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SUPERIOR COURT
FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,	)	
PLAINTIFF,	)	
VS.	)	NO. BC 026959
MONSANTO COMPANY, ET AL,	)	
DEFENDANTS.	)	

DEPOSITION OF R. EMMET KELLY, M.D.
MAY 1, 1992
VOLUME 2

G O R E R E P O R T I N G C O M P A N Y
100 NORTH BROADWAY ST. LOUIS, MISSOURI
1-800-878-6750 (314) 241-6750

WATER_PCB-SD0000033633

SUPERIOR COURT

FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,	)	
Plaintiff,	)	
vs.	)	NO. BC 026959
MONSANTO COMPANY AND DOES 1 THROUGH 200 INCLUSIVE,	)	
Defendants.	)	

Continued Deposition of R. EMMET KELLY, M.D., taken on behalf of the Plaintiff, at the offices of Bryan Cave, One Metropolitan Square, in the City of St. Louis, State of Missouri, on the 1st day of May, 1992 before Ronald A. Gore, Registered Professional Reporter and Notary Public.

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

Mr. James P. Tallon
Shearman & Sterling
725 South Figueroa Street
Los Angeles, California 90017

Ms. Dana K. Welch
Shearman & Sterling
555 California Street
San Francisco, California 94104

Ms. Christie A. Patrick
Senior Counsel
Enron
Interstate Pipeline Company
1400 Smith Street
Houston, Texas 77251

FOR THE DEFENDANT MONSANTO COMPANY:

Mr. Charles F. Preuss
Bronson, Bronson & McKinnon
505 Montgomery Street
San Francisco, California 94111

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R. EMMET KELLY, M.D.,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

CONTINUED EXAMINATION

QUESTIONS BY MR. TALLON:

Q. Good morning, Dr. Kelly.

A. Good morning.

Q. We were talking as of the time we split up last night about work done by Dr. Jensen and his colleague in Sweden, do you recall that?

A. Yes, sir.

Q. And you testified, I believe, that you became aware of that work in '66 or '67, is that right, or --

A. '67, I believe. The end of -- either December '66 or '67.

Q. Did there come a time when you personally accepted as accurate or valid the work done by Jensen?

A. Yes.

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Q. And when did you so accept it?

A. I think the middle of '67.

Q. Did you take any steps as a result of your conclusions with respect to Jensen's work to change labeling on Monsanto PCB-containing products?

A. I can't recall when we started to change the labels. We did two things, we notified all our customers about the -- but that wasn't in the middle of '67, I think that was probably in '68. We notified all our customers, and then we changed the -- added an environmental sticker to the label. I'm not sure about the time of that. And then we changed the label by incorporating the environmental data -- not the environmental data, the environmental warnings. I'm not sure of the time frame, though, of those last two things.

Q. Can you approximate the time frame?

A. I don't think I can. I mean, it was -- it was sometime after the middle of '68, but -- and before 1970, but I can't

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be any closer than that.

Q. When you referred in your answer of a moment ago to a notification to all customers, to what were you referring?

A. We either told our -- I'm not sure how far it went down to, but certainly told all our major customers. That's my impression, that we told all our major customers, and I don't know what that definition included, about the developments of the environmental aspect of discarding -- not treating the waste, but the unused, or discarded PCBs incorrectly.

Q. Are you referring in your discussion of notification to an oral notification or a written notification or both?

A. Both.

Q. And did you participate in any communications with customers with respect to such notification?

A. Not with customers. I was -- our department was indirectly involved.

(Discussion off the record).

A. Mr. Wheeler of my department was

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involved in the task force that was working on this problem. And so I participated there, but I did not participate directly with the customers.

Q. As a function of your participation, do you recollect having drafted any language to be used in communicating a notice to customers?

A. Wheeler may have asked me for advice. I think Wheeler did it. But I'm sure I was cognizant of what he was putting into it, what input he was putting in, that he was directing toward the problem.

Q. As you sit here today, do you recollect any language that you recommended be used in notification to customers?

A. No, sir.

Q. As you sit here today do you recollect having recommended the use of any language which was rejected?

A. No, sir. I don't remember that at all.

Q. Do you have any knowledge that language suggested by Mr. Wheeler for inclusion in any notification to customers

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was rejected?

A. No, I have no knowledge of such action.

Q. Let me show you a document, Dr. Kelly, which we'll mark as Exhibit 178, a one page document bearing production number Tran 055796.

(Transwestern Deposition Exhibit Number 178 mark'd for identification).

MR. TALLON: Take a moment, please, and review that.

A. Yes, sir.

Q. Can you identify the document?

A. Yes. This is a document written by me to Mr. Gene Wilde, W-i-l-d-e, of Monsanto, dated February 21, 1967.

Q. And you wrote that document in the discharge of your responsibilities as medical director at Monsanto?

A. Yes.

Q. And you wrote it on or about February 21, 1967?

A. Yes, sir.

Q. And you intended Mr. Wilde to rely on the information contained in this

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document?

A. Yes, I did.

Q. There is a reference in paragraph -- the paragraph that is numbered 3, Doctor, that states, "There is no necessity at present for anyone from St. Louis to contact the Swedish people." Do you see that?

A. Yes, I do.

Q. And the paragraph goes on to say, "In fact, it would be unwise at present." Do you see that?

A. Yes.

Q. Do you recollect having written that passage?

A. I didn't recollect until I saw this, yes.

Q. Do you recollect what meaning you attached to the use of the word unwise as it is used in that paragraph numbered 3?

A. Well, yes. First, we didn't know much about the problem, we couldn't contribute anything to the meeting. Second, it was handled pretty well by our people from our London office.

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Q. And in what fashion does that render contact unwise?

A. Well, I thought we were getting all the information we needed from our London office, we couldn't contribute anything to a meeting until we found out more.

Q. Let me show you a document, a two page document which we'll mark as Exhibit 179, which bears production numbers Tran 056068 and 069.

(Transwestern Deposition Exhibit Number 179 mark'd for identification).

MR. TALLON: Can you take a moment, please, and review that?

A. Yes, I will. Yes, sir, I've read it.

Q. This document appears to be a memorandum to you from a Gene Wilde, is that correct?

A. Yes.

Q. And do you recollect Mr. Wilde's position with Monsanto in February 1967?

A. He was a sales correspondent.

Q. A sales --

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A. Correspondent.

Q. And what kind of position is that?

A. Not too high up. I mean, he wasn't a project director, he wasn't a director of marketing. He was a couple of steps below in the hierarchy below a product manager.

Q. Look just at the top left of the first page after Mr. Wilde's name, there is a statement, or at least a reference, it says "General Offices"?

A. Yes.

Q. What does "General Offices" mean, or what did it mean in February '67?

A. 800 North Lindbergh, St. Louis, Missouri.

Q. What was encompassed within the general offices?

A. That was the headquarters.

Q. Do you believe that Mr. Wilde had an involvement in dealing with the issues raised by the Jensen work in February '67?

A. I don't know what you mean by had an involvement with the Jensen work. I don't know what --

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Q. What I'm trying to discover, Dr. Kelly, is the reason why Mr. Wilde is writing this memorandum to you as opposed to some other person within the Monsanto organization? I'm wondering whether you knew the answer to that question?

