would be

9 recommended. Virtually no tetra or penta content, so

10 all would be biodegradable."

11 Do you see that?

12 A Yes.

13 Q Would that be consistent with what you understood in

14 that the tetra or penta contents were more or less

15 likely to degrade as it relates to Aroclor 1242?

16 MR. HA: Object to form.

17 MR. MILLER: Jan, do you want to ask that

18 again? When you said more or less, I'm --

19 MS. CONLIN: I'll ask it again.

20 MR. MILLER: It's hard to determine what

21 you're asking.

22 BY MS. CONLIN:

23 Q With reference to that particular statement --

24 A The statement of Aroclor 1238, 1239?

25 Q Yes. "Would be recommended, virtually no tetra or

00175 penta content, so all would be biodegradable."

2 Do you see that?

3 A Yes.

4 Q And is that consistent with your understanding at

5 that time that the tetra and penta portions of 1242

6 did not biodegrade?

7 MR. HA: Object to form.

8 THE WITNESS: That's the implication that I

9 carry, I take away from this, yes.

10 BY MS. CONLIN:

11 Q Now, finally, Dr. Paton, I want you to assume that

12 NCR has taken the position in this case that even as

13 of 1970, no one at Monsanto told NCR that 1242 could

14 present a potential problem in the environment.

15 Would that be consistent with your view?

16 MR. HA: Object to form.

17 MR. BIRKE: Object to form.

18 THE WITNESS: That nobody in Monsanto told

19 NCR?

20 BY MS. CONLIN:

21 Q That 1242 would present a problem in the environment.

22 MR. HA: Same objection.

23 THE WITNESS: Prior to 1970, no one had

24 told -- from Monsanto told --

25

00176 BY MS. CONLIN:

2 Q Do you want me to repeat it?

3 A Yes.

4 MR. MILLER: You asked two different

5 questions.

6 BY MS. CONLIN:

7 Q Let me just strike it and start over.

8 I want you to assume that NCR's taken the

9 position in this case that as of 1970, no one at

10 Monsanto told them that 1242 could pose a problem in

11 the environment. Would that be consistent with what

12 you've seen?

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13 MR. HA: Object to form.

14 THE WITNESS: Well, in 1969, there was the

15 San Francisco Chronicle article that alleged there

16 was that problem. We presented that in March of '69

17 to NCR, that here was a potential, you know, some --

18 it might create a problem down the road for -- not

19 just for NCR but for a lot of other applications as

20 well.

21 BY MS. CONLIN:

22 Q I want you to assume that NCR's taken the position in

23 this case that no one at Monsanto told NCR why it

24 wanted NCR to move to a replacement for 1242. Would

25 that be consistent?

00177

1 MR. HA: Object to form.

2 THE WITNESS: I find it difficult for me to

3 assume a position that NCR can take. I cannot assume

4 a position for what somebody else might take.

5 BY MS. CONLIN:

6 Q Well, and I'm representing to you that this is the

7 position that their expert has taken in the case.

8 So --

9 A Well, is it? I don't know. I mean --

10 MR. HA: And I'll object.

11 BY MS. CONLIN:

12 Q Would it be fair to state, Dr. Paton, that no one at

13 Monsanto told NCR why it thought NCR should look at

14 replacement for 1242?

15 MR. HA: Object to form.

16 THE WITNESS: Again, I'm having difficulty

17 connecting your question. Could you ask -- could you

18 repeat it again, please?

19 BY MS. CONLIN:

20 Q Sure. Sure. Did Monsanto withhold from NCR its

21 reasons why it was wanting NCR to look at substitutes

22 for 1242?

23 MR. HA: Object to form.

24 THE WITNESS: No, we didn't withhold.

25 There was a -- I think there was a situation where

00178

1 NCR had indicated to our salespeople before that

2 they -- you know, they were -- they felt the cost,

3 the odor and something else, you know, they would

4 like to find solutions to those problems.

5 And then there was this issue superimposed

6 upon it, the issue of the Jensen/Widmark work

7 initially, and then the San Francisco Chronicle that

8 added to that.

9 BY MS. CONLIN:

10 Q Did you tell NCR that one of the reasons why it

11 should look at replacements is due to the possible

12 environmental problem?

13 A That -- that was a -- you know, you could see a

14 potential problem, and it was brought to their

15 attention, and they had to make a decision as to what

16 to do about it.

17 But I think there was an ongoing search,

18 from what I could gather when I came on board, that

19 they were interested in looking at other products,

20 because Aroclor 1242 wasn't necessarily the perfect

21 product, given that they were also making some

22 changes to their own, you know, formulations.

23 Q And as we saw this morning, there was at least one

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instance in which Monsanto went to NCR to make sure
they understood the urgency with respect to their
replacement efforts, correct?
MR. HA: Object to form.
THE WITNESS: The urgency of their
replacement efforts.
BY MS. CONLIN:
Q I'll hand you 971-R. Down at the bottom of the page.
A Yeah, okay. I see what you're referring to, right,
uh-huh.
Q Okay. So it's fair to state that at least on one
occasion, Monsanto went to NCR and apprised them of
the urgency of looking at replacements, correct?
MR. HA: Object to form.
THE WITNESS: I think this is to reinforce
it so they were -- yes.
MS. CONLIN: Okay. No further questions.
MR. MCKENZIE: I have two.
MR. MILLER: Jan, he needs to ask his two
questions.
MS. CONLIN: I'm going to give you the mic.
EXAMINATION
BY MR. MCKENZIE:
Q Good afternoon, Dr. Paton. We met earlier this
morning, but my name is Jeremy McKenzie and I
represent the Neenah-Menasha Sewerage Commission.
During your time at Monsanto, did you have
any conversations with anyone from the Neenah-Menasha
Sewerage Commission?
A No.
Q And to your knowledge, did anyone at Monsanto have
any discussions with the Neenah-Menasha Sewerage
Commission?
MR. MILLER: Object to the form.
THE WITNESS: I don't -- you know, I don't
know. It could well have been.
BY MR. MCKENZIE:
Q But you don't know?
A I don't know.
MR. MCKENZIE: Okay. Thank you. That's
all I have.
THE WITNESS: Thank you.
MR. MILLER: You're finished.
VIDEOGRAPHER: We're going off the record
at 2:10 p.m.
(Deposition concluded at 2:10 p.m.)
(Original exhibits attached to original
transcript. Copy of exhibits attached to copy of
transcript.)
(No previously marked exhibits referenced.)
STATE OF WISCONSIN)
) SS:
MILWAUKEE COUNTY)
I, Constance L. Bauer, RPR/RMR/CRR and
Notary Public in and for the State of Wisconsin, do
hereby certify that the preceding videotape
deposition was recorded by me and reduced to writing

