COMMONWEALTH OF KENTUCKY
ROWAN CIRCUIT COURT
CIVIL BRANCH

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

VOLUME I, Pages 1 through 249

The deposition of NORMAN T. JOHNSON, taken before ELLEN M. WILLIAMS, C.S.R., Notary Public, at Salon 3, Sheridan Suites Hotel, 121 North West Point Road, in the Village of Elk Grove, Cook County, Illinois, commencing at 9:00 o'clock a.m., on the 22nd day of August, 1995.

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APPEARANCES:
HEDLUND, HANLEY & JOHN
(Sears Tower, Suite 5700
Chicago, Illinois 60606), by:
MR. KEVIN B. DUFF,

On behalf of the Plaintiff;

SMITH, HELMS, MULLISS & MOORE, L.L.P
(227 North Tryon Street
Charlotte, North Carolina 28202), by:
MR. ROLLY L. CHAMBERS,
On behalf of the Defendant.
ALSO PRESENT:
Mr. Terry Kuppersmas, A-1 Legal Video

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THE VIDEOGRAPHER: Will the parties please identify themselves for the record?

MR. DUFF: Kevin B. Duff for Tennessee Gas Pipeline Company.

MR. JOHNSON: Norman T. Johnson.

MR. CHAMBERS: Rolly Chambers for Monsanto Company, and for purposes of this deposition only for Mr. Johnson.

MR. DUFF: Would you please swear the witness? (Witness sworn) NORMAN T. JOHNSON, called as a witness herein, having been first duly sworn, was examined and testified a follows: EXAMINATION

BY MR. DUFF:

Q. Mr. Johnson, my name is Kevin Duff, and I represent Tennessee Gas Pipeline Company, as I just mentioned a moment before. Would you please state your full name for the record?

A. Norman -- middle name too? Theodore Johnson.

Q. And what is your date of birth?

A. April 8, 1932.

Q. And what is your Social Security number?

A. Oh, God. 356-22-6657.

Q. And what is your current residence?

A. 601 Huntington Commons Road, Mount Prospect, Illinois 60056 and four funny digits.

Q. What is your -- who is your current employer, if you have one?

A. No one. I'm retired.

Q. And in what year did you retire?

A. 1957.

Q. You retired in 1957?

A. No, no, no, no, no. I'm sorry. 1987.

Q. Have you ever been arrested or indicted for any crime?

A. No.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. I think three.

Q. Do you remember the cases in which you gave those depositions?

A. One was Johnson Motors, and the others I think Rolly would have to -- there were some of the gas

companies and also a company over in Kentucky.

Q. Do you remember the subject of those litigations?

A. It's always been PCBs.

Q. Have you ever given sworn testimony in any other proceeding?

A. Federal Grand Jury.

Q. And when was that?

A. Oh, boy. Probably 1969.

Q. And what was the subject matter of your testimony when you appeared before the Federal Grand Jury in 1969?

A. PCBs.

Q. In what context were PCBs the subject matter of that testimony?

A. It was the PCBs had shown up in the city of Los Angeles, and so they were inquiring in terms of what the sources might have been.

Q. Do you know how the PCBs were showing up in Los Angeles?

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

[22] Q. Do you know where the PCBs were first noticed [23] in Los Angeles?

[24] A. In Monsanto?

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[1] Q. In Los Angeles?

[2] A. No, I don't. It was in the sewer system as [3] best I know.

[4] Q. Do you know if any indictments were issued by [5] that Grand Jury related to --

[6] A. None that I know of.

[7] Q. -- PCBs?

[8] A. No.

[9] Q. Do you know why you were asked to testify [10] before that Grand Jury?

[11] A. Not really. I was just selected and told to [12] go.

[13] Q. Who selected you?

[14] A. I guess the vice president of the company at [15] that time, Wink Corey.

[16] Q. I'm sorry, did you say Wink Corey?

[17] A. Wink -- yeah, Wink. I know him as Wink. [18] Maybe that's a nickname, but he was the vice president [19] and general manager of the Organic Division.

[20] Q. And that was of Monsanto Company?

[21] A. Of Monsanto.

[22] Q. And did Mr. Corey tell you why he was asking [23] you to go?

[24] A. Because he thought I knew more about the

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[1] product than anybody else.

[2] Q. And what product was that?

[3] A. Polychlorinated biphenyls, Pydrauls.

[4] Q. Were you an expert in Pydrauls?

[5] A. No.

[6] Q. What was the nature of your understanding of [7] Pydrauls?

[8] A. Well, I knew the products, and I guess I had [9] held titles like product manager, industry manager for [10] the industrial fluids in which the Pydrauls were a part [11] of.

[12] Q. I'd like to cover just a few ground rules [13] with you for today's deposition. [14] As you know, we have a court reporter [15] here, and she will be taking down everything that we [16] say. So it's important that everything we say be [17] verbal, and that means that we can't be giving gestures [18] or any nonverbal responses to questions that are asked. [19] I'll be asking you a series of questions [20] throughout today and tomorrow, and I'll ask that you [21] answer my questions truthfully and also completely. If [22] you don't understand a question, please feel free to ask [23] me to clarify it for you, and I'll be happy to do so. [24] Because our court reporter can only take

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[1] down one person's testimony at one time -- actually one [2] person's words at one time, I'd ask if I'm asking a [3] question, if you'd allow me to complete my question to [4] you, and if -- when you're giving me an answer, I'll try [5] and remember to allow you to finish your answer.

[6] A. I will try.

[7] Q. We also have a videographer here today, and [8] we've been apprised of the procedures that we're going [9] to be following for the video; is that correct?

[10] A. Well, I understand it's all going to be [11] taped. That's all I can tell you. I don't understand [12] much more than that.

[13] Q. Mr. Johnson, are you represented here by [14] counsel today?

[15] A. Yes. Rolly is representing me.

[16] Q. And by "Rolly" you mean Mr. Chambers?

[17] A. Yes.

[18] Q. When did you retain Mr. Chambers as counsel?

[19] A. I did not; Monsanto did.

[20] Q. Did you ask him to be your counsel for today?

[21] A. No.

[22] Q. Did he tell you that he was going to be your [23] counsel for today?

[24] A. No. Someone at Monsanto told me.

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[1] Q. Who told you?

[2] A. What's her name?

[3] MR. CHAMBERS: Joey Niblock?

[4] THE WITNESS: Yeah, Joey Niblock called.

[5] BY MR. DUFF:

[6] Q. Are you receiving any compensation for your [7] deposition -- for the time that you're spending at [8] today's deposition?

[9] A. No.

[10] Q. Are you currently on Monsanto's payroll?

[11] A. No.

[12] Q. Do you receive any sort of benefit or pension [13] from Monsanto?

[14] A. I receive a very small pension.

[15] Q. Do you receive that on a monthly basis?

[16] A. Yes.

[17] Q. If you know, what allowed you to be

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able -- to be eligible for this pension from Monsanto?

A. I worked there 13 years.

Q. Do you know how long that pension runs for?

A. Until I die.

Q. What did you do to prepare for your deposition today?

A. We spent about four hours yesterday going

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over some of the data.

MR. CHAMBERS: Let me interject at this point that Mr. Duff furnished a list of documents that he expects to ask Mr. Johnson about today, and we assembled a -- have assembled a set of those documents and spent some time allowing Mr. Johnson to look at them in advance of the deposition so that he'll be -- so that he'll be prepared today.

BY MR. DUFF:

Q. And when you said you met for four hours yesterday, was that with Mr. Chambers?

A. Yes.

Q. Did you speak with anyone else regarding your deposition testimony here today?

A. There was another man with, and I don't remember his name, no.

Q. Was he an attorney?

A. Yes.

Q. Do you know where he was from?

A. The same law firm.

MR. CHAMBERS: He is an associate with us.

BY MR. DUFF:

Q. And were you shown any documents yesterday?

A. Yes.

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Q. Do you recall what those documents were?

A. Well, basically paperwork relating to PCBs and to the time period that you're talking about.

Q. Do you know approximately how many documents you saw yesterday?

A. No, I don't.

Q. Would it have been more than a hundred?

A. Could have been.

Q. Did you watch any videotapes yesterday?

A. No.

Q. Have you reviewed any deposition transcripts in preparation for your deposition here?

A. Only my own.

Q. And which deposition transcripts did you review?

A. This is back to -- relating to the various cases that I have been on. Of course the Grand Jury I never received any information.

Q. So did you review the transcripts from the three cases that you referred to earlier to prepare for today?

A. No. I don't have them anymore.

Q. Did you review deposition transcripts yesterday to prepare for your testimony here today?

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A. No.

Q. Were you shown any excerpts from deposition transcripts yesterday?

A. Not to my knowledge. I don't think so.

MR. CHAMBERS: Let me object to the extent that calls for any information that might be considered privileged.

BY MR. DUFF:

Q. Have you spoken with any Monsanto employees or former employees about your deposition here?

A. No.

Q. I'd like to start with your employment history beginning with when you graduated from high school. Where did you go after high school?

A. I went to Wright Junior College here in Chicago for two years, and then I went to the University of Illinois in Champaign, and I graduated sometime in 1954 and went into the service for two years.

Q. And what was your degree in at the University of Illinois?

A. Marketing.

Q. And you said you were drafted into the United States Army, is that correct?

A. Yes.

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Q. And what year was that?

A. 1954.

Q. And how long did you serve?

A. Two years.

Q. And when you left the Army, what was your position?

A. I was unemployed.

Q. What was your position within the Army?

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A. Oh, in the Army I was a clerk-typist and company clerk.

Q. Do you recall your military ID number?

A. 556 -- no, no. 55486998. God, I don't know. That's a tough one; U.S.

Q. Do you believe that that number that you just gave us is correct?

A. Pretty close.

Q. Where did you serve?

A. Germany.

Q. Where in Germany?

A. Giessen.

Q. Could you please spell that for the record?

A. G-I-E-S-S-E-N.

Q. And when you left the Army, what did you do next?

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A. Came back to Chicago and I went to work for a company called Royal McBee.

Q. And what position did you begin with Royal McBee?

A. Sales trainee.

Q. And what were your responsibilities?

A. I was basically a salesman for them.

Q. What were you selling?

A. Accounting systems.

Q. Anything else?

A. Well, they had a -- key sort was another part of their product mix, but basically it was all related to accounting.

Q. Okay. And how long did you work there?

A. About two years, and then I went with a company called Mead & Wheeler, and they were in the office equipment business.

Q. And was that also in Chicago?

A. Yes.

Q. And what's your best recollection about what years you worked for Mead & Wheeler?

A. The latter part of '57, '58 and the middle of 1959.

Q. And what were your responsibilities at Mead &

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Wheeler?

A. Sales.

Q. And what did you do next?

A. I joined Monsanto as a sales trainee going to St. Louis and was in that trainee status for six months.

Q. Did you live in St. Louis at that time?

A. Yes, I moved down there.

Q. And was that from the middle of 1959 to the end of the year?

A. I believe I joined Monsanto in November of '59 and was in the sales training program until about May or June of '60.

Q. And what did you learn in that training program?

A. It was a complete training program in terms of all the products produced by the Organic Division plus an understanding of operations and procedures for the company, and then I spent two months working in the purchasing department at the Queeny plant in St. Louis.

Q. When you refer to the Organic Division, what is that?

A. The Organic Division at that time was that segment of the company that handled Organic Division -- organic chemicals.

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Q. What are organic chemicals?

A. Based on carbon.

Q. So it would be any chemicals that contain carbon, is that correct?

A. Right.

Q. I'm sorry?

A. Yes.

Q. And what products were produced by the Organic Division?

A. Well, there was a segment of fine chemicals that involved products like aspirin and acetophenetidin, saccharine. Then you had the fluids group which involved the Pydrauls, the dielectric fluids. You had Plasticizers which involved selling to the vinyl industry, various other applications for plastics. You had the dibasic acid group which sold chemicals for manufacturing alkyd resins, polyester resins. You had another group that was just basically intermediate-type chemicals. I think I've covered them all.

Q. And were you responsible -- well, why did you learn about all these different areas?

A. Because at that time the volume of business was not that great so that salesmen were located around the country with the responsibility for handling all

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those products to customers in the geographical area.

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[2] Q. And in fact when you left the training [3] program, did you sell all these different types of [4] products?

[5] A. Yes.

[6] Q. You also said that as a part of the training [7] program you learned about operations and procedures?

[8] A. Yes.

[9] Q. What were those?

[10] A. Oh, things like credit, what the order entry [11] mechanisms were, what the reports would be that you [12] would receive in terms of sales analysis, the invoicing [13] procedure, the order entry procedure, credit and [14] collections, basically all related to the operations of [15] a -- of a sales situation.

[16] Q. And what specifically did you learn about [17] credit and collections?

[18] A. I learned that if the customer had poor [19] credit, the people in St. Louis would not sell them, it [20] was basically where it was. So there were many times we [21] had small customers who didn't pay their bills, and the [22] result was that you couldn't sell them.

[23] Q. And you referred to the order entry [24] procedure. What is that?

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[1] A. That's when a customer calls in and places an [2] order for material and an acknowledgement goes out later [3] on after the shipment and invoice goes out. And there [4] are people who handle that customer contact.

[5] Q. Is it the salesmen that handled the customer [6] contact?

[7] A. Direct customer contact, yes; but the sales [8] correspondents that were assigned to each one of the [9] sales offices would be designated to pick up the orders [10] or assume the orders and enter the orders for a specific [11] salesman.

[12] Q. Would a salesman and a sales correspondent [13] work together on a one-to-one basis?

[14] A. Sometimes. Sometimes the sales correspondent [15] would handle two or three salesmen.

[16] Q. And were the sales correspondents based in [17] St. Louis?

[18] A. In my case they were based in St. Louis, but [19] there were district offices around the country. Later [20] on it was all centralized into St. Louis.

[21] Q. When you started with the company, where were [22] the other district offices?

[23] A. Oh, I think there were 13 or 14 offices. You [24] could talk about Boston, New York, Atlanta, Chicago,

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[1] Detroit, Cincinnati, Houston, San Francisco, Los [2] Angeles, Seattle, Minneapolis. Keep going.

[3] Q. And would the order be something that would [4] be prepared by the salesmen?

[5] A. No. The order was actually called in, and [6] normally our repeat customers, we had data on every [7] repeat customer, and the girls would just pull the card [8] and of course receive from the customer the amount that [9] they wanted to order. [10] On the card were all the details of [11] possibly the trucking company or how the material was [12] going to be shipped, and the order was entered on a [13] Teletype which then went through a central unit in St. [14] Louis and on to the appropriate plant for shipment.

[15] Q. Explain for me if you would what you mean by [16] a Teletype order?

[17] A. That's the ancient system that used to be [18] through Western Electric -- or Western Union.

[19] Q. How did it operate?

[20] A. A girl would sit down at a machine and she'd [21] create a little punch tape, and the tape was then [22] transmitted in terms of the data to St. Louis where it [23] was then routed. Another tape was created in St. Louis, [24] then she would enter that on the appropriate plant so

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[1] the plant would then get a printout of the details of [2] the order. This is a very old system.

[3] Q. And when you say that someone would type the [4] order, would that be at the location where the salesman [5] or salesperson was located?

[6] A. Where he reported, and that would be where [7] the sales correspondent was located.

[8] Q. And that could have been either in St. Louis, [9] as it was in your case, or it could have been in a [10] divisional office; is that correct?

[11] A. Yeah, an office around the country, yes.

[12] Q. Do you refer to division offices and regional [13] offices in the same way?

[14] A. There was a transition at a point in time in [15] Monsanto when all orders were entered in what we call [16] district offices, and I named some of those for you. [17] Later a system was -- a central system was put into St. [18] Louis where people would call on an 800 number from [19] across the country, and the orders would be entered [20] there and into a computer system which then was directed [21] to a specific plant or warehouse for the shipment of the [22] material.

[23] Q. Now, you said earlier that people would pull [24] cards for individual repeat customers?

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A. Yes.

Q. How were those cards set up, in what --

A. Alphabetical order.

Q. And what did they contain? What sort of information did they include?

A. Customer name, shipped to location. There would be -- sometimes they maintained a separate card for each product that the customer purchased because there might be specific details in terms of how the customer wanted the drum labeled or special information, routing information for shipping, and the details were contained on that card.

Q. And if you had a customer that had more than one location, would they have a separate card for each location?

A. Yes.

Q. And if you had a customer that had more than one location, would it have been your practice as a salesman to make calls on individual locations, or would you have made calls at a headquarters for the company as a whole?

A. No, no. You'd called at the consuming location. So you could call on a major company that had plants all over the United States. You were only

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responsible for those customers in your geographical area.

Q. And would it have been that consuming location for the customer that gave you the information about what product they needed and what they were going to use a product for?

A. Yes.

Q. And how they were going to use a product?

A. Sometimes at that point in time customers would not tell you how they were going to use a product.

Q. But sometimes they did, is that correct?

A. Most times they did. Most customers were very cooperative.

Q. And where were the cards kept that were maintained for your customers?

A. At the time I started with the company, I was covering a geographical area and reported to St. Louis, Missouri; and the girl in the district office in St. Louis had the cards that represented my customers and their requirements in that geographical area.

Q. And do you recall her name?

A. No, I don't.

Q. What department was she in?

A. She was in the district sales office in St.

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Louis.

Q. Would she have been in the accounting department of the district sales office?

A. No, no, no. She would have been in the sales office.

Q. Was she the sales correspondent?

A. Yes. She typed my call reports, for example.

Q. And just so I'm clear, what's the time frame that we're talking about that this situation existed?

A. I think we went to a computerized order entry system in approximately 1968. Up until that point all the orders were entered at the district or regional offices and transmitted through St. Louis and on to a plant.

Q. And so the computerized system, if I -- am I correct that the computerized system came into place at the same time the 800 number came into place?

