

COMMONWEALTH OF KENTUCKY
ROWAN CIRCUIT COURT
CIVIL BRANCH

TENNESSEE GAS PIPELINE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 94-C1-90145
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

VOLUME II, Pages 250 through 373

The continued deposition of NORMAN T. JOHNSON,
taken before ELLEN M. WILLIAMS, C.S.R., Notary Public,
at The Sheridan Suites Hotel, 121 North West Point Road,
The Board Room, in the Village of Elk Grove, Cook
County, Illinois, commencing at 9:35 o'clock a.m., on
the 23rd day of August, 1995.

WATER RESOURCES DIVISION
P.O. BOX 2508
DENVER, COLORADO 80202

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REPORT

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 1 APPEARANCES:
 2 HEDLUND, HANLEY & JOHN
 3 (Sears Tower, Suite 5700
 4 Chicago, Illinois 60606), by:
 5 MR. KEVIN B. DUFF,
 6 On behalf of the Plaintiff;
 7 SMITH, HELMS, MULLISS & MOORE, L.L.P.
 8 (227 North Tryon Street
 9 Charlotte, North Carolina 28202), by:
 10 MR. ROLLY L. CHAMBERS,
 11 On behalf of the Defendant.
 12 ALSO PRESENT:
 13 Mr. Terry Kupperman, A-1 Legal Video
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 11 THE VIDEOGRAPHER: This will be
 12 the start of 13 Tape Number 5 on August
 13 23, 1995. 14 (Witness previously sworn) 15
 16 NORMAN T. JOHNSON, 17 the witness at
 18 the time of recess, having been 19
 20 previously sworn, was examined and
 21 testified further as 22 follows: 23
 24 EXAMINATION [Resumed]
 1 BY MR. DUFF:
 2 Q. Good morning, Mr. Johnson. How
 3 are you doing 4 this morning?
 5 A. I'm here. That's all I can tell you.
 6 Q. I just wanted to review with you,
 7 this is -- 8 we're resuming your
 9 deposition today, continuing your 10
 11 deposition from yesterday. Do you
 12 understand that 13 you're still under oath
 14 today?
 15 A. Yes.
 16 Q. Yesterday afternoon we were talking
 17 about a 18 February 9, 1970 pollution
 19 letter that was sent out to 20 some of your
 21 customers, do you recall that?

211 A. Let me pull it out again.
 212 Q. For your reference, this letter was
 213 marked 214 previously as Plaintiff's 22.
 215 A. Yes. The one sent out by Don Olson?

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 111 Q. That's correct. Do you have it in
 112 front of 113 you?
 114 A. Yes, I do.
 115 MR. DUFF: I'd like to have marked as
 116 the next 117 exhibit Number 63. 118
 119 (Whereupon, Plaintiff's Exhibit 63 120 was
 121 marked for identification)

122 BY MR. DUFF:
 123 Q. And I'm providing a copy to
 124 counsel. 125 This is a group exhibit. There
 126 are five 127 stapled documents -- five
 128 individually stapled documents 129 that I've
 130 grouped together here. Do you see that all
 131 five of these documents have the
 132 heading Functional 133 Fluids at the top?

134 A. Yes.
 135 MR. DUFF: For the record, these
 136 documents 137 bear production numbers
 138 TRAN 0034240 through 42 -- I'm 139 sorry
 140 through, 43; TRAN 022346 through 47,
 141 TRAN 004266 142 through 67, and TRAN
 143 024996. And I believe -- just so 144 the
 145 record is clear, I believe I lumped the first
 146 two 147 documents together, so I'll just
 148 make that clear. The 149 first document is
 150 TRAN 003240 through 41, and the second
 151 document in this group is TRAN
 152 003242 through 43.

153 BY MR. DUFF:
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 154 Q. Would you take a moment to look
 155 through these 156 documents?

157 A. Okay.
 158 Q. Are these drafts of the February 9,
 159 1970 160 letter?
 161 A. I would believe so.
 162 Q. And having perused these
 163 documents, do you 164 see any documents
 165 that contain your handwriting in 166 Exhibit
 167 -- Plaintiff's Exhibit 63?

168 A. No.
 169 Q. Do you recognize any of the
 170 handwriting on 171 any of these documents
 172 in Plaintiff's Exhibit 63?
 173 A. No. Oh, boy.
 174 Q. Do you recall who participated in
 175 drafting 176 the February 9, 1970 pollution
 177 letter?

178 A. Well, obviously Don Olson was
 179 involved. I 180 don't know if Howard
 181 Bergen was involved in reviewing 182 the
 183 letter. There may have been other people,
 184 but those 185 would be the two that I would
 186 think would have been 187 involved. I'm
 188 not sure Don Olson was still around, or 189
 190 maybe it was Tom Gossage.

[22] Q. Do you see that Mr. Olson in fact signed the [23] February 9, 1970 letter? That's in -- Plaintiff's 22 [24] shows that, I believe. Do you see that?

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[1] A. Yes.

[2] Q. And do you recall any of the preparation that [3] was undertaken before this letter was sent out?

[4] MR. CHAMBERS: Object to the form. The term [5] "preparation" is vague and ambiguous.

[6] THE WITNESS: I'm sure there was preparation, [7] but I don't -- you know, I don't remember the details. [8] Obviously somebody would have to help the writer to [9] define the specific products that were involved and the [10] details of the chlorinated biphenyls that were contained [11] in those products, but I don't remember the discussions.

[12] BY MR. DUFF:

[13] Q. Do you recall anyone else who would have been [14] shown this letter?

[15] A. Unless it went to the legal department maybe. [16] I don't know.

[17] Q. Do you recall who at the legal department [18] this letter went to?

[19] A. No.

[20] Q. Do you recall anybody in the legal department [21] who was responsible for overseeing notification of [22] customers?

[23] MR. CHAMBERS: Object. That question has been [24] asked and answered yesterday. Mr. Johnson testified

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[1] that he was responsible for getting this letter out to [2] customers.

[3] MR. DUFF: You may answer.

[4] THE WITNESS: I don't remember who would have [5] reviewed it in the legal department if they did it. [6] Don't remember.

[7] BY MR. DUFF:

[8] Q. You may set that or those exhibits aside for [9] now. [10] I would like to show you now what has [11] been previously marked as Plaintiff's Exhibit 23, and I [12] have a copy for counsel. [13] Mr. Johnson, this is a letter -- a single [14] page letter dated June 11, 1970 that is signed by you [15] and it bears production number TNGS 009102. Are you the [16] author of this document?

[17] A. Yes.

[18] Q. And what is this document?

[19] A. From what I gather, we were advising the [20] customer that we were changing the formulations on the [21] products that included Pydraul 625 AC, AC Winter Grade [22] and Pydraul 540, and

we had the new designations for [23] each one of those products by adding the letter A, and [24] we stated to the customers what our inventory position

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[1] was and that we weren't going to make any new [2] material -- or any old material anymore, and if they had [3] any problems to contact their local representative or [4] contact the people in St. Louis.

[5] Q. And were the new formulations in fact [6] available at the time this letter was sent out?

[7] A. Did the formulation exist or did inventory [8] exist?

[9] Q. Were the new formulations available at the [10] time that the -- this particular letter went out on June [11] 11, 1970?

[12] THE WITNESS: It states --

[13] MR. CHAMBERS: Object to the form. You're [14] entitled to have that question clarified if you need to [15] have it clarified.

[16] THE WITNESS: Well, the third line in the [17] second paragraph says "New formulations have now been [18] developed and tested," and I would assume at that point [19] we had already initiated manufacturing at the Queeny [20] plant.

[21] BY MR. DUFF:

[22] Q. In fact, new manufacturing had been initiated [23] at the Queeny plant at that point, isn't that true?

[24] A. That I don't know. I don't remember if on

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[1] June 11th we had started to make the new products or [2] they were in the pipeline to be manufactured. I don't [3] know.

[4] Q. And in this letter you advised -- well, who [5] received this letter?

[6] A. The customers of those products.

[7] Q. Do you know that those customers in fact [8] received the letter, or is it your understanding that [9] the customers of these products were mailed this letter?

[10] A. They were mailed the letter.

[11] Q. You don't know if the customers in fact [12] received the letter, is that correct?

[13] A. We relied on the United States Post Office [14] that they deliver the mail, and therefore we believe the [15] customers received the information.

[16] Q. And that's because you -- it's your [17] understanding that this letter was in fact mailed to [18] those customers, is that correct?

[19] MR. CHAMBERS: Object to the form. That's [20] been asked and answered. I would request counsel not to [21] unduly burden this witness with repetitive

questions. [22] You're welcome to repeat your previous response for him.

[23] THE WITNESS: We relied on the sales analysis [24] information we had, and to those customers we mailed

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[1] this letter.

[2] BY MR. DUFF:

[3] Q. And did you tell your Pydraul AC customers in [4] this letter that the new formulations for Pydraul AC [5] were completely compatible with the old formulations?

[6] A. That's what it says here, the last line of [7] the second paragraph.

[8] Q. And by that did you mean that the new [9] formulations could be added right on top of the old [10] formulations?

[11] A. Yes.

[12] Q. And directing your attention to the third [13] paragraph, you intended that the existing inventory of [14] Monsanto for PCB-containing Pydrauls would be depleted [15] before the new formulations would be sent out; isn't [16] that correct?

[17] A. I would say at the point of time that this [18] letter was written, we had very, very little inventory [19] in existence because our manufacturing people were told [20] in advance that we did not want to produce any of the [21] old product based on the work that had come out of [22] research, and our pump testing said we had a replacement [23] product. So even though it was stated in the next 90 [24] days, we had stopped delivering to warehouses around the

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[1] country many weeks before. On every one of our [2] products, as a replacement product came out and we knew [3] it was on its way, we might have stopped shipping to [4] warehousing 180 days before the product came out and [5] only shipped from St. Louis.

[6] Q. But you intended that the inventory that was [7] in the warehouses would be depleted before the new [8] formulations would be sold, isn't that correct?

[9] A. If there was inventory in a warehouse in [10] North Carolina, that might be shipped even though the [11] new formulations may exist in St. Louis. If the [12] inventory was depleted, we shipped directly from St. [13] Louis.

[14] Q. Are you saying that if the inventory was [15] depleted in St. Louis then you would have shipped the [16] new formulations?

[17] A. Absolutely. And the inventory was probably [18] depleted in St. Louis two months before this memo was [19] written -- or letter was written.

[20] Q. Do you know that to be true in fact or are [21] you assuming that?

[22] A. I know we were in the bind, that there were [23] some customers who placed orders during this period of [24] time for which we did not have manufactured product to

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[1] supply, and we had to contact the customer and say we [2] will be manufacturing the new product in the plant [3] within the next two weeks. So we had back-orders for [4] supplying the new products because we had exhausted the [5] old.

[6] Q. Did you use the same mailing list to send [7] this letter out as you had for the February 9, 1970 [8] letter?

[9] A. I'm sure. It was the best we had.

[10] Q. Do you know who helped you to prepare this [11] June 11, 1970 letter?

[12] MR. CHAMBERS: Object to the form. It's vague [13] and ambiguous.

[14] THE WITNESS: I don't know if anybody helped [15] me to put it together.

[16] MR. DUFF: I'd like to have marked as Exhibit [17] 64 -- [18] (Whereupon, Plaintiff's Exhibit 64 [19] was marked for identification)

[20] MR. DUFF: -- which I'm also providing to [21] counsel of another copy of the June 11, 1970 letter that [22] we just looked at that was marked previously as [23] Plaintiff's Exhibit 23. This is a two-page document. [24] The letter -- the June 11, 1970 letter has a one-page

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[1] attachment, and this document bears production number [2] TRAN 009522 through 23.

[3] BY MR. DUFF:

[4] Q. This is in fact a copy of the same letter [5] that was marked as Exhibit 23, isn't that correct?

[6] A. Yes.

[7] Q. Except in this instance there is an [8] attachment, is that correct?

[9] A. Yes.

[10] Q. What is the attachment to this letter? It's [11] a page titled Monsanto Company Regional Sales Offices.

[12] A. Correct. It referred to the regional offices [13] that we had as a fluids group around the country.

[14] Q. And does the fact that this page is attached [15] to the June 11, 1970 letter have any significance to [16] you?

[17] A. Other than if customers receiving the letter [18] wanted to contact somebody who would be knowledgeable [19] about these products, that this is where we had regional

[20] managers or salesmen who could assist them.

[21] Q. Is it your understanding that this second [22] page was attached to the June 11, 1970 letter when it [23] was sent out?

[24] A. I don't remember. I have no way of knowing.

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[1] Q. You may set that document aside as well. [2] I'd like to show you a document that has [3] been previously marked as Plaintiff's Exhibit 24, an [4] August 27, 1970 letter which is a single page letter and [5] is signed by you.

[6] A. Yes.

[7] Q. Bearing production number TNGS 008965, and [8] I'm also providing a copy to counsel. [9] Mr. Johnson, are you the author of this [10] letter?

[11] A. It says so.

[12] Q. Is that your signature at the bottom?

[13] A. Yes.

[14] Q. And what is this document?

[15] A. This is the follow-up progression of [16] replacing products in the marketplace. So in this case [17] F-9 had contained PCBs, so now we were notifying all the [18] customers that Pydraul F-9 had been changed to a new A [19] formulation.

[20] Q. Did this letter only go to your Pydraul F-9 [21] customers?

[22] A. I would believe so.

[23] Q. And would that have been only the customers [24] that purchased Pydraul F-9 who were in the mailing --

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[1] who appear on the mailing list that we have referred to [2] as the pollution letter mailing list?

[3] A. That was generated over the sales for three [4] years, yes.

[5] Q. Did you prepare any letters to be sent out by [6] your distributors to their customers? And for time [7] frame I'm talking about the period in 1970.

[8] A. Since Pydraul AC was going through [9] distributors, this kind of a letter we would make a [10] point of attaching maybe 15 copies of the letter and [11] sending it to the locale of that distributor and have [12] them forward it to their customers. I don't remember [13] any customers who bought through a distributor for [14] Pydraul F-9. AC was the biggest product that went [15] through the oil companies.

[16] Q. I'd like you instead of concentrating on the [17] specific documents in front of you, I'm asking in [18] general do you recall in 1970 if you helped to prepare [19] or if you drafted any letters that you intended for your [20] distributors to send out to their customers?

[21] MR. CHAMBERS: Object to the form. That's [22] been asked and answered.

[23] THE WITNESS: They received copies of this [24] letter and with probably a cover letter that said we

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[1] would request that you send this letter to all of your [2] customers. And in the case of F-9, we really didn't [3] have to my knowledge any distributor on F-9. We had [4] primarily distributors on Pydraul AC.

[5] MR. DUFF: I'd like to have marked as Exhibit [6] 65 -- [7] (Whereupon, Plaintiff's Exhibit 65 [8] was marked for identification)

[9] MR. DUFF: -- a copy of which I'm also [10] providing to counsel for Monsanto, a document which is [11] titled Suggested Letter from Distributor to Aroclor [12] Customers and bears production number TRAN 013692.

[13] BY MR. DUFF:

[14] Q. Have you had an opportunity to review this [15] document, Mr. Johnson?

[16] A. Yes.

[17] Q. And do you recognize this document?

[18] A. No. It wasn't sent out by our group.

[19] Q. And by "our group" you mean the functional [20] fluids group?

[21] A. Right.

[22] Q. And do you know which group this letter was [23] sent out by?

[24] A. By the Plasticizer.

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[1] Q. Did the Plasticizer group -- is it your [2] understanding that the Plasticizer group sent a letter [3] out to their distributors for them to distribute to [4] their customers?

[5] A. They would have operated in the same [6] mechanism in that they would have sent this out to [7] customers and then they would have sent additional [8] copies to the distributors for forwarding to their [9] customers.

[10] Q. Was there an effort to coordinate the method [11] by which the functional fluids group notified its [12] customers of the pollution problem associated with PCB [13] and the functional fluids group?

