

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

3 DEPARTMENT NO. 31 HON. G. KEITH WISOT, JUDGE

4
5 TRANSWESTERN PIPELINE COMPANY,)
6 A DELAWARE CORPORATION,)

7 PLAINTIFF,)

8 VS.)

NO. BC 026959

9 MONSANTO COMPANY AND DOES 1)
10 THROUGH 200, INCLUSIVE,)

11 DEFENDANTS.)
12

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

14 DECEMBER 16, 1993

15 VOLUME 21

16 PAGES 3150 TO 3305
17

18 APPEARANCES:

19 FOR PLAINTIFF:

20 SHEARMAN & STERLING
21 BY: JAMES P. TALLON, ESQ.
22 & JANET M. GRADY, ESQ.
23 & JERRY MARKS, ESQ.
24 725 SOUTH FIGUEROA STREET
25 21ST FLOOR
26 LOS ANGELES, CA 90017

23 FOR DEFENDANT:

24 PREUSS, WALKER & SHANAGHER
25 BY: CHARLES F. PREUSS, ESQ.
26 & DONALD F. ZIMMER, ESQ.
27 & ALAN LAZARUS, ESQ.
28 595 MARKET STREET
16TH FLOOR
SAN FRANCISCO, CA 94105

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111 NORTH HILL STREET
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1 TRANSWESTERN A CUSTOMER OF MONSANTO?

2 A WELL, TO THE BEST OF MY KNOWLEDGE AT THIS
3 MINUTE, THE ANSWER IS YES.

4 BECAUSE IT SHOWS HERE WE SHIPPED THEM
5 PRODUCT.

6 BUT I NEVER CONSIDERED, NEVER KNEW THEY
7 WERE A CUSTOMER.

8 MR. PREUSS: THANK YOU, SIR.

9 THE COURT: ANYTHING FURTHER, MR. TALLON?

10 MR. TALLON: NO.

11 THE COURT: MAY THIS WITNESS NOW BE EXCUSED
12 MR. PREUSS?

13 MR. PREUSS: YES.

14 THE COURT: AND MR. TALLON?

15 MR. TALLON: YES.

16 THE COURT: THANK YOU FOR YOU YOUR ATTENDANCE
17 AT THIS TRIAL.

18 YOU ARE EXCUSED FROM FURTHER ATTENDANCE.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 THE COURT: A FURTHER WITNESS, MR. PREUSS?

21 MR. ZIMMER: YOUR HONOR, MONSANTO WOULD CALL
22 CARL CLAY.

23 THE CLERK: RAISE YOUR RIGHT HAND, SIR, TO BE
24 SWORN.

25 CARL CLAY,
26 CALLED AS A WITNESS BY THE DEFENDANT, MONSANTO, WAS
27 SWORN AND TESTIFIED AS FOLLOWS:

28 ///

1 THE WITNESS: I DO.

2 THE CLERK: PLEASE, BE SEATED.

3 PLEASE STATE AND SPELL YOUR NAME FOR THE
4 RECORD.

5 THE WITNESS: CARL, C-A-R-L, MIDDLE INITIAL L.
6 CLAY, C-L-A-Y.

7

8 DIRECT EXAMINATION

9 BY MR. ZIMMER:

10 Q SORRY TO JUMP IN THERE BEFORE YOU GOT
11 YOUR NAME OUT.

12 HOW ARE YOU?

13 A OKAY.

14 Q WHERE DO YOU LIVE, SIR?

15 A HUDSON, OHIO.

16 Q HOW LONG HAVE YOU LIVED THERE?

17 A ABOUT A YEAR.

18 Q ARE YOU MARRIED, SIR?

19 A YES, SIR.

20 Q DO YOU HAVE A FAMILY?

21 A YES.

22 Q CHILDREN?

23 A YES, TWO CHILDREN.

24 Q GOOD. WHERE DO YOU WORK, SIR?

25 A WORK FOR MYLES, INCORPORATED IN AKRON,
26 OHIO.

27 Q ARE YOU A FORMER EMPLOYEE OF MONSANTO?

28 A YES, I AM.

1 Q HOW LONG DID YOU WORK WITH MONSANTO?

2 A FROM '68 TO '77.

3 Q WAS THAT YOUR FIRST JOB OUT OF SCHOOL?

4 A YES, IT WAS.

5 Q COULD YOU TELL THE JURY BRIEFLY ABOUT
6 YOUR EDUCATIONAL BACKGROUND, BEGINNING WITH HIGH
7 SCHOOL.

8 A I GRADUATED FROM SANTA FE HIGH SCHOOL IN
9 ATLANTA, GEORGIA AND PROCEEDED TO GO TO COLLEGE AT
10 TWO SCHOOLS, ONE IN SPRINGFIELD, MISSOURI.

11 MY DEGREES CAME FROM UNIVERSITY OF
12 GEORGIA. I HAVE THREE DEGREES.

13 I HAVE ONE DEGREE IN PSYCHOLOGY, ONE IN
14 CHEMISTRY AND A MASTER'S IN BUSINESS.

15 I GRADUATED IN '68.

16 Q WHAT POSITION, SIR, DID YOU HOLD AT
17 MONSANTO WHEN YOU FIRST BEGAN WORK IN '68?

18 A I CAME IN AS A SALES TRAINEE, SALES
19 REPRESENTATIVE.

20 Q AND WHERE WERE YOU BASED AT THAT TIME?

21 A ST. LOUIS.

22 Q WHAT OTHER POSITIONS, IF ANY, DID YOU
23 HOLD WITHIN THE COMPANY?

24 A THAT WAS IT.

25 IT WENT FROM SALES REPRESENTATIVE TO
26 SENIOR SALES REPRESENTATIVE.

27 Q OKAY. AND WERE FUNCTIONAL FLUIDS AMONG
28 THE PRODUCTS THAT YOU SOLD FOR MONSANTO?

1 A AT THE BEGINNING THOSE WERE THE ONLY
2 PRODUCTS.

3 Q WAS TEXAS EASTERN TRANSMISSION COMPANY
4 ONE OF YOUR CUSTOMERS?

5 A WHEN I TOOK OVER THE SALES TERRITORY IN
6 ST. LOUIS AND THE HOUSTON SALES TERRITORY, YES, THEY
7 WERE IN THAT TERRITORY.

8 Q WHEN DID YOU FIRST BECOME ACQUAINTED WITH
9 TEXAS EASTERN AS A CUSTOMER?

10 A IT WAS -- I DON'T RECALL SPECIFICALLY BUT
11 IT WAS LATE '68, EARLY '69.

12 Q AT ANY POINT IN TIME WHILE YOU WERE
13 WORKING FOR MONSANTO DID YOU EVER HEAR OF A COMPANY
14 CALLED TRANSWESTERN PIPELINE COMPANY?

15 A NO, I DID NOT.

16 Q HAVE YOU SINCE?

17 A YES.

18 Q WHEN WAS THE FIRST TIME YOU HEARD THE
19 NAME "TRANSWESTERN"?

20 A WE HAD A DEPOSITION. IT WAS BROUGHT
21 BEFORE US.

22 I WAS ASKED AT THAT TIME IF I HAD EVER
23 HEARD OF TRANSWESTERN PIPELINE.

24 Q WAS THAT YOUR DEPOSITION IN THIS CASE?

25 A THAT'S CORRECT.

26 Q SIR, YOU MENTIONED YOU WORKED AT A
27 COMPANY CALLED MYLES, NOW; IS THAT CORRECT?

28 A YES. THAT'S CORRECT.

1 Q TELL ME, WHAT DO YOU DO NOW?

2 A MYLES, WE HAVE TAKEN THE NAME, IT USED TO
3 BE TO MO BAY CORPORATION.

4 WE TOOK THE NAME THE FIRST PART OF '91.

5 WE TOOK THE NAME FROM MYLES LABORATORIES
6 WHICH MAKES ALKA-SELTZER, ONE-A-DAY VITAMINS AND SOS
7 PADS.

8 MYLES INCORPORATED IS A WHOLLY OWNED
9 SUBSIDIARY OF BAUER OUT OF GERMANY. I WORK FOR A
10 SPECIFIC DIVISION IN THE RUBBER DIVISION.

11 WE, IN THAT DIVISION, MARKET POLYMERS AND
12 RUBBER CHEMICALS.

13 AND POLYMERS ARE THE RUBBER THAT GOES
14 INTO TIRES, THINGS LIKE THIS.

15 THE CHEMICALS ARE WHAT IS THE SALT OR
16 PEPPER OF WHAT YOU USE TO CURE THE RUBBER.

17 I'M SPECIFICALLY INVOLVED AS DIRECTOR OF
18 MARKETING FOR RUBBER CHEMICALS, FOR THAT DIVISION,
19 FOR NORTH AMERICA.

20 Q ARE ANY OF THE PRODUCTS YOU DEAL WITH NOW
21 AT MYLES PRODUCTS THAT YOU HAD SOLD SIMILAR VERSIONS
22 OF WHILE YOU WERE WITH MONSANTO?

