

IN THE MATTER OF:

Tennessee Gas Pipeline Company
vs.
Monsanto Company

Cause No. 94-CI90145

Deposition of Cumming Patton
October 26, 1995

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1 COMMONWEALTH OF KENTUCKY

2 ROWAN CIRCUIT COURT

3 CIVIL BRANCH

4
5 TENNESSEE GAS PIPELINE COMPANY,

6
7 Plaintiff,

8
9 vs.

NO. 94-CI90145

10
11 MONSANTO COMPANY,

12
13 Defendant.

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15 Deposition of CUMMING PATON, Volume II, taken
16 on behalf of the Plaintiff, at the offices of
17 Thompson & Mitchell, One Mercantile Center, in the
18 City of St. Louis, State of Missouri, on the 25th
19 day of October, 1995, before Dawn L. McTeer,
20 Registered Professional Reporter and Notary Public.

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

7 EXAMINATION
8 QUESTIONS BY MR. ROEDER:

9 Q: This is the continued deposition of Cumming
10 Paton. Dr. Paton, you recognize you're still under
11 oath?

12 A: Yes.

13 Q: Okay. Yesterday, when we concluded, we were
14 talking about Exhibit No. 119. Let me hand you a
15 binder which has the exhibit in it.

16 A: Gossage. For goodness sake. 119.

17 Q: Gossage, Paton. We're talking really
18 important people.

19 A: Okay.

20 Q: Okay. That was your memorandum, dated July
21 17th, 1972. Do you recall the testimony regarding
22 this document?

23 A: The testimony we covered yesterday?

24 Q: Yes.

25 A: Yes, I think I do.

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1 Q: Okay. You had requested that the
2 individuals consider sending the attached letter
3 modified, as you may suggest, but I'm reading from
4 your memorandum, to the attached customer list. And
5 we had discussed briefly the mechanisms or the
6 language you had used in that draft letter. Now, if
7 you look to the second page of the document of the
8 memorandum, bates number TNGS 6123, you write "I
9 would propose we give some thought as to how we
10 distribute this letter to the customers. We have
11 learned a few things about customer relations in the
12 blizzard of mail we have sent out in the last few
13 years." What type of thoughts did you have with
14 respect to how you distribute this letter?

15 A: It's so long ago now that I cannot recall
16 what my thoughts were at the time. So anything I
17 would say now would be sheer speculation on my part,
18 because I really cannot remember what my thoughts
19 were at the time.

20 Q: And prior to this deposition, you hadn't
21 seen this document since approximately 1972?

22 A: I don't think so. I might have seen it on
23 Monday, but I cannot recall it. I don't think.

24 Q: But other than Monday, you didn't see this
25 document?

1 A: No. No, I would have had no reason to.

2 Q: All right. Keeping that binder open in
3 front of you, sir, would you turn to -- while I'm
4 getting the number, you were concerned or expressed
5 a concern in that exhibit about customer cleanout.
6 What did you mean by that?

7 A: This is item three you're referring to?

8 Q: Well, in the body of the exhibit, you said
9 "We know from heat transfer experience that certain
10 PCB affected customers have tried to pin the cost of
11 conversion and related problems on MICC, because of
12 the alleged failure to properly warn them on need
13 for system cleanout." What's system cleanout as you
14 understood that term?

15 MR. CHAMBERS: Where are we in the
16 document?

17 MR. ROEDER: The body of that memorandum.

18 A: Okay. Let me read it again.

19 Q: (By Mr. Roeder) Sure. Take your time.

20 A: I don't think there necessarily was a
21 connection between item three alone and that
22 statement. I think my statement in the body of it
23 was sort of a general statement, but I was trying,
24 as I said, I think, in my earlier testimony, to
25 understand what the difference is in the hydraulic

1 type areas were compared to heat transfer areas,
2 because, as I again indicated, I had been in that --
3 in this position of having Pydraul as well as the
4 other PCB fluids only a matter of weeks.

5 Q: Well, let's -- in the heat transfer area,
6 Therminol area, as you noted in your July 17, 1972,
7 memorandum, earlier correspondence to customers that
8 stated "No draining is necessary." That's what the
9 memorandum you wrote says, right?

10 A: Yes.

11 Q: And we looked at yesterday afternoon the
12 full description that you -- that the letters of
13 February 28, 1972, said, which that would be "No
14 draining, cleaning or changing of seals near systems
15 is necessary." That would be at TNGS 6129, Mr.
16 Bergen's letter of February 28th, 1972.

17 A: And as I say, I was new. There could have
18 been, you know, a perfectly reasonable explanation
19 of why that wasn't necessary in Pydrauls. I was in
20 a position of being new trying to ask the people
21 that had been involved earlier and were involved in
22 Pydrauls as to what the situation really was and the
23 differences.

24 Q: I understand that, sir. But when you read
25 this, admittedly your testimony is that

1 approximately in July of 1972 you were given the
2 responsibility for Pydrauls, correct?

3 A: Yes.

4 Q: So as part of your standard procedure when
5 you had obtained new responsibilities, you would
6 examine and investigate with respect to your
7 responsibilities so that you can better do your job?

8 A: Yes.

9 Q: And as part of that investigation, you came
10 across these letters and then had written your July
11 17, 1972, memorandum to highlight questions you had
12 about previous correspondence, correct?

13 A: Yes.

14 Q: Right. And when you look at the February
15 28, 1972, letter from Mr. Bergen, the one that you
16 attached to your memorandum in July, you highlighted
17 this point about telling the customers that no
18 draining or cleaning or changing of seals near
19 systems was necessary. That was what you did in
20 your memorandum?

21 A: Yes.

22 Q: Okay. Now, isn't it true that you were
23 concerned that customers would believe that there
24 was no cleaning or draining or changing of seals
25 that would be necessary with respect to PCB issues

1 that confronted them because of this letter?

2 A: I don't think you can draw that conclusion.
3 There can be other interpretations for that. At the
4 present time, it's hard for me to go back and
5 actually think what are various interpretations I
6 was thinking at the time that I wrote it. That most
7 -- the thing I can remember is trying to find out
8 as much as I could about what went on and the
9 reasons for it.

10 MR. ROEDER: Could you read the question
11 back?

12 (The requested portion of the
13 record read by the reporter.)

14 Q: (By Mr. Roeder) I think the answer calls
15 either for a yes or no or I don't recall. So I'll
16 move to strike your previous answer, and ask if you
17 can answer that question?

18 A: I can't recall.

19 Q: Well, you were aware as of July 1972,
20 weren't you, that customers were not -- did not know
21 uniformly that there was a requirement or a need to
22 completely clean out and flush their system to
23 eradicate any PCB problems?

24 MR. CHAMBERS: Object to the form.

25 THE WITNESS: Again, could you read that

1 back to me again?

2 (The requested portion of the
3 record read by the reporter.)

4 A: Well, the term "customers" is -- is very
5 broad. I mean what customers do you really mean?

6 Q: (By Mr. Roeder) Customers of Monsanto who
7 purchased products that had PCBs in them. Is that
8 too broad for you?

9 A: Yes, sir. I mean are we talking Pydrauls?
10 Are we talking Therminols or heat transfer,
11 dielectrics? You know, what does --

12 Q: It's too broad to answer if the question
13 encompasses Pydrauls and dielectrics for you as of
14 that date. How about for Therminols if I limit it
15 to Therminols?

16 A: I think in the case of Therminols, to the
17 best of our ability, all the customers we knew about
18 had been notified.

19 Q: So all the customers that you knew about as
20 of July 1972 were aware that there was, in fact, a
21 need to flush the system, remove all the PCB
22 materials, clean that system and then completely do
23 a new fill with non-PCB materials to get rid of the
24 PCBs that were in their system?

25 MR. CHAMBERS: Object to the form.

1 A: In the case of the heat transfer systems,
2 which is the area that I knew most about in July
3 1972, to the best of my knowledge and ability, they
4 had all been notified. In the case of dielectrics,
5 they had not been notified, because we were still
6 continuing in that business. And in the case of
7 process fluids, as I recall, by then we had
8 discontinued the uses. In the case of Pydraul, as I
9 said, I was new. I didn't know whether they all had
10 or hadn't.

11 Q: And the notification that went to the
12 customers in the Therminol area was the notification
13 that went out through the letters?

14 A: Yes.

15 Q: Okay. And so by looking at those letters,
16 customers would understand what they needed to do?

17 A: Yes.

18 Q: Can you turn, sir, to Exhibit 96? It should
19 be in that binder. Probably at the very -- no,
20 that's right. It should be in that binder. That's
21 it. Take a moment to review that, sir, and I'll
22 identify it for the record. Exhibit 96 is a call
23 report, organic division, to Cumming Paton. It
24 bears production number TNGS 7355, dated 6-16-72.
25 That's the date of the call. Date typed is

1 6-21-72. This is a call report that you received
2 with respect to U.S. Steel, correct?

3 A: Yes.

4 Q: Okay. And in this call report, there is a
5 reference to Pydraul 230-C and there is also a
6 discussion with respect to the entire PCB situation
7 with the customer. I guess Mr. Stegen is the
8 salesman, correct?

9 A: Yes.

10 Q: Mr. Stegen writes to you "Peterson, who is
11 the customer, is of the opinion that U.S. Steel
12 plant Torrance in California has already changed
13 their system with the assistance of Monsanto from
14 PCB to non-PCB fluids and has flushed the system to
15 remove all residual PCBs." That's what he writes
16 there, correct?

17 A: Yes.

18 Q: Okay. Then Mr. Stegen writes "We discussed
19 the entire PCB situation with Peterson and Roland,
20 and I now feel they have a reasonably good
21 understanding of the problem." Did I read that
22 correctly?

23 A: Yes.

24 Q: Okay. Mr. Peterson informed -- excuse me.
25 Mr. Stegen informed you that "Peterson, who is the

1 customer, recognizes he will not get to zero PCBs
2 even if he drains and flushes his system." Did I
3 read that correctly?

4 A: Yes.

5 Q: Okay. Was that an understanding that you
6 believe that all customers had as of -- Therminol
7 customers had as of June 1972?

8 A: Well, this is a Pydraul customer.

9 Q: Okay. Did you believe that there was a
10 concern that the Pydraul customers did not have that
11 understanding as of June 1972?

12 A: This -- this call report indicates to me
13 that customers apparently then did have a better
14 understanding than my recollection earlier might
15 have been.

16 Q: Okay. The understanding is that, after you
17 have somebody from Monsanto go out and with their
18 assistance change their system and flush it, that
19 they will even not get to a zero PCB state with the
20 existing system, correct?

21 A: That's what this statement says.

22 Q: Sure. And the customer only learned of this
23 possibility, because it had assistance from Monsanto
24 changing the system in the first instance, correct?

25 MR. CHAMBERS: Object to the form.

1 A: I would not interpret that from this call --
2 what you said, I would not interpret that from
3 reading this call report.

4 Q: (By Mr. Roeder) Well, you would interpret
5 it, wouldn't you, sir, that the customer with the
6 assistance of Monsanto recognizes that he will not
7 get to zero PCBs even if he drains and flushes his
8 system?

9 MR. CHAMBERS: Object to the form.

10 A: I don't think it says that. It says
11 "Peterson recognizes," but it doesn't add that
12 Peterson recognized only because Monsanto gave him
13 assistance.

14 Q: (By Mr. Roeder) Well, Peterson recognized
15 that after Monsanto discussed the entire PCB
16 situation with him, and after the Monsanto
17 representative concluded they have a reasonably good
18 understanding of the problem. Isn't that what that
19 memorandum says?

20 A: Yes.

21 Q: All right. And at this point, Mr. Stegen
22 informed you that he had provided the customer with
23 the name of the labs which would be willing -- they
24 would be willing to recommend for analytical work on
25 PCBs. That's what he informed you there, right?

1 A: Yes.

2 Q: Okay. Was that standard practice with
3 respect to customers that you would inform them of a
4 lab with respect to PCBs?

5 A: I cannot recall now. It wouldn't -- it
6 wouldn't surprise me, but I cannot specifically
7 recall doing that. That may have been done before I
8 even got there, but I can't remember.

9 Q: Was U.S. Steel a large customer?

10 A: I believe they were.

11 Q: A larger customer than Tennessee Gas?

12 A: I can't recall.

13 Q: In fact, you can't recall Tennessee Gas
14 being a large customer with respect to Pydrauls at
15 all; isn't that correct?

16 A: That's probably -- yes, I think that's
17 probably fair.

18 Q: And as a larger customer, U.S. Steel would
19 naturally attract a larger interest and concern on
20 behalf of Monsanto; isn't that true?

21 MR. CHAMBERS: Object to the form.

22 A: No, I don't think that's -- I don't think
23 that's accurate.

24 Q: (By Mr. Roeder) Well, NCR was a larger
25 customer of your plasticizer division, correct?

1 A: Yes.

2 Q: Okay. And you went personally out to visit
3 NCR to discuss the issues relating to Dr.
4 Riseborough's article that had been published in the
5 "San Francisco Chronicle"?

6 MR. CHAMBERS: Object to the form. Go
7 ahead.

8 A: As I said in my testimony, I had arranged to
9 go there for reasons other than the PCBs, Dr.
10 Riseborough's statement. NCR were looking for
11 alternatives to the PCBs totally unrelated to PCBs,
12 and that was the reason that I was making the call
13 was to discuss how we could -- if there were
14 products that we had that might be of use to them in
15 this changeover, which was a technical -- there was
16 a technical reason for them wanting to change. It
17 so happened, at the time that I went, this
18 Riseborough paper came along and I took that along
19 with me.

20 Q: (By Mr. Roeder) But the first thing you
21 discussed in that memorandum you wrote was the
22 Riseborough paper, correct?

23 A: Yes, because it probably was an introduction
24 to the -- the call, but that was not the main
25 purpose of the call.

1 Q: Are you recalling this -- are you recalling
2 this trip to National Cash Register more precisely
3 today than you did yesterday?

4 A: I don't think so.

5 Q: Going back, sir, to Exhibit 119, which was
6 your memorandum to Davidson, Gossage, Bergen,
7 Stapleton, Papageorge and Johnson. We were looking
8 at that earlier.

9 A: Yes.

10 Q: I asked you yesterday whether the statement
11 that you had noted in your point two about the April
12 15th, 1971, letter, whether that was true or false,
13 and you said you didn't know?

14 A: That's right.

15 Q: Am I -- am I fairly characterizing your
16 testimony?

17 A: I think that's probably right.

18 Q: I want to show you, sir, Exhibit 11, which
19 is a memorandum from Mr. Bradford to Mr. Davidson to
20 Mr. Gossage as of December 8th, 1971. Okay. You --
21 you can sit down, sir.

22 A: Well, do we -- are we going to go back to
23 this?

24 Q: We are. We certainly are.

25 A: I'm trying to see if I have some way of not

1 losing all the places.

2 Q: I have, if you would like, sir, some
3 post-its if that will help you.

4 A: It's a good idea. Thank you.

5 Q: It is -- for the record, the witness is
6 looking at Bradford Exhibit 11. It is --
7 Plaintiff's Exhibit 11. It is dated December 8th,
8 1971, from C. L. Bradford and J. H. Davidson to T.
9 L. Gossage. It bears production number TNGS 8577
10 through 8593. Perhaps I can speed up the -- your
11 review of this, sir, by drawing your attention to
12 page four. Bates number at the bottom is TNGS
13 8580. There is a paragraph there entitled "Customer
14 Notification."

15 A: Yes.

16 Q: And so the record is clear, the paragraph
17 that I'm drawing your attention to says "On April
18 15, 1971, we sent out a letter to the Pydraul
19 mailing list saying there are no PCBs in any of our
20 Pydraul fluids." Let me stop right there. That's
21 the same statement you were referring to in point
22 number two of your July 17th memorandum, correct?

23 MR. CHAMBERS: Object to the form.

24 A: I referred to a statement from that letter.

25 Q: (By Mr. Roeder) That's what I mean. At

1 this point, this -- he's referring to the same
2 statement you were referring to in your memorandum
3 of July 17th, 1972, correct?

4 A: Yes.

5 Q: Okay. Mr. Davidson and Mr. Bradford
6 continue. "This letter is not true and has
7 irritated the Chevrolet division of General Motors
8 and probably anyone else who knows that it is not
9 true. We will communicate immediately to the same
10 customers clearly stating that the letter was
11 somewhat in error in giving them facts on the PCB
12 contamination." Did I read that correctly?

13 A: Yes.

14 Q: Okay. "If possible, we can temper this with
15 our plans for future fluids. However, getting the
16 information to our customers before they get this
17 information from our competitors should be our prime
18 area of consideration." Did I read that correctly?

19 A: Yes.

20 Q: Was this document in the file you examined
21 when you were given the responsibility for the
22 Pydrauls in July 1972?

23 A: I cannot recall that.

24 Q: Well, do you -- let me show you on that same
25 book, sir, Exhibit 13. 13.

1 A: One three. Okay. Here it is. 13.

2 Q: 13 also is an exhibit, dated December 8th,
3 1971, to T. L. Gossage from C. L. Bradford and J. H.
4 Davidson and bears production number TNGS 10691.
5 This is Mr. Gossage's handwriting here, isn't it?

6 A: It looks -- it looks a bit like it, yes. I
7 wouldn't a hundred percent swear, but it looks it
8 might be.

9 Q: The handwriting on the sides of this
10 exhibit?

11 MR. CHAMBERS: In the margins?

12 MR. ROEDER: Right.

13 Q: (By Mr. Roeder) If you turn to page four,
14 the customer notification paragraph of this
15 document.

16 A: I'm not sure if it his writing, though.

17 Q: If it helps, I think you testified it was.
18 I think Mr. Gossage did.

19 MR. CHAMBERS: I -- I will object to the
20 form, because I don't think that's correct, but
21 let's proceed.

22 MR. ROEDER: The record will show what the
23 record will show.

24 MR. CHAMBERS: Obviously.

25 MR. ROEDER: I'm not going to -- if the

1 witness can't recall, he can't recall. I'm pretty
2 confident Mr. Gossage said that was his handwriting.

3 MR. CHAMBERS: And I'm equally confident
4 that he didn't. We're up in the air. We just need
5 to look back.

6 A: I cannot be a hundred percent sure.

7 MR. ROEDER: I'll send you the transcript.

8 A: I cannot be a hundred percent sure.

9 Q: (By Mr. Roeder) All right. But in your
10 opinion, it looks like his handwriting?

11 MR. CHAMBERS: Object to the form.

12 A: Some. I looked -- I looked again, and then
13 I'm not -- right now at this minute I'm not so sure.

14 Q: (By Mr. Roeder) All right. Look on page
15 four, sir, the customer notification paragraph. It
16 might help actually if you would place your hand, if
17 you have it, as well on Exhibit 11 so you can see
18 the changes to this paragraph.

19 A: You're wanting me to look at the one that's
20 labeled customer notification; is that right?

21 Q: Right.

22 A: Okay.

23 Q: You'll see that in the Exhibit 13 draft
24 there are a couple of changes that to the way that
25 it was originally drafted by Mr. Davidson and Mr.

1 Bradford. In the customer notification paragraph in
2 Exhibit 13, it would originally read -- I'm going
3 straight to the third sentence of it. "We should
4 write another letter immediately to the same list,
5 referring to customers, clearly stating that the
6 letter was not true in giving them the facts on PCB
7 contamination." That's the way that -- that's the
8 way the typed portion of that memorandum reads,
9 correct?

10 A: Yes.

11 Q: So as Mr. Davidson and Mr. Bradford were
12 suggesting in this letter as originally typed, the
13 letter of April 15th was not true and they were
14 suggesting that Monsanto ought to send another
15 letter immediately to the same list of customers
16 telling them that the previous letter was not true,
17 correct?

18 A: That's what I'm reading.

19 Q: Right. Then the changes are made. Instead
20 of "We should write another letter," it's changed to
21 "We should communicate or we will communicate."
22 And if you look, you will see that is the change
23 that is reflected in the customer notification
24 memorandum as part of Exhibit 13. Instead of "We
25 should write another letter," it's changed to "We

1 will communicate." So the idea of the letter is now
2 withdrawn based on that change. Would you agree
3 with that edit?

4 MR. CHAMBERS: Object to the form.

5 A: I'm looking at two -- two drafts, and I'm
6 reading one, reading the other. I have absolutely
7 no idea why they were changed.

8 Q: (By Mr. Roeder) Well, let me -- let me just
9 --

10 A: And whether that was the only change before
11 the final one. I don't know.

12 Q: All right. Well, the changes that were made
13 in handwriting on Exhibit 13 with respect to that
14 paragraph were made on the draft which is contained
15 in Exhibit 11, right, of that sentence I should
16 say. "We should write another letter" that appears
17 in Exhibit 13 is changed in accordance or at least
18 consistent with the handwriting to "We will
19 communicate immediately," correct?

20 A: Well, there's a draft now, which I read
21 earlier, which says "will communicate." I see a
22 draft here which didn't have it, but there's
23 handwriting that would seem to indicate that that's
24 the change they made on that, yes.

25 Q: Right. And then the word "list." "We will

1 write another letter immediately to the same list"
2 as it's originally written is changed to "We will
3 communicate immediately to the same customers."
4 Customers is in handwriting on Exhibit 13?

5 A: That was written above customers. I can see
6 the C, and then that's the only letters I can make
7 out.

8 Q: All right. Well, if you look at Exhibit 13
9 or 11, excuse me, you'll see that the word
10 "customers" appears where "list" appeared. Would
11 you agree with me on that?

12 A: Yes.

13 Q: All right. If possible continuing -- strike
14 that. Continuing on that same sentence after "list"
15 is changed to "customers," the original draft would
16 read "Clearly stating that the letter was not
17 true." That's the draft Mr. Davidson and Mr.
18 Bradford have, right?

19 A: Well, that's -- yes, there's a word "not
20 true," and that's been scored out, yes.

21 Q: Right. Okay. The "not true" that's changed
22 in Exhibit 11 to "somewhat in error," isn't it?

23 A: The draft that I see now, document 11, says
24 "somewhat in error," yes.

25 Q: Well, "somewhat in error" is different than

1 "not true," isn't it?

2 MR. CHAMBERS: Object to the form.

3 Q: (By Mr. Roeder) Or are they the same for
4 you?

5 A: I see a difference. How significant it is I
6 don't know, because I wasn't involved or wrote the
7 different words so I don't know what they meant.

8 Q: All right. Continuing. The previous
9 sentence on the earlier draft would say "Clearly
10 stating that the letter was not true in giving them
11 the facts on the PCB contamination. If possible, we
12 can temper the letter." That's changed -- the
13 "letter" is changed to "this," correct?

14 A: Yes.

15 Q: "With our plans for future fluids. However,
16 getting this information" -- strike that. "Getting
17 this letter into our customers' hands," which is the
18 way Mr. Bradford and Mr. Davidson first drafted it,
19 is changed in Exhibit 11 to "However, getting the
20 information to our customers," that's the change
21 that shows up, correct?

22 A: Yes.

23 Q: And that change is consistent with the edit
24 on Exhibit 13, isn't it?

25 A: It appears to be. Although, the letters are

1 hard to read.

2 Q: That should be our primary consideration.

3 Now, just so I understand it, this was available to
4 you when you assumed responsibility for the Pydraul
5 products as well? Documents regarding letters sent
6 out, memoranda, et cetera, this would have been
7 available to you as product manager for that
8 product, correct?

9 MR. CHAMBERS: Object to the form.

10 A: It might have been.

11 Q: (By Mr. Roeder) Well, if it's available to
12 us in discovery in this case, it certainly would
13 have been available to you as the person who had
14 responsibility for that?

15 A: Yes, but I cannot recall if I read it or not
16 when I moved in, because I cannot recall -- I doubt
17 if I read every conceivable piece of correspondence
18 in all the files, but I can't recall.

19 Q: Would you look to the next exhibit, Exhibit
20 14? There is a memorandum from Mr. Bradford to Mr.
21 Bergen, who is the director of this group, organic
22 chemicals division, correct?

23 A: Yes.

24 Q: Okay. Who is Mr. Bollinger, who it was also
25 sent to?

1 A: I think it might have been engineering, but
2 I can't recall that. Maybe you know. Maybe it
3 wasn't. I know somebody with a similar name. So
4 I'm not sure who he was.

5 Q: All right. Anyway, December 22nd, 1971,
6 we're looking at Bradford Exhibit No. 14, TNGS 8477
7 through TNGS 8479, and it's a memorandum from
8 Bradford to Mr. Bergen, Mr. Bollinger, Mr. Hatton,
9 Mr. Herber, Mr. Johnson, Mr. Potter, Mr. Savage, Mr.
10 Cilari, Mr. Stark and Dr. Richard and a carbon to
11 Mr. Gossage, right?

12 A: Yes.

13 Q: All right. In this memorandum, Mr. Bradford
14 asks to substitute pages four and five in place of
15 those attached to the above memo and relates it to
16 his memo of December 8th, which is Exhibit 11 that
17 we've been looking at, right?

18 A: Yes.

19 Q: And if you'll compare the recipients of Mr.
20 Bradford's December 22nd memorandum are all of the
21 people who received carbon copies of his December
22 8th memorandum, isn't that right, as reflected on
23 that document?