A. No, I don't. But his sales duties involved correlating the overseas sales of Aroclors with the St. Louis production of Aroclors. And I don't know what his relationship was to the sales of the English company's Aroclors that we manufactured both in England and St. Louis in that time. So I really don't know. He certainly didn't stay very prominent in the -- associated with the problem after we got involved in it, so I don't know what his association was.

Q. There is a reference in the first sentence and paragraph of his memo to you to a meeting in your office of February 8, 1967. Do you, by any chance, remember that meeting?

A. No, sir, not at all.

Q. Does looking at the list of

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recipients of this, or copy of this memo in the upper right-hand corner of the first page in any way refresh your recollection as to a meeting held in your office?

A. No, sir.

Q. Okay. Do the five numbered paragraphs on the top of page 2 reflect the action plan as of this point, February 1967?

A. Well, I don't know. I mean, I think we probably passed this action plan up to other people that were involved in the problem, not just Kelly and Wilde. Whoever else might have been at that meeting. But it didn't seem, to my recollection, in the fact that I don't remember anything about it, that it was a very high-powered meeting.

Q. Do you remember ever communicating with Mr. Wilde to tell him that this action plan was rejected?

A. Oh, no. It wasn't rejected, because -- except I don't know -- I've never contacted Beyer and Brodolack, which are the major manufacturers of PCB in

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Europe.

Q. Do you know whether Monsanto did make contact with those companies, a contact not including you?

A. Not that I know of. But they may. But I think that is another reason that I advised Gene Wilde that St. Louis not get involved in the project, what was happening over there, let's see what the major manufacturers of PCBs were doing over there. After all, the odds were that this was their PCB they were finding, not Monsanto's PCB.

Q. Without regard to the identity of the PCB that may have been found in the studies done by Mr. Jensen, was it a concern to you that PCBs were found in Dr. Jensen's work?

A. Yes.

Q. Do you recollect whether there was a person at Monsanto in 1968 whose initials were C.E.A.

A. Agostopolous. I know his first name was Christus or something. It might have been his, I don't know. He may have

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been involved in functional fluids at that time, but I don't know. This is complete speculation, I shouldn't even answer it.

Q. We're only interested in what you know or remember.

A. Well, I don't know who C.E.A. is.

Q. Okay. Do you recollect ever having told Dr. Richard that you hoped that Monsanto would lose its Aroclor business slowly?

A. I don't recall saying a statement such as that.

Q. Let me just show you a handwritten note with production number Tran 057163.

(Transwestern Deposition Exhibit Number 180 mark'd for identification).

A. You didn't have this typed up, did you?

Q. No. I'm sorry.

A. I can't make anything out of it. "Dr. Kelly seems correct. We are hoping to lose slowly. Any info we get which is distributed must be repeated" --

Q. "Reported"?

A. "Reported so why pay for it".

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MR. PREUSS: No --

A. I can't make --

MR. PREUSS: Unless you're sure of the words, don't try to read it.

A. I'm not sure. But, I mean, "Dr. Kelly seems correct," I could read that.

MR. TALLON: Does review of this document, Exhibit 180, refresh your recollection as to any communication that you had with Dr. Richard?

A. No, sir. But I talked to Richard quite a lot over this program, but to me this doesn't say much of anything.

Q. Does looking at the handwritten note which constitutes Exhibit 180 refresh your recollection in any way as to the identity of an individual at Monsanto in 1968 with the initials C.E.A.?

A. I'd have to speculate.

Q. Don't.

A. I won't.

Q. Okay. Doctor, are you familiar with something called the Yusho incident?

A. Oh, yes.

Q. Can you describe in brief your

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understanding of the Yusho incident?

A. Yes. Yusho is a town in Japan. A pentachlorophenol -- I mean, a PCB was manufactured by Kawasaki or some Japanese company. They manufactured a compound called Cantachlor 500. It was made by a different process than Monsanto's PCBs. It was -- had a different level of impurities that did not exist in that level in Monsanto's compound. It was sold as a heat transfer agent, and it was used to cook rice oil. The PCBs leaked out of the heat transfer agent -- apparatus, got into the rice oil and the material was sold to a couple of towns in Japan, I presume, for using in cooking, so it would cook their soybean cakes in woks or some other particular type of cooking apparatus they used, and heated it again. So people got -- received an indeterminate amount of the Japanese PCB Cantachlor over a period of six months, and they developed quite a lot of problems from skin problems to problems with the newborns, and various illnesses. After several years it was found --

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determined by the Japanese scientists that it was not -- their opinion was it was not due to the PCBs, but was due to the dibenzofurans that were caused by the action of heat and oxygen at the time the material leaked out of the heat transfer agency. And also that was aggravated by the cooking of the rice pancakes in the household of the Japanese housewives. So that's about what happened at Yusho.

Q. Do you recollect approximately when it was that you heard about the Yushow incident?

A. I think it was 1968 or '69 it occurred, by the time we read about it in the United States newspapers. We do not read Japanese newspapers, Japanese scientific journals.

Q. You indicated that after study Japanese scientists concluded that the ill-effects suffered by the populace of Yusho was due to furans?

A. Chlorinated dibenzofurans, yes.

Q. For the purpose of this exercise I'm just going to refer to it as furans.

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A. Yes, furans.

Q. And do you recollect when -- or, rather, how long after the initial incident that conclusion was reached?

A. Middle '70's.

Q. When you learned of the Yusho incident, were you concerned that the incident was as a result of PCB poisoning, in essence?

A. Yes.

Q. Was there any reported liver damage as a result of the contamination of the rice oil?

A. I believe there was.

Q. And were there cases of cancer connected with the contamination with the rice oil?

A. No, not that I can recall.

Q. Did your knowledge of the Yusho incident cause you to recommend any change in the labeling of PCB-based products?

A. No. Because we didn't expect it to be -- we didn't think we'd need to put on "Do not use internally" -- I mean, "Do not take internally" on an industrial

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chemical. But we did advise against the use of it in a heat transfer agency in cooking, associated with cooking.

Q. What was the advice? I mean, how was that advice not to use in a heat transfer agency associated with cooking?

A. That advice was given by the medical department to the product manager of the PCB operations, and how he transmitted it to his customers, I don't know.

Q. And who was the product manager to whom you are referring?

A. Probably Bergen.

Q. And do you remember when the medical department gave that advice to Mr. Bergen?

A. Pretty soon after Yusho.

Q. So far as you know, the heat transfer agency involved in the Yusho incident was a closed system?

A. Yes. It may have been poorly maintained and leaked.

Q. We also talked briefly yesterday, Doctor, about the work of Dr. Risebrough,

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and you remember that?

A. Yes.

Q. Okay. Somewhere in your pile of exhibits is this chronology.

A. Yes, I have it.

Q. And I had asked you yesterday whether you recollected having received a draft of a study by Dr. Risebrough for comment. Could you look at page 3 of that exhibit, and particularly the entry after October 9, 1968?

A. Yes, sir.

Q. Does that refresh your recollection in any respect as to whether you received any work from Dr. Risebrough for study before their publication?

A. It really doesn't. I don't recall much of the details at all of this publication. It was analytical, and, really, it was not something that I could comment on. I mean, at that time.

Q. Do you remember ever meeting with Dr. Risebrough?

A. No, I never did.

Q. Do you recollect whether or not

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Dr. Risebrough found Aroclor 1242 in Peregrine Falcons?