23 A NOT SPECIFICALLY.

24 IT'S INTERESTING.

25 WE MANUFACTURE RUBBER CHEMICALS,
26 ANTIOXIDANTS AND ACCELERATORS, TO CURE UP AND FINISH
27 TIRES, THINGS LIKE THIS.

28 IT'S IRONIC I DID NOT WORK IN THE RUBBER

1 CHEMICALS GROUP IN MONSANTO. BECAUSE NOW MONSANTO IN
2 THE NORTH AMERICAN CONTINENT, NORTH AMERICA, PERIOD,
3 IS MY MAJOR COMPETITOR AND ALSO MY MAJOR COMPETITOR
4 WORLDWIDE IN RUBBER CHEMICALS.

5 THE COURT: SIR, YOU ARE SPEAKING VERY QUICKLY.

6 COULD YOU MAKE A POINT TO TALK A LITTLE
7 MORE SLOWLY.

8 THE WITNESS: SLOWLY.

9 THE COURT: MR. ZIMMER.

10 MR. ZIMMER: WE WILL TRY TO FOLLOW YOUR LEAD.

11 Q SIR, WHEN WERE YOU LAST EMPLOYED BY
12 MONSANTO?

13 A I LEFT MONSANTO IN 1978.

14 Q WHY DID YOU LEAVE MONSANTO?

15 A '77.

16 I'M SORRY.

17 I HAD A RECRUITER OR SOMEBODY COME AND
18 KNOCK ON THE DOOR AND SAY WE HAVE AN OPPORTUNITY FOR
19 YOU AND WOULD YOU BE INTERESTED IN COMING TO WORK FOR
20 US AT MO BAY.

21 IT LOOKED TOO GOOD TO RESIST.

22 Q AND MOBAY IS THE COMPANY YOU MENTIONED
23 YOU HAVE BEEN THERE SINCE YOU LEFT MONSANTO?

24 A EXACTLY.

25 Q LET ME MOVE BACK IN TIME TO JUNE OF 1968.
26 IS THAT WHEN YOU STARTED?

27 A CORRECT.

28 Q AND YOUR FIRST POSITION WAS AS A SALES

1 TRAINEE?

2 A CORRECT.

3 Q WHAT SORT OF TRAINING DID YOU RECEIVE AS
4 A SALES TRAINEE?

5 A MONSANTO HAD A PROGRAM. I CAME TO WORK IN
6 JUNE AND THEN WE WERE PUT INTO A MARKET RESEARCH TYPE
7 OF FUNCTION, KIND OF WE WERE IN WAITING FOR THE
8 SALES -- THE FORMAL SALES TRAINING FROM THE START
9 WHICH I BELIEVE WAS IN SEPTEMBER.

10 AND IT WAS -- I STILL TALK ABOUT THAT
11 PROGRAM BECAUSE I AM STILL IMPRESSED WITH IT.

12 IT WAS A SIX-WEEK MANAGING THE MARKETING
13 JOB.

14 IT DIDN'T TEACH YOU ABOUT PRODUCTS
15 SPECIFICALLY BUT IT TAUGHT YOU ABOUT YOUR PERSONALITY
16 AND HOW TO CONDUCT YOURSELF AS A SALESMAN AND HOW TO
17 BRING FORTH, I GUESS, YOUR STRONGEST ATTRIBUTES SO IT
18 WAS A TREMENDOUS PROGRAM.

19 I LEARNED A LOT ABOUT MYSELF.

20 PRODUCT TRAINING, SPECIFIC PRODUCT
21 TRAINING WHICH WAS NOT IN THAT COURSE CAME AT A LATER
22 DATE THROUGH TRAVELING WITH TECHNICAL PEOPLE OR
23 COMING INTO ST. LOUIS FOR ONE- OR TWO-DAY, THREE-DAY
24 PERIODS, TECHNICAL PROGRAMS.

25 Q SO THAT IS HOW YOU RECEIVED YOUR PRODUCT
26 TRAINING?

27 A CORRECT.

28 Q WHO WAS YOUR SUPERVISOR, SIR, IN

1 FUNCTIONAL FLUIDS WHEN YOU FIRST STARTED?

2 A LARRY BRADFORD.

3 Q AND HOW DID YOU WORK IN THE FUNCTIONAL
4 FLUIDS GROUP?

5 A FUNCTIONAL FLUIDS, SPECIFICALLY IT WAS
6 PROBABLY UNTIL 19 -- EARLY 1970 OR MID 1971.

7 Q NOW, YOU MENTION THAT YOU TOOK OVER SOME
8 EXISTING ACCOUNTS.

9 WHICH CUSTOMERS DO YOU RECALL ASSUMING
10 RESPONSIBILITY FOR?

11 A WELL, WE HAD FOUR OR FIVE DIFFERENT AREAS
12 OF PRODUCTS.

13 WE HAD THE TURBINOL WHICH WAS TEXAS
14 EASTERN, OF COURSE.

15 WE HAD TURBINOLS WHICH WAS HEAT TRANSFER
16 FLUID.

17 PRIMARILY THERE WERE A NUMBER OF
18 CUSTOMERS THERE THAT WERE ENGINEERING AND
19 ARCHITECTURAL DESIGN GROUPS AND WE ASKED THEM TO
20 DESIGN THE TURBINOL INTO A PRODUCT THAT COULD USE
21 THAT PROJECT.

22 WE HAD PYDRAULS WHICH WERE INDUSTRIAL
23 HYDRAULIC FLUIDS AND WE ALSO HAD SKYDROL WHICH WAS A
24 HYDRAULIC FLUID WHICH WAS USED IN AVIATION,
25 AIRLINES.

26 Q SO YOU SOLD PRODUCTS FROM ALL OF THOSE
27 GROUPS?

28 A I'M SORRY. ALL OF THOSE.

1 IF YOU TAKE EACH ONE OF THOSE, PYDRAULS
2 WOULD BE LIKE FORD MOTOR, GENERAL MOTORS PLANT, THE
3 DIE CASTING PLANTS, TURBINOLS WOULD BE AN ENGINEERING
4 FIRM AND THEN YOU WOULD HAVE SKYDROL WOULD UNDER TWA
5 AND UNITED AIR LINES, LIKE THAT.

6 Q WHEN DO YOU FIRST RECALL HAVING ANY
7 DEALINGS WITH TEXAS EASTERN?

8 A WE HAD AN ACCOUNT TURN OVER.

9 I DON'T RECALL THE SPECIFIC TIMING ON
10 THAT.

11 BUT I WENT WITH THE SALESMEN.

12 IT WAS A ROUTINE, NORMALLY WHEN YOU HAD
13 INHERITED A TERRITORY THAT YOU WENT WITH THE -- YOUR
14 SALESMEN THAT YOU WERE SUCCEEDING AND MADE A JOINT
15 CALL WITH HIM AT THAT ACCOUNT.

16 SO WE WENT TO SHREVEPORT INTO HOUSTON.

17 Q ALL RIGHT. THOSE ARE THE TWO LOCATIONS
18 THAT YOU RECALL DEALING WITH TEXAS EASTERN ON?

19 A CORRECT, SHREVEPORT, LOUISIANA AND
20 HOUSTON TEXAS.

21 Q WHO DID YOU DEAL WITH AT TEXAS EASTERN,
22 AS BEST YOU CAN RECALL?

23 A THE NAMES I CAN RECALL WOULD BE A TED
24 HARRISON AND AN OLLIE FLETCHER WHO WERE IN HOUSTON
25 AND THERE WERE A COUPLE OF PEOPLE IN SHREVEPORT, BUCK
26 JARNAGIN AND EARL FARMER.

27 Q ALL RIGHT. DID YOU MAKE ANY DISTINCTION
28 IN YOUR MIND BETWEEN THE LOCATIONS YOU HAVE JUST

1 MENTIONED, SHREVEPORT AND HOUSTON AND TO WHAT
2 FUNCTIONS WERE CARRIED OUT THERE?

3 A YES, VERY SPECIFICALLY.

4 THE HOUSTON LOCATION WAS STRICTLY
5 PURCHASING.

6 THAT IS, THEY DID ALL OF THE BUYING OF
7 THE TURBINOL AND WHATEVER ELSE TEXAS EASTERN
8 REQUIRED.

9 THE SHREVEPORT LOCATION WAS STRICTLY
10 ENGINEERING AND TECHNICAL.

11 Q DID YOU EVER HEAR, SIR, OF A GENTLEMAN
12 NAMED DON SLOAN?

13 A NO.

14 Q WHEN YOU WERE DEALING WITH TEXAS EASTERN
15 DID YOU HAVE ANY UNDERSTANDING OF WHERE ANY PRODUCTS
16 YOU SOLD THEM WOULD BE USED?

17 A ONLY THE TURBINOL GOING INTO TURBINES.

18 Q DID YOU SELL ANY OTHER PRODUCTS TO TEXAS
19 EASTERN, IF YOU RECALL?

20 A NOT THAT I RECALL, NO.

21 Q NOW, HOW DID YOU HANDLE THE TEXAS EASTERN
22 ACCOUNT?

23 A WELL, WE WERE -- WE WOULD CALL ON
24 PRIMARILY -- THE FOCUS WOULD BE PRIMARILY ON
25 PURCHASING SINCE I WAS COMMERCIAL AND NOT TECHNICAL.