[14] MR. DUFF: Could you read that question back? [15] (Question read)

[16] BY MR. DUFF:

[17] Q. Do you understand the question, Mr. Brad -- [18] excuse me. [19] Do you understand the question, [20] Mr. Johnson?

[21] MR. CHAMBERS: I object to the form of the [22] question.

[23] BY MR. DUFF:

[24] Q. Let me rephrase the question for you.

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[1] Was there an effort to coordinate the [2] method by which the Plasticizer group and the functional [3] fluid group notified their customers of the pollution [4] aspects of PCBs?

[5] A. I believe there was, and I believe the timing [6] was probably the same.

[7] Q. And what do you recall about the efforts to [8] coordinate this method of notification?

[9] A. I don't ever remember a meeting on it. We [10] were located on the same floor, and so I would believe [11] that we'd walk down and tell them we're going to send [12] out our mailing on such and such a date and that [13] we've -- they knew we had a mailing list, and then they [14] had their own mailing list, and they would be prepared [15] to send it out almost simultaneously. Now, we did not [16] write their letter. This is their letter.

[17] Q. Did you intend that notification of Monsanto [18] customers would be uniform?

[19] A. As best we could.

[20] Q. And by "customers" do you understand I mean [21] all customers of PCB-containing fluids?

[22] A. This does not refer to PCB-containing fluids. [23] This refers to Aroclors.

[24] Q. I understand that. For this particular

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[1] document --

[2] A. That's the one I'm looking at.

[3] Q. I'm not -- for the moment I'm not requesting [4] that you be looking at that document. I'm asking what [5] you recall generally about the efforts to notify [6] Monsanto's customers of the PCB problem. Do you [7] understand that?

[8] A. The Plasticizer group was discontinuing their [9] products, and we were discontinuing our products that [10] contained 1254 and/or 1260 chlorinated biphenyls.

[11] Q. Was there an effort to coordinate the message [12] that was being given to the salesmen of all [13] PCB-containing products at this time?

[14] A. Within reason, yes.

[15] Q. So that the advice that, for instance, you [16] gave to functional fluids salesmen --

[17] A. Right.

[18] Q. -- was consistent with the advice that would [19] have been given to Plasticizer salesmen, is that [20] correct?

[21] A. Correct.

[22] Q. I may have asked you this tomorrow so -- I'm [23] sorry, yesterday, so I apologize if this is repetitive, [24] but do you recall

who oversaw the notification of

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[1] Plasticizer customers of the pollution aspects of PCBs [2] in 1970?

[3] A. At the time this was done it was probably [4] done by Cuming Paton.

[5] Q. Again I'll ask for your indulgence. I may [6] have asked you this question yesterday. [7] Do you recall any discussions with [8] Mr. Paton related to notifying the customers of your [9] respective products in 1970?

[10] A. No, I don't -- I'm sure we may have had [11] discussions, but I don't remember any details of any [12] discussion or when it took place or whatever. We were [13] trying to coordinate our efforts.

[14] Q. You may set that document aside. [15] I'd like to shift away from the [16] notification of customers. I'm not asking -- you can be [17] mindful of that, but I'd like to now talk about the [18] reformulation of the Pydraul products, okay?

[19] A. Right.

[20] Q. Was there a committee that was formed to [21] oversee the reformulation of Pydraul products?

[22] A. No.

[23] Q. Was there a specific group that was [24] responsible for that?

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[1] A. The people in research.

[2] Q. Who in research would have been responsible [3] for the reformulation of Pydraul products?

[4] A. Bill Richards, Dr. Bill Richards; Lou Stark, [5] I believe a fellow named Duane Fowlkes. And on the [6] existing Pydrauls, that would have been the group [7] followed by Dr. John Herber who was working on the [8] development of the phosphate ester.

[9] Q. The first time that Pydrauls were [10] reformulated was when you moved to a PCB -- I'm sorry, a [11] PCT-based fluid; is that correct?

[12] A. Correct.

[13] Q. Was there a committee that was formed to [14] oversee the transition of your customers from the [15] PCB-based fluid to the PCT-based Pydraul fluid?

[16] A. Nothing more than the fact that we all worked [17] for Howard Bergen or we worked for Don Olson, and so any [18] coordination that may have existed would have been [19] through those two people.

[20] Q. What was your role in assuring the smooth [21] transition or conversion, if you will, of your customers [22] from the PCB-containing fluid to the PCT-containing [23] Pydraul fluids?

[24] A. Well, I was marketing manager responsible for

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[1] the Pydraul products, and I had the salesmen out in the [2] field who were the ones to be contacting customers or [3] talking with customers or handling problems, and I had a [4] product group of a couple of people to assist in the [5] whole transition, but basically we worked directly with [6] research and then through our own group and then to the [7] customer in the field.

[8] Q. And how did you work with your salesmen in [9] the field to transition your customers from the [10] PCB-containing fluids to the PCT-containing fluids?

[11] A. If I was in St. Louis, I spent an enormous [12] time on the telephone talking with salesmen. If I was [13] out in the field, I was making calls with them on [14] various customers. There was a period of time I [15] traveled six straight weeks.

[16] Q. And what were the -- what was the nature of [17] the conversations you would have with your salesmen?

[18] A. To talk about the transition and what we were [19] doing and what was happening to the higher chlorinated [20] biphenyls and how we were reformulating down to [21] terphenyls and lower chlorinated biphenyls, what the [22] transition had been in pump testing, had we talked to [23] Factory Mutual, did we have approval on the products; [24] all through the discussion to include what did we have

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[1] in warehouses, when were we going to manufacture this [2] product or that product and what was the inventory of [3] the new materials.

[4] Q. And how did you work with your salesmen by [5] making calls to ensure that the transition went [6] smoothly?

[7] A. Called on major customers with them.

[8] Q. Do you recall which major customers you went [9] on such calls?

[10] A. Probably to many of the General Motors [11] locations, many of the steel mills, Johnson Motors, [12] McCulloch out on the west coast. When I was in a given [13] geographical area, we would try and contact as many of [14] the customers using Pydrauls as possible.

[15] Q. And did you visit these particular customers [16] because of the volume of the sales that they have [17] represented?

[18] A. Not necessarily. If you went into a given [19] area like Detroit, you would end up going to General [20] Motors; but then there were other consumers of Pydraul [21] in the area, and if time permitted and you had two or [22] three days to do it, you'd go around and see everybody [23] that was there.

[24] Q. Did you make any such visits to

Tennessee

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[1] Gas?

[2] A. No, I did not. That was handled by Dale [3] Smith and Roger Hatton.

[4] Q. Do you recall if Dale Smith and Roger Hatton [5] had such a meeting with Tennessee Gas?

[6] A. I don't remember.

[7] Q. But it's your understanding that Dale Smith [8] and Roger Hatton would have been responsible for making [9] contact with Tennessee Gas in the context of the [10] transition from PCB to PCT-containing fluids?

[11] A. Any gas line company was handled on a direct [12] basis from St. Louis to the home office of the [13] appropriate people within the company.

[14] MR. DUFF: Move to strike as nonresponsive. [15] Would you please read the question back [16] to the witness? [17] (Question read)

[18] THE WITNESS: Yes.

[19] BY MR. DUFF:

[20] Q. You said that you also worked with your [21] product group to ensure that the transition of your [22] customers from PCB to PCT-containing fluids was smooth, [23] is that correct?

[24] A. Yes.

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[1] Q. And how did you do that?

[2] A. Verbal communications.

[3] Q. What did you discuss with them?

[4] A. Well, they had access to the same information [5] that I had, what our inventory position was, what we had [6] in warehouses, where we didn't have any material anymore [7] and we were formulating to the new products, what orders [8] were in-house, what priority we would give to each one [9] of the orders, who would we ship first, second, third so [10] that we would get it out there; maybe conversations with [11] the salesmen to learn if the customer still had [12] inventory could he still run for another two weeks [13] before he needed replacement products. [14] Obviously we were not interested in [15] shutting down any customer. Our obligation was to try [16] and make a very smooth transition so that anybody who [17] required fluid immediately was given some priority, [18] because in many cases inventories on products didn't [19] exist of the old materials.

[20] Q. And these were all discussions that you had [21] with the product group, is that correct?

[22] A. Oh, constantly. You know, where do we stand [23] on pump tests, where do we

stand on various other things ⁽²⁴⁾ so that the next step could be made to eliminate the

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⁽¹¹⁾ next generation of Pydrauls and switch them over to the ⁽²⁾ terphenyl.

⁽³⁾ Q. And who was in the product group that was ⁽⁴⁾ responsible for the transition at this time?

⁽⁵⁾ A. I don't think anybody in the product group ⁽⁶⁾ was responsible for the transition other than myself and ⁽⁷⁾ coordination with research to know when did they have ⁽⁸⁾ enough performance data on a product so they could go ⁽⁹⁾ ahead and turn the product over to the plant for ⁽¹⁰⁾ manufacture.

⁽¹¹⁾ MR. DUFF: I'd like to show you a document ⁽¹²⁾ that I'll have marked as Exhibit 66. ⁽¹³⁾ (Whereupon, Plaintiff's Exhibit 66 ⁽¹⁴⁾ was marked for identification)

⁽¹⁵⁾ MR. DUFF: And I'll provide a copy to counsel ⁽¹⁶⁾ for Monsanto as well. ⁽¹⁷⁾ This is a document dated December 11, ⁽¹⁸⁾ 1969 and it is from D. A. Olson to H. S. Bergen and ⁽¹⁹⁾ copied to P. G. Benignus, J. R. Fallon and N. T. Johnson ⁽²⁰⁾ and bears production number TNGS 008700 through 01.

⁽²¹⁾ BY MR. DUFF:

⁽²²⁾ Q. Mr. Johnson, have you had an opportunity to ⁽²³⁾ review this document?

⁽²⁴⁾ A. No, I will.

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⁽¹⁾ Q. Please take as much time as you need.

⁽²⁾ A. Okay.

⁽³⁾ Q. Have you had an opportunity to review this ⁽⁴⁾ document?

⁽⁵⁾ A. Yes.

⁽⁶⁾ Q. And what is this document?

⁽⁷⁾ A. Obviously it was a document created by the ⁽⁸⁾ director of marketing and he was sending it to the ⁽⁹⁾ business director, Howard Bergen, and it was a status on ⁽¹⁰⁾ polychlorinated biphenyls at this point in time.

⁽¹¹⁾ Q. In fact, this was the action plan for your ⁽¹²⁾ product group at this time; isn't that correct?

⁽¹³⁾ A. For my group? Well, it's rather brief ⁽¹⁴⁾ because it's only referring to the 1254 and 1260 ⁽¹⁵⁾ Aroclors and the reformulation of those products ⁽¹⁶⁾ specifically.

⁽¹⁷⁾ Q. Was this -- does this document represent the ⁽¹⁸⁾ action plan for discontinuing the sales of Aroclor 1254 ⁽¹⁹⁾ and 1260 in the industrial fluids product group?

⁽²⁰⁾ A. Yes.

⁽²¹⁾ Q. In addition to other product groups

as well, ⁽²²⁾ is that correct?

⁽²³⁾ A. Well, nobody else sold formulated products ⁽²⁴⁾ except us. The Plasticizer group sold 1254 and 1260 per

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⁽¹⁾ se, and you saw this letter that was produced earlier ⁽²⁾ suggesting that the Plasticizer group was ceasing the ⁽³⁾ sales of Aroclor 1254 and 1260.

⁽⁴⁾ Q. And by "this letter" you're referring to what ⁽⁵⁾ exhibit number?

⁽⁶⁾ A. This letter, TRANS 013692.

⁽⁷⁾ Q. What was that -- what is the exhibit number ⁽⁸⁾ marked on the sticker at the bottom of the page?

⁽⁹⁾ A. It says Exhibit 65 I guess IC, IC?

⁽¹⁰⁾ MR. DUFF: That's Exhibit 65, for the record.

⁽¹¹⁾ BY MR. DUFF:

⁽¹²⁾ Q. Directing your attention to Plaintiff's ⁽¹³⁾ Exhibit 66, the document that I just had marked for you, ⁽¹⁴⁾ the December 11, 1969 memo of Mr. Olson. Do you see on ⁽¹⁵⁾ the second page where there's a section titled ⁽¹⁶⁾ Industrial?

⁽¹⁷⁾ A. Yes.

⁽¹⁸⁾ Q. Is it your understanding that this section ⁽¹⁹⁾ relates to the products for which you were responsible ⁽²⁰⁾ at this time?

⁽²¹⁾ A. Yes.

⁽²²⁾ Q. And as of December 11, 1969, were you ⁽²³⁾ considering more than one approach to take for ⁽²⁴⁾ reformulating Pydrauls?

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⁽¹⁾ A. Yes.

⁽²⁾ Q. And what were those approaches that you were ⁽³⁾ considering?

⁽⁴⁾ A. Well, the approach to find initially was to ⁽⁵⁾ go to the terphenyl; and at the end of the paper we talk ⁽⁶⁾ about the trial quantities of new phosphate ester to be ⁽⁷⁾ produced by January 19, 1970; the proposed field test, ⁽⁸⁾ the commercial development by 1970, and that these ⁽⁹⁾ esters could replace Pydraul AC, AC Winter Grade, 625, ⁽¹⁰⁾ and only Pydraul 540 can be replaced with a reformulated ⁽¹¹⁾ product.

⁽¹²⁾ Q. So as of December 11, 1969 phosphate esters ⁽¹³⁾ were planned to be available for Pydraul AC customers by ⁽¹⁴⁾ April 1, 1970; is that correct?

⁽¹⁵⁾ A. Well, that's what the memo suggests.

⁽¹⁶⁾ Q. Is that correct?

⁽¹⁷⁾ A. Did we make it, no.

⁽¹⁸⁾ Q. No, I'm asking if that was the plan at that ⁽¹⁹⁾ time?

⁽²⁰⁾ A. Well, obviously it's stated that that is the ⁽²¹⁾ plan; but did we make it, no.

[22] Q. In fact, phosphate esters were not used to [23] replace the PCBs or PCTs in Pydraul products until 1971, [24] isn't that correct?

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[1] A. We did not have a plant to make this product. [2] It was a dream. We didn't even have raw materials to [3] make the phosphate ester because the coal industry along [4] with the steel industry had essentially shut down on [5] coking ovens. So there were no cresols available. You [6] had to go find another type of phosphate ester that [7] would have the fire resistance and be available to make [8] replacement products.

[9] Q. As of the date of this document that's been [10] marked as Exhibit 66, there was a plan to offer [11] phosphate esters in replacement for Pydraul AC [12] commercially on April 1, 1970 if the tests were [13] successful; isn't that correct?

[14] A. That's what it says.

[15] Q. Was a decision made to reformulate with [16] terphenyls first and with phosphate -- strike that. [17] Was a decision made to choose [18] reformulation with terphenyls over reformulation with [19] phosphate esters?

[20] A. No.

[21] Q. Why is it that terphenyls were in fact -- [22] strike that. [23] Were terphenyls used to reformulate [24] Pydrauls before phosphate esters were used?

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[1] A. Some of our products already contained [2] phosphate esters, the old products. The thought that [3] was presented to us is to go to the terphenyl as a [4] suitable way of maintaining fire resistance and [5] satisfying the needs of the customers. At the same time [6] there was a desire to produce phosphate esters in large [7] enough quantities to supply the fluids group, but the [8] raw materials in the United States were not available so [9] we could not have manufactured TCP, MDP, a number of [10] other phosphate esters that we needed because the [11] cresylic acid was not available. They attempted to buy [12] cresols from England who were still doing a lot of [13] coking. We could not get a sufficient supply. [14] So the decision was made to look at new [15] types of phosphate esters that would have the physical [16] characteristics that we would need to manufacture these [17] fluids at various viscosity grades, and we did not have [18] a plant to produce them.