24 A: I see more on the 22nd one than I do on the
25 8th one on number 11.

1 Q: Well, who is different? I see also Bergen
2 and Richard written in.

3 A: But they weren't on the original one. So I
4 don't know who gave them those.

5 Q: All right. So even more people?

6 A: Well, you know, seem to be more people, but
7 I don't know because I wasn't part of it.

8 Q: Do you see in the substituted page four for
9 the December 8th memorandum the paragraph regarding
10 customer notification?

11 A: Let's see. I'm now looking at -- do you
12 want me to look back at Exhibit 11?

13 Q: Compare -- compare 11 to Exhibit 13 14 now,
14 the substituted pages that Mr. Bradford wants all
15 these people to put with the memo and send him back
16 the other pages to him immediately.

17 A: And you're asking me?

18 Q: Do you see the paragraph in the substituted
19 pages that Mr. Bradford sent these people that
20 relates to customer notification?

21 A: No.

22 Q: It's deleted, isn't it?

23 MR. CHAMBERS: Object to the form.

24 A: I don't know if it's deleted or not. I
25 don't see it there.

1 Q: (By Mr. Roeder) Right. But everything else
2 looks the same, doesn't it?

3 MR. CHAMBERS: Object to the form.

4 A: I haven't read it so I don't know.

5 Q: (By Mr. Roeder) Well, but you can see that
6 looking at page four of Bradford Exhibit 14, the
7 paragraph, carry-over paragraph, ends with DASCO
8 300, and that's the way it appears on Exhibit 11 as
9 it was originally sent, correct?

10 A: I -- I see a paragraph ending with DASCO and
11 then 300, and then it goes down to field sales.

12 Q: And field sales/product group relationship
13 is the next paragraph after the customer
14 notification paragraph in the December 8th original
15 memo which is Exhibit 11; isn't that correct?

16 A: Yes.

17 Q: And just so the record is clear, in Exhibit
18 14 Mr. Bradford attached pages four and five, which
19 he asks to be substituted in place of those attached
20 to his earlier memo. That's what he writes in his
21 memorandum, correct?

22 MR. CHAMBERS: You're referring to the --

23 MR. ROEDER: Yes, I am.

24 MR. CHAMBERS: The first page of Exhibit
25 14?

1 MR. ROEDER: Yes, I am.

2 MR. CHAMBERS: He's referring to this --
3 this portion of the memo on Exhibit 14 of that
4 page.

5 A: Yes.

6 Q: (By Mr. Roeder) All right. And then he
7 says "Please return the other pages to me
8 immediately." That's what Mr. Bradford requests,
9 right?

10 A: Yes.

11 Q: Okay. Whose handwriting is that at the top,
12 sir?

13 A: I have no idea.

14 Q: No idea. It's not yours?

15 A: No.

16 Q: Do you recall -- does this -- does this
17 refresh your recollection now, looking at the change
18 in the memorandum that Mr. Bradford and Mr. Davidson
19 prepared, whether these concerns informed your
20 thinking when you prepared your July 17, 1972,
21 memorandum, which is Exhibit 119?

22 A: I can't recall that they did.

23 Q: Okay. And looking at this doesn't refresh
24 your recollection?

25 A: No.

1 Q: Did Mr. Bradford ever tell you that he
2 thought that the April 15th, 1972, letter contained
3 a statement that was false?

4 A: No, I can't remember that.

5 Q: Did he ever tell you that customers, who
6 knew that the statement in that letter was false,
7 were angry as Chevrolet Motors division was?

8 A: I can't recall him telling me that.

9 Q: Okay. Was that a concern that you had, when
10 you assumed responsibility for Pydrauls in 1972,
11 that customers, who were aware of a false statement
12 in a letter that had been sent out by Monsanto,
13 would have been upset about it?

14 A: I can't remember that situation.

15 Q: Well, this is -- that concern is nothing --
16 did not inform or was not going through your mind
17 when you say "I would propose we give some thought
18 as to how we distribute this letter to customers.
19 We've learned a few things about customer --
20 customer relations in the blizzard of mail that was
21 sent out in the past few years." That didn't relate
22 to that?

23 A: I don't think so, but I can't recall.

24 Q: All right. Did you talk about this
25 statement at all with Mr. Davidson?

1 A: I can't recall.

2 Q: How about with Mr. Gossage?

3 A: I can't recall.

4 Q: Can you turn your attention, sir, to Exhibit
5 122? It's probably also in that binder, in one of
6 those binders.

7 A: I think it's in the other one, isn't it? Do
8 you want this one back?

9 Q: Yeah, let me get it out of your way. I
10 think that's all I have for that binder. 122.

11 A: 122.

12 Q: I'm trying to find, sir, the letter that
13 ultimately did go out that you had planted the seed
14 for in your July 17th, 1972, memorandum, which is
15 Exhibit 119. Is, in fact, the letter which is
16 referenced on Exhibit 122, is that the letter that
17 ultimately did go out on August 3, 1973, that began
18 with your memorandum of July 17th, 1972?

19 MR. CHAMBERS: Object to the form.

20 A: I need to read through this, because I can't
21 recollect.

22 Q: (By Mr. Roeder) Sure. Take as much time.

23 A: You're asking me is a letter that's
24 somewhere in 122 similar to what I had suggested
25 back in --

1 Q: No. No. What I said -- what I am asking
2 you is in the context of your July 17th, 1972,
3 letter, you suggested that Monsanto should send out
4 additional correspondence to its customers relating
5 to federal regulations. And I'm trying to find out,
6 is -- first of all, if any such letter was sent
7 out. So maybe we ought to start right there. Was
8 any such letter sent out as you suggested a letter
9 should be sent out in your memorandum of July 17,
10 1972?

11 A: I can't remember.

12 Q: Okay. Now, if you look at Exhibit 122,
13 perhaps that might help refresh your recollection.

14 A: Well, let me read through this. Okay.

15 MR. ROEDER: Can you read back the
16 question?

17 (The requested portion of the
18 record read by the reporter.)

19 A: It doesn't absolutely. I don't recollect
20 even now reading this whether anything was sent out
21 between 1972, July, when I wrote the previous thing,
22 and August '73. I really don't -- can't remember.

23 Q: (By Mr. Roeder) Well, the letter, which is
24 attached to Exhibit 122, is signed by you, correct?

25 A: The letter that on --

1 Q: Is attached to Exhibit 122 is signed by you?

2 A: Okay. Let me look. Yes. Yes.

3 Q: And Exhibit 122 is a memorandum that you
4 sent out to a number of people starting with J.
5 Armentour?

6 A: Yes.

7 Q: And going all the way to E. Trifner?

8 A: Yes.

9 Q: Using almost every letter in the alphabet in
10 between?

11 A: That's right.

12 Q: Is that fair enough?

13 A: Yes.

14 Q: Would you agree with me that the August 3,
15 1973, letter was similar to in certain paragraphs to
16 the July 17, 1972, draft, which is attached to
17 Plaintiff's Exhibit 119?

18 MR. CHAMBERS: Let me object to the form.
19 Is there a particular letter that you have in mind
20 since there are multiple letters attached?

21 Q: (By Mr. Roeder) All right. Fair enough.
22 What I'm really looking for, sir, is the -- well,
23 the only draft you had prepared in your July 17,
24 1972, letter was the one that would have gone to
25 Pydraul customers -- I'm sorry. I said letter.

1 July 17th, draft -- strike that. Let me rephrase
2 the question, because I'm saying letter when I mean
3 memorandum and I want the record to be clear. Your
4 July 17, 1972, memorandum attaches a draft letter
5 which is also dated July 17, 1972, correct?

6 A: Yes.

7 Q: Now, that letter would only go to Pydraul
8 customers, right?

9 A: My recollection, yes, that was my
10 suggestion, yes.

11 Q: Now, there was a letter, which was also
12 attached to Exhibit 122, which is dated August 3,
13 1973, over a year later, correct?

14 A: Yes.

15 Q: Okay. And one of those letters attached to
16 Exhibit 122 would also go to Pydraul customers,
17 correct?

18 A: Yes.

19 Q: And that's the one that begins with the
20 bates number TNGS 8617, correct?

21 A: I'm sorry.

22 Q: Just so the record is clear, you're looking
23 at a piece of paper that has a bates number at the
24 bottom of TNGS 8617?

25 A: Yes. Yes.

1 Q: Okay. So if you compare that one, the
2 August 3 Pydraul letter, to the July 17, 1972, draft
3 letter, the first paragraphs are almost identical?

4 A: Let me get them out. It will be easier for
5 me.

6 Q: You need to -- you need to --

7 MR. CHAMBERS: Let me give you a hand.

8 THE WITNESS: This high technology.

9 MR. CHAMBERS: We're just going to take this
10 one out.

11 MR. ROEDER: You've got to pull it open.

12 Q: (By Mr. Roeder) Let's stop at the first
13 paragraph. The first paragraph is very similar
14 except for the last sentence, correct? I think it's
15 identical up to the last sentence of the first
16 paragraph?

17 A: The first sentence is the same. The -- the
18 second and third sentences are different.

19 Q: The second sentence in the July 17, 1972,
20 letter says "Since then we've gone even further and
21 eliminated the use of any chlorinated compounds in
22 our Pydraul fluids." Then isn't it exactly the
23 same?

24 A: No.

25 Q: "Since then we have reviewed our

1 formulations and taken further steps to remove all
2 chlorinated compounds from our Pydrauls."

3 A: Yes.

4 Q: Okay. The wording of the third sentence, as
5 of the July 17, 1972, draft, was "Effective July 1,
6 1972, no Pydraul fluids will be sold that contain
7 chlorinated compounds as a formulation component."
8 And what you said in your August 3 letter was
9 "Pydraul fluids containing chlorinated materials
10 have not been sold since mid 1972," correct?

11 A: Correct.

12 Q: Pretty much the same overall thought,
13 wouldn't you agree?

14 A: Yes, similar.

15 Q: I mean there's no great distinctions in the
16 -- the message that you were conveying in the first
17 paragraph of the August 3 letter in 1973 as to the
18 draft in July -- on July 17th, 1972, correct?

19 A: Probably not.

20 Q: All right. In the July 17th, 1972, draft,
21 you had discussed a publication, dated May 14th,
22 1972, of the intergovernmental agency PCB task force
23 which recommends the discontinuation of PCBs, and
24 then you referenced a notice of a proposed rule
25 making on PCBs that the FDA had noted as of March

1 18, 1972, correct?

2 A: Yes.

3 Q: All right. Now, in your August 3, 1973,
4 letter you talk about the final rule that the FDA
5 had made with respect to polychlorinated biphenyls?

6 A: Yes.

7 Q: Okay. That's the final rule in the August 3
8 letter. That's the rule that was proposed in the
9 July -- that was discussed -- let me rephrase the
10 question so it's clear. The final rule reflected in
11 the August 3, 1973, letter is the rule that was
12 proposed on March 18, 1972, correct?

13 A: Proposed rule making. Yes, in March '72
14 they proposed -- they give notice of a proposed rule
15 making. What I see in the '73 letter is they got
16 around to making that final, and I don't know if it
17 was the same or had been modified in July '73 just
18 about 15 months or so later.

19 Q: But it's the continuation of the -- the rule
20 that you had noted in July '72 in your letter became
21 a final rule in exactly the same form or slightly
22 modified as of July 1973, correct?

23 MR. CHAMBERS: Object to the form.

24 A: Looking at these two letters, that would be
25 an inference, and I don't know if there was anything

1 else in between or not. I can't recall.

2 Q: (By Mr. Roeder) All right. But the July --
3 okay. Now, the August 3, 1973, letter now talks
4 about the proper disposal of chlorinated materials.
5 That was not -- that was also referenced in your
6 July 1972, letter, correct?

7 A: Where are you now? You are now what? What
8 paragraph are you in now? Are you in August '73
9 letter at the moment?

10 Q: Sure. Both of them. I'm trying to do them
11 both at the same time so we can compare.

12 A: Okay. You're addressing what part of the
13 letter?

14 Q: The fourth paragraph on the first page talks
15 about disposal of chlorinated materials requires
16 high temperature incineration?

17 A: Yes.

18 Q: Then it references Monsanto's installation
19 of a facility at its Sauget, Illinois, plant?

20 A: Yes.

21 Q: You also contain or give that same
22 information in the draft of your July 17, 1972,
23 letter, don't you, if not the same words but at
24 least the same thought?

25 A: Yes, they are somewhat similar paragraphs.

1 Q: All right. But the essential message was
2 the same in each of those, correct?

3 A: I wouldn't dispute that.

4 Q: All right. Now, the August 3, 1973, letter
5 contains a statement that says "Because you have
6 purchased Pydraul fluid prior to our changeover
7 activities in mid 1972, it may have contained PCBs.
8 You may wish to review your procedures and inspect
9 your facilities at this time to ensure that your
10 operations are in compliance with the new
11 regulation." Did I read that correctly?

12 A: Yes.

13 Q: Okay. The new regulation related only to
14 the uses of PCBs that might contaminate animal feed,
15 food and food packaging materials during their
16 manufacturing, handling and storage, correct?

17 A: That would be my understanding. I can't
18 recall everything that was in that register, but
19 that's what I wrote in August.

20 Q: In any event, the way you describe the
21 regulation in August 3, 1973, in this letter, the
22 FDA rule relates to the uses of PCBs in processes
23 where you make or produce animal food, food for
24 humans or packaging for food, right?

25 A: Yes.

1 Q: All right. Not, for example, relating to
2 uses of Pydraul with respect to a gas transmission
3 purpose?

4 A: I can't recall the register referring to
5 that specific application.

6 Q: Right. But you would consider that
7 different than the use in food processing? --

8 MR. CHAMBERS: Object to the form.

9 Q: (By Mr. Roeder) -- operations?

10 A: You know, I have no opinion on that.

11 Q: All right. In any event, your August 3,
12 1973, letter suggests that customers should inspect
13 their operations to be sure they're in compliance
14 with the regulation that relates to animal feed or
15 food or food packaging materials for humans, right?

16 A: I'm saying they should review their
17 procedures and inspect their facilities to see that
18 they're in compliance with this particular
19 registration of which I've given some indication of
20 what it is there. Whether my paragraph was totally
21 comprehensive or not, I don't know. I'm saying they
22 should read that regulation themselves and make a
23 judgment.

24 Q: Well, you've attached a copy of the
25 regulation in your letter. You say you've attached

1 a copy.

2 A: Okay. Yes, then I'm sure I did.

3 Q: All right. So they could immediately refer
4 back to that regulation. Okay. So whatever
5 concerns they could have, they could identify it
6 with this regulation as you had enclosed it?

7 A: Yes.

8 Q: Then in your July 1972 draft on page two,
9 you had written "In view of the foregoing
10 governmental actions, you may wish to evaluate their
11 effects, if any, in light of past purchases of PCB
12 containing fluids from Monsanto." You further
13 write, do you not, sir, "To assist you in carrying
14 out any investigations you may care to make, we've
15 attached a list of Pydraul purchases by your company
16 each year from 1969 to the present." That's
17 different from the way you had written the third
18 paragraph of the August 3, 1973, letter, isn't it?

19 A: Yes.

20 Q: Okay. In the August 3, 1973, letter you
21 don't suggest that you're going to attach a list of
22 their purchases, do you?

23 A: That's true. But we give them the
24 information that they could identify that
25 themselves.

1 Q: But you at Monsanto had that information,
2 didn't you?

3 A: We had information, yes.

4 Q: And then the next sentence in the third
5 paragraph of this letter says "To assist you in any
6 investigations you may care to conduct, I've
7 attached a list identifying the Pydraul fluids which
8 contain chlorinated ingredients and those which do
9 not." That's the same point that you tried to make
10 in your July 17, 1972, draft; isn't that correct?

11 A: Yes. Well, except there I say PCB and
12 non-PCB, and I broaden it to be chlorinated for this
13 one.

14 Q: So it's almost as if you said -- if you
15 simply deleted the phrase that said "We have
16 attached a list of Pydraul purchases." So if you're
17 looking at the July 17 draft, "To assist you in any
18 investigations you may care to make, we have
19 attached a list," and then you just eliminated that
20 clause in between, right?

21 A: Yes.

22 Q: Okay. Is that a decision you made?

23 A: I cannot now recall.

24 Q: But you would have been involved in it,
25 wouldn't you?

1 A: In all probability, yes.

2 Q: Would Mr. Gossage have approved that
3 decision?

4 A: Mr. Gossage may have seen the letters before
5 they went out. I think probably, but I cannot
6 specifically recall that now.

7 Q: How about Mr. Papageorge?

8 A: I would think so but, again, I can't
9 specifically recall.

10 Q: Both of those individuals received drafts of
11 your letters, didn't they?

12 A: Yes, they did.

13 Q: Who was Mr. Stapleton, J. F. Stapleton?

14 A: I think J. F. Stapleton was in our legal
15 department.

16 Q: A lawyer?

17 A: Yes.

18 Q: Mr. Bergen was your boss?

19 A: Well, I reported to -- directly to Tom
20 Gossage.

21 Q: Who reported to Bergen, right?

22 A: Exactly.

23 Q: So he was the senior guy in the division?

24 A: Yes.

25 Q: So the only people who got your July 17

1 letter were Davidson and Johnson who were in sales
2 in that division, right?

3 A: Yes.

4 Q: Papageorge, who was the -- in charge of the
5 -- in charge of PCBs, he was the coordinator?

6 A: Yes, with the agencies and all of that.

7 Q: Your boss, your boss' boss and the lawyer?

8 A: That's right.

9 Q: Did it concern you that -- that your July 17
10 draft letter was not getting out quickly?

11 A: I can't recall.

12 Q: Well, would it be your practice to follow up
13 on memoranda that you had sent to people if you
14 hadn't heard back from them in a week, week and a
15 half, two weeks?

16 A: Probably. But in this case, I cannot recall
17 what went on afterwards. I mean I see the two
18 things, and I cannot today recall what took place
19 between when I wrote this obviously on July the 17th
20 and what happened between August the 3rd. You know,
21 I have no recollection.

22 Q: Sure. So what I'm trying to find out,
23 because you testified you have no recollection of
24 that. It would be your practice, wouldn't it, that,
25 if Gossage hadn't gotten back to you on something

1 that you wanted to get out, you'd call him up and
2 say "Tom, where are we" on whatever it is that you
3 wanted to get out?

4 A: Normally, yes.

5 Q: Okay. And that would also be the same with
6 Mr. Papageorge, right?

7 A: Yes.

8 Q: And would you expect Mr. Gossage to
9 communicate that point to get the approval of Mr.
10 Bergen, or would you call him directly?

11 A: I would have left it to Gossage to get
12 Bergen's approval.

13 Q: Okay. But if Gossage says it's okay, you're
14 assuming he's cleared it with Bergen?

15 A: Absolutely.

16 Q: How about Stapleton? Would you have called
17 Stapleton directly to get his approval on something
18 that you had sent for his approval?

19 A: Not necessarily.

20 Q: Okay. But you would have relied upon
21 Gossage to have gotten the approval from Stapleton?

22 A: I'm not sure. You know, I can't -- it
23 varied. You know, I can't recall what happened in
24 this case.

25 Q: I understand that. But I'm just saying, in

1 the ordinary course at Monsanto, you wanted to get
2 something out, and you were instructed or felt
3 prudent that somebody in legal ought to approve it,
4 Stapleton, for example, here?

5 A: Yes.

6 Q: Would it be your practice to call him up
7 directly and say, as you would with Mr. Gossage,
8 "Where are we on this"?

9 A: I think it would have been. Whether I did
10 in this case, I don't know. It probably would have
11 been.

12 Q: You didn't -- you didn't feel that you had
13 to go through a channel to get to Stapleton. You
14 could call him directly?

15 A: That's right.

16 Q: While we're on the subject, why don't we
17 mark this as the next exhibit.

18 A: So are we finished with these for the
19 moment?

20 Q: We are. And I'd like to mark this as an
21 exhibit?

22 A: So should I put this back in the place where
23 it was?

24 Q: Yes, put that exhibit back from whence it
25 came.

1 A: Okay.

2 MR. ROEDER: Could you mark this as the next
3 exhibit, please? I think we're on Exhibit 215.
4 Does that sound right?

5 (Plaintiff's Deposition Exhibit No.
6 215 marked for identification.)

7 Q: (By Mr. Roeder) Exhibit 215, sir, is your
8 letter dated August 3, 1973. It says "Dear sir" and
9 has your signature on the second page, right?

10 A: Yes.

11 Q: And this is the same letter that we've been
12 looking at that was attached to Exhibit 119, right?
13 Would you like to see it to confirm it is?

14 A: I'm sure it is.

15 Q: All right. And the production numbers are
16 TNGS 2837 through TNGS 2851. And if you notice,
17 sir, attached to this document is a list of Pydraul
18 fluids which contain chlorinated ingredients?

19 A: Yes.

20 Q: It's at 2839. This was included in the
21 letter that was sent out, right?

22 A: Yes.

23 Q: Okay. Then current Pydraul fluids do not
24 contain chlorinated ingredients. That was the list
25 that was sent out. There's an incineration service

1 letter. This went out with that mailing, right?

2 A: Yes.

3 Q: And also the "Federal Register," Department
4 of Health Education and Welfare, Food and Drug
5 Administration ruled that you had discussed, right?

6 A: Yes.

7 Q: So this was the letter that was sent out,
8 wasn't it?

9 A: Yes.

10 Q: Now, as we have compared the July 17 draft
11 with the August 3, 1973, draft sent out a year
12 later.

13 A: Yes.

14 Q: And the testimony we just had. Does this
15 refresh your recollection as to whether or not this
16 August 3, 1973, letter was the letter that was
17 suggested in the July 17, 1972 memorandum?

18 A: It could well be. You know, based on the
19 letters I've seen, it would have indicated it is.
20 But I-- you know, I cannot just say 100 percent
21 sure.

22 Q: Okay. Assuming, for the sake of this
23 question, it is and there are similarities, I think
24 you'll agree, between the July draft and this draft?

25 A: Yes.

1 Q: Why did it take a year to send out?

2 MR. CHAMBERS: Object to the form. But go
3 ahead and answer if you're able.

4 A: I, you know, cannot now specifically recall,
5 but certainly the reference I made at the time in my
6 '72 draft referred to a proposed rule making and as
7 I look through the -- what's in the -- what I had --
8 what is in the August '93 letter.

9 Q: (By Mr. Roeder) '73 letter.

10 A: '73 letter. The "Federal Register" didn't
11 get around to making the final rule until, you know,
12 virtually a year later. So one consideration could
13 be -- and I'm not saying it was the only one. But
14 one would be wait until we see what the authorities
15 do, in fact, come up with so that -- because when
16 they publish a proposed rule making, my
17 understanding of that is that that gives time for
18 interested parties, whoever they may be, to come
19 forward and say "Well, no, we think this is wrong."
20 So there's a period where comment is accepted and
21 digested and so on, and that might have changed.
22 You know, what came out finally a great deal which
23 would have made what was being proposed in July not
24 necessarily helpful or accurate.

25 Q: Well, if you gave the customers notice of

1 the proposed rule in 1972, they would have that much
2 more time to prepare for any potential rule that
3 would be implemented over a year later; isn't that
4 correct?

5 MR. CHAMBERS: Object to the form.

6 A: I think that would be speculation. As I say
7 again, I am not absolutely sure that nothing was
8 done between July '72 and '73. It may not have
9 been. I cannot recall.

10 Q: (By Mr. Roeder) So but in any event, you're
11 uncomfortable speculating as to how Monsanto's
12 actions would or would not give customer lead time
13 with respect to government regulation that
14 ultimately came down the pike?

15 MR. CHAMBERS: Object to the form.

16 Q: (By Mr. Roeder) You understand where I'm
17 coming from when I ask this question?

18 A: No, I'm not sure I am.

19 Q: Okay. Well, when I asked you why did you
20 wait, you said -- couldn't you have given your
21 customer a year's lead time, you didn't want to
22 speculate as to --

23 A: I'm saying that's one possible scenario.
24 I'm saying that now having looked at what I said --
25 looked at the date of that final one and what was

1 available to me at the time of my July '72, which
2 was there was a proposed rule making in the works
3 and here is the final one. I don't know whether
4 that was a factor if there was a delay. Today I'm
5 not sure if there was a delay between July of '72
6 and 1973 before a letter was sent out. And I'm
7 speculating today that that might have been one of
8 the reasons, but I cannot recall what the reasons
9 were or what transpired.

10 Q: Well, you believed, once there was a notice
11 of a proposed rule making from the FDA, that a rule
12 was going to be made, didn't you?

13 A: Not necessarily. It said it was being
14 considered, and that this was their way of letting
15 people know, I think, that they could make comments
16 and so on and so forth. That's my recollection of
17 what the -- how the process worked.

18 Q: Well, as of July 1972, hadn't Monsanto
19 already made the decision not to sell Therminol FR
20 for food related uses?

21 A: We had done that, yes.

22 Q: So you thought it would be improper for
23 continued use and purchases of Therminol FR with
24 PCBs as they would be used for food, right?

25 MR. CHAMBERS: Object to the form.

1 A: Yes.

2 Q: (By Mr. Roeder) Okay. And so if the FDA
3 were going to make the rule a proposed, it would
4 have been consistent with what you thought the
5 proper policy should have been regarding PCBs and
6 food related operations?