A. Pretty much so.

Q. Were they a complement to one another?

A. I think the 800 number was probably around for a couple of years, and then the procedures and programs were developed to go to a centralized order entry facility.

Q. What type of computer was used?

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A. I don't know.

Q. Do you know how the information was input on the computer?

A. It had a terminal. As best I can describe it, just a terminal like you might have to a computer today; a keyboard.

Q. Did you ever use a terminal such as that yourself?

A. No, no.

Q. Did you ever see one?

A. Yes. They were there in St. Louis.

Q. And that was in 1968?

A. I believe it was 1968, 1969 that they went to a centralized order entry system.

Q. What other data would you keep on repeat customers other than the type of product that the individual customer would use at its specific locations?

A. Well, obviously you have all the address information. You'd have all the specific instructions to the plant because many times customers required a product identification number to be

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stenciled on 55 [22] gallon drums or five gallon pails. [23] If you were shipping in bulk, there may [24] be information in terms of how long the hose should be

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[1] and what size the hose should be and also what the [2] fittings might be to connect to their storage tank, and [3] basically you're really talking about the product itself [4] and how many containers or what quantity of bulk [5] material would be shipped, and then the special [6] instructions as we called it.

[7] Q. So would the information include, if you [8] knew, the specific details of how the customer actually [9] used the product?

[10] A. No, no.

[11] Q. But it might -- it would get down to a level [12] of detail such as what sort of hose fittings the [13] customer used, is that correct?

[14] A. Yes, because you had to really direct the [15] trucker and direct the shipping plant to make sure that, [16] for example, the truck had the appropriate hose, [17] appropriate fittings to make a connection to the bulk [18] container that the customer had.

[19] Q. And that assumes that the customer would have [20] some sort of a bulk container at its facility, is that [21] right?

[22] A. Oh, we would know that, yes.

[23] Q. By that you mean something of the order of a [24] holding tank or --

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[1] A. A 5,000 gallon storage tank.

[2] Q. If a customer received 55 gallon drums, then [3] they -- you wouldn't be concerned with hose fittings --

[4] A. No.

[5] Q. -- is that correct?

[6] A. No.

[7] Q. That's correct?

[8] A. Right.

[9] Q. What other information would you have on your [10] repeat customers?

[11] A. Well, we would receive a salesman's sales [12] analysis information in terms of once a month we'd get a [13] report on all the customers for which you were [14] responsible and the amount of product they may have [15] bought in the last 30 days. We used to receive copies [16] of acknowledgements acknowledging the order so we would [17] be aware that the customer had placed an order, and then [18] later on we would see an invoice copy showing date of [19] shipment, and it contained all the information that I've [20] referred to earlier in terms of basically we would see [21] what an invoice would look like and what the [22] acknowledgement looked like with all the details.

[23] Q. And in this time period are we talking about [24] from when you started with Monsanto in 1959 until the

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[1] computerized system came into place in '68?

[2] A. Yes. But when the computerized system came [3] in 1968, you still had some of that data going out to [4] the salesman so that he would know that a shipment was [5] made and an order had been placed.

[6] Q. As long as you were at Monsanto was it a [7] responsibility of a salesman to generate a monthly sales [8] report for its -- for his or her repeat customers?

[9] A. The salesman wrote a monthly report on [10] activity in his area, but the data in terms of the [11] shipments made and whatever, that came off the computer [12] system and was mailed to him.

[13] Q. So whether or not a specific customer would [14] be discussed in that monthly sales report would depend [15] on what activity that customer had that month --

[16] A. Right.

[17] Q. -- is that correct?

[18] A. Yes, that is.

[19] Q. And when you refer to the acknowledgements of [20] orders, what are those?

[21] A. Just a piece of paper that duplicates the [22] detail of the order entry, and an acknowledgement goes [23] to the customer so he will know what the shipping date [24] is going to be; and another acknowledgement copy came to

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[1] the salesman, so he was aware that the order had been [2] placed. And then of course later on when the shipment [3] was made, then an invoice copy was sent out to the [4] customer, and the salesman would also receive a copy of [5] that invoice copy.

[6] Q. What's the difference between the [7] acknowledgement that you're referring to and an invoice?

[8] A. Well, in the chemical industry you don't [9] necessarily ship the same day that an order comes in. [10] And if the product has to be made for the customer, [11] you're acknowledging the order to the customer and [12] you're indicating a shipping date maybe five days later [13] or ten days later. And that always assumes that you [14] have inventory to ship. So the acknowledgement tells [15] the customer when he could expect to receive the [16] product.

[17] Q. Would the acknowledgement to the customer be [18] sent to the location at which the product was being [19] used?

[20] A. Yes.

[21] Q. And would that have been sent by

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mail or by [22] Western Union?

[23] A. By mail.

[24] Q. By mail?

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[1] A. Yes.

[2] Q. And the invoices that you're referring to, [3] would those have also been sent by mail to the customer?

[4] A. Yes.

[5] Q. At the location at which the customer is [6] using the product?

[7] A. It depends. Sometimes customers would say we [8] want all invoice copies go to the home office rather [9] than a branch plant or an operating unit. In other [10] cases invoices went to the shipped to location.

[11] Q. And would that information have been [12] maintained on the card that you referred to earlier?

[13] A. Yes.

[14] Q. And when you changed to a computerized [15] system, would that information have been contained on [16] the computer for each customer?

[17] A. Yes.

[18] Q. Do you know how on the computer system the [19] information was arranged?

[20] MR. CHAMBERS: I'm going to object to the [21] form, to the use of the term "arranged." I think that's [22] a pretty vague term. If you're able --

[23] THE WITNESS: I don't know the details of how [24] it was arranged, if -- I don't have any copies of any of

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[1] those, and I haven't seen them since I left the company [2] in '73, so I can't really tell you much about it.

[3] BY MR. DUFF:

[4] Q. Are you aware of any differences in the [5] information that was maintained on the cards versus the [6] information that was maintained on the computer?

[7] A. To my knowledge, when they went to a [8] computerized system, everything that was on those cards [9] was put into the database in the computers.

[10] Q. So on the computer database you would have [11] the various locations for a repeat customer?

[12] A. Yes.

[13] Q. Just so I'm clear, if you had a customer that [14] had multiple locations, you would have a separate entry [15] for each location at which they use a product; is that [16] correct?

[17] A. Yes.

[18] Q. And for each such location you'd have the [19] address?

[20] A. Yes.

[21] Q. And would you have a telephone number?

[22] A. No. I don't remember phone numbers being a [23] part of it.

[24] Q. If it was available would it have been --

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[1] would a telephone number have been on there?

[2] A. If a customer requested that he be called [3] with the information in terms of date of shipment or an [4] analysis of the material that he was receiving, then [5] that might be phoned to the customer in advance of the [6] shipment being made out of the plant.

[7] Q. Would you also have the product [8] specifications for the customer on the computer?

[9] A. No.

[10] Q. Would you have the manner in which the [11] customer used the product on that --

[12] A. No.

[13] Q. -- computer?

[14] A. No, no.

[15] Q. You would have the type of product, though, [16] that the customer purchased; is that correct?

[17] A. Yes.

[18] Q. Would you have the contact people at the [19] customer on the cards?

[20] A. No.

[21] Q. So if, say, for ABC Company located in [22] Chicago, Illinois, if you knew that Joe Smith was your [23] contact at that location, would his name be on the card?

[24] A. As a salesman?

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[1] Q. Yes.

[2] A. No.

[3] Q. Do you know if that information would be [4] provided to the sales correspondent?

[5] A. If it was shipping information and you were [6] required to call the receiving department at a plant in [7] advance of shipment and delivery, that individual's name [8] might be down in the special instructions, and it would [9] indicate that the plant should make a phone call and [10] tell them that they're shipping the material today, it [11] should be there tomorrow.

[12] Q. When you referred to the sales reports [13] earlier, what were you referring to, that would be [14] generated by the salespeople?

[15] A. Well, the salespeople wrote call

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reports [16] which were data which may have been achieved by a phone [17] call to a customer or a personal visit by the customer. [18] It would indicate the people he contacted, the subjects [19] that they talked about, and that would be transcribed. [20] We used to transcribe them onto disks. That was sent in [21] to St. Louis in my case, and the sales correspondent [22] would type that information into a call report, and that [23] would be circulated to the various departments that were [24] requested by the salesmen to see that information.

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[1] Q. And as long as you were at Monsanto, was it [2] the practice of salespeople to write call reports after [3] they --

[4] A. Yes.

[5] Q. -- visited or spoke with a customer?

[6] A. Yes.

[7] Q. How long were you a salesman with Monsanto?

[8] A. Almost seven years.

[9] Q. So from -- was that from about the end of --

[10] A. 1959, the latter part of '59 until I was [11] moved back to St. Louis in '67 I believe it was, the [12] fall of '67.

[13] Q. And I just want to return also, you referred [14] to transcribing the call reports on disks; is that [15] correct?

[16] A. Yes. We had a Dictaphone-type dictating [17] machine that we carried with us or had at our homes, and [18] when you returned home after that day, you were expected [19] to dictate a call report on that record which was then [20] put in the mail to St. Louis in my case, and the girl [21] would transcribe that to a hard copy.

[22] Q. And that call report -- well, in general was [23] it your practice to address the call report or circulate [24] the call report to those individuals you expected to

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[1] read it?

[2] A. Yes.

[3] Q. You referred earlier to an invoicing [4] procedure. Could you tell me more about that?

[5] A. Well, when an order was placed by the [6] customer, the data was there on all repeat customers, so [7] you knew exactly the -- the girls knew what the [8] procedure was going to be, that the typical order might [9] be five drums of a given product, certainly the name of [10] the product, who that was supposed to be called if -- at [11] the customer if there was advanced information required. [12] There would be the information on what [13] should be stenciled on the drums, because sometimes [14] customers go by their own product codes. They don't [15] rely on our information in terms of what we call the [16] product. [17] Sometimes people would say they want the [18] top of the drum painted yellow. Don't ask me why, but [19] that's what they gave us. And so we'd paint it yellow [20] and put the appropriate stenciling on it, the yellow [21] drum.

[22] Q. Who would receive -- you may have addressed [23] this earlier, but who would receive copies of the [24] invoice? And by "invoice" here, I assume we're talking

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[1] about a shipping invoice; is that correct?

[2] A. Representing a product that was shipped, [3] yeah.

[4] Q. Who would receive copies of that?

[5] A. Well, the billing department would create a [6] number of copies, one of which would go to the district [7] office, one would go to the salesman, one would go to [8] accounts receivable, probably one would go to file.

[9] Q. Was a file maintained on each customer?

[10] A. Yes.

[11] Q. And when you referred to a file, is that a [12] central file that was maintained in St. Louis?

[13] A. Yes.

[14] Q. Was that -- for the entire period that you [15] worked for Monsanto, was that the practice to have a [16] central file for each customer in St. Louis?

[17] A. Yes.

[18] Q. And for each customer, again, are we talking [19] about -- strike that. [20] When you're referring to each customer, [21] are you referring to the individual locations where the [22] customer used the product?

[23] A. Yes.

[24] Q. And so if there were multiple locations at

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[1] which a customer used a product, you'd have a file for [2] each location; is that correct?

[3] A. If there was sufficient volume involved, yes.

[4] Q. Assuming that these were repeat customers who [5] came back to Monsanto --

[6] A. But if a customer only bought once a year, [7] you'd probably -- if there were ten locations, you'd put [8] it all in one file folder. You wouldn't have a separate [9] file folder for each location just to have one piece of [10] paper in there.

[11] Q. And in that file you would put both invoices [12] and call reports, is that right?

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[13] A. Yes.

[14] Q. Would there be other information that would [15] go in that file?

[16] A. Well, if somebody wrote a memo back out to [17] the salesman, a copy of the memo might go in that file. [18] If there were letters that were going to customers [19] created by the salesmen or by people in the product [20] group, there might be a copy of the letter that would be [21] in that file.

[22] Q. And when you were a salesman, was it your [23] practice to also maintain an individual file for each of [24] your customers?

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[1] A. I started out doing that and later I didn't.

[2] Q. And when did you stop doing that?

[3] A. I don't know. Probably in my first couple of [4] years as a salesman I realized that to maintain records [5] on every individual customer wasn't really necessary; [6] that there was those same copies in St. Louis or [7] somewhere that you could get to, and so I would stop. [8] Maybe only on major customers I would keep copies of [9] invoices.

[10] Q. And when you were a salesman, what was your [11] geographic area of responsibility?

[12] A. Initially I was covering all but five [13] counties of Indiana, and those counties were up near [14] Chicago; the central part of Illinois, and a segment of [15] Kentucky below Indiana.

[16] Q. How much of Kentucky would that have been?

[17] A. A third. That's about the best I can tell [18] you.

[19] Q. So the northwest corner or -- northwest [20] portion of Kentucky?

[21] A. No, no. The northwest corner of Indiana was [22] covered by salesmen out of Chicago, and I covered the [23] rest of Indiana.

[24] Q. But was your portion -- the portion of

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[1] Kentucky for which you were responsible the western [2] portion of Kentucky?

[3] A. That area directly below Indiana.

[4] Q. And would the Indiana-Ohio border if it were [5] to be extended south, would that be approximately where [6] your responsibility cut off in Kentucky?

[7] A. Yes. And then, to add on to that, Monsanto [8] made a change, and I was then added to cover areas over [9] to Dayton, Ohio -- no, over to Columbus, Ohio. And then [10] I was reporting to two district managers, one in St. [11] Louis and one in Cincinnati.

[12] Q. When you -- in your initial position as a [13] salesman when you covered most of Indiana and central [14] Illinois and western Kentucky, were there any other [15] states that you were responsible for?

[16] A. No.

[17] Q. And who did you report to at that time?

[18] A. A fellow named Dave Evans.

[19] Q. And was Dave Evans based in St. Louis?

[20] A. Yes.

[21] Q. And what was his position?

[22] A. District manager.

[23] Q. And what was your title at that time?

[24] A. Salesman, peddler.

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[1] Q. And at that time did you sell Pydraul?

[2] A. Yes.

[3] Q. And how long -- strike that. [4] When did the change occur which caused [5] you to cover the area over to Columbus, Ohio?

[6] A. Probably sometime in 1962.

[7] Q. And what was the northern border of your area [8] of responsibility?

[9] A. The Indiana-Michigan line except for those [10] few counties near Chicago, and in Ohio it was probably [11] the central part of the state going over to Columbus and [12] then drawing a line back towards Cincinnati.

[13] Q. And what was your southern border?

[14] A. The southern border of Kentucky.

[15] Q. Were you then responsible for the entire [16] state of Kentucky?

[17] A. No, no, no. The area that I covered for [18] Kentucky probably went from Owensboro over to [19] Louisville.

[20] Q. And was that the area of responsibility you [21] had when you first started as a salesman?

[22] A. Yes, yes.

[23] Q. And when this change occurred in 1962 to [24] extend your area over to Columbus, Ohio, did your

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[1] geographic responsibilities in Kentucky increase?

[2] A. No, they didn't. Another salesman had [3] responsibility for that area. There wasn't enough [4] business down there to justify two or three people going [5] down into Kentucky.

[6] Q. Who was the salesman in Kentucky at that [7] time?

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[8] A. Well, I was one, and a fellow name Gene Wilde [9] would have covered for whatever was necessary that area [10] from Louisville probably over to the eastern border of [11] Kentucky.

[12] Q. And was Gene Wilde the salesman for the area [13] in Kentucky from Louisville to its -- to Kentucky's [14] eastern border when you started with Monsanto in 1959?

[15] A. There were other salesmen in the Cincinnati [16] office at the time, and I don't know who had the [17] responsibility for that eastern section of Kentucky. [18] Gene Wilde could have, may have gone down there, I just [19] don't remember and I don't know. As I say, there were [20] other salesmen in the Organic Division out of the [21] Cincinnati office.

[22] Q. And who were they?

[23] A. I don't even remember now. I'm lucky I [24] remembered Gene Wilde.

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[1] Q. Do you remember any of the other names?

[2] A. No, I don't. Jim Feeks was my boss. That's [3] the one I knew.

[4] Q. How do you spell his last name?

[5] A. F-E-E-K-S.

[6] Q. And was he the district manager in St. Louis [7] or in --

[8] A. In Cincinnati.

[9] Q. He was in Cincinnati.

[10] A. I had two bosses at that time. I had Dave [11] Evans over in St. Louis and Jim Feeks in Cincinnati.

[12] Q. And when did your area of geographic [13] responsibility change next?

[14] A. I was transferred from Indianapolis to New [15] York.

[16] Q. Was that New York City?

[17] A. Yes.

[18] Q. And what year was that?

[19] A. The latter part of 1964.

[20] Q. From 19 -- well, from the time you began as a [21] salesman with -- strike that. [22] After you finished the training program, [23] did you then get based in St. -- in Indianapolis?

[24] A. Yes.

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[1] Q. And was that in the middle of 1960?

[2] A. Yes.

[3] Q. So from the middle of 1960 to 1964 you were [4] based in Indianapolis --

[5] A. Right.

[6] Q. -- is that correct?

[7] A. Right, with no district office there. The [8] district offices that I reported were in St. Louis and [9] in Cincinnati, and I was considered a resident salesman [10] because there was no Monsanto facility in Indianapolis.

[11] Q. During that time period, at any time did you [12] have Tennessee Gas as a client?

[13] A. I don't remember. If they had a plant in [14] that area of Kentucky below Indiana, then I might have [15] had a location that was consuming Pydraul AC.

[16] Q. Do you recall any?

[17] A. No, I don't. Do I recall pipeline companies? [18] Yes.

[19] Q. Do you recall any other pipeline companies [20] that you did have as customers?