[19] Q. So a decision was made to go with the [20] terphenyls at that time rather than the phosphate [21] esters, is that correct?

[22] A. No, no, no, I disagree. The terphenyls were [23] presented as a logical alternative, and as we got into [24] the products, the recognition that there were still

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[1] minute quantities of biphenyls present in the [2] terphenyls, therefore the terphenyl solution was not a [3] good one and would only be an interim step until we [4] could start to manufacture raw materials to make [5] phosphate ester-type fluids.

[6] Q. And when did you realize that you were not [7] going to be able to pursue the phosphate ester approach?

[8] A. No, no, no. We knew we were going to pursue [9] the phosphate ester approach.

[10] Q. Let me rephrase the question. [11] When did you realize that you were not [12] going to be able to pursue the phosphate ester approach [13] before the -- or in -- strike that. [14] When did you realize that you were going [15] to have to use terphenyls as an interim solution for [16] replacement of PCBs with phosphate esters?

[17] A. You have the cart before the horse. [18] We went with terphenyls and then [19] recognized that terphenyls were not going to solve the [20] problem and then immediately went to looking for various [21] phosphate esters to produce a straight phosphate ester [22] product.

[23] Q. At the time that the decision was made to use [24] terphenyls to reformulate the PCB-containing products,

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[1] did you realize that terphenyls had some quantity of [2] PCBs in them?

[3] A. I did not.

[4] Q. When did you first realize that?

[5] A. The day Bill Richards came over and pounded [6] on my desk and said we failed. We have to go to a [7] straight phosphate ester.

[8] Q. And when did he do that?

[9] A. Oh, God, I don't know the timing. It [10] probably was sometime here in late '69 or early 1970.

[11] Q. Was it before the February 9, 1970 letter had [12] gone out?

[13] A. I don't know. Communications were normally [14] very good within our company, but you also have to [15] understand -- have to understand research people sit [16] there and they analyze things and analyze things, and [17] once they have it clear in their mind as to what the [18] problem is, that's when they come over and tell us. [19] It could have been that Bill Richards [20] recognized the problem a couple of months before he ever [21] came over and said, well, it is just not going to work, [22] and we have to go ahead with the phosphate ester [23] program, and this would then only be an interim step and [24] that we could at some point start talking to customers

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[1] that this interim step would be followed by the [2] development of a phosphate ester fluid.

[3] Q. Was Mr. -- I'm sorry, was Dr. Richard located [4] in a different building than you were located?

[5] A. Yes.

[6] Q. What building was he located in?

[7] A. Oh, God. I think maybe the W Building or [8] something over in the research complex.

[9] Q. Was that the research and development [10] building?

[11] A. That whole segment of buildings. They had [12] different letter designations, but the building must [13] have been at least a block and a half long.

[14] Q. And was that near to the building that you [15] were located in?

[16] A. About three blocks.

[17] Q. Do you see under the Industrial section on [18] the second page of Mr. Olson's December 11, 1969 memo?

[19] A. Right.

[20] Q. Do you see where there's a subsection A [21] titled Reformulation Products?

[22] A. Yes.

[23] Q. What does it mean when Mr. Olson says [24] "Replacement Pydrauls without Aroclors 1254 and 1260

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[1] have been formulated and pump tested?"

[2] MR. CHAMBERS: Let me object to the form to [3] the extent you're requesting this witness to speculate [4] about something that Mr. Olson wrote.

[5] THE WITNESS: Well, it says what it says, [6] "Replacement Pydrauls without Aroclor 1254 and 1260 have [7] been formulated and pump tested."

[8] BY MR. DUFF:

[9] Q. Does this mean that replacement Pydrauls [10] without Aroclors 1254 and 1260 were available for [11] shipment to customers at this point?

[12] MR. CHAMBERS: Object to the form to the [13] extent you're asking this witness to speculate about the [14] meaning of something that Mr. Olson wrote.

[15] THE WITNESS: Well, doesn't the third [16] paragraph answer it?

[17] BY MR. DUFF:

[18] Q. Is it your understanding that there's meaning [19] in the third paragraph which explains the first [20] paragraph?

[21] A. Obviously.

[22] Q. And what is your understanding?

[23] A. Well, if all the pump testing was successful, [24] replacement products will be produced early in January.

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[1] Customers will be advised of replacement products and [2] requested to switch to the new products. July 1 [3] customers will be told by letter that the old products [4] will be discontinued and no longer produced.

[5] Q. And do you recall if replacement products for [6] Pydrauls without Aroclors 1254 and 1260 were in fact [7] produced in January of 1970?

[8] A. No, I don't know. I don't remember.

[9] Q. Do you see the second paragraph under that [10] subsection A titled Reformulation Products?

[11] A. Yes, I do.

[12] Q. Do you recall that replacement for Pydraul AC [13] was running in a Queeny plant compressor at that time?

[14] A. Yes, that's where we did run the big test, [15] yeah.

[16] Q. And do you know if that test was successful?

[17] A. Ultimately yes, it was.

[18] Q. Well, do you see where it says "Performance [19] will be checked on December 15th" in this paragraph?

[20] A. Yes.

[21] Q. Do you recall if -- when the performance was [22] checked on December 15th if it was determined that the [23] test had been successful for Pydraul AC?

[24] A. Yes.

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[1] Q. And it was in fact successful?

[2] A. Yes.

[3] Q. So as of December 15th, 1969 a replacement [4] for Pydraul AC without Aroclors 1254 and 1260 had been [5] formulated and tested; is that correct?

[6] A. Yes.

[7] Q. What would it take at that point to produce a [8] product and get it to a customer?

[9] A. Material safety data sheets, labels, [10] registration of the product. I don't know what the [11] other problems would be, but you just can't stencil on a [12] drum and say that's Pydraul AC replacement. You've got [13] a lot of steps after that to comply with all government [14] regulations for shipping a product.

[15] Q. You just mentioned a few of the things that [16] you believe would be necessary to do after formulation [17] and testing?

[18] A. No, those things I know had to be

done.

[119] Q. And one of them you said was a material [20] safety data sheet?

[121] A. Sure.

[122] Q. And was a material safety data sheet required [23] to be filled out at this time?

[124] A. I don't remember, but I assume so.

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[1] Q. Assuming that your assumption is correct that [2] an MSDS or material safety data sheet was in fact [3] required at this time, what would it have taken to [4] prepare an MSDS for Pydraul AC at this time?

[5] A. Well, there's a question then about toxicity [6] testing, and I suppose there's some other tests that [7] have to be evaluated, and I don't remember the details [8] of what they might be.

[9] Q. Who would have been responsible for preparing [10] an MSDS for Pydraul AC replacement?

[11] A. The medical department.

[12] Q. Would that have been Dr. Kelly's [13] responsibility?

[14] A. I believe so.

[15] Q. Was toxicity testing performed on all Pydraul [16] products before they were supplied to customers?

[17] A. It depends on what you refer to as toxicity [18] testing. I don't know.

[19] Q. Well, that was your term. What did you mean [20] by it when you used it?

[21] A. Well, they may have done some work or [22] contracted with some work to be done. I am not familiar [23] with it. Once we were given approval to go ahead with a [24] product in a corporation the size of Monsanto, you

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[1] recognize that there were other people who would be [2] responsible for doing various aspects so that you could [3] put it together.

[4] Q. What is your understanding of toxicity [5] testing?

[6] A. There's a large number of ways for doing [7] toxicity testing, and I'm not a doctor and I'm not a [8] hygienist and I have no knowledge of what would be [9] recommended for a Pydraul product.

[10] Q. Do you know how long the toxicity testing [11] took?

[12] A. No, I don't.

[13] Q. What were some of the other steps that you [14] said would be required before a

[15] A. Labeling.

[16] Q. -- product could be supplied to a customer?

[17] A. Labeling.

[18] Q. And who was responsible for labeling at this [19] time?

[20] A. Normally that was the traffic department.

[21] Q. And who was the head of the traffic [22] department at that time?

[23] A. I don't remember. I don't.

[24] Q. And what else would have been required before

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[1] a reformulated product could be shipped to customers?

[2] A. I suppose you've got to register with the [3] U.S. Department of Transportation. I don't know the [4] details of all the things that -- they were all [5] designated to various departments within Monsanto so [6] that the information would be brought to bear so we [7] could start shipping the product as soon as we had it in [8] production and packaged.

[9] Q. Who would have been responsible for [10] registering a product with the U.S. Department of [11] Transportation at that time?

[12] A. Probably the traffic department.

[13] Q. Any other actions that would need to be [14] undertaken prior to sending a reformulated product to a [15] customer at this time?

[16] A. Printing of the new label, getting approval [17] on what the new label would look like and what [18] information it would contain and then getting it out to [19] a printer and then getting it produced, and of course [20] having it down at the plant at the time that we go into [21] production and start filling drums.

[22] Q. Anything else?

[23] A. Oh, I'm sure there were other things that had [24] to be done, but we had sufficient people I feel in

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[1] Monsanto so that if we needed help from the medical [2] department or the traffic department or whatever, we [3] could get that assistance.

[4] Q. Who was responsible for ensuring that all the [5] steps had been taken prior to sending out a product that [6] had been reformulated to the customers?

[7] A. Probably research.

[8] Q. Would that have been Dr. Richard's [9] responsibility?

[10] A. Yes.

[11] Q. Anybody else's responsibility?

[12] A. Well, we obviously in the product group would [13] probably be responsible for getting the label produced [14] and getting it approved. We may not be

involved in ^[15] getting it printed, but certainly the details that would ^[16] comply with what the legal department wanted on there, ^[17] what the Department of Transportation wanted on there, ^[18] everything had to be coordinated. And then finally with ^[19] full agreement, we'd then go to a printer and say print ^[20] them.

^[21] Q. Who did Dr. Richard report to at this time?

^[22] A. I believe he reported to Howard Bergen.

^[23] Q. You can set that document aside for the time ^[24] being.

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^[1] Are you familiar with the term tentative ^[2] process?

^[3] A. Could be.

^[4] Q. What's your understanding of that term?

^[5] A. Well, I relate -- would relate it to a ^[6] chemical process or a chemical reaction where maybe the ^[7] research people say we're going to make the nonyl phenyl ^[8] phosphate, this or that, and obviously they have to do a ^[9] lot of lab work to be sure that you do get a reaction to ^[10] form the product that you want. Sometimes they succeed, ^[11] sometimes they fail.

^[12] Q. Did you participate in formulating the ^[13] tentative process for any Pydraul products?

^[14] A. Absolutely not.

^[15] Q. Whose responsibility would that have been?

^[16] A. For the formulation would be research.

^[17] Q. And who was in research? Was that ^[18] Dr. Richard?

^[19] A. Yes.

^[20] MR. CHAMBERS: Object to the form. That's ^[21] been asked and answered now about three or four times.

^[22] MR. DUFF: I'd like to show you and have ^[23] marked as Exhibit 67 -- ^[24] (Whereupon, Plaintiff's Exhibit 67

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^[1] was marked for identification)

^[2] MR. DUFF: -- a single page document, a copy ^[3] of which I'm also providing to counsel for Monsanto, ^[4] which has written at the top "list of Pydrauls to be ^[5] reformulated" and bears production number TRAN 004013.

^[6] BY MR. DUFF:

^[7] Q. Have you had an opportunity to review this ^[8] document, Mr. Johnson?

^[9] A. Yes.

^[10] Q. Is this your handwriting on this page?

^[11] A. Looks like it.

^[12] Q. And in fact at the bottom of this page is ^[13] that your handwriting that says "from N. Johnson ^[14] 4/23/70"?

^[15] A. No, that's not, and the handwriting at the ^[16] very top of the -- which says "list of Pydrauls to be ^[17] reformulated," that's not my handwriting.

^[18] Q. Do you recognize the handwriting that you ^[19] just referred to?

^[20] A. That in the middle of the document, yes.

^[21] Q. Whose handwriting is at the bottom of the ^[22] page where it says "from N. Johnson 4/23/70"?

^[23] A. I don't know.

^[24] Q. And you also -- did you say you also do not

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^[1] recognize the handwriting that says "list of Pydrauls to ^[2] be reformulated"?

^[3] A. The only -- maybe it was Don Olson's or maybe ^[4] it was Tom Gossage, I just don't know. And then the ^[5] other in here it says "reform not available yet," I ^[6] don't know whose handwriting that was either.

^[7] Q. Is all the other handwriting on this page ^[8] yours?

^[9] A. Yes.

^[10] Q. And what is this document?

^[11] A. I have no idea other than somebody may have ^[12] said where do we stand on these products, and so I ^[13] recorded the AC 625, AC Winter Grade, F-9, A-200, 540 ^[14] and 280 and indicated that these formulations exist and ^[15] plan to be produced by June '70. And then 150, 135, ^[16] 230, 320, 153, 312 reform not available yet.

^[17] MR. DUFF: You may set that document aside. ^[18] I'd like to have marked as Exhibit 68 -- ^[19] (Whereupon, Plaintiff's Exhibit 68 ^[20] was marked for identification)

^[21] MR. DUFF: -- a document dated June 4, 1970. ^[22] I'm also providing a copy to counsel for Monsanto.

^[23] BY MR. DUFF:

^[24] Q. This is a document prepared by R. M. Kountz,

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^[1] K-O-U-N-T-Z?

^[2] A. Yes.

^[3] Q. And addressed to a list of eight individuals ^[4] and copied to a list of six individuals and is regarding ^[5] minutes of meeting on Aroclor replacement program and ^[6] bears production number TRAN 093167 through 69. ^[7] Mr. Johnson, have you had an opportunity ^[8] to review this document?

[9] A. No. Let me look at it.
[10] MR. CHAMBERS: While the witness is reviewing [11] the record, I'd note I'm having difficulty locating this [12] among the documents previously identified by Mr. Duff.
[13] THE WITNESS: Oh, boy.
[14] MR. CHAMBERS: Wait. I found it.
[15] THE WITNESS: Okay.
[16] BY MR. DUFF:
[17] Q. And what is this document, Mr. Johnson?
[18] A. I'm sure it was Mr. Kountz who was involved [19] in manufacturing and scheduling who was looking at the [20] time frame to produce cumyl-nonyl phenyl diphenyl [21] phosphate, and he's talking about the various facilities [22] at the Queeny plant that we might have access to to [23] manufacture these products.
[24] Q. And what is that type of phosphate?

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[1] A. It's a phosphate ester that has never been [2] made at this time.
[3] Q. And why has it never been made?
[4] A. Nobody has ever developed a process to make [5] the cumyl-nonyl phenyl diphenyl phosphate.
[6] Q. Was this a formulation that only existed in [7] theory?
[8] A. Yes.
[9] Q. And did you attend a meeting on Aroclor [10] replacement on May 27, 1970?
[11] A. It says I did.
[12] Q. Do you recall that meeting?
[13] A. Not really. It's only 25 years ago.
[14] Q. Who was E. D. Malone?
[15] A. Oh, boy. I think that E. D. Malone and D. B. [16] Redington off the top of my head may have been part-time [17] manufacturing people assigned from the Queeny plant for [18] this project.
[19] Q. Do you see on the first page where there's a [20] reference to Aroclor 1242B?
[21] A. Yes.
[22] Q. What is that?
[23] A. More highly refined Aroclor 1242.
[24] Q. What does the B designate?

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[1] A. Like second generation.
[2] Q. What would be the first generation?
[3] A. The existing product.
[4] Q. Do you see the reference on the second page [5] to cumyl phenol?
[6] A. Yes, I do.
[7] Q. What is that?

[8] A. Well, in order to make the cumyl phenyl [9] diphenyl phosphate you needed the cumyl phenol as a raw [10] material, which also had never been made.

[11] Q. Do you see the reference at the bottom of the [12] second page -- or toward the second to Aroclor 1242B?

[13] A. Yes.

[14] Q. Was Aroclor 1242B ever manufactured?

[15] A. I don't know.