26 WE WOULD CALL ON HOUSTON, ATTEMPT TO MAKE
27 SURE THEY WERE SATISFIED WITH THE SERVICE INVOLVED.

28 ALSO WE WOULD CALL ON THE SHREVEPORT

1 LOCATION IF THERE WERE ANY QUESTIONS ON THE TECHNICAL
2 SIDE.

3 I THINK IT SHOULD BE NOTED THAT COMING
4 INTO THIS TERRITORY THAT TEXAS EASTERN WAS WHAT I
5 WOULD REFER TO AS A MAINTENANCE ACCOUNT, IN THE SENSE
6 THAT IT HAD BEEN A LONG-TERM ESTABLISHED ACCOUNT FOR
7 MONSANTO AND REALLY MY FUNCTION AND PURPOSE WAS JUST
8 TO MAKE SURE THEY WERE HAPPY WITH OUR SERVICE, WITH
9 OUR DELIVERIES AND MAKE SURE WE HAD THE ADEQUATE
10 FORECAST TO PRODUCE PRODUCTS OF TURBINOL-153 FOR
11 TEXAS EASTERN.

12 Q WAS IT YOUR UNDERSTANDING THAT THAT
13 RELATIONSHIP HAD BEEN ESTABLISHED FOR SOME TIME?

14 A ABSOLUTELY, YES.

15 IT HAD BEEN A NUMBER OF YEARS PRIOR TO MY
16 TAKING IT OVER.

17 Q DID YOU MAKE, IN THE COURSE OF YOUR SALES
18 DEALINGS WITH TEXAS EASTERN, PERSONAL VISITS?

19 A I DID.

20 Q PHONE CALLS AS WELL?

21 A MANY PHONE CALLS, YES.

22 Q ANY MORE OF ONE VERSUS THE OTHER?

23 A PROBABLY MORE PHONE CALLS THAN PERSONAL
24 VISITS.

25 Q WHY WAS THAT?

26 A I HAD, AGAIN, I CATEGORIZE IT AS A
27 MAINTENANCE ACCOUNT.

28 MY PURPOSE AS A SALESMAN, OBVIOUSLY, WAS

1 TO TRY TO IMPROVE OUR POSITION IN SALES.

2 SO I LOOKED AT TEXAS EASTERN AS A
3 MAINTENANCE HOLD ACCOUNT AND SPENT A LOT OF TIME
4 BECAUSE I HAD A LARGE TERRITORY FOCUSED ON SELLING
5 SKYDROL, SELLING PYDRAUL, SELLING MORE THERMINOL, THE
6 OTHER PRODUCTS WHERE THERE WAS GROWTH AND
7 OPPORTUNITIES TO SELL PRODUCT.

8 Q WHO ORDERED FLUID FOR TEXAS EASTERN, AS
9 BEST YOU CAN RECALL?

10 A THAT CAME OUT OF PURCHASING BUT I CAN'T
11 RECALL SPECIFICALLY WHO IT WAS.

12 I'M ASSUMING IT CAME FROM HOUSTON.

13 Q AND WOULD THAT HAVE MEANT EITHER
14 MR. FLETCHER OR MR. HARRISON?

15 A OR SOMEONE IN THEIR DEPARTMENTS.

16 Q ARE THESE THE ONLY TWO NAMES THAT YOU
17 RECALL FROM TEXAS EASTERN THAT YOU DEALT WITH?

18 A YES.

19 Q IN A PURCHASING FUNCTION, I SHOULD SAY.

20 A YES.

21 Q WHAT USUALLY HAPPENED WHEN YOU MADE A
22 SALES CALL, IN OTHER WORDS, A PERSONAL VISIT TO TEXAS
23 EASTERN?

24 A WELL, WHEN I GO TO PURCHASING IT WOULD
25 JUST BE, AGAIN, MAKE AN APPOINTMENT, MAYBE GO TO
26 LUNCH.

27 I'M QUOTING REALLY WHAT I DID ON NORMAL
28 SALES CALLS.

1 BUT I CAN'T RECALL SPECIFICALLY, OTHER
2 THAN MAYBE A CHANGEOVER CALL.

3 TECHNICALLY, YOU WOULD JUST GO IN AND ASK
4 IS THERE ANYTHING NEW OR DO WE HAVE ANY QUESTIONS
5 FROM ST. LOUIS THAT WE NEED TO HAVE IMPLEMENTED OR
6 ANSWERED OR RESPONDED TO AT THIS LITTLE TECHNICAL
7 LOCATION IN SHREVEPORT.

8 Q WOULD YOU REPORT THE RESULTS OF VISITS
9 LIKE THAT BACK TO YOUR SUPERVISORS?

10 A YES.

11 Q HOW WOULD YOU DO THAT?

12 A YOU GET INTO AN INTERESTING AREA.
13 MORE COMMONLY OR NOT IT WAS TO USE A CALL
14 REPORT.

15 Q WHAT IS A CALL REPORT?

16 A A CALL REPORT IS SIMPLY A DOCUMENT PIECE
17 OF PAPER IN A FORMAT THAT MONSANTO HAS PREPRINTED.

18 WE ARE TO SUBMIT THE HIGHLIGHTS OF OUR
19 CALL, THAT PARTICULAR CALL AT THAT LOCATION, WHO WE
20 CONTACTED, WHO WE TALKED TO, WHAT THE TOPICS OF
21 CONVERSATION WERE AND THEN FOLLOW IT UP WITH SOME
22 ACTION ITEMS.

23 THEN WE WOULD SEND THAT IN AND GO WITH
24 THE RESPONSE.

25 A LOT OF TIMES, BECAUSE THE TIME IT TOOK
26 FOR THE CALL REPORT TO BE TIMED, FIRST OF ALL, AND
27 THE TIME IT TOOK TO GET TO THE APPROPRIATE PEOPLE,
28 SAY, IN ST. LOUIS IT WAS TIME FOR -- IT WAS EASIER TO

1 GET ON THE PHONE.

2 THAT IS TO SAY ON THE PHONE STANDPOINT IT
3 WAS EASIER TO IMPLEMENT, THAN IT WAS WRITTEN.

4 Q UNDER WHAT CIRCUMSTANCES WERE CALL
5 REPORTS PREPARED?

6 A YOU MEAN AS FAR AS A MECHANISM?
7 WE HAD AN ANTIQUATED DICTAPHONE.
8 IS THAT WHAT YOUR ASKING?

9 Q I'M ACTUALLY ASKING WHAT KIND OF EVENTS
10 WOULD TRIGGER?

11 A PRIMARILY SOMETHING SIGNIFICANT THAT CAME
12 UP DURING THE CALL AND SOME SIGNIFICANT ACTIONS THAT
13 WERE REQUIRED.

14 AGAIN THAT WOULD BE FOLLOWED UP BY THE
15 FORM OF A PHONE CALL.

16 Q WERE PHONE REPORTS PREPARED FOR EVERY
17 VISIT TO A CUSTOMER?

18 A HYPOTHETICALLY YOU WERE SUPPOSED TO DO
19 THAT.

20 MONSANTO REQUESTED THAT THAT BE DONE.

21 I'M NOT A GLOWING EXAMPLE. WITH RESPECT
22 TO WRITING CALL REPORTS PRIMARILY BECAUSE I, AGAIN, I
23 DIDN'T WRITE MANY CALL REPORTS.