[21] A. The biggest problem with pipeline companies [22] that I experienced is that they would consume -- they [23] would place an order for four or five gallon pails of [24] Pydraul AC. If I were down in the Kentucky area looking

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[1] at various customers that were on my sales analysis, I [2] would make an effort to go make a call early in my [3] career, and I would go to a gas transmission plant and [4] stand at the gate and maybe ring the bell, and nobody [5] would answer. And if someone did answer, they would say [6] we don't deal with salesmen. This is an operating [7] plant. Contact the home office, and they'd give you a [8] name. [9] In some cases there was no phone at the [10] gate, and I would go into some small town in Kentucky. [11] I'd look up the location in the phone book and I would [12] make a similar phone call to be told the same thing, and [13] I would relate that I'm just there to try and understand [14] what they're doing with the product and if they needed [15] any help. [16] But gas transmission companies were [17] operated out of their home office. They were not [18] subject to being contacted by local salesmen.

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

[20] THE WITNESS: That whole testimony? Okay.

[21] BY MR. DUFF:

[22] Q. And when you were transferred to New York [23] City in 1964, who did you report to then?

[24] A. A man named John Lonsberg.

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[1] Q. Would you please spell his last name?

[2] A. L-O-N-S-B-E-R-G.

[3] Q. And what was your geographical area of [4] responsibility at that time?

[5] A. Basically Brooklyn, a small part of New [6] Jersey, part of Long Island, a little bit of Queens and [7] a very small segment

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in eastern Pennsylvania.

Q. And what products were you selling at that time?

A. Only Plasticizers.

Q. And was that a change from the position you'd just held previously in Indianapolis?

A. Yes.

Q. When you were in Indianapolis, were you selling all the products that were produced by the Organic Division?

A. Yes, except for ag. chemicals which they had a separate salesman for, and then later the Ag. Division from the Inorganic Division and then the Organic Division were combined into their own division.

Q. When you say "ag. chemicals," what do you mean?

A. These were herbicides, insecticides, product of that type; and they had a separate salesman in

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Indiana who I did not see, but he covered those products for the Organic Division.

Q. Did ag. stand for something?

A. Agricultural products.

Q. I understand. And how long were you based in New York City?

A. Two years.

Q. And would that have been from 1964 to 1966?

A. Yeah. I think I moved sometime in 19 -- the latter part of '66, early part of '67 to St. Louis.

Q. While you were in New York City, what was your position?

A. I was classified as an industry manager to the vinyl industry.

Q. And when you moved to St. Louis in late 1966 or early 1967, what position did you assume there?

A. I was termed a field sales manager or industry manager to the fluids group.

Q. Was the term field sales manager synonymous with industry manager?

A. There was a question at -- when they created this type of position, they recognized in the fluids group that most of the district managers around the country had very little understanding about fluids.

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They were basically chemical people selling products as chemicals. So a decision had been made to create a job for someone, my predecessor, to work with the 13 salesmen that were around the country selling fluids. And so you can term that for business direction I was advising those salesmen. For rations and quarters, those men were still reporting to a district office and a district manager.

Q. Who was your predecessor in that position?

A. I don't remember. I can see his face, but I can't remember his name. I can't.

Q. And when you refer to the fluids group, what are you referring to?

A. The fluids group had all the Pydrauls, the Aroclors to the electrical industry, Coolanol to the -- I guess you'd call them the electronics industry, Skydrols going to the air frame manufacturers in the airlines, Therminol going to heat transfer applications. I guess that covers it.

Q. Did it include Plasticizers?

A. No, it did not.

Q. Was there a separate field sales manager for Plasticizers at that time?

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A. It was a totally separate product group, and that product group had salesmen out in the field who sold Plasticizers along with other products as I had done when I was located in Indianapolis.

Q. When you refer to product group, what do you mean?

A. Well, when I was talking about the different product areas that I represented, fine chemicals had a product manager, and it had a product group of the system people. Plasticizers had the same situation. Each one of those groups would have people to assist the salesman out in the field, and of course assist customers if they were to call in to St. Louis and request information, then they were the technical backup that could provide information.

Q. So what were the various products groups at that time?

A. Well, they were the groups that I represented that I mentioned earlier in Indiana. You had the intermediates group, you had a resins group, a Plasticizer group, a fine chemicals group, fluids group, intermediates I guess maybe I mentioned. The only -- there was an oil additives group, but I did not handle oil additives and I did not handle the organic ag.

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chemicals.

Q. What were your responsibilities as a field sales manager or industry manager for fluids group?

A. I was to provide technical and business direction to the 13 salesmen in

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the field covering the [6] United States.

[7] Q. So you were responsible for all fluid [8] products sales in the United States?

[9] A. Right.

[10] Q. And that was in late 1966 or early 1967?

[11] A. Right.

[12] Q. And when you say technical information that [13] you provided, what are you referring to?

[14] A. No, I -- I provided more sales direction for [15] the salesmen. Within the fluids group were a number of [16] technical specialists who could work with the salesmen [17] providing technical information. But I was there really [18] to coordinate for major corporations across the country [19] the sale of products. [20] So if we were dealing with a company [21] headquartered in New York and it had plants around the [22] country or in Detroit and it had plants around the [23] country, I would be making calls with salesmen at all [24] locations.

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[1] Q. And when you say you coordinated sales for [2] major corporations, what do you mean?

[3] A. Well, if you're calling on someone like [4] General Motors, they have a number of plants across the [5] country that may have had die casting operations that [6] utilized our fluids. So you would go to Detroit, maybe [7] you'd go over to the tech center, maybe you would talk [8] to a man who was the chief lubrication engineer for all [9] of General Motors, or in the case of U.S. Steel in [10] Pittsburgh or wherever.

[11] Q. How long did you hold the position field [12] sales manager?

[13] A. I believe that sometime in the latter part of [14] 1968 my job was changed to be called industry manager [15] for industrial fluids which included the Pydrauls.

[16] Q. When you were field sales manager prior to [17] late '68 did your responsibilities also include [18] Pydrauls?

[19] A. Yes.

[20] Q. And how did your responsibilities change in [21] late 1968 when you became industrial manager for [22] industrial fluids?

[23] A. I had total responsibility for seven salesmen [24] around the country selling industrial fluids, plus I had

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[1] the product group in St. Louis, and I had an individual [2] who was responsible for product development.

[3] Q. Previously you had said that when you were [4] field sales manager you were responsible for 13 [5] salesmen, is that correct?

[6] A. Yes.

[7] Q. And then when you became industry manager for [8] industrial fluids you were only responsible for seven [9] salesmen?

[10] A. Yes.

[11] Q. And why did your -- the number of salesman [12] underneath you --

[13] A. The other salesmen were designated for the [14] aviation industry, for example, for the Skydrol-type [15] products, and there were three salesmen that were [16] shifted away from me. There were also two salesmen that [17] were shifted away for calling on the dielectric [18] customers, so we in essence broke that group up into [19] four segments, and there were three salesmen responsible [20] for the United States sales of heat transfer fluids.

[21] Q. So -- I'm sorry. You said you had four [22] salesmen who were responsible for heat transfer fluids?

[23] A. Three. There were three plus the product [24] manager that was there in St. Louis.

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[1] Q. And in addition to heat transfer fluids, what [2] other fluids were included under the name industrial [3] fluids?

[4] A. Basically the Pydraul products.

[5] Q. So in late 1968 when you became industry [6] manager for industrial fluids, were you responsible for [7] Pydrauls and heat transfer fluids?

[8] A. Not heat transfer. That was given to a [9] fellow named Jack Fallon. I had only the Pydraul [10] products, Santovac which was another. There may have [11] been some other trade names there that I had [12] responsibility for, but they were small.

[13] Q. Do you recall them?

[14] A. Most of them were known as MCS, Monsanto [15] Chemical Samples that had never reached the level of [16] being a trade name product. They were probably produced [17] for only one customer.

[18] Q. What was the difference between a Pydraul [19] fluid and an MCS fluid?

[20] A. Well, an MCS fluid might be where you develop [21] a product for a specific customer, you would produce [22] some -- maybe even bulk quantities of the product. It [23] would be evaluated by the customer. It might become a [24] product of use, and it would be a product that we

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[1] produce, but it was not a product that we would go out [2] and promote the sales of to other people.

[3] Q. I'd like to return to when you were field [4] sales manager from late '66 or early '67 until you [5] became industry manager for industrial fluids in late [6] 1968. Who did you report to at that time?

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[7] A. A fellow named George Buchanan.

[8] Q. And what was his position?

[9] A. He was a product manager for petroleum [10] additives and the fluids -- and the functional fluids [11] group.

[12] Q. And when you referred to functional fluids [13] group, what are you referring to?

[14] A. The Pydrauls, the Inerteens, the Skydrols, [15] whatever.

[16] Q. And is the term functional fluids a broader [17] term than the term industrial fluids?

[18] A. Yes.

[19] Q. And is that because functional fluids [20] includes the aviation fluids, the dielectric fluids [21] whereas the industry fluids does not include those?

[22] A. Right.

[23] Q. And who did Mr. Buchanan report to?

[24] A. Wow. I think a fellow named Jim Lawter.

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[1] Q. Can you spell that?

[2] A. L-A-W-T-E-R.

[3] Q. And what was his position?

[4] A. He was a business director I believe they [5] titled those people.

[6] Q. And do you recall who Mr. Lawter reported to?

[7] A. He reported to the director of marketing for [8] the Organic Division.

[9] Q. And who was that at that time?

[10] A. It may have been Ernie Robson. That's the [11] closest I can come. There may have been somebody else [12] in that position at the time you're talking, but I [13] remember Ernie Robson holding that position then and [14] maybe later on.

[15] Q. And do you know who Mr. Robson reported to?

[16] A. The vice president, general manager of the [17] division which was a man named Bob Morris. God, this is [18] something.

[19] Q. What division are you referring to?

[20] A. The Organic Division.

[21] Q. Do you know who Mr. Morris reported to?

[22] A. Oh, he would have reported to the president [23] of the company.

[24] Q. Who was that at that time?

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[1] A. Charlie Sommers. God, I'm remembering these [2] things.

[3] Q. Can you please spell Mr. Sommers' last name?

[4] A. S-O-M-M-E-R-S.

[5] Q. And as best you can recollect, were these [6] people all in the positions that we just discussed while [7] you were field sales manager from late 1966 or early [8] 1967 until late 1968?

[9] A. Yes.

[10] Q. When you moved and became industry manager [11] for industrial fluids in 19 -- in late 1968, who did you [12] report to?

[13] A. A fellow named Don Olson.

[14] Q. And what was his position?

[15] A. He was director of marketing for the [16] functional fluids group.

[17] Q. Was there a product manager for functional [18] fluids at that time or was that your position?

[19] A. There were no products managers. That job [20] title was eliminated, and we were referred to as [21] industry managers.

[22] Q. So Mr. Olson was in the position for the [23] functional group that Mr. Lawter was in the position for [24] the functional fluids group? Let me take that -- let me

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[1] repeat that. [2] Was Mr. Olson in the same position for [3] the industrial fluids group as Mr. Buchanan was -- I'm [4] sorry, as Mr. Lawter was for the functional fluids [5] group?

[6] A. No, no. Mr. Olson was considered director of [7] marketing under Mr. Howard Bergen who was a business [8] manager. As these organizations changed its -- it [9] changed all the way to the top when it was changed so [10] that you had two assistant director of marketings, and [11] those jobs were eliminated when this transition went to [12] form separate business groups.

[13] Q. Did this transformation take place when you [14] moved positions as well in late 1968?

[15] A. Yes.

[16] Q. Who did Mr. Bergen report to?

[17] A. He could have reported to a man named Bob [18] Morris who was the vice president of the Organic [19] Division, but then I think later on it was a man named [20] Throdahl.

[21] Q. Did Mr. Morris and Mr. Throdahl hold the same [22] position at different --

[23] A. Yes.

[24] Q. -- at different times?

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[1] A. Yes. Morris may have moved on in like '66, [2] '67, and Monte Throdahl came over from a research [3] position to be vice president and general manager of the [4] Organic Division.

[5] Q. And who did Mr. Morris and Mr. Throdahl [6] report to?

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A. President of the company.

Q. And was that Charlie Sommers?

A. At that time I believe so.

Q. And at that time we're talking about late 1968, is that correct?

A. Yeah.

Q. Do you know when Mr. Sommers left as president of the company?

A. No, I don't.

Q. Do you know who became president of the company after him?

A. No. I believe a Mahoney. That's a guess.

Q. You said in late 1968 when you became industry manager for industrial fluids that you were responsible for seven salesmen, is that correct?

A. Yes.

Q. Do you remember who those salesmen were?

A. Oh, boy. A George Fague, Carl Clay, Jerry

Davidson. That's about the best I can do. I think there's some paperwork that I was shown yesterday that had some of the additional names that might relate to it.

Q. Well, if you remember -- as we look at some documents during today, if you remember that, if you would just tell me? Thank you.

THE REPORTER: Your answer, sir?

THE WITNESS: Yes.

BY MR. DUFF:

Q. Just to remind you, if I'm asking a question, we need to have a verbal answer from you, and shaking or nodding of your head won't be picked up by the transcript.

A. I understand, but this is tough. This is 25 years ago.

MR. CHAMBERS: It's also for the benefit of the transcript that the court reporter is preparing. I think the videotape will pick up any gestures or that kind of thing just fine.

THE WITNESS: Some of these are tough.

BY MR. DUFF:

Q. Do you recall what fluids Mr. Fague, Mr. Clay and Mr. Davidson were responsible for?

A. The industrial fluids which involved all the Pydrauls.

Q. And did that also involve all the other industrial fluids?

A. No.

Q. Were those three individuals only responsible for Pydraul fluids?

A. Yes.

Q. Was anybody else responsible for Pydraul fluids?

A. No.

Q. Do you remember a man named C. Larry Bradford?

A. Yes.

Q. And was he one of your salesmen at this time?

A. He was a salesman for the -- I believe Larry Bradford prior to this was a salesman down in Houston, and he was promoted to be a regional manager out in Los Angeles in the early part of 1967 when we formed the business groups. So Larry had been a salesman down in Houston and was aware of the customers in that area. And then when he moved to Los Angeles, he became a part of our group with that total reorganization.

Q. Would Don Pogue have been one of your

salesmen at this time?

A. When we had 13 salesmen, Don Pogue was the salesman in Los Angeles, and then in the reorganization he became responsible for product development in our industrial group and reported to me.

Q. He was the individual you referred to earlier as responsible for product development, is that correct?

A. Right.

Q. And did a gentleman named Don Erickson report to you?

A. At one time Don Erickson reported to me, but when the breakup came into these smaller groups, Don Erickson went with the Skydrol group or the aviation fluids group on the west coast.

Q. So did he report to you when you were the field sales manager?

A. Yes, initially.

Q. Do you recall a gentleman by the name of Bob Damiani?

A. Yes, Bob Damiani, yes.

Q. Damiani?

A. Yes.

Q. Could you please spell that for the record?

A. D-A-M-I-A-N-I, I believe.

Q. And he was one of your salesmen in the industrial fluids group?

A. He was a salesman here in Chicago.

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[4] Q. Do you know what area George Fague was [5] responsible for, geographically speaking?

[6] A. Basically it was Detroit, so that would have [7] been Michigan, maybe a small part of Ohio. That's about [8] it.

[9] Q. And what were Carl Clay's areas of [10] responsibility?

[11] A. Well, under that new organization, Carl Clay [12] had a responsibility that covered most of the southern [13] states. It was a terrible assignment. So he was [14] covering the areas from the Carolinas all the way over [15] to Texas.

[16] Q. And did that include Florida?

[17] A. Yes.

[18] Q. And all of the states along the Gulf of [19] Mexico?

[20] A. Yes.

[21] Q. And how far north did his area go to?

[22] A. I believe he probably went to the northern [23] border of Tennessee.

[24] Q. And what areas were Jerry Davidson

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[1] responsible for?

[2] A. Well, Jerry had been a salesman on the west [3] coast, and then he was brought into the product group as [4] a product specialist under this organization with [5] industrial fluids.

[6] Q. Was Jerry Davidson the product specialist for [7] Pydraul?

[8] A. Yes.

[9] Q. And how long did he hold that position, if [10] you recall?

[11] A. Oh, boy; oh, boy; oh, boy; oh boy. [12] I'm having trouble pinpointing when Jerry [13] Davidson moved from the west coast into that product [14] group. It may have been somewhere in '69 or '70.

[15] Q. Did he hold the position of product [16] specialist when he moved from Los Angeles to St. Louis?

[17] A. Yes.

[18] Q. And did he hold that position as long as you [19] were at Monsanto from that point on?

[20] A. I believe so.

[21] Q. Do you recall who your salesman was in the [22] northeast at this time?

[23] A. No, I don't. Later as we see some of the [24] paperwork I can probably pinpoint who it was.

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[1] Q. You said that Don Pogue reported to you when [2] you were industry manager for industrial fluids and he [3] was in product development, is that correct?

[4] A. Right.

[5] Q. Who did he work with in that position?

[6] A. He really worked by himself. He interfaced [7] with me, he interfaced with people in research and to [8] some degree was interfacing with customers on projects [9] that we were looking at.

[10] Q. How would you define his responsibilities?

[11] A. He was really obligated to look for fluid [12] applications, industrial applications that we might be [13] able to develop new products for, and then as the PCB [14] problem came before us, we requested Don to look at the [15] possible -- possibility of reclamation of fluids, and [16] that caused us to take a look at some customers' [17] effluent to see how much they were losing and where they [18] were losing it and determine if there was a business for [19] reclamation.

[20] Q. When did you ask Don Pogue to look into [21] reclamation for the PCB problem?

[22] A. Oh, I'd say sometime in '68.

[23] Q. And what was his assignment with respect to [24] reclamation?

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[1] A. Contact large customers for Pydraul products [2] to analyze where their effluent might be going, whether [3] it was conceivable that we could reclaim fluid for these [4] people and minimize the leakage of PCBs into the [5] environment.

[6] Q. And by "large customers" who do you mean?

[7] A. Oh, God. Somebody who might buy 20,000 [8] pounds or 30,000 pounds of product on up.