[16] Q. Was it ever formulated?

[17] A. No, that's a straight material. It would [18] have been a more highly distilled 1242.

[19] Q. And when you say "more highly distilled," [20] what do you mean?

[21] A. Probably put it through a second column to [22] strip out as many of the non-1242 biphenyls, chlorinated [23] biphenyls in the mixture.

[24] Q. Do you see the handwriting on the second

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[1] page?

[2] A. Yes.

[3] Q. Is that your handwriting?

[4] A. No.

[5] Q. Do you recognize that handwriting?

[6] A. No.

[7] MR. DUFF: You may set that document aside for [8] now. [9] I'd like to show you a document that I'll [10] have marked as Plaintiff's Exhibit 68 -- actually I [11] think we're up to 69 at this point.

[12] MR. CHAMBERS: Appreciate the court reporter [13] to help to keep us straight on that. [14] (Whereupon, Plaintiff's Exhibit 69 [15] was marked for identification)

[16] MR. DUFF: And I'll provide a copy to counsel [17] as well for Monsanto. This is a two-page document which [18] is titled on the first page Pydraul Reformulation [19] Program bearing production numbers TNGS 013070 through [20] 71.

[21] BY MR. DUFF:

[22] Q. Mr. Johnson, have you had an opportunity to [23] review this document?

[24] A. No. Let me look at it. Okay.

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[1] Q. And what is this document?

[2] A. It just says we reformulated the various [3] Pydraul products and we dropped the use of 1248, 1254, [4] 1260. The amount of production required for Pydrauls [5] would drop accordingly.

[6] Q. Did you prepare this document?

[7] A. No, I did not.

[8] Q. Do you see your handwriting anywhere on the [9] first page of this document?

[10] A. No, I don't. I just see where somebody is [11] sending me a note.

[12] Q. Do you see any of your handwriting on the [13] second page of this document?

[14] A. Could have been.

[15] Q. Does that look to be your handwriting?

[16] A. Could be.

[17] Q. Directing your attention back to the first [18] page of the document, what does the note that is written [19] to you say on this page?

[20] MR. CHAMBERS: Object to the form to the [21] extent you're asking this witness to speculate about the [22] meaning of a note that somebody else has written to him. [23] Subject to that, go ahead.

[24] BY MR. DUFF:

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[1] Q. I'm simply asking you if you can read what [2] this note says.

[3] A. It says "revised numbers sent to Don Olson."

[4] Q. And the initials, is that the initial DAO?

[5] A. Yes.

[6] Q. And before that language it actually says [7] Norm -?

[8] A. Yes.

[9] Q. And there's an arrow in front of the name [10] Norm, is that right?

[11] A. Yes.

[12] Q. Is it your understanding that this document [13] was sent to you with this note?

[14] A. Yes, or a copy of the document, yes.

[15] Q. Based on your understanding of the operations [16] of the functional fluids group at this time, who would [17] have prepared a document like this?

[18] A. Probably somebody in manufacturing.

[19] Q. Would that have been Dr. Richard?

[20] A. No. He would have been research.

[21] Q. Would that have been Lou Stark?

[22] MR. CHAMBERS: Objection. Mr. Stark and [23] Dr. Richard have both been identified previously as in [24] the research department rather than the manufacturing

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[1] area, and to the extent we're repeating something that's [2] already been testified to unnecessarily, I object, and I [3] would ask that you not deal with the witness in this [4] fashion, please.

[5] BY MR. DUFF:

[6] Q. Who would that be in the manufacturing [7] department?

[8] MR. CHAMBERS: If you know.

[9] THE WITNESS: It could have been Jim Savage, [10] it could have been Bob Kountz. I don't know anymore.

[11] MR. DUFF: You may set that document aside.

[12] THE WITNESS: I should have been a handwriting [13] expert.

[14] MR. DUFF: Mr. Johnson, I'm showing you what's [15] been previously marked as Plaintiff's Exhibit 7 in this [16] case, and I'm providing a copy to counsel for Monsanto. [17] For the record, this is a memorandum [18] dated January 3, 1971 from N. T. Johnson to a lengthy [19] list of individuals and copied to T. L. Gossage and C. [20] L. Bradford. It's a two-page document bearing [21] production numbers TNGS 006209 through 10.

[22] BY MR. DUFF:

[23] Q. Mr. Johnson, have you had an opportunity to [24] review this document?

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[1] A. No, but I'll sure look at it. Okay.

[2] Q. Did you prepare this document?

[3] A. Yes.

[4] Q. And what is this document?

[5] A. It was sent out to all the salesmen who were [6] requested to be in St. Louis for the discussion on the [7] new phosphate esters.

[8] Q. And when you say "the new phosphate esters," [9] do you mean the Pydraul products that were reformulated [10] to remove all PCBs and PCTs and replace them with [11] phosphate esters?

[12] A. Yes.

[13] Q. When were Pydraul products reformulated to [14] use phosphate esters?

[15] A. I don't remember the timing.

[16] Q. Was it your understanding that that [17] reformulation had occurred as of the date of this memo?

[18] A. No, it had not.

[19] Q. And what took place at the meeting that took [20] place in St. Louis on January 10th and 11th, 1971?

[21] A. We probably reviewed from various departments [22] the chemistry of the products, our manufacturing [23] problems to produce the new NC ester and discussion of [24] customers out there and the products that they purchased

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[1] which would now be converted over to the phosphate [2] ester.

[13] Q. Do you recall this meeting?

[14] A. Not really.

[15] Q. Did you lead this meeting?

[16] A. Probably.

[17] Q. And are the recipients of this memo all [18] salesmen?

[19] A. Salesmen and regional managers, and I would [110] suggest at this point in time that the industrial fluids [111] group was now the responsibility of C. L. Bradford, and [112] my title had changed to field sales manager.

[113] Q. And in this memo you listed several accounts [114] that you believe may need assistance, is that correct?

[115] A. Right.

[116] Q. And why did you believe that?

[117] A. These were the large customers that we had on [118] the various Pydraul products.

[119] Q. And does Tennessee Gas appear on this list?

[120] A. Tennessee Gas was not a large customer.

[121] Q. Direct your attention to the second page of [122] this document in the list of accounts that appears on [123] this page, do you see the entity Pedco in Houston?

[124] A. Yes, I do.

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[1] Q. Who was Pedco?

[2] A. I believe they were a distributor for heat [3] transfer fluids and may have also distributed some [4] Pydraul AC out to the platforms in the Gulf.

[5] Q. And do you also know Pedco as Petroleum [6] Distributing Company?

[7] A. I don't remember it as that, but it could [8] have been.

[9] Q. Do you have an understanding as to what a [10] company named Petroleum Distributing Company would have [11] done?

[12] A. Been a distributor.

[13] Q. Just so I'm clear and so the record is clear, [14] do you have an understanding that Pedco and Petroleum [15] Distributing Company were different companies?

[16] A. No, I don't. I don't know.

[17] Q. Do you know the customers of Pedco?

[18] A. No, I don't.

[19] Q. Would Pedco have been one of the distributors [20] that you relied upon to send a pollution letter to your [21] customers in February of 1970?

[22] A. If they were selling our product, we would [23] have been in touch with them and asked how many copies [24] of our various letters they would require, and we

would

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[1] send those down to them and ask them to mail them to [2] each one of their customers. I believe Pedco was mainly [3] offshore oil, oil platforms in the Gulf.

[4] Q. And why did you believe Pedco needed [5] assistance?

[6] A. I can't remember.

[7] Q. Do you know who was responsible for the Pedco [8] account at this time?

[9] A. Oh, boy; oh, boy; oh, boy.

[10] MR. CHAMBERS: Let me object to the form. [11] When you say "who was responsible," are you asking which [12] salesman, or do you just want the names of everybody who [13] had anything to do with the account?

[14] MR. DUFF: You may answer, Mr. Johnson.

[15] MR. CHAMBERS: If you can understand what he's [16] asking, you can answer.

[17] THE WITNESS: Probably was Don Stegen.

[18] BY MR. DUFF:

[19] Q. And why is that?

[20] A. Because Don Stegen was located in Houston I [21] believe at this time.

[22] Q. Anybody else?

[23] A. Well, it also could have been Carl Clay, but [24] I just don't know in the transition time who was

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[1] handling that specific account. Carl at one time was [2] handling the whole southern part of the United States [3] and then we went into the transition, which is indicated [4] here, that the paper chemicals group became a part of [5] our group, and then Don Stegen was in Houston and would [6] have been the individual who I think would have been [7] responsible for the customer.

[8] Q. Did you pull together the list of accounts [9] that you believe needed assistance for the purposes of [10] this memorandum?

[11] A. I don't know if I did it or it was done by [12] Dave Hall or Dale Smith or... I don't remember.

[13] MR. DUFF: I'd like to have marked as Exhibit [14] 70 -- [15] (Whereupon, Plaintiff's Exhibit 70 [16] was marked for identification)

[17] MR. DUFF: -- a copy of which I'm providing to [18] counsel for Monsanto, a one-page document which has a [19] handwritten title at the top Pydraul Major Customers and [20] bears production number TRAN 003213.

witness with repetitive ^[19] questioning, testimony please.

^[20] MR. DUFF: And I would ask that you not coach ^[21] the witness and provide him with the answers that you ^[22] hoped he will provide. ^[23] Would you please repeat my last question ^[24] to the witness?

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^[1] (Question read)

^[2] MR. CHAMBERS: And would you please repeat the ^[3] witness' response to that question? ^[4] (Portion of record read)

^[5] MR. DUFF: But that was not in response to the ^[6] question that I asked.

^[7] BY MR. DUFF:

^[8] Q. So, Mr. Johnson, there is a question pending ^[9] for which I do not have an answer from you, and I would ^[10] ask that you provide an answer.

^[11] A. What was the question?

^[12] MR. DUFF: Would you please repeat the ^[13] question for the witness? ^[14] (Question read)

^[15] MR. CHAMBERS: Object to the form. That ^[16] question has been asked and answered.

^[17] THE WITNESS: The paragraph says "I would ^[18] hope."

^[19] BY MR. DUFF:

^[20] Q. And in the second sentence of that paragraph ^[21] when you wrote "If we have no low cost Pydraul ^[22] replacement, the need for product group assistance to ^[23] retain the business will be substantially increased," ^[24] what did you mean?

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^[1] A. Everybody would be traveling until they were ^[2] blue in the face.

^[3] Q. What did you mean by "low cost Pydraul ^[4] replacement"?

^[5] A. That was the Pydraul 312 series.

^[6] Q. Did this refer to any other Pydrauls?

^[7] A. No. The low cost Pydrauls were the 312 ^[8] series of 135, 312, was it 540? I believe those were ^[9] the three. There may have been two others. I don't ^[10] remember the viscosity designations.

^[11] Q. Did this refer to Pydraul AC?

^[12] A. No, it did not refer to Pydraul AC because ^[13] Pydraul AC was not a low cost fluid.

^[14] Q. Did it refer to Pydraul F-9?

^[15] A. No.

^[16] Q. Did it refer to Pydraul 90?

^[17] A. No.

^[18] Q. Is that your signature at the bottom of this ^[19] document?

^[20] A. No.

^[21] Q. Whose signature is that?

^[22] A. My secretary at the time.

^[23] Q. It's your name but not your writing, is that ^[24] correct?

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^[1] A. That's correct.

^[2] Q. And are those her initials or his initials ^[3] L. B.?

^[4] A. Yes.

^[5] Q. And what do the initials L. B. stand for?

^[6] A. Linda Brown.

^[7] Q. How long had Ms. Brown been your secretary at ^[8] this point?

^[9] A. Oh, maybe a year. I don't remember details. ^[10] We shared secretaries.

^[11] Q. When you say "we," who do you mean?

^[12] A. The group, and sometimes the secretary that I ^[13] had also worked for Paul Benignus or worked for some ^[14] other people so that we did not have exclusive ^[15] secretaries for one individual.

^[16] Q. And do you recall if any of the ^[17] secretaries -- I'd like to direct your attention back to ^[18] the time period the end of 1969 and beginning of 1970. ^[19] Do you recall that that was the time period when you ^[20] were responsible for preparing the mailing list for the ^[21] pollution letter that was sent out?

^[22] A. Yes.

^[23] Q. Do you recall any of the secretaries that ^[24] were working with you or for you at that time assisted

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^[1] in the preparation of that mailing list?

^[2] A. No, I don't. They were not secretaries to ^[3] us. They were girls that had been secretaries in ^[4] Monsanto who were occasionally looking for additional ^[5] work; and so through our personnel department they ^[6] brought in three or four girls who started working maybe ^[7] 8:30 after their kids were off to school and would leave ^[8] maybe 3:00, 3:30 in the afternoon and of course return ^[9] the next day.

^[10] Q. Those individuals are the ones that you're ^[11] referring to who were responsible for pulling together ^[12] the mailing list?

^[13] A. Yes. They were former Monsanto employees, ^[14] secretaries who had left the company for raising a ^[15] family.

^[16] Q. And do you recall any of their names?

^[17] A. No. I'm sorry. That's a tough one.

^[18] THE VIDEOGRAPHER: This will be all for Tape ^[19] Number 5. ^[20] (Brief interruption)

[21] A. I know in most cases we didn't have any.

[22] Q. Do you know -- this document indicates that [21] you did have some inventory of Pydraul F-9, Pydraul AC [24] and Pydraul 625; is that correct?

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[11] A. Only for the purposes of saying we may still [21] have inventory to supply customers if they absolutely [23] need material. But I know in the case of these [41] products, as we were in transition, in many cases we [25] stopped manufacturing a product three months before.

[6] MR. DUFF: Move to strike as nonresponsive.

[7] BY MR. DUFF:

[8] Q. At this time of this document there was [9] existing inventory of Pydraul F-9, Pydraul AC and [10] Pydraul 625; is that correct?

[11] A. It could have been one drum.

[12] Q. There was some inventory though, is that [13] correct?

[14] A. That's what I said based on the knowledge I [15] had at that point in time, but I can assure you that the [16] inventory was moved and reduced as quickly as we [17] possibly could to make room for the new product.

[18] Q. And the preference wasn't to sell new product [19] until the old product was sold, is that correct?

[20] A. Not true. In most cases we didn't have any [21] inventory left.

[22] Q. Would you please read the second sentence in [23] the last paragraph on this page into the record?

[24] A. Yes.

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[1] Q. Would you please read that for the record?

[2] A. I really don't want to.

[3] Q. Well, I'll ask you again if you would please [4] read the --

[5] A. I think we're nitpicking, okay, because I'm [6] telling you that inventory for the most part didn't even [7] exist, regardless of what this memo says. And if you [8] want me to read that, I'll read it, but I think you're [9] bastardizing this whole God damn concept of what we were [10] trying to accomplish. [11] "We would prefer not to ship the new [12] formulations to any customer until old formulations have [13] been sold out from the Queeny plant or warehouses in [14] your area." [15] Thank you, and I want to take a break.

[16] MR. DUFF: We can take a break now.

[17] (Recess taken)

[18] THE VIDEOGRAPHER: Back on the video record.

[19] BY MR. DUFF:

[20] Q. Mr. Johnson, I'd like you to direct your [21] attention back to the document that's been previously [22] marked as Plaintiff's Exhibit 7. This is a January 3, [23] 1971 memo that you were shown earlier this morning.

[24] A. Yes.

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[1] Q. Do you have that document in front of you?

[2] A. At the bottom it says Bradford 7.

[3] Q. That's because this was an exhibit marked in [4] Mr. Bradford's deposition.

[5] A. Okay.

[6] MR. DUFF: I'd also like to have marked the [7] next exhibit, Exhibit Number 71 -- [8] (Whereupon, Plaintiff's Exhibit 71 [9] was marked for identification)

[10] MR. DUFF: -- a November 24, 1971 memorandum [11] prepared by Norman T. Johnson to C. L. Bradford and [12] copied to T. L. Gossage regarding Pydraul accounts and [13] bearing production number TRAN 005181 through 82, a copy [14] of which I'm also providing to counsel for Monsanto.

