

IN THE MATTER OF:

Transwestern Pipeline Company
vs.
Monsanto Company, et al.

Cause No. BC 026959

Deposition of W.B. Papageorge
November 5, 1992

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1 SUPERIOR COURT
2 FOR THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF LOS ANGELES
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6

7 TRANSWESTERN PIPELINE COPANY,

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9 Plaintiff,

10
11 vs.

NO. BC 026959

12
13 MONSANTO COMPANY AND
14 DOES 1 THROUGH 200 INCLUSIVE,
15

16 Defendants.
17

18 Continued deposition of W.B.
19 PAPAGEORGE, taken on behalf of the
20 Plaintiff, at the offices of Bryan Cave, One
21 Metropolitan Square, in the City of St.
22 Louis, State of Missouri, on the 5th day
23 of November, 1992 before Ronald A. Gore,
24 Registered Professional Reporter and Notary
25 Public.

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1 W.B. PAPAGEORGE,
2 of lawful age, having been first duly sworn
3 to testify the truth, the whole truth, and
4 nothing but the truth in the case
5 aforesaid, deposes and says in reply to
6 oral interrogatories propounded as follows,
7 to-wit:

8 EXAMINATION

9 QUESTIONS BY MR. TALLON:

10 Q: Good morning, Mr. Papageorge.

11 A: Good morning.

12 Q: During calendar years 1970 and
13 1971 did you work with a J.G. Bryant?

14 A: Yes.

15 Q: What was Mr. Bryant's position in
16 1970 and 1971, if there was only one such
17 position?

18 A: I have forgotten the official
19 designation or title, but he was the
20 technical representative in the marketing
21 group located in St. Louis that was
22 involved with the sales of PCB type
23 products to the electrical manufacturing
24 industry.

25 Q: And during the same period did you

1 work with Art Koenig, K-o-e-n-i-g?

2 A: Yes.

3 Q: Do you know what Mr. Koenig's
4 position was during the same time period?

5 A: Yes, sir. He was the accountant
6 assigned to the functional fluids business
7 group.

8 Q: The accountant, meaning that there
9 was just one assigned to that group at that
10 time?

11 A: Well --

12 Q: Or that he was the head of it?

13 A: He was the head of the accounting
14 function that took care of that functional
15 fluids business group's accounting needs.

16 Q: In 1970 and 1971 did Dr. Richard
17 have any responsibility for Pydraul
18 reformulations?

19 A: Yes, he did.

20 Q: Was it, indeed, his ultimate
21 responsibility to supervise that project or
22 series of projects?

23 A: Yes.

24 Q: So far as you know, Dr. Richard
25 had familiarity with the Pydraul product

1 line?

2 A: Yes, he did.

3 Q: Let's mark as -- actually, this
4 is an exhibit already marked in this case,
5 number 750, on October 6, 1992, bearing
6 production number Tran 085106. Just take a
7 moment and review that, please.

8 A: I have read the document.

9 Q: Does this appear to you to be a
10 memorandum from Dr. Richard to C.W. Roos,
11 dated September 20, 1971?

12 A: It does.

13 Q: And Mr. Roos' position in 1971?

14 A: He was the top man in the research
15 department of the organic chemicals
16 division.

17 Q: Was he in some sense Dr. Richard's
18 boss or superior?

19 A: Well, Dr. Richard reported to Mr.
20 Bergen directly, and indirectly to Dr.
21 Roos.

22 Q: Is that indirect reporting
23 function what is sometimes called in
24 corporate America a dotted line reporting?

25 A: That is a typical kind of

1 relationship, yes.

2 Q: In this memorandum Dr. Richard
3 refers to Turbinol 153 as being an
4 exception from the effort to remove all
5 chlorinated biphenyls from Pydrauls?

6 MR. PREUSS: I object to the form,
7 the document speaks for itself.

8 A: Well, it is parenthetically
9 written in here that exceptions to that
10 replacement program included Turbinol and
11 Pydrauls specifically sold to Germany.

12 Q: And the title of this memo
13 is "Pydraul reformulations"?

14 A: That is true.

15 Q: You don't think that Dr. Richard
16 would have included a reference to Turbinol
17 153 in this memo about Pydraul
18 reformulations by mistake, do you?

19 MR. PREUSS: I object to the form,
20 argumentative.

21 A: Well, as in many business
22 relationships there is certain terminology
23 has definite and unique meanings within the
24 community that works with these products,
25 and when Dr. Richard talks to Dr. Roos

1 about Pydrauls, he's really talking about
2 all the products handled by a particular
3 research group. Pydraul, being the
4 overwhelmingly larger activity, is the term
5 used to apply to any activities that that
6 group gets involved with. So the title
7 Pydraul reformulations is almost a generic
8 thing. It does not mean that other
9 products in the group are Pydrauls.

10 Q: So that you would say that the
11 reference to Turbinol 153 in this memo
12 regarding Pydraul reformulations and the
13 specific reference to Turbinol 153 as an
14 exception from the research effort to
15 remove all chlorinated biphenyls from
16 Pydrauls does not connote that Turbinol 153
17 is a Pydraul?

18 A: That is correct.

19 Q: Did you know Larry Bradford?

20 A: Certainly.

21 Q: And Mr. Davidson?

22 A: Yes.

23 Q: And they were in the functional
24 fluids group?

25 A: They were, yes.

1 Q: We're going to have the reporter
2 -- we don't need to mark that, it's
3 already marked. Their function was in
4 marketing?

5 A: Yes.

6 Q: Let me show you a document that's
7 been previously marked as a Deposition
8 Exhibit in this matter, number 865.

9 A: I have reviewed the exhibit.

10 Q: Turn for a moment, if you would,
11 please, Mr. Papageorge, to the page which
12 is numbered at the bottom STR 001825.

13 A: I have it.

14 Q: That's a page titled "Top 20
15 customers for Pydraul"?

16 A: Yes.

17 Q: Have you ever seen that particular
18 page before?

19 A: Yes, I have seen it.

20 Q: That is a list of customers in the
21 left column, followed by a list of products
22 and then a list of 1971 projected sales in
23 terms of pounds and dollars?

24 A: Yes.

25 Q: And the 12th entity identified is

1 Texas Eastern?

2 A: Yes.

3 Q: And the product is Turbinol 153?

4 A: Yes.

5 Q: Does this suggest to you that the
6 marketing people in the functional fluids
7 group treated Turbinol as a Pydraul?

8 MR. PREUSS: Objection, calling for
9 speculation, no foundation.

10 A: There again, as a product of the
11 group which carried the title Pydrauls in a
12 generic fashion in its communications. It
13 still doesn't make that a Pydraul.

14 Q: It doesn't have the name Pydraul?

15 A: That's true.

16 Q: It's called Turbinol?

17 A: It is. And it never appeared in
18 their trade literature and any other
19 references to Pydrauls.

20 Q: However, it is listed -- Texas
21 Eastern is listed as one of the top 20
22 customers for Pydraul, is it not?

23 MR. PREUSS: The document speaks
24 for itself, argumentative.

25 A: It does say that. But that does

1 not make it a Pydraul.

2 MR. TALLON: Turn, if you would,
3 for a moment, Mr. Papageorge, to the page
4 of this particular exhibit which is
5 numbered STR 001829. Actually, a separate
6 memorandum.

7 A: I have it.

8 Q: That appears to you to be a
9 memorandum to Mr. Bradford from Norm
10 Johnson?

11 A: It is.

12 Q: And you had indicated that Mr.
13 Johnson had a sales responsibility in the
14 functional fluids group?

15 A: He was the manager of that group,
16 yes, sir.

17 Q: And he was the person from whom
18 you believe you got information relating to
19 that product, Turbinol 153?

20 A: Yes, sir.

21 Q: And with respect to its use?

22 A: Yes.

23 Q: And this memo from Mr. Johnson to
24 Mr. Bradford dated November 24, 1971 lists
25 accounts which Mr. Johnson apparently felt

1 could require product group participation
2 during the transition to reformulated
3 Pydrauls, correct?

4 **A:** Yes.

5 **MR. PREUSS:** The document speaks
6 for itself.

7 **MR. TALLON:** And one of the
8 customers listed is Texas Eastern
9 Transmission?

10 **A:** That's correct.

11 **Q:** And does that suggest to you that
12 the sales function in the functional fluids
13 group viewed Turbinol 153 as a Pydraul?

14 **MR. PREUSS:** Objection, no
15 foundation, calling for speculation,
16 argumentative.

17 **A:** No. My comments relating to the
18 generic use of the word Pydraul to describe
19 the product line that Mr. Johnson managed
20 applies to this document as well.

21 **MR. TALLON:** Do I take it from that
22 that the product group would generically
23 refer to Turbinol 153 as a Pydraul?

24 **A:** Yes.

25 **Q:** Mr. Papageorge, isn't it the case

1 that Monsanto had a policy of not revealing
2 product composition to customers?

3 A: No, I'm not aware that Monsanto
4 had such a policy.

5 Q: Is it not the case that Monsanto
6 had a policy of refusing to disclose the
7 specific blends in products that it sold?

8 A: I could cite examples of
9 situations where the ingredients of a
10 product were disclosed when requested by
11 the customer or when it was important to
12 the application. There are situations --
13 or there were situations, because of
14 competitive reasons, that the exact
15 formulation was not revealed, because we
16 felt some obligation to keep the
17 information from the competition. On the
18 other hand, as we did that, we recognized
19 that with sophisticated analytical methods
20 available to the larger competitors, it
21 would only be a matter of time before they
22 discovered it, so that policy really was a
23 very loose one, where, in most cases, the
24 ingredients would be divulged when either
25 requested or when it was deemed

1 appropriate.

2 Q: Do you remember testifying in the
3 case of see Cecil Scott versus Monsanto
4 Company in 1987?

5 A: I did.

6 Q: Could you just take a moment to
7 review the transcript of volume 2 of a
8 deposition you gave in that case in May of
9 1987. I'm particularly interested in the
10 testimony appearing on page 379, but please
11 review as much of the context as you wish
12 to in order to familiarize yourself with
13 the context.

14 A: I have read it.

15 Q: During that deposition the
16 attorney propounding the questions to you
17 asked "whether, in fact, Monsanto had a
18 policy of refusing to disclose to even its
19 customers the specific blends in products
20 that it sold, did it not?" That was the
21 question.

22 A: That is right.

23 Q: And your response was "Yes",
24 indicating that Monsanto had a policy of
25 refusing to disclose to even its customers

1 the specific blends in products that it
2 sold, correct?

3 A: The key word there is specifics.
4 We did not tell them it was X percent of
5 ingredient so and so.

6 Q: And the attorney propounding the
7 questions also asked in the next question,
8 "And, in fact, even here as we are in May
9 of 1987, almost ten full years since
10 Monsanto has last manufactured or sold a
11 PCB-containing product, that policy is so
12 strong in your mind that you had doubt
13 about whether to reveal the constituents in
14 one of the PCB-containing Pydraul products,
15 correct?" And you answered "Correct."

16 A: Yes. Again, that refers to
17 ingredients that are added to the mixture
18 to attain certain properties, such as
19 anti-foaming agents added to improve
20 lubricity and all. But the key ingredients
21 -- this does not cover the principal
22 ingredients, up to 99 percent of the
23 product.

24 Q: You didn't note that exception
25 when you gave that testimony, though, did

1 you?

2 A: I was not asked to.

3 Q: Let me show you a document bearing
4 production numbers Tran 06315 through
5 63617, which appears to be a letter to Dr.
6 Herman, dated April 6, 1971 from you.

7 (Deposition Exhibit Number
8 1133 mark'd for identification).

9 A: I have reviewed the document.

10 Q: That is a letter that you wrote to
11 Dr. Herman in April of 1971?

12 A: Yes.

13 Q: And one of the things you
14 explained or reported to Dr. Herman was
15 that as of that date Monsanto's industrial
16 and hydraulic fluids have all been
17 reformulated to exclude PCBs?

18 A: That's what I reported, yes.

19 Q: And what was the reformulation?
20 Was that with 1016?

21 A: In 1971, no. No.

22 Q: Was 1016 used extensively by
23 Monsanto in reformulated products?

24 A: No.

25 Q: Was it the case that Aroclor 1016

1 turned out to have its own toxicity
2 problems?

3 A: That had nothing to do with the
4 reformulation program.

5 Q: Did you determine or learn at some
6 point that there were toxicity problems
7 associated with Aroclor 1016?

8 A: There are with all PCBs. Nothing
9 -- there was no new toxicity information,
10 really.

11 Q: Let me show you a document which
12 is dated September 16, 1971, and bears
13 production numbers Tran 004966 and 4967, a
14 memorandum from C. L. Bradford to you.
15 We'll have that marked.

16 (Deposition Exhibit Number
17 1134 mark'd for identification).

18 A: I have read the document.

19 Q: Is that a memo that Mr. Bradford
20 sent to you in September of 1971?

21 A: It is.

22 Q: Do you, in fact, recall having
23 received it?

24 A: I do.

25 Q: It looks like there is a

1 handwritten notation in the upper
2 right-hand corner indicating "PCB-mktg",
3 which may stand for marketing, do you see
4 that?

5 A: I do.

6 Q: Is that your handwriting?

7 A: It looks like it, yes.

8 Q: Did you have a file in your
9 offices in 1971 titled "PCB marketing"?

10 A: I did.

11 Q: And was that file established to
12 keep track of memoranda or to contain
13 memoranda that related to marketing efforts
14 with respect to PCB based products?

15 A: Yes.

16 Q: On page 2 of the memorandum Mr.
17 Bradford reports to you with respect to an
18 issue relating to Turbinol 153?

19 A: Yes.

20 Q: And Mr. Bradford reported to you
21 that with respect to Turbinol 153, "We do
22 not plan to approach Texas Eastern until we
23 have received approval from General
24 Electric for use of one of our new NC
25 esters in gas turbines"?

1 A: That's true.

2 Q: What, do you know, is meant by the
3 letters NC that appear before the word
4 esters in the last line of that memo before
5 the signature?

6 A: That's one of the phosphate
7 esters, as I recall. That's the Nonnyl,
8 n-o-n-n-y-l, cumyl, c-u-m-y-l. I'm not
9 certain of the spelling. But it's that new
10 phosphate ester that was being developed.

11 Q: And, to your knowledge, did Mr.
12 Bradford or anyone working for him discuss
13 the use of esters as lubricants in G.E. gas
14 turbines with G.E.?

