

Richard E. Schroeder
Registered Professional Reporters
400 N. Fourth - Suite 910
St. Louis, MO 63102
(314) 621-0107

Oct. 22, 1992

Mr. Cumming Paton
13300 Fairfield Circle Dr.
Chesterfield, MO 63017

IN RE: EQUITABLE RESOURCES ENERGY CO.
 V. MONSANTO COMPANY

Dear Mr. Paton:

Your deposition given on Oct. 7, 1992, has been transcribed, and is now ready to be read and signed by you. Please call and make an appointment at your earliest convenience to come downtown to this office to handle this matter.

If you have not called us within thirty days, your deposition will be filed absent your signature.

I am enclosing correction sheets for your convenience in case you have been furnished a copy of your testimony by counsel. Please return them to my attention at the address shown on this letter, along with a notarized signature page found at the end of the transcript.

Yours very truly,

Richard L. Saunders

cc: Gregory Monge, Esq.

COPY

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

EQUITABLE RESOURCES ENERGY
COMPANY, a West Virginia
Corporation,

Plaintiff,

VS.

No. 91-441

MONSANTO COMPANY, a
Delaware Corporation,

Defendant.

DEPOSITION OF CUMMING PATON, Ph. D.
TAKEN ON BEHALF OF THE PLAINTIFF.

October 7, 1992

RICHARD E. SCHROEDER

Registered Professional Reporters
818 Olive
St. Louis, MO 63101
621-0107

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUITABLE RESOURCES ENERGY)
COMPANY, a West Virginia)
Corporation,)
Plaintiff,)
VS.) No. 91-441
MONSANTO COMPANY, a)
Delaware Corporation,)
Defendant.)

DEPOSITION OF CUMMING PATON, Ph. D.,
produced, sworn, and examined on the part of the
PLAINTIFF, used in an action pending in the United
States District Court within and for the Eastern
Division of the Eastern Judicial District of
Missouri, in re: EQUITABLE RESOURCES ENERGY
COMPANY, a West Virginia Corporation, VS. MONSANTO
COMPANY, a Delaware Corporation, on October 7, 1992,
at the office of Husch, Eppenger, Donohue,
Cornfield & Jenkins, 100 North Broadway, St. Louis,
Missouri, before Richard L. Saunders, a Notary
Public within and for the City of St. Louis, State
of Missouri.

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

McCoy, Baker & West
309 North Broadway
Lexington, Kentucky 40592-1660
By: Michael D. Baker, Esq.
And Charles E. Beal, II, Esq.
For The Plaintiff.

Smith, Helms, Mulliss & Moore
227 N. Tryon St.
Charlotte, NC 28231
By: Rolly Chambers, Esq.
For The Defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY INDEX

PAGE

Direct Examination	4
Cross Examination	144
Redirect Examination	147

EXHIBIT INDEX

PLAINTIFF'S

PAGE

MOVED IN EVIDENCE

28	34	
37	36	
38	38	
52	42	
104	48	142
21	50	
22	51	
23	51	
24	55	
25	56	
58	57	
102	93	142
100	99	
53	100	142
67	107	142
9	128	
2	130	142
15	139	

1 CUMMING PATON, Ph. D.,

2
3 of lawful age, produced, sworn, and examined on
4 behalf of the PLAINTIFF, deposes and says:

5 DIRECT EXAMINATION

6 BY MR. BAKER:

7 Q. Would you state your name, please?

8 A. Cumming Paton.

9 Q. Dr. Paton, my name is Michael Baker.

10 Mr. Beal and I are lawyers from Lexington,
11 Kentucky. We represent Equitable Resources, a
12 company that has a plant in Kentucky that's used
13 Pydraul AC back in the '50's, '60's and early '70's
14 and we have encountered some cleanup costs recently
15 because of that and have a lawsuit against Monsanto
16 claiming that Monsanto's totally or at least partly
17 to blame for the situation and should pay some
18 damages for that.

19 We are here today to try to obtain
20 some information from you concerning what you and
21 Monsanto knew and did back in the '60's and '70's
22 concerning Pydraul AC in particular and PCB's in
23 general. Our purpose is not to trick you into
24 saying anything you don't wish to say or try to
25 outsmart you in any way; solely to ask you questions

1 and try to get truthful information.

2 If at any time I ask you a question
3 that you don't completely understand, feel free to
4 ask me to rephrase it or to stop the deposition,
5 consult with your counsel. If you do answer the
6 question, we will assume that you understood what we
7 were asking and may use your answers at some time in
8 this litigation.

9 Have you given your deposition
10 previously in other cases?

11 A. Yes.

12 Q. Approximately how many times?

13 A. I think this is the fourth if I'm not
14 mistaken.

15 Q. Did all of the previous instances involve
16 litigation concerning PCB's?

17 A. Yes, I think they did.

18 Q. Have you testified in any previous cases
19 where fire-resistant lubricants, specifically
20 Pydraul, were involved?

21 A. Pydraul, no.

22 Q. Did you give a deposition or testify at
23 trial in the Stroh case in Milwaukee?

24 A. I don't think so.

25 Q. To the best of your ability could you

1 identify the previous instances in which you did
2 testify?

3 A. There was something -- let's see, as I
4 recall, something to do with a case in Jacksonville
5 and I think that had to do with dielectric
6 transformer fluid.

7 There was a case in San Francisco
8 dealing with a transformer and there was one a
9 couple months ago. God! What was it about? Oh,
10 that was a turbine lubricant.

11 Q. Do you know what turbine lubricant was
12 involved in that case?

13 A. I think the name was Turbinol 153.

14 Q. Where was that case filed to the best of
15 your knowledge?

16 A. Well, we had two California lawyers. The
17 company was Transwestern, which was new to me. It
18 was a Transeastern, which I think was the name of
19 the group, but there had been some mergers and God
20 knows what, so -- but the name I think of the
21 company was Transwestern today, but I'm not familiar
22 with the machinations of how it got from the early
23 '60's to where it is today.

24 Q. That's fine. I just want to find out if
25 you testified at trial in any of these cases.

1 A. No.

2 Q. Where do you live?

3 A. Here in the suburbs of St. Louis, place

4 called Chesterfield, Missouri.

5 Q. Are you presently employed?

6 A. I've got my own business.

7 Q. What is that business?

8 A. I'm an international business consultant.

9 Q. Briefly, what is your educational

10 background?

11 A. Are you talking university education or --

12 Q. That would be a good place to start.

13 A. Well, I've got a degree in Chemistry, B. A.

14 Degree in Chemistry, and a Ph. D. in Chemistry.

15 Q. Where and when did you obtain those

16 degrees?

17 A. B.S.C. in Chemistry from University of

18 Aberdeen in Scotland back in '55, and a Ph. D. in

19 Chemistry, also from the University of Aberdeen in

20 Scotland in 1959.

21 Q. Were you employed in any full time

22 positions prior to 1959?

23 A. No.

24 Q. After you obtained your Ph. D. in Chemistry

25 in 1959, what did you do?

1 A. I went to work for Monsanto Chemicals in
2 Newport, in Wales, as a Research Chemist. I left
3 them after three and a half years and went to work
4 for The Geigy Company, G-E-I-G-Y, in Manchester,
5 England, in charge of their customer technical
6 laboratory in additives, plastics.

7 Q. How long did you stay at Geigy?

8 A. I was with Geigy two years.

9 Q. And then what did you do?

10 A. Then that would take us to late '64 and I
11 came to the United States. I had been offered and
12 accepted a position with a company called Diamond
13 Alkali and I would have been located in Painesville,
14 Ohio. I think the company is probably now known as
15 Diamond Shamrock but it was Diamond Alkali when I
16 was there.

17 Q. How long did you stay with the Diamond
18 company?

19 A. I was there only two years because although
20 I enjoyed living in the States, career-wise it
21 turned out it wasn't really a very good career
22 decision, so I started to look around for another
23 position, and Monsanto back in '66 were advertising
24 for somebody in what was known as plasticizers which
25 are used in conjunction with plastics in marketing

1 and I applied for and got the job, so I moved back
2 to Monsanto in late '66.

3 Q. Was that position in St. Louis?

4 A. Yes.

5 Q. When you worked with Monsanto in Wales were
6 you in any way involved with PCB's?

7 A. No.

8 Q. What did your job entail there in general
9 terms?

10 A. I did some research in latex chemistry for
11 a product line that they did. I also did some work
12 on expandable polystyrene but it was kind of -- I
13 would say application research into improvements on
14 new product lines. It was more in the polymer
15 plastics area.

16 Q. Did the facility in Wales manufacture PCB's
17 at that time?

18 A. I honestly can't remember.

19 Q. When did you first become familiar with
20 PCB's?

21 A. I wouldn't have become familiar with PCB's
22 until probably the late 1960's. I became I think
23 probably in '68.

24 Q. Let's back up for a moment. What was the
25 name of the plant in Wales?

1 A. I worked at a place called Newport.

2 Q. Then you went to work for Geigy?

3 A. In Manchester.

4 Q. In general terms, what was your job with
5 Geigy?

6 A. They had a product line which basically was
7 called additives and plasticizers and I was in
8 charge of a laboratory which would have worked on
9 developing application data to supply to customers
10 and field sales force in terms of new products.
11 Also, in handling questions, problems regarding
12 existing products with customers, customer problems,
13 or showing them how to do things, so I was an
14 interface with the sales force to support that
15 effort.

16 Q. I know Geigy manufactured a number of
17 drugs.

18 A. Yeah.

19 Q. Were you involved in drugs at all there?

20 A. No, no. Geigy has since merged with Ciba,
21 but in those days the English part of Geigy, the
22 British participant of Geigy, was pretty much in the
23 industrial chemicals area and I did not have any
24 contact with the pharmaceutical side.

25 Q. In the industrial chemicals end were you at

1 all involved in the testing of products to determine
2 whether they were safe for their expected use or
3 whether there were any potential health safety
4 factors?

5 A. That would be other parts of the company.

6 Q. Then in late '64 you came to the United
7 States to work with Diamond Alkali and stayed there
8 a couple of years. What was your job there?

9 A. They had developed a new -- what they
10 called an elastomer, and God, my technical memory is
11 getting a little hazy. It was kind of a product
12 that had rubber plastic-like properties, a lot of it
13 having to do with adhesive and sealing applications,
14 and I was hired specifically to be the technical
15 service manager; in other words, work with
16 customers, back up the sales force again, to
17 technically help develop the market and then deal
18 with any formulation application questions or
19 problems that would arise.

20 Q. Were you at all involved in the testing of
21 products during that period?

22 A. I would have been involved in testing them
23 for their ability to do the job they were supposed
24 to do.

25 Q. Were you at all involved in testing them to

1 determine whether there were any potential safety or
2 health hazards with the products?

3 A. I would have interfaced with other parts of
4 the company whose responsibility that would have
5 been.

6 Q. Was Diamond Alkali involved in the
7 production of chlorinated hydrocarbons during that
8 time period?

9 A. Not that I can recall.

10 Q. Then in late 1966 you came to St. Louis to
11 work for Monsanto?

12 A. Uh-huh.

13 Q. Start with late 1966 and come forward as
14 far as you worked for Monsanto and tell us first in
15 general terms what your positions were with Monsanto
16 and what that entailed.

17 A. Okay, when I joined Monsanto in '66 I went
18 into their plasticizer group. I'm not sure it was a
19 division but it was a group of products in what
20 those days was called the organic chemicals part of
21 Monsanto. I was called a Product Specialist. In
22 other words, I worked for a Market Manager and I had
23 responsibility for a group of plasticizers; again,
24 supporting the marketing, supporting the field sales
25 force with marketing, commercial information, and

1 then also trying to answer their questions, visit
2 customers, you know, kind of be a marketing
3 technical interface.

4 After about a year and a half I was
5 promoted to be a Market Manager, which is the
6 beginning of 1968. The reason I remember is I had
7 just become engaged, so it is a date that sticks in
8 my memory. To be a Market Manager for what are
9 known as specialty plasticizers, and I was in that
10 position for two years, because in early 1970 I then
11 was promoted again to be an Area Marketing Manager,
12 Latin America, for all Monsanto's organic chemical
13 products. I didn't physically relocate in Latin
14 America. I lived in St. Louis but I traveled
15 extremely extensively and was gone for long periods
16 of time. That lasted until late sometime -- I'm
17 guessing now, third quarter, early fourth quarter of
18 1971, when I was then made a Product Manager in a
19 group of fluids products, reporting to a man called
20 Tom Gossage, who was a director of marketing. And
21 my responsibility was to be Product Manager of heat
22 transfer fluids, dielectric fluid and something as I
23 recall we called process fluids. And, as I say, I
24 think that was the latter part of 1971.

25 Then within a year or might have been

1 two years, but somewhere in the '72-'73 time frame,
2 and, again, I'm shaky on dates now, I was given
3 broader responsibility in fluids. I think I was
4 made Product Manager of all fluids, so that meant
5 that I took on responsibility for aviation hydraulic
6 fluids and the products that you're talking about
7 today like Pydraul, Turbinol hydraulic fluids.

8 Q. How long did you stay in that position?

9 A. I'm guessing, I was in that until -- maybe
10 sometime in '76, and I'm not trying to be -- it's
11 tough to remember all that far back.

12 Q. I'll tell you that the specific dates won't
13 make much difference when we start looking at
14 letters and things and you can probably recall
15 whether you were in --

16 A. So somewhere with reorganizations maybe I
17 added some other products in that span of time. I
18 rather think I did.

19 And then I made a move probably in '77
20 or so back into the plasticizer area as manager or
21 Director of Commercial Development for the
22 Plasticizer Division.

23 Then in 1979 I became involved in
24 international business and I essentially was in that
25 the rest of my career with Monsanto. I moved to

1 Brazil in '79 as the Commercial Director. By then
2 it was called the Monsanto Industrial Chemicals
3 Company I think, so for all of Monsanto's industrial
4 chemical business in Brazil I was the Commercial
5 Director, and I lived in Brazil for about six
6 years.

7 Halfway through I was given
8 responsibility of planning and for coming up with a
9 new investment program in Brazil. I came back from
10 Brazil in late '84, became the director of
11 International Development -- International
12 Administration -- no, yeah, International
13 Administration Development for Monsanto Company
14 world wide, reporting to the head of Monsanto
15 International.

16 I then was in that position for two to
17 three years. Sometime in late '86, early '87, I was
18 in kind of -- we decided to try to get involved in a
19 joint venture in Korea and essentially I was number
20 two on the team, but essentially I was the main
21 negotiator, the main person that coordinated that
22 whole project.

23 And then somewhere in the third
24 quarter of 1987 when we negotiated a deal I went to
25 Korea as the director representing Monsanto in the

1 joint venture, so I co-managed that joint venture
2 until the end -- until December of 1990. I was
3 living in Korea for the almost three and a half
4 years of that period.

5 Came back here, became Director of
6 Business Development for our Asia Pacific operations
7 and became involved in negotiating a three-way joint
8 venture in Thailand.

9 Then in October of 1991 Monsanto had a
10 restructuring. They were offering, you know, very
11 generous early retirement incentives. I decided to
12 take it because I was, in two years, going to retire
13 anyhow, and the financial thing, so then I formed my
14 own company, consulting. I've got several clients,
15 of whom Monsanto was one because they wanted me to
16 consult until they finished the work on the Thai
17 joint venture, which was accomplished just about a
18 couple months ago.

19 Q. Without going into any great detail or tell
20 us any secrets, what are some of the companies you
21 consult with now besides Monsanto?

22 A. I consult with Hercules at Wilmington,
23 Delaware, and I consult with a small chemical
24 company in Brazil. Monsanto pretty well -- we
25 finished up that as of early September because the

1 venture has been approved, management in place and
2 they were going ahead implementing it.

3 Q. In your consulting work with Monsanto, was
4 that done with a retainer, an hourly rate, a daily
5 rate or some combination?

6 A. It was a daily rate, hourly/daily rate.

7 Q. Does Monsanto also have an arrangement with
8 you to pay you and reimburse expenses when you give
9 depositions or testify in these cases?

10 A. No.

11 Q. Do you have an arrangement with any law
12 firm concerning that?

13 A. No.

14 Q. During your work with Monsanto from 1966,
15 let's say up to 1979 when you went to Brazil, let's
16 focus on that time period. I don't know of any
17 reason right now that we're interested in anything
18 you did after 1979, so I will ask you questions now
19 about the period '66 to '79. If this causes us to
20 develop an interest in what happened after that, we
21 will ask you.

22 A. Okay.

23 Q. Were you involved during any of that time
24 period in developing products or testing products
25 for Monsanto?

1 A. I was not involved in testing products.
2 When you say "developing," I would have been
3 involved occasionally from the standpoint of
4 commercial guidance, deciding was that something we
5 would want to do, take it commercial? If so, how
6 would we go about it, how should they be priced, et
7 cetera, et cetera.

8 Q. We have had previous testimony from
9 Mr. Papageorge that in 1970 Monsanto replaced the
10 product Pydraul AC with a product called
11 Pydraul AC A which contain PCT's but no PCB's
12 according to Mr. Papageorge.

13 Were you involved in the decision to
14 develop that product?

15 A. No.

16 Q. Were you in any way involved in the
17 development of that product?

18 A. No.

19 Q. We have also had testimony that I believe
20 sometime in late 1971 Monsanto replaced Pydraul AC A
21 and some other products with a product called
22 Pydraul 90-E which contained phosphate esters and
23 according to Mr. Papageorge did not contain PCT's or
24 PCB's.

25 Were you in any way involved in the

1 development of Pydraul 90 E?

2 A. No.

3 Q. Were you in any way involved in any of the
4 decisions that led to development of Pydraul 90 E?

5 A. No.

6 Q. You testified earlier that sometime in 1968
7 I believe it was, you first became familiar with or
8 first came into contact with PCB's. Tell us how
9 that occurred.

10 A. Well, as I said, plasticizers in general,
11 these are products that are used to modify plastics
12 in some way, and so in the plasticizer group we had
13 a group of products called Aroclor, which were
14 either polychlorinated biphenyls or polychlorinated
15 terphenyl, and then there might have been some
16 miscellaneous usage which would have been very very
17 minute where they didn't really fit into anywhere so
18 they came into my department by default, and
19 everything else. But that was it. So that's how I
20 became familiar with the products.