A. I thought he found 1254. I have no recollection of lower chlorinated hydrocarbons. I could be mistaken, but I thought it was the higher chlorinated. I know we sent him specimens, we gave him specimens. I recall that because somebody went out to the airport on Christmas Eve and gave him a bunch of specimens of Aroclors that he needed for his analytical work on Christmas Eve of '67.

Q. Let me just show you, Dr. Kelly, a document which we'll mark as Exhibit 181. It bears a couple of different production numbers. We'll identify it as PRR 050542 through 558.

(Transwestern Deposition Exhibit Number 181 mark'd for identification).

MR. TALLON: Would you take a moment and review that? You need not study the entire exhibit, but just to familiarize yourself with it, if you like, or read it all if you like, but I'm not going to question you in detail about it.

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A. As you realize, I've really skimmed this.

Q. For these purposes, I think that's probably sufficient. The exhibit appears to be a memorandum from Elmer Wheeler to Dr. Richard on which you are copied, dated October 21, 1968, correct?

A. Yes.

Q. Do you have a recollection of having received this memorandum and its attachments?

A. Vaguely. I mean, it's really all analytical chemistry, so it was really outside my sphere of expertise, so I couldn't analyze the article. Although I didn't see where he said he found anything -- I didn't see in my fast skimming of this where he labeled the PCBs. I didn't see 1254 mentioned. I don't think he characterized them.

Q. Do you know if this is one of a series of works done by Dr. Risebrough on the subject?

A. I don't know. But it would be very unusual if he only did one.

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Q. Do you have a recollection of having discussed this report with Mr. Wheeler?

A. I probably did, but I have no recollection of it.

Q. You stated that you had not met Dr. Risebrough. Do you know if others from Monsanto met with him?

A. Oh, yes. Tucker did. He's an analytical chemist. Wheeler met him. I'm sure other -- but I know those two did.

Q. And what's the basis of your statement that you're sure that Tucker and Wheeler did?

A. Because I remember Wheeler talking about Risebrough.

Q. Do you remember what Wheeler said to you about Risebrough?

A. No, I don't. I remember him going out there, I saw his expense account.

Q. And do you remember if Mr. Wheeler accepted the conclusions of Dr. Risebrough's work?

A. Well, it all depends. You've got to put that in a frame -- a time frame. I

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mean, at the end he certainly did. Right off the bat, there was an awful lot more work to be done, because as late as December '67 he didn't really have the samples that he compared of Aroclors, the pure samples that he compared with what he found -- what he believed to be Aroclors in the fish and eggs. But eventually he did believe in it, yes.

Q. When you used the term eventually, what time frame are you referring to?

A. Twelve months after he started, we gave the samples, of '67, and by the end of '68 -- this paper came out in around '68, late '68, I thought.

Q. Was Scott Tucker associated with the functional fluids group?

A. No. He was an analytical chemist in the research department.

Q. Why don't we mark as the next exhibit a three page document bearing production numbers Tran 058816 through 818.

(Transwestern Deposition Exhibit Number 182 mark'd for identification).

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A. Yes, sir, I've read it.

Q. Do you remember receiving this memo from Dr. Richard to Elmer Wheeler in March of '69?

A. My recollection isn't completely clear, but I have a vague recollection of it.

Q. Do you have a recollection of participating in any discussion where a portion of the discussion touched on attacking or discounting Risebrough's studies?

A. I don't recall that.

Q. Does looking at the second to last paragraph on page 2 refresh your recollection in any respect about such a conversation?

A. No, sir, it doesn't.

Q. Do you know whether Dr. Richard undertook to attack and discount Risebrough's work?

A. Well, I don't know what you mean by attack and discount. I mean, all through this he is saying let's find out some of the answers to Richard's questions

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-- I mean, to Risebrough's questions, and let's see what other avenues there is, so I don't -- I mean, that isn't attacking Risebrough. But the answer to the question is I don't recall what Richard did.

Q. Did you participate in any communication with customers where the subject of the communication was a discussion of Risebrough's work?

A. No, sir, not that I recall.

Q. Do you know if communications with customers were held -- were accomplished where the subject of the communication was Risebrough's work?

A. Not that I remember at all. I do not think so.

Q. Do you have any recollection of having discussed the memorandum which is before you as Exhibit 182 with Mr. Wheeler?

A. I'm sure I did.

Q. Do you remember doing so?

A. No, I don't remember, but I'm sure I did.

Q. Do you remember discussing it with Dr. Richard?

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A. No, I don't remember. I may have.

Q. Let's take a brief look at a document that we'll mark as Exhibit 183, a two page document bearing a series of different identifying numbers, including T 091770 and 771.

(Transwestern Deposition Exhibit Number 183 mark'd for identification).

MR. TALLON: Take a moment and review that, please.

A. Yes. Yes, sir.

Q. Did you get a chance to review that?

A. Yes, I did.

Q. Is that a memo to you from Mr. Wheeler, dated March 7, 1969?

A. Yes, it is.

Q. Do you recall getting that?

A. Yes, I do.

Q. When Mr. Wheeler writes in the first sentence of the first paragraph, "The Aroclor pot is really boiling," do you believe that to be a reference to issues raised by Dr. Risebrough's work?

A. I think he means issues raised by

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the media.

Q. And was the media at this time, March 1969, focusing on Dr. Risebrough's work?

A. I don't recall that they were specific about any details, but they were quite alarmists in their editorializing and reporting.

Q. Let's mark as Exhibit 184 a three page document bearing production numbers, among other things, T 091767 through 769.

(Transwestern Deposition Exhibit Number 184 mark'd for identification).

A. Yes, sir,.

Q. Did you review that?

A. Yes, I did.

Q. Can you identify it?

A. It's a letter from Mr. Wheeler to Westinghouse Electric Corporation, dated March 3, 1969.

Q. Have you seen this before today?

A. I feel sure I have. I have no recollection of when I saw it, though.

Q. Do you have any recollection of having drafted any portion of Exhibit 184?

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A. No, sir, I have no such recollection.

Q. Refer back for a moment, if you will, Dr. Kelly, to Exhibit 183, which is the March 7, 1969 memo to you. In the fourth paragraph on page 1 Mr. Wheeler writes that, "I have enclosed a copy of the final form of the P.R. release that was developed last week. This has been sent to 21 Monsanto customers over my signature". Do you see that reference?

A. Yes, I do.

Q. Do you know if Exhibit 184 is the press release referred to?

A. No, I don't know. But I don't think it would be. This is an individual letter to Innis. If it were a press release, he'd say attached is the information we have. I don't think that's a release.

Q. There is a reference to 21 customers, which I just read. Do you have any knowledge as to who the 21 customers referred to were?

A. No, sir, I do not.

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Q. Do you know if 21 customers comprised the total customer constituency for Aroclor products in 1969?

A. I feel quite sure it did not.

Q. Do you know if 21 customers represented a -- the biggest customers of Aroclor products in '69?

A. It would have to be an assumption, but I would assume it was.

Q. There is also a reference in the same paragraph we were just reading from in Exhibit 183 where Mr. Wheeler states, "I was not asked as to whether or not I should sign such a release but guess that Bergen or Minckler decided that I should. They had the letters typed and brought over here for signing." Do you recollect any discussion with Mr. Wheeler touching on the subjects encapsulated by those two sentences?