15 A: Yes.

16 Q: And when, to the best of your
17 knowledge, did such discussions initiate?

18 A: I don't know that I ever knew the
19 exact date. It had to be sometime after
20 the middle of 1971.

21 Q: And what is the basis for your
22 statement that it had to be sometime after
23 the middle of 1971?

24 A: Well, earlier in 1971 the research
25 work on the new phosphate esters was

1 getting well under way, to the point where
2 some of the phosphate esters were being
3 looked upon as potentially suitable, and
4 it's only when you have that kind of
5 information would the research individuals
6 be ready to propose further testing. And
7 since this occurred in the early part of
8 '71, no one would have been in a position
9 to speak to General Electric until several
10 months later. That's how I arrive at that
11 date.

12 Q: Just for a point of elaboration,
13 why is it that you say that no one would
14 have been in a position to speak to General
15 Electric until several months later?

16 A: Well, the discussion which would
17 take place with a company like General
18 Electric would require the spokesman for
19 Monsanto to know quite a bit about the
20 alternative material, regarding what it is,
21 and how much of it is in the proposed
22 mixture, how it tested in the laboratory,
23 did it meet the fire resistance needs.
24 These kinds of things had to be developed,
25 and it does take time. It isn't enough

1 just to be able to make the phosphate ester
2 in the laboratory and then run to General
3 Electric and say we've got a phosphate
4 ester. They're going to say what do you
5 know about it.

6 Q: Did Mr. Bradford meet with General
7 Electric to discuss the use of NC esters in
8 gas turbines?

9 A: I don't know if Mr. Bradford
10 personally did.

11 Q: Do you know if someone working
12 with or for Mr. Bradford did so?

13 A: Someone in Mr. Johnson's group
14 did, along with someone from the research
15 department, Dr. Richard's group.

16 Q: Do you know who those people were?

17 A: I do not.

18 Q: Do you know if one of them was
19 Roger Hatton?

20 A: I do not know.

21 Q: And do you know if one of them may
22 have been Lou Shoeff?

23 A: I don't know.

24 Q: And to the best of your
25 recollection, when did those someones meet

1 with representatives of General Electric?

2 A: Latter part of '71.

3 Q: Your understanding was that
4 Monsanto was looking at replacing the PCB
5 content of Turbinol 153 with an ester?

6 A: That was the objective, yes.

7 Q: And it was determined that before
8 the product could be offered to Texas
9 Eastern General Electric would have to
10 approve it for its use in General Electric
11 manufactured turbines?

12 A: I don't know that General Electric
13 had necessarily to approve it, but we felt
14 it would be to our advantage to have their
15 endorsement, that this product does work
16 well in the equipment they designed and
17 sold.

18 Q: When you use the term "to our
19 advantage", do you mean that having General
20 Electric's endorsement would make the
21 product more saleable?

22 A: Certainly.

23 Q: Now, we had touched briefly on a
24 product that you referred to as Santovac,
25 or Santovac line?

1 A: Yes.

2 Q: Those were products used in vacuum
3 pumps?

4 A: Yes.

5 Q: And is it your understanding that
6 the vacuum pumps used small amounts of the
7 Santovac product in their operations?

8 A: Yes.

9 Q: Do you know, in fact, whether the
10 vacuum pumps were considered by Monsanto to
11 be small users, using from one pint to five
12 gallons per pump?

13 A: That sounds right, yes.

14 Q: And was it also your understanding
15 that the vacuum pumps are under negative
16 pressure so that there was no leakage?

17 A: That's my understanding.

18 Q: And what do you understand the
19 term negative pressure to mean?

20 A: That means that the pressure on
21 the liquid is such that it will not be
22 pushed up into the environment, but, in
23 essence, sucked into the system and
24 maintained, or retained in the system.

25 Q: Let me show you a document which

1 bears production numbers Tran 090534
2 through 543, and is dated November 10,
3 1970, which we'll have marked.

4 (Deposition Exhibit Number
5 1135 mark'd for identification).

6 A: I have reviewed the exhibit.

7 Q: The exhibit is one of your
8 periodic PCB environmental problem status
9 reports?

10 A: It is.

11 Q: And this particular one is the
12 October 1970 status report?

13 A: It is.

14 Q: And this is one of those reports
15 that you put together for circulation to
16 the group of interested constituents?

17 A: Yes.

18 Q: That's your signature on the last
19 page?

20 A: Yes.

21 Q: And the discussion -- a portion
22 of the discussion on the first page relates
23 to marketing?

24 A: Yes.

25 Q: And, in particular, there is a

1 discussion there regarding the use of the
2 Santovac line of products?

3 A: Yes.

4 Q: Santovac I and Santovac II?

5 A: Yes.

6 Q: There is a sentence there that
7 reads, "the typical pump will use the same
8 charge for one to two years", do you see
9 that?

10 A: Yes.

11 Q: Does charge mean to you the
12 initial fill of the unit in question?

13 A: Well, there is an initial, then
14 there is subsequent fills. Each one is a
15 charge in itself. Just like the oil in
16 your car.

17 Q: The use of the term same charge,
18 what does that indicate to you?

19 A: That the material added to the
20 unit is retained in that unit for one to
21 two years.

22 Q: Is it the case that the sales of
23 Santovac were somewhat limited because
24 there were low replacement sales?

25 MR. PREUSS: I object to the form

1 of the question, it's ambiguous as to what
2 you mean by somewhat limited.

3 A: That's one of the factors that
4 lead to the volume consideration. The
5 other is the number of vacuum pumps in
6 service that use this material. Of course,
7 the amount per fill is relatively low when
8 you compare it to other uses. So, the
9 answer to your question, it is a factor in
10 determining the level of activity in that
11 kind of business.

12 MR. TALLON: In your answer you
13 indicated that the number of pumps in
14 service would be a factor in the sales of
15 the product, correct?

16 A: Yes.

17 Q: So that if new pumps were added,
18 conceivably sales would increase?

19 A: If the operator of that pump
20 decided to use the PCB fluid. There are
21 other fluids in the marketplace.

22 Q: If an operator decided to use the
23 Monsanto product, then putting new pumps on
24 line and using the Monsanto product in
25 those pumps would relate in greater sales

1 of the Santovac products?

2 A: Certainly.

3 Q: And once a pump was filled with
4 the Monsanto product, the call for
5 replacement fluid was low?

6 A: Low when compared to all the PCB
7 business, certainly.

8 Q: By the way, just one other
9 question in relation to Mr. Bradford's memo
10 to you of September 16, 1971. He's
11 referring in that last paragraph on page 2
12 to General Electric turbines?

13 A: Well, I see the reference to
14 General Electric and separately to gas
15 turbines. I can only assume they're
16 talking about turbines manufactured by
17 General Electric.

18 Q: And did you have an understanding
19 of what Mr. Bradford meant when he referred
20 to a turbine in that sentence?

21 A: I believe I did, yes.

22 Q: And is it your understanding that
23 a turbine is roughly similar in concept to
24 a jet engine?

25 A: Yes, that's my understanding.

1 Q: Let me show you a document, Mr.
2 Papageorge, which is a memorandum dated
3 November 17, 1971 and bears production
4 numbers Tran 5029 through Tran 5032. We'll
5 ask the court reporter to mark that and
6 then give you a moment to look at it.

7 (Deposition Exhibit Number
8 1136 mark'd for identification).

9 A: I have read the document.

10 Q: Does that appear to you to be a
11 memo from Messrs. Bradford and Johnson to
12 to Tom Gossage, dated November 17, 1971?

13 A: It's a copy of it, yes.

14 Q: Have you seen that before?

15 A: Yes.

16 Q: And when do you recollect having
17 seen it before?

18 A: I saw this in relationship to a
19 legal matter.

20 Q: This legal matter?

21 A: No.

22 Q: Another legal matter?

23 A: Another, yes.

24 Q: Did you see it in 1971?

25 A: No.

1 Q: Do you know approximately the year
2 in which you saw this document before?

3 A: About 1986.

4 Q: What legal matter was that?

5 A: This was a case involving
6 hydraulic fluids, Pydrauls.

7 Q: Was Monsanto a party to that case?

8 A: Yes.

9 Q: And you testified on behalf of
10 Monsanto?

11 A: Yes.

12 Q: Did you ever discuss with
13 either -- with any of Messrs. Gossage,
14 Bradford or Johnson the effect of
15 withdrawal of Turbinol 153 on customers for
16 that product?

17 MR. PREUSS: At or about November
18 of 1971?

19 MR. TALLON: Well, let's take the
20 general question first, and then we can
21 narrow it down. There is no time limit on
22 that question.

23 A: I understand. I had discussions
24 with Mr. Johnson and members of his group
25 regarding the impact on customers of

1 alternative materials. I don't recall that
2 the discussions were specific to any
3 particular product or to any particular
4 customer. It was the general discussion of
5 the hardships that these changes would
6 create and the need to do it responsibly,
7 that type of discussion.

8 Q: Do you recall any discussion with
9 Mr. Bradford or anyone working with or for
10 him about the effect of Turbinol 153 on
11 Texas Eastern Gas Transmission?

12 A: I recall we did touch on it and I
13 recall that just a general comment was made
14 that this would be quite disturbing to
15 Texas Eastern and might be difficult to do.

16 Q: Do you recall anything else about
17 that communication or series of
18 communications?

19 A: That's all I recall.

20 Q: And does reading the two
21 paragraphs on the bottom of the first page
22 of this memorandum or the first paragraph
23 on the top of the page of the second
24 refresh your recollection as to any
25 additional comments made by Mr. Bradford or

1 others on that same subject?

2 MR. PREUSS: To him?

3 MR. TALLON: To him.

4 A: No. The paragraphs you point out
5 get into detail that I did not get into
6 with -- during my discussions.

7 Q: Was it your understanding that the
8 difficulty that could be caused to Texas
9 Eastern was a potential shutdown of the
10 pipeline?

11 A: Well, that was certainly one of
12 them.

13 Q: Did you know a Carl Clay?

14 A: Yes.

15 Q: And what was Mr. Clay's position?

16 A: Mr. Clay was a Monsanto field
17 salesman.

18 Q: In the functional fluids group?

19 A: He sold functional fluids. I
20 believe he also sold other Monsanto
21 products as well.

22 Q: Do you know what his region or
23 area of responsibility was? I mean,
24 geographical.

25 A: The central part of the country is

1 as close as I can come.

2 Q: Do you know if Mr. Clay's area of
3 responsibility included Texas?

4 A: Yes. Yes, down in there.

5 Q: Let me show you a document that
6 bears production numbers Tran 002552 and
7 53, which I'll ask the court reporter to
8 mark.

9 (Deposition Exhibit Number
10 1137 mark'd for identification).

11 A: I have read the exhibit.

12 Q: Was Texas Eastern Transmission one
13 of Mr. Clay's customers?

14 A: Yes.

15 Q: Was it the responsibility of
16 Monsanto sales representatives to know
17 quite a bit about the operation of the
18 customers they serviced?

19 MR. PREUSS: I object as vague and
20 ambiguous.

21 A: Well, we hoped that they could
22 learn as much as they could.

23 MR. TALLON: The principle there is
24 that sales representatives should know
25 customers and operations in order to help

1 them better to use the Monsanto product,
2 right?

3 A: That is one of the principles,
4 yes.

5 Q: And the knowledge of the salesman
6 about the customer's operations would
7 enhance the possibility of the customers
8 continuing to use a Monsanto product,
9 right?

10 A: That is one hoped for result, yes.

11 Q: And you would say that most
12 Monsanto sales representatives were quite
13 familiar with the operations of their
14 customers?

15 A: That's been my experience, yes.

16 Q: Did you get this memorandum which
17 has now been marked as an exhibit from Mr.
18 Garrett?

19 A: Yes.

20 Q: And did you reply to this
21 memorandum in writing?

22 A: I did not.

23 Q: Did you speak with Mr. Garrett
24 about the subjects raised in this
25 memorandum?

1 A: Yes.

2 Q: Was it your understanding that Mr.
3 Garrett was asking for your guidance on how
4 to respond to an inquiry from Texas Eastern
5 regarding the toxicity of Turbinol 153?

6 A: Yes.

7 Q: And did you give Mr. Garrett a
8 response on how to deal with that question?

9 A: Yes.

10 Q: What was your response?

11 A: I told him to be open, tell them
12 all we knew.

13 Q: Do you know if Mr. Garrett went
14 forward and had discussions with Texas
15 Eastern or if Mr. Clay did?

16 A: It's my understanding Mr. Clay
17 did, as informed and coached by Mr.
18 Garrett.

19 Q: Did someone report that to you?

20 A: Certainly.

21 Q: Who?

22 A: Mr. Garrett.

23 Q: When?

24 A: Oh, several weeks later.

25 Q: During 1970 was it a practice of

1 the sales function in the functional fluids
2 group to create call reports of the
3 contacts such as the one you described
4 between Mr. Clay and Texas Eastern?

5 A: The preparation of a call report
6 was left up to the judgment of the
7 salesman.

8 Q: During the time that you were --
9 you took on your new position, as of
10 January 1, 1970, did you deem it important
11 to make a record of contacts with customers
12 seeking information about PCB toxicity and
13 environmental pollution?

14 MR. PREUSS: Are you talking about
15 contacts to him?

16 MR. TALLON: No. I'm asking him
17 whether after he took on his position in
18 1970 he thought it was important in general
19 for Monsanto employees to make a written
20 record of contacts they had with customers
21 regarding PCB toxicity or environmental
22 contamination?

23 A: I didn't place any particular
24 importance on that discussion any more than
25 I did on environmental issues or all the

1 other matters that come up with products.
2 I did not give it that particular degree of
3 emphasis.

4 Q: Isn't it the case that the
5 corporate management committee directed in
6 1970 that communications with clients about
7 PCB toxicity and environmental pollution be
8 in writing?

9 A: The corporate management committee
10 was referring to the general mailings
11 common to all the customers of PCB
12 products. That was not intended to apply
13 to the day-to-day contacts that were made
14 either by salesmen personally or over the
15 telephone, by not only salesmen, but
16 researchers and medical department staff
17 and me and so on.

18 Q: Have you ever seen any written
19 report of communications that Mr. Clay had
20 with Texas Eastern on the subject of PCB
21 toxicity?

22 A: I don't remember. I'd have to see
23 the document to refresh my memory. I just
24 don't recall.

25 Q: Let me show you a document, Mr.

1 Papageorge, bearing production numbers Tran
2 003508 through 3511, which we'll ask the
3 court reporter to mark.

4 (Deposition Exhibit Number
5 1138 mark'd for identification).

6 A: I have read the exhibit.

7 Q: Can you identify that exhibit,
8 please?

9 A: The exhibit is a copy of a monthly
10 marketing report prepared by Mr. T.L.
11 Gossage, addressed to Mr. H.S. Bergen,
12 distributed to a list of other recipients.