24 I HAVE LEARNED MY LESSON.

25 IN MY EARLIER CAREER I DIDN'T WRITE VERY
26 MANY CALL REPORTS AT ALL.

27 AGAIN, IF IT WAS A MAINTENANCE ACCOUNT I
28 FELT FAIRLY COMFORTABLE WAS BEING MADE, DIALOGUES

1 WERE HELD WITH ME AND OTHER PEOPLE IN ST. LOUIS.

2 Q DO YOU RECALL PREPARING ANY CALL REPORTS
3 THAT RELATED TO A TEXAS EASTERN VISIT YOU WOULD HAVE
4 HAD?

5 A I'M SURE THERE ARE SOME THAT I PREPARED.
6 I DON'T RECALL ANY SPECIFICALLY, BUT I'M
7 SURE THAT I PREPARED THEM.

8 Q YOU THINK YOU DID BUT YOU ARE JUST NOT
9 CERTAIN?

10 A I CAN'T SAY I DID.

11 Q YOU MENTIONED TURBINOL AS ONE OF THE
12 PRODUCTS THAT YOU WERE RESPONSIBLE FOR IN THIS '68 TO
13 '71 TIME PERIOD.

14 DID YOU KNOW TURBINOL BY ANY OTHER NAMES?

15 A IT WAS MCS-153, I BELIEVE.

16 Q IF I SAY "TURBINOL," CAN WE USE THOSE
17 SYNONYMOUSLY?

18 A YES.

19 Q WERE YOU AWARE WHEN YOU STARTED IN 1968
20 THAT TURBINOL-153 CONTAINED PCB'S?

21 A WAS I AWARE THAT IT SPECIFICALLY
22 CONTAINED PCB'S?

23 I WAS AWARE THAT IT CONTAINED A CHEMISTRY
24 WHICH WAS A PCB CHEMISTRY.

25 PCB'S AS FAR AS MY RECOLLECTION WAS
26 CONCERNED WAS A TERM USED AFTER I CAME TO MONSANTO.

27 Q HOW DID YOU REFER TO THAT CHEMISTRY?

28 A PRIMARILY POLYCHLORINATED BIPHENYLS

1 INITIALLY CHLORINATED.

2 Q CHLORINATED POLYPHENYLS?

3 A I BELIEVE IT'S P-H-E-N-Y-L.

4 Q THANK YOU, SIR.

5 WHEN DID YOU FIRST BECOME AWARE THAT
6 TURBINOL CONTAINED CHLORINATED POLYPHENYLS?

7 A RIGHT AT THE BEGINNING.

8 Q DO YOU RECALL EVER DISCUSSING THE
9 CHEMICAL COMPOSITION OF TURBINOL WITH TEXAS EASTERN?

10 A I'M SURE IT WAS DISCUSSED.

11 Q DO YOU RECALL ANY SPECIFIC INSTANCES IN
12 WHICH YOU DID THAT?

13 A NO.

14 I JUST LOOK AT IT AS AUTOMATIC.

15 Q NOW, BASED ON YOUR EXPERIENCE IN SELLING
16 TURBINOL TO TEXAS EASTERN, DID YOU GAIN AN
17 UNDERSTANDING THAT THEY WERE AWARE OF THE CHLORINATED
18 POLYPHENYLS CONTACT OF TURBINOL?

19 A TO BE VERY HONEST, AS I SAID EARLIER IN
20 THE DEPOSITION, I DON'T SEE HOW THEY COULD NOT HAVE
21 BEEN AWARE JUST BECAUSE OF THE DEFINITION OF THE
22 CHEMISTRY.

23 TO CALL IT PCB'S IS ONE THING.

24 BUT CHLORINATED HYDROCARBON BIPHENYLS ARE
25 THE SAME THING.

26 Q YOU NOW USE THE TERM PCB FOR
27 "POLYCHLORINATED"?

28 A THAT IS A CATCH PHRASE.

1 Q WAS THE PCB OR POLYCHLORINATED, A TRADE
2 SECRET WHEN YOU WERE SELLING THAT PRODUCT?

3 A I DON'T THINK, YOU MEAN AS FAR AS WHAT IT
4 WAS, HOW MUCH WAS IN IT OR WHAT IT WAS?

5 Q WAS THAT SOMETHING YOU KEPT A SECRET?

6 A NOT NECESSARILY.

7 I DON'T RECALL WHAT IT WAS, OTHER THAN IT
8 WAS ONE AROCLOR IN IT THAT I DO RECALL.

9 I DON'T THINK IT WAS.

10 I THINK IT WAS SOMETHING THAT TEXAS
11 EASTERN SPECIFIC TO TURBINOL WAS AWARE OF SINCE THEY
12 HELPED DEVELOP THE PRODUCT.

13 Q WAS THAT INFORMATION ABOUT THE AROCLOR
14 THAT YOU'RE AWARE OF SOMETHING THAT YOU WOULD SHARE
15 WITH CUSTOMERS?

16 A WE HAVE NO PROBLEM WITH SHARING THE
17 CONCEPT.

18 WE WOULDN'T GET INTO THE SPECIFIC, YOU
19 KNOW, SALT AND PEPPERS THAT MADE THEM SPECIAL OR
20 WHATEVER BUT WE WOULD GET INTO THE BASIC CONTENT OF
21 THE CHEMISTRY.

22 Q DID YOU EVER MAKE ANY EFFORT DURING YOUR
23 SALES CAREER AT MONSANTO TO CONCEAL THE CONTENT OF
24 TURBINOL?

25 A NO.

26 AGAIN, WE HAD ONE CUSTOMER WHICH WAS
27 TEXAS EASTERN.

28 AND, IN FACT, WENT TO GREAT LENGTHS

1 BECAUSE WE PICKED UP IN MY TIME ANOTHER CUSTOMER ON
2 TURBINOL.

3 AND THAT CUSTOMER WE FREELY TALKED WITH
4 THEM ABOUT WHAT ITS CONTENTS WERE.

5 Q WE WILL GET TO THEM IN A MOMENT.

6 LET ME ASK YOU JUST A FEW OTHER
7 PRELIMINARY QUESTIONS.

8 WHAT WOULD YOU DO, SIR, IF YOU RECEIVED
9 QUESTIONS FROM CUSTOMERS ABOUT SAFE HANDLING OR
10 TOXICITY ISSUES AS THEY RELATED TO PCB PRODUCTS?

11 A PRIMARILY WE WOULD ATTEMPT TO FOCUS THE
12 ATTENTION ON THOSE QUESTIONS TO ST. LOUIS WHERE THE
13 SO-CALLED EXPERTS WERE, NOT FROM A TECHNICAL BUT FROM
14 A MEDICAL STANDPOINT.

15 SOMETIMES IT WAS LUDICROUS FOR US TO
16 ATTEMPT TO ANSWER THE QUESTIONS BECAUSE WE WEREN'T AS
17 TECHNICALLY ORIENTED OR MEDICALLY ORIENTED, OBVIOUSLY
18 WITH THE PRODUCT.

19 Q AT ANY POINT IN YOUR SALES CAREER WITH
20 RESPECT TO TEXAS EASTERN DID YOU GAIN AN
21 UNDERSTANDING THAT ANY HEALTH EFFECTS HAD BEEN
22 ASSOCIATED WITH PCB'S?

23 A I RECALL SPECIFICALLY ONE INCIDENT THAT
24 WAS THE FIRST TIME I HEARD ABOUT IT.

25 THAT WAS IN LIVER STUDIES THAT WERE DONE
26 IN RATS.

27 Q OKAY. DO YOU RECALL WHEN YOU LEARNED OF
28 THESE RAT LIVER STUDIES?

1 A I DON'T, OTHER THAN IT HAD TO BE IN THE
2 EARLY 70'S, WHEN PCB'S SURFACED.

3 Q HOW DID THAT COME TO YOUR ATTENTION?

4 A I DON'T RECALL.

5 Q IS THAT THE KIND OF THING THAT YOU WOULD
6 HAVE DISCUSSED WITH CUSTOMERS?

7 A I DON'T RECALL WHETHER I DISCUSSED IT
8 SPECIFICALLY, BUT IT'S SOMETHING THAT I WOULDN'T HAVE
9 HESITATED TO.

10 IT'S FREE INFORMATION. IT WASN'T
11 ANYTHING SECRET ABOUT IT.

12 Q DID YOU AT SOME POINT, SIR, LEARN ABOUT
13 CONCERNS ARISING THAT PCB'S WERE PERSISTING IN THE
14 ENVIRONMENT?

15 A YES.

16 Q AND WHAT DID YOU LEARN IN THAT REGARD?

17 A THE LEVEL OF BIODEGRADABILITY, THE PCB
18 CHEMISTRY IN AND OF ITSELF, OR POLYCHLORINATED
19 BIPHENYL CHEMISTRY IS ONE.

20 THAT WAS THE ADVANTAGE IT HAD IN THE
21 APPLICATIONS THAT I HAVE TALKED ABOUT, THAT THE
22 BIODEGRADABILITY OR THE STABILITY OF THIS MOLECULE
23 WAS TERRIFIC IN THE SENSE THAT YOU COULD PUT IT IN A
24 MACHINE AND RUN IT AND RUN IT AND BEAT IT TO DEATH
25 ALMOST AND IT WOULD STILL BE STABLE.

26 AND AS A CONSEQUENCE THE DOWNSIDE OF THAT
27 STABILITY WAS THE FACT THAT YOU HAD POOR
28 BIODEGRADABILITY OF IT.

1 IT WAS SPECULATIVE AT THE TIME.

2 I DON'T RECALL IF IT WAS EVER PROVED THAT
3 IT WAS A BIG PROBLEM AT THE TIME IT WAS.

4 Q WHEN DO YOU RECALL LEARNING THAT
5 INFORMATION THAT YOU JUST TOLD US ABOUT?

6 A THAT IS JUST THE NATURE OF THE CHEMISTRY.

7 SO AS I LEARNED MORE ABOUT THE CHEMICAL
8 MAKEUP IN PYDRAULS, THERMINOLS OR TURBINOL, IT CAME
9 WITH THE CHEMISTRY.

10 Q I'M ASKING YOU, THOUGH, WHEN DO YOU FIRST
11 RECALL LEARNING ABOUT THE PCB SITUATION AS I THINK
12 YOU HAVE DESCRIBED IT?