A. No. As you can see from this letter, I was out of the country at that time.

Q. Yes.

A. And I'm sure that Wheeler went

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over it in the draft form when it was composed.

Q. Are you basing that statement on something in this letter or recollection or --

A. I'm basing it on Wheeler. He wouldn't sign anything that he hadn't had something to do with.

Q. Do you see any inconsistency between that statement and Mr. Wheeler's writing, "I was not asked as to whether or not I should sign such a release"?

A. No, not at all. Because, in other words, if there are three people making a draft press release and then they decide it would be better to come from the medical department, we would have no objection to signing it. But to think that somebody brought a letter over he never saw in his life, a press release, and said here, sign this, it's completely inconsistent with Wheeler's unconscious, he would not do that.

Q. Did the last two sentences of the fourth paragraph in Exhibit 183 suggest to

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you any pique on Mr. Wheeler's part at having to sign the press release?

A. No, it doesn't. No.

Q. The reference is to Bergen or Minckler. Identify Mr. Minckler, if you can?

A. He was the chief, the vice-president in charge of the organic division which, among its products, were the functional fluids.

Q. Is that a fairly senior position?

A. Yes, it is. It's a vice-presidency.

Q. In the organizational hierarchy of Monsanto at that time, was the president above a vice-president or were there executive vice-presidents in between?

A. There was a president, he was the -- he was the CEO usually. Sometimes he was and sometimes he wasn't. And there were vice-presidents, and then there were other vice-presidents in charge of divisions. Monsanto was made up of several manufacturing divisions, each of which was headed by a vice-president. And that

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vice-president may have reported directly to the president or he may have reported to a vice-president in charge of manufacturing or something like that. I'm not sure. They shifted every seven years, it looks like. But it was a quite senior position.

Q. Let's take a look, if we can, at a four page document bearing production numbers Tran 021750 through 753.

(Transwestern Deposition Exhibit Number 185 mark'd for identification)

A. Yes, sir, I've read what I could read of it.

Q. Do you recognize the handwriting on this four page set of handwritten notes?

A. No, I do not.

Q. Do you recollect having attended a meeting in August of 1969 with, among other persons, Wheeler, Richard, Tucker, Springate?

A. No, sir, I do not.

Q. Do you recollect ever having been appointed a committee chair in August of 1969 for reasons having to do with the study of the PCB issues?

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A. No, sir. It looks like Wheeler was appointed in this memorandum.

Q. Right. Do you remember whether Mr. Wheeler ever chaired a committee having to do with PCB issues in '69?

A. Yes, he did.

Q. What was the name of the committee?

A. Ad hoc PCB committee or something like that. I don't know the name of it.

Q. Did you sit on that committee?

A. No, sir.

Q. Did Mr. Wheeler report to you?

A. Yes, he did.

Q. With respect to the committee's work?

A. Yes, along with his reports to everyone.

Q. Who else, to your recollection, received reports of the committee's work?

A. I'm sure Bergen did, I'm sure Minckler did.

Q. Do you recollect the purpose for which the committee was formed?

A. Yes. To try to solve the problem

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of lessening PCB contamination and finally getting the facts of the whole problem.

Q. Do these notes appear to be to you to be a compilation of instances of identification of PCBs in the environment?

MR. PREUSS: I object to the form of the question, assuming facts not in evidence.

A. Well, some yes and some no. I mean, some places say that it's in the environment, they talk about Cantachlor in some of them, they talk about residues in fish. Yes. Some of the notations they do mention PCBs in the environment in marine animals.

Q. Let me show you a document that bears production numbers Tran 023298 through 301.

(Transwestern Deposition Exhibit Number 186 mark'd for identification).

A. Yes, sir, I read it.

Q. Dr. Kelly, does this appear to you to be excerpts from minutes of the meeting of the corporate development committee of November 17, 1969?

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A. Well, it's confusing to me because I can't figure out what page 254, if that's a page, is doing in there with 78 and 79. It's got me confused, so I don't know what -- we had two meetings with them, at least, so whether this is one of the other meetings or not, I don't know. But the answer is I know 78 and 79 reflect the minutes.

Q. On the first page of that exhibit there is a list of names following the designation "Present". Are those the members of the corporate development committee or were those the members of the corporate development committee in November '69?

A. Yes, they were.

Q. And, in brief, what was the corporate development committee in November '69?

A. You mean the personnel or what were they supposed to do or what?

Q. What was the function of that committee?

A. It was almost like an executive

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committee. I really don't know why they called it -- they had an executive committee and development committee, but I do not know -- most of the people were on both, so I don't know, really, what the thrust of the committee was. I thought they were the people on this that run the company.

Q. The chairman of the corporate development committee was a Mr. Bock?

A. He was the president.

Q. President of Monsanto?

A. Correct.

Q. And do you recollect Mr. Bible's position?

A. Vice-president of administration.

Q. Mr. Eck?

A. Vice-president of manufacturing.

Q. Mr. Gillis?

A. Vice-president of sales or marketing, I guess.

Q. Mr. Putzell?

A. Chief counsel.

Q. Mr. Sommer?

A. Chairman and CEO.

WATER_PCB-SD0000033671

Q. Of Monsanto Company?

A. That's correct.

Q. And Mr. Ehlers?

A. Well, he was assistant counsel and he was the secretary of the -- of this committee.

Q. Are these gentlemen some of the senior officers of Monsanto?

A. They're most of them.

Q. Do the minutes -- setting aside for a moment this odd page 254, do these minutes suggest to you that you were present at this meeting of the corporate development committee?

A. Yes, I was.

Q. You testified that you recollect having been present at two meetings of the corporate development committee. Is this one of them?

A. Yes, it was.

Q. Okay. Did you regularly attend meetings of the corporate development committee?

A. No.

Q. And can you describe the

WATER_PCB-SD0000033672

circumstances under which you came to attend this particular meeting?

A. I was told by the vice-president to which -- to whom I reported that they wanted to be brought up to date on the PCB problem and what we were doing about it, and what they could do to help.

Q. And you attended the meeting?

A. Yes, I did.

Q. The vice-president to whom you reported at that time was whom?

A. I don't know if it was Bible or whether it was Throdahl. I don't recall.

Q. There is a reference right on the last page of the minutes -- actually, the last two lines, it says, "Excerpt to Messrs. Minckler, Harris, Kelly, Smith." Do you see that?

A. The last page?

Q. The last two lines on the last page.

A. Yes.

Q. Does that indicate to you that you got a copy of these minutes at the time?

A. Well, remember, this was not the

WATER_PCB-SD0000033673

sole item on the agenda.

Q. Right.

A. So there were other things. They may have been saying we're going to buy General Motors or something, they might have been talking about other things about buying subsidiaries, so they wouldn't send those minutes. So they just sent the minutes-- the excerpts that were germane to the PCB problem.

Q. So, in other words, that reference at the bottom of the last page indicates to you that you got the pieces of the minutes that related to the reason you were there?

A. Yes.

Q. Okay.

A. All the pieces.

Q. Correct. Did you make a presentation at the meeting?

A. Yes, I did.

Q. Did you speak from a prepared text?

A. Not a prepared text. I might have had an outline, but I don't recall.

Q. Do you recollect the sum and

WATER_PCB-SD0000033674

substance of your presentation to the corporate development committee?