13 Q: And Mr. Gossage's position at that
14 time?

15 A: He was director of marketing for
16 the specialty products group of Monsanto.

17 Q: The specialty products group had
18 been formed in January of 1971, or named in
19 January of '71?

20 A: That's about right, yes.

21 Q: On the first page of the memo,
22 under the caption "hydraulics and
23 lubricants", there is a reference to
24 Columbia Gulf Transmission, do you see
25 that?

1 A: I do.

2 Q: It indicates that Columbia Gulf
3 Transmission ordered fifty thousand dollars
4 worth of Turbinol 153?

5 A: It does.

6 Q: Did you ever hear of the
7 experience that Columbia Gulf Transmission
8 had with the use of Turbinol 153?

9 A: I'm not aware of what you're
10 referring to.

11 Q: Did you ever hear that after
12 selling Turbinol 153 to Columbia Gulf,
13 Monsanto representatives visited the
14 facilities of Columbia Gulf?

15 A: I did not hear that. I assume
16 they did.

17 Q: Did you ever hear that Roger
18 Hatton had visited a facility of Columbia
19 Gulf?

20 A: I did not.

21 Q: Did you ever hear that Columbia
22 Gulf experienced leakage of Turbinol 153
23 into their pipeline?

24 A: I did not.

25 Q: What was the reason for the

1 adoption of the nomenclature Specialty
2 Products in January of '71?

3 A: As I recall, Monsanto had a
4 reorganization of their business groups and
5 reassigned the product lines, and someone
6 decided that functional fluids was too
7 limited in the description of the total new
8 product line and they adopted the specialty
9 products designation. I don't know who did
10 that.

11 Q: You did receive a copy of this
12 memorandum, by the way, in October of 1971?

13 A: Yes, sir.

14 Q: The distribution on the first page
15 of the memo, it's actually a distribution
16 sheet, are those gentlemen all members of
17 the specialty products group at that time,
18 or employees working in that group?

19 A: Not all of them.

20 Q: Is there any organizing principle
21 that you perceive behind this
22 organizational -- or, rather, list of
23 recipients?

24 A: These are individuals within
25 Monsanto, world-wide, associated with the

1 product lines represented by the specialty
2 product group.

3 Q: There is a series of letters and
4 numbers before your name on the
5 distribution list, B28K; is that a
6 designation of where you were officed?

7 A: Yes.

8 Q: What does that signify?

9 A: It's the B building, second floor,
10 mailing zone SK.

11 Q: I thought that was an 8. And the
12 B building is located somewhere in St.
13 Louis?

14 A: It's at the headquarters of
15 Monsanto Company in St. Louis County.

16 Q: And what's the area known as?

17 A: It's the City of Creve Coeur,
18 Missouri.

19 Q: Let me show you a document which
20 is a one page memorandum dated November 16,
21 1971 from T.L. Gossage to C.P. Cunningham.
22 It has production number Tran 005156. And
23 we're going to ask the court reporter to
24 mark that as the next exhibit.

25 (Deposition Exhibit Number

1 1139 mark'd for identification).

2 A: I've read the exhibit.

3 Q: Can you identify that?

4 A: This is a memorandum, Monsanto
5 memorandum from Mr. T.L. Gossage to Mr.
6 C.P. Cunningham, dated November 16, 1971 on
7 the subject of Aroclor approved customer
8 list.

9 Q: And you are noted as a copyee?

10 A: Yes.

11 Q: And you received a copy of this?

12 A: I did.

13 Q: What was C.P. Cunningham's
14 position in November of 1971?

15 A: He was a vice-president and the
16 managing director of the operating unit of
17 Monsanto which included the PCB products.

18 Q: So he was a senior fellow?

19 A: Yes.

20 Q: And did your copy of the
21 memorandum, that is to say, the copy of the
22 memorandum you received in November 1971
23 have the handwritten note on it?

24 A: No, it did not.

25 Q: Did you know an employee of

1 Monsanto in November 1971 who was referred
2 to as Wink?

3 A: I did.

4 Q: Who was that?

5 A: That's -- I believe it's W.C.
6 Corey.

7 Q: What was Mr. Corey's position
8 relative to Mr. Cunningham?

9 A: At that time Mr. Corey was the
10 director of administration for that
11 operating unit.

12 Q: He reported to Mr. Cunningham?

13 A: He did.

14 Q: Did you ever have a discussion
15 with Mr. Cunningham or Mr. Corey about the
16 subject of this memo?

17 A: I don't recall any.

18 Q: Do you ever recall a discussion
19 with Mr. Corey or Mr. Cunningham about any
20 holes in the Aroclor approved customer
21 list?

22 A: I don't recall such a discussion.

23 Q: There was an Aroclor approved
24 customer list in November 1971?

25 A: Yes.

1 Q: And when was that first -- that
2 list first initiated?

3 A: I know they were working on it
4 late summer '71, putting it together.

5 Q: You had approval authority with
6 respect to that list, which is to say, you
7 could approve or withhold approval for
8 sales to a particular customer?

9 A: Or to a new customer, yes.

10 Q: And did you approve placing Texas
11 Eastern Transmission Corporation and/or
12 Columbia Gulf Transmission Company on the
13 approved customer list?

14 A: Yes.

15 Q: When did you do so?

16 A: Sometime when these lists were
17 prepared in '71. I don't recall the exact
18 date.

19 (Recess).

20 MR. TALLON: Before concluding that
21 Texas Eastern was an approved customer for
22 the purchase of Turbinol 153, did you have
23 any discussions with any Monsanto employees
24 about the use of the product?

25 A: Yes, I did.

1 Q: With whom did you have such
2 discussions?

3 A: Norm Johnson.

4 Q: Were these discussions in addition
5 to the discussions about which you have
6 already testified?

7 A: These discussions were really a
8 review of past information.

9 Q: Were others participants in those
10 discussions besides yourself and Mr.
11 Johnson?

12 A: I don't recall anyone else being
13 in the office, no.

14 Q: Did Mr. Johnson provide you
15 information about the use to which Turbinol
16 153 was put by Texas Eastern?

17 A: I already knew it by this time.

18 Q: Did he provide you any additional
19 information, information you had not
20 already known?

21 A: No. It was just a reassurance
22 that the customer was fully tuned in, that
23 they were a responsible, sophisticated
24 operation, knowledgeable about handling
25 dangerous materials, the system is a closed

1 system by our understanding and
2 definition. That type of discussion was
3 held.

4 Q: Did you review any sales figures
5 with Mr. Johnson at that time to determine
6 how much Turbinol had been ordered by Texas
7 Eastern?

8 A: I don't recall doing that, no.

9 Q: Did you ask Mr. Johnson to explain
10 to you whether or not there were any
11 opportunities for the Turbinol to leak from
12 the system in which it was used by Texas
13 Eastern?

14 A: We discussed the control for
15 escape to the environment, yes, and he
16 assured me that things were in order.

17 Q: Did he use that phrase, that
18 things were in order, or --

19 A: No, that's my perception of the
20 total of all the inputs he gave me. And I
21 don't remember all the exact words.

22 Q: Do you remember what he said that
23 suggested to you that things were in order?

24 A: Well, that the handling of the
25 materials that contained PCBs was being

1 done responsibly, that they knew^o about the
2 environmental issue, that they were taking
3 steps to properly dispose of the material.
4 And as far as he was concerned, he
5 recommended that the customer be supplied
6 with the material, since they were
7 responsible and that the safety features of
8 the product were required.

9 Q: Did you and Mr. Johnson discuss
10 the availability of any substitute products
11 for use by Texas Eastern at that time,
12 whether or not those products were
13 manufactured or sold by Monsanto?

14 A: He informed me that there was no
15 known alternative material at the time.

16 Q: Do you know if Texas Eastern began
17 to use an alternative material after
18 Monsanto discontinued sales of Turbinol to
19 Texas Eastern?

20 MR. PREUSS: At what point in
21 time?

22 MR. TALLON: After Texas Eastern
23 -- after Monsanto ceased to sell
24 Turbinol.

25 MR. PREUSS: At any point after?

1 **MR. TALLON:** Yes.

2 **A:** I was informed that -- after
3 that, there was a phasing in of some
4 alternative material. I was not -- I do
5 not recall being told what that alternative
6 material was.

7 **Q:** And was it your understanding that
8 the alternative material was provided by
9 another company?

10 **A:** Yes.

11 **Q:** Have you ever heard of a product
12 called Fyrquel?

13 **A:** I've heard the trade name, yes.

14 **Q:** And Monsanto had conducted some
15 tests on Fyrquel products in 1971 and 1970?

16 **A:** I don't recall that. They could
17 well have, I just don't remember.

18 **Q:** When you used the term responsibly
19 to describe the usage as described to you
20 by Mr. Johnson, what do you recall Mr.
21 Johnson saying to you that led you to
22 conclude that the use was responsible?

23 **A:** Just they're not letting it get
24 away from them, or some such words. Get
25 into the environment.

1 Q: Was it your understanding that no
2 leaks occurred during the course of Texas
3 Eastern's use of the product?

4 A: I wouldn't say no leaks.

5 MR. PREUSS: Right now? What point
6 in time?

7 MR. TALLON: Then.

8 A: During the discussion?

9 Q: Yes. Well, you had said that you
10 recalled Texas Eastern being put on the
11 approved customer list at some point when
12 the lists were created?

13 A: Yes.

14 Q: Which I think, in turn, you
15 identified as being some point during mid
16 1971. And now I'm inquiring whether it was
17 your understanding at the time from
18 discussions with Mr. Johnson that no leaks
19 occurred or some leaks occurred or
20 something else, whether you had no
21 understanding?

22 A: I had an understanding that on
23 occasion a leak would occur. But I was
24 also definitely left with the impression
25 that those leaks were managed properly in

1 terms of cleaning up, controlling, so they
2 didn't get into the environment in
3 general. They may have contaminated a
4 spot, but I was left with the impression
5 that situation would be cleaned up and
6 corrected.

7 Q: Did Mr. Johnson indicate to you
8 that the Turbinol had leaked into the gas
9 pipelines operated by Texas Eastern?

10 A: Well, there was Turbinol in the
11 condensate, or the liquid that was removed
12 from the system along the route of the
13 system, so, yes, he indicated that Turbinol
14 was getting into the gas stream.

15 Q: What is the basis of your
16 statement that you thought that Texas
17 Eastern was aware of the environmental
18 issue, I think is the term that you used?

19 A: I was led to believe from our --
20 from my discussions that the
21 representatives of Texas Eastern were well
22 tuned into the PCB environmental issue, the
23 fact that PCBs were in the Turbinol and the
24 need to prevent it from getting into the
25 environment. I don't know how else to

1 describe that. He assured me they were
2 dealing with individuals within Texas
3 Eastern who understood these kinds of
4 things.

5 Q: These kinds of things being what?

6 A: Technical matters. So they were
7 people who were -- who had the necessary
8 training and background to understand
9 technical terms.

10 Q: Did you understand that Mr.
11 Johnson was dealing with chemists at Texas
12 Eastern, or chemical engineers?

13 A: I'm going to suggest that a better
14 word, from my perspective, technically
15 trained people. They might have been
16 engineers, they might have been chemists.

17 Q: Do you have a specific
18 recollection of Mr. Johnson telling you
19 that he was dealing with chemists or
20 chemical engineers at Texas Eastern?

21 A: I don't recall the specific
22 reference to those two types of
23 professionals.

24 Q: In any of the discussions that
25 you've been describing with Mr. Johnson,

1 did Mr. Johnson make a specific reference
2 to Transwestern Pipeline Company as
3 contrasted with Texas Eastern Transmission
4 Company?

5 A: I never heard of Transwestern.
6 The only Transwestern I'm familiar with was
7 a trucking firm.

8 Q: You indicated as part of your
9 answer a moment ago that you were told that
10 Texas Eastern was aware that there were
11 PCBs in the material. Is that something
12 that Mr. Johnson told you?

13 A: Yes.

14 Q: And did he indicate to you the
15 source of his knowledge for that statement?

16 A: Well, he led me to believe that he
17 personally had discussions on this issue,
18 and that the -- that the members of his
19 team in their contacts had discussed it.
20 It was not just a one time discussion, it
21 happened periodically, sort of update
22 sessions, is what I was led to believe, as
23 well as the field salesman.

24 Q: The field salesman had discussions
25 with Texas Eastern about which Mr. Johnson

1 was telling you?

2 A: Yes.

3 Q: And by the way, we've been talking
4 about this communication that you had with
5 Mr. Johnson, are you referring to one
6 discussion or more than one discussion?

7 A: Oh, more than one. But I don't
8 know how many.

9 Q: I'm referring now to the
10 particular period during 1971 when you put
11 Texas Eastern on the approved customer
12 list. During that time period you're
13 referring to one discussion or more than
14 one discussion?

15 A: I'm referring to the one
16 discussion at that time with Mr. Johnson,
17 who, in turn, reviewed the whole situation
18 as it evolved through several months prior
19 to.

20 Q: Is there -- rather, do you have
21 any ability to recollect now approximately
22 how long the conversation that you had with
23 Mr. Johnson lasted back in 1971?

24 A: Oh, gosh, I really don't recall
25 the timing. It was -- I just don't

1 remember. It was not half a day kind of
2 session, by any means. An hour or less is
3 my best recollection.

4 Q: Did you ever see a call report
5 from any meeting between Monsanto
6 representatives and Texas Eastern
7 representatives regarding Monsanto's
8 decision to cease sales of Turbinol to
9 Texas Eastern?

10 A: I believe I saw a copy of a call
11 report here Monday of this week the first
12 time. I believe it was in that collection
13 of documents.

14 Q: In other words, in connection with
15 this deposition?

16 A: Yes, sir.

17 Q: And other than that call report,
18 did you see any call reports indicating to
19 you that there had been discussions between
20 Monsanto representatives and
21 representatives of Texas Eastern in
22 connection with the PCB content of Turbinol
23 153?

24 A: No.

25 Q: Had you seen any call reports

1 which reflected discussions between
2 Monsanto representatives and
3 representatives of Texas Eastern with
4 respect to the issues created by the fact
5 of PCBs in the environment?

6 A: I did not.

7 Q: Did you inquire of Mr. Johnson to
8 undertake any additional analysis or study
9 to determine whether the Texas Eastern use
10 of Turbinol 153 was, in fact, a closed use
11 in the summer of '71 or at any point during
12 1971?

13 A: Did I ask Mr. Johnson to
14 re-study?

15 Q: Yes.

16 A: No.

17 Q: Did you also approve Columbia Gulf
18 Transmission Company as an approved
19 customer on the Aroclor approved customer
20 list?