7 MR. CHAMBERS: Object to the form.

8 A: I would have had no objection. I would have
9 had no objection to the proposed rule as best I
10 recall.

11 Q: (By Mr. Roeder) But you thought Monsanto's
12 decision not to sell PCB fluids in the Therminol
13 area for food related uses was proper?

14 A: Yes.

15 Q: Okay. And what the FDA was doing was giving
16 notice of a rule that would be consistent with
17 Monsanto's previously made rule, right?

18 MR. CHAMBERS: Object to the form.

19 Q: (By Mr. Roeder) They were going to -- let
20 me rephrase the question. What the FDA suggested in
21 their proposed rule making was that you couldn't use
22 PCBs in food related processes, right?

23 MR. CHAMBERS: Object to the form.

24 A: I think they said that there shouldn't -- I
25 don't know if they said you couldn't use it. My

1 recollection was that they were talking about in the
2 limits of PCBs that could be present.

3 Q: (By Mr. Roeder) All right. But they were
4 limiting the use of PCBs in food related operations,
5 correct?

6 MR. CHAMBERS: Object to the form.

7 A: By setting, you know, limits on how much
8 PCBs, yes, you could say they were.

9 Q: (By Mr. Roeder) Okay. And you had already
10 established a policy of limiting PCBs in food
11 related industries by not selling Therminol FR,
12 correct?

13 MR. CHAMBERS: Object to the form.

14 A: You could say that, yes. I mean we were
15 saying "From now on we won't be supplying any. So
16 if there are PCBs out there, we're not going to be
17 adding to it by selling."

18 Q: (By Mr. Roeder) And you weren't going to
19 make any new fills?

20 A: That's right. Exactly.

21 Q: And if anyone wanted to top up, you were
22 going to sell them, if they wanted, additional fluid
23 that would be compatible with the PCBs, but would
24 not contain PCBs, right?

25 A: That's right.

1 Q: So you were out of the PCB Therminol
2 business as it related to food products?

3 A: Yes.

4 Q: Okay. So the FDA's proposed rule was
5 consistent with the policy that Monsanto had; isn't
6 that correct?

7 MR. CHAMBERS: Object to the form.

8 A: Well, it was to some extent possibly an
9 endorsement. We did -- I did not and, to the best
10 of my knowledge, I don't know if anybody within
11 Monsanto had gone, you know, and suggested this rule
12 come out. I think that came from the federal
13 government who had established a task force on its
14 own, and we gave them information. We tried to be
15 as open and cooperative as we could giving them
16 information. You know, if there's any implication
17 in your statement that, you know, somehow this was
18 Monsanto having developed the rule and then said to
19 the federal agencies "You bless it," no, that --
20 that didn't happen, as best I can recall.

21 Q: (By Mr. Roeder) No. No. The question
22 was: Their rule was consistent with the policy that
23 you had adopted, their proposed rule? --

24 MR. CHAMBERS: Object to the form.

25 Q: (By Mr. Roeder) -- as you understood that

1 rule?

2 MR. CHAMBERS: Object to the form.

3 A: It certainly wasn't incompatible with it.

4 Q: (By Mr. Roeder) Okay. It was not
5 incompatible. It was consistent?

6 MR. CHAMBERS: Object to the form.

7 Q: (By Mr. Roeder) Would you agree with me on
8 that?

9 A: Well, except the point I'm trying to make is
10 that they went one step further and said that, you
11 know, there were -- you know, that it was up as long
12 as it didn't exceed a certain level. And that was
13 not something that Monsanto --

14 Q: So they didn't go as far as you did, as far
15 as you wanted to go?

16 A: No, I'm not saying that. I think, from a
17 practical standpoint, you have to set some measure
18 somewhere, you know. As we got to talking
19 yesterday, I think, you know, zero is something that
20 you cannot -- you know, zero meaning this. You've
21 got to be careful. Zero is -- is not, you know,
22 something that you can actually measure.

23 Q: All right. So didn't you expect, though,
24 that, when a proposed rule was issued and notice of
25 a proposed rule was published in the "Federal

1 Register," that some kind of rule regulating the use
2 of PCBs would ultimately be put in place?

3 A: I can't think what I thought at the time,
4 but I don't think it's a given that because they
5 publish that proposed rule that it would actually
6 happen. At the time, I thought it probably -- it
7 would, but I mean I wouldn't bet on it.

8 MR. ROEDER: All right. Let's take a couple
9 minute break.

10 (Discussion off the record.)

11 MR. ROEDER: Let's mark this as the next
12 exhibit.

13 (Plaintiff's Deposition Exhibit No.
14 216 marked for identification.)

15 Q: (By Mr. Roeder) Okay. Exhibit -- is this
16 216?

17 A: 216, yes.

18 Q: Plaintiff's 216 is a letter?

19 A: I've got two copies. Is that intentional or
20 am I --

21 Q: I only want you to have the one that has the
22 TNGS number. I think they're the same exhibit.

23 MR. CHAMBERS: I think I got -- I think I
24 got the TRAN version. Thank you.

25 Q: (By Mr. Roeder) Okay. That way we avoid

1 any questions regarding the designation. Okay. It
2 bears TNGS number 4094 to 4095, and this is a letter
3 to Mr. Henry Bartz at Tenneco Chemicals in Lobeco,
4 South Carolina. Did you ever talk to Mr. Bartz
5 yourself?

6 A: Not that I recall.

7 Q: Okay. Now, the letter to Mr. Bartz, dated
8 November 22nd, 1971, recommends that he drain
9 Therminol FR from the system and replace it with a
10 non-PCB Therminol 66. Was this pursuant to a policy
11 you had adopted in the heat transfer area?

12 MR. CHAMBERS: Object to the form.

13 Q: (By Mr. Roeder) To send out letters like
14 this to customers?

15 A: I recall that we were getting a lot of
16 inquiries and, yes, I think there was a general
17 policy established as to how to handle inquiries,
18 yes.

19 Q: Who was your counterpart in the Pydraul area
20 at this time? Who was product manager?

21 A: I cannot recall.

22 Q: Because you didn't take -- you didn't get
23 Pydrauls until approximately seven months later?

24 A: Exactly. So I don't know.

25 Q: Mr. Johnson, Mr. Bradford?

1 A: It might have been one of those.

2 Q: Do you know what happened in response to
3 this letter?

4 A: I can't recall now.

5 MR. ROEDER: That's all I have for that.
6 Would you mark this as the next exhibit, please?

7 (Plaintiff's Deposition Exhibit No.
8 217 marked for identification.)

9 Q: (By Mr. Roeder) Exhibit 217, sir, is a
10 memorandum from James J. Roder to W. B. Papageorge,
11 dated December 8th, 1971, and you are carboned on
12 that letter, correct?

13 A: Yes.

14 Q: And for the record, you were carboned on the
15 previous letter Plaintiff's Exhibit 216, weren't
16 you?

17 A: Yes.

18 Q: So you would have received that in the
19 ordinary course?

20 A: Yes.

21 Q: And you would have received Plaintiff's
22 Exhibit 217 in the ordinary course as well, correct?

23 A: I'm sorry. I would have received?

24 Q: Plaintiff's Exhibit 217 in the ordinary
25 course of business at Monsanto?

1 A: Yes. Yes.

2 Q: Exhibit 217 references a report that the EPA
3 had contacted Tenneco regarding their use of PCB
4 material as a heat transfer fluid in offshore
5 platforms. Do you recall this?

6 A: I don't recall.

7 Q: Okay. And looking at that statement doesn't
8 refresh your recollection concerning that?

9 A: No.

10 Q: All right. Mr. Roder also suggests to Mr.
11 Papageorge whether the EPA would tell Mr. Papageorge
12 which oil companies had been contacted, who they
13 contacted and their impression about the future use
14 of PCB material. Do you recall Mr. Papageorge ever
15 getting back to you or Mr. Roder regarding whether
16 or not he would contact or thought you should
17 contact the EPA to find out who was using PCBs?

18 A: I can't recall. I can't recall.

19 Q: Would that have been the policy? Would it
20 have been consistent with your understanding of
21 Monsanto's policy that someone would contact the EPA
22 to find out which companies they had contacted,
23 which companies the EPA had contacted regarding
24 their use of PCB?

25 A: I have no way of --

1 MR. CHAMBERS: Object to the form. Now you
2 can answer.

3 A: I have no way of knowing now whether Mr.
4 Papageorge would have considered that appropriate or
5 not. Whether he did it, I don't -- I just don't
6 recall anything about it.

7 Q: (By Mr. Roeder) You were familiar with your
8 policies at Monsanto as of December 1971 concerning
9 whether or not an employee would contact the
10 government to learn information about what the
11 government was doing with respect to customers,
12 weren't you?

13 MR. CHAMBERS: Object to the form.

14 A: I -- you know, I don't know about a policy.

15 Q: (By Mr. Roeder) Was there such a policy?

16 A: I can't recall.

17 Q: So if you can't recall that there was such a
18 policy, you don't know whether this would be
19 consistent or inconsistent with Monsanto's policy?
20 I mean I just I want to make my record clear.

21 A: True. I -- I can't recall anything about
22 this particular situation.

23 Q: All right. And you can't recall whether it
24 was a practice or a procedure that Monsanto would
25 contact government to find out who the government

1 had contacted regarding the PCB use of their
2 materials, correct?

3 A: I -- I didn't have responsibility for
4 contacting the -- the government directly in any of
5 this. That was Mr. Papageorge's area.

6 Q: Okay. Now, Mr. Roder says "We could use
7 this information in promoting Therminol 66 as a
8 replacement both for new and existing systems."
9 What is your understanding of his purpose in making
10 that point?

11 MR. CHAMBERS: Object to the form.

12 A: Mr. Roder was a salesman. But as to what he
13 had specifically had in mind when he wrote this, I
14 have no of knowing.

15 Q: (By Mr. Roeder) Well, if the PCB -- strike
16 that. If the EPA had an impression about the future
17 use of PCB material which as he reflects here, which
18 would be that you couldn't use it, wouldn't that
19 tend to increase your ability to sell Therminol 66?

20 MR. CHAMBERS: Object to the form.

21 MR. ROEDER: What's the basis for the formal
22 objection?

23 MR. CHAMBERS: It assumes facts not in
24 evidence.

25 MR. ROEDER: It's cross-examination.

1 A: I have no way of knowing what was in Jim's
2 mind when he wrote this. He wrote it, sent it to
3 Papageorge, which was perfectly appropriate. He
4 copied me in. And I can't recall discussing it with
5 Roder, with Papageorge or having seen a response.

6 Q: (By Mr. Roeder) Well, you were aware at the
7 time, weren't you, that if -- strike that. At the
8 time, Monsanto was attempting to sell Therminol 66,
9 correct?

10 A: Yes.

11 Q: And isn't it also true that, if customers
12 had to completely drain out their systems of
13 Therminol FR and then put in Therminol 66, you would
14 sell more Therminol 66, correct?

15 MR. CHAMBERS: Object to the form.

16 A: Yes, we had competitors so there was -- at
17 least we would have an opportunity. Whether we
18 would get it or not.

19 Q: (By Mr. Roeder) Okay. But it would be your
20 understanding that the requirement that -- that a
21 customer would have to drain its system would then
22 create the possibility that they'd have to buy
23 replacement fluid for the fluid they drained?

24 A: Or find another way to do their heating.

25 Q: Okay. By nonthermal operation?

1 A: Exactly. So they would have -- they had --
2 they had a range of options that they would probably
3 consider.

4 Q: All right. Okay. Was it your experience,
5 at the time in 1971, that customers were, in fact,
6 draining Therminol FR from their systems?

7 MR. CHAMBERS: Let me ask that that question
8 be read back, please.

9 (The requested portion of the
10 record read by the reporter.)

11 MR. CHAMBERS: I apologize. I misheard your
12 question. You can answer.

13 A: My recollection is that we didn't totally
14 discontinue sales. I seem to recall yesterday
15 looking at correspondence that indicated the date
16 that we told them that we would be discontinuing
17 sales was later than December the 8th. So,
18 therefore, as of December the 8th, I'm not sure -- I
19 cannot recall now what I -- anything about what the
20 actual status of draining or not draining was.

21 Q: (By Mr. Roeder) Maybe I can help you on
22 that date. What I'm looking for, sir, is a -- to
23 help refresh your recollection, is a cable or a fax
24 or something like that that was sent out indicating
25 what the last date was that you would sell PCB for

1 nondielectric uses?

2 A: And I thought that was just a few days
3 before Christmas or something 1971. The date of
4 December 17th sticks in my mind.

5 Q: Okay. That's -- that's your best
6 recollection of when --

7 A: When we said no to all PCB. Sorry. No to
8 all PCB. No to all Therminol FR sales.

9 Q: Okay. So we can move this along, this
10 letter or this memorandum from Mr. Roder, dated
11 December 8th, 1971, would be approximately a week
12 before your best recollection is that decision was
13 made to get out of all PCB business other than
14 dielectric?

15 A: Well, at that time, I would have been
16 involved in -- in PCBs, all PCB containing heat
17 transfer fluids.

18 Q: All right. Okay. So as far as your
19 responsibility was concerned as of that date, you
20 weren't selling PCBs anymore, because you had the
21 Therminol at that point?

22 A: Yes, except for the dielectrics. And there
23 was some discussion as to whether there might be
24 some circumstances where there might be a request
25 for an extension as I recall. And I don't know -- I

1 cannot recall now exactly what -- what that was.
2 Effectively or to all intents and purposes, when we
3 went out on that 17th or whenever that later date in
4 December was, that was a termination of PCB heat
5 transfer fluids.

6 Q: Okay. Well, in fact, I have an exhibit
7 right here.

8 (Plaintiff's Deposition Exhibit Nos.
9 218, 219 marked for identification.)

10 Q: (By Mr. Roeder) Sir, Exhibit 218 is a
11 memorandum from W. S. Clark, dated December 16th,
12 1971, to Messieurs Bechtold, B-E-C-H-T-O-L-D,
13 Fording, McNamara, Sutton and Wilde, W-I-L-D-E, and
14 you're a carbon copy recipient, right?

15 A: Yes.

16 Q: December -- let me continue the
17 identification. It has bates numbers TNGS 4609 to
18 TNGS 4623. Your handwriting is on Exhibit 218,
19 isn't it?

20 A: Yes, that looks like -- that looks like
21 mine, yes.

22 Q: All right. Now, Exhibit 219 is a memorandum
23 from the Industrial Chemicals Company St. Louis to
24 directors of marketing, field sales directors, field
25 sales managers and district sales managers, and this

1 has production numbers TNGS 4838 through 4858. This
2 is the decision that you were talking about; isn't
3 that correct?

4 A: Yes.

5 Q: Okay. Exhibit 219 references a board
6 meeting on December 9, 1971, in which "Monsanto's
7 board of directors approved corporate Monsanto
8 decisions previously takes as follows:" That was
9 "One, to terminate all sales of PCB fluids for use
10 in heat transfer applications by formal notice to
11 all customers." That's what you were referring to;
12 isn't that right?

13 A: Yes.

14 Q: So that's what would directly relate to your
15 area of responsibility, correct?

16 A: Yes.

17 Q: Okay. "To immediately implement a plan to
18 terminate all sales of polychlorinated terphenyls
19 March 31, 1972, for plasticizers." That was also
20 within your jurisdiction?

21 A: Yes.

22 Q: All right. And the third one "The sales of
23 PCB fluids for transformer or capacitor use will be
24 dependent upon the receipt of agreements acceptable
25 to Monsanto holding Monsanto harmless from legal

1 liability associated with the use of PCBs in
2 transformers and capacitors from customers whose
3 financial responsibility makes such agreements
4 meaningful in Monsanto's opinion." It also related
5 to your area of responsibility?

6 A: Yes.

7 Q: Okay. You had signed this memorandum,
8 didn't you? Your signature appears on page six?

9 A: Yes.

10 Q: Okay. And Willis Clark who is he?

11 A: He was in the plasticizer group doing
12 something similar in the specialty area, as I
13 recall, that I would have done sometime in the
14 period '66 to '70 when I was in plasticizers, a
15 similar type job.

16 Q: And Mr. Clark also signed this memorandum,
17 correct?

18 A: Yes.

19 Q: And so he took -- basically took the
20 position you had at that point?

21 A: That's right.

22 Q: Okay. On page four of the memorandum,
23 there's a reference to key Monsanto customers. For
24 the heat transfer group, for example, you could let
25 the key Monsanto customers know by special

1 notification, which would either be by mail, by
2 phone or by phone plus personal visit (with letter
3 hand carried), correct?

4 A: Yes.

5 Q: Okay. Why -- why the distinction?

6 A: I cannot remember now why we made a
7 distinction.

8 Q: Did it relate to the ability or the size of
9 the customer and whether they're a big customer or a
10 little customer, good customer?

11 A: I cannot say. I recall that, as this was
12 being prepared, there was -- as I recall, there were
13 conversation, you know, input from other parts of
14 the company totally unrelated to fluids, you know,
15 saying, you know, they had become aware that, you
16 know, this was being discussed internally saying
17 "Well, if you do something, you know, we would like
18 to know about it, because we have, you know, certain
19 negotiations going on," and et cetera, et cetera.
20 So I think, as best I recall, there was an element
21 of what the different preferences would be for how
22 they wanted this communicated.

23 MR. ROEDER: Can I have the answer read
24 back?

25 (The requested portion of the

1 record read by the reporter.)

2 Q: (By Mr. Roeder) As I understand your
3 answer, whether someone received notification by
4 mail or by phone might depend upon what someone else
5 in the company may have had going with that customer
6 in terms of either business relationships?

7 A: That's vaguely my recollection. You know, I
8 cannot -- looking back almost 25 years later, I
9 cannot recall.

10 Q: All right.

11 A: There must have been some reason, but I --
12 you know, I cannot pin it down today.

13 Q: All right. By phone plus personal visit,
14 you don't know why some customers were put in that
15 category or not?

16 A: I can't recall. I do recall myself going to
17 a few customers with whoever, you know, account
18 responsibility in other areas at their request, but
19 I -- I'm very, very fuzzy and vague on it today.

20 Q: Do you recall one of the customers you went
21 to?

22 A: One I do recall is Lubrizol.

23 Q: Lubrizol?

24 A: And the reason I recall that is that I got
25 caught in a blizzard in Cleveland and couldn't get

1 home.

2 Q: Okay.

3 A: That -- that sticks in my mind.

4 Q: But you can't recall any others?

5 A: I can't.

6 Q: And you don't recall going yourself to speak
7 with anyone at Tenneco?

8 A: I can't recall that.

9 Q: Now, the letter that was sent to the
10 Therminol customers was the letter that was attached
11 to this memorandum beginning with the production
12 number TNGS 4846, correct?

13 A: Yes.

14 Q: This letter did not go to the Pydraul
15 customers, did it?

16 A: I don't know. I don't -- you know -- I just
17 --

18 Q: You have no knowledge that it went?

19 A: I have no knowledge it went to Pydraul.

20 Q: And it doesn't contain the words Pydraul in
21 here, does it?

22 A: Not that I can see, no.

23 Q: Now, starting on page 58, 54 the TNGS
24 production number, there's a listing of key
25 plasticizer accounts. Were these the largest

1 plasticizer accounts?

2 A: I don't know whether they were or they
3 weren't. I can't recall.

4 Q: All right. Let's go to the next page. Heat
5 transfer accounts.

6 A: We're on 55, 56 now are we?

7 Q: We're 58, 55.

8 A: 855 and 856.

9 Q: Right.

10 A: We're on 855 at the moment. 854 you had
11 asked me about earlier.

12 Q: Right.

13 A: I don't know if these were the largest or
14 not.

15 Q: On the heat transfer accounts, these would
16 be accounts that you would have looked at on a
17 regular basis in discharging your duties as product
18 manager, correct?

19 A: We selected only these key customers who
20 bought FR in '70 and '71, and we are sending letters
21 to customers who show up in '68 and '69 IBM runs
22 some of whom are key accounts to corporate Monsanto
23 for reasons other than FR -- would have been for
24 reasons other than FR fluids. Since these key
25 accounts have not bought any fluid in 1970 and '71,

1 we believe the Therminol FR systems are very small,
2 under 50 gallons. That was just an inference on our
3 part.

4 Q: Now, there's a reference on the same thing
5 just where you stopped. It says "Consequently we
6 would not expect our formal notification letter to
7 cause a major upset in Monsanto customer relations."
8 That's how that paragraph ends, correct?

9 A: Yes.

10 Q: What did you mean by that when you wrote the
11 memorandum?

12 A: It was an opinion in my -- it looks as if it
13 was an opinion. I cannot -- you know, I cannot
14 remember my thought process at the time I put it
15 down.

16 Q: Well, was there a concern that a formal
17 notification letter would cause a major upset at
18 certain customers while it may not cause it at other
19 customers?

20 A: I'm having difficulty, you know, going back
21 in time to this date and thinking what my thought
22 process was, but -- so I cannot recall what I was
23 actually thinking.

24 Q: Well, you have no recollection of there
25 being a concern that some customers would be upset

1 by getting a letter that said you weren't going to
2 sell the product that they were buying?

3 A: I think -- I think, in general, that would
4 have to be a -- you know, that was a concern that
5 this, to a greater or lesser extent, it interrupted
6 their operations. Some within that customer might
7 say "Well, if Monsanto does it to us in this area,
8 you know, why should we, you know, buy other things
9 from them?" You know, that's -- that was again
10 speculation. One didn't know they would take that
11 position, but it was a possibility.

12 Q: And you always wanted to maintain as good of
13 customer relations as you could?

14 A: Absolutely.

15 Q: Now, the next list is key accounts notified
16 by phone with follow-up formal notification letter.
17 By the way, Tenneco is not listed in the number one
18 key accounts where a formal notification letter was
19 accompanied by a cover letter, was it?

20 A: I don't see Tenneco here, no.

21 Q: Okay. Tenneco is not a member -- one of the
22 key accounts notified by phone with follow-up formal
23 notification letter that's listed here, is it?

24 A: No.

25 Q: Number three, the phone calls with personal

1 visits by St. Louis specialty products group
2 management, Tenneco is listed there, isn't it?

3 A: Yes.

4 Q: Who from St. Louis on this specialty
5 products group management was to visit Tenneco?

6 A: I cannot recall.

7 Q: Do you know if, in fact, that was done?

8 A: I cannot recall.

9 Q: Well, the specialty products group
10 management that would have gone was listed here at
11 the top, right, I'm sorry, on page four, Gossage,
12 Johnson, you or Bergen?

13 A: Yes.

14 Q: Mr. Johnson didn't have any responsibility
15 -- did Mr. Johnson have responsibility to you as
16 well? Did he report directly to you?

17 A: As best I recall, he never reported directly
18 to me. He reported to Gossage as I recall.

19 Q: Okay. But he was in the heat transfer area
20 as well, or was he in the Pydraul area?

21 A: I cannot -- we went through several, you
22 know, rearrangements of one time having, you know,
23 groups of salespeople just associated with a
24 particular group of products like dielectrics, you
25 know, distinct difference. I vaguely remember that

1 there was at some point, maybe possibly, you know,
2 it was broader than that. There was a sales
3 director person in St. Louis that had responsibility
4 of fluids. I could be wrong on that, because I --
5 it's -- it's a fuzzy recollection, and I cannot pin
6 particular times on it now.

7 Q: But under this memorandum the senior people
8 who are supposed to go would be one of you four,
9 correct?

10 A: Correct. And it would -- this would
11 indicate to me that he might have had responsibility
12 for fluids other than Pydraul at that time in the
13 sales function.

14 Q: When a personal visit had been followed up
15 as was envisioned in this memorandum, in the
16 ordinary course would there be a trip report of the
17 visit prepared?

18 A: I cannot say absolutely for sure.

19 Q: But, in general, a trip report would be
20 prepared when somebody had gone to visit a customer;
21 isn't that true? Wasn't that the practice?

22 A: That would have been the normal practice.
23 Whether there were exceptions, it's hard to say.

24 Q: You would have expected or would it have
25 been your practice yourself, sir, that, if you had

1 gone to visit, say, General Motors or Ford Motors --
2 make sure we take one as listed as the -- Ford
3 Motors is listed on number three as someone to whom
4 a formal notification letter will be hand carried.
5 When someone brought that to Ford, if they did bring
6 it to Ford, you would expect there to be a trip
7 report prepared about that so people back at
8 Monsanto would learn what Ford was thinking about
9 this issue, and they would know how to handle
10 themselves; isn't that correct?

11 A: My recollection would have been that, yes, I
12 would have done that. Although, my general policy
13 -- whether I would always have done it, you know, I
14 cannot for sure say now, but that would have been my
15 general practice. I cannot speak for the others.

16 Q: Well, the people who reported to you?

17 A: The people that reported to me.

18 Q: Wasn't your order or your policy that you
19 wanted to see a trip report when they went to see an
20 important customer?

21 A: I would have -- yes. Again, I wouldn't know
22 that they always did it, but that would have been my
23 general policy. None of these other people -- these
24 three people I don't -- well, certainly Bergen and
25 Gossage didn't report to me, and Johnson -- Johnson

1 I'm almost certain never did either.

2 Q: As a practical matter, if Johnson went with
3 Bergen, Johnson would write up the sales report,
4 correct?

5 A: Possibly. You know, I'm not sure how they
6 would have worked between each other.

7 (Discussion off the record.)