A. Yes. We've got a problem, here's what we're doing about it, and we hope we can solve it. If we can't solve it, we've got to decide on something else. And that's when Mr. Bock, the president, said if we can't solve this problem, no matter what the profit is, we're going to give up the business.

Q. Was there any discussion at that meeting with respect to Aroclor 1242 in terms of its biodegradability?

A. We may have said we -- yes. Isn't there something in there? We're going to expand biodegradation tests with Aroclor, especially 1242, 48 and 54. And we hadn't found -- they hadn't found anything below 54 by then. And we had this new apparatus that we were trying to see if we could find the lower ones, we thought the lower ones were biodegradable.

Q. Did Monsanto continue and expand biodegradation tests?

A. Yes, we did.

WATER_PCB-SD0000033675

Q. Internally?

A. Yes.

Q. Externally?

MR. PREUSS: I object to the form, as to what you mean internally and externally.

MR. TALLON: When I was asking you internally, I meant were the tests on biodegradation conducted by Monsanto employees with Monsanto equipment?

A. Yes. There are two ways of determining biodegradability. I thought you meant by internally in a laboratory, and externally in the field.

Q. Okay.

A. So, they did both.

Q. Internally in the laboratory and externally in the field?

A. That's correct.

Q. Who is the "they" in that answer?

A. Monsanto research group.

Q. Were outside laboratories employed to conduct biodegradability tests?

A. I think they were, but I'm not sure which ones.

WATER_PCB-SD0000033676

Q. And you may have touched on this yesterday. If so, I've forgotten. But was it determined that 1242 is not biodegradable?

MR. PREUSS: You mean as of this time?

MR. TALLON: Ever.

A. It was found out it was not biodegradable.

Q. Was there any discussion at this corporate development committee meeting, Doctor, about changing the labeling of PCB-based products?

A. Not that I recall. I don't think that would have to go up to the corporate development department. We'd decide that on our own.

Q. Was there any discussion at the meeting of communications with customers with respect to the issues being raised?

A. Yes. We told them we were going to do it to -- item 4, "Educate customers on need to reduce and effectively control." Item 2, "Notify all Aroclor customers of PCB problem." All customers.

WATER_PCB-SD0000033677

We had done the 26 before, but this one we decided to do everybody.

Q. Do you know if, indeed, all Aroclor customers were notified of the PCB problem?

A. Well, I didn't see the letters mailed, but I'm sure if the management of the organic division told the corporate development committee they were going to notify the customers, they did.

Q. Did you draft any notification to customers in satisfaction of point 2 on page 79 of the minutes?

A. It was drafted by the committee that Wheeler headed.

Q. Did you approve the text?

A. I don't know if I did or not. I don't believe I needed to. Wheeler was knowledgeable in it.

Q. Do you know when the notification was sent?

A. This was in November, probably -- I don't know if it got out in '69, but it certainly got out in '70, early in '70.

Q. Do you know if a record was

WATER_PCB-SD0000033678

maintained of the customers to whom the notification was sent?

A. I can't answer that. I don't know.

Q. When you referred a moment ago to item 4 on that same page of the corporate development committee notes, "Educate customers on need to reduce and effectively control PCB effluents at their plants" --

A. Yes, sir.

Q. Do you know what is meant by the use of the term effluents there?

A. Sure. Whether it's stuff that they discharge in the air, discharge in the sewers.

Q. And --

A. Or just dump.

Q. Do you know if a program was undertaken to educate customers as indicated in item 4 on page 79 of the minutes?

A. Yes, it was.

Q. And what was the program?

A. The program was to have the -- to send them letters, to have the customer --

WATER_PCB-SD0000033679

or the sales people talk to them, to tell them about our incineration program, about the fact that we would bring this material back and, at cost, incinerate it.

Q. Do you know when that program was commenced?

A. I think it was sometime in '70. We had to build the incinerator, I don't know when that was finished.

Q. Did you participate in any of the communications to customers with respect to effluent control?

A. No, sir.

Q. Do you know whether Monsanto communicated with all of its customers with respect to effluent control?

A. Of my own knowledge, I do not.

Q. Why don't we take a brief look at a document bearing production number Tran 008408.

(Transwestern Deposition Exhibit Number 187 mark'd for identification).

A. Yes, sir, I read it.

Q. That appears to be a memorandum from Keller to Papageorge, dated April 17,

WATER_PCB-SD0000033680

1970 on which you were copied, right?

A. Yes, it is.

Q. Do you remember receiving that memo?

A. I do now, yes, sir, after looking at it.

Q. Do you recollect having had any discussions with Mr. Keller about the topics described in this memo?

A. I may have. I don't remember.

Q. Do you remember having any communications with Mr. Papageorge on the subjects of this memorandum?

A. Again, I may have, but I don't remember.

Q. There is a reference in the second to last sentence in the memo that says, "The water, sediment and air samples contain PCBs typical of Aroclor 1242, 1248, 1254 and/or 1260." Do you see that?

A. Yes, I do.

Q. Do you have any recollection as to the degree to which 1242 was found in water, sediment or air samples?

A. In comparison of 54 or 60?

WATER_PCB-SD0000033681

Q. Yes.

A. I do not.

Q. Before April 17, 1970 had you seen documents concerning the existence of 1242 in water sediment or air samples?

A. Say that over.

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

A. I do not believe I did.

Q. Are you familiar with something called the Pensacola incident?

A. Yes, I am.

Q. What's the Pensacola incident?

A. By that you mean the Pensacola incident relating to PCBs?

Q. Right.

A. It seems that there was a -- two things that occurred more or less simultaneously. There was some PCBs were found in Escambia Bay, which is the part of the Gulf of Mexico to which the outflows from the water from the Pensacola nylon plant discharged. They found some PCBs, I don't know which one it was, I think it was one of the higher ones, 54. At the same

WATER_PCB-SD0000033682

time a research group down there was finding that there was a lessening of the shrimp in the bay, for some reason they did not know. So we tested this particular PCB on the -- first, we only used PCB in compressers in our plant, at this nylon plant, we didn't manufacture, we didn't use it for anything except as a functional fluid. So we investigated our outflow and we did find there was leaks and there was discharge of PCBs. Then, as I say, then we tested to see what the effect of that level of PCB on shrimp would be. And we called the Gulf Fisheries Department of Government, whatever, they were called on it and found out that it wasn't harmful on adult shrimp, but it was to baby fish, whatever you call them, baby shrimp. So whether that was a cause and effect nobody ever decided. But we decided to change the PCB fluid in our compressers and we heard no more about it. The shrimp presumably are thriving. That's it.

Q. When you referred a moment ago to the use of PCBs in a functional fluid in

WATER_PCB-SD0000033683

your Pensacola plant, I believe you referred to use in compressers?

A. That's correct.

Q. What type of compressers?

A. Well, they extruded the nylon to make a nylon fiber. You put the resin in a solution and you have some sort of a propelling force, and whatever is pushing that out is the compressor. It's supposed to lubricate the compressor. That's a layman's viewpoint of making nylon. I'm not too familiar with the intricacies of what went on.