13 A AGAIN, IT WAS THE EARLY 70'S.

14 Q NOW, WHAT WAS MONSANTO'S REACTION TO THE
15 PCB SITUATION, AS YOU RECALL?

16 MR. TALLON: OBJECTION, VAGUE AND FOUNDATION.

17 THE COURT: LAY SOME FOUNDATION, MR. ZIMMER.

18 Q BY MR. ZIMMER: MR. CLAY, YOU TOLD ME
19 THAT YOU LEARNED ABOUT ENVIRONMENTAL INFORMATION AND
20 OTHER DEVELOPMENTS AS THEY WERE OCCURRING IN '70 TO
21 '71; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q WERE THESE THINGS IMPARTED TO YOU BY YOUR
24 SUPERVISORS?

25 A YES, BY THE ORGANIZATION OF FUNCTIONAL
26 FLUIDS ORGANIZATION IN ST. LOUIS.

27 Q ALL RIGHT. WHAT DID YOU UNDERSTAND TO BE
28 THE COMPANY POSITION WITH RESPECT TO THIS EMERGING

1 KNOWLEDGE?

2 A THE WAY WE TREATED IT WAS I THOUGHT,
3 AGAIN I HAVE BEEN AWAY FROM THE COMPANY FOR SOME
4 TIME, I THOUGHT IT WAS WITH AN EXTREMELY PROFESSIONAL
5 DEGREE, HIGH DEGREE OF PROFESSIONALISM IN THE SENSE
6 THEY KEPT US INFORMED WITH AS MUCH INFORMATION AS
7 POSSIBLE SO THAT WE COULD EITHER TALK TO THE
8 CUSTOMERS AND BE ABLE TO HAND OUT WHATEVER WE HAD AT
9 THE TIME OR THAT WE KNEW WHO TO REFERENCE OR REFER
10 PEOPLE TO WHEN THEY HAD QUESTIONS ON PCB'S.

11 BUT IT WAS, I FELT, AN ABSOLUTELY WIDE
12 OPEN, VERY PROFESSIONAL WAY OF HANDLING A VERY
13 DIFFICULT SITUATION.

14 Q DID YOU EVER DISCUSS THAT SITUATION WITH
15 TEXAS EASTERN?

16 A I'M SURE I DID.

17 I DON'T RECALL.

18 Q YOU DON'T --

19 A I'M SURE I DID BUT I DON'T HAVE A
20 SPECIFIC RECOLLECTION.

21 Q BUT YOU CAN'T TELL ME A PARTICULAR DATE
22 OR CONVERSATION?

23 A AGAIN YOU HAVE TO GO BACK TO THE
24 CHEMISTRY.

25 A PCB IS A CHLORINATED HYDROCARBON AND A
26 POLYCHLORINATED BIPHENYL.

27 AS SUCH IT IS ALL ONE AND THE SAME.

28 Q LET'S GO BACK TO THE CHEMISTRY FOR A

1 MOMENT.

2 YOU MENTIONED YOU WERE FAMILIAR WITH AT
3 LEAST ONE AROCLOR THAT WAS A COMPONENT OF TURBINOL.
4 WHICH WAS THAT?

5 A 1242.

6 Q DO YOU REMEMBER ANYTHING ELSE ABOUT THE
7 COMPOSITION OF TURBINOL?

8 A NO.

9 Q DO YOU RECALL RECEIVING ANY CRITICISM
10 FROM EITHER CUSTOMERS OR COMPETITORS ABOUT MONSANTO'S
11 CONTINUED SALE OF PCB PRODUCTS?

12 A I HAVE TROUBLE WITH THE CUSTOMERS WITH
13 THE APPROACH WE WERE TAKING.

14 AS I RECALL IT WAS A FAIRLY POSITIVE
15 APPROACH OR WE ATTEMPTED TO KEEP EVERYTHING ABOVE
16 BOARD.

17 WE DID HAVE AN AWFUL LOT, I REMEMBER
18 SPECIFICALLY, WE HAD SOME COMPETITORS THAT ATTEMPTED
19 TO TAKE VERY WELL-DEFINED ADVANTAGE OF THE
20 SITUATION.

21 Q WHAT DO YOU RECALL IN THAT REGARD?

22 A WELL, THERE IS ONE COMPETITOR IN
23 PARTICULAR I WILL NEVER FORGET.

24 IT WAS CALLED STAUFFER CHEMICAL.

25 THEY WERE VERY SPECIFIC IN ATTACKING THE
26 PRODUCTS, NOT ONLY PYDRAULS BUT ALSO WHICH THEY HAD
27 COMPETITIVE PRODUCTS THAT DID THE SAME JOB. THEY
28 WEREN'T CHEMICALLY THE SAME, AND ALSO THE TURBINOL.

1 Q DID YOU EVER, SIR, HEAR THE TERMS "CLOSED
2 SYSTEM" OR "CLOSED LOOP" WHILE YOU WERE SELLING
3 FUNCTIONAL FLUIDS?

4 A YES.

5 Q AND WHAT DO THOSE TERMS MEAN TO YOU?

6 A I SEE THEM AS TWO SEPARATE TERMS.

7 I SEE THE CLOSED SYSTEM AS BEING TOTALLY
8 ENCAPSULATED, ALMOST ENVISIONING IT AS A CHAMBER, IF
9 YOU WILL, WHERE YOU HAVE FLUIDS CIRCULATING OR
10 RECYCLING THROUGH THE CHAMBER. A CLOSED LOOP I THINK
11 MORE IN TERMS OF A PUMP. YOU HAVE A DRIVING FLUID
12 THROUGH PIPES, THROUGH HOSES AND THAT IT'S MORE OR
13 LESS RECIRCULATING. IT'S RECYCLING UNDER PRESSURE.

14 Q DID YOU HAVE OCCASION, SIR, TO LEARN WHAT
15 USE TEXAS EASTERN WAS PUTTING TURBINOL TO THAT YOU
16 SOLD THEM?

17 A THE TURBINES, TO MY RECOLLECTION, WERE
18 CLOSED SYSTEMS.

19 THEY WERE IN THIS CHAMBER AS FAR AS I
20 RECALL, AS I DESCRIBE IT.

21 Q WHAT DID YOU LEARN ABOUT THE OPERATION OF
22 TEXAS EASTERN'S TURBINES AND COMPRESSORS WHILE YOU
23 WERE SERVICING THAT ACCOUNT?

24 A I LEARNED THAT -- I LEARNED VERY LITTLE
25 ABOUT IT FROM THE TECHNICAL STANDPOINT.

26 I ATTEMPTED TO LEARN HOW MANY THEY HAD,
27 HOW MANY THEY HAD SO WE COULD FORECAST WHAT THE FLUID
28 CONSUMPTION WAS.

1 I LEARNED VERY LITTLE AS FAR AS THE
2 OPERATION.

3 Q DID YOU CONSIDER YOURSELF ANY SORT OF AN
4 EXPERT IN COMPRESSOR OR PIPELINE OPERATIONS?

5 A NO.

6 I HAD -- FELT IN LOOKING AT TEXAS
7 EASTERN THAT WE HAD A DIALOGUE, AN OPEN DIALOGUE UP
8 AND DOWN BOTH SIDES OF THE ORGANIZATION.

9 MONSANTO AND TEXAS EASTERN, NOT ONLY FROM
10 A COMMERCIAL STANDPOINT ABOVE ME BUT ALSO FROM A
11 TECHNICAL STANDPOINT ABOVE ME IN ST. LOUIS.

12 Q DID ANYONE FROM TEXAS EASTERN EVER TELL
13 YOU THAT THEIR TURBINE AND COMPRESSOR EQUIPMENT WAS
14 LEAKING LUBRICANT INTO THE PIPELINE?

15 A I DON'T RECALL, NO, NO.

16 Q DID YOU EVER BECOME AWARE, DURING THE
17 TIME THAT YOU WERE SERVICING THE TEXAS EASTERN
18 ACCOUNT, OF THE POTENTIAL FOR LEAKS IN COMPRESSOR OR
19 TURBINE EQUIPMENT?

20 A YES.

21 Q WHAT DO YOU RECALL IN THAT REGARD?

22 A THE FACT THAT A TURBINE FOR ANY SYSTEM
23 THAT -- A CLOSED SYSTEM SUCH AS THIS REQUIRED SEALS.
24 AND THE FUNCTION OF THE SEALS WAS TO ALLOW TWO PIECES
25 OF METAL OR JOINTS TO COME TOGETHER BUT ALLOW -- NOT
26 ALLOW THE FLUID TO LEAK AROUND OR THROUGH THE JOINT,
27 EITHER THROUGH INCORRECT SEALS OR POOR MAINTENANCE
28 YOU COULD HAVE SEAL LEAKAGE.

1 THAT WOULD BE THE WAY THAT YOU COULD SEE
2 LEAKAGE.

3 Q DID YOU EVER LEARN THAT ACTUALLY
4 OCCURRED?

5 A NO.

6 WE DIDN'T -- I DIDN'T PERSONALLY TRACK.

7 Q WHAT IS YOUR UNDERSTANDING OF HOW SEAL
8 LEAKS LIKE THAT COULD OCCUR?

9 MR. TALLON: OBJECTION, FOUNDATION.

10 THE COURT: SUSTAINED.

11 LAY SOME FOUNDATION.

12 Q BY MR. ZIMMER: DID YOU EVER DISCUSS
13 MAINTENANCE OF COMPRESSOR OR THE SEALS WITHIN THEM
14 WITH ANYONE AT TEXAS EASTERN?