[15] BY MR. DUFF:

[16] Q. Mr. Johnson, have you had an opportunity to [17] review this document?

[18] A. Yes.

[19] Q. And did you prepare this document?

[20] A. Well, it's got my name on it.

[21] Q. And when you view Exhibit 71 in the [22] context -- or in conjunction with Exhibit 7, does that [23] refresh your recollection about whether or not you [24] prepared the list of accounts that are listed in Exhibit

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[1] 7 for which you believe there may need -- be a need for [2] assistance?

[3] A. Yes.

[4] Q. Directing your attention to the second page [5] of Exhibit 71.

[6] A. Okay.

[7] Q. Did you intend that for customer accounts [8] other than those listed in this document the transition [9] to non-PCB fluids would be handled directly by your [10] salesmen?

[11] A. Well, that's what we hoped.

[12] Q. Was that what you intended when you wrote [13] this document?

[14] MR. CHAMBERS: Object to the form. That's [15] been asked and answered. He just said what he hoped was [16] that all other industrial fluids accounts could be [17] handled directly by the salesmen. I would ask that you [18] not unduly burden this

[23] short period of time.

[24] MR. DUFF: I'd like to show you what's been

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[1] previously marked as Plaintiff's Exhibit 11. This is a [2] document regarding industrial hydraulic fluids [3] transition plan dated December 8, 1971 from C. L. [4] Bradford and J. H. Davidson to T. L. Gossage copied to [5] several individuals including N. T. Johnson. And I'm [6] providing a copy to counsel for Monsanto as well. This [7] document bears production numbers TNGS 008577 through [8] 8593.

[9] BY MR. DUFF:

[10] Q. Mr. Johnson, have you had an opportunity to [11] review this document?

[12] A. No, but I'll go through the details with you [13] as you go along.

[14] Q. Please feel free to take a moment to peruse [15] the document if you'd like.

[16] MR. CHAMBERS: I'd note this is a lengthy [17] document. It may save some videotape if we just allow [18] the witness to continue reviewing off the video record [19] at any rate.

[20] MR. DUFF: That makes sense. We'll go off the [21] video record.

[22] THE VIDEOGRAPHER: Now off the video record. [23] (Brief interruption)

[24] THE WITNESS: Okay.

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[1] THE VIDEOGRAPHER: Back on the video record.

[2] BY MR. DUFF:

[3] Q. Mr. Johnson, have you had an opportunity to [4] review this document?

[5] A. Yes.

[6] Q. We're referring now to the document that's [7] been previously marked Plaintiff's Exhibit 11?

[8] A. Right.

[9] Q. Do you recall this document?

[10] A. Not really, but it does point out that the [11] document that we created for the sales meeting was [12] misdated January 3, 1971 and it really should have been [13] January 3, 1972, which was your document Bradford Number [14] 7.

[15] Q. I'd like to direct your attention to the [16] fourth page of Exhibit Number 11. It bears production [17] number TNGS 08580.

[18] Are you referring to Exhibit 7 in the [19] context of the first sentence in the second paragraph [20] under the section titled Field Sales Product Group [21] Relationship where it says "To help prepare the salesmen [22] for this transition, a meeting will be held in St. Louis [23] will focus on strategic salesmen and their managers who [24] will be in attendance"?

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[1] A. Right.

[2] Q. Do you see the last sentence of that [3] paragraph where it says "We will leave them with a [4] transition handbook?"

[5] A. Well, I don't read that. I read it says [6] "Also at the meeting we will specifically define who [7] will handle what accounts."

[8] Q. If you would look at the sentence directly [9] above that one?

[10] A. Yes.

[11] Q. What was the transition handbook, the term [12] that appears there in quotes?

[13] A. I don't remember.

[14] Q. Did you provide any materials to your [15] salesmen to assist them in the transition of their [16] customers from PCB to PCT-containing products?

[17] A. I don't remember.

[18] Q. Did you provide your salesmen with any [19] materials to assist them in the transition of their [20] customers from PCT to phosphate ester-containing [21] products?

[22] A. I don't remember.

[23] Q. Did you approve this industrial hydraulic [24] fluids transition plan that was prepared by Mr. Bradford

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[1] and Mr. Davidson?

[2] A. No. He did not work for me, he worked for [3] Tom Gossage.

[4] Q. Did you approve this transition plan?

[5] MR. CHAMBERS: Object to the form. That's [6] been asked and answered. The answer was no.

[7] MR. DUFF: You may answer.

[8] MR. CHAMBERS: Repeat your answer for the [9] benefit of Mr. Duff.

[10] THE WITNESS: I don't remember anything in [11] terms of approval. These people reported to Tom [12] Gossage, not to me.

[13] MR. DUFF: I'd ask that you not coach the [14] witness to tell him what he should and should not say. [15] He can answer the questions on his own.

[16] MR. CHAMBERS: He can repeat his answers on [17] his own.

[18] MR. DUFF: He'll repeat what you direct him to [19] repeat.

[20] MR. CHAMBERS: He'll repeat what his prior [21] testimony was.

[22] BY MR. DUFF:

[23] Q. Mr. Johnson, I'd like to direct your [24] attention to the -- you will note that there are several

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[1] appendices to this document?

[21] THE VIDEOGRAPHER: This will be the start of [22] Tape Number 6.

[23] MR. DUFF: Mr. Johnson, I'd like to show you a [24] document that I'll have marked as Exhibit 72 --

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[1] (Whereupon, Plaintiff's Exhibit 72 [2] was marked for identification)

[3] MR. DUFF: -- a copy of which I'm also [4] providing to counsel for Monsanto. This is a document [5] dated November 17, 1971 from C. L. Bradford and N. T. [6] Johnson to T. L. Gossage and bears production numbers [7] TRAN 005029 through 32.

[8] BY MR. DUFF:

[9] Q. Mr. Johnson, have you had an opportunity to [10] review this document?

[11] A. No. Please let me look at it.

[12] Q. Take as much time as you need.

[13] A. Okay.

[14] Q. Did you author this document?

[15] A. Not really. It was done by Larry Bradford.

[16] Q. Is that your name at the bottom of the [17] document?

[18] A. Along with Larry's, yes.

[19] Q. Both of your names appear at the bottom of [20] the document, is that correct?

[21] A. Yes.

[22] Q. I'd like to direct your attention to the [23] second page of this document. Have you had an [24] opportunity to review this page?

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[1] A. Yes.

[2] Q. What did you mean when you wrote -- I'll [3] direct your attention to the third sentence under the [4] section titled Pydraul and Miscellaneous Industrial [5] Fluids. [6] What did you mean when you wrote "If we [7] stop using PCTs without fully tested NC/N2C ester [8] formulations, inventoried replacement products, and 90 [9] days thereafter for conversion, we will lose all of this [10] business?"

[11] A. Larry really wrote this because he was [12] panicking, and when he referred to this section, it's [13] difficult for people to understand that if we went out [14] of the business completely as is indicated in that [15] paragraph, without the NC/N2C ester there would not be [16] enough fire-resistant fluids in the United States to [17] keep the plants operating.

[18] Q. I direct your attention to the third page of [19] this document. Did you and Mr. Bradford make a [20] recommendation that "For the air compressor lubricants [21] we recommend replacing free of charge approximately [22] 25,000 gallons of fluid now out in the industry and [23] incinerating that amount at our own expense?"

[24] A. Well, obviously it's in the memo. It was

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[1] Larry's recommendation and he asked me to participate in [2] the signature because I had previously been responsible [3] for that group.

[4] Q. And so it was the recommendation of both you [5] and Mr. Bradford, is that correct?

[6] A. Yeah, as a possible alternative.

[7] Q. Is that what you thought you should do with [8] the air compressor lubricants that were out in the [9] industry at this point in time?

[10] A. At various points in time we were looking [11] toward alternatives that would make the transition easy [12] for customers, and this was one of those recommendations [13] that Larry felt we should consider.

[14] Q. Was this recommendation for air compressor [15] lubricant customers followed?

[16] A. I don't believe so.

[17] Q. And why is that?

[18] A. Our superiors would probably not agree to it.

[19] Q. Is it because it would have been too [20] expensive to do this?

[21] A. Well, it would not only have been expensive, [22] we wouldn't know what to do with the replacement [23] products because I don't believe we had an incinerator [24] operating to handle the material. And in many cases I

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[1] would believe a lot of customers would not even be [2] willing to drain their systems and add new fluid. What [3] they would do is just take the new fluid and put it [4] right on top of the old.

[5] MR. DUFF: Would you please reread that last [6] answer? [7] (Answer read)

[8] MR. DUFF: Move to strike that portion of the [9] answer that begins with "and in many cases" through the [10] end of the answer.

[11] BY MR. DUFF:

[12] Q. Mr. Johnson, were there any incinerators [13] operating in the United States at this time for -- that [14] could have incinerated Pydraul products?

[15] A. To my knowledge, no.

[16] Q. You may set that document aside for the time [17] being. [18] Do you recall if an industrial hydraulic [19] fluids transition plan was prepared?

[20] A. I don't believe there was a basic document [21] ever created for the whole transition. Maybe there was [22] something that somebody wrote for a transition for a

[12] MR. DUFF: You may set that document aside. [13] I'd like to show you what's been [14] previously marked as Plaintiff's Exhibit 32, a copy of [15] which I'm providing to counsel for Monsanto. This is a [16] document dated January 31, 1972 and bears production [17] number TNGS 010665.

[18] THE WITNESS: Okay.

[19] BY MR. DUFF:

[110] Q. Do you recognize this document?

[111] A. Not really, but it went out under Howard [112] Bergen's signature.

[113] Q. Did you help to prepare this document?

[114] A. I don't know.

[115] Q. What was your position in January of 1972?

[116] A. I was field sales manager for the Monsanto [117] industrial chemical group, specialty products group.

[118] Q. All of your customers at that time would have [119] received this letter, is that correct?

[120] A. That same mailing list would have been used [121] plus any new customers that we may have generated [122] through this period.

[123] Q. And when you say "that same mailing list," do [124] you mean the pollution letter mailing list that was

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[11] prepared in 1970?

[12] A. Yes.

[13] Q. Do you recall if you saw a draft of this [14] letter before it was sent out?

[15] A. I don't recall it.

[16] MR. DUFF: Let me show you what's been [17] previously marked as Plaintiff's Exhibit 33, a copy of [18] which I'm providing to counsel for Monsanto. [19] This is a document dated January 14, 1972 [110] bearing production numbers TNGS 008721 through 22 from [111] C. L. Bradford to a list of seven individuals including [112] N. T. Johnson regarding letter of notification to all [113] Pydraul customers.

[114] BY MR. DUFF:

[115] Q. Have you had an opportunity to peruse this [116] document, Mr. Johnson?

[117] A. Yes, I have.

[118] Q. And does this refresh your recollection about [119] whether or not you reviewed a draft of the document that [120] we previously marked Plaintiff's's Exhibit 32?

[121] A. It's possible.

[122] Q. Is that what this document numbered Exhibit [123] 33 indicates to you?

[124] A. Could you repeat the question?

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[11] MR. DUFF: Could you please repeat the [12] question to the witness? [13] (Question read)

[14] THE WITNESS: Well, it suggests to me that [15] Larry Bradford wrote the letter and somebody made the [16] decision that the letter should go out under Howard [17] Bergen's signature, and that that was the letter then [18] sent dated January 31, 1972.

[19] BY MR. DUFF:

[110] Q. Was it one of your duties in January of 1972 [111] to review letters that were sent to your customers [112] before they went out?

[113] A. Not really on this situation. I'm sure when [114] Larry sent it over and I got the copy... The basic [115] decision-maker on this would have been Tom Gossage and [116] ultimately his boss Howard Bergen.

[117] Q. Who was P. S. Park?

[118] A. He was a lawyer in the legal department of [119] Monsanto.

[120] Q. Was he the individual in the legal department [121] who was responsible for reviewing customer notification [122] letters before they went out?

[123] A. Yeah, we did work with Phocian Park.

[124] Q. Was he the individual in the legal department

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[11] that you worked with in 1970 and 1971 on the customer [12] notification letter?

[13] A. He would have been.

[14] MR. DUFF: I'd like to show you what's been [15] previously marked as Plaintiff's Exhibit 37, a letter [16] dated February 28, 1972 bearing production number TNGS [17] 010664, and a copy of which I'm providing to counsel for [18] Monsanto. This is a letter signed by Howard S. Bergen, [19] Junior.

[110] BY MR. DUFF:

[111] Q. Mr. Johnson, have you had an opportunity to [112] review this document?

[113] A. I'm reading it now.

[114] Q. Please take as much time as you need.

[115] A. Okay.

[116] Q. Did you assist in the preparation of this [117] document?

[118] A. No, I would think that Larry wrote the entire [119] thing -- or Howard Bergen wrote it with Larry's [120] assistance.

[121] Q. Did you review this document before it went [122] out?

[123] A. No, I -- I certainly recognized we had [124] quality -- qualified people, and putting together the

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[2] A. Yes, I see them.

[3] Q. Do you see Appendix C which is titled Pydraul [4] Blends and appears on the page bearing production number [5] TNGS 008584?

[6] A. Yes.

[7] Q. Do you recognize the handwriting on this [8] page?

[9] A. No, I don't.

[10] Q. What is a Pydraul blend?

[11] A. Pydrauls are all blends. Pydrauls are never [12] pure materials.

[13] Q. And what does the term blend mean?

[14] A. It's a combination of in this case what I see [15] various phosphate esters plus some polymer here, and the [16] first one is maybe a thickener or maybe a corrosion [17] inhibitor or whatever.

[18] Q. Do you see on this page the reference to [19] Pydraul 90E?

[20] A. Yes.

[21] Q. What was Pydraul 90E?

[22] A. It was probably a replacement for 60, so it [23] was a phosphate ester made with normal cumyl phenol [24] phosphate, triphenyl phosphate, and probably some small

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[1] parts of various corrosion inhibitors or foam inhibitors [2] as defined in parts per million.

[3] Q. Did it contain any PCBs or PCTs?

[4] A. No.

[5] MR. DUFF: I'd like to show you what's been [6] previously marked as Plaintiff's Exhibit 12, a copy of [7] which I am handing to you, and I also have a copy for [8] counsel for Monsanto. This document bears production [9] number TRAN 003267 through 3282 and is titled -- or [10] appears to be regarding industrial hydraulic fluids [11] transition plan.

[12] BY MR. DUFF:

[13] Q. Do you recognize this document, Mr. Johnson?

[14] A. No, I don't. It indicates it was a draft, [15] and obviously it was probably a draft drawn up by Larry [16] Bradford.

[17] Q. And do you recall if you received a copy of [18] this document?

[19] A. I don't remember it, but it's very possible [20] since my name is indicated that I got a copy.

[21] Q. Does this refresh your recollection regarding [22] whether or not you would have approved this transition [23] plan before it was finalized?

[24] MR. CHAMBERS: Objection. That's been asked

[1] and answered.

[2] THE WITNESS: It didn't require my approval. [3] Tom Gossage was the boss.

[4] MR. DUFF: I'd like to show you what's been [5] previously marked as Plaintiff's Exhibit 13, and I'm [6] providing a copy to counsel for Monsanto as well.

[7] MR. CHAMBERS: Thank you.

[8] MR. DUFF: This document bears production [9] numbers TNGS 010691 through 95. It is a December 8, [10] 1971 document regarding industrial hydraulic fluids [11] transition plan, and it is from C. L. Bradford to J. H. [12] Davidson to T. L. Gossage, copied to N. T. Johnson and [13] others who are both typed and handwritten in.

[14] BY MR. DUFF:

[15] Q. Mr. Johnson, have you had an opportunity to [16] peruse this document?

[17] A. Yes.

[18] Q. Do you recognize any of the handwriting on [19] this document?