8 MR. ROEDER: This has already been marked.
9 I have another copy for you.

10 MR. CHAMBERS: Thank you, sir.

11 Q: (By Mr. Roeder) By the way, sir, as you're
12 looking at Exhibit 116, did you look at Exhibits 217
13 or 218 or 219 in preparation for your testimony?

14 A: I seem to recall seeing the one with my
15 handwriting.

16 Q: That would be 218?

17 A: 218. Possibly I saw 217. I'm not so sure.
18 I think -- yes, I think I did also see 219.

19 Q: How about 216? Did you look at this one
20 right here? Is that a document you looked at in
21 preparation for your testimony today?

22 A: It may have been. I'm not sure about this
23 particular one. I'm not so sure about this one.
24 There was one I saw where Tenneco was part of our
25 trip report that Roder wrote. So I cannot recall

1 this, but I may have seen it.

2 Q: I think the trip report one is one that we
3 looked at yesterday?

4 A: Yes, and that I recall.

5 Q: That's another one you looked at prior to
6 your testimony?

7 A: Yes. But this I'm not so sure, but I might
8 have done.

9 Q: 219 you looked at?

10 A: 219, yes, I did. I'm not so sure I remember
11 looking -- I can't recall looking at the list of
12 customers. Somewhere I remember seeing -- I may not
13 have gone through it all, but I remember seeing this
14 thing about Gustafson.

15 Q: You're referring to the article on PCBs?

16 A: Yes, I remember seeing that, because I
17 remember seeing that little insert about Monsanto
18 and that caught my eye. So that may be as far as I
19 went in looking at the document.

20 Q: Well, while you're still there, is this
21 accurate? There was a specialty products business
22 group Monsanto Industrial Chemicals Company. I
23 don't know what you would call this, a chain of
24 command.

25 A: Organization chart.

1 Q: Organizational chart for the PCB task force
2 heat transfer fluids?

3 A: Yes.

4 MR. CHAMBERS: Let -- let me object to the
5 form just a second. Do you mean is it accurate that
6 that's part of the document, or do you mean -- are
7 you asking him independently to verify?

8 MR. ROEDER: Well, I'm asking him
9 independently if this was accurate when it was
10 prepared.

11 A: To the best of my knowledge, yes.

12 Q: (By Mr. Roeder) All right. So you were the
13 -- you were a member of the PCB task force with
14 respect to heat transfer fluids?

15 A: I think -- I'm not sure. This might have
16 been a name PCB task force. It was just a name I
17 gave to this particular group for a task in hand,
18 which was to help customers in this transition from
19 non-PCB to PCB. So that might have just been a name
20 that I coined to call this particular group.

21 Q: Right. Well, there's a task force telephone
22 number 694-2514. Where did that go?

23 A: As I recall now, I think that was into my --
24 that was directly into my department.

25 Q: All right. Directly to your office?

1 A: It might have been, but I would think we
2 probably had some, you know, internal switchboard
3 mechanism. Not every call necessarily. Somebody
4 would have answered and then routed it to whoever
5 the appropriate person was.

6 Q: And as the task force mail address, you were
7 the guy?

8 A: Yes.

9 Q: You were the person that people should send
10 things directly to?

11 A: Yes.

12 Q: Now, Exhibit 216 is a memorandum from T. L.
13 Gossage to --

14 A: You mean 116?

15 Q: Did I say 216? I'm sorry. 116. I'm sorry.
16 I misspoke. Exhibit 116 is a memorandum from Mr.
17 Gossage, dated January 4th, 1972, and you are a
18 carbon copy recipient, correct?

19 A: Yes.

20 Q: Okay. This memorandum Mr. Gossage attaches
21 a memo from Mr. Corey. Who is W. R. Corey?

22 A: I think he was a -- I think his title was
23 general manager of the organic division.

24 Q: So he was higher than Mr. Bergen?

25 A: Yes.

1 Q: And who is Mr. Cunningham?

2 A: Mr. Cunningham might have been a managing
3 director of the chemical group or conceivably, I
4 think, he might even have been on the board of
5 Monsanto. I'm not sure. But he was -- he would
6 have been more senior than Mr. Corey.

7 Q: All right. So Mr. Gossage is sending out to
8 his people a memorandum that -- a confidential
9 memorandum, as is listed here, that the general
10 manager of the organics division is sending to his
11 superior as to how the worldwide program they've
12 adopted to conform with the corporate management
13 policy to discontinue all sales of PCBs would be
14 implemented, correct?

15 A: Yes, with the exception of dielectrics, yes.

16 Q: With the exception of the sales of PCBs for
17 use in dielectric -- for dielectric use in
18 transformers and capacitors?

19 A: Yes.

20 Q: And then you received a copy of Mr. Corey's
21 memorandum to Mr. Cunningham as well, didn't you?

22 A: Yes.

23 Q: If you look, sir, at the -- the actual
24 PCB/PCT implementation program talks about the
25 discontinuance of sales of PCBs for heat transfer

1 applications, correct?

2 A: Yes.

3 Q: Number C or letter C on page two.

4 A: Yes.

5 Q: Says -- your name appears. It says "A team
6 of trained engineers will be directed by Dr. Cumming
7 Paton. They will, one, visit customers' plants upon
8 request." Was that true?

9 A: Yes.

10 Q: Was that done?

11 A: Yes.

12 Q: "Number two, discuss the possibility of
13 using other Monsanto fluids giving proper warnings
14 as to possible hazards."

15 A: Possible fire hazards.

16 Q: Possible fire hazards. Thank you. How
17 would these possibilities of using other Monsanto
18 fluids be discussed when the trained engineers
19 visited customer plants upon request?

20 A: Or as I recall, on the phone if a customer
21 called and had a request on that, he would have been
22 -- if one of the engineers was in the office, he'd
23 have been the one to pick up the call or conceivably
24 Don Roush who was technically competent in that
25 area, or it would have been left for an engineer or

1 Roush to call back as soon as they were able to.

2 Q: But the engineers were the people we saw
3 here that were in the organizational chart?

4 A: Yes.

5 Q: Is that right?

6 A: Yes.

7 Q: Dean Danzer, Bob Neary, Frank Calkins and
8 Skip Ratterman?

9 A: Yes.

10 Q: And they were identified as conversion
11 engineers on Plaintiff's Exhibit 219, correct?

12 A: Yes.

13 Q: Okay. So those would be the guys that are
14 referenced here?

15 A: Yes, exactly.

16 Q: "The engineers will discuss the possibility
17 if a customer asks about their plant or if the
18 customer calls in."

19 A: Yes.

20 Q: All right. "Number three, the engineers are
21 to make the customer aware of other possible
22 alternatives, but make no recommendations as to
23 their use." Was that done?

24 A: To the best of my knowledge, yes.

25 Q: And that was the policy?

1 A: That was the policy.

2 Q: Why would there be no recommendations as to
3 other possible -- as to the use of other possible
4 alternatives?

5 A: Because there could be a range of
6 alternatives to using heat transfer fluids to using
7 nonfluid type systems if they chose. So we would
8 say, you know, here's -- and it would be usually a
9 dialogue. The customer would have people that would
10 have some idea what they were doing and why they
11 were doing it. If they were asked "Well, what
12 alternative would be open to us," we would suggest
13 some, but we were in no position to be able to make
14 a recommendation.

15 Q: Well, but you were allowing your engineers
16 to discuss the possibility of using alternative
17 other Monsanto fluids?

18 A: Yes, but we couldn't speak for other
19 companies' fluids or for nonfluid heating systems.

20 Q: All right. Okay. Then you would refer the
21 customer to the other manufacturer?

22 A: That's right.

23 Q: Okay. Make arrangements with customer for
24 proper handling, packaging and return of spent PCB
25 fluids to Monsanto for incineration. This is,

1 again, after the engineer has gone out to the plant
2 to look at it, right?

3 A: Yes, or it might have been done on the
4 phone, too.

5 Q: If someone called in and asked for it?

6 A: Yes. Yes.

7 Q: "Number five, the engineering teams' role is
8 solely to consult with and assist customers in
9 making conversion away from PCBs. Any questions
10 with respect to Monsanto management's decision to
11 discontinue sale of PCBs for heat transfer use are
12 to be referred to Dr. Paton for proper answer."

13 A: Yes.

14 Q: You were the guy that, if anyone wanted to
15 know why it was being done, they were instructed
16 they can't say, "You have to call Dr. Paton"?

17 A: That's right.

18 Q: Was that done?

19 A: Oh, yes.

20 Q: Why could the engineering team not answer
21 that question?

22 A: Because they had had jobs in engineering
23 within Monsanto, but they were picked because they
24 had -- they were conversant with heat transfer
25 fluids or the heating aspect of processes in our

1 Monsanto plants. So we chose some that had a
2 background of either using systems or having this
3 kind of expertise, but they had not been in any way,
4 associated -- as best I recall, none of them had
5 been associated with the fluids business in their
6 engineering capacity, you know, our -- our business
7 group. And so for -- to tie them up in getting into
8 discussions of why management decided or not, they
9 really didn't know. And, you know, if we had to go
10 back and get them a training course in that, I don't
11 know when we would have been able to get them to do
12 the job for which they were brought in to do.

13 Q: Well, but it was also an issue that was
14 something that Monsanto took great care to decide,
15 correct?

16 A: We were trying to use these engineers --

17 Q: I mean the decision.

18 A: In a practical situation.

19 Q: I'm talking about the decision right now.

20 "As it's reflected in this policy, questions
21 regarding Monsanto management's decision to
22 discontinue the sale of PCB fluids for heat transfer
23 use was a decision Monsanto took after considering
24 all the possible options that it felt was relevant;"
25 isn't that correct?

1 A: Yes. Yes.

2 Q: And it was a complicated decision that
3 Monsanto took, correct?

4 A: Yes.

5 Q: Wasn't that at least part of the reason why
6 Monsanto wanted to be sure that you were the person
7 who would give the proper answer to those questions?

8 A: I saw it more as a separation of
9 responsibilities and duties, that I was in the best
10 -- probably of this group that we have on that
11 chart, I probably was the one that had had most
12 involvement with the decision making process and,
13 therefore, could probably give the most complete
14 answers I could.

15 Q: Or the proper answers as is suggested here?

16 A: Well, proper answers. By that I mean I
17 would say correct answers, you know, not
18 speculation, to be as accurate as I could.

19 Q: Did you type this up? Is this a policy that
20 you actually prepared yourself?

21 A: I cannot recall if I did. I undoubtedly
22 would have seen a draft or had some input into it.

23 Q: But you didn't want your conversion
24 engineers out there indicating why corporate
25 management had done something?

1 A: Because they had not been a party to it.
2 And as I said, we had so much work to do. That for
3 me to have gone through the answers to any possible
4 questions that could come up would have been very
5 time consuming and complicated, because they might
6 -- I could have said "Well, here's some
7 hypothetical questions that come up," but the
8 questions that might have come up might have been
9 totally different. And then what would they have
10 done? They would have probably had to call me to
11 say "He's asked me this. I don't know. What do you
12 say?" So it was much more efficient to break it
13 down and say "Paton, this is part of the job you
14 will do. Your job is to help." And if -- so I --
15 you know, so that was a perfectly natural way to be
16 efficient in managing the task we had to do.

17 Q: Well, by this -- all of engineers would have
18 known this, too?

19 MR. CHAMBERS: Object to the form.

20 A: I'm sorry. They would have known what?

21 Q: (By Mr. Roeder) All the engineers would
22 have been given a copy of this policy, correct?

23 A: Yes.

24 Q: And so by giving them a copy of this policy,
25 they would know that they weren't authorized to make

1 statements with respect to Monsanto management's
2 decisions to discontinue the sale of these PCB
3 fluids; isn't that correct?

4 A: Correct.

5 Q: That way the only person who was authorized
6 to make those statements would be you?

7 A: Yes, or someone that I may have later
8 delegated to do it.

9 Q: All right. But as of the policy that was
10 given by Mr. Corey to Mr. Cunningham, you were the
11 only person who was authorized to speak on this?

12 A: Yes, and I would have been held accountable
13 for that.

14 Q: Okay. And you didn't want these other guys
15 making statements out to customers that would later
16 come back and might get misunderstood, et cetera;
17 isn't that correct?

18 A: Yes.

19 Q: And you didn't want these -- these
20 conversion engineers, who were dealing with
21 customers, also to say statements that you didn't
22 agree with?

23 MR. CHAMBERS: Object to the form.

24 A: I hadn't thought of it that way.

25 Q: (By Mr. Roeder) But it's true, isn't it?

1 It prevented that from happening; isn't that right?

2 A: I think it prevented confusion, answers that
3 weren't correct or even them trying to speculate on
4 answers just to make up a reply if they didn't
5 really know. So many factors go into it. I mean I
6 wasn't a tyrant. You know, it may seem that way,
7 but I wasn't.

8 Q: Well, I mean the reason that you didn't want
9 to sell PCBs in a heat transfer application was
10 because you were concerned that PCBs would get into
11 the actual -- would somehow get into the operations
12 when they would otherwise be contained; isn't that
13 it?

14 MR. CHAMBERS: Object to the form.

15 Q: (By Mr. Roeder) Let me rephrase the
16 question. Tell me, as we sit here today, what your
17 understanding was of the reason that you stopped
18 selling these PCB fluids? Why did Monsanto -- if
19 I'm a customer and call you up -- I'll amend the
20 question this way. I say "Dr. Paton, tell me why
21 Monsanto's management decided to discontinue selling
22 me PCB fluids for heat transfer uses." What would
23 you tell me?

24 A: I would -- again, as I recall, I would have
25 gone back to some incidents where this product had

1 found its way into food, food packaging kind of
2 applications, and there was a lot of controversy
3 going around about PCBs in the environment. And
4 having considered a whole variety of complex factors
5 decided that it was better to get out of that
6 business.

7 Q: Just so I understand your testimony, you
8 were concerned that you couldn't tell your
9 conversion engineers that so that they could answer
10 that question?

11 A: Well, --

12 MR. CHAMBERS: Object to the form.

13 A: Because my recollection is that customers
14 asked me a great deal of questions. Some of them
15 were, you know, controversial, and we were offering
16 these engineers a service where we were using their
17 expertise, and to have their time tied up getting
18 into these other areas would have been inefficient,
19 because we -- we had a lot of requests for
20 assistance. And so the idea was to try to get them
21 to cover as many customers as they could giving the
22 assistance a customer required, and not get them
23 into the explaining the whys and wherefores of the
24 decision. That was something that I took on.

25 Q: (By Mr. Roeder) Wouldn't it be your

1 expectation, sir, that if the discussion of the
2 decision to no longer sell these fluids could be
3 done within a minute?

4 A: Not necessarily. I mean I recall some
5 conversations with customers that went on for many
6 minutes.

7 Q: Well, as you just related your reason to me,
8 it didn't take a minute, did it?

9 A: But some customers would come back with
10 follow-up questions, and I cannot recall all they
11 were now. But there were, you know, a whole myriad
12 of questions they would ask me. And I would have to
13 step -- some I wasn't able to answer. Some I could.

14 Q: Was there ever a listing or a log prepared
15 of all the customers who had called in to utilize
16 this service?

17 A: I recollect that was an area where Paul Gann
18 was involved.

19 Q: Mr. Gann was involved with that?

20 A: Yes.

21 Q: Do you recall whether Mr. Gann prepared a
22 list so he would know that Mr. Neary, for example,
23 would have to be at this customer next Tuesday?

24 A: My recollection was yes. I think he would
25 have done that in conjunction with the engineers.

1 But Mr. Gann was in charge of the record keeping,
2 the organization of these kind of logistics, yes.

3 Q: Now, this heat transfer fluid task force
4 that you headed up, was there a comparable task
5 force for the Pydraul area?

6 A: At that time, I don't know.

7 Q: Well, when you took over responsibility for
8 Pydrauls, did you ever see any documents that
9 suggested that there were conversion engineers that
10 were designated the responsibility of answering
11 questions that customers might have regarding other
12 Monsanto fluids, for example?

13 A: No. Two reasons for that.

14 Q: Were there conversion engineers who were
15 part of a PCB task force in Pydrauls that were
16 instructed to visit customer plants upon request
17 with respect to a conversion?

18 A: I cannot recall personnel other than the
19 technical personnel there that were in the Pydraul
20 area.

21 Q: But nothing set up like this?

22 A: Nothing set up like this, and there were
23 reasons for that.

24 MR. ROEDER: Why don't we -- it's 12:15.
25 Why don't we take lunch. This is a good time.

1 (Discussion off the record.)

2 Q: (By Mr. Roeder) Good afternoon, sir.

3 A: Good afternoon.

4 Q: I'll find the exhibit I'd like to begin
5 with. Can you look, sir, at Plaintiff's Exhibit 36,
6 and I'll hand you the binder in which that exhibit
7 is located. There you go. It should be in that
8 binder. For the record, sir, Plaintiff's Exhibit 36
9 is a PCB/PCT action plan that Mr. Papageorge had
10 prepared. And you were listed as a carbon copy
11 recipient on this document, were you not?

12 A: Yes.

13 Q: You and a number of others from Mr. Bergen
14 on down to Mr. Vodden, V-O-D-D-E-N, correct?

15 A: Yes.

16 Q: And for the record, the production number is
17 TRAN 3025 through TRAN 3035. Now, what was this
18 document? What was its purpose?

19 MR. CHAMBERS: Object to the form.

20 A: All I can see is what's on the first page.
21 I don't recall the document.

22 Q: (By Mr. Roeder) Okay. So the document says
23 on its first page is that "This is the first attempt
24 to present a composite of the action plans of the
25 various product and area groups involved in the

1 PCB/PCT program." That was Mr. Papageorge's
2 description of what followed, correct?

3 A: Yes.

4 Q: When he talks about the PCB/PCT program,
5 what did that refer to as you understood it?

6 A: I'm not sure what he felt was covered by
7 that.

8 Q: Well, there was an action plan, was there
9 not, to implement the board's directive of the
10 previous December?

11 A: Yes.

12 Q: Okay. And so that's what he's referring to
13 are the PCB/PCT action plan, correct?

14 A: Possibly.

15 Q: Now, you are noted on the second page in the
16 heat transfer area. Your initials are C. P.,
17 correct?

18 A: Yes.

19 Q: I see you showing up on the page with
20 respect to heat transfer fluids. You mailed
21 customer notification. You had organized a
22 conversion team. You had developed the conversion
23 bulletin. That's correct so far, right?

24 A: Yes.

25 Q: You were assigned the responsibility of

1 rechecking offshore installations on the Gulf of
2 Mexico?

3 A: Yes.

4 Q: You followed visits to OEMs, which are
5 original equipment manufacturers, correct?

6 A: Yes.

7 Q: Then you evaluate response and review
8 policy?

9 A: Yes.

10 Q: And you were to get all of this done by 4-1?

11 A: Yes.

12 Q: Okay. Did you complete this by April 1st of
13 1992?

14 A: I can't now recall if I did or didn't.

15 Q: What I don't see, though, on page four of
16 the same document, which relates to industrial
17 fluids, is your initials with respect to any of the
18 assignments or actions with respect to either
19 Santovac, Turbinol or Pydraul; is that correct?

20 A: Correct.

21 Q: But at this time you had the Pydraul
22 responsibility; isn't that right?

23 A: No, not in --

24 Q: Oh, you got it the following July?

25 A: I got it -- yes, I got it sometime in the

1 summer of '72. So there would have been no reason
2 to copy me in back in April.

3 Q: So you were not supervising Bradford as of
4 this time?

5 A: No, in fact, as I said earlier, I think
6 Bradford may have been person that was in the
7 position similar. It was either him or Johnson. By
8 this it looks as though it was Bradford.

9 Q: So you don't know whether Bradford completed
10 all of these assignments by the target date or ever?

11 A: No.

12 Q: Did you ever determine whether on a later
13 date Mr. Bradford had completed the assignments as
14 required under the PCB/PCT action plan?

15 A: I can't recall that.

16 Q: Did you have a view as to whether or not Mr.
17 Bradford was someone that you could -- as of this
18 date, you had -- Mr. Bradford had never worked for
19 you?

20 A: That's right. And he never did work for me
21 as I recall.

22 Q: Did he leave the employment of Monsanto?

23 A: I'm not sure if that was the reason that I
24 was moved over or if he got another position. I
25 cannot recall that.

1 Q: But in effect you assumed his
2 responsibility?

3 A: As I say, I'm sure it was him or Johnson,
4 but I now think -- that's refreshed my memory. I
5 took over what Bradford had been doing in this area.

6 Q: All right. So as of July, you assumed the
7 duties of Bradford?

8 A: That's right.

9 Q: And so if this were -- if this exhibit were
10 to have been prepared say in July where they have
11 Bradford's initials under the industrial fluids,
12 they probably would have put yours, because you
13 would have been the guy?

14 A: Probably right. I can't say for sure, but
15 probably.

16 Q: All right. When you assumed the duty for
17 the Pydraul area, did you confirm whether or not Mr.
18 Bradford had completed all of these duties by the
19 time you left?

20 A: I can't recall specifically doing that.
21 It's not to say I didn't, but I just cannot recall
22 it.

23 Q: Did Mr. Bradford leave voluntarily?

24 A: At some point, he left Monsanto, and I have
25 no idea under what circumstances he left.

1 Q: Did you review any of Mr. Bradford's
2 performance evaluations at any point?

3 A: No.

4 Q: But as an employee, he would have been
5 reviewed periodically, would he not?

6 A: The likelihood is yes but, again, I can't,
7 you know, say whether it was carried out or not.

8 Q: Well, would -- would the review -- would
9 there be a yearly review or twice a year review? Is
10 there any particular practice or procedure that was
11 followed?

12 A: I cannot totally recall. As I recall in my
13 own case, it was approximately once every year there
14 was sort of a formal review, but I can't speak for
15 anybody else.

16 Q: Well, when you had your formal reviews,
17 would you meet with your superior?

18 A: Yes.

19 Q: Anyone else?

20 A: No.

21 Q: And would the superior accept or get
22 comments from other people who had worked with you
23 in formulating his review of you?

24 A: I don't know.

25 Q: At some point as a managerial employee at

1 Monsanto, you would review people as well, correct?

2 A: Yes.

3 Q: What was your practice with respect to
4 getting information concerning your subordinates
5 when you would perform their reviews?

6 A: If as -- as I recall, there was a system of
7 goals in place, and these goals would have not
8 necessarily been these people working in isolation
9 but involving others. If that's the case, I might
10 have called maybe the regional sales managers if it
11 was -- if the person that I had reporting to me had
12 a lot of interaction with sales, which usually they
13 did, I would ask the regional managers how they felt
14 so and so had performed. And that would tend --
15 that would not always be wait until -- you know, you
16 -- that might be brought up when you meant them or,
17 if there was a particular customer situation that
18 had arisen, you might ask, okay, were you happy with
19 how so and so handled that. I don't think there was
20 sort of a formal written thing went on. It was
21 something you would pick up the phone or see them
22 and ask. You would take -- you know, you would take
23 a note and put it in that individual's file.

24 Q: On a yearly basis --

25 A: That's how I did it on a -- you know, I

1 think there probably was some leeway as to how other
2 people would have done it.

3 Q: But on a yearly basis at Monsanto, an
4 employee would learn whether his salary would be
5 increased or not, correct?

6 A: At some point, that came into play. I'm not
7 sure if it was in practice as early as this or not.
8 But I do -- I think at some point there was more of
9 a grade and the minimum and the maximum and where
10 you were on that curve. You know, you were shown
11 it. But I don't think that was in place, say, when
12 I first joined Monsanto. So when that happened I'm
13 not so sure.

14 Q: Well, when you first joined Monsanto --

15 A: Well, about five years earlier, well, six
16 years earlier.

17 Q: Six years earlier. It was Monsanto in St.
18 Louis?

19 A: Yes, five years. So I cannot recall --
20 certainly when I came in, maybe I was naive and
21 didn't bother to ask, but I mean I was given a
22 salary. It seemed okay. I accepted the job. I got
23 awarded appropriately when I got promoted, and I
24 have never had any reason to, you know, enter into
25 any discussion or dispute about what my salary was.

1 Q: Right. Just so I'm clear, as you would be
2 promoted, that would certainly reflect a good
3 evaluation of your performance, correct?

4 A: I would hope so.

5 Q: Right. But with respect to people who
6 remain in the same position, then that -- I mean
7 from one year to the next their supervisor would
8 want to know how well they were doing, and would
9 determine or make a recommendation as to their
10 salary for the following year based upon a review,
11 correct?

12 A: Yes. Yes.

13 Q: Okay. Now, did Mr. Bradford -- was he --
14 was he senior to Mr. Johnson?

15 A: I would have thought they were in reporting
16 relationships were all in the same line. Now,
17 whether they were different grades, I don't know.

18 Q: Okay. Whose job did Mr. Gossage -- strike
19 that. Mr. Gossage had replaced Mr. Olson, correct?

20 A: Possibly. I can't -- I can't remember that.

21 Q: All right. You can't remember whether
22 either Mr. Johnson or Mr. Bradford was upset at not
23 obtaining that job?