Q. Is it your understanding that the use of the PCB fluid in the circumstances just described was in a closed system?

A. I can't answer that. I don't know whether it was closed or not.

Q. Did the existence of the PCBs in shrimp indicate to you that the PCBs were entering the food chain?

A. The food chain as high up as the shrimp, yes.

Q. And did you reach any conclusion as to how the shrimp were getting the PCBs?

WATER_PCB-SD0000033684

A. They were eating plankton and algae that had PCBs in it, so it went from the algae bearing PCB into the shrimp's metabolism.

Q. And were the PCBs accumulating in the shrimp?

A. There was bioaccumulation, yes.

Q. I just wanted to touch on one other thing. You had mentioned that you had attended two meetings of the corporate development committee and you -- we looked at the minutes of one. Do you remember when the other meeting you attended took place?

A. I thought it was three or six months later, they wanted a follow-up meeting.

Q. And what was the purpose of the follow-up?

A. To see how the problem was getting along and whether we had been working on all the things that we had outlined in the first meeting.

Q. And do you remember whether you gave a report at that meeting, the second

WATER_PCB-SD0000033685

meeting?

A. Yes, I gave a progress report of what was happening.

Q. And do you remember --

A. Not only -- by that time we had appointed Bill Papageorge, who was the point man on PCBs, he was directing the problem at that time. We had withdrawn Wheeler back to his medical department and they had Papageorge working full-time.

Q. And what was the sum and substance of the report that you gave to the committee at that date?

A. We're doing all we can, but it takes time.

Q. Was there any discussion at that second meeting with respect to changing labeling on PCB-based products?

A. No, sir.

Q. Was there any discussion at that meeting that you recall with respect to the biodegradability of 1242?

A. First, we may have changed it by that time, because we changed our label. We added the environmental sticker early in

WATER_PCB-SD0000033686

'70, and then we changed the label incorporating the caution about -- or warning about disposal sometime in 1970, to the best of my knowledge. But at any rate, there was no discussion of labeling at the meeting.

Q. Let's take a brief look at a document bearing production numbers Tran 024242 through 247.

(Transwestern Deposition Exhibit Number 188 mark'd for identification)?

A. Yes, sir, I've read it.

Q. Is this a quarterly report of the medical department for July, August, September 1969 which you signed?

A. Yes, I did.

Q. Did you draft it?

A. Yes. Well, along with other members of the department, yes.

Q. Did you prepare this quarterly report as a function of your responsibility as medical director at Monsanto?

A. Yes.

Q. And you intended the 29 odd recipients to rely on the information

WATER_PCB-SD0000033687

contained therein?

A. Yes.

Q. And you wrote this report at or about the time of the events described in it?

A. Yes.

Q. Was this the only quarterly report you authored where the topic of discussion included a discussion of PCB issues?

A. Well, I'm sure there were others.

Q. Did all of your medical department quarterly reports get distributed to the distributees listed on the first page of this exhibit?

A. Presumably. I didn't realize that it was this widely distributed. But the answer is probably yes.

Q. The quarterly report is actually addressed to Mr. Bock, and then copied to a number of others. The first group of names, Mr. Bock, Mr. Bible, Mr. Gillis, Mr. Putzell and Mr. Sommer, Mr. Throdahl, Mr. Eck and Mr. Ehlers, those are the senior officers of the company you identified before?

WATER_PCB-SD0000033688

A. Yes.

Q. And who are the other gentlemen whose names are listed on the right-hand side of that page?

A. Well, there are various vice-presidents. Bauer was vice-president of the agricultural division. Bromley was head of plastics. Bryan was vice-president of the overseas department. I don't know what Crawford was doing. Cunningham was head of engineering. Daume was head of personnel. Depp was head of engineering. Fernandez was something in the inorganic division. Flitcraft was in research. Forrestal was head of P.R.. Gordon was head of research. I don't know who Mahoney was, but he ended up being CEO. That's a different Mahoney. Minckler was head of the organic division. Nason was head of research. I don't know what O'Neal was. Sam Pickard was Washington office. Reese was hydrocarbons vice-president. T.K. Smith was vice-president of marketing. I'm not sure what he was, but he was up there. Johnson and Wheeler were in the medical

WATER_PCB-SD0000033689

department.

Q. And who is Finis Morgan?

A. Finance.

Q. I may have asked this question, but let me ask it a slightly different way. Was your quarterly report distributed to this same group in each quarter?

A. The same positions. There may have been different people.

Q. Does the information following the caption "Environmental Control" starting on page 3 of the quarterly report and continuing through --

MR. PREUSS: You mean paragraph 3?

MR. TALLON: Paragraph numbered 3, continuing on through page numbered 3, do you recall drafting any portion of that?

A. I would say this is probably drafted by Mr. Garrett. He was mostly concerned with the water contamination, and he was following the sampling and the fish toxicity. I mean, I saw it, obviously, before it went into the report, but I would say that the actual drafting was done by

WATER_PCB-SD0000033690

Garrett.

Q. There is a reference on --

A. Or Wheeler. Either Wheeler or Garrett in combination.

Q. There is a reference on the bottom of the page numbered 2 at the top to the Anacapa disaster?

A. Yes.

Q. And to what does that refer?

A. It refers to the next page.

Q. Is that a summary of the Anacapa disaster on the top of page 3 of this memo?

A. Yes, it is. I don't think we heard much about it after this. I don't know. I don't know if -- we still have pelicans, so I don't know whether there is an ongoing problem or if the problem cured itself.

(Discussion off the record).

MR. TALLON: On the page numbered 3 of the memo there is a paragraph just before the caption "B. Pollution Control"?

A. Yes, sir.

Q. And it says, among other things, "The organic division, which produces this

WATER_PCB-SD0000033691

series of very profitable products, has a concerted effort under way to protect continued sales and uses." Do you see that?

A. Yes, sir.

Q. Do you know to what the concerted effort under way language refers?

A. Sure. It refers to telling the customers not to discharge the -- to prevent discharging the stuff into the environment.

Q. How does the concerted effort -- how does telling customers not to discharge stuff in the environment protect continued sales and uses?

A. Well, if a worry about continued sales is an environmental problem of the birds, and we're just as anxious to keep the pelicans and the Bald Eagles existing in the United States, and if we could solve that problem rather than get out of the business, especially getting out of areas of the business where it's absolutely essential to have a fire-resistant product, such as in the subways, Busch Stadium or

WATER_PCB-SD0000033692

the White House, we want to do it.

Q. So it's your testimony that the concerted effort under way to protect continued sales and uses refers to educating customers about dealing with effluents?

A. Yes. Among other things I mentioned, I'm sure there were other things. I'm sure we were thinking of stopping sales to areas where we knew it could not be controlled, open operations that we knew we could not control it, and where substitutes probably existed.

Q. Do you know if the concerted effort referred to included any effort to reformulate products?

A. Well, eventually they tried to reformulate it with lower -- with getting the higher chlorinated compounds out. In other words, suppose we take 1248, that has some 1254 in it, so they tried to get the 54 out of the 48 so you would have a lower chlorinated product with the same use.

Q. I understand. I'm just asking if you know whether that reformulation process

WATER_PCB-SD0000033693

was part of the concerted effort under way referred to in this memo?

A. Yes, it was.

Q. Is there anything else that you believe is covered by the phrase "the current effort"?

A. I don't think so. I mentioned -- we mentioned reformulation, we mentioned education of the customers. Oh, we also provided for -- whether we were doing this at this time or not we had an incinerator. Maybe not in '69. We trying to put it on stream, of having an incinerator where we could dispose of the material. If the customer sent it back to us we'd dispose of it at cost.