[20] A. I believe it to be Tom Gossage.

[21] Q. Do you see any other handwriting on this [22] document on any of the pages of this document that you [23] recognize?

[24] A. No. I only see what appears to be one

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[1] person's handwriting.

[2] MR. DUFF: You may set that document aside. [3] Why don't we take a short break. Off the [4] record. [5] (Recess taken)

[6] THE VIDEOGRAPHER: Back on the video record.

[7] MR. DUFF: Mr. Johnson, I'd like to show you [8] what's been previously marked as Plaintiff's Exhibit [9] 28, a document dated April 15, 1971 signed by C. Larry [10] Bradford. I'm also providing a copy to counsel for [11] Monsanto. This document also bears production number [12] TNGS 004341.

[13] BY MR. DUFF:

[14] Q. Mr. Johnson, have you had an opportunity to [15] review this document?

[16] A. Let me finish and I'll... Okay.

[17] Q. Do you recognize this document?

[18] A. No, I don't remember it, but I can understand [19] what he was writing here.

[20] Q. Did you help Mr. Bradford to prepare this [21] document?

[22] A. No.

[23] Q. Did Mr. Bradford speak with you about mailing [24] this document out?

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[1] A. I don't remember.

[21] BY MR. DUFF:

[22] Q. Mr. Johnson, have you had an opportunity to [23] review this document?

[24] A. Yes.

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[1] Q. Is this your handwriting on this document?

[2] A. No.

[3] Q. Does your handwriting appear anywhere on this [4] page?

[5] A. No.

[6] Q. Do you recognize this handwriting?

[7] A. No.

[8] MR. DUFF: I'd like to show you documents that [9] have been previously marked as Plaintiff's Exhibits 18 [10] and 20, and I also am providing a copy of these exhibits [11] to counsel for Monsanto. [12] For the record, these are -- for the [13] record, Exhibit 18 is a single page letter dated [14] February 1, 1970 and bearing production number TNGS [15] 004340; and Exhibit 20 is a single letter dated February [16] 1, 1971 bearing production number TRAN 036871. And if I [17] misspoke, Exhibit 18 is also dated February 1, 1971.

[18] BY MR. DUFF:

[19] Q. Mr. Johnson, do you see that these are copies [20] of the same letter except that there is handwriting on [21] one of them?

[22] A. Yes, I do.

[23] Q. And both letters are in fact signed by C. L. [24] Bradford, is that correct?

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[1] A. Yes.

[2] Q. Do you see on Exhibit 20 the initials that [3] are written toward the top of the document?

[4] A. Yes.

[5] Q. Are those your initials?

[6] A. Yes.

[7] Q. And do you see the handwriting in the lower [8] left-hand corner of this document?

[9] A. Yes.

[10] Q. Do you know whose handwriting that is?

[11] A. Not mine. I don't know whose it is.

[12] Q. Do you recall this letter?

[13] A. Not this specific letter. I recall, you [14] know, our sending out these kinds of letters [15] consistently as we were reformulating products.

[16] Q. Did you participate in drafting this letter?

[17] A. No. This would have been done by Larry [18] Bradford because my job had changed. I had become field [19] sales

manager for the entire group, and Larry had taken [20] over the industrial fluids area.

[21] Q. Would you have been responsible for mailing [22] out this letter?

[23] A. No. Larry would have picked up the [24] responsibility with whatever our mailing list was to get

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[1] this out to the appropriate customers who buy 312, 135 [2] on out.

[3] Q. Do you recall discussing with Mr. Bradford [4] the method by which this letter should be mailed to the [5] customers?

[6] A. I wouldn't have to. Larry was very much [7] involved in all of the things that were going on. He [8] knew what the sequence was.

[9] MR. DUFF: I'd like to show you a document [10] that's been previously marked as Plaintiff's Exhibit 19, [11] and I'm providing a copy of this exhibit to counsel for [12] Monsanto. [13] For the record, this is a document dated [14] January 25, 1971 from N. T. Johnson to a very lengthy [15] list of individuals, and this document bears production [16] numbers TNGS 010713 through 715.

[17] BY MR. DUFF:

[18] Q. Mr. Johnson, have you had an opportunity to [19] review this document?

[20] A. No, but I will. Okay.

[21] Q. Does this document refresh your recollection [22] regarding whether or not there were any -- was any [23] existing inventory of Pydraul AC in St. Louis in January [24] of 1971?

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[1] A. It says we still have some inventory of [2] Pydraul F-9, AC, Pydraul 625, and these must be moved in [3] the next 60 days. It's the bottom of the second [4] paragraph.

[5] Q. When you wrote "these must be moved in the [6] next 60 days," what did you mean?

[7] A. Shipped out.

[8] Q. Does that mean sold to customers?

[9] A. Sure.

[10] Q. And when you wrote this document, was it [11] Monsanto's preference to not ship the formulations -- [12] not ship new formulations of Pydraul products to any [13] customer until the old formulations had been sold out of [14] existing inventories and warehouses?

[15] A. That was the direction we were given. [16] However, the inventory was so low I don't -- even though [17] we stated in that line we still have some inventory, it [18] probably wasn't very much.

[19] Q. Do you recall exactly how much inventory [20] existed?

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[1] information this seems very logical at that point in [2] time.

[3] Q. But this isn't a document that you would have [4] expected to have been shown before it went out to your [5] customers?

[6] A. Not if it was going out under Howard Bergen's [7] signature. It may have been reviewed by Tom Gossage, [8] but not necessarily by me.

[9] Q. What does the term reclamation mean?

[10] A. It means if a customer has a mechanism like [11] floor drains or whatever that could accumulate lost [12] fluid, the possibility of recovering that fluid and [13] putting it through a diatomaceous earth system to reduce [14] the acidity and of course filter out any contaminants in [15] it so that the customer could reuse it in his system.

[16] Q. Was reclamation possible with all systems? [17] Let me rephrase that question for you. [18] Was reclamation possible for all uses of [19] Pydraul products?

[20] A. If the customer had a mechanism to collect [21] the leakage or if they contaminated a system -- [22] sometimes that would happen. Somebody would dump [23] petroleum oil on top of the phosphate ester which [24] created a mess, and there were instances over the years

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[1] where people would come to us and say we've got to get [2] the oil out of the phosphate ester and we want to save [3] it, can we do this, can we do that. And there was a [4] company in St. Louis that did have the capability of [5] making that separation and making that distillation.

[6] Q. Do you recall the name of that company?

[7] A. Findett Service.

[8] Q. You referred earlier to a diatomaceous earth [9] system. What is that?

[10] A. Well, diatomaceous earth is something you [11] mine. I guess there's enormous quantities under ground. [12] We use it in filtrations of swimming pools, and it can [13] be used in the filtration of fluids in that it helps [14] reduce the acidity. And of course in a swimming pool [15] what you develop is a lot of acid in the water because [16] people go in and swim and don't take a shower. So by [17] using a DE filter you recover that acidity and convert [18] the water to a normal pH. [19] Acidity in a fluid was always a problem [20] if somebody dumped water into it or didn't maintain it [21] properly because it would cause corrosion.

[22] Q. Did different Pydraul products have different [23] levels of acidity?

[24] A. No. We tried to control that to a low level,

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[1] so I don't remember the pH at which we handled the [2] fluids, but they were consistent in terms of trying to [3] maintain a certain pH level.

[4] Q. So different Pydraul products had the same pH [5] level, is that what you're saying?

[6] A. Right, right.

[7] Q. Are you familiar with the term fuller's [8] earth?

[9] A. It's the same.

[10] Q. Is that diatomaceous earth, the same thing?

[11] A. Yeah. To the best of my knowledge it's an [12] interchangeable comment.

[13] Q. Did Monsanto institute a reclamation program [14] or plan in the early '70s?

[15] A. There had been a program set up with General [16] Motors central foundry division in Bedford, Indiana that [17] was handled by Findett Service, so it was like an [18] outside contractor. We had no involvement in the [19] arrangement between the two of them other than [20] occasionally I believe our research people would fire [21] test the recovered fluids.

[22] Q. Did Monsanto ever offer reclamation services [23] to its Pydraul AC customers?

[24] A. In our brochure that we had through the '70s,

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[1] one of them explained the possibility of -- well, [2] explained all the equipment and all the necessary [3] procedures for filtering and recovering lost fluids.

[4] Q. And what brochure would that have been?

[5] A. I don't remember.

[6] Q. Are you referring to a selector bulletin?

[7] A. No, no, no. It was a bulletin that I [8] remember the two pages showing the pieces of equipment [9] and a tank and all the various things and then talking [10] about using I believe diatomaceous earth, or like you [11] were saying, fuller's earth for the purposes of [12] reclaiming fluids.

[13] MR. DUFF: I'd like to show you what's -- [14] actually I'd like to have marked for you Exhibit 73. [15] (Whereupon, Plaintiff's Exhibit 73 [16] was marked for identification)

[17] MR. DUFF: A copy of which I've also provided [18] to counsel for Monsanto. [19] This is a document titled Pydraul [20] Fire-Resistant Hydraulic Fluid Selector 1 bearing [21] production numbers TRAN 063847 through 62.

[22] BY MR. DUFF:

[23] Q. Mr. Johnson, directing your attention to Page [24] 11 of this document, is that

what you were referring to?

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[1] A. Yes, but this was actually published in a [2] brochure on Pydraul AC that existed, oh, from the time I [3] became a salesman back in 1959, and this was in a [4] different brochure that was just a single opening page.

[5] Q. But the same information was provided in the [6] Pydraul AC bulletin?

[7] A. Yes, it was.

[8] Q. What was your role in developing a [9] reclamation plan for Monsanto and its customers in the [10] early 1970s?

[11] A. Well, I had Don Pogue working for me, and we [12] had directed him to go up to Johnson Motors and recover [13] samples, and then we would analyze it and determine how [14] much fluid may be getting out of their systems and [15] looking at the potential of how could we assist [16] customers to put in facilities to recover fluids, [17] specifically those who were large users of material. [18] We had some of our engineering people [19] looking at the concept. We had talked to some customers [20] out there in addition to Johnson Motors, and that was [21] prior to the decision point of going to phosphate ester.

[22] Q. You referred to sending Mr. Pogue to GE, is [23] that correct?

[24] A. General Motors.

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[1] Q. I'm sorry, GM?

[2] A. Yes.

[3] Q. Did you send Mr. Pogue to visit other [4] customers to discuss reclamation?

[5] A. He went to Johnson Motors in Waukegan, [6] Illinois. He went to a couple of steel companies. [7] These were people who were large users of fire-resistant [8] hydraulic fluids.

[9] Q. Did you send Mr. Pogue to Tennessee Gas?

[10] A. I doubt it.

[11] Q. As far as you know, did anybody speak with [12] Tennessee Gas about reclamation of Pydraul fluids?

[13] A. Over the years we had always talked to people [14] about reclamation because they complained about the cost [15] of the fluids, and sometimes we've had incidents where [16] people would dump hydraulic oil into a phosphate ester [17] system, and how do you get the oil out and still retain [18] the phosphate ester, and this is a mechanism to do it. [19] Through the years we had spent a lot of [20] time encouraging people to recover -- if they had a big [21] hose break or something happened to try and recover as [22] much fluid and to build one of these small fluid [23] purification units because it was well worth the [24] investment.

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[1] MR. DUFF: Would you please read my last [2] question back? [3] (Question read)

[4] BY MR. DUFF:

[5] Q. Let me ask you that same question this way: [6] Do you have any specific recollection of [7] discussions with Tennessee Gas relating to reclamation?

[8] A. I have no specific information, but I don't [9] doubt that it was discussed at some point in time [10] because if customers asked or we would promote it. The [11] understanding was there that these things were [12] recoverable and reclaimable.

[13] MR. DUFF: Move to strike everything after the [14] word information. [15] I'd like to show you what's been [16] previously marked as Plaintiff's Exhibit 42. This [17] document has several exhibit stickers on it -- on its [18] face. You'll see that the one that's been placed on [19] this document in this case is -- appears as Exhibit [20] Bradford 42, 8/15/95 JAS. [21] This is a February 19, 1971 document from [22] D. R. Pogue to several individuals, including N. T. [23] Johnson. This document is a two-page document. The [24] first page the subject matter is reclamation meeting.

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[1] The second page is titled Agenda.

[2] BY MR. DUFF:

[3] Q. Have you had an opportunity to review this [4] document, Mr. Johnson?

[5] A. I'm reading it now. Okay.

[6] Q. And what is this document?

[7] MR. DUFF: Why don't we take a -- actually if [8] you can answer the question, that would be great. I [9] thought we were going to be having an interruption right [10] there.

[11] BY MR. DUFF:

[12] Q. What is this document, if you know?

[13] A. Well, Don Pogue was working in the area of [14] the potential of reclaiming fluids as an alternative on [15] PCB-containing materials.

[16] MR. CHAMBERS: Let me inquire whether you're [17] going to furnish me with a copy or do I need to just [18] look off --

[19] MR. DUFF: I do have a copy for you. I [20] apologize.

[21] THE WITNESS: And this was something that was [22] requested by upper management to look at the possibility [23] of do we get into waste incineration, do we get into [24] total fluids reclamation, does the individual do it,

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[1] does the customer do it, do we do it. And so obviously [2] the agenda is trying to define the alternatives that [3] should be considered, and Don was calling the

meeting of ⁽⁴⁾ all these people to discuss those alternatives.

⁽⁵⁾ BY MR. DUFF:

⁽⁶⁾ Q. Were the individuals listed on this document ⁽⁷⁾ a committee that was designed to discuss reclamation?

⁽⁸⁾ A. No. These were just what I would call people ⁽⁹⁾ in the product group who were relating to the PCB ⁽¹⁰⁾ problem.

⁽¹¹⁾ Q. Who was E. P. Benzing?

⁽¹²⁾ A. He was a man that worked over in the ⁽¹³⁾ development department of Monsanto originally for the ⁽¹⁴⁾ Organic Division, and I'm not sure what he was involved ⁽¹⁵⁾ in at this point in time.

⁽¹⁶⁾ Q. Do you recall being present at this meeting?

⁽¹⁷⁾ A. No, I don't.

⁽¹⁸⁾ Q. I direct your attention to the agenda that ⁽¹⁹⁾ appears on the second page of this document. Do you see ⁽²⁰⁾ where it says Reclamation versus Disposal?

⁽²¹⁾ A. Yes.

⁽²²⁾ Q. What does that mean?

⁽²³⁾ MR. CHAMBERS: Let me object to the extent ⁽²⁴⁾ you're asking this witness to speculate about the

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⁽¹⁾ meaning of something that Mr. Pogue wrote.

⁽²⁾ THE WITNESS: I would suspect the reference is ⁽³⁾ to incineration.

⁽⁴⁾ BY MR. DUFF:

⁽⁵⁾ Q. By that do you mean the reference to the word ⁽⁶⁾ disposal?

⁽⁷⁾ A. Yes. Reclamation probably refers to the ⁽⁸⁾ possibility of customers reclaiming leakage or whatever ⁽⁹⁾ and then returning it to us for disposal probably by ⁽¹⁰⁾ incineration.

⁽¹¹⁾ Q. Did Monsanto make recommendations to its ⁽¹²⁾ customers regarding whether or not it should attempt to ⁽¹³⁾ reclaim Pydraul fluids or dispose of them?

⁽¹⁴⁾ MR. CHAMBERS: Let me object to the form. ⁽¹⁵⁾ When you say whether it should try to reclaim, are you ⁽¹⁶⁾ referring to Monsanto or the customers?

⁽¹⁷⁾ MR. DUFF: The customers.

⁽¹⁸⁾ BY MR. DUFF:

⁽¹⁹⁾ Q. Mr. Johnson, do you understand the question?