21 Q. Was there a period of time when your duties
22 involved marketing of Pydraul?

23 A. Marketing of Pydrauls maybe I guess, as I
24 said earlier, sometime in '72 or maybe '73 I would
25 have become Product Manager of all fluids, which

1 included Pydraul. Reporting to me then would have
2 been a person whose name was Jerry Davidson, so he
3 would have been the Market Manager for Pydraul and
4 he reported to me and I would have, obviously,
5 supervised his activities.

6 Q. During the period from the late '60's up
7 through about '72 or '73 would you have known what
8 salesmen were responsible for companies in Kentucky
9 that purchased Pydraul products?

10 A. No.

11 Q. Do you know if Monsanto had sales
12 representatives responsible for particular
13 territories at that time?

14 A. As I recall, we were on a territory-based
15 mode. In some cases I think we also had maybe more
16 of a specialty nature, and as I recall, in the
17 dielectrics area, for example, our sales force was a
18 very small one, maybe two people, and they kind of
19 just covered the country with the Market Manager who
20 would then be responsible, who, in turn, would have
21 reported in to me. When you get into some other
22 areas with many customers such as Pydraul heat
23 transfer, my recollection is they were
24 territory-based.

25 Q. Who could you identify who is now living to

1 your knowledge who could tell us what persons were
2 responsible for marketing Pydraul in Kentucky
3 between 1965 and 1975?

4 A. Jerry Davidson would be one suggestion.
5 There was a man called Norman Johnson. I can't
6 remember whether it was Johnson or Johnston now.
7 But Norman Johnson or Johnston. As I recollect, he
8 was sort of the sales manager for most of our fluid
9 business. He certainly was when I became involved
10 in the Fluids Group in -- when did I say? Late
11 '71. He left the company but I think it was when I
12 -- I can't remember when he left the company.

13 Q. Can you think of any other persons who are
14 living today who could provide us with that
15 information?

16 A. Well, I'm trying to think -- we had four --
17 when I joined the Fluids Group in late '71 I think
18 there were about four regional sales managers.
19 There would have been Phil Slayton out of New York.
20 There was a Ray Ford, who at that time was based in
21 Atlanta. There was a Garcia I think, Rollie Garcia,
22 somewhere in the Midwest. And there was Doug Hanson
23 who I think had the West Coast, and I recollect
24 these as being the four I dealt with in the late '71
25 onwards for maybe the next year or so.

1 Q. Prior to your joining the Specialty Fluids
2 Group in 1971, who was the head of that group?

3 A. You mean the group that I inherited?

4 Q. Yes.

5 A. Well, there was a man I think by the name
6 of Fallon. I think he had the responsibility for
7 heat transfer fluids. Paul Benignus was Market
8 Manager, dielectrics. Paul reported to me, and Jack
9 Fallon I think resigned from Monsanto and so I
10 didn't fill the position I don't think directly as I
11 recall.

12 Q. Do you know if Jack Fallon is living today?

13 A. I don't.

14 Q. And I know you've answered this question in
15 general terms, but in 1966 and '67 did you have any
16 involvement at all in PCB's for Monsanto?

17 A. '66 and '67?

18 Q. Yes, sir.

19 A. Best of my recollection, no.

20 Q. That takes care of that page then.

21 A. Good.

22 Q. Are you familiar with any effort by
23 Monsanto between 1966 and beginning of 1970 to warn
24 customers of PCB's, that there might be some
25 environmental risks?

1 A. I was aware I think some of that was done
2 -- you said through 1970.

3 Q. I'm separating this in time frames first,
4 from 1966 through the end of 1969, and then we'll
5 start with late '69 and 1970.

6 MR. CHAMBERS: Let me just object to the
7 form for the sake of some clarification. Are you
8 interested in terms of Dr. Paton's involvement
9 personally during that time frame as opposed to
10 something he may have heard about or learned about
11 at a later date or do you want it to be broad enough
12 to include that?

13 MR. BAKER: I believe the way I asked the
14 question was: Are you aware of any? And we can use
15 hearsay for our purposes here.

16 MR. CHAMBERS: Fine. In fact, I'll
17 withdraw the objection. I just want to make sure
18 that we all understand where you're coming from.

19 A. I cannot recall being aware -- you said --
20 maybe do that for me, please, rephrase the question,
21 please, or just repeat the question rather.

22 Q. (By Mr. Baker) Certainly. Are you aware
23 of any efforts at Monsanto between 1966, and let me
24 say this time 1969, from the period 1966 to 1969, to
25 warn their customers of any potential environmental

1 hazards or risks with PCB's?

2 A. I became aware of some efforts on that in
3 1968 when I got into the specialty plasticizer job.
4 I became aware of it because -- or became aware of
5 PCB's in the environment because of the publication
6 of some papers which were brought to my attention.
7 And then I remember interfacing with people like
8 Emmet Kelly, trying to understand what the
9 significance of this meant.

10 As I recall, it started off fairly
11 broadly that somebody, some scientist somewhere, had
12 found evidence of -- I believe there were
13 chlorinated hydrocarbons and then there was maybe
14 some -- again, I'm trying to test my memory, but
15 then maybe there was -- I'm trying to think of the
16 word that -- came up with chlorinated hydrocarbons,
17 then what might they be. There was speculation they
18 were maybe chlorinated pesticide things or they
19 might be chlorinated biphenyls and somewhere along
20 the line, and probably was because there was a
21 reference to chlorinated biphenyls, but since I was
22 a Market Manager for them, what's all this about.
23 So I would have gone to Emmet Kelly I think would
24 have been the most likely person and said, Emmet,
25 what does this mean? What's the significance of

1 this? Is there something that I should know about,
2 et cetera.

3 Then I think more papers, more
4 comments were made maybe on the same thing and there
5 was an attempt being made within Monsanto to
6 understand the significance of this, what was being
7 found, because it wasn't really clear what was being
8 found or why. I think Sweden was one of the places,
9 and that was a bit puzzling because our business in
10 Sweden I don't think was very big. I don't know if
11 we had sales then, so it was a bit puzzling, so I
12 was searching for information. I think people in
13 Monsanto then thought, well, what does all this
14 mean? And so we're making attempts to try to find
15 out.

16 So our research community would have
17 been involved in trying to find out what all this
18 meant and I was sort of involved because I had the
19 business, commercial responsibility for the products
20 and until I knew what the significance was, it was
21 very difficult for me to know should I do nothing
22 and what should I do? And we were trying to get
23 some facts.

24 Q. Were you in any way familiar with this
25 potential PCB problem before 1968?

1 A. Not that I can recall.

2 Q. So your first familiarity began sometime
3 after you became Market Manager for specialty?

4 A. Yes. Somehow or other some article was
5 either brought to my attention or crossed my desk
6 for some reason and I set about trying to go to the
7 right people within Monsanto who had the ability to
8 understand it and be able to tell me what it all
9 meant.

10 Q. To the best of your recollection did that
11 happen soon after you became Market Manager in 1968
12 or was it several months later?

13 A. That's hard for me to say because since I
14 was only really Market Manager for two and a bit
15 years we didn't have many months to work on, but it
16 was within a month or two months. At this point I
17 can't remember.

18 Q. You said you talked to Dr. Kelly about
19 this?

20 A. Uh-huh.

21 Q. Do you recall roughly when you talked to
22 Dr. Kelly?

23 A. My recollection is that I probably got
24 ahold of him probably within, you know, a week or so
25 of reading it. You know, well, I read it, I don't

1 understand it. Picked up the 'phone and --

2 MR. CHAMBERS: Let me object. Did you
3 testify that you got in touch with Dr. Kelly or
4 Mr. Wheeler?

5 A. I think -- well --

6 MR. CHAMBERS: Or both maybe?

7 A. No, that's maybe a moot point. I seem to
8 recollect Emmet Kelly, but it could have equally
9 been -- because Elmer Wheeler was in that
10 department, but it would have been that department
11 and I might have well have started with Emmet Kelly.

12 Q. (By Mr. Baker) Do you recall any of your
13 discussions with Dr. Kelly?

14 A. No, I can't recall the specifics of them.

15 Q. Do you recall in general what Dr. Kelly
16 told you?

17 A. I cannot -- my impression is that initially
18 that he was trying to maybe -- I cannot recall if he
19 was already aware of some of these papers, or I'm
20 not sure if I brought them to his attention or not,
21 but initially it would have been him trying to find
22 out what it all meant.

23 And I also remember seeing some
24 correspondence or being in touch with some of our
25 marketing people in Europe trying to -- since Sweden

1 as I remember was the -- that's the area where I
2 remember the first stuff coming from, so we were in
3 an information-gathering mode at that point in time.

4 Q. And you are certain that you became Market
5 Manager in early 1968 because that was when you
6 became engaged and you remember that time frame
7 vividly; is that correct?

8 A. That's right.

9 Q. And at that time to your recollection
10 Dr. Kelly was seeking information from people in
11 Sweden and others concerning the situation?

12 A. Yeah, I think the research area, the
13 industrial health, you know, because our Medical
14 Department had all the responsibilities for safety,
15 that sort of thing. Were all then trying to figure
16 out what the significance of this was, what the
17 accuracy was of it, et cetera, et cetera, et
18 cetera. There were questions about how accurate
19 could the methodology be for detecting these various
20 levels, because prior to that time detecting levels
21 that low -- I think we're talking parts per million
22 if I'm not mistaken -- was relatively new.

23 Q. Other than the effort to obtain information
24 from people in Sweden and perhaps from other
25 persons, do you know whether during this time period

1 1968, 1969, Monsanto took any other steps to
2 determine whether there were PCB's in birds or
3 fish?

4 Did they do any testing or did they
5 simply ask for information from Dr. Jensen in Sweden
6 and from others?

7 A. I seem to recall that we commissioned a lot
8 of tests and did tests but I'm really not the right
9 person to answer these questions. People more
10 knowledgeable than I, if they can still remember,
11 would be the people to ask that.

12 Q. I understand. I'm just trying to determine
13 what you knew from that time period. Did you talk
14 to any persons besides Dr. Kelly that you can recall
15 in 1968 and 1969 concerning these reports from
16 Sweden or the potential PCB environmental problem?

17 A. Well, I would have interfaced with the
18 people responsible for the technology and work on
19 plasticizers and people like Dr. Martin Ferra, who,
20 as I recall, was the technical research director --
21 can't remember the right title now -- which included
22 plasticizers. A man called Joe Darby, who would
23 have been in charge of our application in customer
24 development labs in plasticizers. There's a man
25 called Bill Richard, but he was more in fluids, but

1 -- and I really didn't have any real regular
2 interface with those products because, number one, I
3 wasn't really that long with Monsanto in the U. S.
4 These were different products, but I knew the
5 people. I had my own focus of responsibility but I
6 would probably have interfaced with those, but I
7 cannot recall the specifics now.

8 Q. Just for clarification, which of the
9 plasticizer products contained PCB's?

10 MR. CHAMBERS: Let me just object for the
11 record to the relevancy, and I'd like to make that a
12 continuing objection. But, certainly, he's welcome
13 to answer whatever else you care to pursue there.

14 A. Where does that leave me?

15 MR. CHAMBERS: That leaves his question
16 that I've objected to for you to answer.

17 A. Could you repeat it again?

18 Q. (By Mr. Baker) I will try. Which of the
19 plasticizers contained PCB's?

20 A. Well, Aroclor also was a trademark that
21 included polychlorinated terphenyls as well as
22 PCB's, and Aroclor numbers, which were four numbers,
23 four-digit, starting with 12, contained PCB's. If
24 they had a 54 I think they were terphenyls and there
25 was something else that was a blend and I can't

1 remember what that was.

2 In the plasticizer area, 1242, because
3 it was very specific to carbonless copy paper
4 application, 1254, 1260 could have been the ones I
5 think.

6 Q. Just for our information, what is a
7 plasticizer and what were some of the uses of
8 plasticizers?

9 A. Okay, plasticizers can be used to make
10 plastics sometimes more flexible. In the case of
11 Aroclor they can be used to make them
12 fire-retardant. They could be used to give them
13 solvent or capability to stand up more to solvents
14 or to wear. They were sometimes used in marine
15 coatings or special coatings where you really wanted
16 a very tough, you know, product that lasted. You
17 didn't want something that broke down. So there
18 were technical advantages why they were used.

19 In many cases dealing -- particularly
20 when you got into the Aroclor area, the person who
21 developed the plastic, or the polymers sometimes
22 called, was trying to formulate it for a specific
23 application, so he was looking for additives that
24 would improve and impart other characteristics. So
25 sometimes these companies conceivably, you know,

1 could find out -- if we supplied them, they would do
2 the testing, they would then maybe recommend to
3 their customers, well, this product from Monsanto,
4 this Aroclor 1254, so on, is the thing you should
5 use. So then we get a 'phone call from customer ABC
6 saying, Supply it, and in many cases we hadn't
7 participated in preparation of that formulation or
8 the testing, we were just -- because we made it, we
9 sold it.

10 Q. Do you know when roughly Monsanto first
11 began selling PCB products to either to be used in
12 plasticizers or to manufacture plasticizers with PCB
13 products?

14 A. No, I don't.

15 Q. Do you know whether they were doing that in
16 the 1950's?

17 A. I can't say that with any certainty.

18 Q. You did know they were doing it in the
19 1960's?

20 A. I know they were doing it in the late
21 1960's to the extent I was involved.

22 Q. Do you know how long they continued into
23 the '70's?

24 A. Well, as I recall, they phased out. It was
25 kind of a somewhat progressive phaseout and I cannot

1 recall when we finally -- dielectric fluids as I
2 recall was about the last area that we stopped, and
3 I now forget the exact date. In fact, maybe I would
4 by then have moved out of the Fluids Group, I cannot
5 recall.

6 Q. Were you involved in the early 1970's with
7 any organized effort by Monsanto to warn customers
8 concerning possible PCB environmental questions?

9 A. I would have been involved from sometime in
10 the late '71 period onwards, and onwards might have
11 went into, guessing, into about maybe '75, and I
12 really am guessing when I say '75.

13 Q. Were you at all involved in a program to
14 warn Therminol customers of possible PCB
15 environmental risk?

16 MR. CHAMBERS: I'll interpose a relevancy
17 objection at this point as well and make that a
18 continuing objection.

19 But, Dr. Paton, you should go ahead if
20 you're able to answer his questions.

21 A. Mr. Baker, if you could be a bit more
22 specific. Because that's a very broad question, so
23 I'd like you to be specific if you could.

24 Q. (By Mr. Baker) Well, I meant it as a broad
25 question because I don't know the answer to it.

1 Were you involved in any way in an
2 effort to provide warnings to Therminol customers in
3 the 1970's? And if your answer is no, I won't try
4 to be any more specific than that. If it's yes,
5 we'll try to find out exactly how you were involved
6 in it.

7 A. I recall being involved in a mailing to
8 customers sometime in late 1971 regarding the
9 discontinuation of PCB-containing Therminol fluids.

10 Q. Were you involved in any efforts of
11 Monsanto in the 1970's to warn Pydraul customers of
12 potential PCB environmental risk?

13 A. If I was involved it would have been after
14 I got responsibility for Pydraul, which that could
15 have been, I'm guessing, the early -- would have
16 been 1972, the very earliest.

17 Q. I want to show you a series of letters that
18 have been produced to us by Monsanto and I want to
19 ask you to review each of these and tell me whether
20 you had any involvement in the drafting of the
21 letter or in determining who would receive the
22 letter.

23 A. Okay.

24 Q. The first one has been marked as
25 Plaintiff's Exhibit 20, and I will tell you it's a

1 letter from a Mr. Olson, who apparently was Director
2 of Sales for the Functional Fluids Group at that
3 time. There were some pages attached to this that
4 were produced to us by Monsanto and I believe were
5 attached to this letter, and ask you if you could
6 review this and tell us if you had any involvement
7 at all in this letter.

8 A. I think I can say that I almost certainly
9 had nothing to do with this.

10 Q. Did you know Mr. Olson?

11 A. Yes.

12 Q. Can you tell us what his job at Monsanto
13 was to the best of your recollection?

14 A. My recollection is that he -- I think the
15 time I knew him in Monsanto he was in sales, and so
16 he was a colleague I would know but I don't think
17 I've ever reported to him, and he since left the
18 company --

19 Q. Do you have any idea what he's doing now?

20 A. No, I don't.

21 Q. Now, there are a series of letters. I want
22 to show you also some internal memoranda. I believe
23 we have these in chronological order, so it may be
24 easier for you to deal with, but that would explain
25 why this is not the order of our exhibits, so I'm

1 trying to give them to you in chronological order to
2 make it easier for both of us.

3 This is marked Plaintiff's Exhibit 37
4 and it appears to be an internal memorandum from
5 Mr. Papageorge.

6 A. Okay.

7 Q. Do you recall having received this or
8 something similar to this?

9 A. I can't recall.

10 Q. At the top of this it indicates that it was
11 to be sent to a number of persons. One of those is
12 C. Paton. I assume that would refer to you, would
13 it not?

14 A. Yes.

15 Q. This refers to a rough draft of a plan for
16 managing the PCB problem.

17 Do you recall at sometime around March
18 of 1970 receiving a rough draft of such a plan?

19 A. I don't, but that's not to say it wasn't.
20 I would think also, given this date, that I was
21 about or maybe was even in transition from the
22 Market Manager job in Specialty Plasticizers to the
23 Latin America job, but probably because of the
24 previous two years I had been involved they might
25 have even copied me in and wanted me to be involved

1 because of that. I have no reason to think there
2 wasn't but I can't remember anything more about it.

3 Q. This also refers to a meeting of April 2nd
4 in Conference Room C-303 to review this draft.

5 Do you recall attending any committee
6 meetings during this time frame, early 1970's, where
7 the PCB problem was discussed?

8 A. No, no.

9 Q. Do you recall attending any committee
10 meetings at any time before or after 1970,
11 discussing the PCB problem?

12 A. Well, I was at -- you know, particularly
13 after late '71 when I became involved in heat
14 transfer dielectric fluids and in other fluids, I
15 was at many meetings. I cannot recall that we had
16 any sort of a standing set committee. There was a
17 group, you know, we had a group of people that were
18 involved in different parts of the company and we
19 met and reviewed things. Whether there was really a
20 formal committee, I cannot recall that.

21 Q. During the time period first part of 1970,
22 did you report to Mr. Papageorge at all with regard
23 to the PCB situation?