21 A: Yes, sir.

22 Q: And was that on the basis of
23 discussions that you had with some other
24 Monsanto employee or employees?

25 A: Yes.

1 Q: And was that also Mr. Johnson?

2 A: Yes.

3 Q: Was that discussion the same
4 discussion that you've just been describing
5 with respect to Texas Eastern, that is to
6 say, did it take place at the same time?

7 A: Yes, sir.

8 Q: Were you aware that the business
9 unit at Monsanto wanted to continue to sell
10 Turbinol 153 to both Texas Eastern and
11 Columbia Gulf at the time that you put them
12 on the approved list?

13 A: Yes.

14 Q: Were you aware that the business
15 unit was concerned that if sales to Texas
16 Eastern were terminated that that could
17 result in cessation of gas transmission by
18 Texas Eastern?

19 A: That thought was shared with me,
20 yes.

21 Q: Shared with you by Mr. Johnson?

22 A: By Mr. Johnson.

23 Q: Did you share the thoughts that
24 Mr. -- Or the information that Mr. Johnson
25 gave you about Turbinol with Mr. Bergen, or

1 anyone senior to Mr. Bergen?

2 A: No.

3 Q: You are aware that there came a
4 time when Monsanto ceased selling Turbinol
5 to Texas Eastern?

6 A: I am aware, yes.

7 Q: And are you also aware that
8 Monsanto solicited a hold harmless letter
9 from Texas Eastern?

10 A: Yes.

11 Q: And by that term hold harmless, I
12 mean that you are aware that Monsanto
13 offered to continue to sell Turbinol to
14 Texas Eastern for a period if Texas Eastern
15 would agree to hold Monsanto harmless from
16 any legal liability associated with the use
17 of that product?

18 A: That's my understanding.

19 Q: You believe that Texas Eastern was
20 placed on the Aroclor approved customer
21 list at some point during 1971, and perhaps
22 during the summer, is that right?

23 A: Yes.

24 Q: And you are aware that Monsanto
25 discontinued sales of the product to Texas

1 Eastern at the beginning of 1972?

2 A: Yes.

3 Q: Let me be more precise about
4 that. You are aware that at the beginning
5 of 1972 Monsanto announced to Texas Eastern
6 that it was going to discontinue sales of
7 the product to Texas Eastern?

8 A: That is correct.

9 Q: That fact is reflected in the call
10 report that you looked at on Monday?

11 A: Yes.

12 Q: What changed between the time that
13 Texas Eastern was put on the approved
14 customer list and the time that Monsanto
15 made the decision to discontinue sales of
16 the product to Texas Eastern?

17 A: I personally don't know what
18 management was thinking in late 1971.

19 Q: Do you have any understanding --
20 I'm sorry, I thought you were finished.

21 A: I'm finished.

22 Q: Okay. Do you have any
23 understanding as to the reasons why a
24 decision was made at some point before
25 January of 1972 to discontinue sales of the

1 Turbinol product to Texas Eastern and
2 others?

3 A: Well, the discontinuation was
4 based on the lack of any agreement between
5 Monsanto and its customers regarding the
6 hold harmless arrangement that we discussed
7 earlier here.

8 Q: Is it your understanding that
9 Monsanto would have continued to sell
10 Turbinol to Texas Eastern or other
11 customers if those customers had furnished
12 hold harmless letters to Monsanto?

13 A: That's my understanding.

14 Q: And that in the absence of any
15 such an agreement between Monsanto and the
16 customer, Monsanto would not do so?

17 A: Yes. Exactly as they did with the
18 electrical use.

19 Q: Do you know at what time the
20 decision was made to seek such an agreement
21 with Texas Eastern?

22 A: Sometime in January or February of
23 '72 is the best I can recall.

24 Q: When, to your knowledge, was the
25 first time that a dielectric customer

1 furnished Monsanto with a hold harmless
2 agreement?

3 A: I'm certain it was in January.
4 There may have been an agreement signed in
5 late December.

6 Q: Of what year?

7 A: December '71 or January '72.

8 Q: Do you have an understanding as to
9 the reasons for the decision to solicit
10 those letters from Texas Eastern or other
11 Turbinol customers in January 1972?

12 A: I do not.

13 Q: You were not part of the
14 decision-making process that led to that
15 action on the part of Monsanto?

16 A: That is correct.

17 Q: You were informed simply that in
18 the absence of obtaining such a letter
19 sales would be discontinued?

20 A: Yes.

21 Q: And at what point were you so
22 informed?

23 A: Just before the Christmas holidays
24 in December of '71.

25 Q: Did you inquire as to the reason

1 that Monsanto was to take that position?

2 A: Yes, I did.

3 Q: What were you told?

4 A: That we were very interested in
5 making certain that the customer and its
6 representatives understood the seriousness
7 of PCB in the environment, and in order to
8 assure ourselves, Monsanto, that the proper
9 activities were being conducted, we wanted
10 the customer's high officials to be aware
11 of this concern, and one way to get them is
12 to have them sign such an agreement to make
13 certain that they would provide the
14 necessary leadership, money and manpower,
15 whatever it took to do the job properly.
16 That was one of the objectives of such an
17 agreement. The other, of course, was the
18 legal protection that Monsanto felt that it
19 deserved under those conditions.

20 Q: Is it fair to state that at the
21 end of 1971 Monsanto perceived that the
22 continued sales of a product containing
23 Aroclor 1242 posed a risk to Monsanto?

24 A: Certainly.

25 Q: And is it also fair to say that

1 soliciting hold harmless letters from
2 customers for PCB based products was a way
3 to shift risk to the customers away from
4 Monsanto?

5 A: Well, certainly, that is achieved
6 by such an agreement.

7 Q: By the way, did you testify to
8 Congress in 1974 about the uses and other
9 issues related to PCBs?

10 A: I believe it was 1974, yes, sir.

11 Q: And in that testimony did you not
12 tell Congress that one of the uses for PCBs
13 was as a lubricating fluid in gas turbines?

14 A: I did.

15 Q: By the way, did you ever find out,
16 or -- yes, did you ever find out what Mr.
17 Cunningham meant when he referred to holes
18 in his handwritten note on Exhibit 1139?

19 A: I did not.

20 Q: Did you ever solicit an
21 explanation from anyone as to what Mr.
22 Cunningham meant by his term -- use of the
23 term holes?

24 A: Well, I was not aware of the
25 reference to holes, so --

1 Q: So, naturally, you didn't ask?

2 A: I didn't ask, therefore, I didn't
3 find out.

4 Q: You had said a moment ago in
5 describing your conversations with Mr.
6 Johnson that one of the things that Mr.
7 Johnson told you was that Texas Eastern was
8 aware of the issues relating to PCBs in the
9 environment, is that what he told you?

10 A: Yes, sir.

11 Q: Do you recall today whether he
12 elaborated as to that point?

13 A: I don't recall any elaboration.
14 It was sort of a given.

15 Q: It was understood?

16 A: All our customers of PCBs were
17 tuned in, everyone of them, they know
18 exactly what we're talking about, and they
19 are -- I recall the emphasis on the degree
20 of sophistication of the people they were
21 dealing with, that's important. That's why
22 I remember that.

23 Q: So, you didn't have actual
24 knowledge that people at Texas Eastern
25 themselves were informed about the issues

1 related to PCBs in the environment?

2 MR. PREUSS: Objection, misstates
3 his testimony.

4 A: The knowledge I had was that which
5 I obtained from normal business
6 interaction.

7 Q: True. That business interaction
8 was not with representatives of Texas
9 Eastern?

10 A: With me?

11 Q: Right.

12 A: No. It was with others in
13 Monsanto.

14 Q: In that sense you were relying on
15 Mr. Johnson?

16 A: Certainly. I had to.

17 Q: Let me show you a document that
18 bears production numbers Tran 3347 through
19 Tran 3349, which we'll have marked.

20 (Deposition Exhibit Number
21 1140 mark'd for identification).

22 MR. TALLON: Why don't you take a
23 moment and review that, please, Mr.
24 Papageorge.

25 A: I have read the exhibit.

1 Q: Is that a memorandum that you sent
2 to Messrs. Bergen, Gossage and Paton on
3 January 12, 1972?

4 A: I did.

5 Q: That's your signature on the last
6 page?

7 A: It is.

8 Q: The title is "PCB action plan",
9 right?

10 A: It is.

11 Q: And the introductory sentence on
12 page 1 indicates, "Below is the rough
13 checklist we developed during our meetings
14 on January 4 and 6", do you see that?

15 A: I do.

16 Q: Did you have meetings on January 4
17 and 6, 1972 with the recipients of this
18 memorandum?

19 A: I did.

20 Q: And with Mr. Corey?

21 A: Mr. Corey was not present.

22 Q: Were others present?

23 A: No.

24 Q: What was the purpose of those
25 meetings?

1 A: It was a review of the status of
2 the PCB program, and an attempt to
3 determine what actions should follow, what
4 further actions were needed.

5 Q: What general program was under
6 discussion at that time, if there was a
7 general program?

8 A: The general program was the
9 responsible manufacture and sale of PCBs to
10 those uses which can be controlled in terms
11 of entering into the environment and for
12 which no suitable alternative was
13 available.

14 Q: The particular exhibit that we're
15 looking at starts with paragraph number 3.

16 A: I see that.

17 Q: Originally, there were paragraphs
18 numbered 1 and 2 on this, right?

19 A: Yes.

20 Q: And those related to what, in
21 general?

22 A: I don't recall. I'd have to see
23 the original document.

24 Q: Have you seen it recently?

25 A: I don't recall seeing it recently.

1 Q: You didn't see it on Monday?

2 A: If I did, it doesn't stick out in
3 my memory. I don't recall seeing it.

4 Q: Mr. Preuss, is the redaction
5 intentional?

6 MR. PREUSS: I assume it is. I
7 would have to check on it.

8 MR. TALLON: Mr. Papageorge, do you
9 recollect whether the first two points on
10 this memorandum dated January 12, 1972
11 related to hold harmless agreements?

12 A: I do not.

13 Q: There is a specific reference
14 under paragraph 12 on page 2 of the memo
15 that reads "Develop Turbinol 153 plan", and
16 then the further indication "Status: Plan
17 developed 1/7/72". Do you know what --

18 A: I see that.

19 Q: Do you know what plan is referred
20 to?

21 A: This hold harmless agreement
22 approach.

23 Q: Was that approach described to you
24 at the January 4 and 6 meetings?

25 A: Well, it was reviewed again. I

1 had known about it back in December.

2 Q: What is meant by the use of the
3 terminology "Develop Turbinol 153 plan"?

4 A: Well, the business group had been
5 assigned the task of coming up with a
6 proposal relating to whether or not we
7 should continue selling Turbinol 153. If
8 we did continue to sell it, under what
9 conditions would they recommend. That was
10 the general gist of the assignment. And it
11 was referred to as our business plan. In
12 December it was decided to go the hold
13 harmless route. This particular meeting,
14 which was sort of an update on where do all
15 these plans stand, this subject came up,
16 and Mr. Gossage informed the group, since
17 he's the marketing manager, that we've
18 already developed our plan the previous
19 week, and it was the adoption of the hold
20 harmless arrangement.

21 Q: Were there any other aspects to
22 the plan, as you remember it today?

23 A: I don't recall any other details,
24 no.

25 Q: To your knowledge, did something

1 happen on January 7, 1972? I mean, that
2 date is referenced, I'm just wondering --

3 A: It is. Mr. Johnson had a work
4 session with his team working on these
5 plans, and that's the date of the meeting.

6 Q: Was there a document, an actual
7 written plan for Turbinol 153 as of this
8 time?

9 A: I didn't see it.

10 Q: Do you know if there was one?

11 A: I don't know.

12 Q: Were you in charge of developing
13 the plan or were you simply reporting that
14 such a plan was to be developed?

15 A: I was simply reporting.

16 Q: You did not have responsibility
17 for developing a plan?

18 A: That is true.

19 Q: One of the things that you
20 referred to yesterday was the -- after you
21 took on your position as of January 1, 1970
22 was information dissemination. That was
23 one of your responsibilities?

24 A: Yes.

25 Q: Was there a task force to deal

1 with new developments and news relating to
2 PCB issues?

3 A: Yes.

4 Q: And the task force consisted of
5 representatives of research, marketing,
6 medical, legal, public relations and
7 manufacturing?

8 A: Yes.

9 Q: Was it the case that following
10 your installation in your new position as
11 of January 1, 1970 that each business group
12 would decide what to tell its customers?

13 A: Well, each business group, of
14 course, would communicate with its
15 customers, and the information they would
16 share with the customers, of course, they
17 would prepare the basic text, but they
18 would run it by this task force for
19 comments. And following that process, the
20 groups would end up with a final draft that
21 would eventually be used to share with the
22 customers.

23 Q: Is it the case that the details of
24 what was said was left up to the business
25 group involved with the products?

1 **A:** That depends on the type of
2 detail. If it were a -- an example, if it
3 were a medical question, they would be
4 coached by members of the medical
5 department in terms of what was the proper
6 information to share. So, I cannot say
7 that all the details were developed by the
8 marketing group.

9 **Q:** Right. But was it left up to the
10 business group to determine what was said
11 to the customers about the various
12 products?

13 **A:** Well, they were responsible for
14 the communication, yes, sir.

15 **Q:** And in January 1970 you met with
16 Don Olson and Norman Johnson to discuss
17 customer applications of Monsanto products?

18 **A:** Yes.

19 **MR. PREUSS:** You said 1970?

20 **MR. TALLON:** I did say 1970. And
21 during those communications you also
22 discussed the ways, the uses by customers
23 of Monsanto products would allow PCBs to
24 get into the environment?

25 **A:** I was informed of that at that

1 time, yes, sir.

2 Q: And one of the things that you and
3 the business group considered at that time
4 was to sit down and think about spills?

5 A: Yes.

6 Q: Salesmen were permitted to answer
7 customer questions about PCBs?

8 A: Up to the limit of their
9 knowledge, yes.

10 Q: Let me show you a document that I
11 can't tell whether it's been marked in this
12 case or not, but we'll mark it again, just
13 to be sure, it bears production numbers T
14 091767 through 769.

15 (Deposition Exhibit Number
16 1141 mark'd for identification).

17 A: I have read the exhibit.

18 Q: You've seen that particular letter
19 before?

20 A: Yes, I have.

21 Q: Is this one of the documents that
22 you reviewed after you took on your new
23 position in January of 1970?

24 A: It is.

25 Q: Did you discuss the text of this

1 document with Elmer Wheeler?