15 A NO.

16 IT WASN'T MY -- IT WAS NOT MY EXPERTISE.

17 Q DID YOU EVER SELL PYDRAUL FLUIDS?

18 A YES.

19 Q AND WHAT WERE THEY?

20 A PYDRAUL, AGAIN, WOULD BE USED IN A -- IN
21 THE CLOSED LOOP SYSTEM THAT I WAS REFERENCING WHERE
22 YOU HAVE RECIRCULATING FLUID.

23 ITS PRIMARY PURPOSE -- IT WAS USED IN
24 METALWORKING.

25 HERE WHERE YOU MAKE AN ENGINE CASING,
26 WHERE YOU HAVE PRESSURE COMING TOGETHER WITH MOLTEN
27 METALS, YOU NEED TO SHAPE IT AND NEED TO PUT PRESSURE
28 ON TWO PLATES THAT FORM THAT ENGINE MOUNT OR ENGINE

1 HEAD.

2 THAT IS THE TERMINOLOGY, TOGETHER, IN
3 ORDER TO GET PRESSURE TO FORM THAT ENGINE HEAD YOU
4 HAVE TO HAVE A HYDRAULIC SYSTEM PUTTING PSI ON THE
5 PLATES. THAT WAS A CLOSED LOOP. THAT IS AN EXAMPLE
6 OF WHERE A LOT OF PYDRAULS WERE USED IN THAT TYPE OF
7 APPLICATION.

8 Q WAS TURBINOL A PYDRAUL?

9 A TURBINOL.

10 Q RIGHT?

11 A NO..

12 Q DO YOU RECALL, SIR, ANY CHANGE IN THE
13 FORMULATION OF PYDRAULS WHILE YOU WERE SELLING
14 FLUIDS?

15 A ABSOLUTELY, YES.

16 Q AND WHAT DO YOU RECALL IN THAT REGARD?

17 A THAT WE DID CHANGE PYDRAULS FROM AROCLORS
18 TO PCB'S TO NON-PCB'S OR PHOSPHATE ESTERS.

19 Q WHAT IS YOUR UNDERSTANDING OF WHY
20 MONSANTO WAS MOVING AWAY FROM A PCB CONTENT IN
21 PYDRAUL FLUIDS?

22 A I THINK PROBABLY PRIMARILY THE ISSUE WAS
23 THAT ALTHOUGH PCB'S WAS A CONCERN I DON'T BELIEVE
24 THERE WERE ANY CONSEQUENCES THAT HAD BEEN LAID OUT
25 AGAINST THE PRODUCT.

26 I THINK THERE WERE ENOUGH ISSUES AND I
27 THINK MONSANTO -- AGAIN, I THINK HIGHLY OF
28 MONSANTO -- WAS A RESPONSIBLE COMPANY, RESPONSIBLE

1 CHEMICAL COMPANY.

2 AS A CONSEQUENCE THEY SAID THIS IS NOT A
3 LONG-TERM ISSUE WITH US. WE HAVE TO DO SOMETHING
4 ABOUT IT NOW.

5 Q DO YOU KNOW IF THE PYDRAUL FLUIDS WERE
6 BEING REFORMULATED? TURBINOL WAS NOT BEING
7 REFORMULATED?

8 A I THINK IF YOU LOOK AT THE PYDRAUL
9 APPLICATION, AS I MENTIONED, WITH THE CLOSED LOOP
10 TYPE OF THING, I THINK THE VULNERABILITY WAS MUCH
11 GREATER.

12 THE LOSS OF FLUID FROM THAT SYSTEM WAS
13 IMMENSELY GREATER BECAUSE OF THE HIGH PRESSURE AND
14 BECAUSE OF THE POINTS IN THE LOOP THAT YOU COULD LOSE
15 PRESSURE.

16 WE ARE AGAIN GETTING BACK TO THE LITERAL
17 DEFINITION OF CLOSED SYSTEM.

18 YOU HAD A CLOSED SYSTEM WITH THE
19 TURBINOL.

20 Q WHEN YOU SAY "POINTS IN THE LOOP"?

21 A LITERALLY THE CLOSED LOOP OF THE
22 HYDRAULIC SYSTEM.

23 YOU HAD JOINTS BETWEEN HOSE AND PIPE AND
24 BETWEEN PIPE AND PUMP, THINGS LIKE THAT.

25 THERE YOU HAD DEFINITE LEAKAGE, WHETHER
26 YOU WANTED IT THERE OR NOT.

27 I DON'T RECALL SEEING THE PERFECT SYSTEM.

28 Q DO YOU RECALL SEEING HYDRAULIC SYSTEMS

1 THAT USED PYDRAUL?

2 A YES.

3 Q WHAT SORT OF HOSES DO YOU RECALL SEEING?

4 A THE ONLY HOSE THAT I RECALL IS THAT USED
5 BY HOUSTON.

6 THAT WAS DIFFERENT. JUST A REGULAR HOSE
7 BECAUSE OF THE COMPATIBILITY PROBLEM YOU HAD WITH THE
8 PYDRAULS OR WITH THE CHEMISTRY.

9 Q TO YOUR KNOWLEDGE WERE ANY HOSES USED IN
10 NATURAL GAS TURBINE AND COMPRESSOR SYSTEMS?

11 MR. TALLON: OBJECTION, FOUNDATION.

12 THE COURT: SUSTAINED.

13 Q HOW WERE YOU INFORMED ABOUT THE PYDRAUL
14 REFORMULATION PROGRAM THAT YOU DESCRIBED A MOMENT
15 AGO?

16 A WE WERE INFORMED BY ST. LOUIS THAT WE
17 WOULD UNDERTAKE AN EFFORT TO REFORMULATE PYDRAULS.

18 SO ST. LOUIS INFORMED US THAT THIS IS ITS
19 INTENT AND THIS IS THE DIRECTION WE ARE GOING AND
20 THESE ARE THE PRODUCTS WE WOULD BE REFORMULATING.

21 Q WERE YOU GIVEN INSTRUCTIONS AS TO WHAT TO
22 TELL YOUR CUSTOMERS ABOUT THOSE REFORMULATIONS?

23 A YES.

24 Q DID YOU FOLLOW THOSE?

25 A LOOSELY SPEAKING, I WOULD SAY SO.

26 AGAIN, AT THAT TIME IT WAS MORE OF A
27 CONCERN THAN A CONSEQUENCE.

28 SO THERE WERE A LOT OF QUESTIONS THAT

1 WOULD COME UP BUT THEY WERE NOT NECESSARILY QUESTIONS
2 THAT THE CUSTOMER WAS VITALLY CONCERNED WITH.

3 AGAIN IT WAS NOT A DONE DEAL WITH HOW
4 GOOD OR BAD PCB'S WERE.

5 I THINK I WOULD HAVE ATTEMPTED TO FOLLOW
6 THOSE.

7 PROBABLY IT WAS SAFER FROM MY STANDPOINT,
8 BECAUSE, AGAIN, I HAD A LOT OF PRODUCTS.

9 I HAD A LOT OF TERRITORY TO REFER
10 EVERYTHING BACK TO ST. LOUIS AND LET THEM HANDLE IT.

11 Q MOVING BACK TO TEXAS EASTERN FOR A
12 MOMENT, DID YOU GAIN UNDERSTANDING DURING SERVICING
13 THEIR ACCOUNTS AS TO HOW LONG TEXAS EASTERN HAD BEEN
14 PURCHASING CHLORINATED POLYPHENYLS TURBINE LUBRICANT
15 FROM MONSANTO?

16 A IT HAD BEEN WHEN I CAME ON THE JOB, IT
17 HAD BEEN A NUMBER OF YEARS.

18 SPECIFICALLY I COULDN'T RECALL.

19 Q HAVE YOU EVER HEARD OF A PRODUCT CALLED
20 OS-81?

21 A YES.

22 Q DO YOU KNOW WHETHER THAT WAS SOMETHING
23 THAT MONSANTO WAS SELLING TO TEXAS EASTERN?

24 A AS I RECALL, THAT WAS THE FOUNDING FATHER
25 OF TURBINOL-153 OR THE INITIAL FLUID THAT WAS
26 DEVELOPED BY MONSANTO AND TEXAS EASTERN.

27 Q NOW, WHEN YOU STARTED ON THE TEXAS
28 EASTERN ACCOUNT IN 1968, HOW WAS TURBINOL SHIPPED TO

1 TEXAS EASTERN?

2 A IN DRUMS.

3 Q DID YOU EVER SEE OF ANY THOSE DRUMS?

4 A NO.

5 MR. ZIMMER: YOUR HONOR, THIS MIGHT BE AN
6 OPPORTUNITY.

7 THE COURT: WE WILL TAKE THE AFTERNOON BREAK AT
8 THIS POINT, LADIES AND GENTLEMEN AND BE IN RECESS
9 UNTIL THREE O'CLOCK.