24 A. No, I never reported to Mr. Papageorge
25 directly.

1 Q. Did he report to you --
2 A. No.
3 Q. -- during that time period?
4 A. No.
5 Q. I expect I know the answer to this question
6 but I'm obligated to ask it anyway. I want to show
7 you a document marked Plaintiff's Exhibit 38 which I
8 believe is a draft of the plan and I will ask you if
9 you recall having seen this before?
10 A. Okay, and your question again was?
11 Q. The first question was: Do you recall
12 having seen this document before?
13 A. I can't recall. Again, that's not to say
14 that I didn't receive it.
15 Q. Do you recall at any time receiving a
16 document similar to this?
17 A. I can't recall, but it's not to say that I
18 didn't.
19 Q. Do you recall being in any meetings where a
20 document similar to this or the information
21 contained in this document were discussed?
22 A. I cannot, but I know that I interfaced with
23 people on the PCB issue in that time frame because
24 it is in the date when I was responsible for one
25 part of it.

1 Q. On the first page of this document down at
2 the bottom is the statement: In November -- which I
3 believe would have been November of 1969 -- but in
4 November the decision was made to develop a plan to
5 phase out the manufacture of Aroclor 1254 and 1260.

6 Were you aware of that decision at
7 that time?

8 A. I would have had to be, given what my
9 position was at that time, and Aroclor 1254 and 1260
10 were used not in large amounts but they were used
11 in, quote, what we call plasticizer applications, so
12 though I can't remember, it would have been
13 impossible for me not to have known.

14 Q. Do you know who would have been involved in
15 the making of that decision in November 1969?

16 A. There would have probably been several
17 divisions, inorganic chemicals involved, that would
18 have been -- whoever was responsible for
19 plasticizers would have been part of it. I reported
20 directly to Mr. Walter Waycoff at the time. He was
21 a Product Manager for plasticizers. I cannot now
22 recall the hierarchy above that.

23 Then there would have been a group
24 that would have been responsible for things like
25 dielectric fluids, heat transfer fluids, hydraulic

1 fluids, to the extent that they had PCB's in them.
2 I can't recall if that was all one group back then
3 or whether it might have been a separate group,
4 so --

5 Q. At this time you were Market Manager for
6 Specialty Plasticizers, and some of those
7 plasticizers contained Aroclor 1254?

8 A. Uh-huh.

9 Q. Some of them contained 1260?

10 A. I think 1260 would have been part of it but
11 probably to a much lesser extent. My recollection
12 is that 1260 is a fairly small-volume product.

13 Q. As Market Manager for these plasticizers,
14 were you instructed to inform your customers in any
15 way about the decision made in November 1969 to
16 phase out the manufacture of Aroclor 1254 or 1260?

17 A. I cannot remember right now. I cannot
18 recall doing anything on that. As I say, again,
19 sometime in the early part of 1970 I may have been
20 into another job, but my mind draws a blank 20-odd
21 years later on that.

22 Q. I believe your answer to that question
23 would cover this question, but just so we're
24 certain, the first question was: Were you
25 instructed to tell anything to your customers?

1 Let me ask you another question. I
2 believe you already answered this. Did you instruct
3 your subordinates to inform the customers in any way
4 of this decision?

5 A. I don't think so, because I don't think I
6 -- I just had one subordinate at the time, so there
7 weren't a lot of subordinates. There might have
8 been one but I can't recall instructing them to do
9 it.

10 Q. At page 1890, which is I believe the
11 seventh page of that document -- and the numbering
12 system here is from the production of documents from
13 Monsanto.

14 A. Okay.

15 Q. There is a reference to some spillage and
16 leaks at Monsanto plants. Were you in any way
17 familiar with this situation?

18 A. No.

19 Q. That takes care of that page of questions.

20 A. Okay.

21 Q. Were you involved in any way with
22 biodegradation studies?

23 A. If you mean carrying them out, the answer
24 is no.

25 Q. Were you familiar with any biodegradation

1 studies concerning PCB's?

2 A. I recollect that they were being done and I
3 might have been briefed on how they were going but I
4 did not have any direct management of that sort of
5 activity.

6 Q. Do you know who was involved in that?

7 A. I would refer questions, like I thought of
8 Emmet Kelly, Bill Richard, as being the ones more
9 likely to know about that, at least would know who
10 was involved.

11 Q. I have no further questions about this
12 exhibit. Dr. Paton, if at any time you want to take
13 a break, just speak up.

14 I'm going to show you a document
15 that's marked as Plaintiff's Exhibit 52 and ask you
16 first to review this.

17 Have you reviewed this document?

18 A. Yes.

19 Q. You testified previously about a Norman
20 Johnson. This is a memorandum from an N. T. Johnson
21 in St. Louis. Is that the same person as Norman
22 Johnson?

23 A. Yes, sir.

24 Q. I believe this document primarily went to
25 sales personnel. Your name is not listed on the

1 person to have received it.

2 A. That's right.

3 Q. Can you identify most of these persons
4 listed as sales personnel?

5 A. Well, I feel a little bit -- since my name
6 is not on there anywhere, that I'm really --
7 Mr. Johnson I think is the person that should be
8 asked that question.

9 MR. CHAMBERS: I think all Mr. Baker's
10 interested in is giving you a list of names and see
11 if that helps refresh you about whether some of
12 these individuals were in sales or not, and I think
13 this is probably as fair a way to do this as any.

14 A. Okay.

15 Q. (By Mr. Baker) I will tell you, I planned
16 to ask you why you weren't listed here but I think
17 you've already given us a pretty good explanation
18 for that.

19 A. My job had nothing to do with this area at
20 that time. Craska was in sales. I knew Paul Craska
21 probably in the '72-'73 period onwards, and since
22 I've known him, he was in sales, so he well could
23 have been in sales.

24 Clay. Again, I got to know him
25 sometime after '71, and he was in sales, left

1 Monsanto.

2 Jerry Davidson we've talked about.

3 Damiani, the name rings a bell. It
4 appears that he could well have been in sales.

5 George Fague I knew. He once worked
6 in sales. Has left Monsanto.

7 Rollie Garcia. I mentioned earlier I
8 remember him as Regional Sales Manager for the
9 Midwest.

10 Robin Garnsworthy was in sales
11 marketing for Australia operations.

12 And Heilala, that name doesn't ring a
13 bell any more.

14 Irwin, that doesn't ring a bell any
15 more, if it ever did.

16 J. Pullman, yes, sales.

17 Jim Roder, yes, sales.

18 Bob Giles, business man, went from our
19 Monsanto Australian operations. Might have had
20 sales responsibility.

21 Peter Marsh was marketing when I knew
22 him, so he has a marketing background.

23 Ehrhardt. Don't know him.

24 Oneson, Monsanto Canada operations.

25 John Haggart in marketing for Monsanto

1 in Brussels.

2 Vaughn Morse was the person that I was
3 about to replace in Latin America.

4 John Brydon, yes, sales in Canada.

5 Randy Graham was sales in
6 dielectrics.

7 Paul Benignus, Market Manager,
8 dielectric fluids.

9 Jim Bryant, sales in dielectric
10 fluids.

11 Don Roush was like a marketing sales
12 engineer support person in heat transfer fluids.

13 Jack Fallon had been a Market Manager
14 of heat transfer fluids at least until he resigned
15 sometime in '71 but I don't know how much earlier.

16 Hall. That name rings a bell but I
17 cannot recollect now.

18 Don Pogue worked for me once I think
19 again in the '71 period onwards in marketing.

20 Dale Smith. I think Dale Smith might
21 have had something to do with hydraulic fluids but I
22 can't recall.

23 Olson, as I say, something in sales,
24 and you produced something that said Sales Director,
25 so that's maybe what he did there, okay?

1 Q. That's very good, thank you. You testified
2 that you replaced --

3 A. Vaughn Morse.

4 Q. Vaughn Morse in Latin America?

5 A. Yes.

6 Q. Do you recall after replacing Mr. Morse
7 ever seeing this document?

8 A. No.

9 Q. What was Mr. N. T. Johnson's position at
10 this time, best of your recollection? And "this
11 time" is February 1970.

12 A. I really can't tell you what it was in
13 February 1970. I remember back when I came into
14 fluids in 1971, that's probably about the first time
15 I really came face-to-face with him, and at that
16 time he was, as I recall, the sales manager -- maybe
17 he was sales director for a group of fluids
18 products.

19 Q. Were you familiar at any time in the early
20 '70's with Monsanto's policy on customers return of
21 products to Monsanto?

22 A. I was familiar with it as it related to
23 heat transfer fluids starting late '71.

24 Q. What was the Monsanto policy with regard to
25 returning of heat transfer fluids containing PCB's

1 in late 1971?

2 A. We made an offer for a certain -- when we
3 decided to discontinue sales of PCB-containing heat
4 transfer fluids, which I think was made within maybe
5 a few months of me coming into that position, we
6 made available for a certain period of time, if I'm
7 not mistaken, incineration services, and I think for
8 a period of time they were free. The idea being to
9 try to get people to do the conversion quickly.
10 Incineration services were provided after that
11 initial period I think at a certain cost I believe
12 in other products, and when I got involved later in
13 hydraulic fluids we made these services available
14 but I think they were always charged for.

15 The reasons for that was that in heat
16 transfer fluids in the U. S. we could be pretty
17 certain we knew what they were. We were the only
18 producer in the U. S. There were producers in other
19 parts of the world but I think the imports were
20 limited, and since we had a record of who we were
21 selling to, we pretty well knew what we were taking
22 back, because one of the technical difficulties in
23 incineration is you want to know what it is you're
24 burning.

25 When you get into hydraulic fluid you

1 have another problem because they were not a hundred
2 percent PCB's and we were not the only producer of
3 hydraulic fluids. Some people might buy from one
4 competitor one type of fluid and buy ours and they
5 might all go in the same machine so, therefore, we
6 had a problem of just bottling everybody's fluids
7 and we certainly couldn't afford to do it for free,
8 so we felt there was a reason why the policies
9 weren't exactly the same.

10 Q. Let me show you a document marked
11 Plaintiff's Exhibit 104 and ask you to please review
12 this.

13 A. Yes.

14 Q. Did you prepare this memorandum?

15 A. No reason to believe I didn't.

16 Q. Could you tell us what this page
17 represents?

18 A. It would be me going to the salesman in
19 whose territory this customer was located and
20 relaying to him this conversation that I must have
21 had back in '71 with Mr. Heath.

22 Q. So this is a memorandum of a telephone
23 conversation apparently from a customer?

24 A. That's right.

25 Q. To you?

1 A. Uh-huh.

2 Q. And then you prepared this memorandum to
3 pass the information on to someone else. To whom
4 did you send this information?

5 A. Well, it looks as though I sent it to a man
6 named Mr. Capps, III, who as I recall was a
7 salesman.

8 Q. And this was in October of 1971, and by
9 that time you were back?

10 A. The Product Manager for heat transfer and
11 dielectric fluids. Forget the exact title, but
12 that's basically what I was. That's why the 'phone
13 call would have been relayed to me.

14 Q. Was it your policy to prepare memoranda of
15 'phone calls that you received concerning PCB's?

16 A. Pretty much, yes.

17 Q. Do you recall ever having any communication
18 with Kentucky Hydrocarbon or any company names that
19 began with Equitable concerning PCB's?

20 A. No.

21 Q. Do you recall having any conversations with
22 anyone from any of those companies concerning
23 anything?

24 A. No.

25 Q. If you had had a conversation with someone

1 from Kentucky Hydrocarbon or Equitable concerning
2 PCB's, would you ever, as a part of your job, have
3 prepared a memoranda of that conversation?

4 MR. CHAMBERS: Let me object to that since
5 he's already said he didn't have any that he
6 remembers.

7 You can go ahead and answer, if you're
8 able.

9 A. I think as a general policy, any time that
10 I got someone on the 'phone I would have taken note
11 somewhere and would have written it up and probably
12 I almost certainly would have let the sales person
13 know about it.

14 Q. (By Mr. Baker) Do you know if Monsanto had
15 a policy to retain all these memoranda?

16 A. I don't know.

17 Q. Do you know if Monsanto had a company-wide
18 policy asking its employees to make memoranda of
19 'phone calls concerning PCB's?

20 A. I can't recall. That's not to say there
21 wasn't one. I just cannot remember.

22 Q. I told you we'd do this in chronological
23 order and we attempted to but we jumped around just
24 a little bit. Going to show you a document marked
25 Plaintiff's Exhibit 21. This appears to be a form

1 letter designed to be sent to some customers and
2 signed by Mr. Johnson, dated June 11, 1970.

3 Considering some of your past answers I think I know
4 the answer to this but I will ask anyway.

5 Were you at all involved in the
6 preparation of this letter?

7 A. No.

8 Q. Do you recall having seen this before?

9 A. No.

10 Q. Let me show you a document marked
11 Plaintiff's Exhibit 22. It's an April 15, 1971,
12 letter signed by Mr. Bradford, Product Manager of
13 Pydraul hydraulics and lubricants, and I will ask
14 you if you were involved in the preparation of this
15 letter.

16 A. No.

17 Q. Do you recall having seen it before?

18 A. No.

19 Q. I'll show you a document marked Plaintiff's
20 Exhibit 23, dated January 31, 1972, from
21 Mr. Bergen.

22 I'll ask you if you were involved in
23 the drafting of this letter.

24 A. No, I can't recall that I was.

25 Q. You recall having received this letter or

1 having seen it?

2 A. No, I can't recall.

3 Q. Let me ask you a few questions about the
4 situation at Monsanto at this time, January 1972.
5 You were Product Manager for a group of fluids at
6 that time, were you not?

7 A. Yes.

8 Q. Were you in any way involved during that
9 time period with an effort to inform customers
10 concerning reformulation of products or
11 discontinuation of PCB products?

12 A. Around this date sometime towards the end
13 of 1971 I was heavily involved with a program to
14 discontinue the sales of PCB-containing Therminols
15 and to have a program in which we tried to assist
16 customers to convert over to other products which,
17 unfortunately, were not going to be fire-resistant.
18 And so at that point in time I don't think I had any
19 direct involvement in what was going on in the area
20 of Pydraul. I would have been devoting my
21 attentions to heat transfer fluids, Therminol,
22 dielectrics and process fluids, which was primarily
23 carbonless carbon paper. But I think we had already
24 discontinued it, so I'm not sure to what extent that
25 was really -- you know, how much I was involved in

1 that, I just cannot remember any more. But that's
2 basically what I was doing.

3 Q. Did you and/or your staff attempt to
4 contact all customers of those products?

5 A. What products?

6 Q. The products that you were involved in.

7 A. We did the very best we could, yes.

8 Q. Did you start with bigger ones and work
9 your way down or how did you determine which
10 customers to contact?

11 A. We tried to cover all customers.

12 Q. Did you inform your customers that the
13 products you were discontinuing had contained PCB's
14 and/or PCT's?

15 A. In the case of heat transfer fluids, the
16 PCT's didn't arise because they were solids, so they
17 were not -- so the Therminol products, best of my
18 recollection, never had anything to do with PCT's.
19 They were only PCB's.

20 Q. Did you inform your customers that those
21 products had contained PCB's and that you were no
22 longer manufacturing them?

23 A. Yes, I think that was contained in the late
24 '71 letter. However, I think that there had been
25 previous letters if I'm not mistaken.

1 Q. In the letters that you sent to your
2 customers did you retain any records, copies of
3 addresses, of address labels or copies of actual
4 letters that had the customer's name and address on
5 them? Did you retain any documentation showing to
6 whom those letters had been sent?

7 A. My recollection is that we did. What has
8 happened to those, I have no idea.

9 Q. Do you know what it was you retained?

10 A. I cannot recall exactly right now but my
11 recollection would be that it would be either or
12 both of what you just stated.

13 Q. Do you know if you sent any of those
14 letters by certified mail or any other means where
15 there would be evidence that they had been sent and
16 received?

17 A. That's a good question, and I cannot
18 remember.

19 Q. What was the Monsanto policy for retention
20 of documents in the early 1970's?

21 A. I cannot remember what the policy was. My
22 secretary was maintaining for me a reading file and
23 I would have complied with whatever the program at
24 the time was.

25 Q. I'm just trying to determine if there was a

1 policy, and if so, what it was.

2 A. I cannot remember. I think there was but I
3 cannot say for sure.

4 Q. Do you know anything about Monsanto's
5 policy in the 1970's on destruction of documents?

6 A. No. If there was one -- everything would
7 have been a document retention program. I cannot
8 recall a separate document destruction program.
9 Nobody ever came to me and say, Gee, Cumming, you
10 better destroy all your files.

11 Q. But you didn't keep everything, did you?

12 A. God, no, I can't remember.

13 Q. Do you know who could tell us what
14 Monsanto's company policy was in the 1970's on
15 retention or destruction of documents?

16 A. Gee, I don't know. I'd start with the
17 Legal Department I would guess would be my starting
18 point.

19 (A brief recess was taken.)

20 Q. (By Mr. Baker) Show you a document marked
21 Plaintiff's Exhibit 24. It's another letter from
22 Mr. Bergen dated March 15, 1972.

23 I'll ask you if you had any
24 involvement in the preparation of this document.

25 A. If I had got into taking on some Pydraul

1 responsibilities by then the answer would have been
2 yes, but I cannot recall now. But I was Project
3 Manager for all fluids, yes. Probably Jerry
4 Davidson might have been the one that would have
5 started this off and then I might have reviewed it
6 and it would have marched on up the line.

7 Q. Do you have any present recollection of
8 having seen this letter or having participated in
9 the drafting of it?

10 A. No, no.

11 Q. I will show you a document marked
12 Plaintiff's Exhibit 25. It's dated April 1972.
13 It's signed by Mr. Papageorge, and ask you to review
14 this and tell us whether you have any recollection
15 of this letter.

16 A. I wouldn't have recalled this situation.
17 I guess this letter is refreshing my memory that
18 yes, I seem to recall there was Bill Papageorge
19 bringing to our attention this kind of a problem
20 that he was facing.

21 Q. Were you involved at all in the drafting of
22 this letter?

23 A. I can't recall specifically, but the odds
24 are I would have probably been involved.

25 Q. Were you involved in deciding to whom to

1 send this letter?

2 A. I cannot recall that.

3 Q. Do you know what companies or groups of

4 companies were sent this letter?

5 A. If I did, I've forgotten.

6 Q. I will show you a document marked

7 Plaintiff's Exhibit 58 and ask you first to review

8 this.

9 A. Yes.

10 Q. Not quite sure where to start. Let me ask

11 you first, do you recall having received this

12 document sometime in February or so of 1972?

13 A. No, but I have no reason to say I didn't.

14 Q. Do you recall having seen this at any time

15 prior to today?