[9] Q. How many customers did you have that [10] purchased 20 to 30,000 pounds or more of industrial [11] fluids products?

[12] A. Oh, I would say probably 20, maybe 30; at [13] multiple locations though.

[14] Q. Is it fair to say these were your most [15] important customers?

[16] A. Everybody was important.

[17] Q. And what were the results of Don Pogue's [18] efforts?

[19] A. We were able to identify effluent from plants [20] where the people had indicated they probably didn't have [21] any problems. And when we confronted them with the [22] information, obviously it was a rude awakening.

[23] Q. And why was that?

[24] A. To a great degree, companies using Pydraul

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[1] recognized they were buying replacement

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product to fill up their equipment and never gave any consideration to where did the product go that had disappeared from the system.

Q. Did Monsanto ever give any thought to that?

A. We sure as hell did in 1967, '68, '69, '70, '71, '72.

Q. And in 1967 what thought did you give to that?

A. In 1967 when PCBs were identified in the environment, we gave an enormous amount of consideration to, one, do we eliminate the PCB-containing products, were PCBs really showing up in the environment, could we confirm what two scientists had defined as PCBs in the environment; and then we looked at the possibility of changing our product, which we did change the chemistry of the Pydrauls, and then later recognized that that change was not going to be sufficient, then we would have to go to phosphate ester.

Q. Did all of this happen in 1967?

A. No, it all happened in '67, '68, '69, and I don't know exactly when we started on the phosphate ester program.

Q. And one of the things that Monsanto

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recognized in 1967 was that customers were buying replacement fluids, is that right?

A. Yes.

Q. And was it your understanding that they were buying replacement fluids because those fluids were getting into the environment?

A. Most people denied that it was getting into the environment. Many of them reclaimed. They had pits around their equipment, the Pydraul would leak in. They would run a filtration system and draw the Pydraul out, recondition the Pydraul and put it back into their machines. Other people would say we don't have any losses. It was a very difficult situation for salesmen to identify where effluent from the plant was going. Customers did not make this information available. They almost regarded us as a part of the environmental United States Government, and we were really there to try and help them.

MR. DUFF: I would move to strike the last answer as nonresponsive.

BY MR. DUFF:

Q. Was it your understanding at this time that customers were buying replacement products because the

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products were getting out of their systems?

A. Most customers would tell us the reason they were buying product is they purchased new equipment and needed product to go into the equipment.

Q. What was --

A. Others would talk about the fact, sure, they had replaced -- they had to replace the lost fluid in their equipment.

Q. What was your understanding at this time of the need for customers to buy replacement products?

A. Up until 1967 I would suspect most people felt that PCBs were biodegradable and they were not being retained in the environment.

Q. What was your understanding of why customers were buying replacement products at this time?

A. To refill equipment, to add new equipment to the production line.

Q. And is that because you understood that customers' product, PCB products were getting out of their equipment?

A. If you're operating a die cast machine and it's a 2,000 ton machine, it's got all kinds of hoses on it, because you have to be able to close the die and open the die, it's possible for a customer to have an

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operator who closes the die and closes the hose in it. Now, the pump is pumping at about 2,000 psi. When that hose is fractured, you blow all the fluid out of the reservoir through that pump, and obviously you shut down the machine. Now, he's got molten aluminum sitting right next to him. If this hadn't been a fire-resistant product and instead it was petroleum oil, he would have been dead because that is a flame thrower once you get the source of ignition with petroleum oil. So fire-resistant products were brought into existence to prevent that kind of occurrence. And you may have remembered, maybe you're too young, General Motors had a plant at Livonia, Michigan that made hydromatic transmissions. They were using petroleum oil in die cast machines. They burnt the whole plant down. You couldn't buy a hydromatic transmission for three years. That was probably one of the most important incidents to cause the development of fire-resistant hydraulic fluids. It saved one hell of a lot of lives.

MR. DUFF: Move to strike as nonresponsive.

THE WITNESS: Okay.

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BY MR. DUFF:

Q. Was it your understanding that

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customers that [3] bought replacement products were buying those [4] replacement products because their Pydraul products were [5] escaping from their machinery or their systems?

[6] A. That was one reason, and obviously the other [7] reason was for new equipment.

[8] Q. When you were industry manager for industrial [9] fluids, was Tennessee Gas one of your customers?

[10] A. I understand they were.

[11] Q. And what is the basis of your understanding?

[12] A. The fact that I'm here testifying for [13] Monsanto on a lawsuit by Tennessee Gas.

[14] Q. Did you discuss with anybody that Tennessee [15] Gas was a customer of Monsanto's?

[16] A. Many of the gas transmission companies bought [17] Pydraul AC for their operating systems at the local -- [18] or the pumping stations along the line to wherever they [19] were distributing the natural gas.

[20] Q. Do you recall that Tennessee Gas was a [21] customer of Monsanto's?

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

[23] Q. Did you ever visit a Tennessee Gas station?

[24] A. Probably tried but never got in.

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

[2] BY MR. DUFF:

[3] Q. Do you recall ever visiting a Tennessee Gas [4] station?

[5] A. Nope.

[6] Q. Do you recall ever meeting with anybody from [7] Tennessee Gas?

[8] A. It's very possible I met with people from [9] Tennessee Gas down in Houston or Dallas, wherever they [10] were headquartered, on a trip early in my career.

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

[12] BY MR. DUFF:

[13] Q. Do you recall ever having met with somebody [14] from --

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

[16] Q. -- Tennessee Gas. [17] Do you recall which of your salesmen [18] would have been responsible for the Tennessee Gas [19] account? And we're talking the time period that you [20] were industry manager for industrial fluids.

[21] A. It may have been Larry Bradford initially [22] when he was down in Houston covering that wide area. We [23] had a man in our organization initially when I came with [24] it called Roger Hatton, and Roger Hatton had some

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[1] involvement with the gas transmission people because of [2] our involvement in fluid for the turbines, turbine [3] lubricants.

[4] Q. Anyone else?

[5] A. No.

[6] Q. Are you saying that there was nobody else or [7] you don't recall anyone else?

[8] A. I don't recall anybody else.

[9] Q. Do you have an understanding about how [10] Pydraul AC was used in air compressors?

[11] A. It's a lubricant in the reservoir which is [12] brought up by a small pumping system to the rings.

[13] Q. And when you say a small reservoir -- strike [14] that. [15] When you refer to a reservoir, what are [16] you referring to?

[17] A. Well, the air compressor always has a [18] reservoir of lubricant because you do have pistons [19] operating just as you do on an internal combustion [20] engine and you must lubricate those rings.

[21] Q. And do you have an understanding about how [22] the Pydraul AC would be placed in the reservoir?

[23] A. Typically the reservoir is much like an [24] internal combustion engine that you have in your car.

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[1] You have a reservoir at the bottom and a small pumping [2] system that will pump small quantities of oil up to the [3] rings and the cylinders.

[4] Q. Do you have an understanding about how the [5] Pydraul AC would be placed in the reservoir?

[6] MR. CHAMBERS: Let me object to the form for [7] a second. When you say "placed," do you mean physically [8] poured into the reservoir, or do you remember how it [9] would be located within the reservoir?

[10] MR. DUFF: You may answer the question.

[11] MR. CHAMBERS: If you can make any sense out [12] of it.

[13] THE WITNESS: You're familiar with putting [14] oil in your car, are you not?

[15] BY MR. DUFF:

[16] Q. What I'm asking is if you have an [17] understanding of how the Pydraul AC was placed in the [18] reservoir of an air compressor?

[19] MR. CHAMBERS: Same objection to the form.

[20] THE WITNESS: The same way you would put oil [21] in the reservoir of your

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automobile.

BY MR. DUFF:

Q. And what is that understanding that you have?

A. You go to a gas station, you buy a quart of

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oil, you punch a hole in it, you pour it in the little opening that puts it down in the crank case of the car.

Q. So is it your understanding that Pydraul AC would be poured into an opening?

A. May have a cover on it. You'd take the cover off just like you'd take the cover off on your internal combustion engine of your automobile and you'd pour in a quart of oil. Goes down in the reservoir. You've got an oil pumping system that pumps up oil to the rings on the pistons and keeps the walls of the cylinder lubricated, and that's the way the -- an air compressor functions also.

Q. So is it your understanding that there would be a cap on the top of the reservoir that would be removed and then the Pydraul AC would be poured into that reservoir?

MR. CHAMBERS: Objection, asked and answered. Go ahead. You may answer it again if you need to.

THE WITNESS: There would be some mechanism that they would have to take off to put or pour the Pydraul AC into the reservoir of the air compressor.

BY MR. DUFF:

Q. Do you have an understanding as to what that mechanism would be in a typical situation?

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A. Oh, sometimes they required a wrench to take the cap off on compressors that I have seen. Other times it's just like the system in your car if you have to add engine oil, you'd just go over and you'd lift it off and you'd pour in the quart of oil.

Q. And when you say that in some cases you saw that a wrench was needed to take the cap off the reservoir, what do you mean?

A. It's conceivable that there was a threaded cap and you would require a crescent wrench to go and open it up and then you'd pour in oil to a certain level of the reservoir and then you'd seal it and put the cap back on.

Q. And you stated that your understanding was that from the reservoir there would be a small pumping system, is that correct?

A. Yes, like you have in your automobile.

Q. And what is your understanding of how a -- the small pumping system would operate in an air compressor?

A. It could have been just a combination of a yolk on a small piston; any mechanism to provide sufficient pressure to move oil into the area on the cylinder wall to catch oil by the rings to lubricate the

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rings and the cylinder wall.

Q. So pressure was used -- pressure would be used in an air compressor to move the Pydraul AC from the reservoir to the cylinder wall, is that correct?

A. When you say pressure, it would be a very, very low pressure pump. In your automobile you have a little oil pump, and it pumps oil up into the area on the cylinder wall, it gets caught in the various rings on the piston and it continues to lubricate as it goes up and down. If you lose the pump in your automobile for the oil, you end up burning out the engine.

Q. And is that your understanding as to how the Pydraul AC would get from the reservoir to the cylinder walls in an air compressor?

A. Yes. There may be more exotic systems to do it, but that's basically what you have to do.

Q. And when you talk about lubricating the rings, what do you mean?

A. On a piston in your automobile or a piston in an air compressor you have this large metal object, and along the outside you have probably three slots in that piston in which you put a metallic ring. You press those in very tight, you slip that down into the

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cylinder of the air compressor. The rings are designed to keep the lubricant down below and yet maintain pressure so that the air compressor can compress air. If the air were to go around the piston and around the rings down into the crank case, then you'd pressurize the crank case, which is not what you want. You want to pressurize the upper part of the system so that you have 50 pounds or a hundred pounds of compressed air for whatever the need may be.

Q. So the function of the pistons is to compress the air, is that right?

A. Yes.

Q. And do you have an understanding as to how physically the area where the air was compressed would be in relation to the pistons?

A. The upper part of the piston.

Q. So would the upper part of the piston be in the chamber, if you will, in which

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the air was compressed?

A. Yes. You're doing the reverse of the internal combustion engine you have in your car. There you're putting fuel in along with air to drive the piston down to rotate a crank case which transmits to the wheel lifts of your car.

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In this particular case what you're doing is the reverse. You've got a driving mechanism to turn that crank case and raise and lower the pistons which are secured in the walls of the cylinder. They compress air on the upper part, and that compressed air is used for whatever reason the pipeline company may need it. It may be just control air for their operating system.

Q. How would the compressed air be contained?

A. In pipelines; you know, in small lines for operating systems.

Q. Do you have an understanding of how the compressed air once it's been compressed is stored?

A. Sometimes there's a device called an accumulator. Sometimes you have a storage tank in which you maintain a large quantity of air at a certain pressure. I mean, it's very possible to have a cylinder that just contains compressed air. Much like when you go to fill the air in your tires. When you go over to the gas station, they have an air compressor and they also have a tank in which they put a quantity of compressed air. So if somebody comes in, the pump doesn't have to start up all the time. It can utilize the pressure in that tank. You put 30 pounds of air in your tire and you drive off,

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and of course as the pressure drops in the tank, the air compressor comes on to refill the tank with compressed air.

Q. And would anything besides compressed air be in that tank?

A. Well, you always have the possibility if the rings are bad that you might be forcing oil over. If you're bringing in exotic fumes, that will be drawn into the compressor and then put in the storage tank too.

Q. Is it possible for oil to get into the -- this area where the compressed air is held even if the rings are not bad?

A. Even if what?

Q. Even if the rings are not bad?

A. Then it shouldn't -- you shouldn't have fluid going around the rings. It should be sticking right on the wall. It would be very, very minimal. You're talking about how many quarts of oil do you put in your car every thousand miles? If you don't burn any oil, then the five quarts you put in when you changed your oil is still there when you go in after a thousand or two or 3,000 miles and they drain out the same five quarts of oil.

Q. You understand that your companies that used

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air compressors purchased replacement products, is that correct?

A. Occasionally.

Q. And what was your understanding about where the Pydraul AC they used as initial fill went?

A. Back before 1967 I don't remember that anybody had expressed any great concern. In 1967 when PCBs were found in the environment, then there was great concern.

Q. What is your understanding of the reasons that a -- an air compressor customer would purchase replacement Pydraul AC?

A. Because they had bad rings in a compressor and the oil was getting around the rings and into the compressed air that they were using.

Q. Is it your understanding that in every instance that a customer was buying replacement Pydraul AC that they had bad rings?

A. The rings were probably worn. On a typical air compressor, a company might buy five gallons a year or two years if they had good rings. When the consumption of oil increased, proper maintenance should be done, the compressor is torn down and new rings are installed.

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Q. Is it your understanding that at a point the rings will break down?

A. Metal will wear.

Q. So is it your understanding that in the normal operating procedures of an air compressor that oil will get through the rings?

A. If there's bad maintenance.

Q. Under any other circumstances?

A. Well, I've had many automobiles in which I've driven 50,000 miles, and when I have my oil changed and I go back in again and have my oil changed, I would say they take the same quantity of oil that I put in there because the rings on my car were well-maintained. It's the same problem with an air compressor. If the rings are well-maintained and they have a periodic shutdown, maybe once a year, and they said we're going to break down that compressor and we'll replace the

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rings in there, they will have minimum loss [19] of Pydraul AC up into the air system. It will be [20] retained in the reservoir.

[21] Q. But they will have some loss, is that your [22] understanding?

[23] A. I've got a car out here now that has 50,000 [24] miles. I put four and a half quarts in when I change

Page 81

[1] the oil, and you know what, I've got four and a half [2] quarts after I drive 3,000 miles. So the car has been [3] well-maintained, and I'm not losing oil. [4] If sloppy maintenance is going on, yeah, [5] there's a good possibility that they will lose that [6] quantity over maybe a year period. Maybe they use five [7] gallons of fluid back in there. So there's some loss, [8] and when the losses start to indicate, it's an [9] indication to the plant people they've got to go out and [10] change the rings on that air compressor.

[11] MR. DUFF: Move to strike and nonresponsive.

[12] THE WITNESS: Good.

[13] BY MR. DUFF:

[14] Q. Is it your understanding that small amounts [15] of Pydraul AC would escape into the air compressor -- [16] into the compressed air chamber?

[17] MR. CHAMBERS: Objection to the form. Asked [18] and answered. Go ahead and answer it again if you need [19] to.

[20] THE WITNESS: If it's a tight system, there [21] wouldn't be any loss of Pydraul AC.

[22] BY MR. DUFF:

[23] Q. Your understanding is that in the normal [24] operating of an air compressor that there would be no

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[1] losses of Pydraul AC?

[2] MR. CHAMBERS: Objection to the form, asked [3] and answered. Go ahead and answer it again.

[4] THE WITNESS: If it's a tight system, [5] well-maintained, basically there would be no loss. It [6] is not there as a fuel, it is a lubricant.

[7] MR. DUFF: Move to strike as nonresponsive. [8] Would you please repeat my last question? [9] (Question read)

[10] MR. CHAMBERS: Objection to the form. It's [11] been asked and answered. You can answer it one more [12] time if you need.

[13] THE WITNESS: If it's a well-maintained [14] system, there will be no loss.

[15] MR. DUFF: Move to strike as nonresponsive. [16] I think this is an appropriate time to [17] take a short break.

[18] MR. CHAMBERS: Fine.

[19] THE VIDEOGRAPHER: Now off the video record. [20] (Recess taken)

[21] THE VIDEOGRAPHER: Now back on the video [22] record with Tape Number 2.

[23] BY MR. DUFF:

[24] Q. Mr. Johnson, before we took our break we were

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[1] talking about air compressors, is that correct?

[2] A. Right.

[3] Q. Do you have an understanding if in the normal [4] operating procedures of air compressors they generate [5] condensate?

[6] A. Yes, they do.

[7] Q. And how is that generated?

[8] A. Condensate can also be moisture in that you [9] may be bringing in very humid air and you're running it [10] through a compressor, and that moisture which is a vapor [11] will be condensed down to a water, and sometimes that [12] ends up getting into the mechanical part of the [13] compressor system, and normally down the line you have a [14] small accumulator which permits you to take that [15] moisture out.

[16] Q. And how does that accumulator allow you to [17] take the moisture out of the air compressor?

[18] A. Well, an accumulator bottle of various sizes [19] is put on the air compressor line. As the air comes [20] down the line, water will condense. It condenses and [21] then drops into a long cylinder, and normally you have a [22] petcock at the bottom permitting you to drain that water [23] out.

[24] Q. And how would air that results in condensate

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[1] get into the system in the first place?

[2] A. The air coming in is very moist, and if it's [3] moist and you subject it to compression, that means you [4] heat it, you run it through a sequence of coolers which [5] will cause that water to reform as liquid moisture; and [6] as it goes down the line, it is converted then to water, [7] and the water will then drop into that accumulator [8] bottle which permits you to take that water out.

[9] Q. Have you ever seen this system in an air [10] compressor?