24 A: I have no way of knowing that.

25 Q: Do you have Exhibit 117?

1 A: Are we finished with this now?

2 Q: Yes, we are.

3 MR. ROEDER: I'm looking for Exhibit 117.

4 Right there. It's in that one by you, Mr.

5 Chambers.

6 MR. CHAMBERS: 117.

7 MR. ROEDER: It's this one with a different
8 production number, but it's the same document.

9 MR. CHAMBERS: Okay. Thank you.

10 Q: (By Mr. Roeder) Exhibit 117, sir, is the
11 memorandum from Mr. Papageorge to Mr. Bergen and Mr.
12 Gossage and you and a carbon to Mr. Corey, dated
13 January 12th, 1972. It bears production number TRAN
14 3011 to 3013.

15 MR. ROEDER: Before we go, Mr. Chambers, I
16 had asked whether or not what was the purpose of the
17 deletion, and you've not been able to determine
18 that?

19 MR. CHAMBERS: Not as of this date. I don't
20 have an answer for you on that, but I'll continue
21 looking into that.

22 Q: (By Mr. Roeder) Okay. Is this a memorandum
23 that you received, sir, from Mr. Papageorge on or
24 about that date?

25 A: I cannot recollect receiving it. I'm on

1 there so there's no reason to assume that I would
2 not have seen it back then.

3 Q: Well, just -- just to be sure, the copy that
4 I gave to Mr. -- that one if you would show the
5 witness. It has an arrow directed directly at C.
6 Paton. So that would have been the practice. That
7 would have been your copy right?

8 A: Yes, I have no reason to dispute what you're
9 saying.

10 Q: All right. That copy then perhaps you
11 should look at the copy that has the arrow. There's
12 some handwriting on it. Is that your handwriting?

13 A: It might be. It looks as though it might
14 be.

15 Q: Okay. And you're looking at the second page
16 next to paragraph 14?

17 A: Yes.

18 Q: "J. J. R."

19 A: Yes, that would be --

20 Q: "Presents." Is that what it says?

21 A: It looks like a P. R., doesn't it?

22 Q: J. J. R. Something, right?

23 A: I think it's P-L-S-E N-O-T-E. So please
24 note.

25 Q: Please note. So you were making a note for

1 Mr. Roder to follow up?

2 A: Follow up, yes. That's what it looks like
3 to me.

4 MR. ROEDER: All right.

5 MR. CHAMBERS: Let me just note for clarity
6 that the page that we're looking at bears production
7 number TRAN 003348.

8 MR. ROEDER: I was going to suggest, since
9 it's technically a different document, maybe we
10 should just mark it as an exhibit.

11 MR. CHAMBERS: Fair enough.

12 (Plaintiff's Deposition Exhibit No.
13 220 marked for identification.)

14 A: So we're still on page two?

15 Q: (By Mr. Roeder) Right. Okay. So on page
16 two this is on the page that has the production
17 number TRAN 3348 where it says "Obtain list of
18 operators of offshore installations in the Gulf of
19 Mexico. Contact them to determine if they're using
20 PCB heat transfer fluids." You wrote "J. J. R.
21 please note," right?

22 A: Yes.

23 Q: Just so the record is clear. Now, 15
24 there's a notation. Does that say "in hand"?

25 A: Yes.

1 Q: Okay. This would be to the check status of
2 letter to accompany acknowledgment of PCB orders.
3 So you wanted Mr. Roder that, when he went to visit
4 certain customers, to carry these letters in hand.
5 Is that what this relates to?

6 A: No, I would see these as two separate items,
7 and now this morning just before lunch you showed me
8 the letter that the question that Roder had directed
9 to Papageorge. And having already seen that just a
10 couple of hours ago, this would to me probably was
11 an indication that someone in our Washington office,
12 Warren Easley who was in Monsanto's Washington
13 office, had contacted the Department of Interior to
14 find out did they have a list of installations, and
15 so this would have been my way of saying to Roder
16 "No, there was no -- there's no -- according to
17 what we've got from Warren Easley, there's no list
18 available." So what Roder was trying to follow up
19 on didn't necessarily exist, which was the EPA or
20 something.

21 Q: Here. I think the exhibit you're referring
22 to is Exhibit 217?

23 A: Yes.

24 Q: And that was the memorandum?

25 A: From Roder to Papageorge about the EPA.

1 Q: That was December 8th, 1971. This was a
2 month later on January 12th, 1972?

3 A: Yes, so maybe -- and again, I have tied this
4 one to this. It may be that this triggered me or
5 something to tell Roder. Not necessarily for Roder
6 to do anything, but to say "Look, someone has, in
7 fact, been in touch with an agency in Washington
8 about a list of offshore installations, and this
9 particular agency says they don't have a list."

10 Q: How do you get that from the word "in hand"?

11 A: No. No. I'm saying in hand number 15,
12 because you were asking me did -- was Roder going to
13 be hand carrying letters, and I was saying that 15
14 bore no relation to 14. They were two different
15 items, and Roder wasn't necessarily involved in
16 number 15.

17 Q: Well, what I was thinking is that -- okay.
18 I was wondering if 15 related to the suggestion --
19 okay. All right. Just so I understand and the
20 record is clear, and I apologize if I wasn't seeing
21 it. What does the "in hand" refer to?

22 A: The "in hand" would refer to just that
23 particular section 15, and I cannot now recall what
24 I really meant by saying "in hand," but it said that
25 something was -- you know, it was being attended to,

1 and whether it had been totally accomplished or was
2 an ongoing thing I'm not sure. "Check the status of
3 letter to accompany acknowledgment of PCB orders is
4 being sent to customers." That is at least in the
5 process of being -- has been implemented or being
6 implemented. It's in hand.

7 Q: Well, who is the individual you said who
8 worked in the Washington office?

9 A: That's Warren Easley, but --

10 Q: Had Mr. Easley succeeded in obtaining this
11 information?

12 A: Well, I think I understood from what you had
13 said to me was in hand was this something that Roder
14 was going to be doing, and that's then headed me
15 back to 14. And I said, well, 14 and 15 are two
16 different things. But then when you had mentioned
17 the word "Roder" again, then it occurred to me,
18 okay, this looks to be very much tied into this
19 previous document.

20 Q: Oh, you're talking about paragraph 14?

21 A: Exactly.

22 Q: The list of operators?

23 A: And so I was then -- I think my note would
24 have meant that I was going to tell Roder "Look, you
25 were asking for a list. As best I know today, there

1 isn't such a list."

2 Q: All right. Okay. I was confused, because I
3 was asking about 15. You're tying paragraph 14 with
4 that memorandum?

5 A: Well, I think I heard you use the word
6 "Roder" in connection with 15, and that's what
7 threw me off, because I couldn't see Roder having
8 anything to do with it. It got me on to the Roder
9 kick. I looked back up, and then it triggered -- it
10 rang a bell. So we -- so I've clarified and
11 confused at the same time.

12 Q: It's not me. It's no relation to me,
13 right? Maybe I ought to clarify that at some point
14 on the record. It's spelled differently than my
15 name.

16 MR. CHAMBERS: All men are brothers.

17 MR. ROEDER: And six degrees of separation,
18 right.

19 A: So we've got that squared away, hopefully.
20 Okay. So 15 I'm dealing strictly with these lines
21 four to five lines of text, and my "in hand" meant
22 it was -- it was being handled. I was comfortable
23 with how it was being handled.

24 MR. ROEDER: All right. Fair enough. And
25 just so the record is clear, Mr. Chambers, it looks

1 as though there's a 16 and 19 which are deleted.
2 And again, I don't know why. And a one and two on
3 the previous page which are deleted.

4 (Plaintiff's Deposition Exhibit No.
5 221 marked for identification.)

6 Q: (By Mr. Roeder) Exhibit 221, sir, is a
7 memorandum from Mr. Papageorge to you along with Mr.
8 Munch, Dr. Richard -- is it Dr. Munch as well?

9 A: Dr. Munch, yes.

10 Q: Dr. Munch, Dr. Paton, Dr. Richard and is it
11 Dr. Tucker?

12 A: Yes, doctor.

13 Q: All the scientists got this memorandum,
14 correct?

15 A: Well, if you'd ask -- if you'd ask, maybe
16 two out of the four. They have considered me
17 having, you know, scraped in, but certainly my
18 current position said that I had betrayed the cause.

19 Q: All right. And this reflects a meeting with
20 Dr. Edward Goldberg, Dr. Robert Riseborough and Dr.
21 George Harvey. Dr. Riseborough we have discussed
22 already, correct?

23 A: Yes, I've heard that name before.

24 Q: He was one of the researchers who first
25 discovered PCBs in fish in the wildlife in San

1 Francisco Bay area, correct?

2 A: I think so, yes.

3 Q: And he's the guy whose article you brought
4 to see the NCR people?

5 A: That's right.

6 Q: Who are Dr. Goldberg and Dr. Harvey?

7 A: Harvey rings a bell, but I can't recall his
8 position. And Goldberg I have difficulty
9 recollecting him at all. But I can't recall what
10 their positions were.

11 Q: All right. Do you recall having a meeting
12 with Dr. Riseborough at any point?

13 A: I vaguely think I might have been somewhere
14 where he was present, but I can't really pin down
15 the place, the time, the subject, no.

16 Q: Well, at this point, Dr. Riseborough was
17 sort of an important figure in the PCB pollution
18 issue, correct?

19 A: Yes.

20 Q: Okay. We had seen an earlier memorandum
21 where Dr. Richard had gone to meet with Widmark in
22 Stockholm to discuss what he was doing?

23 A: Yes.

24 Q: When you vaguely recall meeting Dr.
25 Riseborough, was it here in St. Louis?

1 A: That I can't even recall that. It might --
2 the other thing that's flashing through my mind is
3 conceivably there was some governmental task force
4 agencies or something got involved in Washington,
5 and I was certainly at one meeting, might have been
6 at more. And conceivably he might have been at one
7 of those. But I -- you know, I cannot for sure say.

8 Q: Well, did you ever discuss with Dr.
9 Riseborough what plan of action Monsanto would take
10 with respect to the PCB products that it sold?

11 A: No, I probably wouldn't have done that in
12 any event.

13 Q: Why not?

14 A: Because the most, if not all of the
15 relationships between him and Monsanto would have in
16 all likelihood been handled by someone like Bill
17 Richard, who was the head of research in that fluids
18 area, and that would have been -- you know, he would
19 have carried the main thrust of that. If I had had
20 to be involved in any presentations with scientists,
21 it would have been to supply supplemental
22 information, maybe describe what the applications
23 were, describe the volumes of Aroclor for different
24 applications, that kind of background, but not to
25 get involved in discussions of the technical, you

1 know, accuracy or merit or pros and cons of findings
2 and procedures. I would not have -- I'd have been
3 interested in the outcome, but I would not have had
4 any real role to play. Sometimes I knew these
5 meetings were taking place, didn't necessarily
6 attend. They sometimes invited me out of courtesy.
7 But if I had other things to do, I wouldn't
8 necessarily have gone. I would have relied later on
9 finding out what had happened.

10 Q: Well, by this time, isn't it true that Dr.
11 Riseborough was advocating that all PCBs be
12 eliminated or removed from sale?

13 A: You know, he might have been. I can't
14 recall he was.

15 Q: Okay. And the memorandum we saw yesterday
16 suggested that Dr. Widmark was in sympathy with
17 those people who had removed PCBs from use, correct?

18 A: Yes.

19 MR. CHAMBERS: Object to the form.

20 Q: (By Mr. Roeder) Who was Dr. E. J. Burger
21 who is reflected in this memorandum?

22 A: I don't know.

23 Q: Okay. And it references a Dr. Warren Muir,
24 M-U-I-R?

25 A: Yes.

1 Q: Council of Environmental Quality. Have you
2 ever spoken to him?

3 A: I think that name rings a bell, and I think
4 that was part of this interagency task force in
5 Washington.

6 Q: And as the memorandum reflects, he will be
7 representing the multi-agency PCB task force?

8 A: Exactly, yes.

9 Q: That's the one that was going to examine,
10 make recommendations for PCB use or nonuse?

11 A: Yes.

12 Q: At this point, we're now in January of 1972
13 with this memorandum. At this time, sir, the only
14 sales of PCB products that Monsanto wanted to
15 continue with would be in the dielectric area,
16 correct?

17 A: Yes. And that was -- they were -- that was
18 the only ones that were continuing, yes.

19 Q: All right. Would it be fair to say that at
20 this point Monsanto's goal, with respect to the PCB
21 production in continuing products, would be to save
22 the ability to use or to save the uses for the
23 dielectric area?

24 A: I think, as I recall, the thrust we were
25 getting was that the dielectric industry could not

1 see a way to give up the fire resistant properties
2 that they got from the PCBs and be able to cope with
3 -- as best I recall, they didn't have a replacement
4 available that they could use in place of PCBs, and
5 get the level of fire resistance that was required
6 and which had got involved in insurance and a whole
7 lot of other aspects of their business. And it
8 appeared -- I'm, again, not sure exact time. But at
9 some point, it appeared that this interagency task
10 force was sympathetic to that situation. So in some
11 ways Monsanto was continuing to produce in response
12 to that situation.

13 Q: Well, out of all the functional fluids or
14 the specialty fluid group -- I'm using it in a broad
15 term, including dielectrics, Therminol, heat
16 transfer, the Pydrauls, Santovacs. The largest
17 single portion of that business was the dielectric
18 group, wasn't it?

19 A: Yes.

20 Q: Did it account for 50 percent of the volume
21 or higher than that?

22 A: You know, at one time, I would have had
23 numbers at my fingertips. I can't recall today.

24 Q: Okay. Well, historically it had been a very
25 profitable line, had it not?

1 A: I can't recall, but I have no reason to
2 dispute that. I can't recall figures and
3 percentages now.

4 Q: Well, would a 40 percent profit margin be a
5 good profit margin?

6 A: Depends. You know, I'm not saying it wasn't
7 profitable. But what level it was at, I can't
8 recall.

9 Q: All right. Let me see if I can find this
10 exhibit for you. You can probably do this better
11 than I can. I'm showing you, sir, what had been
12 marked as -- do you have Plaintiff's Exhibit 97 in
13 front of you?

14 A: Yes.

15 Q: All right. It's a memorandum to P. G.
16 Benignus from P. G. Benignus, I'm sorry, to Mr.
17 Papageorge, and you are copied on it along with Mr.
18 Corey, Mr. Bergen, Mr. Gossage and Mr. Savage.
19 Before we go into the letter or the memorandum, who
20 is Mr. Savage?

21 A: Mr. Savage, as I recall, would have been in
22 production manufacturing. I think at that time.
23 At one time I know he was. I think at that time.

24 Q: Okay. This memorandum you would received
25 this in the ordinary course at Monsanto?

1 A: Yes.

2 Q: And it relates to askarel dielectrics, does
3 it not?

4 A: Yes.

5 Q: Okay. Now, that's the dielectric uses of
6 the PCB products that we were just discussing a
7 minute ago, isn't it?

8 A: It's one category. As I recall, that was in
9 the transformer area.

10 Q: Askarel was transformer?

11 A: Yes, there was some products that we
12 produced for the transformer industry that carried
13 askarel and, I think, there was another one. And
14 they were either General Electric or, as I recall,
15 Westinghouse formulations.

16 Q: The Inerteen and Pyranol?

17 A: Inerteen that's the -- Inerteen and
18 Pyranol. Yes, these were the ones I'm thinking of.

19 MR. ROEDER: P-Y-R-A-N-O-L, I think, and
20 Inerteen is just how it sounds, I-N-E-R-T-E-E-N, I
21 think. Is that correct, Mr. Chambers.

22 MR. CHAMBERS: Sounds right to me, yes.

23 MR. ROEDER: Mr. Chambers is our spelling
24 maven here.

25 MR. CHAMBERS: I've been wrong about every

1 time so far so that role may change.

2 A: Maybe now that we've clarified that, askarel
3 I'm not quite so sure what -- my memory escapes me
4 as to what -- looking at this, it would seem it
5 would cover both transformers and capacitors so
6 maybe that's some other terminology, but I've
7 forgotten what that was.

8 Q: (By Mr. Roeder) Well, would askarel refer
9 more broadly to products made with polychlorinated
10 biphenyls?

11 A: It might or it might even include ones made
12 not just by Monsanto but by other companies.

13 Q: Right. Aroclor was your trade name?

14 A: That's right. Exactly. So askarel might
15 have been a broader umbrella. Mr. Benignus would be
16 the best person to ask that.

17 Q: Okay. Well, Mr. Benignus writes in this
18 memorandum that "When dealing with historical
19 production and sales figures for dielectrics, it
20 becomes quite important for all concerned to put
21 them in proper perspective especially from the
22 standpoint of the higher PCBs, Aroclor 1254 and 1260
23 content relative to the PCB pollution problem."
24 Have you had a chance just to review this
25 memorandum?

1 A: I haven't, but I will.

2 Q: Why don't you take a moment.

3 A: Yes.

4 Q: The purpose of it, as you can read from this
5 memorandum -- see if you agree with me. What I get
6 from it is Mr. Benignus is trying to tell Mr.
7 Papageorge what the historical production has been
8 for dielectrics and how it has gone down over the
9 years, correct? Would that be a fair way to
10 characterize the --

11 A: Well, I think not necessarily saying that
12 total Aroclor has gone down over the years, but that
13 the amount of these penta and higher chlorinated
14 biphenyls have gone down considerably over the
15 years.

16 Q: Those would be, if we can use it, the bad
17 Aroclors that do not degrade?

18 A: That did not appear to degrade.

19 MR. CHAMBERS: Object to the form.

20 Q: (By Mr. Roeder) Did you understand what I
21 meant by that? I think he was going to object to
22 assumes a fact not in evidence.

23 MR. CHAMBERS: Characterization. You should
24 answer.

25 Q: (By Mr. Roeder) You understood what I meant

1 by that. At least you didn't indicate any --
2 because of the objection, let's just ask the
3 question again so it's clear. The intent of the
4 memorandum was to show that the Aroclors that did
5 not degrade and were the more serious Aroclors in
6 that respect were becoming less frequently used,
7 correct?

8 A: That would be correct.

9 Q: All right. Whether they're bad or not, the
10 jury can determine. But in any event, this was the
11 day before the meeting was scheduled or suggested to
12 be held, I should say, pursuant -- let me rephrase
13 the question. On Plaintiff's Exhibit 221 the
14 meeting was going to be held on January 21st, right?

15 A: Yes.

16 Q: Mr. Benignus prepares and distributes this
17 memorandum the day before the meeting, correct?

18 A: Yes.

19 Q: Okay. Was this memorandum from Mr. Benignus
20 prepared to give participants at the meeting with
21 Dr. Riseborough some information as to how serious
22 or not serious the dielectric use problem would be?

23 A: It's hard for me now to say whether or not
24 it was or whether this was, you know, responding to
25 some other Papageorge request.

1 Q: But it would be something that you would
2 expect Mr. Riseborough and the other scientists to
3 discuss with respect to the PCB pollution problem?

4 A: Not necessarily. From this it doesn't help
5 me any in my recollection knowing whether this was
6 strictly a technical discussion involving Munch,
7 Richard and Tucker on analytical techniques and so
8 on or whether it was going to look at, you know,
9 broader aspects of what types are considered more
10 biodegradable than others and what that impact is.
11 So it might have been used in this meeting to take
12 place on the 21st. And on the other hand, it might
13 not have been.

14 Q: Well, when the members of the PCB task
15 force, the multi-agency PCB task force would attend
16 a meeting, and the only thing at this point that
17 Monsanto was going to sell that had PCBs would be in
18 the dielectric area?

19 A: Yes.

20 Q: So wouldn't it have been important then to
21 get information to that representative as to how
22 minimal from Monsanto's view the dielectric problem
23 with PCBs was?

24 MR. CHAMBERS: Object to the form.

25 A: I don't know about the phrase "minimal," but

1 I know that in my own capacity I can recall giving a
2 presentation. I think I gave it. I certainly
3 prepared data which was somewhat along the same
4 lines. It might have been broader. It might have
5 been -- it might have covered more than just
6 dielectrics. I can't remember. To this interagency
7 task force, I remember being present, and I think I
8 gave a presentation. But as I say, if I did not, I
9 prepared the data for it, which was a similar
10 situation, and that was not trying to argue in favor
11 of continuing it. It was to try to give a
12 perspective of what we were talking about in trying
13 to address this question of PCBs that were less
14 biodegradable, more biodegradable and monochlor
15 biphenyl, for example, which I was, I think,
16 reasonably and readily biodegradable as memory
17 serves me.

18 Q: Well, one of the exhibits that we had looked
19 at -- actually I think it was Exhibit 116 the PCB,
20 PCT implementation program, which was just two weeks
21 prior to this date, Exhibit 116.

22 A: Got it.

23 Q: Got it. But don't lose the other exhibit,
24 because we're not done with it yet. Here Monsanto
25 had agreed that it would continue to sell

1 dielectrics only to those entities that were
2 financially responsible and would agree to pay
3 Monsanto for any damages that resulted from the use
4 of those dielectrics, correct?

5 MR. CHAMBERS: Object to the form.

6 Q: (By Mr. Roeder) Is that -- is that correct?

7 MR. CHAMBERS: Just noting an objection to
8 the form. Certainly you should respond.

9 A: Yes, I think that -- that --

10 Q: Well, in light of the objection, I'll reask
11 the question. And the reason I do it is because, if
12 we get to trial and there's a formal objection which
13 is sustained, then I may not be able to use the
14 answer. So if he continues to object to form on a
15 question that you and I know what we're talking
16 about, we'll just have to do it again.

17 On Plaintiff's 116 Mr. Gossage wrote that --
18 or describes the letters that would be sent to the
19 dielectric customers, all of which would relate to
20 indemnity agreements, correct?

21 A: I think all -- yes, I think that was true.

22 Q: All right. And the policy was, as of
23 January 1972, that Monsanto would agree only to sell
24 dielectric PCB products to customers who had agreed
25 to indemnify Monsanto by signing appropriate hold

1 harmless and indemnity agreements with Monsanto
2 arising out of the continued use of those PCB
3 products, correct?

4 A: Yes.

5 Q: Monsanto wanted to -- I should say Monsanto
6 retained the option of determining who it believed
7 was financially responsible. So if one of the
8 customers, in Monsanto's opinion, was not
9 financially responsible, it could retain the option
10 of not doing business with them, right?

11 A: Yes.

12 Q: So at this point, if Monsanto is able to
13 continue to sell dielectric products, it has an
14 assurance that it can sell the product to somebody
15 who will hold it harmless from any liability arising
16 out of that product, correct?

17 A: Yes.

18 Q: Okay. So that would be a good business to
19 be in assuming Monsanto is satisfied with the
20 indemnity arrangement with its seller or its buyers,
21 correct?

22 MR. CHAMBERS: Object to the form.

23 A: I wouldn't necessarily draw that conclusion.

24 Q: (By Mr. Roeder) Well, historically the
25 dielectric -- the dielectric fluids have been

1 profitable, correct?

2 A: Yes.

3 Q: Okay. And if their uses could be -- strike
4 that. If the purchasers of the fluid from Monsanto
5 were financially responsible like General Electric,
6 for example, I think you would agree with me that
7 would be a financially responsible party to do
8 business with?

9 A: Yes.

10 Q: Okay. They would have the financial
11 wherewithal to compensate Monsanto for any liability
12 arising out of their continued use of the PCBs,
13 correct?

14 A: Yes.

15 Q: Okay. So Monsanto would continue to make
16 money by selling the dielectrics to GE so long as GE
17 agreed to indemnify Monsanto from any liability
18 arising out of their use, correct?

19 A: Yes.

20 Q: Okay. And the same would be true for
21 Westinghouse, which was another large customer in
22 this area, correct?

23 A: Yes.

24 Q: And we would have no dispute that
25 Westinghouse had financial wherewithal to live up to

1 an indemnity obligation like that, correct?

2 A: Correct.

3 Q: Okay. So, at this point as of January 1972,
4 you're getting out of the Therminol business with
5 PCBs, right?

6 A: Yes.

7 Q: Okay. You're out of the Pydraul business
8 with the PCBs, correct?

9 A: Yes.

10 Q: You were out of any other formulations with
11 PCBs other than the dielectric use, correct?

12 A: Yes.

13 Q: So wasn't it to Monsanto's interests to
14 continue to serve the dielectric area with this
15 product so long as it received appropriate
16 indemnification agreements from its buyers, its
17 customers?

18 A: Not necessarily long-term.

19 Q: Well, not long-term?

20 A: And not necessarily.

21 Q: Well, you would continue to make money with
22 each barrel of dielectric fluid you sold, correct?

23 A: Possibly. I mean there are some economic
24 and competitive situations here that would say that
25 that is not a -- selling to customers who were

1 agreeing to indemnify you and hold you harmless
2 isn't particularly a good customer relationship to
3 be in.