10 PLEASE RETURN AT THAT TIME.

11 (RECESS.)

12 THE COURT: AND RESUMING.

13 LADIES AND GENTLEMEN, A CHANGE IN OUR
14 PROGRAM FOR THIS AFTERNOON.

15 THERE IS SOMETHING I NEED TO DO WITH THE
16 LAWYERS BEFORE WE COMPLETE THE TESTIMONY OF THIS
17 WITNESS.

18 I'M GOING TO EXCUSE YOU NOW UNTIL
19 TOMORROW MORNING.

20 YOU ARE NOT SUPPOSED TO THINK ABOUT THE
21 CASE.

22 SO PLEASE REMEMBER THAT ADMONITION AND
23 THE DIRECTION TO NOT SAY ANYTHING TO ANY OTHER
24 PERSON, HAVE A NICE EVENING.

25 WE WILL SEE YOU TOMORROW MORNING AT
26 9:30.

27 (THE PROCEEDINGS WERE RESUMED IN OPEN
28 COURT OUT OF THE PRESENCE OF THE JURY.)

1 THE COURT: ALL THE JURORS HAVING LEFT THE
2 COURTROOM, COUNSEL, WE TALKED INFORMALLY THIS MORNING
3 ABOUT THE TESTIMONY OF MR. BAYLEY.

4 AND I FEEL THAT IT'S SOMETHING THAT YOU
5 SHOULD PUT ON THE RECORD AND I NEED TO RESOLVE WHICH
6 I DID NOT FULLY DO THIS MORNING.

7 LET'S TAKE A FEW MINUTES NOW TO RESOLVE
8 THAT CONCERN.

9 MR. PREUSS, IS IT STILL MONSANTO'S
10 POSITION THAT YOU DO NOT WANT TO CALL MR. BAYLEY IN
11 YOUR DEFENSE CASE?

12 MR. PREUSS: YES, YOUR HONOR.

13 WE HAVE MADE THE DECISION NOT TO CALL
14 MR. BAYLEY AS PART OF OUR CASE.

15 THE COURT: AND HIS HAVING BEEN HERE AND BEING
16 SUBJECT TO THE JURISDICTION OF THE COURT AND NOT
17 BEING EXCUSED FROM FURTHER ATTENDANCE, MR. TALLON,
18 YOU WANT TO RECALL HIM IN REBUTTAL; IS THAT CORRECT?

19 MR. TALLON: THAT'S CORRECT.

20 THE COURT: WE DISCUSSED 2034 SUBDIVISION M AND
21 HIS AVAILABILITY IN CONNECTION WITH THE PREMISES OF
22 ANOTHER EXPERT.

23 MR. TALLON, COULD YOU TELL US
24 SPECIFICALLY WHAT PREMISES OF MR. MILLER OR ANY OTHER
25 EXPERT YOU EXPECT TO RECALL HIM IN CONNECTION WITH
26 FURTHER TESTIMONY?

27 MR. TALLON: YOUR HONOR, MAY I HAVE THE
28 INDULGENCE OF THE COURT TO JUST BACK UP TO THE M-1

1 SECTION?

2 THE COURT: GO AHEAD.

3 MR. TALLON: BECAUSE WHEN WE MET IN CHAMBERS
4 THIS MORNING I HAD NOT READ 2034 M AND I HAVE SINCE.

5 2234 M PROVIDES THAT A PARTY MAY CALL AS
6 A WITNESS AT TRIAL AN EXPERT NOT PREVIOUSLY
7 DESIGNATED BY THAT PARTY IF, ONE, THAT EXPERT HAS
8 BEEN DESIGNATED BY ANOTHER PARTY AND HAS THEREAFTER
9 BEEN DEPOSED UNDER SUBDIVISION I OF SECTION 2034.

10 THEN SECTION 2034 M GOES ON --

11 THE COURT: SIMPLY BEING DEPOSED AFTER A
12 DESIGNATION BY MONSANTO QUALIFIES HIM FOR THE CALL
13 OF -- I DON'T THINK THAT IS THE PROBLEM, MR. -- THE
14 PROBLEM IS, IF YOU HAD CALLED HIM IN YOUR CASE IN
15 CHIEF, THEN YOU WOULD QUALIFY UNDER THAT SECTION.

16 THE QUESTION NOW IS, HAVING CHOSEN FOR
17 YOUR OWN REASONS TO NOT CALL HIM IN YOUR CASE IN
18 CHIEF, DO YOU HAVE ANY BASIS TO CALL HIM OTHER THAN
19 IN REBUTTAL?

20 MR. TALLON: MY REASONS FOR NOT CALLING HIM WAS
21 BECAUSE HE WAS BEING MADE AVAILABLE, PUT ON THE
22 WITNESS LIST AND LOCKED IN AS OF LAST FRIDAY, AS WELL
23 AS FROM OCTOBER 8TH FORWARD.

24 SO I READ 2034 M-1 AS SAYING THAT HE IS
25 SOMEONE I HAVE NOT DESIGNATED BEFORE.

26 HE HAS BEEN DEPOSED AND, THEREFORE, I CAN
27 CALL HIM IN REBUTTAL.

28 THE COURT: LET ME ASK YOU FOR AN OFFER OF

1 PROOF, MR. TALLON, ON HIS RELEVANCE.

2 MR. TALLON: OKAY.

3 MR. BAYLEY, IF CALLED BY ME, WOULD
4 TESTIFY AS TO THE FACTS ASSOCIATED WITH THE OPERATION
5 OF THE LABYRINTH SEAL IN TERMS OF THE FLOW ACROSS IT.

6 AND MORE PARTICULARLY THAT IN OPERATION
7 THE PRESSURE DIFFERENTIAL BEHIND THE SECOND STAGE
8 IMPELLER AND IN THE SEAL OIL DRAIN CAVITY ARE THE
9 SAME.

10 THAT IS, AS MR. BAYLEY PUTS IT, THERE IS
11 NO FLOW OF GAS OR ANYTHING HE SAYS ACROSS THE
12 LABYRINTH SEAL.

13 THAT HAS A FACTUAL UNDERPINNING TO THE
14 OPINION.

15 THE COURT: ARE THERE ANY OTHER POINTS?

16 YOU DON'T NEED TO DO A COMPLETE PARADE OF
17 ALL THE THINGS HE WOULD SAY, BUT GIVE ME AN OFFER OF
18 PROOF ON THE RELEVANCE.

19 MR. TALLON: THE SECOND POINT IS THAT HE WOULD
20 TESTIFY REGARDING THE FACTS OF THE FUNCTIONALITY OF
21 THE SEAL OIL DRAIN TRAP AND HOW IT DRAINS IN NORMAL
22 OPERATION AS WELL AS IN START-UP AND IN SHUTDOWN.

23 THE COURT: SO HE WILL BE TESTIFYING TO THE
24 DRAIN TRAP AND TO THE SEAL PRESSURES.

25 ANY OTHER POINTS?

26 MR. TALLON: WELL, THE EFFECTS OF THOSE
27 THINGS.

28 THE COURT: YES, I UNDERSTAND.

1 ANYTHING FURTHER, MR. ZIMMER OR
2 MR. PREUSS?

3 MR. ZIMMER: YES.

4 I THINK THE COURT HAS CORRECTLY OBSERVED
5 THAT PLAINTIFF HAVING RESTED WITHOUT CALLING
6 MR. BAYLEY IN THEIR CASE IN CHIEF WE ARE BROUGHT
7 SQUARELY WITHIN THE AMBIT OF 2034 P-2 WHICH, INDEED,
8 SAYS, AMONG OTHER THINGS, THAT THE IMPEACHMENT
9 TESTIMONY MR. TALLON WOULD INTEND TO OFFER VIA
10 MR. BAYLEY MAY INCLUDE TESTIMONY AS TO THE FALSITY OR
11 NONEXISTENCE OF ANY FACT USED AS THE FOUNDATION FOR
12 ANY OPINION BY ANY OTHER PARTY'S EXPERT WITNESS BUT
13 MAY NOT INCLUDE TESTIMONY THAT CONTRADICTS THE
14 OPINION.

15 THIS MORNING IN CHAMBERS MR. TALLON
16 INDICATED THAT HE BELIEVED THAT MR. BAYLEY'S
17 TESTIMONY WOULD, IN FACT, CONTRADICT SOME OF THAT
18 OFFERED BY MR. MILLER AND, IN FACT, HE HAS JUST
19 REITERATED THAT OF THE THREE OR FOUR THINGS
20 MENTIONED, FACTS ABOUT THE OPERATION OF THE LABYRINTH
21 SEAL AND THE FLOW ACROSS IT, WHETHER THE PRESSURE
22 DIFFERENTIAL IS THE SAME OR NOT AND THE FUNCTIONALITY
23 OF THE SEAL OIL DRAIN TRAP, NONE OF THOSE ARE
24 FOUNDATIONAL ISSUES AS TO WHAT EACH OF THESE EXPERTS
25 REVIEWED AND RELIED UPON.