[11] A. Yes. I worked in a power plant.

[12] Q. Which power plant did you work in?

[13] A. I worked in a power plant at the Municipal [14] Tuberculosis Sanitarium here in Chicago for a summer.

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[15] Q. And when was that?

[16] A. Oh, somewhere maybe in 1967.

[17] Q. Was that while you were working for Monsanto?

[18] A. No, no, no, no, that was before. That was in [19] an interim summer job that I took between working at [20] Royal McBee and at Mead & Wheeler.

[21] Q. Did you mean 1957?

[22] A. Yes, I'm sorry. Yes, '57.

[23] Q. And how would the condensate be released from [24] the system at the power plant that you operated -- that

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[1] you worked at?

[2] A. We had an accumulator bottle down the line [3] and a small petcock at the bottom. We'd put a pail [4] under it and we would drain the water out, and it would [5] drain out based on the pressure of the system in [6] addition to just the gravity of the water that was in [7] the accumulator bottle.

[8] Q. This was an air compressor that you --

[9] A. Yes.

[10] Q. -- worked at?

[11] A. Well, I worked as a fireman in a power plant. [12] We fired three boilers, 150 pounds of pressure, and we [13] had an air compressor system for the control air to [14] control the dampers and the various other controls on [15] the boilers.

[16] Q. And when you allowed this condensate to go [17] into the bucket, how much condensate would you get at a [18] time?

[19] A. Well, if the other firemen were good, and [20] they would do it once a day or once every other day, [21] there wouldn't be much there. But sometimes I'd come in [22] and I'd say gee, it's probably a good time to go drain [23] the bottle, and you'd find the darn thing was almost [24] full.

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[1] And it depends on the moisture in the air [2] during the time of the year. If it was in the winter, [3] you wouldn't get much moisture. But in the summer when [4] you had hot and humid days, you would accumulate more [5] moisture because we had a higher level of humidity in [6] the air.

[7] Q. And what would the condensate look like?

[8] A. Oh, it may have a -- kind of a milky [9] appearance; didn't look very clean.

[10] Q. And did it have an odor?

[11] A. I don't remember. Probably had kind of a [12] smelly odor because the water had been sitting in the [13] accumulator bottle for a period of time.

[14] Q. Do you recall an odor?

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

[16] Q. Have you ever seen condensate emptied from an [17] air compressor system that used Pydraul AC?

[18] A. No.

[19] Q. Is it your understanding that condensate from [20] air compressors using Pydraul AC might sometimes have [21] oil in it?

[22] A. It's conceivable.

[23] Q. Is it your understanding that in fact [24] sometimes customers' condensate had oil in it?

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[1] A. I would relate that to your automobile with [2] the rings there and say that if rings were not properly [3] maintained in an air compressor, as some people don't [4] maintain the rings in their internal combustion engine, [5] you will have blow-by. You will have oil that will get [6] up into the pistons.

[7] MR. DUFF: Move to strike as nonresponsive. [8] Would you please repeat my last question to the witness? [9] (Question read)

[10] MR. CHAMBERS: Let me object to the form [11] because that question has been asked and answered, but [12] you can certainly repeat the answer one more time.

[13] THE WITNESS: Well, I can answer it this way: [14] I was never in a pipeline station that [15] had a compressor for air control system, and therefore [16] never saw them drain the accumulator bottle, so I don't [17] know.

[18] BY MR. DUFF:

[19] Q. Do you have an understanding that in fact [20] customers that used Pydraul AC sometimes had oil in [21] their condensate?

[22] MR. CHAMBERS: I'll object to the form. [23] That's been asked and answered, but you can answer it [24] again.

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[1] THE WITNESS: I was never in a plant when [2] they drained the accumulator bottle to know whether they [3] had oil carryover in the system.

[4] MR. DUFF: I'm not asking for what you [5] physically may have seen or not. I'm asking for your [6] understanding. And with that in mind, I'll ask the [7] court reporter to reread the question to you. [8] (Question read)

[9] THE WITNESS: If the rings of the compressor [10] are not properly maintained, they would have oil [11] carryover into the accumulator bottle.

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

[13] BY MR. DUFF:

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[14] Q. I'm not asking you for -- I'm not asking you [15] to speculate as to the reasons that may or may not have [16] existed. I'm asking as to your understanding as to [17] whether or not customers in fact had oil in their [18] condensate?

[19] MR. CHAMBERS: I object because he gave you [20] his understanding. That's what you asked him for. [21] That's not speculation. [22] You're free to repeat your response one [23] more time if that's what it takes, but that question has [24] been asked and answered multiple, multiple times.

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[1] And, you know, if we keep going down this [2] road, we're not only wasting time here, but we may need [3] to look at getting some relief from badgering the [4] witness about it. Now, you have a response. Let's move [5] on to something else and conclude the deposition. [6] Subject to that, go ahead and respond one [7] more time.

[8] THE WITNESS: A well-maintained air [9] compressor will have very, very little carryover, if [10] any, into the air system.

[11] BY MR. DUFF:

[12] Q. Is it possible that an air compressor system [13] will have some carryover into the condensate?

[14] MR. CHAMBERS: Let me object to the form. [15] That's been asked and answered as well.

[16] THE WITNESS: I'll answer you again by saying [17] a well-maintained system should have absolutely no [18] carryover. [19] And I would ask you this: When you buy a [20] brand new car, does that car burn oil? Do you when you [21] go in and change the oil have less oil at the changeover [22] than was initially put into the crank case of that car?

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

[24] THE WITNESS: That's okay.

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[1] BY MR. DUFF:

[2] Q. When you were industry manager for industrial [3] fluids -- strike that. [4] When you were field sales manager for the [5] fluids group and also when you were industry manager for [6] industrial fluids, was it your practice to read the call [7] reports that were addressed to you?

[8] A. Yes.

[9] Q. And by "call reports," what is your [10] understanding of what I mean?

[11] A. The call report is a report on the sales call [12] indicating the customer, the location, the people that [13] were talked to and contact relative to the conversation [14] with the customer. And if there was immediate action [15] required, typically that would be also indicated on the [16] call report and a copy would be sent to the appropriate [17] party.

[18] Q. Did your salesmen in the field have contacts [19] that they would go to for the -- strike that. [20] Did your salesmen in the field have [21] contacts that they would go to on a regular basis?

[22] A. Yes.

[23] Q. I'd like to jump ahead briefly to just finish [24] up your employment history.

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[1] Did you hold the position industry [2] manager for industrial fluids until you left Monsanto?

[3] A. No.

[4] Q. What was your next position?

[5] A. The fluids group and the paper chemicals [6] group were merged, and I was re-established as field [7] sales manager for the combined group. And then the [8] latter part of '72 I was made director of product [9] development for the fluids group.

[10] Q. And when did you become the field sales [11] manager for the combined group of fluids and paper [12] chemicals?

[13] A. I can only define that time as sometime in [14] probably '72, latter part of '71.

[15] Q. I'm sorry, did you say late '71 or early '72?

[16] A. Right, somewhere in there.

[17] Q. And when you became director of product [18] development for the fluids group in late 1972 --

[19] A. Yes.

[20] Q. -- did your responsibilities change in any [21] way from your previous position as field sales manager [22] for the combined group of fluids and paper chemicals?

[23] A. Yes.

[24] Q. And how did that change?

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[1] A. I was now responsible for the development of [2] new products both for paper chemicals and industrial [3] fluids. So I had a more direct relationship with [4] research, and I believe I had three people working for [5] me.

[6] Q. Do you recall the names of those individuals?

[7] A. Dick Davis was one, and now I'm at a loss. I [8] don't remember the other two. Maybe I'll see a piece of [9] paper later today and I can tell you.

[10] Q. And when you -- returning to when you were [11] field sales manager for the combined fluids and paper [12] chemicals group, what were the fluids that you were [13] responsible for?

[14] A. Still the same products. It was the [15] salespeople that were handling, whether it

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was Skydrol [16] or Pydrauls or Inerteen for capacitors and transformers. [17] And then in addition to that, the paper chemical side [18] which was rosincize plus various scriptsets for wet [19] strength resins and various things that went into paper.

[20] Q. Were the fluids that you were responsible for [21] when you were field sales manager for the combined group [22] the same fluids that you were responsible for when you [23] were industry manager for industrial fluids?

[24] MR. CHAMBERS: Let me object to the form.

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[1] When you say "same fluids," are you talking about same [2] trade name, same product name or same composition?

[3] MR. DUFF: You may answer the question.

[4] MR. CHAMBERS: Well, I'll object to the form. [5] If you're able to make sense of what he's asking, you [6] sure can answer it. Subject to that, go ahead.

[7] THE WITNESS: The trade names would have been [8] the same; however, during that period, a whole bunch of [9] the products were changed chemically.

[10] BY MR. DUFF:

[11] Q. Which products were changed chemically?

[12] A. The Pydrauls.

[13] Q. And how were they changed chemically?

[14] A. They were changed in terms of reducing role. [15] The change was to eliminate PCBs from industrial fluids [16] which ultimately was done by converting the systems to a [17] phosphate ester.

[18] Q. You say "the change was to eliminate," by [19] that do you mean that the aim was to reduce the amount [20] of PCBs in the fluids?

[21] A. The initial attempt was to eliminate PCBs.

[22] Q. And was the initial attempt successful?

[23] A. No.

[24] Q. But were PCBs later eliminated from Pydrauls?

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[1] A. Yes.

[2] Q. And was that when phosphate esters were used?

[3] A. Yes.

[4] Q. And how long did you hold the position [5] director of product development for the fluids group?

[6] A. About six months and then I left the company.

[7] Q. And when did you leave the company?

[8] A. Oh, God. Sometime in I think around April of [9] '73.

[10] Q. Why did you leave the company?

[11] A. After all the problems, I didn't see a future [12] in that group, and I wasn't sure there was a future for [13] me at Monsanto.

[14] Q. What do you mean all the problems in that [15] group?

[16] A. Well, PCBs were going to be eliminated, or [17] were eliminated, so a large factor of the business of [18] the functional fluids group was going to be gone.

[19] Q. Were there any other problems that you were [20] referring to?

[21] A. Well, see, the other part was the dielectric [22] switch were used in capacitors and transformers, and [23] that was going to be completely eliminated in that PCBs [24] would no longer be used. Monsanto made the decision

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[1] they would no longer sell the products, and we did not [2] have a replacement product for that application.

[3] Q. And were there any other problems that you [4] were referring to?

[5] A. With the losses in business, I did not see [6] that this product group was probably going to exist a [7] year from that point. Now, that was a judgment call on [8] my part.

[9] Q. Were there any other problems that you were [10] referring to?

[11] A. No. I'm sure I could have stayed with [12] Monsanto.

[13] Q. Who was your supervisor in April of 1973 when [14] you left the company?

[15] A. Howard Bergen. He was business director at [16] that time.

[17] Q. And did you have a conversation with [18] Mr. Bergen at that time about the reasons for your [19] leaving the company?

[20] A. Oh, sure.

[21] Q. And what do you recall was said during that [22] conversation?

[23] A. I questioned the future of the personnel in [24] the fluids group. And I'm sure he was very, very

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[1] concerned because about a year later he left the company [2] also.

[3] Q. Do you recall anything else that was said in [4] that conversation?

[5] A. Yeah, he was mad at me that I was leaving. [6] So we had a very difficult time, and he pursued is it [7] money, is it this, is it that? I said, no, Howard. I [8] just don't

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see a future at this point in time, and I think that being connected with PCBs is like the kiss of death.

Q. And what do you mean by that?

A. Well, corporations don't look favorably at people who were involved in a project that went sour or was having difficulty or created a bad image, and that's my own personal opinion. But I've seen that situation many times.

Q. Have you encountered that situation yourself?

A. No, I never encountered it, but I saw a number of people do it or go through that in other parts of the chemical industry.

Q. And when you left Monsanto, where did you go next?

A. I went with Davies Young. It was located in Maryland Heights, Missouri. They were in the

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maintenance chemical business, and I joined them as director of marketing.

Q. And what were your responsibilities as director of marketing for Davies Young?

A. Responsible for the products and the salesmen and a sales manager who covered the U.S.

Q. And what were the products that they sold?

A. Maintenance chemicals. We manufactured a line of products that were under a trade name called Buckeye; and also private label-type products.

Q. And how long did you work for Davies Young?

A. Two years.

Q. And when you left Davies Young, what did you do next?

A. I came to Chicago.

Q. And who did you work for in Chicago?

A. Then I went to work for a company called Allied Tube & Conduit located in Harvey, Illinois.

Q. And what was your position with Allied Tube?

A. Responsible for product development for vinyl coated steel.

Q. And how long did you work for Allied Tube?

A. About two years.

Q. Did you hold any other positions for Allied

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Tube?

A. No.

Q. And so that I'm correct with the time frame, were you with Allied Tube from approximately the spring of 1975 to sometime in 1977?

A. Right, right.

Q. Is that correct?

A. Yes.

Q. And do you recall when in 1977 you left Allied Tube?

A. Oh, boy. Summer. This is tough.

Q. Where did you go next?

A. I went with an energy management company that was owned by the Haughton Elevator people out of Toledo, Ohio.

Q. Do you remember the name of that company?

A. I think it was just Energy Management.

Q. And how long did you work for Energy Management?

A. About two years.

Q. And what did you do next?

A. I went with Henkel which was a buy-out of General Mills Chemical.

Q. And what did you do for Henkel?

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A. I joined them with the intent of staying as a salesman for the rest of my life.

Q. And how long did you work for Henkel?

A. Nine years I guess.

Q. And were you a salesman with Henkel the whole time?

A. No. I after two years went to the vice president and told him he needed a qualified regional manager, and six months later I got that job. And then a year later I told him that we still need vast improvements, and I ended up as field sales manager and then as director of marketing through that period. I don't know exactly the time frame on it.

Q. And were you in the business of selling industrial chemicals for Henkel?

A. Yes.

Q. And what industrial chemicals did that include?

A. Polyamides, acrylics; polyamides going to the coatings industry as an apoxy curing agent, and polyamides going to the printing industry for printing on polyethylene.

Q. And when did you leave Henkel?

A. Oh, God almighty. 1987 I think. I don't

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know if the years work out.

Q. And have you -- what did you do after you left Henkel?

A. I retired.

Q. And have you been enjoying your retirement since 1987?

A. Absolutely. I wouldn't go back to work for anybody. Oh, I do things; I take care of swimming pools and I'm president of condominium associations and whatever. I have more than enough to keep me busy.

Q. Do you do any consulting work?

A. Absolutely not.

Q. Have you been retained by Monsanto in any capacity since you left there in 1973?

A. Absolutely not.

Q. Why do you say "absolutely not"?

A. I have no reason to go back to Monsanto. I wish they'd lose my phone number.

Q. Do they call often?

A. Anytime they call it's too often.

Q. And why is that?

A. In 1973 when I left Monsanto, I had a feeling that PCBs would follow me for the rest of my life, and they sure as hell have.

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Q. And why is that?

A. Because there's companies like the one you represent that want to go after Monsanto for financial gain. And I'm the poor victim. I never got paid enough for all of this.

Q. When you were field sales manager for the fluids group and industry manager for the industrial fluids, what level of involvement did you have with sales?

A. Constant. I mean, I gave direction to the salesmen, I went out and made sales calls with them at their various important accounts. I was on the road a lot.

Q. Anything else?

A. No.

Q. Did you consider yourself more of a manager or more of a salesman?

A. All my life I've been a peddler, but in those capacities I was a manager.

Q. Did Monsanto use distributors for sale of its Pydraul products?

A. Very limited.

Q. In what instances did they use distributors for sale of Pydrauls?

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A. Some of the major oil companies wanted to distribute Pydraul, and because of other relationships it was agreed that the oil companies would handle Pydraul at locations where they felt they had a market to supply. They were never a big factor in the business.

Q. And what's the time frame that you're referring to when you talk about how oil companies would handle the supply of Pydraul products?

A. Well, I think there were authorized distributors when I joined the company in 1959, and when I came back to the fluids group in '67, we still had the same distributors, and the volume of business was fairly small, and most of the product was actually Pydraul AC.

Q. And do you remember the names of any of those distributors?

A. Oh, Mobil was one, Sinclair, I think Standard Oil of Kentucky. I'm not sure of anyone else.

Q. Were any of those distributors your customers?

A. No.

Q. At any time?

A. No, I'm sorry. When I was a salesman they were not my customers. As in the business group, yes,

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they would have been a part of the customer mix then.

Q. When you were a manager they were --

A. Right.

Q. -- accounts that you were responsible for?

A. Right, yes.

Q. Were there any other distributors that you can recall?

A. Later on there was a distributor down in Texas who was supplying product to offshore oil wells, oil platforms.

Q. Do you remember the name of that company?

A. Coastal -- I think it was Coastal Chemical.

Q. Can you recall the names of any other distributors that Monsanto used to distribute Pydraul products?

A. Sinclair was also a distributor, and of course they were finally eliminated and bought out by somebody else. There's such a transition in -- but I believe that was really all we had.

Q. When Monsanto used distributors, would they make calls on those distributors?

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A. Sometimes.

Q. And by "calls" I mean sales calls. Do you understand that?

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A. Yes. And I would say it was very rare because the quantity that a distributor would handle might be ten, five gallon pails every three months or six months. It was very small.

Q. A distributor would distribute that small amount of fluid?

A. Yes, yes. It was nuts.

Q. And would they distribute to more than one ultimate customer?

A. I believe so.

Q. So it was rare to make sales calls on distributors?

A. Yes.

Q. Was it your practice to have other types of communications with distributors?

A. Well, when the PCB problem came in, we sent letters to everybody, including the distributors. We supplied the distributors with additional copies of the letter so that they could send them out to their customers too.

Q. Did you send PCB letters to the customers of your distributors or did you rely on your distributors to do that?

A. If they were in the sales analysis for the

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previous three years, then they received a letter directly from us; and in addition, if they were buying from a distributor, they would have gotten a letter from the distributor also.