2009-08-26 Paton, Cumming Depo in Appleton
under my personal direction.

I further certify that said videotape
deposition was taken at HUSCH BLACKWELL SANDERS LLP,
190 Carondelet Plaza, Suite 600, St. Louis, Missouri,
on the 26th day of August, 2009, commencing at 9:01
a.m.

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

In witness whereof, I have hereunto set my
hand and affixed my seal of office on this 27th day
of August, 2009.

CONSTANCE L. BAUER, RPR/RMR/CRR
Notary Public

My commission expires February 28, 2010.

STATE OF _____)
_____) SS
_____ COUNTY)

I, CUMMING PATON, Ph.D., do hereby certify that
I have read the foregoing transcript of proceedings, taken
on the 26th day of August, 2009, at HUSCH BLACKWELL
SANDERS LLP, 190 Carondelet Plaza, Suite 600, St. Louis,
Missouri, and the same is true and correct except for the
list of corrections, if any, noted on the annexed errata
sheet.

Dated at _____, _____, this ____
day of _____, 2009.

CUMMING PATON, Ph.D.

1 STATE OF Missouri)

2) SS

3 ST. Louis COUNTY)

4
5 I, CUMMING PATON, Ph.D., do hereby certify that
6 I have read the foregoing transcript of proceedings, taken
7 on the 26th day of August, 2009, at HUSCH BLACKWELL
8 SANDERS LLP, 190 Carondelet Plaza, Suite 600, St. Louis,
9 Missouri, and the same is true and correct except for the
10 list of corrections, if any, noted on the annexed errata
11 sheet.

12
13 Dated at HBS, 1:45 PM, this 6th
14 day of October, 2009.

15
16
17
18 
19 CUMMING PATON, Ph.D.

CORRECTIONS TO DEPOSITION

The witness, Comming Paton, states he/she wishes to make the following changes in testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
11	3	insert "key" between "under" & "just"	-- on line 3
11	6	Delete "in the end of 19--"	rest of phrase is accurate
11	10	polysulfides	not polysulfires
12	17	Delete "plas---division--"	redundant
15	22	"trying" as in arranging	ying is incorrect
21	10	delete " -- in terms -- "	confusing
22	22	"lead" instead of "led"	
16	2	delete "was a man"	} Straighten out what looks like confusion in print
16	3	delete "there was and--"	
17	1 & 2	"That was I think maybe sometime in '68"	Avoid confusion
22	6	Delete "at" insert "time" in place of "at"	
33	23	For "--" insert "drums"	
34	8	"de--" should be "define"	
43	23	Replace "tech--" with "technology"	
52	19/20	Replace "by degradation" with "biodegradation"	Biodegradation is correct technical term
70	19	"knowledge"	I did not have analytical or manufacturing expertise on cleaning up the plant
81	12	"--" should be "responsibility"	
88	5	"into--" replace with "into them"	
92	20	I believe Wheeler's first name was Elmer not Emmett	If I said Emmett Wheeler it was an error on my part.
94	25	Same point as in 92 l. 20 above	Should be Elmer Wheeler for p. 94 l. 25 + p. 95 l. 1.

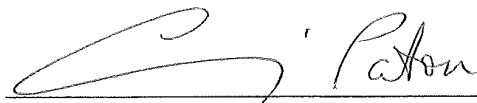

Signature

... 2 of 3

CORRECTIONS TO DEPOSITION

The witness, Cumming Paton, states he/she wishes to make the following changes in testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
97	18	"late" should be "later"	Jensen & Widmark were unsure in the early 60's if what they had identified were chlorinated biphenyl or other chlorinated chemicals.
99	11	"and some degradation bio degradation was also talked about"	
117	12	"I don't know what kura luda is. (phonetic)." Without listening to the recording of my deposition, I have no idea what word (s) I was trying to say.	
140	24	product down the road in dielectrics ----- A ----	
142	14	"plasticizer" instead of " -- the "	
143	14	Delete "under -- "	Fluids group and Plasticizers used similar PCBs for different uses & applications & used different trade names.
144	5	"I was" instead of "I -- "	
144	6	Delete "it had a lot of -- you know"	Redundant - see line 6.
144	7	Insert "PCBs" after "issues with"	
144	7	Delete "and we -- "	} Removes confusion.
144	7	Delete "later I got -- "	
145	1	Replace "hydroplasticizers" with "out of plasticizers"	
145	3	Delete "they sent" and "container"	See ^{corrected sentence} the for lines 3 & 4 next
145	3+4	"And even the non-PCB containing product that was used in carbonless copy"	
145	5	Delete "But -- "	
145	7	Delete " -- " replace with "called Fluids".	
151	3	Delete "I would not have been in -- you know"	Redundant - see line 4


Signature