4 Q: Well, they all agree?

5 A: They agreed. They agreed at the time,
6 because that was the way it was going. As had I
7 said it in my earlier testimony, there was a
8 practical -- initially this became -- it was a
9 concern when we were faced with the situation. On
10 one hand, the government said "Well, we think that
11 the dielectric areas you ought to continue to,
12 because these people have no alternatives at least
13 at the moment," and we were faced with how we're
14 having said we would discontinue others. How do we
15 police that? So the only way was to put some
16 controls around how we sold and what conditions we
17 sold to the dielectric industry. But from their
18 standpoint, they have to take into consideration
19 what it's really costing them to use our product.
20 The dollars per pound that Monsanto bills them is
21 one thing. There is this hidden potential cost that
22 they may have to cough up some day if someone in
23 their operations,, you know, does something that
24 creates an environment concern or it gets into an
25 application that it wasn't supposed to. So it had

1 become -- there had been discussions about what's
2 available to replace capacitor fluids. I mean there
3 was mineral oil for some applications, but there
4 were many applications where a degree of fire
5 resistance was considered essential. In
6 transformers there didn't appear to be there were
7 other chlorinated products, but sometimes they had
8 physical properties or something that wasn't any
9 good. So within Monsanto there had been programs
10 mounted to find replacements, and there were others
11 mounted by other people. So we were looking at a
12 situation whereby this market would go to -- would
13 be searching very hard to find something else.
14 Also, there was a question of what other companies
15 making PCBs would do outside the United States. You
16 know, we were not the only producer of PCBs in the
17 world. So from a business standpoint, you know, I
18 could see reasons why this would not be a business
19 in which you'd want to keep investing time and
20 effort longer than you had to to help the customers
21 find their way to something else.

22 MR. ROEDER: Could you just read my
23 question?

24 (The requested portion of the
25 record read by the reporter.)

1 MR. ROEDER: The court reporter has read
2 back the question, sir. I appreciate the answer,
3 but it doesn't respond to the question. Could you
4 read back the question?

5 (The requested portion of the
6 record read by the reporter.)

7 Q: (By Mr. Roeder) They all agreed, correct?

8 A: To sign?

9 Q: Yes.

10 A: I don't -- well, the ones we were supplying
11 had agreed to sign.

12 Q: Did you consider the conclusion of Mr.
13 Benignus that at this time --

14 A: Which --

15 Q: Again, we're looking at Exhibit 97.

16 A: 97.

17 Q: Right. I'm sorry. I should have made that
18 clear. In Exhibit 97 Mr. Benignus had concluded
19 that the entire U.S. capacitor industry would not
20 use or appear to exceed more than 700 -- strike
21 that. Let me rephrase the question. Mr. Benignus
22 has a conclusion which says "At this time and for
23 the foreseeable future, involvement with the
24 acknowledged nondegradable five chlorine and higher
25 PCBs from the entire U.S.A. capacitor industry does

1 not appear to exceed about 70,000 pounds annually."
2 Do you see that conclusion?

3 A: Yes.

4 Q: Okay. Is that a large amount of
5 nonbiodegradable PCBs, in your view?

6 MR. CHAMBERS: Object to the form.

7 A: It's a large number. You know, I wouldn't
8 draw any conclusion about it. I don't see that as
9 being part of his conclusion and not mine. I mean
10 he's saying factually that, if it's 26,000,000 times
11 .3, you get this. That's that. That's the number.

12 Q: (By Mr. Roeder) But earlier when we had
13 discussed an exhibit that related to insecticide
14 use.

15 A: Yes.

16 Q: In your exhibit where you made clear that we
17 were, we being Monsanto, was not going to sell any
18 more PCB containing products for anyone who would
19 use it for insecticides or pesticides. Do you
20 recall that one?

21 A: Yes.

22 Q: The only customer that you thought might be
23 buying it was a customer who might buy approximately
24 2,400 pounds annually. Do you recall that?

25 A: Yes.

1 Q: Okay. So we're going from 2,400 to 70,000
2 pounds. 2,400 you agreed was not large. That was
3 your testimony yesterday. Do you recall that?

4 A: In the total scheme of things, it didn't
5 seem large. If it went in one place, then the
6 concentration might be higher.

7 Q: Okay. But --

8 A: I -- if I said that, then I stand by what I
9 said.

10 Q: Right. But 70,000 pounds annually for use
11 in different areas throughout the country, would
12 that seem large to you as well, or how would you
13 grade that?

14 A: I don't know that I ever, you know,
15 addressed it in that particular way.

16 Q: Well, then refresh my recollection. I think
17 you just testified that at some point you made a
18 presentation to the multi-agency PCB task force on
19 these very issues.

20 A: Yes.

21 Q: Related to the things that Mr. Benignus was
22 discussing in Plaintiff's Exhibit 97. What was the
23 conclusion of your presentation to the PCB task
24 force?

25 A: The data that I showed indicated that the

1 steps that had been taken were reducing the number
2 of these penta and higher, you know, difficult to
3 biodegrade Aroclors down now to -- you know, from
4 approximately 20,000 million say down to the 78 to
5 deal just with the numbers we have in front of us
6 here, and that at least was heading in the right
7 direction. Is it the right number? I didn't know,
8 and I don't know.

9 Q: But was it, in your opinion, a small number?

10 A: Percentage-wise it's small. Whether that's
11 enough to -- whether that would have been enough to
12 satisfy everyone that was -- had now become involved
13 in the issue such as the interagency task force, I
14 had no way of knowing. It was at least heading in
15 the -- it was heading in the right direction.
16 Whether that was the right number to arrive at, I
17 alone couldn't determine that.

18 Q: All right.

19 A: Are we finished with this binder now, do you
20 think?

21 MR. ROEDER: I think we are for the time
22 being. Why don't you let me have that so we can get
23 it out from in front of you? Thank you, sir. Would
24 you mark this as the next exhibit, please?

25 (Plaintiff's Deposition Exhibit No.

1 222 marked for identification.)

2 (Whereupon, excerpted portion of
3 confidential testimony is contained in confidential
4 transcript Volume II.)

5 MR. ROEDER: Let's mark this as the next
6 exhibit.

7 (Plaintiff's Deposition Exhibit No.

8 223 marked for identification.)

9 MR. ROEDER: Then while you're looking at
10 that, why doesn't the court reporter mark as an
11 exhibit this one.

12 (Plaintiff's Deposition Exhibit No.

13 224 marked for identification.)

14 Q: (By Mr. Roeder) Okay. Exhibits 223 and 224
15 relate to call reports for Tenneco, do they not,
16 sir?

17 A: Yes.

18 Q: Okay. Both of them were sent to you in St.
19 Louis?

20 A: Yes.

21 Q: The salesman was Mr. Stegen, S-T-E-G-E-N?

22 A: Yes.

23 Q: Okay. Exhibit 223 has production number
24 TNGS 4188, 224 is TNGS 4164. All right. Was this
25 call report in connection with the PCB action plan

1 that we looked at just a couple of minutes ago?

2 A: I don't know whether it was directly or
3 not. It could have been.

4 Q: Well, in Exhibit 223 Mr. Stegen says that
5 the person he contacted told him that you had to
6 contact a Buster Kelly who was reflected in that
7 memorandum from Tenneco, correct?

8 A: Yes.

9 Q: Okay. Now, then Kelly was contacted or
10 shown to have been contacted by Mr. Stegen in
11 Exhibit 224, correct?

12 A: Yes.

13 Q: Also, Mr. Louis Williams who was also
14 referenced in Exhibit 223 as someone that Stegen had
15 to contact at Tenneco to bring him up-to-date on the
16 PCB situation, correct?

17 A: Yes. Also, the spelling of Louis is
18 different, but may be the same person.

19 Q: Okay. Could very well be. You wouldn't
20 expect there to be different -- or there would be
21 different people there with those two names, would
22 you?

23 A: Unlikely.

24 Q: Unlikely. Now, the second paragraph, sir,
25 of Exhibit 224 relates to the conversation with Mr.

1 Knight and Mr. Williams at Tenneco by Mr. Stegen.
2 And before we go any further into the document, it
3 says "Call made with J. J. Roder." Does that mean
4 Mr. Roder went with Mr. Stegen on this call?

5 A: That's how -- that's how I'd understand that
6 to be.

7 Q: Did you delegate this responsibility to Mr.
8 Roder?

9 A: What responsibility?

10 Q: The responsibility of following up and going
11 out to accounts to discuss the PCB plan.

12 A: I would have delegated to Roder the
13 responsibility of going out and calling on accounts,
14 because that was part of his job. And to the extent
15 that he could answer questions about them, yes.

16 Q: Okay. But again, if there was an issue
17 relating to why management made this decision, the
18 direction was that that should go to you?

19 A: Yes. Although, in the case of Roder, it's
20 conceivable that I would given Roder authority to
21 answer some questions on my behalf possibly. I
22 can't recall doing it, but it's possible.

23 Q: But certainly that's not what you indicated
24 to senior management would be the way the things
25 were handled on your PCB task force?

1 A: On the PCB task force, probably no. But
2 Roder was -- Roder was a person that had been in the
3 -- in the heat transfer area a long time and knew
4 -- had been part of pretty much everything that had
5 gone on in it.

6 Q: All right. Now, --

7 A: As opposed to the engineers.

8 Q: Okay. In this -- in this sales report, Mr.
9 Stegen says "It came out that Tenneco had been asked
10 for information on organic halide, H-A-L-I-D-E, that
11 they were using. This may have come from an agency
12 of the government, or it may be come from internal
13 Tenneco." What is a halide?

14 A: A halide is a -- it's either a chlorine, a
15 fluorine or a bromine. These are -- chlorine,
16 fluorine and bromine, I believe, are classified as
17 halogens. It's kind of a classification of these
18 three.

19 Q: Okay.

20 A: So you don't know if it's chloride or
21 bromide or fluoride. It could be one of these
22 three.

23 Q: Well, Mr. Knight, Henry Knight, at
24 engineering in Tenneco, as this memo reflects,
25 thought that PCB could be classed as an organic

1 halide, and feels this may be responsible for a
2 million dollar loss in platinum catalysts that
3 Tenneco had experienced at their refineries. Is
4 this something you recall reading?

5 A: I can't recall reading it.

6 Q: Okay. Do you recall following up on an
7 issue like this?

8 A: No. All I see is it looks as though I
9 scribbled this to go to other people and then be
10 filed. So I can't read my writing.

11 Q: Okay. But that would be your writing, one,
12 two and three on the bottom of this?

13 A: Yes.

14 Q: Okay. Would the first one be T. L. G.?

15 A: Conceivably.

16 Q: You would be concerned if there was a report
17 of a potential million dollar loss that could be
18 attributed to PCBs that a customer had suffered,
19 wouldn't you?

20 A: It would -- it would -- yes, I would be
21 interested to know was that really caused by our
22 product or something else. The fact that it's a
23 halide says that there could be other things that
24 could have caused it.

25 Q: Well, did you ever contact anyone at Tenneco

1 with respect to the issues raised in Exhibit 224?

2 A: I can't recollect doing that.

3 Q: Okay. Do you know if Mr. Gossage did?

4 A: I can't recollect that.

5 Q: Okay. Would there be anything there that
6 would refresh your recollection?

7 A: You know, other than asking Mr. Gossage.
8 He'd be in a better position to know whether he did
9 or didn't.

10 Q: As of this memorandum, though, if you look
11 at the first paragraph, Mr. Stegen expects that
12 Tenneco will be changing their existing offshore
13 platforms in the not too distant future. Did you
14 see that statement in there?

15 A: Yes.

16 Q: Okay. Does that mean that -- that Mr.
17 Stegen is reporting to you that it looks like
18 Tenneco in Lafayette, Louisiana, was going to drain
19 their existing system and then be in the market for
20 a new fill?

21 A: That's the impression I get.

22 Q: Okay. Other than what is said in this
23 memorandum, do you have any independent recollection
24 of any of the matters raised in here?

25 A: No.

1 Q: Okay. That's all I have for that. I do
2 have one more question, but you don't have to look
3 at the document. Did you ever -- do you have a
4 recollection of ever talking with anyone at Tenneco
5 or anyone affiliated with Tenneco related to the
6 issues discussed in this memorandum?

7 A: No.

8 MR. ROEDER: Would you mark this next
9 exhibit?

10 (Plaintiff's Deposition Exhibit No.
11 225 marked for identification.)

12 Q: (By Mr. Roeder) Exhibit 223 is a letter
13 dated March 6th, 1972, and it bears your signature,
14 does it not?

15 MR. CHAMBERS: Object to the form. I think
16 you said Exhibit 223, and it's actually 225.

17 MR. ROEDER: Is it 225? Is that what it
18 is? I must have liked 223.

19 Q: (By Mr. Roeder) Let me rephrase the
20 question. Exhibit 225 is a letter dated March 6th,
21 1972, and it is signed by you, is it not, sir?

22 A: Yes.

23 Q: Okay. What is this letter? What was the
24 purpose of this letter?

25 A: I can't recall why this one was sent out.

1 Q: Well, the first paragraph of the letter says
2 "We had previously advised your company of our
3 discontinuation of the sale of Therminol FRs series
4 heat transfer fluids, and urged you to discontinue
5 their use in applications where the potential for
6 food contamination existed. We feel certain that
7 you no longer use these fluids." That's what you
8 wrote, correct?

9 A: Yes.

10 Q: "However, we are maintaining records of the
11 actions taken by our customers in this regard. And
12 to update these records, we ask if you will please
13 confirm that you have discontinued the use of
14 Therminol FR fluids in your plants. Please confirm
15 by signing one copy of this letter and return it to
16 Monsanto in the enclosed self-addressed stamped
17 envelope. The other copy is for your files."
18 That's what that says, right?

19 A: Yes.

20 Q: Now, reading that does this refresh your
21 recollection as to what the intent of this letter
22 was?

23 A: Not really.

24 Q: It doesn't suggest to you that Monsanto
25 wanted to get a signed statement from its customers

1 that they had stopped using Therminol FR in food
2 related applications?

3 A: It looks that way. I think you asked me why
4 maybe, and I wasn't sure why we had written that.
5 But that's what it does ask.

6 Q: Well, that's what it asks for?

7 A: Yes.

8 Q: And if a customer had signed that and sent
9 it back, do you have that record in your files,
10 right?

11 A: Yes.

12 Q: Do you know if, in fact, Monsanto received
13 signed statements from its customers pursuant to
14 this letter?

15 A: I can't remember whether we did or we
16 didn't, and I have no idea today how many we would
17 have received.

18 Q: When you took over responsibility for the
19 Pydraul area, which would have been three months
20 after this approximately, right?

21 A: Yes.

22 Q: Okay. Did you send out a similar letter?

23 A: I can't recall.

24 Q: Okay. Would there be reason why you would
25 send that out in the Therminol FR area, but not in

1 the Pydraul area?

2 A: I think in the Pydraul area, if my memory
3 serves me, we had already reformulated away from
4 PCBs, and then later, I think, about the time that
5 -- I think about the time that I took over they had
6 -- were in the process of reformulating again and
7 not have anything chlorinated as I recall. I think
8 that was the chronology more or less.

9 Q: So the idea in the Pydraul area was that --
10 strike that. You weren't at the Pydraul area when
11 it was reformulated, correct? That was not part of
12 your responsibility?

13 A: No. No. I might have come in at the tail
14 end of going from the chlorinated terphenyls to the
15 nonchlorinated materials. But if that was the case,
16 as best I can recall, I would have been right at the
17 tail end of it so I would have been inheriting what
18 was already almost a fait accompli.

19 Q: Right. You wouldn't be making the decisions
20 as to how it would be reformulated?

21 A: No. No. Do you want me go right to the
22 very last page?

23 Q: Yes, let me -- Exhibit 17, sir.

24 A: Yes.

25 Q: Okay. This is the -- is this a telex that

1 was sent out worldwide to confirm that nowhere
2 throughout Monsanto would PCB containing products be
3 shipped to customers after January 31, 1972, except
4 for dielectric customers?

5 A: That's what it looks like.

6 Q: You received a copy of this telegram?

7 A: Yes.

8 Q: Would that be fair?

9 A: Yes.

10 Q: It's almost quaint now to think of a
11 telegram being sent, isn't it?

12 A: That's right.

13 Q: I think that's what -- you're listed as a
14 carbon copy recipient on the first page of this
15 exhibit?

16 A: Yes.

17 Q: Is that correct?

18 A: Yes.

19 Q: Okay. And you would have received this in
20 the ordinary course?

21 A: Yes.

22 MR. ROEDER: Okay. That's all I have for
23 that exhibit.

24 (Plaintiff's Deposition Exhibit Nos.

25 226, 227 marked for identification.)

1 Q: (By Mr. Roeder) 226 is that what this is?

2 A: Yes.

3 Q: Okay. Plaintiff's Exhibit 226, sir, is a
4 document which just simply has reasons for this
5 price increase at the top, and Plaintiff's Exhibit
6 227 is a memorandum from you, dated March 7, 1972.
7 More particularly, 226 bears production number TRAN
8 67371 to 67373. Plaintiff's 27 is TRAN 69436. Your
9 memorandum, which is Exhibit 27, attaches an article
10 from the "Wall Street Journal" of the previous day.
11 It discusses tougher legislation from PCBs, correct?

12 A: Yes.

13 Q: Okay. At this point, you were closely
14 tracking what was going on with the proposed or
15 potential bans of uses of PCBs, correct?

16 A: Yes.

17 Q: Okay. Who was this sales bulletin sent to,
18 which is Exhibit 227?

19 A: I cannot recollect specifically, but
20 normally this would have gone to our sales personnel
21 and regional sales manager, sales directors and then
22 with copies to other people in the immediate
23 business area, and sometimes it would have gone
24 worldwide. Sometimes it would have been U.S. only.
25 In this case I can't recall where it went, but there

1 were standard distribution lists usually for these
2 kind of things.

3 Q: All right. Did the proposed tougher
4 legislation on PCBs that's reflected in Exhibit 227
5 -- was that related to Exhibit 225 of this same
6 date or the day before where you wanted customers to
7 confirm when they stopped using Therminol FR?

8 A: Again, I can't say. But looking at it, I
9 think it -- I think the two were two different
10 action items on my part.

11 Q: Okay. Well, you'll agree that they're very
12 close in time, correct?

13 A: Yes.

14 Q: Now, the proposed tougher legislation on
15 PCBs, how did you hear of that?

16 A: Well, I have to think that that article that
17 was the message I got from that article, because I'm
18 attaching this article which apparently -- I can't
19 say for sure, because I can't remember the article
20 at all now. But what I had said was "Attached is an
21 article from the 'Wall Street Journal' of March the
22 6th on tougher legislation for PCBs being proposed
23 by the FDA."

24 Q: Sure. I realize that's what the memorandum
25 says. Did Monsanto have any lobbyists that it had

1 retained in Washington with respect to this issue?

2 A: Not that I recall.

3 Q: Not at your level?

4 A: No, and I can't recall any.

5 Q: The ANSI group, which was set up with Mr.
6 Benignus, was part of an effort to influence public
7 policy, though, wasn't it?

8 MR. CHAMBERS: Object to the form.

9 A: I cannot recall that part of it.

10 Q: (By Mr. Roeder) Would Mr. Benignus be the
11 person to ask questions with respect to that?

12 A: Absolutely.

13 Q: Okay. Now, in your March 7 memorandum on
14 the functional fluids stationery sales bulletin
15 number 72, which is Plaintiff's 227, you write
16 "Please publicize this information as widely as you
17 can. It now appears Monsanto's voluntary ban helped
18 industry by giving them lead time they won't get
19 from the government." You wrote that, correct?

20 A: Yes.

21 Q: Did you think that was correct when you
22 wrote that?

23 A: I'm sure I did.

24 Q: Do you think that's correct today?

25 A: I have no way -- I haven't given it -- you

1 know, I haven't thought about it.

2 Q: Now, the Exhibit 226 discusses reasons for
3 this price increase. And if you look at the second
4 page, sir, it's your signature on there, isn't it?

5 A: Yes.

6 Q: Okay. So you wrote this document?

7 A: Yes.

8 Q: Okay. Number one, the reasons for this
9 price increase, that would relate to dielectrics,
10 correct?

11 A: You can infer that, because I talk about
12 Aroclor 1016 and dielectrics, yes, almost certainly.

13 Q: Paragraph one refers to the same attached
14 "Wall Street Journal" article, March 6th, 1972,
15 correct?

16 A: Yes.

17 Q: Okay. And that's the same one that's
18 attached at least on the original to Exhibit 227?

19 A: Yes.

20 Q: Okay. You write "Monsanto has voluntarily
21 gotten out of much of its PCB business to protect
22 the environment and to preserve the continued usage
23 of these products and dielectrics." That's what you
24 wrote at Monsanto in March of 1972, correct?

25 A: Yes.

1 Q: You continued "All of our efforts in PCBs
2 have been made to enable us to continue to supply
3 dielectrics to the electrical industry." That's
4 what you also wrote, correct?

5 A: Yes.

6 Q: Was that true when you wrote that?

7 A: At the time, I must have thought it was
8 true, or I wouldn't have written it.

9 Q: As the attached "Wall Street Journal"
10 article shows, March 6th, 1972, "The government may
11 make our voluntary ban a permanent one." That's,
12 again, reflecting the proposed tougher legislation
13 on PCBs you had mentioned in Plaintiff's Exhibit
14 227, correct?

15 A: Yes.

16 Q: Once you got out of the business of selling
17 PCBs to anything other than dielectric customers,
18 you raised the price for the dielectrics, correct?

19 A: Yes.

20 Q: How much did they go up?

21 A: I cannot recall. I don't know if it says in
22 here. That part I don't see. I can't remember. I
23 know our costs were going up.

24 Q: Well, if you look on the last page of this
25 exhibit, it talks about thousands of pounds and

1 percentage of total of sales and millions of pounds,
2 I should say. This doesn't help you with that
3 calculation, I take it?

4 A: Well, it says that from '67 to '70 our total
5 sales would have been, if everything was being
6 supplied, 63,000,000 pounds, which would have
7 increased, if there had been no PCB issues, to 72 by
8 1970. As a result, it was now probably in the
9 40,000,000 pound range. So that's a decrease of
10 what -- well, it's a decrease of 44 percent in
11 volume in 1970, I guess.

12 Q: All right. So the inability to sell the
13 PCBs to the other uses had decreased your PCB
14 business by about 44 percent as of the number
15 reflected in that memorandum?

16 A: That's right.

17 Q: In fact, that's the reason for your price
18 increase that's reflected in paragraph two here of
19 this memorandum, correct?

20 A: Yes.

21 MR. ROEDER: That's all I have for that
22 exhibit at this time.

23 (Discussion off the record.)

24 MR. ROEDER: Would you mark this as the next
25 exhibit, please?

1 (Plaintiff's Deposition Exhibit No.
2 228 marked for identification.)

3 Q: (By Mr. Roeder) While you're looking at
4 that, sir, I'll identify it for the record.
5 Plaintiff's Exhibit 228, which is a memorandum from
6 H. S. Bergen to R. H. Munch, dated April 3, 1972.
7 You are a carbon copy recipient, and it bears
8 production number TRAN 67976 through TRAN 67978.

9 A: Okay.

10 Q: This exhibit dated April 3, 1972, is this
11 one of the exhibits that you looked at in
12 preparation for your testimony?

13 A: I think I did see this. I think I did.

14 Q: And just so I don't forget, did you look at
15 Plaintiff's Exhibit 227, 226 and 225 in preparation?

16 A: 227, no. 226, no. 225, no.

17 Q: Okay. 228 you did look at?

18 A: 228 I -- yes, I recall seeing that.

19 Q: All right. Do you know whose handwriting
20 that is, sir, on the exhibit?

21 MR. CHAMBERS: You're referring to the first
22 page, right?

23 MR. ROEDER: Yes, I am.

24 A: It might be Bill Richard. It might be
25 Bergen's own. I'm not sure.

1 Q: (By Mr. Roeder) All right. But the
2 memorandum this is from Mr. Bergen, who was the
3 director of the organic division, correct?

4 A: He -- I don't know if he was total organic
5 division, but he was certainly -- he was in charge
6 of certainly all the fluids operations and maybe
7 some others. I can't recall.

8 Q: All right. Compliments Mr. Munch and Mr.
9 Benignus. "On the statement of overall strategy you
10 have presented, you are also to be complimented on
11 your assessment of the technical and commercial
12 risks, and the 'wheel of fortune' that you have
13 developed." That's what it said, correct? You have
14 to answer yes or no.

15 A: Yes. Sorry. Yes.

16 Q: And you're listed as a carbon copy on this?

17 A: Yes.

18 Q: So you would have gotten this in the
19 ordinary course; is that correct?

20 A: Yes.

21 Q: What was the wheel of fortune that Mr.
22 Benignus and Mr. Munch had developed?

23 A: I -- you know, for the life of me, I can't
24 remember that.

25 Q: All right. Mr. Bergen goes on "In order to

1 make a total dielectric fluid strategy, I feel this
2 should encompass the total team effort of research,
3 marketing, manufacturing, engineering and the
4 medical department. We should get a specific
5 timetable on who, what and when. Normally these
6 types of strategies are prepared by marketing, and
7 Tom Gossage has asked Cumming Paton to take on the
8 overall responsibility of making a total strategy."
9 That's what that says, correct?

10 A: Yes.

11 Q: So was that, in fact, what happened that you
12 were assigned the task of making a total strategy
13 for the total dielectric fluid strategy?