⁽²⁰⁾ A. Yes. We constantly talked about the ⁽²¹⁾ possibility of people reclaiming fluids. We discussed ⁽²²⁾ it with plant managers, we discussed it with lubrication ⁽²³⁾ engineers. ⁽²⁴⁾ There was a brochure that preceded this

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⁽¹⁾ that showed that similar type equipment, and we would ⁽²⁾ suggest that people would build this, I don't remember ⁽³⁾ if there was someone you could buy it from, but to have ⁽⁴⁾ this small skid available for the purposes of reclaiming ⁽⁵⁾ fluids and refurbishing and putting them back in their ⁽⁶⁾ equipment.

⁽⁷⁾ Q. Did Monsanto recommend that some of its ⁽⁸⁾ Pydraul customers reclaim their fluids and that other of ⁽⁹⁾ their Pydraul customers incinerate their fluids?

⁽¹⁰⁾ A. No.

⁽¹¹⁾ Q. Did Monsanto recommend incineration for -- to ⁽¹²⁾ some of its customers?

⁽¹³⁾ A. I don't think I can answer that question ⁽¹⁴⁾ because it would relate to a point in time. ⁽¹⁵⁾ We had always promoted reclaiming fluids ⁽¹⁶⁾ with a brochure that preceded this showing this piece of ⁽¹⁷⁾ equipment, and some people did that. As we got into the ⁽¹⁸⁾ 1970, '71, '72, then the question became could people ⁽¹⁹⁾ collect their fluids and would we have an incinerator to ⁽²⁰⁾ dispose of it. And I don't know the exact timing of the ⁽²¹⁾ incinerator. It may have been at this point in time ⁽²²⁾ that the decision was made by the corporation to go ⁽²³⁾ ahead and build the incinerator over at the plant in ⁽²⁴⁾ saint -- in east St. Louis.

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⁽¹⁾ Q. At the point in time when the incinerator or ⁽²⁾ any incinerator was available for incinerating ⁽³⁾ PCB-containing fluids, did Monsanto recommend ⁽⁴⁾ incineration to some of its customers?

⁽⁵⁾ A. I don't think I was with the company at that ⁽⁶⁾ point in time.

⁽⁷⁾ Q. Do you recall devising an incineration policy ⁽⁸⁾ for Pydraul customers?

⁽⁹⁾ A. No, I did not.

⁽¹⁰⁾ Q. Are you saying that you do not recall that ⁽¹¹⁾ you did or are you saying that you in fact did not?

⁽¹²⁾ A. I don't remember it. If there was a ⁽¹³⁾ procedure established, I'm not familiar with it.

⁽¹⁴⁾ MR. DUFF: I'd like to show you what's been ⁽¹⁵⁾ previously marked as Plaintiff's Exhibit 46. This is a ⁽¹⁶⁾ one-page document dated January 19, 1972 regarding ⁽¹⁷⁾ incineration policy, a copy of which I'm providing to ⁽¹⁸⁾ counsel for Monsanto. This document is from C. L. ⁽¹⁹⁾ Bradford to T. L. Gossage and copied to five ⁽²⁰⁾ individuals, including N. T. Johnson. This document ⁽²¹⁾ bears production number TNGS 010577.

⁽²²⁾ THE WITNESS: Okay.

⁽²³⁾ BY MR. DUFF:

[24] Q. Does this document refresh your recollection

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[1] regarding whether or not you helped to devise an [2] incineration policy for Pydraul fluids?

[3] A. I'm sure I must have been involved in the [4] discussion.

[5] Q. And what do you recall about those [6] discussions?

[7] A. We were looking at a program to try and ease [8] the burden on customers when they convert from the old [9] products to the new straight phosphate ester.

[10] Q. And how were you seeking to accomplish that?

[11] A. Well, apparently they were talking here about [12] a credit of three cents a pound. They were also at a -- [13] looking through this policy it gives us an effective [14] price reduction of about 30 cents per gallon for those [15] customers who buy phosphate esters from us. We still [16] would be about 20 to 40 cents a gallon higher than our [17] competition, so obviously we were up against a real hard [18] situation.

[19] Q. And did Monsanto offer the service to those [20] customers that did not continue to purchase phosphate [21] esters?

[22] A. I really don't know. I don't know if this [23] policy ever went into effect. It states we had arrived [24] at an incineration policy we think should be applicable

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[1] to all General Motors locations plus our other [2] customers. That doesn't mean that it was accepted.

[3] Q. You don't recall whether or not it was [4] accepted, right?

[5] A. I have a feeling it was turned down.

[6] Q. And why do you have that feeling?

[7] A. I just have that feeling.

[8] Q. But you don't know that to be true, do you?

[9] A. No, I don't.

[10] MR. DUFF: I'd like to show you what's been [11] previously marked as Plaintiff's's Exhibit 47, a copy of [12] which I'm providing to counsel for Monsanto. This is a [13] document dated February 14, 1972. It's from H. S. [14] Bergen to T. L. Gossage and copied to three other [15] individuals bearing production number TNGS 010574. This [16] document is regarding market price for PCB incineration [17] and Pydraul incineration rebate allowances on new [18] Pydraul sales purchases.

[19] THE WITNESS: Okay.

[20] BY MR. DUFF:

[21] Q. Mr. Johnson, does this document

refresh your [22] recollection that you helped to devise the PCB [23] incineration policy for Pydraul fluids along with [24] Bradford, Johnson -- I'm sorry, along with Bradford

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[1] Bergen, Gossage, Savage and Koenig?

[2] A. It's very possible that we had a meeting to [3] discuss this whole concept.

[4] Q. And that based on that meeting a policy was [5] devised for incineration, is that correct?

[6] A. I really don't know whether this was a policy [7] recommended by the participants in the meeting or this [8] was finally the recommendations made by Howard Bergen [9] who was then our business director.

[10] Q. Well, do you see where it says based on [11] conversations with you and others?

[12] A. Right.

[13] Q. "We will follow the schedule presented below [14] with regard to market prices for incineration"?

[15] A. Right, but keep in mind that may not have [16] been what we recommended but that is what Howard Bergen [17] decided he wanted to do.

[18] Q. Do you recall that the plan was to charge [19] five cents per pound for Pydraul incineration?

[20] A. I don't remember the details specifically. [21] As I read this, it looks like it could have been the [22] program that was generated.

[23] Q. Do you recall that the incinerator was [24] designed and -- for disposal of fluids that were 100

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[1] percent PCBs?

[2] A. It would be easier to design a system to [3] destroy 100 percent PCBs than it would be to destroy one [4] that -- destroy fluids that contained petroleum oil.

[5] Q. Why is that?

[6] A. You'd probably blow up the incinerator.

[7] Q. Is that because the petroleum oil in that [8] example would be combustible?

[9] A. You bet.

[10] Q. Well, did the Pydraul -- what is meant by 100 [11] percent PCBs here, if you know?

[12] A. Well, the dielectric fluids were all 100 [13] percent. The Therminol FR fluids were 100 percent. The [14] Pydraul fluids were blends of materials. So when you [15] get down to Pydrauls, it's an obvious problem that if [16] those products have been contaminated with petroleum [17] oil, in their recovery of it or even pumping out of a [18] system and that was returned to us, we

would run the ⁽¹⁹⁾ risk without carefully analyzing the content of the ⁽²⁰⁾ Pydraul, I'll start feeding it into the incinerator and ⁽²¹⁾ blow it up.

⁽²²⁾ Q. That same risk would exist if there were any ⁽²³⁾ dielectric fluids, for instance, that were contaminated ⁽²⁴⁾ with petroleum oils, isn't that correct?

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⁽¹⁾ A. If they had been contaminated with petroleum ⁽²⁾ oil, but the dielectric fluids were essentially Aroclor ⁽³⁾ and tricolor benzene. They didn't contain petroleum.

⁽⁴⁾ Q. And --

⁽⁵⁾ A. And the capacitor fluids were a hundred ⁽⁶⁾ percent.

⁽⁷⁾ Q. And Pydraul AC by comparison, did that ⁽⁸⁾ contain petroleum oil?

⁽⁹⁾ A. No, it did not, but it contained other ⁽¹⁰⁾ materials other than phosphate ester.

⁽¹¹⁾ Q. And would any of the other materials in ⁽¹²⁾ Pydraul AC have made it more difficult to incinerate ⁽¹³⁾ than say dielectric fluids?

⁽¹⁴⁾ A. I really don't know the parameters of that.

⁽¹⁵⁾ Q. Who was G. G. Kosup?

⁽¹⁶⁾ A. Gil Kosup, he was a product manager for the ⁽¹⁷⁾ Paper Chemicals Group.

⁽¹⁸⁾ Q. Was that his position in 1972?

⁽¹⁹⁾ A. Yes.

⁽²⁰⁾ Q. Was he involved in establishing an ⁽²¹⁾ incineration policy?

⁽²²⁾ A. Not to my knowledge. He was a product ⁽²³⁾ manager for paper chemicals.

⁽²⁴⁾ Q. Do you recall any discussions with him

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⁽¹⁾ relating to reclamation?

⁽²⁾ A. No.

⁽³⁾ MR. DUFF: This would be an appropriate time ⁽⁴⁾ to take a lunch break.

⁽⁵⁾ THE VIDEOGRAPHER: Now off the video record. ⁽⁶⁾ (A luncheon recess was taken)

⁽⁷⁾ A F T E R N O O N S E S S I O N ⁽⁸⁾
August 23, 1995 ⁽⁹⁾ (Witness previously sworn) ⁽¹⁰⁾ NORMAN T. JOHNSON, ⁽¹¹⁾ the witness at the time of recess, having been ⁽¹²⁾ previously sworn, was examined and testified further as ⁽¹³⁾ follows: ⁽¹⁴⁾
EXAMINATION [Resumed]

⁽¹⁵⁾ THE VIDEOGRAPHER: Now back on the video ⁽¹⁶⁾ record.

⁽¹⁷⁾ BY MR. DUFF:

⁽¹⁸⁾ Q. Mr. Johnson, I'd like to direct your ⁽¹⁹⁾ attention to when you became director of product ⁽²⁰⁾ development for functional fluids and paper chemicals.

⁽²¹⁾ A. Right.

⁽²²⁾ Q. You stated earlier that that was in 1972, is ⁽²³⁾ that correct?

⁽²⁴⁾ A. I believe it was in the fall of '72.

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⁽¹⁾ Q. And do you recall why you moved into that ⁽²⁾ position at that time?

⁽³⁾ A. Because a fellow named Gil Kosup had resigned ⁽⁴⁾ and gone to a company in Maryland Heights, Missouri.

⁽⁵⁾ Q. And did you move into Mr. Kosup's position?

⁽⁶⁾ A. Yes.

⁽⁷⁾ Q. And was that a promotion for you?

⁽⁸⁾ A. Yes.

⁽⁹⁾ Q. Had you reported to Mr. Kosup previously?

⁽¹⁰⁾ A. No. I reported to Tom Gossage.

⁽¹¹⁾ Q. So with this move you moved into a different ⁽¹²⁾ chain of command, is that correct?

⁽¹³⁾ A. Right.

⁽¹⁴⁾ Q. Who did you report to when you became ⁽¹⁵⁾ director of product development for functional fluids ⁽¹⁶⁾ and paper chemicals?

⁽¹⁷⁾ A. Howard Bergen.

⁽¹⁸⁾ Q. So you reported directly to Howard Bergen?

⁽¹⁹⁾ A. Right.

⁽²⁰⁾ Q. At that point, is that correct?

⁽²¹⁾ A. Yes.

⁽²²⁾ Q. And previously you had reported directly to ⁽²³⁾ Mr. Gossage, is that correct?

⁽²⁴⁾ A. Correct.

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⁽¹⁾ Q. And at that point Mr. T. L. Gossage had ⁽²⁾ reported directly to Mr. Bergen?

⁽³⁾ A. Right.

⁽⁴⁾ Q. When you became director of product ⁽⁵⁾ development for functional fluids and paper chemicals, ⁽⁶⁾ did you report in any way to Mr. Gossage?

⁽⁷⁾ A. No.

⁽⁸⁾ Q. Did you work with Mr. T. L. Gossage at all in ⁽⁹⁾ that position?

⁽¹⁰⁾ A. Well, we were all on a comparable level, and ⁽¹¹⁾ that was kind of the business group, so occasionally the ⁽¹²⁾ business group would meet under Howard Bergen. And some ⁽¹³⁾ of the names that you've got listed here, whether it ⁽¹⁴⁾ would have been some of the people out of research or ⁽¹⁵⁾ some of the people out of manufacturing, they would ⁽¹⁶⁾ participate in that kind of meeting talking about the ⁽¹⁷⁾ overall business of the group.

[118] Q. And who reported to you when you became [119] director of product development for functional fluids [120] and paper chemicals?

[121] A. There were only three people. I don't [122] remember now. It's too far back because I didn't stay [123] there that long after that point. I think Richard Davis [124] was one. I don't remember the rest.

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[1] Q. And were the three people who reported to you [2] responsible for both functional fluids and paper [3] chemicals?

[4] A. Yes, but the main effort at that point was [5] working on paper chemical products.

[6] Q. And is there a trade name that you associate [7] with paper chemical products?

[8] A. Mercize was one, Scriptite was another, [9] Scriptset was another. Maybe there were a couple of [10] others.

[11] Q. So you had moved away from concentrating on [12] functional fluids at that point, is that correct?

[13] A. Right.

[14] Q. Is that because Monsanto's business had moved [15] away from concentrating on functional fluids?

[16] A. No. Actually what you're seeing here is all [17] those new products that came out, the phosphate ester [18] was on its way, and the main emphasis with the people [19] that were located in product development were residual [20] people from the paper chemicals area. And so it really [21] became that the product group was doing most of the [22] development work, not the actual development people. So [23] the development people had been switched to work more on [24] paper chemicals.

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[1] Q. And you testified yesterday that you were to [2] become the director of commercial development, right, [3] shortly before you left Monsanto; is that correct?

[4] A. Oh, I was made director of commercial [5] development, and I left about six months later.

[6] Q. And did you become director of commercial [7] development at the end of 1972?

[8] A. Probably, yeah, maybe in the fall.

[9] Q. And you left Monsanto in April of '73, is [10] that right?

[11] A. Right.

[12] Q. And when you became director of commercial [13] development, who did you report to?

[14] A. Howard Bergen.

[15] Q. And who reported to you at that point?

[116] A. Well, that's what you asked me before. There [117] were three people, and I think one was Richard Davis, [118] and I don't remember the names of the other two.

[119] Q. Did you refer to the -- do you use the terms [120] director of commercial development and director of [121] product development for functional fluids and paper [122] chemicals interchangeably?

[123] A. Yes, same.

[124] Q. During the years that you worked for Monsanto

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[1] from 1959 to 1973 did you at any time participate in [2] preparing sales brochures or technical bulletins for [3] your customers?

[4] A. I might have reviewed some of them, but I was [5] not actively in the participation of the development of [6] it.

[7] Q. And by reviewing, what do you mean?

[8] A. Well, we had an advertising department. The [9] advertising department would come over and we'd sit down [10] and talk about a brochure that we wanted to create or [11] whatever, and then they would have the responsibility of [12] going out maybe to an agency or whatever and getting a [13] couple of recommendations which would then be reviewed [14] by the fluids group.

[15] Q. So would you review a draft of a sales [16] brochure, for example?

[17] A. Probably. We'd all get a chance to look at [18] one, yeah.

[19] Q. Is that what you meant when you said you'd [20] review it?

[21] A. Right.

[22] Q. Was that an opportunity for you to offer [23] comments?

[24] A. Oh, sure, and certainly make changes in the

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[1] data presented or the way the story was written, [2] whatever it may be.

[3] Q. Were all sales brochures or technical [4] bulletins presented to you for approval for functional [5] fluids products?

[6] A. Well, certainly not at the end because I was [7] involved with commercial development. But if something [8] was there that was going to be created relative to the [9] Pydrauls, I'm sure I had an opportunity to see it before [10] it went into publication.