16 A. No.

17 Q. This is a memorandum from Mr. Papageorge to

18 a number of persons, or appears to be. It shows at

19 the top the right-hand corner on the first page,

20 C. Paton. I assume that was you.

21 A. Yes.

22 Q. What does B2SC after your name mean?

23 A. That's Building B, second floor, and it's a

24 mail code and location in a particular building.

25 Q. If you will turn to the second page, it

1 refers to -- it's titled "Action Plan."

2 A. Yes.

3 Q. And has several columns there. The first
4 one is "Action." The second one is "Assigned To"
5 and it has "Target Date," "Actual Date" and
6 "Remarks."

7 The first listing under "Action" is
8 "Notify key customer" and it has assigned to it WRC
9 and HSB and I believe TLG. Can you identify those
10 persons?

11 A. Yes, WRC would be Wink, W-I-N-K, but that's
12 obviously a nickname. Corey, C-O-R-E-Y, who was a
13 General Manager, Vice President, for Monsanto at
14 that time.

15 HSB is Howard Bergen, who,
16 unfortunately, is now dead. And TLG is
17 T. L. Gossage.

18 Q. Do you have any knowledge as to what's
19 "Notify key customer"? I suspect it's customers
20 but it says "Notify key customer," as to what that
21 action meant?

22 A. Well, all the customers, talking
23 specifically about the Therminol products, all the
24 customers would have got the same letter. However,
25 there was many many of the customers, the only thing

1 they bought from us was heat transfer fluid. But
2 there were others who were major customers of
3 Monsanto in other areas and in a discontinuation
4 like this you are obviously going to inconvenience
5 many many people. The repercussions on Monsanto
6 from companies who bought a wide range of products
7 could have been much greater. We anticipated that
8 we might have other divisions, say fibers or what
9 have you, calling up saying, you know, you have
10 upset one of our biggest accounts. What the hell
11 are you people up to? And that would have created a
12 great deal of turmoil in my organization.

13 We were a team of people trying to get
14 a job done. We were trying to forestall having all
15 the other salesmen on Monsanto calling up and
16 saying, You dumb so and so, what have you done? So
17 we decided one way to tackle it so that we could
18 explain clearly what it was all about was to go into
19 these customers that bought a lot of other products
20 from us besides Therminol and explain what we were
21 about, and we assigned that to the top level of the
22 people. And it wasn't a huge number of customers
23 but it was some.

24 MR. CHAMBERS: Although he's already
25 answered, just to keep our objections preserved I

1 want to enter an objection to questions about the
2 handling of the heat transfer fluids on the grounds
3 that that's not relevant, but, certainly, to the
4 extent you can answer Mr. Baker's questions, I would
5 urge you to do that, Dr. Paton.

6 A. But there was no attempt here to insinuate
7 there was a kind of a first class customers and
8 second class customers, no, that was not -- it was a
9 practical matter to deal with what we knew. It was
10 a situation that was going to generate probably a
11 great deal of response and how could we get that job
12 done and minimize other factors.

13 Q. (By Mr. Baker) Item No. 2 says "Mail
14 customer notification" and says that was assigned to
15 CP. I assume the CP was you?

16 A. Yes.

17 Q. Did you carry out that action?

18 A. Yes, and over there would have been the
19 date when it was done in the circle.

20 Q. How did you determine what customers you
21 were going to mail this notification to?

22 A. I cannot now recall the specifics we went
23 through but we would have -- I would have had staff
24 people in heat transfer fluids. I think we had
25 pooled together a team of people. There was one

1 person was like an administrative coordinator for
2 the program and there were people in the technical
3 end were going to assist and we worked with a
4 combination of sales records, computer runs,
5 salesmen, and we developed to the very best extent
6 we could what we thought was a complete listing of
7 our customers. I cannot now recall what period of
8 time that covered but I recall we did the very best
9 we could to be sure we covered everybody.

10 Q. And you don't know whether you went back
11 one year, three years, ten years?

12 A. At this length of time away from the
13 situation, I cannot recall.

14 Q. If we wanted to find someone who knew which
15 customers were selected to receive this notification
16 or how you determined what customers to mail this
17 to, who could we talk to?

18 A. I don't know if Bill Papageorge's
19 recollection is any better than mine. That might be
20 one particular source since, obviously, we
21 interfaced closely with Bill.

22 Another person that was brought into
23 report to me at that time was a Paul Gann, G-A-N-N,
24 and Paul -- certainly, I don't know how much he
25 would have been -- I can't recall how much he would

1 have been involved in putting the mailing list
2 together. Certainly, he would have been the keeper
3 as far as the department was concerned of who got it
4 and what happened afterwards.

5 Q. Item No. 5 says "Organize conversion
6 team." Also says that's assigned to you.

7 A. Yes.

8 Q. What did that mean and what did you do?

9 A. Well, essentially what we were telling the
10 heat transfer customers is as of a few days hence
11 you will get no more fire-resistant heat transfer
12 fluid and if you want to keep your operations
13 running and deal with Monsanto and to the best of
14 our knowledge other U. S.-based suppliers of these
15 fluids, they were going to be non-fire-resistant, so
16 we were very concerned that possibly customers in
17 switching over might get fires which could be
18 catastrophic in terms of the life of operators, et
19 cetera, et cetera, so how could we go about trying
20 to help these customers deal with it? And so the
21 idea we had was, well, maybe we would bring in our
22 engineers out of our Engineering Department and get
23 a team of them assembled and have them available to
24 go through what seals should be used, pumps,
25 tightening up, you know, all of that technical

1 stuff. And when the letter -- as I recall, the
2 letter probably mentioned that, and so there was a
3 group of six or eight, I can't recall the exact
4 number, who worked for a period of time on call or
5 went to visit and did whatever they could.

6 Q. So you did organize such a team?

7 A. I organized such a team, yes.

8 Q. Did you send them out to assist customers
9 in the changeover?

10 A. I can't recall if they actually visited or
11 if it was -- I think they may have visited, and
12 certainly they sent letters and they were available
13 on telephone.

14 Now we also had in our case a man
15 called Don Roush, who was the normal marketing
16 technical service type person, but we could see that
17 he was just going to be absolutely, you know,
18 inundated with questions so, again, part of this
19 conversion team looked to Don to kind of translate
20 their engineering knowledge over to his knowledge
21 about the product and heat transfer in general, so
22 it was a marriage. But we were then able to take
23 Don's skill and get it over to about seven people
24 who could then interface with the customer.

25 Q. This conversion from PCB heat transfer

1 fluids to non-PCB heat transfer fluids, this didn't
2 involve just topping off the fluid, this was total
3 replacement, was it not?

4 A. Total replacement. Now, I guess the
5 customer always had the option that if he chose to,
6 you know, go about it by a top-off and drain,
7 eventually, over a period of time, he would go from
8 a hundred percent of PCB down to a much lower
9 percentage. I guess if he wanted to he could have
10 done that. I think our recommendation -- but I
11 don't know if any of them really did that or not.

12 Q. You made a pretty strong recommendation
13 that they totally replace the PCB fluid, did you
14 not?

15 A. I would have to read the letter again to
16 refresh my memory, but my guess is we probably did.
17 But, again, it was -- you know, that was up to them
18 to decide.

19 Q. Do you recall requesting that customers
20 send back some kind of signed statement saying that
21 they had replaced the PCB fluid that they had
22 converted?

23 A. My recollection is we tried to get that
24 done just so we could at least know where we stood
25 and I think our management as I recall was

1 interested in, you know, what's really going on
2 here.

3 Q. Do you have any idea how much heat transfer
4 fluid was actually returned to Monsanto and/or
5 incinerated by Monsanto?

6 A. I can't recall the numbers now. I'm sure
7 at one time I probably did but I can't remember them
8 now.

9 Q. In terms of the amount of heat transfer
10 fluid in use at that time that contained PCB's, do
11 you have any idea how it would relate to the amount
12 of Pydraul or the amount of lubricants in use or was
13 it roughly equal, was it greater or was it less?

14 MR. CHAMBERS: Let me object to the form
15 just for a second because when you talk in broad
16 categories of lubricants and Pydraul and so forth,
17 there are many products, some PCB and some non-PCB,
18 within those groups, and if your question is with
19 respect to PCB lubricants and PCB heat transfer
20 fluid, that's one thing, but if it's lubricants and
21 heat transfer, that's something else.

22 Q. (By Mr. Baker) Okay, my question is meant
23 to be directed to PCB-containing lubricants and PCB
24 heat transfer fluids.

25 A. And, again, at one time I would have known

1 that, but if I was to guess now, it could be totally
2 misleading. I just cannot.

3 Q. Do you know now whether there was more
4 PCB-containing lubricants in use in the early '70's
5 or late '60's than PCB-containing heat transfer
6 fluids?

7 A. I don't know.

8 Q. Under No. 8 it says "Develop conversion
9 bulletin" and then has your initials as the assignee
10 of that duty. Did you develop a conversion
11 bulletin?

12 A. I recall that we did, but the people that
13 would know that for sure I think would be Paul Gann
14 and Don Roush because they would have been the ones
15 that were charged to have done that. Roush, from
16 the technical standpoint, began probably from just
17 putting it together in a format that could be
18 readily understood. And it would have been done
19 initially as a guide for these conversion teams.

20 And, secondly, something that could be
21 sent to customers who had the wherewithal to do it
22 themselves and get the thing done more quickly.

23 Q. And do you recall whether that conversion
24 bulletin advised that the heat transfer fluids with
25 PCB's should be completely replaced?

1 A. I can't recall that.

2 Q. Do you recall whether it advised any method
3 of cleaning up the PCB's in heat transfer fluids?

4 A. I recall we used the term "flushing fluid"
5 quite a bit, but whether that went in the conversion
6 bulletin, I'm not sure. It wouldn't surprise me if
7 it was a reference to flushing fluid.

8 I might add that in this area of heat
9 transfer fluids we were dealing often with customers
10 who maybe didn't have the technical expertise in
11 fluids that you would have had in other areas such
12 as dielectric, such as hydraulic fluids, that type
13 lubricants. These people bought a boiler and tank
14 and pipe and really, ideally, it would have been
15 great if we could put water through there and done
16 all the heat transfer with water, but that isn't
17 practical, so they had to go to other things. But
18 their job was to produce rice or whatever the hell
19 it was they were producing and so they weren't
20 accustomed to getting into -- so they needed more
21 hand-holding, if you will, than many of the other
22 applications.

23 Q. How were these heat transfer fluids used?

24 A. They were used as a means of heating up
25 products or, alternatively, removing the heat from

1 vessels that could -- a reaction in a kettle or
2 reactor can produce heat and you need a means of
3 taking it away. Similarly, you want to be able to
4 heat it up.

5 Q. And they were used in the processing of
6 food in some instances?

7 A. They were used in processing of food. They
8 were used in a wide wide variety of applications, I
9 mean many many applications. I can't think of all
10 of them.

11 Q. How did you advise the customers of the
12 heat transfer fluids to clean out their systems
13 during this conversion?

14 A. I recall, as I said, mention of flushing
15 fluids so that drain out what you can, add some
16 other fluid, take that out and then replace it with
17 the new one. We were guided I believe at some point
18 in this whole saga, I seem to recollect that the EPA
19 and The Federal Register, there was some guidelines
20 published as to how many parts per million I think
21 it was would be allowable in -- not sure of
22 foodstuffs but I seem -- the government authorities
23 never banned PCB's. They said that the use in
24 dielectrics in transformers were to continue and in
25 certain areas they talked about you should have

1 guidelines that should be more than this, so we were
2 at some point -- and, again, I don't know if this
3 fits the chronology that we had the customer look to
4 what the federal guidelines said and they would have
5 done the check to go see whether or not they were in
6 compliance.

7 Q. Why did Monsanto advise customers to flush
8 the heat transfer fluids in this conversion rather
9 than just add initially fluid and delay the time for
10 taking the PCB's out of the system?

11 A. I'm not sure that I can recall what the
12 decision on that was, and I'm not sure if we said
13 that was the only way or not.

14 Q. Could you tell us why Monsanto would have
15 advised heat transfer customers to flush the fluids
16 and advise Pydraul customers to simply top off their
17 machines with new fluid?

18 A. Well, you know, I don't know whether there
19 was that distinction made or not and I can't think
20 why, if it was made.

21 Q. The next entry here, No. 9, says "Recheck
22 offshore installations, Gulf of Mexico." I have no
23 idea what that means, Dr. Paton. Could you --

24 A. There were oil rigs in the Gulf of Mexico
25 and somehow these oil rigs were heat transfer

1 systems and because of their location, anything that
2 happens out there -- so fire-resistant fluids were
3 something that the operators of these rigs wanted to
4 have.

5 Q. No. 10 says "Notify OEM's by mail." What
6 were OEM's?

7 A. Original equipment manufacturers. These
8 would be the makers of systems, and that's pretty
9 well true I think of any line of what I call fluids
10 business, be it Skydraul, dielectric, Pydraul,
11 Therminol, whatever, that often the people that
12 recommended what fluid to be used was not Monsanto
13 in any way, it was the OEM. The OEM made his own
14 equipment, he designed it, sold it, and the customer
15 would then ask him, Well, what fluid should I use?
16 And in many cases, and I would say in practically
17 all cases, our product had been tested, sometimes
18 tested for a very long time in great detail by these
19 OEM's and would then give it some kind of an
20 approval. And so consequently, we, obviously, had
21 to let them know that we were discontinuing this
22 line; they should be aware of it so they couldn't go
23 around -- maybe they had to make some adjustments to
24 the design of their equipment to handle a different
25 type of product, so that was all tangled up in that

1 idea.

2 Q. No. 11 indicates that you were assigned the
3 task of follow-up visits to OEM's. Did you actually
4 conduct such visits?

5 A. I can't say I did. I rather doubt if I
6 would have done much of that. I would have
7 designated that to the technical people I had on my
8 staff that were knowledgeable in that area.

9 Q. Finally, No. 12 says "Evaluate response;
10 review policy" and assigns that task to you also.

11 Do you recall the kind of response
12 that you received on this plan?

13 A. We kept records of what happened where and,
14 again, Mr. Gann would have been responsible for
15 keeping all of that, and then I would have reviewed
16 where we stood and then depending on what come up,
17 we would have seen, okay, what do we do to deal with
18 the dozens of different situations that came up?

19 Q. Was there an effort to quickly notify all
20 your customers about the changeover on heat transfer
21 fluids?

22 A. This was the first time that I was involved
23 in that in this date of sometime in December. I
24 believe there had been earlier notifications which I
25 had not been involved in. I know that to best of my

1 recollection everybody got notified at the same time
2 in the same way. There might have been others that
3 would have been followed up or either making sure
4 that the salesmen got to that customer himself.
5 There was ones dealing with these key customers but
6 there also was a situation that who specifically do
7 you get to, so when you go to a big company with
8 many plants, you know, we would try to go to the
9 head office and to the plant locations. But we took
10 steps as best I can recall to try to get that
11 mailing out about the same time so it hit
12 everybody's desk about the same time because we had
13 a termination date and I can't remember now if it
14 was the 31st of December. It was specifically
15 designed to be very short because we didn't want
16 people coming in and trying to stockpile or trying
17 to get us to promise that, gee, one more time and
18 that kind of thing because then you wouldn't have
19 known where you were.

20 Q. It appears to me, and correct me if I'm
21 wrong, from what I've seen that there was a greater
22 effort to notify heat transfer customers than there
23 was to notify Pydraul customers.

24 First, do you believe that is true?
25 And answer that and I'll have a follow-up for that.

1 A. No, I don't think I would agree with that.
2 I think there was a great deal of attention devoted
3 to trying to notify Pydraul customers.

4 Q. If it is true, and we'll leave it to other
5 persons to decide whether it is, but if there was a
6 greater effort to notify heat transfer customers
7 than Pydraul customers, can you think of any
8 justification for giving more notice or having any
9 greater effort to ensure that all heat transfer
10 customers received notice rather than Pydraul?

11 A. Well, there are differences between the two
12 product and application areas. It's my recollection
13 that by the time this action was taken on heat
14 transfer that the Pydrauls had already had PCB's
15 taken out of them, so that was number one. So by
16 the time heat transfer customers were told no more,
17 Pydraul customers didn't have fluid containing
18 PCB's. At least we were not selling them any more.
19 And that in the case of Pydraul customers, or should
20 I say hydraulic fluid customers and in things like
21 turbine lubricants and things, there were several
22 producers of, quote, fire-resistant fluid. Some of
23 these contained PCB's, others didn't. Some
24 contained phosphates, some didn't. And so customers
25 didn't always buy the same kind of product all the

1 time. If they bought from some other customers they
2 were buying, chemically, a different type of product
3 and were unable to interchange those, so it was at
4 times difficult for us to know if, quote, that
5 customer was really still our customer or had
6 switched over to somebody else. We could say with
7 fair degree of certainty that if they were using
8 fire-resistant heat transfer fluids, they were PCB,
9 and if you were dealing in the U. S., the odds were
10 that it came from Monsanto, so to that extent there
11 were differences.

12 Q. So for the heat transfer fluid customers
13 you were contacting, they were buying all or almost
14 all of their fluid from Monsanto?

15 A. That's right.

16 Q. And the Pydraul customers you don't believe
17 were buying all of their lubricants from Monsanto
18 but there were other competitors selling them
19 lubricants?

20 A. Yes.

21 Q. It also appears to me that Monsanto at
22 least attempted to obtain written confirmation from
23 heat transfer customers that they had converted to
24 non-PCB heat transfer fluids and we had not yet seen
25 any evidence that Monsanto had attempted to obtain

1 written confirmation from Pydraul customers that
2 they had received the notifications or had done any
3 conversion.

4 Assuming that there was the attempt to
5 obtain written confirmation from heat transfer
6 fluids and that there was not from Pydraul
7 customers, can you think of any reason for that?

8 A. Well, part of that I think is that the
9 impetus that a lot of this had seemed to hang around
10 the heat transfer area; that just prior to me
11 getting involved in this kind of work at all there
12 had been an incident somewhere in the Carolinas I
13 believe involving a heat transfer fluid which had
14 contaminated -- I can't remember if it was chicken
15 feed or what it was, but it got a fair amount of
16 publicity and, consequently, anything in food is a
17 matter of a great deal of, obviously, controversy
18 and concern. So that kind of focused in on heat
19 transfer fluids.