14 A: This refreshes my memory. I wouldn't have
15 remembered it without this, but yes.

16 Q: Okay. What was encompassed in making the
17 total dielectric fluid strategy?

18 A: I can't recall the details of what it
19 involved today.

20 Q: Well, in general.

21 A: In general, as Mr. Bergen says, it has to
22 encompass all the functions of the business. And in
23 this case clearly since Bergen is saying that
24 somebody that feels strongly about the strategy has
25 to address them, and then it would have -- I would

1 have got from Munch and Benignus what was it that
2 caused them to do -- if I didn't, then I probably
3 had already got copies of the technical, commercial
4 risks and the wheel of fortune. Munch and Benignus,
5 which apparently felt very strongly about this,
6 weighed in with the -- with what I heard from
7 Bergen, and then I'd have put my own thinking
8 together as to what direction the business should be
9 headed, what the issues were and then do an
10 analytical and economic projection. If we were to
11 be looking at new products, you know, what steps
12 would have to be taken, who would be involved in
13 those and milestones to evaluate where we were
14 going, and also looking at what competitors might be
15 doing in this non-PCB replacement area. So I'd
16 follow, to some extent, the kind of strategy that --
17 you know, a program that you would have for
18 development of any new product, because where we're
19 clearly headed was in a new product direction.

20 Q: Okay. So you were the point guy with
21 respect to the overall strategy plan --

22 A: Yes.

23 Q: -- at this point?

24 A: That's right.

25 Q: Now, Mr. Bergen reflects several things he

1 feels strongly about. Number one, "The recent
2 Japanese action of banning all PCBs for all uses,
3 including dielectric use, may cause a political and
4 emotional reaction both in the U.S. and abroad."
5 That's what he wrote there, correct?

6 A: Yes.

7 Q: Now, does this refresh your recollection as
8 to when the Japanese banned PCBs for all uses
9 including dielectric use?

10 A: Well, it says it must have happened fairly
11 recently just before April the 3rd I would imagine
12 from what I read here.

13 Q: So at this point, do you recall there being
14 a lot of factors moving the potential ban as the
15 "Wall Street Journal" is reporting in the March
16 6th, 1972, editorial, correct?

17 A: Yes.

18 Q: We've got the Japanese banning it for all
19 purposes; is that correct?

20 A: Yes.

21 Q: So things are really coming to a head at
22 this point?

23 A: Yes.

24 Q: Mr. Bergen says "We must explain why their
25 reaction is different from ours." Paul Benignus is

1 writing this up. Why was the Japanese reaction
2 different from yours?

3 A: I don't recall. I do recall that initially
4 we had gone to our -- we had a joint venture in
5 Japan, and we had gone to them saying "Here's what
6 we're going to do." They were -- they had gone
7 along with some of our recommendations. They were
8 still considering others. We recently saw something
9 that Ned Greene had gone out on a worldwide basis
10 saying "Here's what we're doing worldwide." It
11 would not -- from my experience, the Japanese don't,
12 you know, usually take time to reach a consensus.
13 Once they do it, they do it. And they may well have
14 had, you know, a consensus building exercise in
15 their own country, and one of the other producers of
16 those products saying "You know, is this a problem?
17 How are we going to address it?" But, you know,
18 part of that is speculation.

19 Q: Mr. Bergen continues "We must alert our
20 people as well as our customers on this move." That
21 would be the Japanese decision, correct?

22 A: Yes.

23 Q: He continues "The Japanese announcement will
24 add fuel to the fire that replacements are possible
25 in both internal and external and easiness will

1 result." Would you agree with that statement?

2 A: Yes.

3 Q: Okay. Did it, in fact, add fuel to the fire
4 that replacements were possible for the dielectric
5 uses of PCBs?

6 A: I think it added some impetus, but it didn't
7 -- as I recall now, it didn't add a lot of fuel to
8 the fire, because we got into issues like, you know,
9 well, what -- you know, what fire standards were in
10 place in different countries, and what they -- were
11 they willing to tolerate in things like capacitor
12 failures and things like that. So again, you know,
13 there were -- there were similarities and there were
14 differences. But I think what was happening is that
15 it added momentum to the search to find
16 alternatives.

17 Q: Well, at some point prior to this, weren't
18 you hearing information from companies such as GE
19 that "If you take away our dielectrics, we may have
20 blackouts in our major cities"?

21 A: I vaguely remember hearing something about
22 that.

23 Q: That was kind of the doomsday scenario that
24 was being portrayed as a possible result if the
25 dielectric industry could no longer use PCBs,

1 correct?

2 A: Yes.

3 Q: Okay. Now, do you recall the Japanese
4 having large blackouts as being a major problem?

5 A: I can't recall.

6 Q: Mr. Bergen requests that "We must anticipate
7 this, the uneasiness, and develop plans to handle
8 this situation." Strike that. I think what he's
9 referring to is the Japanese announcement that
10 replacements are possible, and he asks you to
11 anticipate this and develop the plans to handle this
12 situation. Do you see that there?

13 A: Yes.

14 Q: What did you do to develop plans to handle
15 that situation?

16 A: I cannot today recall specifically what I
17 did to handle that situation. I'd have put it as
18 part of the overall strategy.

19 Q: Mr. Bergen also talks about the Monsanto
20 special undertaking and the requirements for either
21 \$50,000,000.00 net worth or suitable insurance
22 coverage that would require or trigger the smaller
23 manufacturers to look for substitutes. Do you see
24 that?

25 A: Yes.

1 Q: Was that, in fact, the requirement that
2 Monsanto had put in place that anybody who bought
3 dielectrics that contained PCBs either had to have
4 \$50,000,000.00 in net worth or suitable insurance
5 coverage?

6 A: I remember that. 50,000,000 probably was
7 the right figure. You know, if I had been asked
8 independently, I wouldn't remember the figure but,
9 yes, these were the requirements. Either have the
10 net worth or get insurance to cover it.

11 Q: Okay. Now, the next page, page two of this
12 memorandum Mr. Bergen advises you and others that
13 Westinghouse and other manufacturers had told him
14 that they are concerned that the government or even
15 Monsanto might legislate against them and they must
16 be prepared for the alternatives. Do you see that?

17 A: Yes.

18 Q: You were concerned that the government would
19 shut it off immediately, weren't you?

20 A: Yes.

21 Q: Okay. Or at least after whatever time it
22 would be required to either pass a bill or have some
23 kind of ban imposed by a governmental agency,
24 correct?

25 A: Yes.

1 Q: Okay. What was the strategy that Mr. Bergen
2 was reflecting here with respect to developing new
3 products?

4 A: I think, you know, it's difficult for me to
5 go back to the time frame and know everything that
6 Howard was thinking about. I read in this memo a
7 strong emphasis on us doing what we could to find
8 new products and going out and getting them
9 evaluated as soon and effectively as we could. I
10 see in this part of this strategy a lot of what I
11 talked about earlier, this new product development
12 approach.

13 Q: So you would develop a product, but before
14 you could sell it you would need to have one of your
15 customers use it?

16 A: Very rigorously, yes.

17 Q: So that you would get some kind of idea as
18 to how well it performed under actual conditions; is
19 that correct?

20 A: Yes.

21 Q: Was there a crisis going on at this time?
22 Would that be a fair way to characterize it?

23 MR. CHAMBERS: Object to the form.

24 A: I wouldn't -- you know, I would not have --
25 from my perspective, yes, life was challenging but,

1 you know, I didn't feel I was in a crisis
2 atmosphere.

3 Q: (By Mr. Roeder) Under paragraph numbered
4 four Mr. Bergen is relating the recent episodes on
5 timing of the NC phosphate project and the NCR
6 Santosol 100 project, and he requests that we get
7 everyone involved so the crisis element is
8 minimized. Do you see that?

9 A: Yes.

10 Q: What's he mean by that?

11 MR. CHAMBERS: Object to the form.

12 Q: (By Mr. Roeder) What did you understand him
13 to mean?

14 A: I can't remember what I understood about it,
15 but the NCR Santosol 100, Santosol 100 was a product
16 that, as I recall, was a non-PCB replacement for --
17 for Aroclor. I don't think -- in fact, I'm almost
18 certain that I don't think I had responsibility for
19 that. I think that went back into the plasticizer
20 group since it was no longer considered a PCB. The
21 NC phosphate, I can't recall what that was either.
22 So from his perspective, these have been problems,
23 and maybe these particular projects had got
24 themselves into a crisis atmosphere. But I did not
25 sense at the time that we were, you know, we were in

1 a crisis. Monsanto and Munch had done some
2 looking. I mean over years they had looked at
3 possible products that could be better than PCB and
4 so on and so forth. So they weren't -- also, they
5 had a long way to go to commercialize a product.
6 They weren't actually starting from absolutely
7 ground zero in terms of, you know, having -- so it
8 was a thing that properly coordinated and set out
9 and managed. We would do our best. We couldn't
10 guarantee success, but I didn't see it as a crisis.

11 Q: Well, but the answer is you don't know what
12 he meant by that?

13 A: But I don't know what he meant by that.

14 Q: That's all I have for that document, sir.

15 (Plaintiff's Deposition Exhibit No.

16 229 marked for identification.)

17 Q: (By Mr. Roeder) Exhibit 229, sir, is a
18 memorandum from E. Greene to J. P. Berndt, and J. R.
19 Durland, P. A. Klingsporn and A. D. Lapthorne.

20 A: Yes.

21 Q: Who are those people?

22 A: These would be regional people. Durland was
23 in Tokyo responsible for Monsanto's overall
24 businesses in Japanese, particularly the Japanese
25 joint venture with Mitsubishi. Lapthorne was head

1 of our operations in Australia, New Zealand.
2 Klingsporn now where was he? What part of the world
3 did he have? Joe Berndt had India Africa, I
4 believe. And I can't now -- Klingsporn might have
5 been Latin America. I've forgot now.

6 Q: All right. There's handwriting that says
7 "J. F. the book implementation." Do you see that?

8 A: Yes.

9 Q: Does that J. F. stand for Jack Fallon?

10 A: I would -- I doubt it. It might have been
11 his secretary or conceivably -- let's see. I
12 wouldn't have thought it was Jack Fallon but, you
13 know, J. F. might have been his secretary. I don't
14 know.

15 Q: His secretary meaning Mr. Bergen's
16 secretary?

17 A: Yes, but I'm just -- oh, no, wait a minute.
18 It's Ned Greene. Okay. So -- wait a minute. This
19 is Bergen's copy. I really don't know.

20 Q: Well, it looks like there is --

21 A: I don't know.

22 Q: Well, let me -- let me see. Maybe we can --
23 we can work our way through this. It looks like
24 there's an arrow pointing to Mr. Bergen, doesn't it?

25 A: Yes.

1 Q: All right. And if you look at Exhibit 228,
2 the one you just put down, there is a -- if you pick
3 it up and look toward page three, there's a back
4 slash J. F.?

5 A: Yes.

6 Q: J. F. was Mr. Bergen's secretary or initials
7 for his secretary?

8 A: I can't remember who it was, but it's
9 conceivable that's who it was.

10 Q: Well, it was the practice at Monsanto that
11 whoever typed up a document such as a memorandum
12 would put his or her initials in lower-case on that
13 document, correct?

14 A: That was a frequent occurrence. I don't
15 know if it was universal, but it frequently
16 happened.

17 Q: Okay. That happened, for example, Exhibit
18 227 there's a C. S.?

19 A: Yes.

20 Q: That was your secretary?

21 A: Yes.

22 Q: Or the initials of your secretary?

23 A: Yes.

24 Q: So you would conclude that J. F. was
25 probably Mr. Bergen's secretary?

1 A: Yes.

2 Q: Now, was that handwriting Mr. Bergen's?

3 A: It looks like it.

4 Q: Okay. Who is Mr. Greene?

5 A: Mr. Greene was an international, and had
6 some sort of a director administration coordination
7 type role as to what happened throughout our
8 international operations.

9 Q: All right. You received a copy of this
10 document?

11 A: Yes.

12 Q: And as you read this document, this was Mr.
13 Greene telling the people worldwide what the policy
14 was with respect to PCBs, correct?

15 A: Yes.

16 Q: Okay. And he was attempting to confirm
17 compliance with the policy worldwide, correct?

18 A: Yes, if it was being complied with, yes.

19 MR. ROEDER: Okay. That's all I have for
20 that document.

21 (Plaintiff's Deposition Exhibit No.

22 230 marked for identification.)

23 Q: (By Mr. Roeder) Exhibit 230 is a memorandum
24 that you sent enclosing a memo from Bob Sido,
25 correct?

1 A: Yes.

2 Q: Okay. Did you -- it relates to PCB tank car
3 labeling?

4 A: Yes.

5 Q: Dated April 10, 1972. This relates to the
6 new label that would be put on all the tank cars
7 that would ship PCBs at this point only for
8 dielectric uses, correct?

9 A: Yes.

10 Q: What was the reason to change the label that
11 would go on PCB tank cars?

12 A: The specifics of it escape me now.

13 Q: Well, in general, your memorandum reads "Our
14 dielectric tank car fleet will be permanently
15 labeled with a cautionary statement on PCBs. In
16 addition, tags containing standard PCB product
17 labels will be affixed to seals, et cetera, on the
18 bulk loads," correct?

19 A: Yes.

20 Q: Prior to this time the tank cars did not
21 contain the cautionary statement, correct?

22 A: They would have contained statements of some
23 sort. This was a change, and I can't recall what
24 they were before this and after this.

25 Q: If you look, attached to this exhibit there

1 is a leak or spill label that's going to be put on
2 each of these and attached on the next page, which
3 is production number 88380, is a copy of the leak or
4 spill label?

5 A: Yes.

6 Q: So that wasn't there previously, right?

7 A: I'm not -- that might have been there
8 before. It's conceivable that the part that was
9 added is this part in the middle column. I'm not,
10 you know -- I'm not the one to ask that and I don't
11 have access. You know, I don't have the information
12 to say what was changed. This doesn't say what was
13 changed and what wasn't.

14 Q: Well, but the -- this page. And I'm
15 pointing to the one that has production number 88379
16 shows where PCB leak spills are going to be put on
17 the tank cars, right?

18 A: Yes.

19 Q: You're sending this memorandum out. Is this
20 part of your responsibility for the PCB strategy
21 that you'd be sending this memorandum out?

22 A: This would not be related to the PCB
23 strategy that Mr. Bergen referred to. This would be
24 part of my day-to-day duties and communication
25 communicating to the field sales force what was

1 happening as far as their interface with the
2 customer would be concerned.

3 Q: All right. So this is part of your duties
4 as product manager?

5 A: Yes, exactly.

6 Q: All right.

7 (Plaintiff's Deposition Exhibit No.
8 231 marked for identification.)

9 Q: (By Mr. Roeder) Okay. You have Exhibit
10 231, sir?

11 A: Yes.

12 Q: All right. Another memorandum from you
13 dated a couple of days later, a dielectric
14 presentation to PCB task force, dated April 12th,
15 1972, production number TRAN 86234 to 86236. And
16 this reflects a meeting of April 10th, 1972
17 correct?

18 A: Yes.

19 Q: Okay. You were in attendance with Drs.
20 Kellers, Munch, Mr. Benignus and Mr. Papageorge,
21 right?

22 A: Yes.

23 Q: Okay. What was the dielectric presentation
24 to the PCB task force? What was it about?

25 A: See if this refreshes my memory.

1 Q: Sure. Well, take -- take whatever time you
2 need.

3 A: Okay.

4 Q: All right. Have you had an opportunity to
5 look at Exhibit 231?

6 A: Yes.

7 Q: Now, your memorandum, Exhibit 231,
8 references a PCB presentation before the PCT PCB
9 task force tentatively set for mid May?

10 A: Yes.

11 Q: Okay. What was that task force about, or
12 what was the presentation going to be?

13 A: Well, the task force, as I recall, was this
14 group, interagency group here.

15 Q: So this was going to be a presentation to
16 the governmental PCB task force?

17 A: Yes. Yes. Exactly.

18 Q: And people that you expected to be in
19 attendance at your presentation tentatively set for
20 mid May 1972 would be Dr. Burger from the Office of
21 Science and Technology. Environmental Quality will
22 be Terry Davis. Task force co-chairman, Muir,
23 M-U-I-R. He's the guy that was referenced in that
24 earlier memorandum, wasn't he?

25 A: Yes.

1 Q: Exhibit 221?

2 A: Yes, Warren Muir.

3 Q: Right. From the Council of Environmental
4 Quality. And you've written "He came to St. Louis
5 with Riseborough, et al." That -- that relates,
6 doesn't it, sir, to the meeting that was held on
7 Friday, January 21?

8 A: Probably, yes.

9 Q: All right. The EPA and FDA were going to
10 send people, correct?

11 A: Yes.

12 Q: The USDA, Department of Commerce, Bureau of
13 Standards, Department of Interior and somebody from
14 the National Institute of Health Sciences, NIH. Was
15 there such a meeting held?

16 A: I cannot -- I cannot recall. I have no
17 reason to doubt that it wasn't held, but I can't
18 recall.

19 Q: Okay. Well, this is -- this is forward
20 looking at the time you prepared this memorandum?

21 A: Yes.

22 Q: So if you go to the next page, you indicate
23 what you had previously covered in presentations to
24 the same task force, right?

25 A: Yes.

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1 Q: So you brought them up to speed on your
2 analytical methods on PCBs?

3 A: Yes.

4 Q: Okay. What does that refer to?

5 A: That would refer to what capability Monsanto
6 had. Maybe only Monsanto. I'm not sure. But
7 certainly what Monsanto had in their capability to
8 detect PCBs with what accuracy at what levels, and
9 possibly what other procedures, technologies,
10 capabilities might be. But probably -- okay. I
11 shouldn't speculate. It would certainly have ours.
12 And whether it had other peoples' I don't know.

13 Q: All right. Then you brought him up-to-date
14 on the uses of PCBs and Monsanto's withdrawal
15 program?

16 A: Yes.

17 Q: And the withdrawal program is something in
18 effect we've been discussing all day, right?

19 A: Yes.

20 Q: The attitude of competition and foreign
21 governments to PCBs, that was covered?

22 A: If I said -- if I said here it was, it must
23 have been done.

24 Q: Do you just recall, in general, what the
25 attitude of competition was with respect to PCBs at

1 this time?

2 A: I think most of those were continuing to
3 sell. The Japanese had continued now obviously as
4 we just saw recently. They had a change of heart,
5 you know, just prior to April. But up to then they
6 had been going along. There was -- I think there
7 were maybe three in Europe. France was a major
8 producer. Bayer in Germany. And there was an
9 Italian company. In Europe they did not seem to be
10 -- you know, they were not acknowledging that there
11 was a problem in taking steps in the same way that
12 we were in the U.S.

13 Q: But the foreign governments at this time
14 were having differing --

15 A: Views on the subject as I recall vaguely.

16 Q: All right. Sweden had a different view.
17 Sweden had banned them, right?

18 A: I can't recall if they had outright banned
19 them. Clearly because of the Jensen Widmark thing,
20 there probably wasn't much of an atmosphere for
21 wanting them to continue.

22 Q: All right. And toxicity relates to the
23 toxicity of the problem of the product, correct, how
24 toxic it was and what amounts to what types of life
25 forms?

1 A: It probably would have been, you know,
2 covered the type of tests that we had sponsored or
3 work that we had done to determine how toxic they
4 were or weren't, yes.

5 Q: Right. And that would be the tests
6 Industrial Biotest had done?

7 A: Yes, and any other published reports and
8 studies.

9 Q: All right. Now, the action there is from
10 Mr. Papageorge W. B. P. to circulate copies of notes
11 used by John Mason at prior presentations to R. E.
12 K., that's Dr. Keller, to you, to Mr. Benignus and
13 to Dr. Munch to ensure consistency, correct?

14 A: Yes. Yes.

15 Q: Why were you concerned about consistency?

16 A: Well, I think, in any event, you want to --
17 if there's been -- it doesn't necessarily -- If
18 there hasn't been an error made, you wouldn't
19 correct it. But, you know, you don't want to be
20 presenting two different sets of data on the same
21 thing unless you have valid reasons why one thing
22 has changed from now to then.

23 Q: Okay. So you have written that's done?

24 A: Yes.

25 Q: So you've got the copies of notes so that

1 you could ensure consistency. Then you had
2 objectives that had been agreed upon for the May
3 presentation. One was to present Monsanto's
4 biodegradation data on PCBs to dispel the half-life
5 notions on PCBs; is that correct?

6 A: Yes.

7 Q: What's that refer to?

8 A: To get an answer to that, you'd have to talk
9 to someone in the technical research area. I -- you
10 know, my chemical knowledge is getting rusty. I
11 know what a half-life means, but I can't now recall
12 exactly what it meant in terms of this.

13 Q: Okay. Well, in terms of what a half-life
14 means, generally, what do you understand that term
15 to mean?

16 A: Well, it's how long does it take before half
17 of it has got broken down. Another thing is half of
18 it still remains.

19 Q: Okay. All right. You thought you could
20 justify the use of Aroclor 1016 in capacitors on the
21 basis of, number one, the biodegradation data?

22 A: Yes.

23 Q: Now, Aroclor 1016 broke down more easily
24 than the higher chlorinated Aroclors, correct?

25 A: Yes, because 1016, as I recall, was

1 basically a mono, what they call monobiphenyl. So
2 you only had one chlorine atom there. So you had
3 one benzene ring and didn't have any chlorine on it
4 at all. So it's reasonable to see that that would
5 be easier to deal with, you know, than ones that had
6 two or more.

7 Q: All right. Then three would be the decrease
8 in the "hard IE five chloro and higher PCBs in the
9 environment"?

10 A: Yes.

11 Q: That's the same thing Mr. Benignus is
12 writing in his memorandum about how the bad PCBs if
13 I can use that term without an objection?

14 MR. CHAMBERS: Object to the form.

15 A: More biodegradable versus less
16 biodegradable.

17 Q: (By Mr. Roeder) All right. So now I've got
18 to reask the question because of the objection.
19 That's the same thing Mr. Benignus was referring to
20 in his memorandum that we discussed earlier,
21 correct?

22 A: Correct.

23 Q: All right. And you wanted to get the task
24 force to back off from the zero detectable limits of
25 PCB in plant effluent. That was an objective you

1 wanted?

2 A: Yes.

3 Q: Okay. Why was it important to get them to
4 back off of that zero detectable limit standard?

5 A: Because the phrase "zero detectable" is
6 really a moving -- somewhat of a moving target.
7 Zero detectable by what? Under what conditions?
8 You're better to come off and establish -- if it
9 says -- it implies that you can never get, you know,
10 measure absolute zero. You can get very close, but
11 you can never quite get there. So you're left with
12 a degree of fuzziness. So you want to come up and
13 say "Okay, you know, if it's above this level, it's
14 not acceptable. If it's below that level, we're
15 prepared to accept." But that's a much -- you know,
16 that's a much stricter and something that can be
17 complied with much better than coming up with
18 something that's zero detectable. I mean I can do a
19 test and say "Well, gee, by the way, I did it. I
20 didn't see anything." You come in and you say "Gee,
21 I found something."

22 Q: So you needed to have?

23 A: A more strict definition.

24 Q: And a more objective definition?

25 A: Exactly.

1 Q: All right. Okay. You were going to do, on
2 the assignments in getting the first drafts for this
3 status report that you would present to this
4 committee, the hard PCB/degradable PCB statistics.
5 That's what you referred to earlier, isn't it?

6 A: Yes.

7 Q: You thought you'd put this information
8 together, correct?

9 A: Yes.

10 Q: So it was in connection with this
11 presentation to the intragovernmental PCB task
12 force?

13 A: That might have well been the beginning of
14 it, yes.

15 Q: All right. Now, your memorandum continues
16 to down below to refer to the need to be aware of,
17 number one, GE and Westinghouse approaches to OST,
18 which would be Office of Science and Technology?

19 A: Yes.

20 Q: What were those approaches?

21 A: I can't recall what they are now.

22 Q: Okay. But you wanted Monsanto to be
23 consistent with them, correct?

24 A: Yes.

25 Q: Okay. Why was that?

1 A: It would be to the extent that -- that we --
2 we had a contribution, that that would be consistent
3 with what they said that they knew some parts about
4 their business and products that we didn't so there
5 was -- you know, we were trying not to -- to be
6 reasonably accurate in what we said.

7 Q: Okay. There was another meeting that was
8 going to be scheduled between April 21 or 24?

9 A: Yes.

10 Q: Would you have attended that meeting?

11 A: The likelihood is I would since I was, you
12 know, the recipient, and also I had some data to
13 prepare. So the odds are I would be there.

14 MR. ROEDER: All right. That's all I have
15 for that exhibit right now.

16 (Plaintiff's Deposition Exhibit No.
17 232 marked for identification.)

18 Q: (By Mr. Roeder) Exhibit 232 is a memorandum
19 from you to Mr. Papageorge regarding labeling and
20 warnings. What was the purpose of this memorandum,
21 sir?

22 A: Okay. This -- Mr. Papageorge was, if you
23 like, the product -- I think product stewardship was
24 the word that was used for his job at Monsanto. It
25 was to make certain that we complied with the.