Q. When you say "they would have gotten a letter from the distributor also," what do you base that on?

A. We sent 15, 20 copies of our letters to the distributor location that was buying the product and asked them to send a letter to each one of their customers. Some customers would buy from us one time and maybe buy from a distributor the next time, so they could have ended up with two letters.

Q. So when you say that you sent letters to your distributors, are you assuming that the distributors then sent those letters on to your customers?

A. We contacted the distributors and told them they were receiving the letters, and we told them that they -- we wanted them to forward the letter to the appropriate people at the customer location.

Q. But do you know if in fact your distributors did that?

A. I think we had very reliable, reputable distributors, and they probably did what they were asked to do.

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MR. DUFF: Move to strike as nonresponsive.

BY MR. DUFF:

Q. Do you know yourself whether or not your distributors sent the PCB letters on to their customers?

A. I have no record of it.

Q. When you say that customers who appeared in the sales analysis for the previous three years were mailed a PCB letter, what three years are you talking about?

A. I believe the mailing went out in '69, so it would cover '69, '68, '67.

Q. That's your best recollection?

A. Yes.

Q. And who made the decision to send the letters out to customers whose names appeared in the sales analysis for the previous three years?

A. I don't know, but I would assume maybe it was Howard Bergen.

Q. What is the sales analysis that you're referring to?

A. There are a number of analyses of sales each month that get printed by the accounting department, one would be sales by product that would indicate the quantity purchased and also the customer who purchased

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that month by product. We would also have an analysis by salesmen that would show all the sales that the salesmen had that month which was then combined into a district sales and then to the industry sales. There was also a major customer run that didn't mean much for our group but it -- that was also published by the accounting department or the sales analysis department. That was it.

Q. So are you saying that any customer whose name appeared in the sales analysis by product or by salesman or by major customer would have been included in the list?

A. Yes.

Q. And when did this letter go out that you're referring to?

A. I believe somewhere in 1968, 1969. I don't remember specifically.

Q. What's the basis for your believing that the letter was sent out at the same time?

A. Because the latter part of '67 or the early part of '68 is when the Swedes

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had published information [22] on finding PCBs in the environment, and that started an [23] extensive research effort which was then the recognition [24] that PCBs were showing up in the environment and that

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[1] something would have to be done with our products. And [2] the decision was made to send out a letter to alert our [3] customers who were using those products that PCBs had [4] now been regarded as an industrial contaminant and [5] something was going to have to be done to minimize the [6] leakage and/or replace the products.

[7] Q. Was it this Swedish work that -- strike that. [8] Was it this Swedish work that -- or by [9] which Monsanto first learned that PCBs were accumulating [10] in the environment?

[11] A. Yes. To the best of my knowledge that was [12] the first indication.

[13] Q. Is it your understanding that when Monsanto [14] first heard about this work that Monsanto learned that [15] PCBs were accumulating in the environment?

[16] A. We sent two people to the university at [17] Uppsala and they spent time with the research people and [18] analyzed the -- understood the equipment they were using [19] and what they had found and how they had found it. And [20] when they returned to St. Louis, we had a big meeting [21] talking about what had transpired and the testing [22] involved. And an effort was immediately made to obtain [23] some pieces of equipment so that we could see if they [24] were accurate, and then we took an effort to see if we

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[1] could identify PCBs in our own environment.

[2] Q. When did you first hear the term PCBs?

[3] A. Well, I knew them as a salesman in 1959 when [4] they were termed under the trade name Aroclor and the [5] various applications that it was sold to. Then later on [6] it became known to use the term PCBs, although [7] internally we would talk about Pydraul or we'd talk [8] Inerteen or Pyranol or Aroclor, so the trade names were [9] used. And then people just didn't like polychlorinated [10] biphenyls. We're kind of like the Government, it was [11] dropped down to three letters.

[12] Q. So when you referred to your products by [13] trade names, it was understood that those were the [14] PCB-containing products?

[15] A. Yes. Our literature indicated it was [16] chlorinated hydrocarbons.

[17] MR. DUFF: Move to strike the last response [18] as nonresponsive after the word yes.

[19] BY MR. DUFF:

[20] Q. Are you familiar with an incident referred to [21] as Yusho?

[22] A. No.

[23] Q. Have you ever heard of the Yusho incident?

[24] A. Is that the Japanese thing?

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[1] Q. Have you ever heard of an incident called [2] Uscho?

[3] A. No.

[4] Q. Do you recall an incident in Japan --

[5] A. Yes.

[6] Q. -- relating contamination of rice soil?

[7] A. Yes.

[8] Q. And what's your understanding of that event?

[9] A. That polychlorinated biphenyls had gotten [10] into the production of the rice soil through leakage in [11] their system, and a number of people died as a result of [12] it.

[13] Q. As a result of exposure to the PCBs?

[14] A. No, exposure to contaminated rice soil.

[15] Q. And what was your understanding about what [16] the rice soil was contaminated by at that time?

[17] A. PCBs.

[18] Q. Do you recall what year that incident took [19] place in?

[20] A. I don't know. I would estimate somewhere [21] around '68, '69.

[22] Q. Are you familiar with an event called the [23] Irish Seabird incident?

[24] A. No, not by that term.

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[1] Q. Are you familiar with an incident similar to [2] that term?

[3] MR. CHAMBERS: Object to the form.

[4] THE WITNESS: No.

[5] BY MR. DUFF:

[6] Q. When did you first hear that PCBs were [7] accumulating in the environment?

[8] A. When Dr. Bill Richards and -- I can't [9] remember his name, came back from the visit to Sweden to [10] the university.

[11] Q. Did you know that Dr. Richard and the other [12] individual --

[13] A. Scott Tucker I believe it was.

[14] Q. Did you know that Dr. Richard and Mr. Tucker [15] were going to Sweden before they left for their visit?

[16] A. No.

[17] Q. You learned after they returned that they had [18] been in Sweden, is that correct?

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[19] A. Yes. They came back and we had a meeting.

[20] Q. Who are you referring to when you say "we had [21] a meeting"?

[22] A. Oh, Howard Bergen was there. I'm sure Paul [23] Benignus was there, Dr. Munch, probably people from the [24] medical department.

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[1] Q. Anybody else?

[2] A. It's hard to remember. Manufacturing people [3] could have been present.

[4] Q. How many people do you recall being at this [5] meeting?

[6] A. Oh, God. I would say maybe ten or 12 people. [7] It was around a table like this.

[8] Q. And was that a meeting of a specific group?

[9] A. Yes, the fluids group and the various people [10] that were involved in manufacturing, research, medical. [11] I don't -- go ahead.

[12] Q. I'm sorry. I didn't mean to cut you off.

[13] A. I don't remember any others.

[14] Q. And what was discussed at this meeting?

[15] A. What Mr. -- or Dr. Richards and Dr. Tucker [16] had learned on their trip to Sweden.

[17] Q. And what were you told that they had learned?

[18] A. That PCBs were accumulating in the [19] environment.

[20] Q. And do you recall who had informed them that [21] PCBs were accumulating in the environment?

[22] A. I don't remember the names of the Swedish [23] scientists.

[24] Q. Do the names Jensen and Widmark --

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[1] A. That sounds close.

[2] Q. And what else was discussed at this meeting?

[3] A. I don't really remember. I know that there [4] was frustrations over the data that they were bringing [5] back and that our research people were going to [6] undertake adding additional pieces of equipment to see [7] if we could identify PCBs in our own environment.

[8] Q. When you say "our own environment," what are [9] you referring to?

[10] A. United States.

[11] Q. And were any decisions made at this meeting?

[12] A. I don't remember.

[13] Q. Do you recall who from the medical department [14] was present?

[15] A. Dr. Kelly could have been there. I can think [16] of a couple of other faces, but I can't remember the [17] names.

[18] Q. And do you recall who from manufacturing [19] would have been at this meeting?

[20] A. No. A man named Savage sticks now in my [21] mind, Jim Savage. Maybe he was there.

[22] Q. Was he in manufacturing at that time?

[23] A. He was a manufacturing representative that we [24] had to our business group.

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[1] Q. And did Monsanto determine to undertake any [2] research at this meeting?

[3] A. Oh, absolutely.

[4] Q. And what research was that?

[5] A. They wanted to identify whether PCBs were in [6] our environment and try and confirm the work that had [7] been done by the Swedish scientists.

[8] Q. Any other research?

[9] A. Well, if the research was confirmed to be [10] true, then it was going to be a massive project to look [11] at how we could reformulate our products to reduce the [12] higher molecular weight PCBs that were contained in the [13] chlorinated biphenyls.

[14] Q. Were any toxicity -- were any decisions made [15] to conduct toxicity research?

[16] A. I believe they initiated a program, but I [17] don't know if it happened in '67 with the Biotest [18] laboratories to undertake feeding tests.

[19] Q. And were you involved in the decision to [20] conduct --

[21] A. No. That was handled really by the medical [22] department and our research people.

[23] Q. Do you know who Joseph Calandra was?

[24] A. No, doesn't ring a bell.

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[1] Q. Did you ever meet with anybody from [2] Industrial Biotest?

[3] A. No.

[4] Q. Do you know who a Dr. Risebrough was?

[5] A. Yes, I believe he was the fellow out at the [6] University of California in Berkeley who identified PCBs [7] in the brown pelicans, maybe the Peregrine falcons.

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Q. And do you recall when that was?

A. It took place after the Swedish information. And again, what year, probably it was sometime in '67, '68.

Q. Did you learn of Dr. Risebrough's work before you had the meeting with Mr. -- with Scott Tucker and Bill Richard?

A. To my knowledge, no. I think that was the first indication of PCBs.

Q. That you had learned of?

A. Yes.

Q. Are you familiar with an individual named K.

A. Wells?

A. Ken Wells. I believe Ken Wells was in the Plasticizer group.

Q. Do you recall what his position was?

A. No, I don't.

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Q. In 1968 what was Monsanto telling its customers about PCBs?

A. Again, I'm a little confused in terms of when we found out about the Swedish work and Dr. Risebrough's work and how fast we assimilated the information and then made an effort to communicate to our customers. That timing is very foggy for me.

Q. Well, did Monsanto inform its customers of the Swedish work as soon as Monsanto had learned of it?

A. I don't remember.

Q. Do you think was it important for your customers to know about the Swedish work?

A. Well, the Swedish work had been published in U.S. papers. I think it was important for Monsanto, and I believe the Swedes were anxious to see if we could confirm their results.

Q. Was the Swedish work an important work?

A. Sure.

Q. Was it important for your customers to understand what the PCBs' findings were?

A. Yes, but I think it's --

Q. I'm sorry. Let me rephrase that. Was it important for Monsanto's customers to know about the Swedish work?

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MR. CHAMBERS: Let me object to the form to the extent you're asking this witness to specify -- or to speculate about what some other person or customer or whoever considered important. Subject to that you can respond.

BY MR. DUFF:

Q. Let me ask you this: Were you the manager of the sales force for Pydraul fluids at this time?

A. I was field sales manager for the functional fluids group at that point.

Q. And did that include Pydrauls?

A. Pydrauls, yes.

Q. As one of your responsibilities at that time was it your responsibility to know -- well, to advise your customers regarding the qualities and characteristics of the fluids you were selling them?

A. They knew that our products were based on phosphate esters and chlorinated biphenyls or chlorinated hydrocarbons. It depends on the nomenclature you want to select.

MR. DUFF: Move to strike as nonresponsive.

THE WITNESS: I'm sorry. That was in our literature.

MR. DUFF: Would you please repeat the

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question for the witness that I last posed? (Question read)

THE WITNESS: And I answered that by saying our literature stated that our products contained chlorinated hydrocarbons.

MR. DUFF: Move to strike as nonresponsive.

MR. CHAMBERS: Let me object to the form. Maybe you can clarify it in a way you can get your point across. I'm not sure we're communicating here.

BY MR. DUFF:

Q. As manager of the sales force, were you responsible for ensuring that your customers were advised regarding the qualities and characteristics of the fluids you were selling them, in general?

A. Yes.

Q. Was it important for your customers to know about the Swedish work?

MR. CHAMBERS: Let me object to the form to the extent you're asking him to speculate about what was important to somebody else. Subject to that, you can answer.

THE WITNESS: It was important to communicate after we had confirmed the work done by the Swedish people.

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BY MR. DUFF:

Q. Did you communicate to any of your customers that the Swedes had published a report indicating that PCBs were

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accumulating in the environment before you had [5] in fact confirmed that that finding was accurate?

[6] MR. CHAMBERS: Let me object to the form to [7] the extent it assumes there were reports published. But [8] subject to that, go ahead.

[9] THE WITNESS: I believe there was some [10] information published in the U.S. press following the [11] Swedish work that was picked up by some customers who [12] called into St. Louis to talk to our medical people, and [13] that was prior to our confirmation of the Swedish data.

[14] BY MR. DUFF:

[15] Q. Did Monsanto communicate to any of its [16] customers the results of the Swedish work?

[17] A. People who called in --

[18] Q. Let me complete the question. [19] Did Monsanto communicate to its customers [20] the Swedish work that you referred to earlier before [21] Monsanto had confirmed that the Swedish findings were [22] accurate?

[23] A. I don't remember the timing of the letter [24] that went out to the customers.

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[1] Q. Was the letter that went out to the customers [2] the first attempt of Monsanto to communicate to its [3] customers the findings that the Swedes had made?

[4] A. No.

[5] Q. What was the first communication?

[6] A. Verbal. We had alerted our salesmen, and [7] many of the salesmen it became a part of their [8] conversation when they were talking to customers.

[9] Q. Did you advise your salesmen to raise the [10] subject with their customers regarding the Swedish work [11] prior to sending out the letter to which you referred [12] earlier?

[13] A. It didn't come that fast. There were a few [14] customers who were aware of the Swedish work and were [15] making inquiry to us or asking our salesmen, and really [16] our salesmen at that point if they got a response from [17] the customer, we advised them to have them call the [18] medical department because that's where everything was [19] being concentrated.

[20] Q. Did you advise your sales force to raise to [21] your customers orally the Swedish findings that PCBs [22] were accumulating in the environment?

[23] MR. CHAMBERS: Let me object to the form to [24] the extent it doesn't clarify what period of time we're

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[1] talking about. I assume we're still focused on this [2] period that we've been addressing rather than some later [3] time, is that right?

[4] THE WITNESS: I don't feel it was right to [5] advise people of something that we hadn't confirmed. [6] And once we confirmed it, yes, it was released to our [7] salesmen and they were free to talk to customers.

[8] BY MR. DUFF:

[9] Q. Prior to the time that a letter was sent to [10] the customers advising them about the Swedish work that [11] found that PCBs were accumulating in the environment, [12] had you authorized your salesmen to raise the subject [13] with their customers?

[14] A. To some degree it was happening, you know, [15] whether it was our salesmen who were initiating the [16] conversation or it was customers who would become aware [17] of the article published here in the U.S. It is not in [18] my opinion the best to turn a salesman loose to talk [19] about something he probably doesn't really know the [20] total story on.

[21] Q. And why is it that the salesmen would not [22] have known the total story regarding PCBs?

[23] A. Because I probably didn't understand the [24] total story. You're talking about Ph.D.s in chemistry,

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[1] environmental people. And even in their dialogue you [2] have to consider that some of this is speculation. The [3] Swedish work was not a confirmation in science. The [4] confirmation was coming when Monsanto initiated the [5] research to confirm what the Swedes had found. [6] Science is strange. You know, they don't [7] just accept one man making a statement and saying that [8] is the word of God. Other people must confirm.

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

[10] THE WITNESS: That's okay.

[11] BY MR. DUFF:

[12] Q. Was there a concern that if you provided your [13] customers with too much information in 1968 and '69 -- [14] strike that. [15] Was there a concern that if Monsanto [16] provided its customers with too much information in 1968 [17] that you might scare them off?

[18] A. Absolutely not.

[19] Q. I'd like to show you what's been previously [20] marked as Plaintiff's Exhibit 53 in this case. I have a [21] copy for counsel as well.

[22] MR. CHAMBERS: Thank you.

[23] BY MR. DUFF:

[24] Q. I'd like to direct your attention -- well,

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[1] for the record, this is a document that

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has been previously marked as Plaintiff's Exhibit 53. This is a May 8, 1968 memorandum regarding Pydraul 312 toxicity and safe handling authored by R. Emmet Kelly addressed to D. R. Pogue and copied to N. T. Johnson and C. L. Bradford. Mr. Johnson, have you seen this document before?

A. Probably. Don't remember.

Q. Did you receive this document in May 1968?

A. That's when it says it was written.

Q. Is that your name in the top right corner of the first page of this document?

A. Yes, it is.

Q. Does that indicate to you that you received it at approximately the time it was written?

A. Yes.

Q. Would you please read the last two sentences of the first -- I'm sorry, of the second paragraph into the record?

MR. CHAMBERS: Let me object at this point to taking up the time to read something that is in the document. The words are what the words are no matter who reads them. Anybody can read them. But subject to

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that objection, let's take up the time and go ahead.

THE WITNESS: Go ahead. What's your question?

BY MR. DUFF:

Q. Mr. Johnson, would you read into the record the last two sentences of the second paragraph of this document?

A. "In other words, if they were talking about exposure to Pydraul at elevated temperatures in a confined space, that is one thing. If they were talking about Pydraul dripping from a machine in a large room, that is something else. If we get too elaborate, sometimes we're afraid we will scare the customer off."

Q. Is it your understanding that if too much information regarding toxicity were provided to a customer that it might scare the customer off?

A. Depends on who's asking the question from the customer location.

Q. Is it possible to give the customer too much information related to the toxicity of a Pydraul fluid?

A. Probably not. You must understand I don't consider Pydraul products toxic.

MR. DUFF: Move to strike the last sentence as nonresponsive.

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THE WITNESS: I'm sure you will.