20 I think the very nature of Pydraul
21 hydraulic fluid use and turbine lubricants is not
22 something that you associate with the food
23 industry. Hydraulic fluid compressors, the desire
24 to collect the usage of that in the food-related
25 industry is very very small, so the focus was more

1 on, well, if there's going to be a problem in the
2 food area it's more likely to come from heat
3 transfer fluids than other sources. Again, that's
4 not to say that there wasn't a lot of effort and
5 attention devoted to reformulating and helping and
6 so on and so forth deal with the Pydraul area.
7 There was an enormous amount of effort devoted at
8 the technical level.

9 Q. Were you concerned that you might have more
10 potential liability in the heat transfer market than
11 in the lubricant market?

12 A. No, no, I don't.

13 MR. CHAMBERS: I will object, but go
14 ahead.

15 A. No, I don't think so. In all the time that
16 I worked there, yes, you had to have some concern
17 about liability, but that was not anywhere near the
18 top of my priority list of the management that I
19 reported to or the people that worked for me. We
20 were concerned about a problem in the environment,
21 that we weren't sure how great it was, but as time
22 went on it became more and more difficult to be able
23 to know what was happening. Customers were getting
24 concerned, so ultimately you reached the conclusion
25 if you could formulate away from these, quote,

1 supposedly troublesome products you are probably
2 going to be better off.

3 Now, clearly, there were a lot of
4 issues that had to be dealt with because these
5 products were used -- some of the things that people
6 said were problems about them, persistence in the
7 environment, were the very properties that made them
8 useful for these applications. They didn't break
9 down readily, they had fire-resistant properties, so
10 you have the human life aspect.

11 The dielectric industry made
12 representations to the government, Look, if you tell
13 us to quit using those, we have no way to go, and
14 the government, as I say, never banned them, so we
15 were juggling many priorities.

16 I think the liability issue was
17 probably the thing that we worried about least on a
18 day-to-day basis. We were trying to get the job
19 done as best we could to take care of a difficult
20 situation and to satisfy customers as best we could
21 and work them through a difficult situation.

22 Q. I didn't intend to ask you if potential
23 liability was at the top of your list of concerns,
24 but my question was: Were you concerned that you
25 might have more liability with regard to heat

1 transfer fluids than you did with Pydraul or
2 fire-resistant lubricants?

3 A. That, I can't recall that I ever -- that
4 that distinction ever crossed my desk or my mind.

5 Q. Were you familiar with the Yusho incident
6 in Japan?

7 A. I heard about it through reports and I
8 guess in magazines and newspapers and in talking
9 probably to our people in our Japanese joint
10 venture.

11 Q. Was that one of the factors that caused you
12 to attempt a speedy conversion from PCB-containing
13 heat transfer fluids?

14 A. No, I don't think so.

15 Q. Finally, it appears to me that from your
16 testimony that you invited your heat transfer
17 customers to completely flush their systems and get
18 the PCB's out of the system and replace the heat
19 transfer fluid completely with a non-PCB fluid.
20 From other things we've seen, it appears to us that
21 the Pydraul customers were not advised in the same
22 way; that they were told to top off systems with new
23 products but not to completely flush the systems.

24 Assuming that that is true, can you
25 think of any reason that Monsanto would have treated

1 the heat transfer customers differently from Pydraul
2 customers in that regard?

3 A. Well, again, it's partly because the
4 customers that were using hydraulic fluids didn't
5 necessarily always buy from us, so it was a bit --
6 you know, we might be telling a customer to flush
7 somebody else's fluid and the customer say, you
8 know, why do that, you know, I've been topping off,
9 and if I'm buying a competitive fluid that doesn't
10 have PCB's, that's the way I'm going to go. So I
11 think there's a difference in terms of who were
12 supplying fluids into the hydraulic area.

13 It just occurs to me, when I see the
14 exception, Goodyear, that that was, in fact, a
15 customer where we did adopt the -- I would say the
16 top-off situation because that plant was a huge huge
17 plant, hundreds of thousands of gallons of it, so it
18 was physically impossible to just turn a tap and
19 drain it. So what our technical people and
20 Goodyear's technical people and various other people
21 in that supplied the systems for the Goodyear plant
22 worked out was a system whereby, as I recall now,
23 and, again, forgive me if I don't have this a
24 hundred percent accurate, is that we bring in a rail
25 car of the non-FR product and that would go in and

1 there would be a rail car somewhere in the system
2 taking some out, and over a period of a fairly
3 lengthy period of time, and the figure of nine to 12
4 months seems to stick in my mind, we got that thing
5 diluted down, but that was one where it really was a
6 top-off and drain, although in fairly big
7 quantities, but it was the only practical way to go
8 about that.

9 Q. Are you familiar with any other heat
10 transfer customers that you solicited or assisted in
11 topping off their systems with non-PCB fluids rather
12 than completely flushing them?

13 A. I cannot recall. That's not to say there
14 aren't any. Somebody like Jim Roder or Don Roush
15 might have better memory on that than I did, and
16 there might have been customers that just did it on
17 their own and didn't tell us about it.

18 Q. If you will turn over to the fifth page of
19 this document, it says page 4 because we have a
20 cover page here that's unnumbered and then the
21 second page begins page 1. We turn to what's
22 labeled page 4 of this document. The heading on
23 this page is "PCB/PCT Action Plan, Industrial
24 Fluids," and all the tasks listed on this page are
25 assigned to a CLB. Could you identify that person

1 for us?

2 A. That's Larry Bradford.

3 Q. And what was his position in about February
4 of 1972?

5 A. He would have been the equivalent of me in
6 the Skydraul, Pydraul, Turbinol area.

7 Q. Now at some point did you replace him or
8 become his superior?

9 A. No, he left the company as I recall and I
10 can't remember the exact date, and then the product
11 responsibility fell under me, but I would have
12 inherited this plan, and my recollection is that I
13 would have continued on with it. But the plan was
14 formulated by him and his people and the reasons
15 behind it were his people, so he's really the best
16 person to answer some of the questions you've been
17 asking me.

18 Q. I hope we could find him and ask him those
19 questions.

20 A. I don't know where he is. I'm sorry, I
21 haven't seen Larry in years.

22 Q. Just in case we can't or perhaps if he
23 can't remember, let me try to get as much
24 information as we can from you. First, this plan is
25 dated February 10, 1972.

1 From your previous testimony you
2 testified that sometime in '72 or '73 you became
3 Product Manager for all fluids?

4 A. Uh-huh.

5 Q. I believe that is the point you would have
6 taken over this plan?

7 A. That's right.

8 Q. Can you perhaps narrow down that date for
9 us at this stage?

10 A. I wish I could and -- I think it was later
11 in '72 but it might have fallen on to '73. I just
12 honestly can't remember now.

13 Q. Can you perhaps tell us which of the
14 actions on pages 4 and 5 under Pydraul -- Pydraul
15 starts about half way down page 4 and continues
16 through most of page 5. Can you tell us which of
17 those actions you became responsible for?

18 MR. CHAMBERS: Let me object to the form of
19 the question, just to clarify. Since he's testified
20 he inherited the plan, in that sense he became
21 responsible for all of them, but are you more
22 interested in whether he took specific action on
23 items listed here that he could identify for you?

24 MR. BAKER: If you would like, I would ask
25 that question.

1 MR. CHAMBERS: Doesn't matter to me, and
2 I'm not trying to be overly intrusive. I think I'm
3 objecting -- well, I am objecting to the use of the
4 term "responsibility" in light of what his previous
5 testimony has been. I think that's been asked and
6 answered. But if you're interested in specific
7 measures that he took, I think that's probably an
8 area that has not been covered. If you mean it in
9 that way, he's welcome to answer.

10 Q. (By Mr. Baker) Let me ask you, Dr. Paton,
11 did you become responsible for all 22 of these
12 actions or had some of these been completed before
13 you took over responsibility for the plant?

14 A. Some of these would have been completed
15 before I took over the plant.

16 Q. Which of the ones to the best of your
17 recollection were not completed before you took over
18 the plant and which ones did you then become
19 responsible for?

20 A. Things like visiting all accounts, that
21 would have been an ongoing thing. Now that would
22 not necessarily mean either I would have been
23 visiting accounts just for a PCB or PCT thing, but
24 visiting accounts is something I would have done.

25 Aroclor 6037, 5460, I can't recollect

1 doing a great deal on that. I think that at some
2 point I think we went from PCB Pydraul to PCT
3 Pydraul, then we got out of PCT Pydraul, and I can't
4 remember exactly when we got out of PCT Pydraul,
5 whether that was on my watch or started in Larry
6 Bradford's watch. It looks as though it started on
7 his watch, in which case the decisions on what the
8 formulation is going to be, et cetera, et cetera,
9 would all have been in place, so I would have just
10 said, okay, fine.

11 I would not have been involved in
12 setting literature and prices because that would
13 have been done -- given the dates, I wasn't involved
14 in that.

15 Application for approval at Bureau of
16 Mines; no, I would not have been involved in that
17 anyhow. That would have been Davidson, Roger Hatton
18 type thing.

19 5/1, stop manufacturing PCT fluids --
20 so I think through No. 15 I don't think I had any
21 involvement or not. Now, conceivably, I think the
22 earliest that I might have got involved in the
23 Pydraul area if you asked me about pinning it down
24 narrower, if I had to, really, I would say it was
25 between maybe the middle of '72 and maybe the middle

1 of '73, but that is a guess. I might be out date or
2 what. So, really, most of this would have been
3 underway or completed I think before I took over.

4 Q. On No. 5, visiting all accounts, you said
5 that was an ongoing thing?

6 A. Yeah, and again, all accounts but -- sorry,
7 I'll let you finish the question.

8 Q. Was there a list of customers that Larry
9 Bradford, and later you, were responsible for seeing
10 that they were visiting?

11 A. No, I think this would mean that we would
12 have made sure that the people in the marketing
13 area, technical service area and the sales force,
14 some combination worked out, would have visited all
15 the accounts. Some he and I would have gone on, and
16 in my case it would probably be more of a commercial
17 nature. Certainly, when I was new it would be to go
18 to some to get a flavor of what the business was
19 like. But there were salesmen that had been
20 assigned territories and they are really the primary
21 interface. This would have fell to them to make
22 sure that they visited all of their accounts and
23 then if they wanted support or something arose on a
24 call where they needed somebody to come in with
25 them, that request would have been made into the

1 product group and normally that was complied with to
2 the extent it was possible.

3 Q. Was there anywhere a list, either on a
4 computer or on paper, of these customers that you
5 were attempting to visit?

6 A. We would have maintained -- in those days
7 there would have been weekly sales runs and monthly
8 sales runs generated on computer. Got these reports
9 in these big thick bulky piles that came in those
10 days and the salesmen would have got the ones for
11 his territory, the product group would have got the
12 complete list, and these were available and these
13 were gone through, so there were records kept.

14 Q. Was a copy of a list maintained at
15 Monsanto?

16 A. When you say "a list," did somebody go
17 through and say, well, gee, I cannot remember if
18 that was really done or not, but there was certainly
19 computer runs generated and distributed on a very
20 regular basis to product departments and to the
21 sales offices.

22 Q. Was there a system for feedback from your
23 salesmen to where you could determine whether they
24 had visited all these accounts?

25 A. They had a program of writing sales

1 reports, and so I cannot sit here and swear that
2 every salesman religiously did that, but the
3 practice -- and the sales manager was really the one
4 responsible for policing the performance of his
5 salesmen. I should probably today say salespersons,
6 sales manager persons and salespersons. You get
7 older it's more difficult for me to remember all
8 these changes. Salespersons, I'm trying to say
9 that. Where am I? Lost my train of thought.

10 MR. CHAMBERS: The question was whether
11 there was a system for feedback from salesmen and
12 you were referring to the salespeople.

13 A. There was a sales reporting system, usually
14 on yellow paper in those days, which would have come
15 to the Product Manager and would have probably
16 copied in the Market Manager, the technical person,
17 obviously, the sales office, and as I say, that
18 covered -- I can't, obviously, swear everyone but
19 that was meant to be the system where that was done.

20 Q. Did you keep copies of these reports?

21 A. What I would have done is I would have read
22 them, I read all of them as they came in. Then I
23 would have given them -- my secretary would have
24 filed them and, again, it would have fallen to
25 probably the retention system, whatever that was.

1 If occasionally I would have read something that
2 caught my attention, I would have either gone back
3 to the salesman or sent it to somebody in my
4 department or elsewhere and said please follow up on
5 whatever that happened to be.

6 Q. Did you or to your knowledge anyone else at
7 Monsanto maintain a checklist to where you could
8 check off the companies after the salesmen had
9 visited them?

10 A. I can't recollect me doing that personally
11 but marketing managers might have done that, but I
12 can't recall it.

13 Q. After you became Product Manager for all
14 fluids can you tell us who the salesperson or
15 salespersons were who were responsible for Kentucky
16 or Pennsylvania?

17 A. The name Paul Craska rings a bell for
18 Pennsylvania because I think Paul at one point was
19 located I think in Pittsburgh if I'm not mistaken.
20 Now whether his territory covered Kentucky, I can't
21 recall.

22 The man that I mentioned, Rollie
23 Garcia, and I think he was out of Akron at one time,
24 he was out of Detroit at another. He had the area
25 that I recall being the Midwest. He would be

1 another.

2 Norman Johnson, since he was sales
3 manager, if you will, for all fluids might have, you
4 know, remembered.

5 Q. On the next page, numbered page 5, No. 17
6 says "Stop manufacturing PCT fluids." Target date's
7 May 1st I assume, 1972, from the date of the
8 memorandum.

9 When you became Product Manager for
10 all fluids had Monsanto already stopped
11 manufacturing PCT fluids or did that happen after
12 you became Product Manager?

13 A. I cannot remember, and the reason I'm in
14 doubt is that I remember discussing with Jerry
15 Davidson the PCT line and I cannot now recall if
16 that was historical to help me understand the
17 transition or whether we were in a mode of changing
18 over or not, so I can't recall.

19 Q. Why did Monsanto stop manufacturing PCT
20 fluids?

21 A. I really -- I'm a bit hazy now on the
22 reason. I cannot now recall the exact
23 circumstances.

24 Q. Can you recall anything about it?

25 A. What I recall in the PCB area, I recall

1 there was considerable confusion and disruption of
2 plans to try to get out of what we considered that
3 anything that was poly. For just a scientific
4 accuracy is two or more. "Poly" means more than one
5 and "mono" means one, and as I recall, when you
6 think of -- as the biodegradation studies were
7 proceeding I think it was shown that as you had less
8 chlorine, the more biodegradable they were, and if
9 you had mono you had something that could biodegrade
10 much faster than the others.

11 So at one time it looked as though
12 maybe for applications such as dielectric fluid,
13 capacitor fluids, not transformer, dielectric
14 fluids, that a monochloro might be satisfactory.
15 However, somewhere in this chain of events, for
16 reasons best known to themselves, our government
17 bureaucracy was involved and decided that everything
18 was poly, mono as well. Now, that's absolute
19 nonsense. It just shows you how we come about
20 making national policies. So mono suddenly became a
21 poly, and so then everybody was -- we got PCB's so
22 then you try going out teaching Congress, the media
23 and everybody, don't worry, I mean mono isn't a
24 poly, so you just give up the ghost.

25 So that obviously screwed up good

1 well-intentioned science and conceivably we got into
2 some other kind of a muddle in the terphenyls, I
3 cannot recall, or possibly somebody said to us,
4 Well, gee, did the biphenyls or terphenyls contain
5 some biphenyls mixed in, and I honest to God don't
6 know. But there had to be some -- or maybe it was
7 -- I don't know, and Papageorge may be a better bet
8 on that.

9 Q. The preceding number, No. 16, says "No old
10 fluid accepted for credit after this date."

11 Can you tell us what that meant?

12 A. No, I can't.

13 Q. And then this indicates that you planned by
14 approximately May 1st 1972 to stop manufacturing PCT
15 fluids but you were going to continue selling those
16 and try to sell the last of them by the end of May;
17 is that correct?

18 A. Well, that's what it says here.

19 Q. And then in No. 21 it says "Incinerate any
20 remaining PCT fluids." I guess the ones you
21 couldn't sell by the end of May, incinerate those on
22 June 30th 1972; is that correct?

23 A. I have no reason to doubt what it says
24 here.

25 Q. Were you involved in the incineration of

1 remaining PCT fluids?

2 A. I can't recall that I was directly
3 involved. We had an incinerator that was the same
4 incinerator as I recall that we used for other PCB
5 fluids and that I got reports on how much we were
6 doing and so on and so forth, but other than that, I
7 didn't run it, but I would have been -- my
8 department, Pydraul Department, Dr. Davidson, me as
9 a supervisor, would have been involved in
10 communicating anything to the field sales force on
11 what was going on then.

12 MR. BAKER: I have no further questions on
13 Plaintiff's Exhibit 58.

14 (A brief recess was taken.)

15 Q. (By Mr. Baker) Dr. Paton, in the early
16 '70's what persons were responsible for Pydraul
17 marketing?

18 A. You mean in St. Louis?

19 Q. Yes, in St. Louis.

20 A. In the early '70's as best I can recall it
21 would have been Larry Bradford, who would have been
22 Product Manager.

23 Q. Is that Product Manager for Pydraul or for
24 all fluid?

25 A. No, I don't think -- well, there was a Tom

1 Gossage was the director of marketing for all
2 fluids. He reported to Howard Bergen, who was like
3 the general manager I believe or business director.
4 I can't remember the exact title. That was the
5 function. That would have been all fluid.

6 Then there would have been a series of
7 Product Managers and I don't know whether Bradford
8 always had Skydraul and Pydrauls or if at some point
9 these might have been two separate things.

10 Basically, there were four areas of
11 fluids. Skydraul; this had nothing to do with
12 PCB's. Pydraul, Therminol and dielectric, and I'm
13 not sure. As I say, Bradford had -- I know he had
14 Pydraul at one point. Jack Fallon would have been
15 heat transfer. Paul Benignus would have been
16 dielectric. Then Fallon left, I was brought in as a
17 Product Manager and had Benignus report in to me and
18 picked up the Therminol market area, and at that
19 point I know, which would have been late '71, then I
20 know that Bradford was my counterpart. And then
21 when he left, then I picked up all of that.

22 Q. I'll show you a document that's been marked
23 Plaintiff's Exhibit 102. It appears to be a letter
24 from you dated February 17, 1972. I'll ask you to
25 review this and see if you can identify it for us,

1 please.