1 regulations that regards the use of products, the
2 way they were shipped and so on. There were people
3 whose job it was in distribution and in order and
4 billing. In distribution they had to comply with
5 the -- the regulations of the carriers be they OSHA
6 or rail or road. Billing that had to fill the
7 orders and send paperwork to freight forwarders and
8 people like that. And there were a great deal of
9 regulations pertaining to labels and symbols and so
10 on. True to form, the U.S. followed one and our
11 English speaking allies across the pond tended to
12 use another. And they -- that also got, of course,
13 entangled with the common market and continental
14 Europe. And so getting things done in Europe just
15 took longer and was more complicated. But what I
16 was trying to do here was to let Bill Papageorge
17 know where we stood in all of these from the
18 standpoint of him as a kind of an overseer of how
19 well we were complying with the directives that
20 management had put upon us.

21 Q: Okay. I notice, sir, that on this document
22 you have carbon copied Mr. Stapleton again in the
23 law department, right?

24 A: Yes.

25 Q: Were you carboning Mr. Stapleton because you

1 wanted him to be aware of what you were putting or
2 wanted to put as a warning with respect to the drums
3 or your invoices or your order acknowledgments?

4 A: It might have been an element of keeping him
5 informed, because he probably would have looked --
6 he would have looked at the final wording. I would
7 have looked to -- also Sido's name is not on here
8 strangely enough. There was a man called George
9 Sido in distribution that was kind of the -- you see
10 his name mentioned here in the front page, who was
11 familiar with all the symbols and terminologies and
12 rules for setting what went on labels. So you
13 couldn't get people misinterpreting. We talk about
14 clerks in here. You know, from one company we say
15 this and so on. Sido would have come up and said
16 "Here's what I suggest." Then other people would
17 have looked at it in the distribution chain and seen
18 if there was any problems. If it reached my desk, I
19 then looked at it and said "Okay, they're accurate
20 in the words they used pollinated, chlorinated
21 biphenyls. Do I have any problems from an accuracy
22 from the message you were trying to get across?"
23 Then I would have sent it to probably to Papageorge
24 and Stapleton saying "Now, look are we ready to sign
25 off on this" and set the whole nine yards rolling.

1 That's how it -- and then it would have gone in to
2 Sido to take a lot of the action, distribution
3 various other people and gone overseas as well. And
4 there would have been coordination between me and
5 Europe as to -- as to how that was all being
6 handled.

7 Q: All right. There is a D. C. Jones that I
8 have not seen before or I don't think you've
9 testified to. Who was he?

10 A: And I honestly can't remember now.

11 MR. ROEDER: Okay. That's all I have for
12 this document, sir.

13 (Plaintiff's Deposition Exhibit No.
14 233 marked for identification.)

15 Q: (By Mr. Roeder) Exhibit 233, sir.

16 A: Yes.

17 Q: Is a letter that you wrote and signed dated
18 May 25, 1972, correct?

19 A: Yes.

20 Q: Okay. Production numbers TNGS 2836. Under
21 this letter you were advising Therminol FR customers
22 that the offer that you had previously extended,
23 with respect to paying for the freight incurred in
24 connection to Therminol to you for disposal, was
25 going to be revoked effective July 1, correct?

1 A: Yes.

2 Q: Why was that offer put in place initially?
3 What was your purpose?

4 A: I think -- let me see if I can refresh. My
5 memory isn't clear on this. I think it was an
6 assistance. We had established a facility that had
7 reached temperatures high enough to incinerate. At
8 that time, that appeared to be the only way you
9 could dispose of these products. We had made it
10 available. And to be helpful to help counter all
11 the inconvenience that they were, you know, having
12 to put up with, we would do it for a certain period
13 of time. It would be done free. And by allowing,
14 offering it for a certain number of -- six months
15 comes to mind. It may or may not have been right,
16 but that's what I vaguely remember. That that would
17 be a way of them getting it done fairly quickly as
18 opposed to us then having -- you know, this might
19 drag on and on and on. And then by establishing a
20 deadline, okay, that might also get the others that
21 hadn't a way to speed up. And then after it would
22 be -- you know, it would a few stragglers that would
23 be left.

24 Q: Also, it was an encouragement, was it not,
25 for them, if they were going to require a new fill

1 on a system that they had drained, that they would
2 think more highly of Monsanto and might be more
3 inclined to purchase more product from you?

4 A: Yes.

5 Q: Now, this -- the offer was terminated
6 effective July 1, 1972, wasn't it?

7 A: Yes, as best I can remember. I mean I don't
8 remember the date. But this would say -- if I said
9 it in here, the odds are it was.

10 Q: All right. That's all I have for that.
11 Again, with respect to this exhibit, it was dated
12 May 25, 1972?

13 A: Yes.

14 Q: Had you been given the responsibility with
15 respect to Pydrauls at that point?

16 A: I can't recall.

17 Q: Okay. Maybe this will help.

18 (Plaintiff's Deposition Exhibit No.
19 234 marked for identification.)

20 MR. CHAMBERS: Should we invest the time to
21 review the whole thing, or will there just be one
22 portion of it?

23 MR. ROEDER: I don't want to invest the
24 entire time.

25 Q: (By Mr. Roeder) Why don't -- why don't I

1 just draw your attention, sir.

2 A: Okay.

3 Q: I will -- I will acknowledge that you were a
4 very prolific writer at Monsanto. You wouldn't
5 contest that, would you?

6 A: People accuse me of having shares in the
7 paper industry. Even my wife says that, because she
8 looks at our storage area.

9 Q: Sir, Exhibit 234 is a memorandum you wrote
10 to Mr. Gossage, dated June 9th, 1972. It's a
11 monthly report for May 1972?

12 A: Yes.

13 Q: And one of the problem areas that you
14 reference here in number one on the first page is
15 the inability to command the anticipated premiums
16 for your straight PE Pydrauls on the basis of
17 technical superiority. Do you see that?

18 A: Yes.

19 Q: Okay. You would write these monthly reports
20 at the end of the month?

21 A: Yes.

22 Q: Okay. So if you were writing a monthly
23 report for May 1972 that dealt with Pydrauls, would
24 it be fair to say that you had the Pydraul
25 responsibility for that month of May?

1 A: Maybe not the entire month. I could have
2 well have taken over on the first of June, but then
3 I would have had to pick up.

4 Q: And explain what had happened the previous
5 month?

6 A: Exactly.

7 Q: All right. Okay. In any event, as of June
8 1972, you were -- you had the Pydraul
9 responsibility?

10 A: Yes, that's what this indicates.

11 Q: And if there were earlier monthly reports
12 that you had written to Mr. Gossage that reflected
13 Pydraul discussions, in your mind would that suggest
14 that you had the Pydraul responsibility for that
15 month?

16 A: Yes.

17 Q: At least at some point?

18 A: For at least I would have been involved at
19 the time that the monthly report was due.

20 Q: All right. When was the monthly report due?

21 A: It was usually due within a week or so after
22 the -- you know, so many working days after the end
23 of the month.

24 Q: Because it's not very relevant to get
25 information about June if it comes in August,

1 correct?

2 A: That's right. By the same token, you've
3 also have to get time to -- because in those days,
4 although we had computer runs, they didn't -- you
5 know, they weren't instantaneous. We didn't have
6 PCs.

7 Q: Right. It took a few days to get this, type
8 it up assemble it, et cetera. The PE Pydrauls that
9 you reference in your memorandum to Mr. Gossage,
10 what were they?

11 A: As I recall, these were the -- and I can't
12 -- I don't know -- I can't remember what the PE
13 was. But these would have been the ones that we
14 were -- would have been used in the chlorinated
15 product free Pydrauls.

16 Q: Would PE stand for phosphate ester?

17 A: That -- that probably is right.

18 Q: Okay. So these were the non-PCB Pydraul
19 formulations?

20 A: That's right.

21 Q: Okay. So when you tell them that you're
22 unable to command the anticipated premiums on the
23 basis of technical superiority, you're telling them
24 that the product wasn't operating as well as you had
25 hoped, or that it really was a technical superior

1 product, but you weren't able to charge what you
2 hoped you could charge for it?

3 A: It could be either. You know, I can't
4 recall now which it was.

5 Q: Okay. And you can see both interpretations
6 of your statement there, correct?

7 A: Possibly. Although, it might well just have
8 been the cost one. The price one might have been
9 the basis. Yes, we had the technical superiority,
10 but the competition was coming in lower. I can't
11 say for sure which one it was. A combination maybe.

12 Q: You also write "Difficulties exist in
13 product cost due to the processing necessary to pass
14 emulsion tests and getting free phenolic levels that
15 are down to the levels of competition." Does that
16 help you where you where the previous sentence
17 didn't to determine whether or not your products
18 were superior -- were superior to those of the
19 customer?

20 A: Possibly. Or it just meant that our cost
21 -- there might be two separate issues. One, the
22 marketplace issue and, secondly, the internal
23 manufacturing issue that it was taking us costing us
24 more than we had thought to do the processing to get
25 the acceptable product performance.

1 Q: All right. Now, the free phenolic
2 situation, that's another environmental pollution
3 potential question relating to these products,
4 right?

5 A: Yes.

6 Q: What -- can you describe what that situation
7 was?

8 A: I can't really. I've forgotten. Phenyls
9 was a problem, much less magnitude, as I recall,
10 than -- I mean an order of magnitude less than PCBs,
11 but it was there. And from what we were going
12 through and had gone through, it was an area to
13 which we were sensitive.

14 Q: Very sensitive?

15 A: Yes.

16 Q: And you pointed that out to Mr. Gossage.

17 A: So incurred my share of problems, right.

18 Q: Could you turn to the last page of it? Mr.
19 Chambers was right in not having you look at the
20 entire document. Under the heading of PCB/PCT, you
21 indicate that you had lost 32 customers, but you had
22 172 customers who were committed to convert to T-55
23 or T-66. That related to Therminol, right?

24 A: Yes.

25 Q: Okay. Is that an abbreviation for Therminol

1 55 and Therminol 66?

2 A: Yes. Yes.

3 Q: Okay. Your free incineration -- the
4 announcement of termination of free incineration had
5 gelled conversion dates on many accounts. So part
6 of the reason to write this letter was to say "Hey,
7 wake up. It's not going to be here. So you've got
8 to make a decision right away whether -- whether, as
9 I say, you is or ain't," right?

10 A: That's right.

11 Q: Whether you're going to buy it or you're not
12 going to buy it?

13 A: That's right.

14 Q: Okay. At this point, is it fair to say the
15 work of the task force was done or essentially done?

16 A: Yes.

17 Q: Because as you write here, "The task force
18 should be reduced to Paul Gann only through -- only
19 on June 30th." So Paul was going to be the only
20 person left with this responsibility?

21 A: That's right. Exactly.

22 Q: Okay. So by that time you had done your
23 work with respect to the task force relating to the
24 heat transfer?

25 A: That's right. Yes.

1 MR. ROEDER: Okay. That's all I've got for
2 that.

3 (Plaintiff's Deposition Exhibit No.
4 235 marked for identification.)

5 Q: (By Mr. Roeder) Exhibit -- would it be
6 235? You've had a chance to look at it's a call
7 report from Hewlett-Packard Company from Clifford
8 Boutin. He's a salesman who reported indirectly to
9 you, correct?

10 A: Indirectly. He wouldn't have -- he would
11 have reported to Doug Hansen, and Hansen in return
12 -- in turn would have reported to Gossage. But,
13 you know, the product group and the sales force
14 worked very closely together.

15 Q: All right. But it was a memorandum to you?

16 A: Well, this was a sales report, and the
17 normal practice was usually, not always, the sales
18 report would normally come in to me, and then it
19 would be routed to people in my department.
20 Sometimes people would put it to -- if they wanted
21 action done by any particular individual, they would
22 carbon copy them. I would look at it and then send
23 it or have my secretary send it to whoever I thought
24 should see it.

25 Q: All right. Now, at the -- in the sales

1 report Mr. Boutin -- am I saying that correctly?

2 A: Yes, I think so. Boutin, yes. Boutin
3 maybe.

4 Q: Okay. But Mr. Boutin discusses a meeting he
5 had with Hewlett-Packard in which they advised
6 Hewlett-Packard to drain all the die cast machine
7 reservoir since the fluid was old and needed
8 changing. And he reports as good news that they can
9 expect an order for replacement fluid in the not too
10 distant future, correct?

11 A: Yes.

12 Q: Okay. He also offered, Mr. Boutin did, to
13 ask for a composite sample to be analyzed for PCB
14 content. Then he could advise them regarding
15 disposal. There's handwriting at the bottom
16 correct?

17 A: Yes.

18 Q: Okay. It's signed Jerry?

19 A: Yes.

20 Q: Jerry who?

21 A: Davidson.

22 Q: Okay. Mr. Davidson writes to Cliff. "We do
23 not want to analyze for PCB unless we have to. You
24 can bet PCB content will be several percent at least
25 and analysis -- and analysis is expensive. We will

1 dispose of the used fluid for three cents .03 per
2 16." That's three cents a pound, right?

3 A: Yes. Correct.

4 Q: "At Sauget and Hewlett pays the freight."
5 Then it says "PCB analysis costs money. Will not
6 tell us anything we don't already know. A hundred
7 parts per million PCB is as bad as ten percent as
8 far as pollution authorities are concerned. Regards
9 Jerry." Did I read that correctly?

10 A: Yes.

11 Q: Okay. Was that the policy that Monsanto did
12 not want to analyze for PCB unless you had to for a
13 customer?

14 A: There would have been -- there would have
15 been latitude given to analyze or not.

16 Q: Okay. So you don't know whether it was or
17 was not the policy?

18 A: No. In this case what he's saying is that
19 because 312A, if my memory is correct, was a PCB
20 fluid, if I'm not mistaken. Then there would have
21 been -- you would expect to find, you know, not
22 parts per million, but a certain percent of PCB. So
23 that wasn't going to tell us anything. And since --
24 by this time the task force, as these earlier memos
25 have shown, were thinking about setting levels, you

1 know, much lower than one percent. Then if they
2 wanted to take it out because they had to drain it,
3 the best thing was not to do the analysis.

4 Q: All right. The task force you're talking
5 about was the intragovernmental task force?

6 A: Exactly. Exactly.

7 Q: Not your internal task force?

8 A: No, this intergovernmental thing.

9 Q: And as of this date, your own personal task
10 force was winding down?

11 A: In -- in -- in the heat transfer area, yes.

12 Q: All right. Okay. Was this a heat transfer
13 application?

14 A: No. It was Pydraul.

15 Q: In industrial use?

16 A: He says dye cast machine. So that would be
17 hydraulic fluid.

18 Q: I think it's a measure of a person's
19 importance how many documents are sent to him.

20 A: I don't know. I look at that, and I think,
21 God, how many hours were spent? These were before
22 the days of word processors.

23 MR. CHAMBERS: Yeah, this looks like it's
24 already been marked.

25 Q: (By Mr. Roeder) It is. It has. And you

1 were right. All right. Okay. Mr. Chambers has
2 astutely caught my attempt to double mark an
3 exhibit. You have been shown Exhibit 96?

4 A: Yes.

5 Q: Which was another sales report to you?

6 A: Yes.

7 Q: I think actually we discussed this earlier,
8 didn't we?

9 A: It seems to that we have. We talked about
10 that yesterday, I think.

11 Q: You're right. You're right.

12 A: So do you want this?

13 Q: We can have it back unless you would like to
14 keep a copy. We actually did. This one is a new
15 one. That's what confused me.

16 (Plaintiff's Deposition Exhibit No.
17 236 marked for identification.)

18 Q: (By Mr. Roeder) Okay. Exhibit 236, sir, is
19 a call report, dated 6-19-72, from Martin Marietta
20 Aluminum, Torrance, California, to you carboning J.
21 H. Davidson and D. R. Hansen from an R. S.
22 B-E-V-A-C-Q-U-A. Take a moment to look at this.

23 A: Yes.

24 Q: Okay. This memorandum is a memorandum or a
25 call report that you would have received in the

1 ordinary course at Monsanto, correct?

2 A: Yes.

3 Q: And in it Mr. Bevacqua reports of a call to
4 Martin Marietta in Torrance, California, correct?
5 And the customer asks your sales representative a
6 question which he quotes. He says "Seems somewhat
7 out of context based on his knowledge of our Pydraul
8 products, which was that any of the Pydraul products
9 purchased by Harvey Aluminum predecessor Martin
10 Marietta Aluminum ever contained chlorinated
11 biphenyls." Do you see that?

12 A: Yes.

13 Q: Okay. Then he reports that the divisional
14 manager's operation had been called before the
15 federal grand jury with regards to their use of
16 polychlorinated biphenyls. Do you see that in the
17 second paragraph?

18 A: Yes.

19 Q: Is that a concern to you that customers may
20 be called to testify before the grand jury regarding
21 their use of polychlorinated biphenyls?

22 A: I can't recall. Until I read this, I
23 couldn't -- you know, I can't recall this particular
24 incident.

25 Q: Now, looking at Exhibit 236, sir.

1 A: Yes.

2 Q: And if you compare that with the one --
3 actually you just gave it to me, but I'll give it
4 back to you. Exhibit 96. They both have boxes
5 stamped that say "date received" on them, don't
6 they?

7 A: Yes.

8 Q: Then they have initials that are part of a
9 stamp. That's the date received stamp, right?

10 A: Yes.

11 Q: Okay. What are those initials? What do the
12 lines through those initials mean?

13 A: They mean that they went to people, and they
14 marked them off showing that they had read them and
15 then they would have gone to a file.

16 Q: All right. So looking at 96, for example,
17 when you would read it, you would line through it
18 and pass it on, right?

19 A: Yes.

20 Q: P. G. B. was Mr. Benignus. He would look at
21 it and line through, and that was the practice and
22 it would go to F. H. L. Who was that?

23 A: A man called Frank Lagenfeld who was in
24 marketing.

25 Q: Okay. And then G. F. F.?

1 A: He was George Fague, marketing.

2 Q: All right. And the very last person to get
3 this would be T. L. G. That would be Mr. Gossage,
4 right?

5 A: Yes.

6 Q: So that would be the ordinary course. It
7 would all go through to different people. And after
8 Gossage, it would be filed?

9 A: That's right.

10 Q: That way you wouldn't -- on these reports
11 you wouldn't make all sorts of copies, right?

12 A: Right.

13 Q: Okay. And that's what happened as well on
14 Exhibit 236, right?

15 A: Yes.

16 Q: Okay. Where it went from you to Benignus to
17 Fague?

18 A: No, let me just step in a second. When
19 there was a number there, it meant it would go to
20 somebody first. In both cases Davidson, because I
21 had looked to him, since it's in his market area,
22 that he should know it. And if there was follow-up
23 to be taken care of, that would be his
24 responsibility.

25 Q: All right. So you would have written in the

1 numbers one, two, three, four? --

2 A: Yes.

3 Q: -- for the Exhibit 236? J. H. D. That
4 stands for Davidson?

5 A: That's right. And then the U.S. Steel one
6 it went to Davidson and Hatton.

7 Q: Okay. One is J. H. D. Two is R. E. H.

8 A: That's right.

9 Q: All right. And that's your handwriting
10 there, too?

11 A: Yes.

12 Q: All right. So I think you know what I
13 meant, but the record won't show it. The numbers
14 next to the initials is in your handwriting?

15 A: Yes.

16 Q: All right. Is there any particular reason
17 you would have directed these to these individuals
18 first? Was it their responsibility?

19 A: It was their responsibility. Davidson had
20 the Pydraul area, and Hatton was his -- his
21 technical customer service person. So they were the
22 people to address whatever had to be addressed in
23 these two call reports.

24 Q: All right. Do you recall any discussions
25 with anyone at Monsanto regarding potential grand

1 jury investigations of your customers' use of PCBs?

2 A: No, that doesn't ring a bell at all.

3 Q: Okay. Was there a decision making process
4 you would go through personally as to whether you
5 would send these call reports to these people or
6 not?

7 MR. CHAMBERS: Object to the form.

8 Q: (By Mr. Roeder) Let me rephrase it. If you
9 compare 235 and 236. I'm sorry. You just put them
10 down. But just look briefly at 235 and 356. 235
11 doesn't have that stamp, but 236 does.

12 A: What are the dates?

13 Q: Oh, they're within a week of each other.
14 Within days of each other. 235 is 6-9-72. 236 is
15 6-19-72.

16 A: That could mean that my secretary wasn't
17 there -- you know, might not have been there that
18 particular day or days, and sometimes the stamps
19 might have got missed out. But if they were -- if
20 they came and they didn't have a stamp, then I would
21 have routed it by hand to whom I thought it was
22 needed.

23 Q: Okay. I mean it doesn't reflect your own
24 belief that you would need to send the call reports
25 to the other people? What I'm trying to find out

1 was, is it your decision to put the stamp on?

2 A: As I recall, it was probably stamped
3 automatically when it came in, and I would just
4 number them, score off my own name kind of thing.
5 But sometimes that escaped and, therefore, I would
6 just do what --

7 Q: You would write in who you wanted to see it?

8 A: Sure.

9 (Plaintiff's Deposition Exhibit No.
10 237 marked for identification.)

11 Q: (By Mr. Roeder) Exhibit 237 it's a
12 memorandum to you from J. J. Roder, dated July 21,
13 1972, and this is a call report regarding Tenneco at
14 Lafayette, Louisiana, correct?

15 A: Yes.

16 Q: Okay. This would reflect Mr. Roder's actual
17 trip to Tenneco, right?

18 A: Yes.

19 Q: And Papageorge got a copy. Gossage got a
20 copy as well, right?

21 A: Yes.

22 Q: Okay. And this would be the copy that went
23 to Mr. Gann based upon the arrow next to his name,
24 right?

25 A: Yes. Yes.

1 Q: Okay. In this memorandum Mr. Roder reports,
2 does he not, that "Tenneco was not aware of our July
3 1 deadline on the return of PCB, and I gave them a
4 copy of our discontinuation letter to Louis Williams
5 and told him that if he had some indication -- if we
6 had some indication that they would convert to
7 Therminol 66 in the near future, we could possibly
8 extend the deadline on fuel return to September 1."
9 That's what Mr. Roder writes there, correct?

10 A: Yes.

11 Q: Is this the first notice that you had that
12 one of your customers had not been aware of the July
13 1 deadline?

14 A: I can't recall. I can't recall that.

15 Q: But you recall that some customers were
16 still not aware of the July 1 deadline?

17 A: I was not -- you know, I can't recall being
18 aware of that.

19 Q: At all whether this was the first one or
20 whether any others were?

21 A: I can't recall.

22 Q: Okay. And I guess what Mr. Roder is trying
23 to tell you is that, if you would extend the free
24 deadline -- strike that. If you extend the deadline
25 on free return to September 1, that it might be

1 helpful in getting the order for the new fills?

2 A: Yes.

3 Q: Okay. Did you extend the deadline?

4 A: I can't remember.

5 Q: You don't remember whether the Tenneco
6 facility in Lafayette, Louisiana, proceeded to
7 purchase?

8 A: I can't remember.

9 Q: How much was the new fill worth in terms of
10 dollar amount? I mean I'm not looking for the exact
11 number. But I mean it seems as though it's
12 important enough that Mr. Roder has now made two
13 trips to Tenneco Louisiana to discuss this?

14 A: You're probably looking at -- a 2,500 gallon
15 fill might be of the order of -- might have been
16 then an order of somewhere 12, \$15,000.00.

17 Q: In 1972 dollars?

18 A: Yes. Yes.

19 Q: Which would be substantially more today.
20 Although, none of us can figure that out here
21 without a calculator, right?

22 A: Yes.

23 Q: So it was worth going down there a couple of
24 times if you got the order?

25 A: Yes. Exactly. And he wrote it to Gann,

1 because Gann would have been the person that would
2 have then been tracking down what happened to this
3 letter.

4 Q: All right. And you don't recall Mr. Gann
5 talking to you about it at all?

6 A: I can't.

7 Q: And what position did H. R. Ford have?

8 A: He was the regional manager to whom Jim -- I
9 think by then Jim Roder was actually in field sales,
10 because we had reorganized our salespeople so that
11 he was no longer part of the internal -- my internal
12 product group. He was actually in sales. He
13 reported to Ray Ford.

14 MR. ROEDER: All right. All right. Tell
15 you what. Can we break at this point? It's almost
16 5:00. Then we'll pick up at 10:00 next Wednesday.

17 MR. CHAMBERS: I will need to -- I would
18 like a chance to confirm with you that that
19 Wednesday date is good. Tentatively I have no
20 problem with it.

21 MR. ROEDER: All right.

22 (Whereupon, the deposition was adjourned to
23 tentatively reconvene at 10:00 a.m. on Wednesday,
24 November 1, 1995.)
25

1 COMES NOW THE WITNESS, CUMMING PATON, and
2 having read the foregoing transcript of the
3 deposition taken on the 26th day of October, 1995,
4 acknowledges by signature hereto that it is a true
5 and accurate transcript of the testimony given on
6 the date hereinabove mentioned.

7
8
9
10 CUMMING PATON

11
12 Subscribed and sworn to me before this
13 _ _ _ _ day of _ _ _ _ _ , 1995.
14 My Commission expires: _ _ _ _ _

15
16
17
18 Notary Public