Q. Just for a moment look at the very last page of that exhibit.

A. Yes, sir.

Q. Way down in the lower left-hand corner there is your initials, R.E.K., and then stroke LN?

A. Yes.

Q. Was LN a secretary in your area then?

WATER_PCB-SD0000033694

A. Yes, she was.

Q. And who is LN?

A. Louise Nokes.

Q. And were there other secretaries in your area at this time? By this time I'm referring to the fall of '69.

A. Yes, we had three or four other secretaries.

Q. Do you remember their names?

A. They came and went. I mean, there was a Sally Branstedder and a Mary Francis Lions, Doris Hackett. That's about it.

Q. Do you remember a secretary in your area in 1969 with the initials E.C.D.

A. No, I don't. E.C.D.? No, I don't.

(Recess).

MR. TALLON: Why don't we take a look at a document bearing production number Tran 008374.

(Transwestern Deposition Exhibit Number 189 mark'd for identification).

MR. TALLON: Take a moment and review that, please.

A. Yes, sir, I remember this.

WATER_PCB-SD0000033695

Q. What do you remember about this memo? Let me ask another question. This is a memo that you wrote to W.B. Papageorge on March 30, 1970?

A. That's correct.

Q. And it's a memo that you wrote in the discharge of your responsibilities as medical director of Monsanto?

A. Yes, sir.

Q. And you wrote it at or about the time of the events described in it?

A. Yes, sir.

Q. And you intended Mr. Papageorge to rely on the information therein?

A. Yes, sir.

Q. Now, what do you remember about writing this memo?

A. I remember Bill Pappageorge calling me back and saying, "Emmet, we haven't brought you up to date, we've already done this," this telling the customers.

Q. Done what?

A. To keep Aroclor out of any silo paint.

WATER_PCB-SD0000033696

Q. And do you remember when Mr. Papageorge called you?

A. The next day or so.

Q. Did Mr. Papageorge in his communication to you comment on paint used in formulations for use other than in silos?

A. No, sir.

Q. Do you recollect having gotten any additional or other response from Mr. Papageorge or anyone else on the question raised in the last paragraph of your memo?

A. You mean the question when are we going to tell the people?

Q. Yes.

A. No. He told me it was told.

Q. With respect to silo paint?

A. Yes. Well, I mean, to any -- silo paint, anything that could contact food, feed or water for animals or humans. Yes, it was a blanket recommendation it not be used.

Q. And what form did that blanket recommendation take?

A. Letters, to the best of my

WATER_PCB-SD0000033697

knowledge. I mean, I don't remember exactly what form it took.

Q. Do you remember seeing one of those letters or a paradigmatic letter?

A. No, sir, I do not.

MR. PREUSS: What kind of letter?

MR. TALLON: Paradigmatic letter.

(Discussion off the record).

MR. TALLON: Let's look at Tran 008600.

(Transwestern Deposition Exhibit Number 190 mark'd for identification)?

A. I've read it.

Q. Did you get a chance to look at that?

A. Yes.

Q. Is that a memo that you wrote to Mr. Papageorge in April 1970?

A. Yes, sir.

Q. Did you write it in discharge of your function as medical director of Monsanto?

A. Yes, I did.

Q. And you wrote it at or about the time of the events described in it?

WATER_PCB-SD0000033698

A. Yes.

Q. You intended Mr. Papageorge to rely on it?'

A. Yes, I did.

Q. The last paragraph refers to an immediate problem, correct?

A. Yes, sir.

Q. And you go on to state in this memo, "I think we will have to get word out to our distributors to stop selling Aroclors for this purpose and to have their customers cease painting the interior of silos or selling the paint as an interior coating." Do you see that?

A. Yes, I do.

Q. Did you have any subsequent communications with Mr. Papageorge about that point?

A. No. It looks like I didn't look at my previous correspondence when I wrote this letter, because I know Papageorge told me after one of these, and I thought it was the first letter, that we've already sent it out. So I cannot recall hearing from him after the second letter. But I thought

WATER_PCB-SD0000033699

that after the first letter he told me "Emmet, we've already sent this out".

Q. Well, does the statement you -- do the statements you made in the last paragraph of the April 1970 memo suggest any inconsistency to you with respect to your testimony that Mr. Papageorge called you after the first memo?

A. Say that over again.

Q. Yes. Does what you wrote in the April 1970 memo suggest to you that Mr. Papageorge didn't call you after your first memo?

A. No. There is a possibility. Or I could have forgotten about it, or maybe Mr. Papageorge called me after the second letter. I don't know. But I thought he called me after the first one. But I don't -- and, obviously, I was in error putting this last paragraph in this one, in the second memorandum, if he had already called me, if I had remembered he had already called me. I thought he did. And that's just a month apart and I should have remembered it.

WATER_PCB-SD0000033700

Q. But I take it it's a possibility that he hadn't called you by the time of this April '70 memo?

A. It's a possibility. But I don't know if that's accurate or not.

Q. The last statement in your April '70 memo is, "Legal ramifications are obvious but I think it is better than buying an indefinite number of milk herds." That's what it says, right?

A. That's a confusing sentence, it's got two -- I don't think the second thing follows. Looks like what I'm saying there is well, we're either going to be sued for a bunch of silage or we're going to buy a bunch of cows.

Q. Right.

Q. Was one of the things that Monsanto did in reacting to the discovery of PCBs in milk to buy milk herds from farmers who had affected herds?

A. I think they did. I don't know if they bought the herds. I cannot answer that. I don't know.

Q. Does reviewing the last sentence

WATER_PCB-SD0000033701

of that memorandum refresh your recollection on the question of whether or not Monsanto bought milk herds?

A. No, it doesn't. There was some expenses that Monsanto had in connection with the silage from paint in the dairies in the silos painted with Coumar, but I do not know whether that was payment for the milk destroyed, payment for the silage destroyed or payment for the cows. I do not believe it was for cows, because usually once they stop eating contaminated silage the PCB disappeared from the milk.

Q. Was it of concern to you that PCBs were detected in milk?

A. Oh, yes.

Q. And was it your understanding that the PCBs found their way into the milk as a result of cows eating silage that was stored in silos painted with a PCB-based paint?

A. Repeat that.

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

A. Yes.

WATER_PCB-SD0000033702

Q. Let's mark as the next exhibit a memorandum from Mr. Papageorge to the file, dated November 17, 1970.

(Transwestern Deposition Exhibit Number 191 mark'd for identification).

MR. TALLON: For the record, while Dr. Kelly is reading I will note that the document does not appear to bear any production number, but is a memorandum dated November 17, 1970 on which R.E. Kelly, among others, is shown as a cc.

A. Yes, sir, I've read it.

Q. Do you remember receiving a copy of this file memo from Mr. Papageorge?

A. I don't remember it, no, sir.

Q. Look at paragraph 8 on page 2, please.

A. Yes, sir.

Q. There is a reference to the valuation by Mr. Schwarzwalder of a hundred dollars each for the loss of newborn calves, do you see that?

A. Yes.

Q. Does that reference in any way refresh your recollection as to the

WATER_PCB-SD0000033703

expenses Monsanto had with respect to contaminated milk?