2 A. Yes.

3 Q. Did you write this letter?

4 A. I have no reason to believe I didn't. It
5 also shows, incidentally, that I -- at least as of
6 February 17th I didn't have Pydraul in my realm of
7 responsibilities.

8 Q. That's February 17, 1972?

9 A. Yes.

10 Q. The bottom of the first page of this letter
11 -- first, to whom did you send this letter, and to
12 the best of your recollection can you tell us why
13 you sent the letter?

14 A. Well, I had received a telephone call from
15 Mr. Guinipro at this Westinghouse facility who
16 apparently who must have had some use for Therminol
17 FR there and I was writing back to him putting on
18 record what I guess we discussed and what I told him
19 on the telephone.

20 Q. At the bottom of this page you refer to
21 incineration of Therminol that is being returned by
22 customers, that you were converting to non-PCB heat
23 transfer fluids.

24 Was that Monsanto's policy, to
25 incinerate this Therminol product that was returned

1 by customers?

2 A. We offered incineration services to
3 customers and, you know, that didn't necessarily
4 mean it was always free, but the service was
5 available.

6 Q. Did you encourage your Therminol customers
7 to return fluids for incineration?

8 A. As I recall, we said that that service was
9 available and if they wanted to avail themselves of
10 that service, here's what they had to do, et cetera,
11 et cetera.

12 Q. And for purposes of the record, Therminol
13 was a heat transfer fluid?

14 A. Yes.

15 Q. We talked previously about the conversion
16 of these facilities from heat transfer fluids
17 containing PCB's to non-PCB fluids; is that correct?

18 A. Uh-huh.

19 Q. Ask if we could see the Plaintiff's Exhibit
20 52.

21 MR. CHAMBERS: It's the February 16 '70.

22 Q. (By Mr. Baker) February 16, 1970,
23 memorandum from Mr. Johnson, and I believe you saw
24 this previously today and if I recollect correctly
25 you said you did not recall having seen it before;

1 is that true?

2 A. Yes.

3 Q. In this memorandum at the end of the second
4 paragraph of the first page Mr. Johnson has told the
5 salespeople we don't want to take fluid back. Now
6 he's referring to Pydraul products there rather than
7 Therminol.

8 Can you tell us why Monsanto would
9 have had a different position with regard to
10 Pydraul?

11 MR. CHAMBERS: Let me interpose the
12 objection whenever you're done with the question
13 because this is a document that's never been -- that
14 doesn't have Dr. Paton's name on it, that he's never
15 been provided with, and it comes from a time frame
16 of February '70 that's much different than the time
17 frame we've been looking at. But subject to the
18 objection, to the extent he can answer your question
19 about Monsanto's policy at this time, he's certainly
20 welcome to do that.

21 A. I obviously cannot say what prompted
22 Mr. Johnson to write what he said, so I don't know
23 what his reasons for writing "we don't want to take
24 fluid back."

25 What I can say from my experience and

1 knowledge of the fluids from a perspective once I
2 was Product Manager for everything, that in the case
3 of the FR fluids we knew what we were going to get
4 back, we knew we were going to bet back PCB's,
5 number one.

6 Number two, that the customer in the
7 heat transfer area had to go from a fire-resistant
8 fluid to a non-fire-resistant fluid. Therefore, we
9 had to be sure that he understood that there might
10 be some difficulties. In fact, we didn't have to
11 tell him. Most customers, they got on the 'phone
12 and said, Gee, this is very serious for us. We
13 don't want to do it. Don't you realize you're
14 putting our property, our employees at risk, et
15 cetera, et cetera? That's why we put a conversion
16 team together to help them with things that they
17 might be able to do to redesign the system, modify
18 the system, change seals or whatever, to reduce the
19 chances of a fire.

20 It explains again partly why we didn't
21 think necessarily that top-off was such a good thing
22 to do because as you are going and topping up with
23 an un-fire-resistant fluid, the fire resistance
24 would be increasing and at what point you get into a
25 problem, I don't know. So if you're going to have

1 to do a changeout we thought from a practical
2 purposes from a fire-resistant standpoint you better
3 do it in one go. But I also said there was an
4 exception in the case of Goodyear because physically
5 the thing was so damn big.

6 In the case of the Pydraul, when you
7 were dealing with hydraulic fire-resistant fluids
8 there was a variety of types available from
9 different suppliers. We knew that our customers
10 would add somebody else's fluid of different
11 chemical composition, et cetera, and could keep
12 going and, therefore, in changing out they were
13 probably subject to less of a fire-resistant risk
14 than the heat transfer people were, so topping up
15 was something that they did, and when they were
16 topping up they weren't necessarily I don't think
17 compromising their fire resistance because the
18 hydraulic fluids from us and our competitors had to
19 meet certain Underwriter Lab standards. So the fire
20 resistancy should have been at least able to pass
21 that U. L., whatever their desk was.

22 Q. Okay, Dr. Paton, in your answer you
23 referred to FR fluids. Is that Therminol fluids?
24 Is that what you meant?

25 A. FR means Therminol fire-resistant, and the

1 only type that we produced was PCB-based.

2 Q. Let me show you another letter. I'll show
3 you a document marked Plaintiff's Exhibit 100.
4 Appears to be a letter signed by you dated May 25th
5 1972. It does not have an addressee. I'll ask you
6 to review that and see if you can identify it for
7 us.

8 MR. CHAMBERS: While he's reviewing that it
9 would be a good place for me to interpose my
10 objection for the record that this deals with
11 Therminol FR, which is not a Pydraul product, and I
12 would object it's not relevant to the issues in the
13 case, but subject to that objection, go forward.

14 I would add, I'll make these as
15 continuing objections. I just don't want to disrupt
16 by having to make an objection every time that this
17 comes up.

18 MR. BAKER: Have we told you about our
19 local rule that you can't make a continuing
20 objection?

21 MR. CHAMBERS: Thanks. Wait until I get
22 hold of that transcript.

23 A. Yes.

24 Q. (By Mr. Baker) Dr. Paton, did you prepare
25 this letter?

1 A. No reason to say no.

2 Q. It does not have an addressee. Do you know
3 to whom this letter or similar letters were sent?

4 A. I can't recall specifically now. One
5 thought is that this might have been a draft of a
6 proposed letter.

7 Q. To the best of your recollection did you
8 send letters similar to this to Therminol customers?

9 A. I can't recall if this went out or not.

10 Q. To the best of your knowledge does this
11 accurately reflect the Monsanto policy on disposal
12 of Therminol as of May 1972?

13 A. To the best of my recollection I think this
14 probably does reflect what we did.

15 Q. Dr. Paton, I'll show you a document marked
16 as Plaintiff's Exhibit 53, ask you to first review
17 this.

18 A. Yes.

19 Q. Dr. Paton, have you reviewed Plaintiff's
20 Exhibit 53?

21 A. Yes.

22 Q. I notice at the top of the page it
23 indicates a carbon copy to you. Do you recall
24 having seen this document before?

25 A. No.

1 Q. Who was J. H. Davidson?

2 A. That would be Jerry Davidson, who, as I
3 say, was the Market Manager.

4 Q. Market Manager over what products?

5 A. Over Pydraul products or hydraulic fluid
6 products or that type of thing.

7 Q. This is a memorandum dated June 28th 1972
8 and indicates it was directed to Mr. Potter,
9 Mr. Sprague and Mr. Smid.

10 Were those all three marketing
11 persons?

12 A. No, they were in the production, planning,
13 distribution function.

14 Q. Do you have any reason to believe that this
15 memorandum was not sent to you?

16 A. I'm certain it probably was sent to me.

17 Q. Does this indicate that you were in the
18 position as manager for all fluids by June of 1972?

19 A. That is the interpretation. I would be
20 inclined to say yes.

21 Q. This memorandum indicates that salespeople
22 had done a very good job of getting rid of the old
23 Pydrauls even though the customers were asking for
24 the new Pydrauls. Says they sold every drum.

25 Do you recall during this time period

1 that every drum of old Pydrauls had been sold?

2 A. I can't say for sure but I have no reason
3 to dispute what Johnny is saying. Now, when he says
4 "all," does he mean absolutely zero or a few drums
5 left, I couldn't speculate at this time.

6 Q. During this time period were you happy with
7 your sales force that they were able to sell all the
8 old Pydrauls even though Pydraul 90 E and others had
9 been developed and were available and customers were
10 asking for them?

11 A. Well, as I would read this, he's sending it
12 to people whose function was to try to sort
13 ourselves through -- we had set a date when we were
14 going to stop selling PCT's. These people then had
15 to make sure there was enough PCT's there to get us
16 through that date and then get production geared up
17 to make the new line, to get it formulated and get
18 it shipped, sent out to all our warehouses and
19 distribution points. Trying to juggle that, that
20 everything is in the right place at the right time
21 is extremely difficult because the whole nature of
22 fluids is such that they don't use a pound a day of
23 Pydraul, you know. Something happens, somebody says
24 I've broken a line, I need another ten drums, so
25 it's not a very -- it's a difficult thing to predict

1 accurately.

2 Also, I think there was less concern
3 about the PCT ones because, as I recall, I don't
4 think EPA or FDA or whoever ever really -- and I may
5 be wrong in this but the best of my recollection is
6 -- and, again, others that you have been taking
7 deposition from could give better answers than I
8 can, but I don't recall that PCT ever came up as a
9 major issue. In fact, I remember from my
10 plasticizer days that we were trying to get Aroclor
11 5460 at one time, which is a very good hot melt
12 adhesive for packages. We had done a lot of tests
13 that indicated it might even receive FDA approval.
14 Needless to say, we didn't proceed through with
15 that.

16 And you asked me something that
17 related to the difference between PCB and PCT
18 earlier and just this thinking through, that it may
19 mean that there was nobody -- we thought, my Lord,
20 why go from one chlorinated product to another, you
21 know. Are we just delaying -- are we going to be
22 faced with a PCT problem? Again, I can't recall all
23 the reasons for that but I would seriously question
24 if a customer said, Look, I really must have the new
25 product and I'm not going to take any of your old

1 PCT, we probably would have done our best to make
2 sure they got it. But if it's a case where the guy
3 says, I like the new ones, but we said, Look, only
4 one we've got in our warehouse is this, and he says,
5 Gee, if you don't ship to it me I'm going to stop
6 production because I'm out of fluid but I think the
7 main message he had to get across is these guys in
8 production, planning distribution and the plant and
9 everything had done what was asked of them and it
10 was a pat on the back for how they had done it.

11 Q. And they had managed to sell all the PCT
12 Pydraul?

13 A. Well, they had not, the salesmen, and what
14 we were really saying to these guys, Look, you
15 didn't build up a huge inventory of PCT we didn't
16 need, so your forecasting, production planning,
17 sales scales had kept the thing pretty much in
18 balance. That's how I read this memo.

19 Q. And the PCT Pydraul was manufactured and
20 marketed after you knew about the PCB problem?

21 A. Yes, because at one time we did think that
22 the PCT's did not have a problem. We did not see
23 that in the same line as we saw the potential PCB
24 problem. As best I recall, I don't think I ever
25 read or saw scientific reports that said, Gee, PCT's

1 are available in the environment like the
2 allegations about PCB's and so, therefore, that did
3 not seem to be same kind of a problem.

4 Q. But within a year after you started
5 marketing PCT Pydraul you had already decided to
6 take it off the market?

7 A. And, again, I cannot recall all the
8 reasons. I can think, however, just my perspective
9 on the thing that we might have been subjected to
10 some management -- or maybe as we thought through
11 the thing somebody saying, Well, the reason maybe we
12 haven't seen a lot of PCT is we haven't sold as much
13 PCT as we sold PCB's over the years. What's to say
14 if we switch everybody over to PCT, in five or ten
15 years somebody is going to say in Lapland we're now
16 finding PCT, so we've gone through all of this grief
17 and haven't really solved the problem. And I can
18 certainly think back to the colleagues I worked
19 with, some of them posing these very legitimate
20 questions and probably as a marketing business
21 person, I couldn't look across the table and say,
22 Hell no, don't worry. Trust me, that won't happen.
23 The odds are I probably said, I don't know, and then
24 somebody higher up the line then saying, Well, we've
25 already spent a fortune on all of this, so why go

1 half a step forward? Maybe the thing is to go
2 through -- and I'm throwing out, you know, how it
3 may have evolved, but I'm just thinking through what
4 would have happened.

5 Q. So it appears to you that Pydraul was
6 marketed with PCT's at a time when you knew there
7 was a PCB problem and you thought that there might
8 be the same problem with PCT?

9 A. No, I didn't say that. I don't think it
10 happened that way. At the time we would have gone
11 to PCT, the evidence we had was that PCT was not a
12 problem. In fact, I just said there was work done
13 which would have led to us going to the FDA, and I
14 remember that from my own job in the plasticizer
15 area, of preparing a petition to go to the FDA to
16 get it approved, and that meant we had data. And,
17 again, I'm thinking back, it had to do with feeding
18 studies, toxicity studies, a whole lot of things.
19 We said, Look, FDA, we're making this big petition
20 to you. We think the supporting data would justify
21 you approving it, and I remember being involved in
22 that.

23 I cannot recall now whether we
24 submitted it and then took it back or whether this
25 PCB overtook it and we said, Gee, let's wait. But

1 our scientific and the people in product safety had
2 a real high assurance they felt it was okay.
3 Therefore, based on that, we decided that would have
4 been one of the reasons to look at PCT as a step.

5 Then along the line of what I've just
6 said, another reason came up, somebody saying, Well,
7 maybe down the road, since there's more of it sold,
8 maybe it will start appearing in the environment.
9 That's when you've got to make judgments.

10 Q. They said you were involved in the FDA
11 application for approval of PCT's to be used as an
12 adhesive?

13 A. Yes, in the plasticizer area.

14 Q. Would that have been somewhere toward the
15 end of 1966?

16 A. No, that would have been in the '68 to 1970
17 time frame.

18 Q. And at that time you had done some acute
19 toxicity studies regarding PCT's, had you not?

20 A. Whatever would have been necessary to
21 present the petition to the FDA we would have done
22 or had under way and, again, I cannot remember all
23 the specifics but I do know that work was being
24 done.

25 Q. Do you recall whether you had done any

1 biodegradation study of PCT's at that time?

2 A. Again, I cannot recall, but people like
3 maybe Emmet Kelly might have a recollection of that.

4 Q. Do you recall whether you had done any
5 chronic testing of PCT's at that time?

6 A. Again, I cannot recall, but Papageorge,
7 again, might be a source of that. What I'm saying
8 is, it wasn't just me as a marketing manager sales
9 promotion kind of a guy saying I'm going to write to
10 the FDA. Before I could have even begun to think of
11 that I would have had to have evidence presented to
12 me by our scientific and technical community saying
13 we know this is a reasonable thing to do or we
14 wouldn't have done it. And, again, I cannot
15 remember if we put it in and withdrew it or whether
16 all these other events overtook it and we never put
17 it in, but I know it was one of the things that I
18 was thinking about back in the '60's.

19 Q. At the time you worked for Geigy in the
20 early '60's were they involved in any biodegradation
21 studies on products?

22 A. Not that I can recall.

23 Q. You know if they did chronic testing on
24 their products?

25 A. I don't know if they did. We're now going

1 back, what? 30-odd years in the European chemical
2 industry and I can't recall what they were.

3 Q. Show you a document marked Plaintiff's
4 Exhibit 67 and ask you to please review that.

5 A. Yes.

6 Q. Did you prepare the first two pages of this
7 exhibit?

8 A. Again, I think, yes, I'm sure I did. No
9 reason to say no.

10 Q. And this was done sometime around July 17,
11 1972, after you were responsible for all fluids; is
12 that correct?

13 A. Yes.

14 Q. To the best of your recollection tell us
15 what prompted you to do this at that time.

16 A. Well, I was probably almost certainly new
17 in terms of taking over this area and so in all
18 likelihood I had discussions with Jerry Davidson and
19 probably Norman Johnson, who was the sales manager,
20 saying, Okay, tell me what you have been doing in
21 the Pydraul area, and listen to what they told me.
22 Almost certain I asked about customer notification,
23 et cetera, et cetera, and then maybe from their
24 standpoint -- I was then coming from an area where
25 we had a program in Therminol, kind of tried to

1 prepare and say, okay, how were they doing things
2 compared to us, and from my perspective are there
3 areas that we need to focus on as we moved through
4 this program? And these apparently are three things
5 that came to my mind as issues and I was sending it
6 to the people involved in the various aspects of the
7 PCB issue in Monsanto kind of saying here's my
8 thoughts; now what can you do about it? Here might
9 be my recommendation. But I was also looking for
10 them to say, okay, but here is information you don't
11 have, et cetera, et cetera, et cetera, so it was to
12 initiate a dialogue as to where we stood.

13 Q. This was not a statement of company policy
14 or final company decision, this was an initial
15 statement of your feelings and you were hoping it
16 would lead to discussions to develop a company
17 policy position?

18 A. Yeah, for them to say, look, there was
19 other things and et cetera, so I was trying to get
20 on top of the job and say here's some things that
21 have struck me. Now where do we go from here?

22 Q. Did it not seem to you at that time that
23 Monsanto had done a better job of providing
24 information to Therminol customers than they had to
25 Pydraul customers?

1 A. No, I wouldn't say that. I mean, again, I
2 had been coming in and I knew what I had done
3 there. I really didn't know the other area, but on
4 the other hand, there was a great deal of
5 differences with the other area and so I wouldn't
6 mean that just because they hadn't done this, that
7 didn't mean they had done other things.

8 For example, one of the things I
9 learned in that area, particularly in the turbine
10 lubricant compressor area, was that the OEM carried
11 a great deal more weight than they did normally in
12 heat transfer. Yes, in heat transfer fluids we had
13 OEM's but they didn't go through usually as rigorous
14 testing of the fluid per se as did the compressor
15 OEM's. The vendor of heat transfer equipment, once
16 he knew the physical properties of the fluid, he can
17 design what kind of valves and seals he needed.
18 However, when you're dealing with compressors you're
19 dealing with a lubricant. How well does it prevent
20 moving parts from rubbing together? So they then
21 need to test it. So it is Ingersoll-Rand, the GE,
22 whoever it is that makes all these compressors.

23 I do know that Roger Hatton, the
24 technical service man, spent a great deal of time
25 with these OEM's because they really said whether or

1 not your fluid could go into that equipment.

2 Q. Is it a fair statement that when you wrote
3 this memorandum you were concerned that Monsanto
4 might be exposed to liability for not advising
5 Pydraul customers to clean out their system?