26 THEY ARE ALL, YOUR HONOR, EFFORTS TO SHOW
27 THAT MR. BAYLEY'S TESTIMONY MIGHT CONTRADICT THAT OF
28 MR. MILLER.

1 THE COURT: HERE IS THE PROBLEM I SEE,
2 MR. ZIMMER.

3 THE ENTIRE SECTION OF SUBSECTION M
4 RELATES TO CALLING A WITNESS NOT PREVIOUSLY
5 DESIGNATED BY THAT PARTY.

6 HERE TRANSWESTERN HAS NOT DESIGNATED
7 MR. BAYLEY.

8 THE QUESTION IS NOT WHETHER THEY CAN CALL
9 THAT PERSON UNDER EITHER OF THE TWO STANDARDS SET
10 FORTH.

11 I HEAR MR. TALLON OFFERING BOTH STANDARDS
12 AS A BASIS.

13 MR. ZIMMER: I GUESS I PRIMARILY ADDRESSED THE
14 SECOND.

15 THE COURT: BY LOOKING ONLY AT THE SECOND
16 BASIS, YOU ARE SAYING THAT EVEN IF BAYLEY DOES TALK
17 TO THE DRAIN TRAP AND THE SEAL PRESSURES, HE SHOULD
18 STILL BE PRECLUDED FROM TESTIMONY OF A DIFFERENT
19 OPINION, A DIFFERENT CONCLUSION.

20 AND THAT DOESN'T ADDRESS THE FIRST
21 CONCERN.

22 THAT DOESN'T ADDRESS THE FIRST AND WE
23 DIDN'T LOOK AT IT IN CHAMBERS SO YOU SHOULD RESPOND
24 TO THAT.

25 MR. ZIMMER: I WOULD BE HAPPY TO, YOUR HONOR.

26 AS FAR AS CASES THAT INTERPRET 2034 M GO
27 WAS INDEED A LEGISLATIVE RESPONSE TO THE GALLO
28 DECISION WHICH I COULD CITE TO THE COURT, IF YOU

1 WOULD LIKE, ONE OTHER CASE CALLED POWELL VERSUS
2 ROSEBUD COMMUNITY HOSPITAL THAT HAS INTERPRETED IN
3 THAT SECTION.

4 BOTH OF THOSE DEAL WITH SITUATIONS IN
5 WHICH THE PARTY WOULD HAVE BEEN PRECLUDED FROM
6 CALLING THAT PERSON AT ALL BUT SOUGHT THE RELIEF
7 BEFORE THEY HAD RESTED.

8 THE COURT: LET ME INTERRUPT YOU.

9 SO THAT I CAN LOOK AT THOSE TWO CASES AND
10 SO THAT TRANSWESTERN CAN LOOK AT THOSE TWO CASES,
11 LET'S HAVE THE CITE.

12 WE WILL TAKE A RECESS FOR THE EVENING AND
13 THEN TOMORROW MORNING I CAN RESPOND WITH WHAT THE
14 CASES APPEAR TO CITE.

15 MR. ZIMMER: OKAY.

16 THE POWELL VERSUS ROSEBUD COMMUNITY
17 HOSPITAL CASE IS AT 211, CLAN THIRD, 441.

18 AND GALLO VERSUS PENINSULA HOSPITAL IS AT
19 164 CAL.APP.3D, 899.

20 AND IF I MAY, YOUR HONOR, I WOULD LIKE TO
21 MAKE ONE OTHER BRIEF POINT IN RESPONSE TO YOUR
22 QUESTION ABOUT 2034 M-1, THAT BEING THAT AS I HAVE
23 ALREADY INDICATED WE THINK THAT THAT SECTION OF THE
24 STATUTE IS MOOT, GIVEN THE FACT THAT PLAINTIFF HAS
25 RESTED AND GIVEN ONE OTHER IMPORTANT FACTOR, THAT IS
26 THAT MR. TALLON HAS ALSO INDICATED HE WISHES TO CALL
27 MR. BAYLEY ON REBUTTAL.

28 WE HAVE BEEN SERVED IN THIS CASE AND I

1 BELIEVE THE COURT MAY HAVE A COPY OF A LIST OF 41
2 COUNTER-FAIRNESS DESIGNATIONS AND REBUTTAL WITNESSES
3 FROM TRANSWESTERN.

4 MR. BAYLEY'S NAME DOES NOT APPEAR ON THAT
5 LIST AND IMPORTANTLY AT LEAST TWO OF MONSANTO'S
6 CASE-IN-CHIEF WITNESSES, MR. BISTLINE AND MR. MASON
7 DON'T APPEAR.

8 I FEEL THAT IS ANOTHER IMPORTANT
9 INDICATION.

10 THE COURT: I'M STAYING CONSISTENT WITH WHAT I
11 SAID EARLIER THIS MORNING WHEN WE MET INFORMALLY ON
12 THIS CONCERN.

13 THAT IS, I CAN SEE TRANSWESTERN CALLING
14 BAYLEY ONLY ON REBUTTAL, THAT MEANS TO RESPOND TO
15 DEFENSE TESTIMONY.

16 I'M NOT CONSIDERING EVEN UNDER 2034 M-1
17 THAT THEY CAN SUPPLEMENT THE TRANSWESTERN CASE, THE
18 CASE IN CHIEF.

19 MR. ZIMMER: I UNDERSTAND, YOUR HONOR.

20 WHAT I'M SUGGESTING, IN THE LIST OF
21 POTENTIAL REBUTTAL WITNESSES THAT THEY HAVE RESERVED
22 DOES NOT INCLUDE MR. BAYLEY.

23 THE COURT: I'M LESS IMPRESSED BY THAT BECAUSE
24 I THINK THEY ARE ENTITLED TO MAKING TACTICAL
25 DECISIONS TO THINK THAT THEY WOULD BE ABLE TO DEVELOP
26 MATERIAL FROM BAYLEY UNDER CROSS-EXAMINATION WHEN HE
27 HAS BEEN ON MONSANTO'S WITNESS LIST, AS I UNDERSTAND
28 IT, FROM THE INCEPTION.

1 SO I DON'T HAVE A SIGNIFICANT PROBLEM
2 WITH THEIR NOT COUNTER-DESIGNATING BAYLEY AS THEY
3 COUNTER DESIGNATED BISTLINE OR OTHERS.

4 THEY CAN MAKE THOSE TACTICAL DECISIONS
5 BUT THEN THEY HAVE TO LIVE WITH THEM.

6 HAVING MADE THE DECISION NOT TO COUNTER
7 DESIGNATE, THEN THE ONLY PROBABLE SCOPE OF ANY BAYLEY
8 TESTIMONY, IT SEEMS TO ME, IS IN REBUTTAL.

9 MR. ZIMMER: OUR FINAL POINT, YOUR HONOR, WOULD
10 SIMPLY BE WE DON'T FEEL THAT ANY TESTIMONY HE COULD
11 OFFER WOULD BE THE PROPER SUBJECT OF REBUTTAL IN THAT
12 MY UNDERSTANDING THAT REBUTTAL TESTIMONY MUST
13 CONFRONT SOMETHING COMPLETELY NEW, DIFFERENT,
14 UNEXPECTED, A SURPRISE TO PARTICIPANTS.

15 BOTH MR. MILLER AND BAYLEY WERE DEPOSED
16 BY TRANSWESTERN FOR SOME THREE AND FOUR DAYS APIECE.

17 THE COURT: ANY CASES YOU THINK I SHOULD LOOK
18 AT THAT YOU KNOW NOW, MR. TALLON?

19 MR. TALLON: NO, I DON'T, YOUR HONOR.

20 IF I MAY HAVE UNTIL FOUR -- I DON'T
21 THINK THERE IS ANYTHING ELSE.

22 THE COURT: IF YOU DO LEARN MORE CASES, PLEASE
23 TELEPHONE THEM TO COUNSEL FOR MONSANTO AND TO THE
24 COURT.

25 I WILL BE HERE.

26 AND I WILL BE ABLE TO LOOK AT THOSE CASES
27 THIS EVENING.

28 MR. TALLON: FOR THE RECORD, THE DOCUMENT THAT

1 MR. ZIMMER IS REFERRING TO WAS A DOCUMENT OF
2 POTENTIAL REBUTTAL WITNESSES WE SENT TO THEM.

3 I DON'T THINK THAT HAS ANY OFFICIAL
4 STATUS WITH THE COURT SINCE WE DIDN'T FILE IT.

5 THE COURT: ANYTHING FURTHER THIS EVENING,
6 MR. TALLON?

7 MR. TALLON: NO.

8 THE COURT: MR. ZIMMER?

9 MR. ZIMMER: NO, THANK YOU.

10 THE COURT: THEN WE ARE IN RECESS.

11 THANK YOU.

12
13
14 (AT 3:20 P.M., THE PROCEEDINGS WERE ADJOURNED
15 UNTIL FRIDAY, DECEMBER 17, 1993 AT 9:30 A.M.)
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