A. No, it does not. I don't know any specifics of the expenses Monsanto had.

Q. Do you recollect ever hearing that newborn calves had died as a result of ingesting silage imbued with PCBs?

A. No, I do not.

Q. Do you recollect ever hearing that cows that had ingested silage imbued with PCBs had an unusually high incidence of false pregnancies?

A. No, I do not.

Q. There is a reference in paragraph 7 to the PCB content of milk at .3 to .4 parts per million, do you see that?

A. Yes, I do.

Q. Is that a high content?

A. We'd like to see none in there. I don't know what you mean by high. With regard to what? I mean, the next cow had 1.4. That's high.

Q. Did you ever -- not ever, but in 1970, did you reach any conclusions as to an acceptable level of parts per million of

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PCBs in milk?

A. I took the Food and Drug's level of 2 parts per million they gave.

Q. When was that?

A. 2 parts per million.

Q. Right. When?

A. Sometime around this time.

Q. One other question on this document. At paragraph 10 there is a reference to the value that Mr. Schwarzwalder was able to get for his cows, $1200, $1400 and $500?

A. Yes, sir.

Q. Does looking at that passage refresh your recollection in any way as to the funds spent by Monsanto in connection with milk contamination?

A. No, it does not.

Q. Dr. Kelly, did you participate in communications with NCR, National Cash Register with respect to Aroclor 1242?

A. I can't remember if I did or not.

Q. Let me show you a document bearing production number Tran 085272.

(Transwestern Deposition Exhibit Number

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192 mark'd for identification).

A. Yes, sir, I've read it.

Q. Does reading Exhibit 192, which appears to be a memorandum from J.D. Wright to a number of people, including you, refresh your recollection about whether you participated in any communications to NCR, National Cash Register, where a subject of the discussion was Aroclor 1242?

A. No, sir, I don't remember. I don't remember anything about this meeting or whether I was there.

Q. You do not remember having given a presentation on toxicology and biodegradability on 1242 to NCR?

A. No, sir. Not that I remember at all.

Q. Do you remember having given any presentation on the toxicology and biodegradability to any customer after 1968?

A. Did you say a meeting or --

Q. Well, it could be in a meeting or in a written format.

A. I had telephone calls, and I may

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have had letters, but I don't recall any formal meeting. I don't ever remember contacting -- contact with NCR. I may, but I have no recollection of being in a meeting at all.

Q. Based on your testimony yesterday, would it be fair to say that you don't recollect ever having participated in a communication with representatives of Texas Eastern Transmission Company where the subjects included the toxicology and biodegradability of Aroclor 1242?

A. That's correct.

Q. Would it also be fair to say that you do not recollect ever having participated in a communication with representatives of Transwestern Pipeline Company where the subjects included the toxicology and biodegradability of Aroclor 1242?

A. Yes, sir, that's true.

Q. Let me show you, Doctor, a three page exhibit comprising production numbers Tran 008498 through 008500.

(Transwestern Deposition Exhibit Number

WATER_PCB-SD0000033707

193 mark'd for identification).

A. Yes, sir, I've read it.

Q. Is that an excerpt of the minutes of a corporate management committee meeting of May 11, 1970?

A. Yes, it is.

Q. And did you receive a copy of same in May of 1970?

A. Yes.

Q. Did you attend a meeting of the corporate management committee in May of '70?

A. Yes, I did.

Q. Is this the second meeting to which you referred earlier in your testimony today?

A. Yes, sir.

Q. There is a reference on the second page of this three page exhibit that states "Discontinue sale of Aroclor 1242 to NCR and replace with HB-40" and so on. Do you see that?

A. Yes, I do.

Q. Do you remember the discussion referred to in that passage?

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A. No, I don't.

Q. Do you remember a discussion of discontinuing the sale of Aroclor 1242 products to any other customers?

A. At this meeting or any time?

Q. At this meeting.

A. I don't recall.

Q. Do you remember discussions of the discontinuance of sale of Aroclor 1242 at any time?

A. Well, I don't know. Discussions between whom?

Q. You and anybody.

A. Well, I might have talked to Minckler or Papageorge or somebody and they told me we're discontinuing use of this as a plasticizer all over the place. I mean, there would be that type of discussion. I don't recall any formal meetings. We had talked with Papageorge and Minckler, some of Minckler's scientists and marketing people about this all the way along, there was always ongoing discussions. But I don't recall the details of saying okay, we're going to discontinue this to the

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Bradley Paint Company or something like that.

Q. The sale of Aroclor 1242 was, in fact, discontinued?

A. Yes.

Q. When, if you know?

MR. PREUSS: Well, let me just ask for -- I object on the basis of ambiguity. Are you talking about Aroclor per se or Aroclor 1242-containing products?

MR. TALLON: Right now the question is with respect to, for lack of a better term, raw Aroclor 1242.

A. I don't know the date. And I don't know if Aroclor 1242 was used in electrical apparatus. If it was, that wasn't discontinued until '77.

Q. Do you know the date by which the sale of products containing Aroclor 1242 was discontinued?

A. Well, it depends on what Aroclor was used -- where it was used. The sale was -- the sales were discontinued not because of a product, but because of the

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use. If it were in an open use it was discontinued, and I thought it started in the '70's, and more were discontinued as the years went by. If it were a closed operation, that would be sometime after 1970. Again, I don't know the exact date. But if it were an electrical transformer or electrical capacitor, then it would not have been discontinued until 1977.

Q. You believe that a distinction was drawn in terms of discontinuing sales of PCB-based products depending upon their use in open versus closed systems?

A. That's correct.

Q. And you believe that Monsanto elected to discontinue sale of PCB-based products to users of closed systems at a later date than to users in open systems?

A. Yes. I know they did.

Q. I just want to touch back for a second on the issue of paint in silos. Did you ever visit a farm where the silo had been painted?

A. No, sir.

Q. Do you know if silos that had been

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painted with a PCB-based paint were cleansed, for lack of a better word?

A. They had to be sandblasted.

Q. Do you know if Monsanto paid for the sandblasting?

A. I don't know. In fact, I don't know if the silos were sandblasted.

Q. Okay. So you don't know one way or the other what became of the silos or the paint?

A. That's correct.

MR. TALLON: Why don't we take five.

(Recess).

MR. TALLON: Dr. Kelly, do you anticipate testifying as an expert witness at the trial of the case in which this deposition is being taken?

A. If they ask me, I will.

Q. You haven't been asked?

A. Not as yet.

MR. TALLON: Thank you.

MR. PREUSS: I have no questions at this time.

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COMES NOW THE WITNESS, R. EMMET KELLY, M.D., and having read the foregoing transcript of the deposition taken on the 30th day of April and 1st day of May, 1992, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_____

R. EMMET KELLY, M.D.

Subscribed and sworn to me before this _____ day of _____, 1992.

My Commission expires: _____

_____

Notary Public

rg

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State of Missouri)
) SS.
City of St. Louis)

I, Ronald A. Gore, a Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the civil cause now pending and undetermined in the Superior Court for the State of California for the County of Los Angeles, to be used in the trial of said cause in said court, I was attended at the offices of Bryan Cave, One Metropolitan Square, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 30th day of April and the 1st day of May, 1992.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing

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transcript, said testimony being by me reported in shorthand and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this _____ day of _____, 1992.

My Commission expires May 22, 1994.

_____

Notary Public in and for the

State of Missouri

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