2 A: I did.

3 Q: Did you discuss with Mr. Wheeler
4 the circumstances under which he signed
5 this?

6 A: Yes.

7 Q: Did Mr. Wheeler tell you that
8 Messrs. Bergen and Minckler had encouraged
9 him to sign this letter?

10 A: Yes.

11 Q: Did Mr. Wheeler tell you that he
12 did not want to sign this letter?

13 A: Well, yes, he did express some --
14 an opinion that it should have been signed
15 by the business group, yes.

16 Q: Is it fair to say that this letter
17 attempts to defend the use of PCBs?

18 MR. PREUSS: I object, the document
19 speaks for itself, argumentative.

20 A: I don't know that it was an
21 attempt to defend so much as to share with
22 some key customers the knowledge that
23 Monsanto had accumulated regarding PCBs in
24 the environment as of early 1969.

25 Q: Is it fair to say that the letter,

1 the text of the letter calls into question
2 some of the public reports about PCBs being
3 found in the environment?

4 MR. PREUSS: Objection. The
5 document speaks for itself, argumentative.

6 A: It does refer to some of the
7 questions that existed and reflects the
8 scientific community's confusion on the
9 matter.

10 Q: After you took on your position in
11 January of 1970, did you do any analysis to
12 determine the kinds of customers to which
13 PCB products were being sold, that is to
14 say, what businesses they were in?

15 A: My hesitation is your use of the
16 word analysis. Are you talking about a
17 sophisticated kind of number crunching
18 system.

19 Q: No. Did you look at the issue?

20 A: I tried to look at, of course, the
21 issue I was aware of. Then I looked into
22 the types of products that were being
23 manufactured and sold, and then I tried as
24 best I could to get a good understanding of
25 the kinds of customers that were associated

1 with each of the products.

2 Q: Did you get a sense, after you
3 took on your position in January of 1970,
4 of what percent of the Aroclor business was
5 tied up in sales to dielectric customers?

6 A: Right after I got the job?

7 Q: Yes.

8 A: I don't know that -- I did not
9 arrive at any percent, except that I was
10 definitely aware that it was the principal
11 use.

12 Q: After you returned from Sweden in
13 May of 1970, did you visit with dielectric
14 customers?

15 A: I did.

16 Q: Were you accompanied by business
17 people from Monsanto?

18 A: I was accompanied by a field
19 salesman, yes.

20 Q: And did you visit about a dozen
21 dielectric customers during that month of
22 May, 1970?

23 A: About that, yes.

24 Q: Let me show you a document which
25 actually has been marked as a deposition

1 exhibit in this case before, and
2 particularly as Exhibit Number 527, and it
3 bears production numbers Tran 085833
4 through 085850. Here's a copy for you, Mr.
5 Papageorge.

6 A: I have reviewed the document.

7 Q: Looking at the first two pages of
8 that exhibit, Mr. Papageorge, you've seen
9 that memorandum from Mr. Johnson, dated
10 February 16, 1970, to a group of people
11 before today?

12 A: I have.

13 Q: And is it your understanding that
14 the recipients of this memorandum are
15 salesmen, or directors of sales in various
16 locations?

17 A: Yes.

18 Q: Did you ever discuss the content
19 of this memorandum with Mr. Johnson?

20 A: I saw a draft when it was being
21 prepared, yes.

22 Q: Did you see a draft for purposes
23 of solicitation of your comments?

24 A: Yes.

25 Q: Did you make any comments that you

1 recall today?

2 A: I don't recall specifically, but
3 -- I do recall making some comments, but I
4 don't recall which ones I made.

5 Q: Did you comment on Mr. Johnson's
6 memorandum to the extent that it stated
7 that you can give verbal answers, no
8 answers should be given in writing?

9 A: Yes, we did discuss that.

10 Q: And did you tell Mr. Johnson that
11 that should be in this memorandum?

12 A: Well, it was already in his draft,
13 and I supported it after I found out his
14 reasoning.

15 Q: Did Mr. Johnson tell you that he
16 did not want to take fluid back from
17 customers if replacement products were to
18 be used by those customers?

19 A: That's right. Yes.

20 Q: Did Mr. Johnson also tell you that
21 it was his view that we can't afford to
22 lose one dollar of business, as indicated
23 on the second page of this memo?

24 A: Yes. He was a businessman,
25 interested in profits.

1 Q: Was the list of questions and
2 proposed answers attached to the draft memo
3 when you saw it? It's separated from the
4 actual memo in this exhibit by several
5 intervening - -

6 A: Yes. This whole package was
7 available for review at that time, yes.

8 Q: And did you actually get a copy of
9 the proposed Q and A?

10 A: Eventually, I got a typed copy.
11 The first copy I saw was in pencil, the
12 original draft.

13 Q: Including the questions and
14 answers?

15 A: Yes, sir.

16 Q: And who drafted the questions and
17 proposed answers, do you recall?

18 A: I don't know.

19 Q: Did Mr. Johnson have a hand in
20 that enterprise, so far as you know?

21 A: I know he had a hand. How much I
22 don't know.

23 Q: Do you know who else may have been
24 involved?

25 A: No.

1 Q: Were you asked to give comments
2 with respect to the proposed questions and
3 answers?

4 A: Certainly.

5 Q: Did you also see drafts of the
6 letters dated February 9, 1970 and February
7 18, 1970 that are a part of this exhibit?

8 A: Yes.

9 Q: Did you comment on or pass on
10 these drafts?

11 A: When they were being prepared,
12 yes, independently of Mr. Johnson's letter.

13 Q: Were the letters dated February
14 9th and February 18th sent to customers?

15 A: Yes.

16 Q: Were lists maintained of the
17 customers to whom they were sent?

18 A: Yes.

19 Q: Who maintained the lists?

20 A: The marketing managers.

21 Q: The marketing managers in what
22 group, functional fluids group and
23 plasticizers group?

24 A: Yes.

25 Q: And in February 1970 who was the

1 marketing manager in functional fluids?

2 A: There were three of them. Mr.
3 Johnson was the one responsible for the
4 products we're talking about in this case.

5 Q: In this case, meaning the
6 litigation in which your deposition is
7 being taken or something else?

8 A: That is correct.

9 Q: And who were the other two?

10 A: There was a Mr. Benignus, manager
11 of the sales to the electrical uses. And a
12 Mr. Fallon, manager of the sales to the
13 heat transfer applications.

14 Q: Did each of those gentlemen make a
15 selection as to which customers these
16 letters would be sent to?

17 A: Well, the word selection implies
18 that some decision had to be made by the
19 manager regarding who did and who did not
20 receive it. That was not left to them.
21 They were told to send letters to all
22 customers on record for the previous three
23 years. That would be '69, '68, '67.

24 Q: All customers?

25 A: All customers who received their

1 products that contained PCBs.

2 Q: Was the list specific to customers
3 that purchased Aroclor 1254 and 1260?

4 A: No. All PCBs.

5 Q: And from what sources were those
6 addresses or labels, if there were labels,
7 generated?

8 A: Oh, from shipping records,
9 invoices, bills of lading, individuals who
10 -- well, the invoices do cover the
11 accounts receivable department. That's
12 generally it. It's the shipping
13 information and the invoicing information
14 supplied the list.

15 Q: Were you a participant in any
16 discussions regarding what ought to be said
17 in these letters?

18 A: I helped in the drafting of those
19 letters, yes.

20 Q: Was there any discussion as to
21 whether or not there should be a specific
22 mention of Aroclor 1242 in the letters?

23 A: Well, there was a discussion
24 relating to the differences in the full
25 product line that Monsanto was involved

1 with and the types of PCBs that the
2 laboratories that were studying
3 environmental samples were reporting.

4 Q: Each of the two letters, did they
5 go to different constituencies or the same
6 constituencies, February 9 and February 18?

7 A: The February 9 is the letter that
8 Mr. Johnson refers to, so -- I was looking
9 for the reference. But the difference
10 between the two letters is that the
11 February 18th letter was sent to the
12 electrical equipment manufacturers as,
13 indicated by the last paragraph on page 2.
14 The February 9th letter is addressed to
15 other than electrical grade customers.

16 Q: And did you participate in any
17 discussion as to whether these letters
18 should contain an indication that Aroclor
19 1242 could be a contributor to the PCBs
20 being identified in the environment as of
21 February 1970?

22 A: Well, as of February, that was
23 still speculation, and we were reluctant to
24 inform customers with guesses, and we were
25 trying to concentrate on the facts as we

1 knew them in early February.

2 Q: So, it was decided not to include
3 a reference to Aroclor 1242?

4 A: That's right. We didn't know
5 enough about it.

6 Q: There was a specific mention of
7 Aroclor 1254 and 1260, obviously?

8 A: There was, because of the
9 information that we had received, yes.

10 Q: And what was intended by pointing
11 out to the recipients of this letter that
12 the products identified in numbered
13 paragraph 1 were not formulated with
14 Aroclor 1254 and 1260?

15 A: That's an attempt to relate the
16 product that they were familiar with and
17 the information regarding the environment
18 that we were sharing with them. It's an
19 attempt to somehow tie the two together.

20 Q: Actually, isn't it an attempt to
21 untie the two?

22 MR. PREUSS: I object as
23 argumentative.

24 A: Depends how you look at it.

25 MR. TALLON: Right.

1 A: A person receiving such a letter
2 and not seeing any reference to, say, a
3 Pydraul, and he's a buyer of Pydraul, he
4 can look at that letter and wonder how --
5 "Why do I get this?" And then if he does
6 know that Pydraul has PCBs in it, the next
7 question would be, does it have the one
8 they're talking about here, the 1254. So,
9 this was intended to answer those two
10 questions: What product is it that has
11 PCBs, if so, is the PCB the one that's
12 being found in the environment.

13 Q: And, for example, a purchaser of
14 Pydraul 90 from Monsanto would conclude
15 after reading this letter that the Aroclors
16 being identified in the environment were
17 not in the product that that purchaser was
18 using?

19 A: That's right.

20 Q: And that would also apply to
21 Turbinol 153?

22 A: Correct.

23 Q: And, indeed, all of the products
24 identified in that paragraph 1?

25 A: That is true. Now, up above the

1 second paragraph you will see those
2 Pydrauls that do contain --

3 Q: The specific Pydrauls listed in
4 the unnumbered paragraph, which it is the
5 second paragraph of the February 9, 1970
6 letter are Pydrauls which did contain at
7 that time either Aroclor 1254 or 60 or
8 both?

9 A: That is correct.

10 Q: Referring just for a moment more
11 to the February 18th letter, that last
12 paragraph was added specifically for
13 communication to the dielectric customers?

14 A: That was the intent, yes, sir.

15 Q: And I take it that although the
16 transformer application of Aroclors 1254
17 and 1260 was considered to be a closed use,
18 Monsanto recognized that occasional loss
19 through leaks was a possibility as of
20 February 1970?

21 A: And the leaks are further defined
22 as resulting from equipment misuse,
23 equipment repair, et cetera, yes.

24 Q: By the way, do you know whether,
25 in communications with Texas Eastern in

1 1972, Monsanto advised Texas Eastern that
2 it would be okay to top off their
3 lubricating fluid with Turbinol 153? Let
4 me ask a more general question which may be
5 more helpful. Do you know if topping off
6 was discussed between Monsanto
7 representatives and Texas Eastern
8 representatives in 1972?

9 A: I do not specifically know.

10 Q: When you say that you don't
11 specifically know, are you thinking of some
12 general recollection?

13 A: No. I'm thinking that this is a
14 normal type of discussion for that kind of
15 application. Topping off applies to all of
16 these applications, and it would surprise
17 me if such a discussion had not taken
18 place.

19 Q: But I take it you don't remember
20 specifically having heard about one?

21 A: That is correct.

22 Q: Let me show you one document that
23 has production number IDS 002310 through
24 2325, and we'll just ask you to take a
25 quick look at this one.

1 (Deposition Exhibit Number
2 1142 mark'd for identification).

3 A: I have reviewed the exhibit.

4 Q: Does this appear to you to be a
5 copy of the February 9 letter with the
6 Chemical Week article attached and some
7 mailing addresses?

8 A: It does.

9 Q: Have you seen this particular
10 document before?

11 A: I have seen the letter with the
12 Chemical Week attachment, and I
13 have seen -- I have not seen the address
14 list before.

15 Q: These appear to be all addresses
16 of various General Electric offices?

17 A: That is correct.

18 Q: Do you know where this document
19 came from? I mean, did you ever see this
20 in anyone's files at Monsanto?

21 MR. PREUSS: He said he hadn't seen
22 it.

23 A: I hadn't seen this specific
24 document.

25 MR. TALLON: Okay. Do you know if

1 this is part of another document that was a
2 compilation of labels?

3 A: Yes, sir.

4 Q: Was it?

5 A: Yes.

6 Q: Do you know if there were other
7 labels that appeared on this same page, but
8 we just don't see them on this exhibit?

9 A: That is correct.

10 Q: And was that list of addresses
11 that was maintained by Mr. Benignus the
12 document you remember seeing?

13 A: I recognize some of these
14 addresses as the type that Mr. Benignus
15 would be relating to. There are also some
16 addresses here that lead me to believe that
17 the material involved was not a dielectric
18 fluid, but could well have been a Pydraul.

19 Q: What addresses are those?

20 A: Well, I'm looking at, for example,
21 San Jose, California. These are not going
22 to be all complete, because my information
23 is -- I have forgotten a lot of this. Ft.
24 Wayne, Indiana. Ontario, California.
25 Louisville, Kentucky.

1 Q: Do you remember that Pydraul
2 products were purchased by General Electric
3 in those locations, or --

4 A: Yes.

5 Q: Thank you. Do you remember
6 communicating with Mr. Cameron in early
7 1970 about sending a letter to U.K.
8 customers for Aroclors?

9 A: What year was that?

10 Q: 1970.

11 A: Yes.

12 Q: Let me show you a document that
13 bears production numbers Tran 005232
14 through 005236.

15 (Deposition Exhibit Number
16 1143 mark'd for identification).

17 A: I have reviewed the exhibit.

18 Q: Is that a memorandum to you from
19 Mr. Cameron dated 16 February 1970?

20 A: It is.

21 Q: And attached to that is a draft
22 letter to U.K. Aroclor customers?

23 A: Yes.

24 Q: Did you receive this memorandum
25 from Mr. Cameron in February 1970?

1 A: Yes.

2 Q: Had Mr. Cameron been asked to
3 prepare a letter to U.K. Aroclor customers?

4 A: I have no way of knowing whether
5 Mr. Cameron did this on his own or whether
6 he was asked by his supervisor.

7 Q: Do you know whether Mr. Cameron
8 was sent copies of the February 9 letter
9 which we just looked at a moment ago to
10 assist him in preparing a letter to U.K.
11 customers?