6 MR. CHAMBERS: Object. But subject to my
7 objection, you can answer.

8 A. I had gone through -- as we tried to change
9 over the Therminol FR customers I think it's fair to
10 say that all of them were unhappy. They were
11 concerned because they saw property protection being
12 diminished by not having fire-resistant fluid, a
13 potential danger to employees. These were, to them,
14 high priority. Here was I telling them, Look, as of
15 such and such a date I take that away from them, and
16 so I got some rather tough-minded 'phone calls. I
17 was requested to go visit places where management of
18 various companies would sit me down in a room like
19 this and have at me for a while and would make all
20 kinds of claims, and how I had done this and done
21 that and how I was liable for this, that and the
22 other, so I became a little bit more wary, realizing
23 what I perceived as trying to do good in the world,
24 other people had a totally different view, so not
25 everybody behaves as I would like them to behave.

1 So it occurred to me that somebody
2 might, indeed, make that claim, so I was just maybe
3 being street smart saying, hey, you know, that's
4 something we might want to think about.

5 Q. You had had heat transfer customers claim
6 that Monsanto was responsible for paying the cost of
7 conversion, had you not?

8 A. Put it this way: We had people that said
9 that we were really responsible for the problem and,
10 therefore, they would make some insinuations that it
11 was all my fault and, therefore, I should do
12 something about it. We resisted those.

13 Q. They had tried, in your words here, to pin
14 the cost of the conversion and related problems on
15 Monsanto; is that not correct?

16 A. Uh-huh.

17 Q. Partly because they claim you hadn't
18 properly warned them about the need for system
19 cleanup?

20 MR. CHAMBERS: Objection.

21 A. No, no, I didn't say that.

22 THE WITNESS: Objection. And if we're
23 going to get into questions calling for legal
24 conclusions of that sort we may get into a problem
25 about whether we go forward along that line or not.

1 At this point just let me restate my
2 objection, and subject to that, you're welcome to go
3 ahead and answer, Dr. Paton.

4 A. They were very unhappy that they had to
5 stop using this product, period. Felt that we
6 should continue to supply it and, therefore, I
7 thought, well, gee, possibly some people are going
8 to come up with some other reasons.

9 Q. Let me just read a statement from your
10 memorandum, and I'm not asking you to comment on the
11 merits of anyone's claim, I'm just trying to get at
12 the existence of those claims prior to 1970, July
13 1972.

14 You stated in this memorandum,
15 "Further, we know from heat transfer experience
16 that certain PCB-affected customers have tried to
17 pin the cost of conversion and related problems on
18 MICC...".

19 I assume that's Monsanto Industrial
20 Chemical Company?

21 A. Uh-huh.

22 Q. "...because of alleged failure to properly
23 warn them on need for system cleanout, et cetera."

24 Now, you did include that language in
25 your memorandum, did you not?

1 A. What language?

2 Q. The language I just read from, "Further"
3 through "et cetera."

4 A. Uh-huh.

5 Q. And that was true at the time you wrote it,
6 was it not?

7 A. Yes, but what I also say, that did not mean
8 that we had acquiesced in doing that. In fact, to
9 the best of my knowledge we never did, in fact, do
10 that. We had people that tried to pin it on us but
11 we did not follow through and pay.

12 Q. I'm not here today claiming that you've had
13 a history of following through and paying on those
14 claims, but you had had customers prior to July of
15 1972 claim to you that Monsanto should be
16 responsible for the cost of conversion and related
17 problems because of alleged failure to properly warn
18 them on the need for system cleanout, et cetera, had
19 you not?

20 A. Uh-huh.

21 Q. And you resisted those claims?

22 A. Resisted, and to the best of my
23 recollection we were, I think, the best I know, able
24 to say, Look, you did know what was going on. It's
25 not something that was unknown to you.

1 Q. Now, let me read the next sentence and ask
2 you if you intentionally included that within your
3 memorandum and whether it was true at the time that
4 you wrote it.

5 "Since we have not alerted
6 food-related users of PCB Pydrauls in a special way
7 like we did Therminol FR users, we may be leaving
8 ourselves open to future claims or, worse yet,
9 renewed publicity on PCB's a' la fish meal
10 instance."

11 I'm not asking you to comment on the
12 legal validity of any claims but whether when you
13 wrote this you personally believed it to be true.

14 A. I thought that that was a possibility. It
15 was conjecture on my part but I felt that I should
16 at least bring that to the attention of the people
17 that my colleagues and I work with.

18 Q. And you believed that you had not alerted
19 these Pydraul users in a special way like you did
20 the Therminol users?

21 A. I didn't really know. I pointed out three
22 differences, and what I was trying to find out was,
23 okay, was there reasons why that was done? And
24 since I was new in the job I didn't know, or had
25 they done it in some other way and I didn't

1 understand, but in the event that they hadn't, then
2 I proposed some solution or I made a
3 recommendation. But, again, this was all my
4 personal attempts to understand and sort out what
5 was fact and what wasn't.

6 Q. Now, you attached to this memoranda a draft
7 of a letter you were proposing in July 1972 to send
8 to certain Pydraul customers, did you not?

9 A. Let me look over --

10 Q. You're not going to find it there, I can
11 tell you now.

12 A. No? Really? Okay.

13 Q. But the last paragraph on the front page
14 refers to an attached letter, and I'm asking you:
15 Did you attach a draft of the letter to this
16 memorandum when you sent it?

17 A. What, 30 years later, it's hard for me to
18 say, but I would -- you know, I would have to say
19 the odds are I did accept it or people said, Are you
20 going senile prematurely? Where is this
21 attachment?

22 Q. I'm sure you did send it. I'm not accusing
23 you of being senile 20 years ago, or today, but let
24 me ask you to stretch your recollection as best you
25 can. We do not have a copy of that draft of the

1 letter. I want you to try to recall from the
2 context of this memorandum and your recollection, to
3 the best of your recollection what would that letter
4 have said?

5 A. It would be impossible for me now to
6 speculate what was in the letter. Until you show
7 showed me this today I had even forgotten the
8 existence of even this memo, but I think the odds
9 are I did attach something, but what did it say, I
10 don't know.

11 Q. Would it be a fair statement, considering
12 the context of this memorandum, that your attached
13 letter would have advised Pydraul customers of the
14 need to flush out their systems?

15 MR. CHAMBERS: Object to the form of the
16 question. He's already told you he can't recall
17 anything about this, the attached draft that's
18 referred to here. He said it's been -- he's
19 answered it.

20 A. Yeah, I would have said to you, even
21 without Mr. Chambers saying anything, that it would
22 be totally wrong for me to sit here and speculate.
23 I would need to see the thing in front of me to see
24 what it said.

25 MR. BAKER: I would be thrilled to see it

1 myself. Do you know if there is a copy?

2 MR. CHAMBERS: We can go through the antics
3 on the record but my preference would be that you
4 add it, you go ahead and add it to your list, and
5 we'll certainly go back and see what we can do about
6 that. On the other hand, you know, if we're going
7 to go through the dance on the record, we can do
8 that too. I don't think that would be --

9 MR. BAKER: I'm not here to dance.

10 Q. (By Mr. Baker) Dr. Paton, you testified
11 that this did lead to meetings and discussions with
12 some of these people to whom you sent the memoranda,
13 did you not? Or let me rephrase the question.

14 Did it lead to meetings and
15 discussions?

16 A. I cannot recall that it did, but, again, I
17 can't recall that it didn't.

18 Q. Can you recall that it did not lead to the
19 sending of another letter to customers?

20 A. I cannot recall whether it did or didn't.

21 Q. But your purpose in sending this to
22 Mr. Davidson, Mr. Papageorge and the others was to
23 cause internal discussions as to whether another
24 letter should be sent, was it not?

25 A. Yes, it was, partly, and whether or not

1 what I was looking at as potential problems, did
2 they share that concern or did they have -- well,
3 gee, we've been working on this for several years
4 and here's all the other things we've done and I
5 just said, okay, well, with that, forget about it.
6 No need to send a letter. I cannot remember that.

7 Q. And you don't remember whether you said
8 forget about it?

9 A. I don't remember that.

10 Q. Do you remember what any of these persons
11 said in response to this memorandum?

12 A. I honestly don't.

13 Q. I believe we've already identified
14 Mr. Davidson, Mr. Bergen, Mr. Papageorge and
15 Mr. Johnson, and you may have mentioned Gossage and
16 Stapleton, I don't recall, but can you tell us who
17 Mr. Gossage and Mr. Stapleton were?

18 A. I reported to Mr. Gossage. He was a
19 Director of Marketing. Mr. Stapleton was in our Law
20 Department.

21 Q. And then you sent a copy to Paul Gann, who
22 worked under you I believe?

23 A. Yes, that's right.

24 Q. Do you know if Mr. Gann is still living?

25 A. I honestly don't know. He went back to the

1 Pensacola area but I don't know if he's still
2 living.

3 Q. If you will begin at the bottom of the
4 first page of this. After you've suggested that
5 Mr. Gann should handle the mechanics of this
6 mailing, you say, "Also, he," I assume Mr. Gann,
7 "should enlist field sales to identify (after the
8 initial mailing) any customers we may have missed."

9 Was there a concern on your part at
10 that time that your customer list may not be
11 entirely complete?

12 A. It's hard for me, looking back over this
13 period of time, to say, because you can have
14 situations where customers in these areas might not
15 buy from you for a year or two and so you really
16 don't know, and so it's a check. I wouldn't read
17 into that that I was really very concerned about
18 that but it was just being one extra step, if you
19 will.

20 Q. And customers who hadn't bought in a year
21 or two or three, you certainly recognize there would
22 be a risk that they might not be included on your
23 mailing list?

24 A. Possibly, and I don't know what you do
25 about that.

1 Q. You've attached a list here that begins on
2 the third page, says, "Suspect Pydraul Applications
3 - From IBM Run" and this is a two-page list that
4 has several customers listed there. And then at the
5 end of that says, "Total Pydraul customers:
6 Approximately 1,000."

7 A. Uh-huh.

8 Q. Now, tell us what IBM run you were
9 referring to to determine these suspect Pydraul
10 applications.

11 A. Well, as I recall back in those days every
12 Product Manager Department got a weekly IBM run that
13 said here's sales, and then after the closing every
14 month another run would come forth and would say
15 here's the sales statistics for past month
16 year-to-date, maybe a comparison with the previous
17 year and so on, and, obviously, early January you've
18 seen a history of the previous 12 months and
19 probably would, in that one report, actually cover a
20 two-year spell because I think, you know, again,
21 don't hold me to this, but I think it probably did a
22 comparison of 1972, '73 to '72 sort of thing. So
23 that would have been where we would have gone to get
24 the most recent, and I cannot remember whether we
25 went further back than that or not.

1 We then, further, since my concern was
2 really not the whole gamut of hydraulic fluid
3 applications, I was thinking of the ones that had
4 really given the most publicity, the most concern,
5 had been in the heat transfer and was in the fish
6 meal applications. In a chemical processing plant a
7 Therminol was really not that much of a problem than
8 any other chemical but when you come into food -- so
9 here was, as we went through it, out of a thousand
10 customers there was about 14 in air compressor
11 applications and 14 in other miscellaneous hydraulic
12 fluid applications that apparently we suspected,
13 really, more from the names of the customers, that
14 they were in the food-related type of industry.

15 Q. You referred to the fish meal incident.

16 A. Yes.

17 Q. I know we've been here a long time. I
18 don't want to unnecessarily waste anyone's time, but
19 briefly tell me what you are referring to there.

20 A. I would have been referring to the one I
21 think sometime in the early part of 1971 which I
22 think was a fish meal incident somewhere in the
23 Carolinas, and by then I think I may have had, but
24 I'm not sure, you mentioned -- alluded to the
25 publicity given to the rice oil in Japan, but

1 Monsanto did not supply any fluid to that -- I think
2 that the possibly that the heat transfer fluid in
3 the Carolinas came from Monsanto but the Japanese
4 one didn't, but they were both incidents that got a
5 great deal of publicity.

6 Q. At this time you were considering or
7 recommending that these other persons consider
8 sending an additional letter to Pydraul customers?

9 A. And it was to this list, the food-related
10 list.

11 Q. That was only to the ones you identified as
12 food-related Pydraul customers. Why were you not
13 considering sending such a letter to all Pydraul
14 customers who may still have PCB's in their system
15 at this time?

16 A. Because, again, as I recollect, around this
17 time, in among the various federal -- what is it?
18 What is the correct terminology for that federal
19 register that comes out, I think -- I can't recall
20 if there was EPA or the FDA or both, maybe in this
21 case it might have been the FDA, came out with, you
22 know, sort of guidelines, recommendations. I say
23 they never banned the product, but I suspect -- not
24 suspect, I recollect something that said that they
25 were trying their best to make sure that there was

1 no repetition, obviously, of this fish meal incident
2 and they had come up with some kind of guidelines as
3 to the maximal permissible amount of contaminant, et
4 cetera, and maybe even -- and I can't remember if it
5 was in the system per se or it was in the final
6 food, and that I know was going around.

7 Now whether they all converged about
8 this time and led to this, you know, that's a
9 possibility, but I would have to -- I need the whole
10 -- God knows how long I need to sit down and review
11 the thing just to refresh my memory on it all.

12 Q. In addition to the draft letter that is not
13 attached here today that you referred to in your
14 memorandum, you also attached, according to the
15 memorandum, four letters sent out to Pydraul
16 customers. You've referred in this memorandum to
17 three particular ones; one, February 1st 1971, one
18 of April 15, 1971, and one of February 28, 1972.
19 Attached to this exhibit, this is a form that was
20 produced to us by Monsanto and is a copy of the
21 February 1, 1971, letter and the April 15 1971
22 letter.

23 Ask you first: Do you recall anything
24 about the February 28, 1972, letter which I believe
25 we have elsewhere in the production that said no

1 draining is necessary, you need to only add new
2 products as makeup to your present system? Do you
3 recall that letter?

4 A. You mean we've looked at it today?

5 Q. No, we have not to my recollection. I
6 think we've been -- I believe we've been provided a
7 copy of it and I don't have it with us in this room
8 today. Just asking you if you recall anything about
9 that letter.

10 A. I couldn't have recalled without this.

11 Q. But from this, you stated at that time,
12 that February 28, 1972, letter sent to Pydraul
13 customers did indicate that there's no draining
14 necessary?

15 A. I have no reason to believe that it didn't,
16 given what I've written down here.

17 Q. You refer in this memoranda to a fourth
18 letter sent out in 1971 or 1972. It is not
19 specifically mentioned, the date of that, or any of
20 the contents are not specifically mentioned in the
21 memorandum.

22 Do you have any idea what the fourth
23 letter was?

24 A. No, and that must have been just a mistake
25 on my part saying four when I really meant three, I

1 don't know.

2 Q. Just so it's clear, do you know whether any
3 letter was sent to any Pydraul customers as
4 recommended in your memorandum of July 17, 1972?

5 A. I can't remember.

6 Q. Do you recall any discussions concerning
7 whether such a letter should be sent?

8 A. I can't remember.

9 Q. Do you recall which customers raised
10 complaints to you or to anyone else at Monsanto who
11 mentioned them to you concerning the lack of
12 adequate notice concerning draining the systems?

13 A. I seem to recall one in Louisiana somewhere
14 but I cannot remember the specific -- the names of
15 others. I know that there was general unhappiness,
16 which is often on the 'phone. Then I would be asked
17 by the salesmen, by customers, to come visit them,
18 and in some cases I would meet with management who
19 claimed they would have been the proper people to
20 tell and they didn't and all of that sort of thing.

21 Q. There was general unhappiness from the
22 customers who were told to drain their systems and
23 completely replace the PCB product; is that correct?

24 MR. CHAMBERS: Let me just object to form
25 for purposes of clarification. We're talking about

1 the Therminol FR products I take it as opposed to
2 the full --

3 Q. (By Mr. Baker) What he said, I'll ask you
4 that.

5 A. My remarks up to this point have been with
6 regard to Therminol FR.

7 Q. Yes, and there was a general
8 dissatisfaction among those Therminol customers who
9 were told to drain their systems; is that correct?

10 A. Yes.

11 Q. And complaint by them about having to drain
12 the systems; is that correct?

13 A. Yes.

14 Q. And even in some cases assertions by them
15 that Monsanto should pay the cost or attempts to pin
16 the cost on Monsanto for draining the system; is
17 that correct?

18 A. Yes.

19 Q. Would any of those facts have played a role
20 in Monsanto's decision not to advise Pydraul
21 customers to drain their systems?

22 A. I don't know.

23 Q. Show you a document marked Plaintiff's
24 Exhibit 9. Ask you to review that, please.

25 A. Yes.

1 Q. Do you recall this situation?

2 A. No.

3 Q. This appears to be a letter from

4 Mr. Papageorge to Mr. Anderson at Honeywell,

5 Incorporated in Minnesota. It shows that a copy was

6 sent to you I believe, does it not?

7 A. Yes.

8 Q. And it refers in the opening sentence to

9 you, does it not?

10 A. Yes.

11 Q. In that opening sentence Mr. Papageorge

12 appears to be responding to Mr. Anderson's inquiry

13 of you concerning a disposal of used Pydraul 312.

14 Do you recall Mr. Anderson or anyone

15 else from Honeywell asking you such a question?

16 A. I don't recall.

17 Q. Do you recall in general other companies

18 inquiring of you as to disposal of Pydraul?

19 A. I can't recall now. That's not to say

20 there weren't.

21 Q. At the end of the first page of this letter

22 Mr. Papageorge stated to Mr. Anderson, "You may wish

23 to consider sending your materials to Monsanto for

24 disposal. The cost of disposal is five cents per

25 pounds received. This does not include cost of

1 freight or the cost of the containers which are paid
2 for by the shipper."

3 Do you know whether that was
4 consistent with Monsanto policy at that time
5 concerning disposal of used Pydraul?

6 A. I would think it probably would but I can't
7 say for sure.

8 Q. Do you remember being involved in any
9 question concerning disposal of used Pydraul?

10 A. I cannot recall specifics now but it's part
11 of my supervision of Mr. Davidson and the others in
12 the group, it's likely that I would from time to
13 time have been involved in it but I can't recall any
14 instances today.

15 Q. You don't recall any specific instances?

16 A. No.

17 Q. I will show you a document marked
18 Plaintiff's Exhibit 2, and this is the only
19 additional copy I have, so I ask you if you could
20 share that with your counsel. Ask you to please
21 review this.