[11] Q. And in what positions would you have been [12] when you had that responsibility for approving documents [13] relating to --

[14] A. The marketing manager position for industrial [15] fluids.

[16] Q. And when you were marketing manager for [17] industrial fluids, who would you have worked with in the [18] advertising department?

[19] A. I don't remember. I don't.

[20] Q. Do you recall who was in charge of the [21] advertising department at that time?

[22] A. No, I don't.

[23] Q. Do you remember the name Phil Ziegenfuss?

[24] A. Yes.

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[1] Q. Would that have been the individual

[2] A. Yeah, Phil Ziegenfuss, that's right. He was [3] in the advertising department.

[4] Q. Would you have worked with Mr. Ziegenfuss at [5] that time?

[6] A. I really don't know if Phil was involved in [7] the fluids area. He might have been. Some of those [8] fellows in advertising were assigned to certain groups [9] and some of them worked for three or four different [10] groups.

[11] Q. Would the people in the advertising [12] department rely on you to provide them with any [13] information to include in any bulletins or brochures?

[14] A. You mean if you're talking about technical [15] information or technical data on the product such as [16] specific gravity and color and things of that type?

[17] Q. Any type of information that would be used to [18] be included in either the bulletins or brochures?

[19] A. Well, if specification were defined, we would [20] either supply it to them or it would come out of [21] research or maybe out of manufacturing. People in [22] advertising knew where to go to get that information as [23] quick as possible.

[24] Q. And would the same apply for any

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[1] advertisement or sales information that would be [2] supplied to customers or be used to attract new [3] customers?

[4] A. Well, our advertising department did not [5] produce anything without our request, and normally we [6] would sit down with the advertising people and try and [7] define the message that we wanted to get out in a [8] specific brochure or if we were running an ad, [9] But they basically dealt with the outside [10] agencies in coming up with layout and color and how the [11] information was going to be presented in the brochure, [12] and then we'd have a chance to review it, and if we [13] didn't like it to be on the right-hand side of the page, [14] we'd ask them to move it to the left. And of course if [15] there were things that we just didn't like, we would [16] make major changes in maybe the verbiage

that was [17] presented.

[18] Q. During the period that you were either a [19] salesman or managing people in sales for Pydraul [20] products at Monsanto, did you or your salesmen ever use [21] any films to promote your Pydraul products?

[22] A. We never had any films. We had a little -- [23] at one point I remember seeing something that was a [24] sequence of slides.

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[1] Q. But you don't recall any films, is that [2] correct?

[3] A. No, I don't remember any films. At one point [4] I think they did do some filming on an eight millimeter [5] camera in fire testing, but that was never given to [6] customers. That was a matter of being able to review [7] the fire resistance performance of the fluids.

[8] Q. While you were employed by Monsanto, did you [9] ever belong to any trade associations?

[10] A. Sure.

[11] Q. Which ones?

[12] A. Oh, the American Society of Lubrication [13] Engineers was one. American Die Cast Association was [14] another. And when I was involved in plastics, I was [15] with the two organizations related to the plastics [16] industry, but I don't remember the details or the names [17] of how they addressed themselves.

[18] Q. And what was the nature of the Society of [19] Lubrication Engineers?

[20] A. It was a national society composed of the oil [21] companies, chemical companies and lubrication engineers [22] from major companies across the country.

[23] Q. And did you attend meetings of this society?

[24] A. Yes.

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[1] Q. How often a year would you attend such [2] meetings?

[3] A. They would meet once a year in a major [4] meeting in some city.

[5] Q. And what would be discussed at those [6] meetings?

[7] A. Well, sometimes it was just the overall [8] presentation of new lubricants, new things that could be [9] used as lubricants, but there was also a small group [10] that met talking about fire-resistant hydraulic fluids.

[11] Q. Did you ever discuss lubricating fluids to be [12] used in air compressors at any of these meetings?

[13] A. I don't really remember that it came up, but [14] all of the companies that would be represented would [15] have had large air compressors and a question might be [16]

asked about Pydraul AC.

[17] Q. Did you attend these meetings of this society [18] in order to represent Monsanto?

[19] A. Yes, but we sometimes would have people from [20] research who would come there to attend sessions where [21] papers were presented on lubrication properties, [22] industrial applications where there may be problems in [23] providing a suitable lubricant.

[24] Q. Do you recall any instances where anybody at

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[1] Monsanto presented such a paper?

[2] A. I was never there, but I believe Monsanto did [3] present via Lou Stark a paper on some lubrication [4] application for fire-resistant fluids, and it may have [5] been that John Herber also made a presentation.

[6] Q. And when would the time period be that you [7] attended meetings of the society of lubrication [8] engineers?

[9] A. It would be once a year.

[10] Q. What years would that include?

[11] A. Oh, I'm -- I don't know that I made it every [12] year, but probably sometime between 1968 and 1972.

[13] Q. And do you know where the society was based?

[14] A. I think their home office may be here in Park [15] Ridge.

[16] Q. Park Ridge, Illinois?

[17] A. I think so.

[18] Q. And did you attend meetings for the American [19] Die Cast Association?

[20] A. We used to have a display at the show.

[21] Q. And what type of display would you have?

[22] A. A pretty simple booth just presenting some [23] photographs of demonstrating the fire resistance of the [24] fluids and maybe some photographs of equipment in which

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[1] it was being used, like die cast machines or whatever.

[2] Q. Would you only promote fluids to be used in [3] die cast machines at those meetings?

[4] A. Well, that was the primary business, you [5] know. If it wasn't in the steel industry or the die [6] cast industry, the air compressor business fluids were [7] not the dominant part of the business.

[8] Q. What Pydraul fluids were used for lubricating [9] die casting machines?

[10] A. Well, no, they weren't used for lubricating.

[11] MR. CHAMBERS: Object to the form.

[12] BY MR. DUFF:

[13] Q. What fluids were used in die casting [14] machines?

[15] A. They were all hydraulic applications.

[16] Q. Do you remember which specific Pydraul fluids [17] were used?

[18] A. Principally the F-9 and the 312 were the [19] basic products. 135 was used. Sometimes you'd have [20] applications that would use 625 or later 540.

[21] Q. Did you belong to any business groups when [22] you were employed by Monsanto?

[23] A. "Business groups" meaning what?

[24] Q. Any business societies or business groups

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[1] that were outside of Monsanto?

[2] A. No.

[3] MR. DUFF: At this time I have no further [4] questions for the witness. [5] EXAMINATION

[6] BY MR. CHAMBERS:

[7] Q. I have just a few questions for you, [8] Mr. Johnson. [9] I'd like you to look through the stack of [10] exhibits before you and see if you can pull out [11] Plaintiff's Exhibit 57 which is the mailing list [12] exhibit.

[13] A. God, we've got tons of stuff here. There's [14] too many. This one?

[15] Q. Yes, sir.

[16] A. Oh, God, there's a ream of paper. Yes, sir.

[17] Q. Do you recall when Mr. Duff asked you some [18] questions about this exhibit --

[19] A. Yes.

[20] Q. -- yesterday?

[21] A. Yes.

[22] Q. And this was an exhibit that contains the [23] list of names of customers that Monsanto sent the [24] February 2, 1970 customer letter to; is that right?

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[1] A. Correct.

[2] Q. Let me ask you to turn to the page with the [3] Bates number TNGS 004908.

[4] A. Oh, my God, we're way back. Here it is. [5] Okay.

[6] Q. And on that page do you see an address listed [7] for Tennessee Gas Pipeline Company?

[8] A. The third one down on the right-hand side.

[9] Q. Do you see any other addresses listed on that [10] page for Tennessee Gas Pipeline

Company?

[111] A. Yeah, the third one down on the left-hand [112] side in Houston, Texas.

[113] Q. Do you know where the headquarters office for [114] Tennessee Gas Pipeline Company was located in 1970?

[115] A. I assume it was probably in Houston, Texas.

[116] Q. Who within the Tennessee Gas Pipeline [117] organization was the letter of February 2 -- I'm sorry, [118] February 9, 1970 addressed to?

[119] A. Director of purchasing or office of the [120] president.

[121] Q. Who is it addressed to in the Houston office?

[122] A. In Houston it says director of purchases.

[123] Q. And why was the letter addressed to the [124] director of purchases in Houston?

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[11] A. Well, the attempt was to try and reach a [12] decision-maker since most corporations ended up with a [13] number of purchasing people and you wanted to reach the [14] senior purchasing person. [15] Now, in some corporations we recognized [16] they had a vice president of purchasing, but the [17] decision was made to go with the director of purchases, [18] although you'll see others where we selected the office [19] of the president, and I cannot remember the exact detail [110] or reasons why we selected one versus another at any [111] point in time.

[121] Q. What did you expect the director of purchases [113] of Tennessee Gas Pipeline Company to do with the [114] information that was in the February 9, 1970 letter?

[115] MR. DUFF: Object to the form of the question [116] to the extent it asks this witness to speculate what may [117] have been in someone else's mind.

[118] MR. CHAMBERS: No, I asked him what he [119] expected to be done.

[120] THE WITNESS: Well, we were hoping that by [121] sending the letter to that kind of an individual he [122] would either make copies of it or he would recognize the [123] urgency of it and would communicate information to other [124] people within their corporation, whether it's the

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[11] engineering group or whatever, so that ultimately the [12] information would filter down to the pipeline stations [13] where we recognized the action had to be taken.

[14] MR. CHAMBERS: I don't have anything further. [15] Thank you. [16] FURTHER EXAMINATION

[17] BY MR. DUFF:

[18] Q. Mr. Johnson, do you know whether in fact any [19] of the companies that are

listed -- strike that. [110] Do you know in fact whether all of the [111] companies that are listed on this mailing list that's [112] been marked as Plaintiff's Exhibit 57 in fact received [113] the letter that was sent to them?

[114] A. No, but I can assure it was sent.

[115] Q. So that I'm clear --

[116] A. Well --

[117] Q. I understand that you're saying that the [118] letter was sent. I'm asking you do you know in fact [119] whether or not all the companies that are listed on this [120] mailing list received the letter that you say was sent?

[121] A. It was sent registered mail, and there was a [122] green card that was returned. And that seems to be the [123] problem in that those green cards which were accumulated [124] recording somebody signing for the letter at that

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[11] corporation has -- nobody knows where they are.

[12] Q. So you don't in fact know as you sit here [13] today whether the companies that are listed on this [14] mailing list received the letter that you say was sent, [15] is that correct?

[16] A. 99.9 percent we got a card back from the U.S. [17] Post Office recording that delivery was made and [18] somebody signed for the letter. [19] Now, those that came back as [110] undeliverable we never got a green card on, and the [111] girls then made an effort to search for whether the [112] company was out of business or if addresses had changed [113] and we could possibly reach that kind of person. [114] I remember the girls being on the [115] telephone trying to just go into a particular community [116] where we had this company name and find out if the [117] company still existed in that area so we could send them [118] the letter.

[119] Q. So less than a hundred percent of the [120] companies that are listed on this mailing list received [121] the letter, is that correct?

[122] A. Well, if you say less than, I would say [123] probably one-tenth of one percent we were unable to [124] locate and therefore the letter was not delivered.

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[11] Q. Are you saying that as you sit here today you [12] know in fact that that percentage of people received the [13] letter?

[14] A. All I can answer to that is we had one hell [15] of a lot of cards coming back that were signed by [16] recipient companies, and those that were undeliverable [17] came back, and I think that we may have ended up with [18] ten or 15 where there was no known address or there was [19] some other disclosure, and the girls took one more step [110] to try and call into that geographical area to that [111] city, see if they could get a phone number, see if they [112] could find a

listing on the company. Of course many ^[13] times the people -- the business is gone.

^[14] Q. So you don't in fact know whether or not all ^[15] of the people on this mailing list received the letter, ^[16] is that correct?

^[17] A. I would answer that by saying never in my ^[18] life am I sure of anything to say all.

^[19] MR. DUFF: Thank you. I have no further ^[20] questions.

^[21] THE REPORTER: Signature?

^[22] MR. CHAMBERS: Yes, we're going to have the ^[23] witness read and sign the transcript.

^[24] THE VIDEOGRAPHER: Now off the video record.

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^[1] COMMONWEALTH OF KENTUCKY
ROWAN CIRCUIT COURT ^[2] CIVIL
BRANCH ^[3] TENNESSEE GAS
PIPELINE COMPANY,)) ^[4] Plaintiff,))
^[5] vs.) No. 94-C1-90145) ^[6]
MONSANTO COMPANY,)) ^[7]
Defendant.) ^[8] I hereby certify that I have
read the foregoing ^[9] transcripts of my
deposition given on August 22, 1995 ^[10]
and August 23, 1995, at the time and place
aforesaid, ^[11] and I do again subscribe and
make oath that the same are ^[12] true, correct
and complete transcripts of my deposition
^[13] given as aforesaid, with correction
sheet(s).

_____ correction sheet(s) attached.

^[14] NORMAN T. JOHNSON
SUBSCRIBED AND SWORN TO ^[15]
before me this _____ day of
_____, 1995.

^[16] Notary
Public

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^[1] STATE OF ILLINOIS)) SS: ^[2]
COUNTY OF C O O K) ^[3] The within
and foregoing deposition transcripts of ^[4]
the witness, NORMAN T. JOHNSON,
were taken before ELLEN ^[5] M.
WILLIAMS, C.S.R., Notary Public, at The
Sheridan ^[6] Suites Hotel, 121 North West
Point Road, in the Village ^[7] of Elk Grove,
Cook County, Illinois, on the 22nd and ^[8]
23rd day of August, A.D., 1995. ^[9] The
said witness was first duly sworn and was
then ^[10] examined upon oral interrogatories;
the questions and ^[11] answers were taken
down in shorthand by the undersigned, ^[12]
acting as stenographer and Notary Public;
and the within ^[13] and foregoing is a true,
correct and complete record of ^[14] all of the
questions asked of and answers made by
the ^[15] said witness, NORMAN T.
JOHNSON, at the time and place ^[16] herein
above referred to. ^[17] Pursuant to Rule
207(a) of the Supreme Court Rules, ^[18] as
amended, if deponent does not appear to
read and sign ^[19] the deposition within 28
days or make other arrangements ^[20] for
reading and signing, the deposition may be

used as ^[21] fully as though signed, and the
certificate will then ^[22] evidence such
failure to appear as the reason for ^[23]
signature being waived. ^[24] The
undersigned is not interested in the within

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^[1] case, nor of kin or counsel to any of the
parties. ^[2] Witness my official signature
and seal as Notary ^[3] Public in and for
Cook County, Illinois, on the _____ ^[4]
day of _____, A.D. 1995.

^[5]

ELLEN M. WILLIAMS, C.S.R.
^[6] Notary Public 77 West Washington
Street, Suite 1110 ^[7] Chicago, Illinois
60602 Telephone: (312) 704-5250
^[8] License No. 084-003264

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					324:16 338:24	25 [2] 296:13 309:14										
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					121 [2] 250:12 372:6	254 [1] 252:9										
					1242 [2] 296:23 297:18	262 [1] 252:10										
					1242B [3] 296:20 297:12 297:14	266 [1] 252:11										
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COMMONWEALTH OF KENTUCKY
ROWAN CIRCUIT COURT
CIVIL BRANCH

TENNESSEE GAS PIPELINE COMPANY,)

Plaintiff,)

vs.)

No. 94-C1-90145

MONSANTO COMPANY,)

Defendant.)

I hereby certify that I have read the foregoing
transcripts of my deposition given on August 22, 1995
and August 23, 1995, at the time and place aforesaid,
and I do again subscribe and make oath that the same are
true, correct and complete transcripts of my deposition
given as aforesaid, with correction sheet(s).

____ correction sheet(s) attached.

Norman T. Johnson
NORMAN T. JOHNSON

SUBSCRIBED AND SWORN TO
before me this 2nd day
of October, 1995.

Steven Alexander
Notary Public