12 A: He was.

13 Q: And did you discuss this draft
14 with Mr. Cameron?

15 A: Did I discuss it with him?

16 Q: Yes.

17 A: Yes.

18 Q: Was Mr. Cameron suggesting to you
19 that there should be a greater reference to
20 -- or there should be a reference to
21 Aroclor 1242 in the letter sent to U.K.
22 Aroclor customers?

23 A: He did.

24 Q: And, in fact, his draft did
25 contain a paragraph which discussed Aroclor

1 1242 and Aroclor 1248?

2 A: Yes.

3 Q: And that draft noted that
4 customers should observe the same
5 precautionary measures with respect to
6 Aroclor 1242 and 1248 formulations as
7 already mentioned in the draft with respect
8 to the more highly chlorinated Aroclors?

9 A: They did.

10 Q: And one of the specific
11 formulations referred to in this draft
12 letter as containing Aroclor 1242 or 1248
13 was Turbinol 153?

14 A: Yes.

15 Q: Was this letter sent?

16 A: Yes.

17 Q: To U.K. Aroclor customers?

18 A: Yes.

19 Q: In his cover memo to you, Mr.
20 Cameron indicates that "In view of the
21 present situation in the U.K. we thought
22 our letter should be somewhat more detailed
23 than the one you mailed in the U.S.." Do
24 you see that?

25 A: Yes.

1 Q: Did Mr. Cameron indicate to you
2 what he perceived to be the present
3 situation in the U.K. which motivated him
4 to draft a somewhat more detailed letter,
5 to use his term?

6 A: The reference was primarily to the
7 considerable interest shown in the British
8 press regarding the incident that happened
9 in the North Sea with seals and birds.

10 Q: Sea birds?

11 A: Yes.

12 Q: And did you tell Mr. Cameron that
13 he ought to go ahead and send this letter?

14 A: Yes.

15 Q: A moment ago I asked you whether
16 Mr. Cameron was recommending in this letter
17 to customers that the same precautionary
18 measures noted with respect to Aroclors
19 1254 and 1260 should be observed with
20 respect to Aroclors 1242 and 1248, correct?

21 A: That's correct.

22 Q: And you indicated that is, in
23 fact, what the draft says?

24 A: Yes.

25 Q: And what the final letter said?

1 A: Yes.

2 Q: And the precaution referenced was
3 the -- that customers or users of these
4 materials should exercise the greatest
5 possible care to prevent them from escaping
6 into the environment, correct?

7 A: Correct. It's a different way of
8 saying what the U.S. letter said.

9 Q: Take a look, if you would, please,
10 Mr. Papageorge, at a new exhibit, which is
11 a three page document bearing production
12 numbers Tran 6633 through 6635.

13 (Deposition Exhibit Number
14 1144 mark'd for identification).

15 A: I have reviewed the document.

16 Q: Have you seen that document
17 before?

18 A: Yes, I have.

19 Q: Can you identify it for the
20 record?

21 A: It's a letter which was mailed to
22 customers, Monsanto letterhead, authored by
23 Mr. W.E. Schalk, and dated June 1970.

24 Q: Was it sent to plasticizer
25 customers?

1 A: Yes.

2 Q: Just very briefly, if you can, Mr.
3 Papageorge, what is Montar 1?

4 A: Montar 1 is the material that
5 remains after PCBs are distilled. The
6 clear product is called Aroclors, the
7 remaining material in the tank looks like
8 road tar, and it was sold as Montar.

9 Q: And that's sales made to customers
10 who were not concerned about the clarity of
11 the material, or the color?

12 A: Well, I don't want to confuse
13 things. We had talked about clarity about
14 the crude material.

15 Q: Right.

16 A: As made from chlorinating biphenyl
17 without any distillation. This material
18 results from the distillation step, so you
19 end up with two different portions. The
20 residual in the pot, if you will, is the
21 Montar.

22 Q: And what applications did it have?

23 A: Well, again, applications where
24 the black color was not objectionable.

25 Q: For example?

1 A: Black caulking, roof tarring, roof
2 tiles, asphalt tiles for flooring that were
3 popular in those days. That kind of thing.

4 Q: Were there other Montars besides
5 Montar 1?

6 A: Yes, there were a series of them
7 depending on which Aroclor was distilled.

8 Q: Was there a Montar for every
9 Aroclor?

10 A: Yes.

11 Q: And just, again, very briefly,
12 toluene or xylene blends of Aroclors, what
13 were they?

14 A: They were just that, they were the
15 Aroclors, especially the heavier ones from
16 1260 down this list, down to the 4465, that
17 for some applications were too viscous, and
18 in order to make them potable and useful in
19 some operations they were diluted with
20 toluene or xylene, which are solvents,
21 really.

22 Q: Do you know, by the way, what
23 synthetic resin compositions are referred
24 to in the first paragraph of this letter?

25 A: That term is quite broad in its

1 coverage. It refers to just about any
2 plastic type material manufactured by man,
3 and blends of those.

4 Q: Were the products identified in
5 this letter discontinued for sales purposes
6 effective August 30, 1970?

7 A: For the plasticizer applications.

8 Q: And those were considered to be
9 open applications?

10 A: Yes.

11 Q: Take a look, if you would, please,
12 Mr. Papageorge, at a document, just one
13 page, bearing production number Tran
14 008417, which is a letter dated June 11,
15 1970.

16 (Deposition Exhibit Number
17 1145 mark'd for identification).

18 A: I have read it.

19 Q: And have you seen that particular
20 letter before?

21 A: Yes, I have.

22 Q: That's a letter dated June 11,
23 1970 that went out over Mr. Olson's
24 signature?

25 A: Yes.

1 Q: And there is a handwritten note in
2 the upper left-hand corner of the document
3 which says "Non- elec". Does this indicate
4 that this letter went to non-electrical
5 customers?

6 A: Yes.

7 Q: The letter announces that "We",
8 Monsanto, "have come to a decision to
9 discontinue the sale of PCB-containing
10 products for industrial applications
11 effective August 30, 1970," do you see
12 that?

13 A: I do.

14 Q: And then it goes on to say the
15 products concerned are Aroclor 1242, 1248,
16 1254 and 1260. Do you see that?

17 A: I do.

18 Q: In fact, were sales of those
19 products discontinued as of August 30,
20 1970?

21 A: Certainly.

22 Q: The reference to PCB-containing
23 products, is that a reference to the
24 specific Aroclors which are listed or
25 references to blends in addition?

1 A: No, this letter addresses only the
2 Aroclor product line, not the blends.

3 Q: When you use the term Aroclor,
4 you're referring to the Aroclor that is not
5 mixed with other substances to form a mixed
6 product?

7 A: That is correct.

8 Q: Let me show you a document dated
9 August 14, 1970 with attachments, bearing
10 production numbers Tran 004921 through
11 4946, which we'll have marked.

12 (Deposition Exhibit Number
13 1146 mark'd for identification).

14 A: I have scanned through the
15 document.

16 Q: Now, you've seen this particular
17 letter and its attachments before?

18 A: Yes, I have.

19 Q: This is a letter from Mr. Schalk
20 to customers, dated August 14, 1970 with
21 attachments?

22 A: It is.

23 Q: And, of course, Mr. Schalk, as we
24 saw before, was the director of sales for
25 plasticizer products?

1 A: Yes.

2 Q: This letter went to plasticizer
3 products?

4 A: Yes.

5 Q: This was to specifically make
6 mention of certain findings of PCBs in the
7 environment to plasticizer customers?

8 A: You mentioned the -- you used the
9 word environment, I would suggest that this
10 had to do more with findings of the Food
11 and Drug Administration as it related to
12 items that they regulate.

13 Q: Milk?

14 A: Milk and other foods.

15 Q: Such as fish?

16 A: Correct.

17 Q: This particular letter, Mr.
18 Papageorge, refers to a returned goods
19 policy, on page 2?

20 A: I see it.

21 Q: Do you know if there was ever a
22 returned goods policy for Turbinol?

23 A: I've never seen one. I don't
24 know.

25 Q: Let me show you a letter that's

1 dated August 27, 1970, bearing production
2 number Tran 062404, which we'll have
3 marked.

4 (Deposition Exhibit Number
5 1147 mark'd for identification).

6 A: I have read the document.

7 Q: Was that a letter to customers
8 from Norman Johnson, dated August 27, 1970?

9 A: Yes.

10 Q: And was this also a letter sent to
11 non-electrical customers?

12 A: Certainly. This is a letter to
13 the Pydraul F-9 customers.

14 Q: And it addresses the issue of a
15 reformulated product to be known as Pydraul
16 F-9-A?

17 A: Correct.

18 Q: Do you recollect what the
19 constituent elements of Pydraul F-9-A were
20 in August 1970?

21 A: Not in detail.

22 Q: Do you remember any of them?

23 A: I recall that the polychlorinated
24 biphenyls were removed and replaced with
25 polychlorinated terphenyls for

1 fire-resistant properties.

2 Q: Was it your understanding that
3 inventoried F-9 was to be exhausted before
4 F-9-A was to be shipped?

5 MR. PREUSS: Monsanto inventory?

6 MR. TALLON: Yes.

7 A: Well, yes. This follows the
8 practice in the distribution centers, first
9 in, first out. So, the intent of that
10 sentence is that on occasion here and there
11 there may not be a drum of the old formula
12 shipped out, but eventually it would be
13 replaced by the new.

14 Q: Okay.

15 (Noon Recess).

16 MR. TALLON: Let's continue. Mr.
17 Papageorge, would you say it's a fair
18 statement that any system that at one time
19 had PCBs in it very likely had a high
20 potential for having PCBs in it for a long
21 time to come?

22 MR. PREUSS: I object as vague and
23 ambiguous.

24 A: Gosh, I have to know more about
25 what happened in the system, what kind, how

1 it was drained, how it was cleaned out and
2 so on.

3 Q: Do you remember giving a
4 deposition in the United States versus ABX
5 Corporation case in 1985?

6 A: Yes.

7 Q: Let me show you the transcript of
8 your deposition dating from -- let's see,
9 what day is this? It looks like May 1985,
10 the specific date is not readable. The
11 precise passage in which I am interested is
12 on page 98, but due to some colloquy
13 between the attorneys I think you might
14 have to read back to 97 or earlier to
15 understand this. But the passage which I
16 am interested in is on page 98, from lines
17 5 through 10.

18 A: I have read the sections you
19 designated.

20 Q: Did you get a chance to try to
21 understand the context of that question?
22 It may be a little difficult because of the
23 colloquy. I was thinking particularly of
24 the passage on 98.

25 A: I think I understand it.

1 Q: Okay. May I have that, please?

2 That's the only copy I have. Would you
3 agree today that it was the case that any
4 system that at one time had PCBs in it very
5 likely had a high potential for having PCBs
6 in it for a long time to come?

7 MR. PREUSS: Asked and answered.

8 A: Yes.

9 MR. TALLON: And do you think you
10 understood that concept by the end of 1970?

11 A: Yes.

12 Q: Would you say that you understood
13 it before then?

14 A: Yes.

15 Q: Do you have any sense for when --
16 how long before that you came to appreciate
17 that fact?

18 MR. PREUSS: I'm going to object.
19 The whole line of questioning is vague and
20 ambiguous and out of context as to what
21 kind of system you're talking about.

22 MR. TALLON: You can answer.

23 A: I can't recall any specific date
24 that I became aware of this. I just can't
25 recall.

1 **Q:** Is that a property of PCBs that
2 you realized when you were plant manager at
3 Anniston, for example?

4 **A:** To a degree, yes. My reason for
5 hesitating is that, again, it goes back to
6 the type of system, the way it was drained,
7 the way it was cleaned out, whether the
8 parts of the system that tend to retain the
9 PCBs were removed. And I have in mind such
10 things as the gaskets, when the system is
11 drained and cleaned out, were those gaskets
12 removed and new ones installed. So, it's
13 the kind of attention that the system was
14 given. But unless -- if nothing is done,
15 certainly, those PCBs, since they are
16 stable and non-degradable under those
17 conditions, you go back a long time later
18 and they're still there. There is no
19 reason for them not to be there.

20 **Q:** Did you ever consider whether PCBs
21 had a tendency to adhere to metal, uncoated
22 metal?

23 **A:** They'll do that, just like a lot
24 of other oils will.

25 **Q:** Although PCBs are more tenacious

1 than most oils?

2 A: Most oils. But there is still
3 some types of paraffinic oils that are
4 tenacious, also.

5 Q: What are those used for?

6 A: Some lubricants.

7 Q: Let me show you a letter dated
8 January 29, 1971, bearing production
9 numbers Tran 039382 and 83, which appears
10 to be a letter from you to Mr. R.F. Casey
11 at the Ohio Edison Company. We'll ask the
12 reporter to mark that.

13 (Deposition Exhibit Number
14 1148 mark'd for identification).

15 A: I have read the exhibit.

16 Q: Can you identify that exhibit?

17 A: It's a letter I wrote, dated
18 January 29, 1971, addressed to Mr. R.F.
19 Casey of the Ohio Edison Company in Akron,
20 Ohio.

21 Q: Do you recall whether you were
22 responding to an inquiry that Mr. Casey had
23 made to Don Olson?

24 A: I was.

25 Q: Do you remember the nature of the

1 inquiry?

2 A: Of course, I don't recall the
3 exact words, but, in essence, it was
4 something like what's the latest on this
5 PCB environmental situation.

6 Q: Was Ohio Edison a customer of
7 Monsanto's?

8 A: No.

9 Q: There is a reference in the second
10 paragraph of the letter that there is also
11 increasing evidence that the PCBs being
12 identified as Aroclor 1254 and Aroclor 1260
13 are probably the residues from lower
14 chlorinated materials which have undergone
15 degradation. Do you see that?

16 A: I do.

17 Q: Do the lower chlorinated materials
18 referred to there include Aroclor 1242?

19 A: It did. My answer to your
20 previous question, was Ohio Edison a
21 customer, I answered no, I should have said
22 on occasion they would buy makeup
23 dielectric fluids.

24 Q: By January 1971 had the State of
25 Pennsylvania objected to the disposal of

1 Askarel contaminated solids in landfills?

2 A: They did.

3 Q: Was that an objection or a
4 prohibition?

5 MR. PREUSS: If you know.

6 A: All I know is that I called a
7 representative of the state, I forget the
8 title of the agency responsible for
9 landfills.