22 A. Yes.

23 Q. Dr. Paton, did you author this memorandum?

24 A. I'm sure I did.

25 Q. In the second paragraph you refer to a

1 March 1972 survey letter. What is that?

2 A. I guess that's this attachment here? No, I
3 can't recall what that was.

4 Q. On the second page, the middle paragraph
5 there, I want to ask you if this was a true
6 statement. I'm reading from the middle paragraph.

7 "We never really sent out as many
8 letters on PCB's to all Pydraul customers as we did
9 on heat transfer."

10 Is that a statement that you believe
11 to be true?

12 A. I would have believed it to be true. On
13 the other hand, I don't think you can infer from
14 that that because we didn't send out as many, that
15 we didn't send out pertinent information. As I
16 recall, we discontinued selling of PCB-containing
17 Pydrauls earlier than heat transfer, so, in effect,
18 that says we had done that phase of it earlier, so
19 you wouldn't maybe have had to send as many.

20 Q. This was July 30th 1973, and according to
21 Mr. Papageorge's testimony, it was about three years
22 after you stopped selling Pydraul with PCB's.
23 Why --

24 MR. CHAMBERS: Never mind. I started to
25 object to the characterization of the three-year

1 time frame but I would concur that the testimony has
2 been that during the '70-'71 time period the
3 transition from PCB to PCT Pydrauls took place.

4 Q. (By Mr. Baker) I believe Mr. Papageorge
5 testified that about mid 1970 you ceased
6 manufacturing Pydraul PCB's. In any event, this was
7 at least two years and perhaps three years from the
8 time that Mr. Papageorge testified you ceased
9 manufacturing Pydraul PCB's.

10 Why did you feel a necessity to send a
11 letter at this time to Pydraul users concerning
12 PCB's?

13 A. I think, as it says there, we thought it
14 was a kind of a service to do. We were still
15 selling Pydraul and we felt that it might be useful
16 information for our customers to have that.

17 Finally, the FDA had got around to
18 promulgating some regulations and we were just kind
19 of bringing it to their attention as a piece of
20 information that they might find useful.

21 Q. You stated in this letter, "We realize that
22 this letter may reopen old wounds."

23 Can you tell me what you refer to
24 there?

25 A. Yes, sir, in that they had gone through one

1 or two reformulations. Clearly, again, they have
2 been inconvenienced, so here's a purchasing agent
3 you're trying to sell your new chlorinated -- oh, my
4 God! Here's the guys that gave me all that hassle
5 and grief two years ago, so on one hand you think
6 you're trying to be kind and offer a service and in
7 another way you may remind him of the problems he
8 had with his plant manager saying, My God, you going
9 to change it one more time? You know how these
10 things are. Salesmen don't usually like to get in
11 and get chastised for having created problems in the
12 past, real or imagined. So this, again, was trying
13 to get our people to understand why we were doing
14 this.

15 Q. You attached three drafts of letters. Do
16 you know whether one of those was selected to send
17 to customers or whether some customers received one
18 of them and others received other letters?

19 A. At this point in time I don't understand
20 why -- in fact -- well, one seems to be fairly
21 self-evident. One seems to be of the incineration
22 service I guess; is that right? Is that one of the
23 three? Let me see here. No, that was an additional
24 one. Bill Maddox was one in addition, so leave that
25 aside.

1 So I have one dated August the 3rd,
2 one dated August the 3rd -- I was looking to see, is
3 there any difference between two six four and two
4 six five. I have not gone through it word for
5 word. It looks rather similar to me, but let's
6 see. Two of them seem to be FR-related, right?

7 Q. Yes.

8 A. But they look very similar, don't they?
9 Two six four and two six five looks the same. It's
10 hard to --

11 MR. CHAMBERS: They don't quite match up
12 that way.

13 MR. BAKER: I believe the wording is the
14 same, just different type, but --

15 MR. CHAMBERS: The spacing on the lines is
16 different but I don't know that the contents --

17 Q. (By Mr. Baker) Okay, I can tell you. The
18 first one to Therminol customers says, "We have
19 received your response."

20 A. And the other says, "We have received no
21 response," that's right.

22 Q. So that you have one letter designed for
23 Pydraul customers and you have two letters designed
24 for Therminol customers?

25 A. Subdivided by who responded and who didn't.

1 Q. Now, I notice in the one designed for
2 Pydraul customers you don't have the opening
3 statement about requesting confirmation about
4 discontinuance of use, which leads me to believe
5 that you probably never did ask Pydraul customers to
6 confirm whether they discontinued use.

7 Would you agree with that
8 characterization?

9 A. I really don't know if they did or didn't.

10 Q. You don't recall having done it?

11 A. I don't recall having done it but it might
12 have been done before I got involved, but I cannot
13 remember either way.

14 Q. You said on the first page of this, "It has
15 been decided that we should notify all customers."

16 Do you know what person or persons
17 made that decision?

18 A. Well, I've copied in Papageorge, Stapleton
19 and Gossage and, undoubtedly, they would have been
20 part of my decision-making process group. Whether
21 it went beyond that, I don't know. Clearly, the
22 other people you see here by that time is GFF, which
23 is George Fague. Davidson had left the company and
24 Fague was his replacement. Roger Hatton, who was
25 the technical service in Pydraul. Clearly, they

1 would have been part of the decision process. Don
2 Roush and R. L. Cook, they were in the heat transfer
3 area at that time. They would have been part of
4 it. And Norm Johnson I think had left the company,
5 but I would guess that we would have -- just from my
6 style, I would have -- probably the sales managers
7 would have known this was in the works, so this
8 thing wouldn't have come as a surprise to the sales
9 management group.

10 Q. I notice in the Pydraul draft letter you
11 still don't mention anything about flushing the
12 system. You recall whether you had any discussions
13 about whether that should be advised at this point?

14 A. I can't recall that. But, again, I would
15 have -- we would have had Davidson, then Fague and
16 Hatton all intimately involved. Davidson and Hatton
17 having had a long history and involvement with that
18 industry.

19 George Fague, although he had recently
20 become a Market Manager, in fact, had spent previous
21 several years I think selling a lot of Pydraul type
22 fluids in the Michigan area, so he was familiar with
23 the diecasting operations, familiar with Pydraul.
24 They would have done a lot of that communication I
25 think in their own matter.

1 Q. But you don't know what they told the
2 customers, do you?

3 A. I really at this point in time can't
4 remember what they said.

5 Q. Do you know what they were instructed to
6 tell customers about flushing systems?

7 A. And I can't recall what they were either, I
8 can't recall that.

9 Q. Do you recall ever instructing any of them
10 to advise customers that they should flush the
11 system, Pydraul customers?

12 A. I can't recall.

13 Q. Do you recall any decision ever being made
14 by Monsanto to advise Pydraul customers that they
15 should flush their systems?

16 A. I can't. That's not to say that there
17 wasn't a discussion, but I can't recall.

18 Q. Who was responsible for deciding which
19 customers received this August 3, 1973, letter?

20 A. At this 20 years later I can't remember how
21 we went about it. I testified how I thought we
22 would have gone through the procedure, and I guess
23 it would have been somewhat similar.

24 Q. Do you know whether any documentation in
25 the form of copies of mailing labels or of actual

1 copies of the letters with the address of the
2 accompanying address on those letters, whether that
3 was maintained by Monsanto?

4 A. I can't recall specifically. I'm pretty
5 certain that once the mailing was done, that's the
6 set of copies of each letter. Mailing lists were
7 available. Where they went, I can't recall.

8 Q. You mentioned earlier IBM runs. Do you
9 know if Monsanto had, in 1973, a computer system
10 where you could generate either lists of addresses
11 or mailing labels?

12 A. I don't think we had a computer-generated
13 one. I seem to recall secretaries busily typing
14 them. I seem to recall that.

15 MR. BAKER: I will ask at this point, and
16 we requested it during Mr. Papageorge's deposition I
17 believe and perhaps in Mr. Craddock's deposition, if
18 there are any documents of any kind that would show
19 the addressees of any of these letters that Monsanto
20 contends were sent to Pydraul customers, we ask that
21 they be produced as soon as possible.

22 MR. CHAMBERS: And I will say my response
23 is the same as whatever Greg Monge's was at those
24 previous depositions.

25 MR. BAKER: I believe I can paraphrase his

1 testimony as agreeing to do it, if there are any.

2 MR. BEAL: That's about what he said.

3 Q. (By Mr. Baker) I'm going to show you a
4 document labeled Plaintiff's Exhibit 15. This is
5 something that has been -- copies have been attached
6 to the testimony of many witnesses. I'm not going
7 to ask that we attach my last copy to this
8 deposition, but this is a document called Pydraul AC
9 Fact Finder, and I believe the only question I have
10 for you other than have you seen this before is: Do
11 you have any idea when this was published?

12 MR. CHAMBERS: Object to the form; two
13 questions, compound question.

14 MR. BAKER: Review that and then I'll ask
15 you separate questions on it.

16 Let the record reflect that counsel
17 for Monsanto was smiling when he raised that
18 objection.

19 MR. CHAMBERS: I'll stipulate to that. As
20 was counsel for Equitable Resources.

21 A. Okay.

22 Q. (By Mr. Baker) Have you seen this document
23 before?

24 A. I'm sure I have. I can't recall but I'm
25 certain I have.

1 Q. Can you give us any indication as to when
2 this document was published?

3 A. I can't recall. Unless there's anything in
4 here that might give clues, I'd have no way of
5 beginning to guess.

6 MR. BAKER: That's satisfactory. We have a
7 couple of clues from in there. We know it wasn't
8 published before a certain date but that's all we
9 know so far.

10 (Discussion off the record.)

11 Q. (By Mr. Baker) Dr. Paton, while you were
12 working with Monsanto were hydraulic fluids
13 profitable for the company?

14 A. As far as I remember, I think they were.

15 Q. Can you give us some idea of how profitable
16 they were?

17 A. No, and I'm sure that varied somewhat.

18 Q. Do you know roughly what percentage of
19 Monsanto's profits came from hydraulic fluids in the
20 last half of the 1960's?

21 A. No.

22 Q. Would you know for the first half of the
23 1970's?

24 A. No, and it's just because -- I probably
25 would have known but I've just forgotten.

1 Q. Do you know anything about the levels of
2 production of PCB's by Monsanto during the 1960's?

3 A. I think that was probably in one of the
4 documents we looked at today. I think in the
5 presentation I made to the task force,
6 intergovernment task force, there were numbers
7 there. I can't recall if they just dealt with
8 dielectric only, but I suspect they probably covered
9 the whole range.

10 Certainly in the late '60's, as we
11 started discontinuing, and in the '70's they
12 declined rather rapidly, so, therefore, as the
13 volume went down, clearly, the costs went up.

14 Q. Do you recall when the volume started to go
15 down of PCB production by Monsanto?

16 A. They would have -- if you know or can
17 pinpoint the dates at which we discontinued some
18 plasticizer applications, the PCB-containing
19 Pydrauls, then I think the carbon paper applications
20 got discontinued somewhere along the line. Then we
21 got to the end of '71 and we got out of PCB's.
22 These would be the milestones that I could think of.

23 Q. Do you recall any PCB products that were
24 discontinued by Monsanto between 1966 and the
25 beginning of 1970?

1 A. I thought that when -- oh, '66 and '70.

2 Q. The end of 1969.

3 A. End of 1969. I'm a bit fuzzy in that area
4 because that's about the time I began thinking of
5 transferring to the other job, so I can't recall if
6 I had actually done anything at the end of '69 or
7 getting ready to do something.

8 Q. Do you know whether PCB production at
9 Monsanto increased or decreased between 1966 and the
10 end of 1969?

11 A. That would be sheer speculation on my part.

12 Q. Do you know where Norm Johnson went after
13 he left Monsanto?

14 A. I recall somebody saying he had gone to the
15 Chicago area, but that's all I know.

16 Q. Do you have any idea what kind of job he
17 took then?

18 A. No.

19 Q. Do you know what reasons he gave for
20 leaving Monsanto?

21 A. No.

22 Q. Do you know why he left Monsanto?

23 A. No.

24 MR. BAKER: We move at this time
25 introduction of Plaintiff's Exhibits 2, 67, 100, 102

1 and 104.

2 MR. CHAMBERS: And we have no objection to
3 Plaintiff's Exhibit 2 and 67.

4 We object to Plaintiff's Exhibit 100
5 on the grounds that it deals with Therminol FR heat
6 transfer products, which was a much different
7 application in a different situation than the
8 Pydraul AC product and that, thus, this exhibit
9 isn't relevant to the issues in this case.

10 We also object to Plaintiff's Exhibit
11 102 which, again, deals with the Therminol FR
12 product and not a Pydraul AC product or any
13 PCB-containing Pydraul product and, thus, our
14 position is that this exhibit also is not relevant
15 to the issues in this case.

16 Finally, we also object to Plaintiff's
17 Exhibit 104, which deals with a Pyranol as opposed
18 to a Pydraul product, Pyranol being a dielectric
19 product for a far different application than
20 Pydraul.

21 It would be our position that
22 Plaintiff's Exhibit 104 is also not relevant to the
23 issues in this case. And with respect to all three
24 exhibits, to the extent there's probative value we
25 would contend it's outweighed by other

1 considerations.

2 MR. BAKER: We have no further questions of
3 this witness at this time.

4 MR. CHAMBERS: I have just a few questions
5 I'd like to ask you fairly quickly here, Dr. Paton.

6 CROSS EXAMINATION

7 BY MR. CHAMBERS:

8 Q. We spent a fair amount of time looking at
9 Plaintiff's Exhibit 58, which is the PCB/PCT Action
10 Plan from February of 1972.

11 Let me ask you, before the time --
12 well, this was the plan, was it not, that provided
13 for the draining and flushing of the PCB Therminol
14 FR heat transfer systems?

15 A. Yes.

16 Q. Had there been sales of PCB Therminol heat
17 transfer fluids for the top-up of other heat
18 transfer systems containing Therminol FR products
19 before the PCB/PCT Action Plan was implemented in
20 February of 1972?

21 A. Yes, I think, as I recall, and this policy
22 might have been put in place just before I took over
23 in heat transfer fluids following this fish meal
24 incident and that may not be the exact timing, but I
25 recall that there were directives given that there

1 would be no new fills of PCB-containing Therminols
2 and there would be no makeup or top-up sold for
3 food-related applications, to the extent we could
4 determine they were food-related applications.

5 Top-up would be continued I think in
6 other areas and it was really then later towards the
7 end of '71 that we decided we would stop everything.

8 Q. Did the fish meal incident that you've
9 referred to earlier today lead to litigation and a
10 lawsuit?

11 A. I can't remember that.

12 Q. Are you aware of any litigation that was
13 brought by a Pydraul customer during the period that
14 we've talked about here today, the '68 to '76, '79
15 time frame while you were at Monsanto?

16 A. You're talking specifically in the '68 to
17 '70 --

18 Q. Let me preface that and get you to focus
19 during the period of time that you have dealt with
20 the PCB products. Are you aware of any occasion
21 where a Pydraul customer sued Monsanto?

22 A. I can't recall that.

23 Q. At the time that this PCB/PCT Action Plan
24 was being implemented, the plan that's described in
25 Plaintiff's Exhibit 58, were there still PCB's in

1 the Pydraul fluids that Monsanto was selling?

2 A. To the best of my knowledge, no.

3 Q. And at the time that this plan was being
4 put together and presented and proposed -- and by
5 "this plan" I mean the PCB/PCT Action Plan -- had
6 Monsanto's experience with the PCB heat transfer
7 fluids been the same as its experience with its
8 customers who used the PCB hydraulic fluids?

9 A. I think that from what I can recall of
10 conversations with my colleagues in the Pydraul area
11 that the -- and this, again, is just my recollection
12 of conversations with them, that it seemed as if the
13 transition in the Pydraul area had been less
14 troublesome in the majority of cases because they
15 were still remaining on a fire-resistant fluid.
16 There was less objection, et cetera.

17 In the case of the heat transfer, it
18 was because of the finality as far as the fact that
19 they had to go from a fire-resistant to a
20 non-fire-resistant, so I sensed that there was more
21 adverse customer reaction, more complaining in the
22 Therminol area than in the Pydraul area.

23 MR. CHAMBERS: I don't have anything
24 further.

25 MR. BAKER: Just one more question in

1 conclusion.

2 REDIRECT EXAMINATION

3 BY MR. BAKER:

4 Q. Did you also sense more of the complaining
5 and dissatisfaction in the Therminol area because
6 you were advising those customers to flush out their
7 entire system and totally replace the fluid rather
8 than top it off?

9 A. No, it was the fact that whatever way they
10 went they were going to at some point be faced with
11 the lack of a fire-resistant fluid. We said the FR,
12 the fire-resistant fluid, will not be available any
13 more. That was the real concern.

14 MR. BAKER: I have nothing further.

15

16

17 SIGNATURE OF WITNESS

18

19

Cumming Paton

20

21 Subscribed and sworn before me this _____
22 day of _____, 1992.

22

23

Notary Public

24

25 My Commission Expires:

1 STATE OF MISSOURI)
2) SS
3 CITY OF ST. LOUIS)

4 I, Richard L. Saunders, a Notary Public
5 within and for the State of Missouri, do hereby
6 certify that pursuant to agreement between counsel,
7 there came before me at the office of Husch,
8 Edppenberg, Donohue, Cornfeld & Jenkins, 100 North
9 Broadway, St. Louis, Missouri,

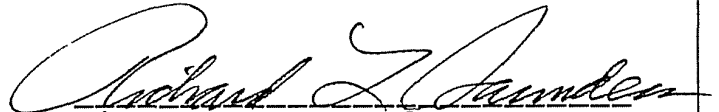
10 CUMMING PATON

11 a witness of lawful age, who was by me first duly
12 sworn to testify to the whole truth touching and
13 concerning the matters in controversy therein; that
14 the witness was examined, and said examination was
15 reduced to machine shorthand by me on that day,
16 between the hours, at the place, and in that behalf
17 first aforesaid, and later transcribed into
18 computer-assisted transcription under my
19 supervision; that the deposition is a true record of
20 the testimony given by the witness, and now is
21 herewith returned.

22 I further certify that I am neither
23 attorney, nor counsel for, nor related to, nor
24 employed by any of the parties to the action in
25 which this deposition is taken; and, further, that I
am not a relative or employee of any attorney or
counsel employed by the parties hereto or
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal on October 20, 1992.

My Commission Expires August 26, 1996.


Richard L. Saunders
Notary Public.