BY MR. DUFF:

Q. Do you agree that it's important for a customer that purchased a Pydraul product to have all information relating to its toxicity?

A. And I'm sure they were provided with that information as best we knew it. It was in our literature.

MR. DUFF: Would you please repeat the question for the witness? (Question read)

MR. CHAMBERS: And would you also read the response? (Answer read)

MR. CHAMBERS: Is there a question pending?

BY MR. DUFF:

Q. Yes. I'd like to know if you agree with the statement that Monsanto's customers that purchased Pydraul products should be informed of all information relating to the toxicity of those products?

A. It was stated in our literature as an irritant. We stated things that could be done if you were exposed to it, if you got it on your skin. We did not hide anything.

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In the case of Dr. Kelly, I would suspect that he would have been more than happy to talk to somebody in the medical department at McCulloch Corporation to discuss the involvement of Pydraul with its workers.

Q. Let me ask you again, do you agree that customers that purchased Pydraul products should be informed of all aspects of the toxicity of those products?

A. And to the best of my knowledge they were supplied that information if they were interested in having it.

Q. Do you agree that they should have been supplied with that information?

A. Well, our government decided that you had to supply material safety data sheets, so that that kind of information ultimately was passed on to all customers, and that's what is done today. At that point in time that wasn't a requirement in the law. It was a verbal discussion between a customer and a supplier to supply as much information that we had available. And what Dr. Kelly is essentially saying, and he did many times, if there was an appropriate

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person in U.S. Steel or General Motors who he could discuss the level of toxicity with, he was more than happy to do it.

Q. So do you agree that customers should be informed of all the toxicity information relating to Pydraul products

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that they were purchasing?

[7] A. It wasn't a requirement in the law at the [8] time these products were being sold.

[9] Q. I'm asking you if you agree that they should [10] have been provided with such information?

[11] A. We provided them with information. Our [12] literature talked about the chlorinated hydrocarbons, [13] that it could be an irritant, that it could be this, it [14] could be that. That was stated in the literature.

[15] Q. Do you agree that they should have been [16] provided with all information relating to toxicity?

[17] A. I don't know what all means.

[18] Q. Is there any information relating to toxicity [19] that you believe should have been withheld from [20] customers?

[21] A. I'm not a medical person. I never knew of [22] anything that Monsanto was reluctant to divulge to [23] customers. [24] Dr. Kelly and his people over in the

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[1] medical department were more than willing to talk to [2] people on a comparable level to discuss anything [3] relating to our fluids.

[4] Q. Do you know if Monsanto provided its [5] customers with all information relating to the toxicity [6] of its Pydraul products?

[7] A. Oh, boy.

[8] MR. CHAMBERS: Let me object to the form. I [9] think that's been asked and answered, but I guess let's [10] answer it again.

[11] THE WITNESS: We never retained any [12] information. [13] Kevin, I want to tell you I was drenched [14] in Pydraul, okay? I stood next to an accumulator and [15] destroyed a suit. Now, I don't consider that I -- I'm [16] still alive. I'm 63 years old. [17] I know you're going to strike this, but I [18] had an accumulator bottle blow next to me, and I was [19] showered and destroyed a suit. Okay. I'm still alive. [20] People in General Motors are aware of those kinds of [21] catastrophes. [22] The one thing that was important is I did [23] not have a source of ignition that set me on fire [24] because it was a fire-resistant product or I wouldn't be

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[1] here to testify for you. Enough said?

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

[3] THE WITNESS: Move to strike.

[4] BY MR. DUFF:

[5] Q. Do you recall when you first informed your -- [6] strike that. [7] Do you recall when an article appeared in [8] a San Francisco newspaper relating to PCBs in 1969?

[9] A. I recall that there was an article that was [10] published in the San Francisco Chronicle in 1969 but the [11] details of which I don't remember.

[12] Q. Do you recall advising your sales force [13] regarding this article?

[14] A. I believe so.

[15] Q. Why did you do that?

[16] A. I believe at that point that we had confirmed [17] some information based on the Swedish data, and with the [18] publication of this information we decided to send a [19] letter out to all of our customers. That's the best I [20] can remember.

[21] MR. CHAMBERS: Are you referring to the [22] document as you're asking the questions here? It may [23] help the communication if you got a copy of it in front [24] of the witness at the same time.

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[1] MR. DUFF: I'm not referring to a document [2] right now.

[3] MR. CHAMBERS: Okay. I saw you had some [4] things on your lap.

[5] BY MR. DUFF:

[6] Q. Is it your understanding -- strike that.

[7] MR. DUFF: Would you please read the witness' [8] last question back -- I'm sorry, the witness' last [9] answer back? [10] (Answer read)

[11] BY MR. DUFF:

[12] Q. Is it your understanding, Mr. Johnson, that [13] when you had learned of the article that appeared in the [14] San Francisco newspaper in 1969 that you then felt it [15] was necessary to inform your sales force that Monsanto [16] had confirmed that PCBs were accumulating in the [17] environment?

[18] A. I don't remember the time frame.

[19] Q. I'd like to show you what's been marked as [20] Plaintiff's Exhibit 51, and I have a copy for counsel as [21] well.

[22] MR. CHAMBERS: Thank you.

[23] BY MR. DUFF:

[24] Q. This is a document that is dated March 3,

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[1] 1969 regarding pollution studies and is authored by P. [2] G. Benignus and N. T. Johnson and is -- addressed to a [3] variety of individuals. [4] Have you seen this document before, [5] Mr. Johnson?

[6] A. Well, I would have to say yes if I wrote it.

[7] Q. Did you in fact author this

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document?

A. I don't remember.

Q. Well, is that your name at the bottom of the document on the second page?

A. It sure is.

Q. And was it your practice to put your name at the bottom of documents that you authored?

A. Absolutely.

Q. Does this refresh your recollection regarding what you told your sales force after an article that had appeared in the San Francisco Chronicle on February 24th --

A. Yes.

Q. -- in 1969. Did you work closely with Mr. Benignus to draft this memorandum?

MR. CHAMBERS: Let me object to the form to the extent it assumes the witness drafted the memo.

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Subject to that, you can go ahead.

THE WITNESS: Oh, God. I would have to assume that between Paul and myself we put this thing together.

BY MR. DUFF:

Q. Have you had an opportunity to review the document?

A. Not until this point.

Q. Please take your time so that you have had an opportunity to do so.

A. Okay.

Q. Have you had an opportunity to review the document at this time?

A. Yes.

Q. I'd like to direct your attention to the second full paragraph on the second page of the document.

A. Yes.

MR. CHAMBERS: Is that the one that begins "We have expanded"?

MR. DUFF: Yes, it is.

BY MR. DUFF:

Q. Do you see that paragraph?

A. Yes, I do.

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Q. I'd like to direct your attention to the last sentence of this paragraph, the sentence that says "We will keep you advised, and we are also directly writing our major Aroclor customers with background information so they will be prepared for any inquiries." Do you see that language?

A. Yes.

Q. What did you mean when you said you were providing your major Aroclor customers with background information?

A. Well, because this was Paul Benignus and Paul was a product manager and I was involved in the field sales aspects, I'm sure that the intention was to mail this or provide information to the very large Aroclor customers making capacitors and transformers.

Q. Would that have included Tennessee Gas?

A. Not at that point, no.

Q. But you were providing your major Aroclor customers with information so that they would be prepared for any inquiries relating to the finding of PCBs in the environment, isn't that correct?

A. Well, it doesn't say that we provided it. It says "We will keep you advised and we are also directly writing our major Aroclor customers with background

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information so they will be prepared for any inquiries." That would have involved Paul Benignus writing to the capacitor and transformer people, not really anybody else out there until we understood the nature of the problem.

Q. But it was your understanding that you were writing your major Aroclor customers to provide them with background information so that they would be prepared for inquiries related to the finding of PCBs in the environment, isn't that correct?

A. Please understand I did not sell Aroclor. We did not sell Aroclor. Aroclor was sold by the Plasticizer group. And Aroclor under that trade name was sold to capacitor and transformer manufacturers, not to fluids people.

Q. But the Aroclor -- major Aroclor customers were being written at this time, weren't they?

A. Well, that's what it says. Do you have any letters showing that it was -- letters were sent to GE and Westinghouse and all the rest of the large capacitor and transformer manufacturers?

MR. DUFF: Move to --

THE WITNESS: I don't remember.

MR. DUFF: Move to strike after the first

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four words of the last answer.

BY MR. DUFF:

Q. Wouldn't it be important for any of your customers to be prepared with information relating to PCBs in the environment at this time?

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[6] MR. CHAMBERS: Let me object to the form to [7] the extent you're asking for speculation from this [8] witness about what's important to somebody else. You [9] can answer.

[10] THE WITNESS: Well, at some point we did [11] write to every customer out there.

[12] BY MR. DUFF:

[13] Q. At this point on March 3, 1969 you were [14] writing your major Aroclor customers, weren't you?

[15] MR. CHAMBERS: Let me object. I think that's [16] been asked and answered.

[17] MR. DUFF: You may answer.

[18] THE WITNESS: That's what the letter says.

[19] BY MR. DUFF:

[20] Q. But you weren't writing your Pydraul [21] customers at this point, were you?

[22] A. On that day, probably not.

[23] Q. At that time?

[24] A. Closely after it we did.

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

[2] BY MR. DUFF:

[3] Q. At the time that this memo was written, were [4] you writing your Pydraul customers to advise them [5] regarding the accumulation of PCBs in the environment?

[6] MR. CHAMBERS: Let me object to the form of [7] the question. That's been asked and answered. He said [8] not on this date. The constant repetition of this stuff [9] is not only drawing out the length of this deposition, [10] but it's bordering on being harassing to the witness. [11] The answers have been responsive. [12] They're in the record. Let's move on and cover someone [13] (sic) else. It may not be the answer that you'd prefer [14] or would like to hear, but it's there and it's [15] responsive. And let's don't keep burdening the witness [16] by repeating the same question over and over. [17] Subject to that, answer it one more time [18] and then let's move on.

[19] MR. DUFF: Would you please repeat the [20] question for the witness? [21] (Question read)

[22] MR. CHAMBERS: Was there a response to the [23] previous question?

[24] THE REPORTER: Yes, there was.

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[1] MR. CHAMBERS: Would you read that response [2] then, please. [3] (Answer read)

[4] MR. DUFF: Would you please repeat for the [5] witness the last question that I posed? [6] (Question read)

[7] THE WITNESS: We wrote a letter within the [8] next month maybe that went to the Pydraul customers. I [9] don't remember the timing and the dates. I'm sure you [10] have some correspondence that would show when we wrote [11] to every Pydraul customer in the country that we could [12] identify.

[13] MR. CHAMBERS: And perhaps --

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

[15] THE WITNESS: Okay.

[16] MR. CHAMBERS: Let me interject. If counsel [17] can provide copies of these documents to the witness, it [18] may help on things like dates so that we can move on and [19] not get hung up on that kind of thing. It's a little [20] unfair to ask him to recall items off the top of his [21] head when there are documents that would let us pin this [22] down.

[23] BY MR. DUFF:

[24] Q. Mr. Johnson, were you aware of studies that

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[1] were being undertaken to determine the toxicity of PCBs [2] in 1969?

[3] A. By whom?

[4] Q. By anybody?

[5] A. I think Monsanto initiated some programs, but [6] I don't know the details of them.

[7] Q. Have you ever heard the term Aroclor defense?

[8] THE REPORTER: I'm sorry. What was your [9] answer?

[10] THE WITNESS: Not that I remember.

[11] MR. DUFF: I'd like to show you what's been [12] previously marked as Plaintiff's Exhibit 8, and I have a [13] copy for counsel.

[14] MR. CHAMBERS: Thank you.

[15] BY MR. DUFF:

[16] Q. This is a document dated January 25, 1971 [17] regarding 1970 PCB expenditures. It's prepared by T. L. [18] Johnson addressed to N. T. -- I'm sorry, prepared by T. [19] L. Gossage addressed to N. T. Johnson and copied to C. [20] L. Bradford and J. R. Fallon. Have you seen this [21] document before, Mr. Johnson?

[22] A. Most likely.

[23] Q. Do you recognize this document?

[24] A. No.

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[1] Q. Have you had a chance to review the document?

[2] A. I'm looking at it now. Okay.

[3] Q. Does this refresh your recollection

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regarding [4] the term Aroclor defense?

[5] MR. CHAMBERS: I'm going to object to the [6] form. Regarding the term or regarding his recollection [7] about hearing that term?

[8] THE WITNESS: I think it's a bad choice of [9] words by Mr. Gossage, but that's my own opinion.

[10] BY MR. DUFF:

[11] Q. What's your understanding of the meaning of [12] the words Aroclor defense as used in this document?

[13] A. I personally don't feel we ever had a defense [14] program. The fact that he has indicated we spent over a [15] million bucks during that period didn't mean a thing [16] because the people in the D Building which is where the [17] president, chairman of the board, the whole bit never [18] had any questions about the money that was being spent [19] to resolve the problem relative to PCBs.

[20] Q. Do you have an understanding that money was [21] being spent to save PCBs?

[22] A. In 1970 I know of no effort to save PCBs.

[23] Q. Do you have an understanding of an effort to [24] defend Monsanto's PCB-containing products?

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[1] A. No.

[2] Q. Do you have an understanding of Monsanto's [3] efforts to defend its PCB-containing products from [4] criticism relating to PCBs?

[5] A. No. I would say in 1970 the decision had [6] been made that we would be out of the PCB business, [7] period, as soon as we could accomplish it.

[8] Q. Do you have an understanding that money was [9] spent to defend Monsanto's PCB-containing fluids prior [10] to 1970?

[11] A. It depends on what you mean by defense. Were [12] we out making calls to talk to customers, explain what [13] we knew and what was going on? We did that all the [14] time. To try and say we were defending Aroclor to keep [15] it in existence, that's not true.

[16] Q. What's your understanding regarding the [17] $1,033,700 figure that appears in Mr. Gossage's memo?

[18] A. So what?

[19] Q. What's your understanding that that money was [20] used for?

[21] A. I'm sure it was for a lot of research effort [22] to try and confirm that PCBs were showing up in the [23] environment, it was probably travel expense for people [24] to go to Sweden or travel around the United States, but

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[1] mostly for research expenditures. You're talking about [2] $887,000 for toxicity study, research and engineering, [3] manufacturing and administration and staff departments. [4] It wasn't spent on marketing.

[5] MR. DUFF: I think this would be an [6] appropriate time to break for lunch.

[7] MR. CHAMBERS: All right.

[8] THE VIDEOGRAPHER: We're now off the video [9] record. [10] (A luncheon recess was taken)

[11] A F T E R N O O N S E S S I O N [12] August 22, 1995

[13] THE VIDEOGRAPHER: Back on the video record. [14] (Witness previously sworn) [15] NORMAN T. JOHNSON, [16] the witness at the time of recess, having been [17] previously sworn, was examined and testified further as [18] follows: [19] EXAMINATION [Resumed]

[20] BY MR. DUFF:

[21] Q. Mr. Johnson, I'd like to direct your [22] attention to when you were the field sales manager for [23] the fluids group and also the industry manager for the [24] industrial fluids group.

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[1] A. Okay.

[2] Q. Which my understanding was from late 1966 [3] until late 1972, is that correct? I take that back, [4] until early 1972; is that correct?

[5] A. Well, there was a point at which I came in to [6] St. Louis and I was field sales manager for the [7] functional fluids group only, and then in '68 they [8] changed my title to industry manager for the industrial [9] products. Then later on we merged with the paper [10] chemicals group, and I was then field sales manager for [11] the combined group.

[12] Q. Directing your attention then to when you [13] were the industry manager for industrial fluids.

[14] A. Okay.

[15] Q. What were your responsibilities regarding the [16] marketing of Pydraul products?

[17] A. Well, we would establish a forecast and a [18] budget. We would identify customers that -- or [19] prospects that were not customers. We would identify [20] customer applications that were not using fire-resistant [21] fluids. We would put together a marketing plan, an [22] expense budget, and of course we would combine all this [23] effort with the salesmen that were in the field, where [24] they were located. And then if any additions or

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[1] deletions or changes in personnel, that

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would become [2] part of my responsibility. Most of the time through [3] that period I traveled with the salesmen.

[4] Q. When you say we would develop a marketing [5] plan and an expense budget, who are you referring to?

[6] A. The combined product group and the individual [7] salesmen, we'd go to them and say, you know, you were [8] allotted so much money last year, are there areas where [9] you feel you need more money or less money, and [10] sometimes we'd say we're going to cut them. And if we [11] said they were going to cut them, they'd go crazy.

[12] Q. And who was from the fluids group that [13] contributed to devising marketing plans and expense [14] budgets during this time period?

[15] A. Well, on the expense budgets we worked [16] directly with the salesmen in terms of what they had [17] spent the previous year. In terms of the marketing [18] plans and whatever, we would work with research, we [19] would work with our development people, work with our [20] salespeople in the field to define areas where we could [21] begin to sell product. We also worked with OEM [22] manufacturers to try and get their equipment made [23] compatible for containing a Pydraul product.

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

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[1] previously marked as Plaintiff's Exhibit 5, and I have a [2] copy for counsel as well.

[3] MR. CHAMBERS: Thank you.

[4] BY MR. DUFF:

[5] Q. This is a document which is titled Functional [6] Fluids 1970 Total Marketing Plan.

[7] A. Yeah.

[8] Q. It's a rather lengthy document which bears [9] production numbers TRAN 003759 through 3824. [10] Mr. Johnson, have you seen this document [11] before?

[12] A. I probably have, but I don't really remember [13] it.

[14] Q. When you stated earlier that one of your [15] responsibilities as a -- as the manager for industrial [16] fluids, did you mean that this was the type of document [17] that you would prepare?

[18] A. Well, this encompasses all the functional [19] fluids group, so you've got a section here on aviation, [20] I guess a section here on dielectrics, a section here on [21] heat transfer fluids, and then there is a section I'm [22] sure on industrial fluids.