10 Q: In Pennsylvania?

11 A: In Pennsylvania. And the
12 individual I talked to was -- well, I was
13 going to say, he strongly objected over the
14 telephone to the use of landfills for
15 disposal of PCBs. I do not recall any
16 reference to any regulation or any
17 guideline or anything of the sort. The
18 position the individual took was that if
19 they were aware of any such disposals they
20 would do everything they could to stop it.

21 Q: Let me show you a letter dated
22 February 1, 1971. It's a one page document
23 that bears production number Tran 036871,
24 which we will have marked.

25 (Deposition Exhibit Number

1 1149 mark'd for identification).

2 A: I have read the letter.

3 Q: Is that a customer letter sent out
4 by Mr. Bradford?

5 A: Yes.

6 Q: Did you review that letter in
7 draft?

8 A: Yes.

9 Q: And did you review the final
10 version of it before it was mailed out?

11 A: Yes.

12 Q: The letter specifically refers to
13 several of the Pydraul products by name,
14 and indicates that reformulated Pydrauls
15 were being made available by Monsanto,
16 correct?

17 A: Correct.

18 Q: Do the -- rather, were the
19 Pydrauls referred to as reformulated, that
20 is to say, 312 A, 135 A, 230 A, 540 A, and
21 A-200 B all polychlorinated terphenyl
22 reformulations?

23 A: Yes.

24 Q: They were free of polychlorinated
25 biphenyls?

1 A: Yes, sir.

2 Q: Let me show you a letter dated
3 April 15, 1971, bearing production number
4 Tran 063874.

5 (Deposition Exhibit Number
6 1150 mark'd for identification).

7 A: I have read the exhibit.

8 Q: And is that a letter -- a
9 customer letter signed by Mr. Bradford,
10 dated April 15, 1971?

11 A: It is.

12 Q: Is that a letter, the text of
13 which you reviewed before it was sent out?

14 A: Yes.

15 Q: The letter indicates that as of
16 the date of this letter there were no PCBs
17 in any Monsanto Pydraul fluids. Was that
18 accurate?

19 A: Yes.

20 Q: Did you from time to time send
21 samples or direct that samples of Aroclors
22 be sent to government agencies for their
23 use in making studies and analyses?

24 A: Yes.

25 Q: Was that part of your job

1 responsibility?

2 A: It was certainly my job to
3 encourage free cooperation with the
4 laboratories. The actual shipping of the
5 sample was the responsibility of the
6 research department.

7 Q: One of the things that -- one of
8 the responsibilities that you took on as of
9 January 1, 1970 was to coordinate with
10 government agencies?

11 A: Yes.

12 Q: State and federal?

13 A: Yes.

14 Q: And you understood by the time you
15 took on your position that various
16 government agencies had been in contact
17 with Monsanto regarding PCBs in the
18 environment before you assumed your
19 position?

20 A: Yes.

21 Q: And among those agencies that
22 contacted Monsanto before you took on your
23 position was the U.S. Bureau of Commercial
24 Fisheries?

25 A: Yes.

1 Q: In 1970 the Food and Drug
2 Administration established an action
3 guideline permitting a maximum of 5 parts
4 per million of PCB in the butter fat of
5 milk?

6 A: Yes.

7 Q: And that guideline was used by
8 state authorities in Ohio to embargo milk?

9 A: Yes.

10 Q: And to quarantine herds found to
11 be contaminated?

12 A: Yes.

13 Q: And in 1971 and 1972 the FDA
14 promulgated additional action guidelines
15 for poultry and fish?

16 A: Yes.

17 Q: Did one of those come in '71 and
18 one in '72?

19 A: Yes.

20 Q: Which was which? The fish came in
21 '71?

22 A: I don't remember. All I remember
23 is they were separately issued.

24 Q: Do you recall whether in 1971 the
25 Council Of Environmental Quality formed a

1 federal interior departmental task force on
2 PCBs?

3 A: Yes.

4 Q: And was it your understanding that
5 the job of that task force was to
6 coordinate the scientific efforts of the
7 government aimed at understanding PCBs?

8 A: Yes.

9 Q: And the task force consisted of
10 representatives from the Department of
11 Agriculture?

12 A: Yes.

13 Q: The Department of Commerce?

14 A: Yes.

15 Q: The Department of Health,
16 Education and Welfare?

17 A: Yes.

18 Q: And the Department of the
19 Interior?

20 A: Yes.

21 Q: Do you recall if that body
22 ultimately recommended that concentration
23 of PCBs in rivers and lakes should not
24 exceed one one-hundredth parts per billion?

25 A: That recommendation was made, but

1 I don't associate it with the interagency
2 task force.

3 Q: You believe that recommendation
4 was made by a different governmental body
5 or action agency?

6 A: Yes, sir.

7 Q: Do you recall which one you think
8 it is?

9 A: I believe at the United States
10 Environmental Protection Agency.

11 Q: Let me show you a document that is
12 titled "International Dielectrics
13 Symposium, U.S. Environmental Issues
14 Affecting PCB Usage", a document which has
15 identification numbers Tran 029750 through
16 753, which we will have marked.

17 (Deposition Exhibit Number
18 1151 mark'd for identification).

19 A: I have read the exhibit.

20 Q: Is that a copy of a document that
21 you drafted?

22 A: Yes, it is.

23 Q: And is that intended to be a draft
24 presentation to the International
25 Dielectrics Symposium?

1 A: Yes, sir.

2 Q: In what year?

3 A: It was after 1974, but I cannot
4 place the exact year. I just don't
5 remember.

6 Q: And did you attempt in this
7 document to summarize the history of
8 regulatory action with respect to PCBs
9 through the point that you drafted it?

10 A: Yes. This is regulatory action by
11 federal U.S. agencies.

12 Q: Would you agree, Mr. Papageorge,
13 that by 1970 you thought it was a fairly
14 high likelihood that a governmental ban on
15 PCBs eventually would occur?

16 MR. PREUSS: You say by 1970 or,
17 are you talking about January 1970 or by
18 the end of 1970?

19 MR. TALLON: Well, let's try
20 January.

21 A: What was that adjective before the
22 word ban? Did you say --

23 Q: That such a ban eventually would
24 occur?

25 A: In 1970 --

1 MR. PREUSS: January, he's asking.

2 A: I'm sorry. In January?

3 MR. TALLON: By January I think is
4 the precise --

5 MR. PREUSS: That would be fine.

6 A: By January 1970 my initial
7 assumption was that, yes.

8 MR. TALLON: Did you begin dealing
9 with the Environmental Protection Agency
10 after you assumed your position on January
11 1, 1970?

12 A: What there was of it, yes.

13 Q: Right. Let me show you a document
14 dated March 30, 1970, bearing production
15 number STR 029900, which we will have
16 marked.

17 (Deposition Exhibit Number
18 1153 mark'd for identification).

19 A: I have read it.

20 Q: Is that a memo that Dr. Kelly sent
21 to you in late March 1970?

22 A: It is.

23 Q: And do you recollect having
24 received that memo?

25 A: Certainly.

1 Q: Did you talk with Dr. Kelly about
2 the communication that he had with Dr. Hill
3 of the Ohio State Board of Health?

4 A: Yes.

5 Q: Did he tell you that Dr. Hill had
6 found PCBs in samples of milk from three
7 herds in Ohio?

8 A: Yes.

9 Q: And that that PCB had been --
10 that Dr. Hill had traced the contamination
11 back to silage from three different silos?

12 A: Yes.

13 Q: Was it your understanding that by
14 the end of March 1970 Dr. Kelly believed
15 that Aroclors should not be used in any
16 paint formulation that contacts food, feed
17 or water for animals or humans?

18 A: Yes.

19 Q: By the time that you took on your
20 position as of January of 1970 was it your
21 understanding that representatives of
22 Monsanto in the United Kingdom had been in
23 contact with government officials with
24 respect to PCB contamination in the U.K.

25 A: Yes.

1 Q: Was it your understanding that one
2 of those -- that one agency with which
3 those representatives were in contact was
4 the Natural Environmental Research Council?

5 A: Yes.

6 Q: And that you believed to be part
7 of the Department of Education and Science
8 in the U.K.?

9 A: Yes.

10 Q: Do you know whether before you
11 took on your position the San Francisco Bay
12 Regional Water Quality Administration had
13 been in contact with Monsanto with respect
14 to PCB contamination?

15 A: The San Francisco Bay -- I don't
16 recall that.

17 Q: Let me show you a document dated
18 February 27, 1969 and bearing production
19 numbers Tran 059474 and 475 and ask you if
20 reviewing this document refreshes your
21 recollection of having learned of any such
22 contact?

23 (Deposition Exhibit Number
24 1154 mark'd for identification).

25 A: I have read the document.

1 **Q:** Does having read that exhibit
2 refresh your recollection as to whether or
3 not you learned after you took on your
4 position that representatives of the San
5 Francisco Bay Regional Water Quality Board
6 had been in contact with Monsanto regarding
7 PCBs?

8 **A:** It does help me recall that I had
9 seen this document, yes.

10 **MR. PREUSS:** The record should
11 reflect that he is not shown has a copyee
12 or an addressee of the memo.

13 **MR. TALLON:** The record so
14 reflects. Do you recall whether or not you
15 learned that that water quality board was
16 inquiring about use of PCBs by Monsanto in
17 the San Francisco Bay area?

18 **A:** Yes.

19 **Q:** Did you have a meeting with Dr.
20 Frank Field or Franklin Field of WNBC in
21 New York City in April of 1970?

22 **A:** Yes.

23 **Q:** And were you accompanied to meet
24 with Dr. Field by Elmer Wheeler?

25 **A:** Yes.

1 Q: Did you subsequently describe --
2 was that, in fact, an interview of you and
3 Mr. Wheeler by Franklin Field?

4 A: Yes.

5 Q: And did you subsequently describe
6 that interview as a tough one?

7 A: To me it was difficult, since it
8 was my first one.

9 Q: And why was that? Not why was it
10 your first one, why was it a tough
11 interview?

12 MR. PREUSS: Other than the fact
13 that it was his first one?

14 MR. TALLON: Yes.

15 A: Well, that, in itself, made it, to
16 me, difficult. It was something I hadn't
17 been trained for, so the end result was one
18 of -- it was not necessarily a pleasant
19 experience.

20 Q: Was there anything about the
21 subject matter which made the interview a
22 tough one, in your view?

23 A: No.

24 Q: Was that a discussion with Doctor
25 -- an interview by Dr. Field having to do

1 with statements made by Congressman Ryan?

2 A: Yes.

3 Q: And were you aware that by that
4 point Congressman Ryan had made remarks
5 about the environmental contamination by
6 PCBs?

7 A: Yes.

8 Q: And when did you first become
9 aware that Congressman Ryan had made such
10 remarks?

11 A: The early part of 1970.

12 Q: Were you in contact with
13 Congressman Ryan with respect to his
14 remarks or about the subject of PCBs in
15 general?

16 A: No.

17 Q: Was any representative of Monsanto
18 in such contact?

19 A: Not at that time.

20 Q: Was Congressman Ryan believed to
21 be hostile to Monsanto?

22 A: Not necessarily at that time. He
23 was very interested in the PCB issue, but
24 not necessarily hostile to Monsanto.

25 Q: And how did that interest manifest

1 itself in his remarks?

2 **A:** Oh, he wanted to know --

3 **MR. PREUSS:** We're talking about
4 Congressman Ryan's remarks?

5 **MR. TALLON:** Yes.

6 **A:** Again, I can't quote the man
7 word-for-word, but, in essence, he wanted
8 to know what uses they were put to and how
9 much was produced and how did it get into
10 the environment, and if it did get into the
11 environment, what would it do. These kinds
12 of questions were being raised by
13 Congressman Ryan in early 1970.

14 **Q:** Let me show you a document
15 comprising a memorandum and an attachment
16 bearing production numbers Tran 0086
17 hundred through 008600.

18 (Deposition Exhibit Number
19 1152 mark'd for identification).

20 (Discussion off the record).

21 **MR. TALLON:** Back on the record
22 with a housekeeping issue with respect to
23 the numbering of exhibits. Exhibit Number
24 1151 is the International Dielectrics
25 Symposium Draft presentation prepared by

1 Mr. Papageorge: 1152 is the April 1970
2 memorandum from Dr. Kelly to Mr.
3 Papageorge, bearing production numbers Tran
4 008600 through 8602. 1153 is another memo
5 from Dr. Kelly to Mr. Papageorge dated
6 March 30, 1970, and 1154 is a memorandum
7 from Jack Garrett to the Aroclor wildlife
8 file dated February 27, 1969. 1155 is not
9 marked as of this moment.

10 (Discussion off the record).

11 A: I have read the exhibit.

12 Q: That's a memorandum to you from
13 Dr. Kelly?

14 A: It is.

15 Q: And the precise date looks to me
16 to be unreadable, but appears to be dated
17 in April 1970?

18 A: It is.

19 Q: And did you receive a copy of this
20 memorandum in April 1970?

21 A: I did.

22 Q: Do you recall that Dr. Kelly was
23 reporting to you a conference call he had
24 with authorities from the Georgia State
25 Department of Agriculture?

1 A: Yes.

2 Q: And did that call concern the
3 contamination of cow milk by Aroclor 1254?

4 A: Yes.

5 Q: And attached to his memo is a
6 document entitled "George Schwarzwald
7 resume' ". Was that originally attached to
8 Dr. Kelly's memo?

9 A: I don't understand the connection
10 between the two. And I note the May 12,
11 1970 date on the attachment, which is
12 several weeks after the date of Dr. Kelly's
13 letter. I personally don't know why the
14 two are together.

15 Q: Have you seen that document
16 referred to as a resume' before?

17 A: Yes.

18 Q: Does that document review the
19 situation of a dairy farmer in Ohio?

20 A: It does.

21 Q: And the milk of his cows was
22 contaminated with PCBs?

23 A: Yes.

24 Q: Did Monsanto make some reparations
25 or payments to this dairy farmer?

1 **A:** I don't know the result of that.

2 **Q:** Dr. Kelly says in his memo to you,
3 which is the top sheet in this particular
4 exhibit, referring to the last paragraph,
5 now, Mr. Papageorge, "I think we will have
6 to get word out to our distributors to stop
7 selling Aroclors for this purpose, and to
8 have their customers cease painting the
9 interior of silos or selling the paint as
10 an interior coating." And he goes on to
11 say, "Legal ramifications are obvious, but
12 I think it is better than buying an
13 indefinite number of milk herds." Do you
14 know whether by April 1970 Monsanto had
15 purchased any milk herds?

16 **MR. PREUSS:** I object as
17 argumentative.

18 **A:** Not to my knowledge.

19 **MR. TALLON:** Do you know if
20 Monsanto ever did?

21 **A:** I have never heard that they did.

22 **Q:** Did you understand that remark
23 from Dr. Kelly?

24 **A:** Did I understand which remark, the
25 wording in here?

1 Q: Well, what was your understanding
2 of Dr. Kelly's statement that "Legal
3 ramifications are obvious but I think it is
4 better than buying an indefinite number of
5 milk herds"?

6 A: Of course, I can't put myself in
7 Dr. Kelly's shoes, but --

8 Q: Of course not.

9 A: But I believe he was implying that
10 if dairy farmers had cattle that were an
11 economic liability to them, they might ask
12 somebody to buy the herd from them and
13 Monsanto could be -- could end up with
14 milk herds.

15 Q: Because Monsanto had sold PCBs
16 that had some kind of connection with the
17 milk contamination?

18 A: That's a possibility.

19 Q: Do you know Bob Sido?

20 A: Yes.

21 Q: What was his job in 1970?

22 A: He was in Monsanto's headquarters
23 and was the custodian of the label, and was
24 also the individual who coordinated the
25 design of the labels and placed the orders

1 with the printers.

2 Q: Let me show you a document, Mr.
3 Papageorge, which has already been marked
4 as an exhibit in this case, number 868.

5 A: I have read the document.

6 Q: Is that a memorandum from Mr. Sido
7 to the labeling file which was carried to
8 you and dated August 5, 1970?

9 A: Yes.

10 Q: Did you get a copy of it?

11 A: Yes.

12 Q: Did you and Mr. Johnson have a
13 conversation with Mr. Sido at the beginning
14 of August 1970?

15 A: Yes.

16 Q: And did you tell him that Pydraul
17 products should not carry the PCB
18 environmental statement?

19 MR. PREUSS: Well, I object as
20 ambiguous, taken out of context and
21 incomplete.

22 MR. TALLON: Well, that's fine, we
23 can go through it. Did you and Mr. Johnson
24 have a conversation with Mr. Sido at the
25 beginning of August 1970?

1 A: Yes.

2 Q: In person or by phone?

3 A: Person.

4 Q: At your office or --

5 A: Yes, Mr. Sido came by my office.

6 We sat down and talked.

7 Q: And did you and/or Mr. Johnson
8 tell Mr. Sido that all of the domestic
9 Pydraul products were being reformulated
10 and that none would contain PCB?

11 A: Eventually none would, yes.

12 Q: And did you or Mr. Johnson
13 indicate to Mr. Sido that the Pydraul
14 products may contain Aroclors lower than
15 1232 or chlorinated terphenyls so that they
16 would require the chlorinated hydrocarbon
17 standard paragraph?

18 A: Yes.

19 Q: And you know what is meant by the
20 chlorinated hydrocarbon standard paragraph?

21 A: I do, yes.

22 Q: That's a paragraph which appears
23 on labels of Monsanto products referring to
24 chlorinated hydrocarbon being contained in
25 the product?

1 **A:** Yes.

2 **Q:** And did you and/or Mr. Johnson
3 tell Mr. Sido that in the export market one
4 or two Pydraul products may contain some
5 PCB, but the environmental statement should
6 not be used?

7 **A:** That's true.

8 **Q:** And did you also tell him -- did
9 you or Mr. Johnson tell Mr. Sido that those
10 safety hydraulic fluids were being used in
11 coal mine equipment and that Monsanto hoped
12 to get your competitors to agree to use of
13 the PCB message if substitute formulations
14 were not acceptable?

15 **A:** Yes.

16 **Q:** And did you tell him or did Mr.
17 Johnson tell him that none of these Pydraul
18 products referred to in this memorandum
19 should carry the PCB environmental
20 statement?

21 **MR. PREUSS:** Well, objection to
22 your characterization that none of these
23 Pydraul products in this memorandum --

24 **MR. TALLON:** Okay. Did you say or
25 did Mr. Johnson say to Mr. Sido that none

1 of these Pydraul products should carry the
2 PCB environmental statement?

3 A: That's the Pydraul products that
4 he's describing here, that for some reason
5 or other are an exception.

6 Q: Did you ever comment on this memo
7 to Mr. Sido in writing?

8 A: No.

9 Q: Reply to it in any way?

10 A: No.

11 Q: To the best of your knowledge, did
12 Mr. Johnson?

13 A: I do not know.

14 Q: Let me show you a document that's
15 dated February 2, 1971, bearing production
16 numbers Tran 067639 and 640.

17 (Deposition Exhibit Number
18 1155 mark'd for identification).

19 A: I have read the exhibit.

20 Q: Did you work with a Jack Early in
21 1971?

22 A: On occasion, yes.

23 Q: What was his position then?

24 A: He was Monsanto's representative
25 in Washington, D.C. that dealt with

1 regulatory matters relating to insecticides
2 and pesticides that Monsanto manufactured.

3 Q: And in February 1971 did he report
4 to you on a meeting held in Washington with
5 representatives of Campbell's Soup, Agway,
6 the U.S. Department of Agriculture and the
7 FDA?

8 A: Yes.

9 Q: And is this exhibit a copy of his
10 written report to you on that meeting?

11 A: Yes.

12 Q: Was it your understanding that at
13 that meeting the FDA agreed to allow
14 chickens containing 5 parts per million or
15 less in their fat -- of PCB in their fat to
16 be processed through normal commercial
17 channels?

18 A: Yes.

19 Q: But that chickens with greater
20 than 5 parts per million in their fat would
21 have to go through a salvaging procedure?

22 A: Yes.

23 Q: Do you recall whether in 1971 the
24 State of Florida informed Monsanto that it
25 had to take measures to prevent PCBs from

1 entering the Escambia River estuary and
2 bay?

3 A: What year was that?

4 Q: 1971.

5 A: Yes.

6 Q: Let me show you a document which
7 has -- well, we're going to call it 1156,
8 it's a multi-page document dated February
9 8, 1971, and it bears production numbers
10 BIR 007951 through 962, and it is titled
11 "PCB environmental problem, January status
12 report".

13 (Deposition Exhibit Number
14 1156 mark'd for identification).

15 A: I have reviewed the exhibit.

16 Q: Is that exhibit a copy of your
17 January 1971 PCB environmental problem
18 status report?

19 A: Yes.

20 Q: And you prepared this document for
21 circulation to the group of recipients
22 noted on the cover page?

23 A: Yes.

24 Q: Did you report to the recipients
25 of this status report that the State of

1 Florida had informed Monsanto's Pensacola
2 textile plant that it must take emergency
3 measures to prevent PCBs from entering the
4 Escambia River estuary and bay?

5 A: Yes.

6 Q: And that that was to be done
7 within thirty days?

8 A: Yes.

9 Q: And that that was to be an
10 approved permanent solution that Monsanto
11 should adopt?

12 A: Yes.

13 Q: And that the consequence of not
14 doing so was to face a penalty of five
15 thousand dollars per day?

16 A: Yes.

17 Q: Did you determine that, in fact,
18 no PCBs were then present in the plant
19 effluent?

20 A: Yes.

21 Q: But that, instead, that the 2.5
22 parts per billion PCBs which were then
23 being detected were being extracted from
24 sediment contaminated prior to the summer
25 of 1969?

1 A: Yes.

2 Q: How did you so discern? How was
3 that figured out?

4 A: By 1971 the compressor that was
5 the source of the PCBs in 1969 was out of
6 service, and, therefore, was no longer a
7 source of PCBs, and there was no other
8 source.

9 Q: And did you explain that to the
10 Florida authorities?

11 A: Yes.

12 Q: In February 1971 had legislation
13 been proposed in the Massachusetts House of
14 Representatives to ban the discharge of
15 PCBs to the environment?

16 A: Yes.

17 (Recess).

18 MR. TALLON: Do you remember
19 hearing in 1971, Mr. Papageorge, that the
20 Department of Justice, United States
21 Department of Justice had recommended that
22 suit be initiated against the Anniston
23 plant for PCB emissions?

24 A: What year was that?

25 Q: 1971.

1 **A:** '71. I don't recall that at all.

2 **Q:** Let me show you a document which
3 we'll mark as the next exhibit, bearing
4 production numbers Tran 42 through Tran
5 45.

6 (Deposition Exhibit Number
7 1157 mark'd for identification).

8 **MR. TALLON:** And feel free to
9 review the entire document at your leisure,
10 I was particularly interested in knowing
11 whether numbered paragraph 1 on the first
12 page refreshed your recollection of having
13 heard such a statement?

14 **A:** I have read the document.

15 **Q:** And the question was, does looking
16 at the first page, and particularly the
17 first numbered paragraph refresh your
18 recollection as to having heard that in
19 1971 the U.S. Department of Justice had
20 recommended that suit be filed against the
21 Anniston plant for PCB emissions?

22 **MR. PREUSS:** Apparently
23 recommended.

24 **MR. TALLON:** Okay.

25 **A:** Yes, I do recall that now. In my

1 mind I associate emission with vapors up
2 stacks, not as PCB presence in water. This
3 is why I couldn't recall the incident.

4 Q: Do you recall giving a deposition
5 in a case entitled Henderson versus the
6 Monsanto Company and others in 1987?

7 A: Henderson?

8 Q: Yes.

9 A: I believe I recall that one, yes.

10 Q: By the way, what was the most
11 recent deposition you gave for Monsanto
12 other than this one?

13 A: Last week.

14 Q: Let me just show you a transcript
15 from the Henderson deposition, please feel
16 free to take a look at it. I'm
17 particularly interested in asking you about
18 the question and answer that appear here on
19 page 133.

20 A: I've read it.

21 Q: Did you, by any chance, give a
22 deposition in litigation between Texas
23 Eastern and certain insurance companies?

24 A: I remember the insurance
25 companies, but I can't associate Texas

1 Eastern with it.

2 Q: Have you given any other
3 depositions which relate to Turbinol 153?

4 A: No.

5 Q: Excuse me for coming over here,
6 but I was wondering, did you provide the
7 testimony which appears on page 133 of that
8 deposition transcript?

9 A: It appears to be that, yes.

10 Q: Did you use the term -- or did
11 you say that hydraulic fluids, as an
12 example of a use of PCBs in what can
13 idealistically be described as closed
14 systems?

15 A: Yes, I did.

16 MR. PREUSS: In part he gave
17 that -- in part that's his answer.

18 MR. TALLON: I understand. In
19 fact, you were asked "what do you mean by
20 'cannot be controlled' "? Correct?

21 A: Yes.

22 Q: Okay. And the answer you gave was
23 "Well, in my mind the hydraulic fluids is
24 an example of a use of PCBs in what could
25 idealistically be described as closed

1 systems. But in the real world they are
2 extremely difficult to maintain because of
3 the very high pressures involved, and the
4 pressures on the user to keep his
5 operations going encourage the leakage of
6 PCBs into the plant sewers or into the
7 sewerage system out into the environment.
8 We felt that it was unrealistic to expect
9 that application to be controllable". Did
10 you give that answer?

11 A: I did.

12 Q: And was your reference to
13 hydraulic systems as idealistically closed
14 systems a reference to the fact that you
15 recognize that hydraulic systems could
16 fail, leading to leaks or spills?

17 A: Yes. Especially the high pressure
18 systems which are mentioned here.

19 Q: And in your answer did you also
20 refer to the pressure on operators to keep
21 operations going?

22 A: Yes. That's a different kind of
23 pressure.

24 Q: That's sort of a business
25 pressure?

1 **A:** Business pressures, correct.

2 **Q:** You recognize that those business
3 pressures meant that operators wanted to
4 keep their equipment going?

5 **A:** In many cases, yes.

6 **Q:** And did you feel that it was
7 unrealistic to expect that hydraulic fluid
8 application to be controllable?

9 **A:** I did.

10 **Q:** Because of the business pressure
11 to which you just referred, in part?

12 **A:** Yes, in a secondary part. The
13 real problem was the -- what boils down to
14 the technology for designing systems to
15 cope with high pressure temperatures and
16 keep these types of materials from
17 escaping. That was the real problem.

18 **Q:** Yes. The high pressure
19 application and the business pressure were
20 both factors, correct?

21 **A:** Certainly

22 **MR. TALLON:** Thank you. No further
23 questions.

24 **MR. PREUSS:** I have no questions at
25 this time.

COMES NOW THE WITNESS, W.B.

PAPAGEORGE, and having read the foregoing transcript of the deposition taken on the 3rd, 4th and 5th days of November, 1992, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

W.B. Papageorge

W.B. PAPAGEORGE

Subscribed and sworn to me before this

9th day of *December*, 1992.

My Commission expires: *JOSEPHINE S. NIBLOCK*
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
 MY COMMISSION EXP. JAN. 15, 1995

Josephine S. Niblock

Notary Public

rg

1 State of Missouri

2 SS.

3 City of St. Louis

4 I, Ronald A. Gore, a Notary Public
5 in and for the State of Missouri, duly
6 commissioned, qualified and authorized to
7 administer oaths and to certify to
8 depositions, do hereby certify that
9 pursuant to Notice in the civil cause now
10 pending and undetermined in the Superior
11 Court for the State of California for the
12 County of Los Angeles, to be used in the
13 trial of said cause in said court, I was
14 attended at the offices of Bryan Cave, One
15 Metropolitan Square, in the City of St.
16 Louis, State of Missouri, by the aforesaid
17 witness; and by the aforesaid attorneys; on
18 the 3rd, 4th and 5th days of November,
19 1992.

20 The said witness, being of sound
21 mind and being by me first carefully
22 examined and duly cautioned and sworn to
23 testify the truth, the whole truth, and
24 nothing but the truth in the case
25 aforesaid, thereupon testified as is shown

1 in the foregoing transcript, said testimony
2 being by me reported in shorthand and
3 caused to be transcribed into typewriting,
4 and that the foregoing pages correctly set
5 forth the testimony of the aforementioned
6 witness, together with the questions
7 propounded by counsel and remarks and
8 objections of counsel thereto, and is in
9 all respects a full, true, correct and
10 complete transcript of the questions
11 propounded to and the answers given by said
12 witness; that signature of the deponent was
13 not waived by agreement of counsel.

14 I further certify that I am not of
15 counsel or attorney for either of the
16 parties to said suit, not related to nor
17 interested in any of the parties or their
18 attorneys.

19 Witness my hand and notarial seal
20 at St. Louis, Missouri, this 2 __ day of
21 December __ __, 1992.

22 My Commission expires May 22, 1994.

23 Ronald A. Gore __ __ __

24 Notary Public in and for the

25 State of Missouri