[23] Q. And so is this the -- did you contribute to [24] the preparation of this document?

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[1] A. Oh, I'm sure I did, but I don't remember it. [2] I'm sure my initials are here somewhere.

[3] Q. I would like to turn your attention to the [4] second page of this document which has a distribution [5] list.

[6] A. Oh, my goodness.

[7] Q. Do you see your name on that list on the top [8] of the second column, fourth name down?

[9] A. Yes, I do.

[10] Q. Does that refresh your recollection as to [11] whether or not this would have been a document that you [12] helped to prepare?

[13] A. I'm sure.

[14] Q. You're sure that you helped prepare this [15] document?

[16] A. I'm sure.

[17] Q. In what ways did you prepare or contribute to [18] the preparation of this document? [19] Let me offer you the opportunity to [20] peruse the document if you haven't had a chance to do [21] so.

[22] A. Yeah, I have to see whose names are where and [23] what. [24] I would suspect that at this point in

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[1] time the only area of contribution that I would have [2] made is the section on the industrial fluids because I'm [3] not seeing the names of people in the paper chemicals [4] group, so this was prior to the merger of those two [5] business groups.

[6] Q. Is it consistent with your understanding that [7] those groups were merged after 1970?

[8] A. Well, they could have been merged in 1970. [9] This document was probably published sometime in late [10] '69 representing what we were going to do in 1970.

[11] Q. Have you had a chance to review the document?

[12] A. No.

[13] Q. Why don't you take an opportunity to do so.

[14] A. I'll look for the section on industrial [15] fluids. [16] Well, it's pretty much general [17] information. Boy, a lot of detail. Okay.

[18] Q. Have you had a chance to look at the [19] document?

[20] A. Yeah. I can understand what most of it is [21] about. The detail I -- you'd have to ask me some [22] questions about and then I can probably relate an [23] answer.

[24] Q. I'd like to direct your attention to the page

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[1] which has the number 2 at the bottom

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which has the page [2] bearing production number TRAN 003764. The title at the [3] top of this page says 1970 Budget.

[4] A. Say the numbers again.

[5] Q. This is approximately the sixth page of the [6] document.

[7] A. Oh, okay.

[8] Q. Of the document itself, it has the number 2 [9] for the page number at the bottom of this page that I'm [10] referring to and it's TRAN 03764.

[11] A. Okay.

[12] Q. Do you have that page in front of you?

[13] A. Yes.

[14] Q. Have you had an opportunity to review this [15] page?

[16] A. Okay.

[17] Q. What does 1970 Budget at the top of the page [18] mean?

[19] A. Anticipated sales.

[20] Q. Is it fair to say that these were the sales [21] goals for 1970?

[22] A. Well, you establish the sales budget in order [23] to look at cost to goods, subtract that from the gross [24] sales and see what kind of monies you have left over for

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[1] expenses and also if the business is going to be [2] profitable, but the starting point is obviously what we [3] project in sales.

[4] Q. Does this budget amount include any profit?

[5] A. Yes, there's probably some level of profit [6] that's budgeted into it. Doesn't mean we make it.

[7] Q. But in order to meet the year-end goals for [8] sales you would need to meet the numbers that are set [9] forth on this page, is that right?

[10] A. Yes, but I would say at this point in time in [11] 1970 our group, the industrial fluids group because we [12] were going into the phosphate ester area was not going [13] to generate a profit.

[14] Q. Do you see where there are several columns?

[15] A. Yes.

[16] Q. Do you see the column Industrial?

[17] A. Yes.

[18] Q. What does that mean?

[19] A. Dollars, thousand --

[20] Q. What does the word industrial mean?

[21] A. It means essentially the Pydraul products.

[22] Q. Was this the only -- do you see where there [23] are other columns with titles Dielectric, Aviation, Heat [24] Trans?

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[1] A. Yes.

[2] Q. Were you responsible for any of those other [3] areas?

[4] A. Not at that point in time, no.

[5] Q. At this time were you only responsible for [6] industrial fluids?

[7] A. Yes, I believe so.

[8] Q. And so you would have been responsible for [9] generating the numbers that appear in the column titled [10] Industrial, is that correct?

[11] A. Correct.

[12] Q. And what was your 1970 budget for industrial [13] sales -- sale of industrial fluids in the United States?

[14] A. Well, this number says 3.9 million.

[15] Q. Just -- actually just under 4 million?

[16] A. Yes.

[17] Q. I'd like to direct your attention to Page 5 [18] of the document, and that's the page with the Number 5 [19] at the bottom. It's the page bearing production number [20] TRAN 003768.

[21] A. Okay.

[22] Q. Have you had a chance to review this page?

[23] A. Yes.

[24] Q. Is it your understanding that the information

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[1] set on this page under the title Industrial are the [2] goals of the industrial fluids group for 1970?

[3] A. Broad-based, yes.

[4] Q. And was it one of the goals of the industrial [5] fluids group in 1970 to develop and field test a [6] water-based fluid?

[7] A. Yes.

[8] Q. And what does that mean?

[9] A. Well, another product that can be used as a [10] fire-resistant fluid is a water glycol product of which [11] we had competitors in the U.S. who made that type of [12] product, and it was used in industrial applications as a [13] fire-resistant fluid.

[14] Q. When did Monsanto first begin testing a [15] water-based fluid?

[16] A. This product was not going to be manufactured [17] by us. We were going to buy it from Union Carbide.

[18] Q. Well, when it says "develop a water-based [19] fluid," what does that mean?

[20] A. Well, we would have to field test a

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product, and we would have to at least confirm in our own laboratory the kind of water glycol product we wanted to produce. The real objective to this one was the

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possibility of selling a water glycol product in Europe, and so we talked with Union Carbide about just purchasing their product and shipping it to Europe, and then if we were successful there, to bring it back to the U.S. and start selling a water glycol product as a mechanism to replace the PCB-containing fluids.

Q. So the water-based glycol fluids did not contain any PCBs, is that correct?

A. That's true, but they did not perform in all pieces of equipment.

Q. What's the difference between a water glycol product and a phosphate ester product?

A. Well, a water glycol product is roughly 50 percent water and 50 percent glycol, and it's formed into an emulsion. So that if it comes out of a die cast machine or you rupture a hose, the water -- the glycol will burn, but the water is there to be vaporized and snuff out the fire. The water glycol was used in that one capsule in which Mr. Grissom and a few other people died. It was used as a mechanism as a fire-resistant fluid in that capsule. Unfortunately they had lost the water concentration and the fire occurred in the capsule and they all died.

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Most people were required if they used the water glycol system to monitor the percentage of water and the percentage of the glycol at all times to be sure they had a fire-resistant product.

Q. So what were the differences between the water glycol and the phosphate ester?

A. The water-based fluids were not as good lubricants, you could not run them at 3,000 psi. You would vaporize the water in the system. If you were talking about a system running at maybe a thousand pounds per square inch, a water-based fluid would perform, but then the people had to monitor the percentage of water in the system all the time because putting it under that pressure would vaporize water, and as you lost the water, you were now increasing the percentage of glycol which would burn.

Q. Could water-based glycol products be used in air compressors?

A. No.

Q. Why is that?

A. Because you don't have the lubricating properties that you need at the high temperatures that a compressor runs at.

Q. What are those lubricating properties?

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A. Film forming. Water glycol is not a good film forming property. And second of all, the water would mean that as the temperature increased in an air compressor application, you would volatilize the water and you would be back to a non fire-resistant product.

Q. I'd like to direct your attention to the page which has the Page Number 8 at the bottom with production number TRAN 003771.

A. Yeah.

Q. Do you see this page?

A. Yes, I do.

Q. Have you had an opportunity to review the information on this page?

A. Let me read it. Okay.

Q. Just to direct your attention to the two pages that appear in front of this page, is it your understanding when read in that context that this page lists 1970 objectives for industrial fluids?

A. Yes.

Q. And was it your understanding that Monsanto planned to introduce a new phosphate ester fluid in 1970?

A. We hoped to.

Q. That was the marketing plan for 1970 for

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industrial fluids?

A. We would introduce the product if our manufacturing people could come up with the product.

Q. Was it --

A. I don't remember the exact timing of it. I don't think we met that timing. I don't think they had come up with a suitable process to make the phosphate ester in the year 1970, but I could be wrong.

Q. Was it one of Monsanto's goals for 1970 to --

A. Oh, absolutely.

Q. To -- let me -- if you would allow me to just finish the question. Was it one of Monsanto's goals for 1970 to introduce a new phosphate ester fluid?

A. Well, that's what it says.

Q. And that's your understanding?

A. Yes.

Q. But your understanding is that that did not occur, is that correct?

A. I don't believe we made it.

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[21] Q. And would a -- what was a new phosphate ester [22] fluid being designed to replace?

[23] A. All the Pydraul products.

[24] Q. And why was there a need to replace all the

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[1] Pydraul products?

[2] A. Because we were no longer going to [3] manufacture polychlorinated biphenyls, and therefore we [4] would not have a raw material for producing our [5] products, and therefore we had to switch to an alternate [6] fire-resistant material which would be a phosphate [7] ester.

[8] THE VIDEOGRAPHER: This will be all for Tape [9] Number 2. [10] (Brief recess taken)

[11] THE VIDEOGRAPHER: This will be the start of [12] Tape Number 3.

[13] THE WITNESS: Oh, my God.

[14] BY MR. DUFF:

[15] Q. I'd like to direct your attention to the page [16] that begins at TRAN 003804.

[17] A. 38...

[18] Q. Which has written on the side Industrial [19] Hydraulic Fluids.

[20] A. Yes.

[21] Q. Is it your understanding that this was the [22] section of the Functional Fluids 1970 Total Marketing [23] Plan that you were responsible for preparing?

[24] A. Yes.

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[1] MR. CHAMBERS: Let me object to the form. [2] Are you referring just to the page or are you referring [3] to this and subsequent pages?

[4] BY MR. DUFF:

[5] Q. Mr. Johnson, do you understand by "section" [6] I'm referring to the section that includes not only this [7] page but all the pages included in the production range [8] TRAN 003804 through 003822, or would your [9] responsibilities have included all of the pages from [10] 3804 to the end of the document?

[11] A. Yep.

[12] Q. Yes to what?

[13] A. Yes, it would relate to 3822.

[14] Q. And 3823 and 3824?

[15] A. Yes. Yep, agreed.

[16] Q. I'd like to direct your attention to Page 39 [17] of this document with the page bearing the number 39 at [18] the bottom and the production number TRAN 003806, the [19] page titled Pydraul.

[20] A. I'm sorry. Go through the numbers again, 38 [21] what?

[22] Q. At the bottom of the page in the center [23] you'll see the page number 39 and the production number [24] is TRAN 003806.

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[1] A. Okay, yes. I'm sorry.

[2] Q. Do you see that this page has the title [3] Pydraul?

[4] A. Yes.

[5] Q. And headings on this page include Long-range [6] Objectives and General Strategy?

[7] A. Yes.

[8] Q. And were these the long-range objectives and [9] general strategy for Pydraul sales for 1970 that you [10] developed?

[11] A. That my group developed, yes.

[12] Q. And were you responsible for overseeing the [13] development of this plan with respect to Pydraul fluids?

[14] A. With respect to what we could expect based on [15] people in product development and research.

[16] Q. Well, you worked with people in product [17] development and research to pull together these [18] objectives and the strategy, is that correct?

[19] A. Yes, but frequently in the chemical industry [20] we have very optimistic people who think that they are [21] going to produce a product tomorrow and find out that it [22] takes three years before they actually deliver as [23] something that we can sell.

[24] Q. Who was ultimately responsible for the

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[1] material that appears on this page?

[2] A. Me.

[3] Q. And was one of your long-range objectives to [4] increase worldwide sales in 1970 -- strike that. [5] Was one of your long-range objectives as [6] stated in this Functional Fluids 1970 Total Marketing [7] Plan to increase worldwide sales volume from 4.5 million [8] in 1969 to over 9 million -- or over $9.3 million in [9] 1974?

[10] MR. CHAMBERS: Object to the form. I think [11] that's 5.4 million, not 4.5 million as you just read.

[12] MR. DUFF: If I did read that, it was -- I [13] misread it.

[14] MR. CHAMBERS: Would you read back the [15] question?

[16] BY MR. DUFF:

[17] Q. Why don't I just ask the question again. [18] Mr. Johnson, was one of your long-range [19] objectives as stated in this Functional Fluids 1970 [20] Total Marketing Plan to increase worldwide sales volume [21] from 5.4 million in 1969 to more than

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$9.3 million in 1974 with present and future industrial fluids?

A. True.

Q. And one of your goals for Pydrauls in 1970

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was to achieve a ten percent increase over budgeted sales for domestic and international fluid sales, is that correct?

A. True.

MR. DUFF: I'd like to show you what's been previously marked as Plaintiff's Exhibit 6. You can set Exhibit 5 aside for now. Plaintiff's Exhibit 6 -- and I also have a copy for counsel.

MR. CHAMBERS: Thank you.

BY MR. DUFF:

Q. -- is a document that is titled Cost of Rapid Phase-out - All Chlorinated Biphenyls Except Dielectrics bearing production number TRAN 089287 through 089309. Please take a moment to review this document.

A. Okay.

Q. Did you help to prepare this document?

A. I don't think so. I don't remember seeing it. I'm sure that some of the information may have come from my group, but this is the first time I've seen or remember this document.

Q. You don't recall having seen this document before, is that correct?

A. No.

Q. So you don't recall if you helped to prepare

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this document, is that correct?

A. No, I don't.

Q. Tell me what the corporate management committee is or was at this time? And by "this time" I'm referring to the period around 1970.

A. This came up in another question, and all I can respond to is apparently there was a group within what we called the D Building which was the vice president and the president and the chairman of the board, and so I think that's what you're referring to here. They were not someone that would talk to me.

Q. I'd like to direct your attention to Page 15 of this document. You'll see the number Page 15 in the top right-hand corner of the document. This page bears production number TRAN 089300. Do you see that this page is titled Hydraulic Fluids?

A. Yes.

Q. Have you had a chance to review this page?

A. Give me a minute. Okay.

Q. Do you know what this information represents?

A. Well, it was obvious some of the goals that we had for the hydraulic fluids in terms of our problem with PCBs being a pollutant.

Q. At this time did Monsanto recognize that

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spillage and pump leakage makes the use of non-biodegradable chlorinated biphenyls undesirable?

A. That's what it says.

Q. Is that your understanding?

A. Well, this is a projection for 1970, so I would say that that statement was probably understood somewhere in 1969 and that this document, assuming the dates involved here, was probably created in, oh, maybe August to September of '69.

Q. Is that your understanding that you recognize this in 1969?

A. Yes.

Q. Do you recall that reformulation of Pydrauls 625, ACWG, 280 and F-9 were reformulated before other Pydrauls?

A. Yes.

Q. And is ACWG Pydraul AC Winter Grade?

A. Yes.

Q. So is it your understanding that Pydraul AC was reformulated after these other four Pydrauls?

A. I believe because Pydraul AC Winter Grade had more chlorinated biphenyls in them than Pydraul AC, and I think we also had a problem with Pydraul AC in that it was not possible to directly add it to the previous

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Pydraul AC, and we were therefore running formulation tests on our own compressor at the John F. Queeny plant. And after we confirmed what we had to know about Pydraul AC, the formulation was changed and we went to the lower level of chlorinated biphenyls in the system.

Q. So your understanding that Pydraul AC -- that the Pydraul AC reformulation was being tested on a compressor at the Queeny plant?

A. Yes.

Q. What type of compressor was located at the Queeny plant?

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A. I don't know. I don't know the details of it.

Q. Have you ever been to the Queeny plant?

A. Yes.

Q. Do they have an air compressor at that plant?

A. I'm sure they do.

Q. Have you ever seen an air compressor at that plant?

A. Well, the plant extends for about three quarters of a mile, and there are many production units down there, and I am sure there are many compressors down there supplying to each one of the segment plants that are through there, and I have no idea what

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compressor they agreed to let us use as a test.

Q. Do you know who would have been responsible for testing a reformulated Pydraul AC on a compressor at the Queeny plant?

A. Our lab people.

Q. And who would that have included?

A. Lou Stark probably.

Q. Anybody else?

A. Bill Richards maybe.

Q. Anyone else?

A. Probably a fellow named Jim Savage who was our manufacturing representative. I think he was at that time.

Q. Anyone else?

A. No, that would have been it.

Q. What was Mr. Stark's position at that time?

A. He was responsible for reformulations on the industrial products, industrial Pydrauls. I guess you'd title him a group leader.

Q. What was Dr. Richards?

A. He was director of research for the fluids group.

Q. And what was Mr. Savage's position at that time?

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A. He was our manufacturing representative.

Q. I'd like to direct your attention to the next page. Do you see this document has the title N.C.R.?

A. Correct.

Q. What does that stand for?

A. The company known as National Cash Register or N.C.R.

Q. Was that one of Monsanto's largest customers for industrial fluids at this time?

A. No, it wasn't classified as an industrial fluid. It actually was a product that came over from the Plasticizer group and was given to us to handle, and it was maintained as a separate entity and was not a part of the industrial products group.

Q. Was N.C.R. one of Monsanto's largest customers for PCB-containing products?

A. I don't remember the volume, but I'm sure it could have been.

Q. Do you see any other pages in this document that are specifically dedicated to one customer or any customers of Monsanto's in particular?

A. No, I don't.

Q. I'd like to direct your attention to the document that begins at the page TRAN 089304 and has the

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title Present Plan at the top.

A. Okay.

Q. I'd like you to look at both this page and the next page and tell me if you recognize these two pages?

A. Okay.

Q. Do you recognize these two pages?

MR. CHAMBERS: Object to the form. That's been asked and answered. He said he didn't recall whether he had seen this document at all before. That includes these two pages. Subject to that, go ahead.

MR. DUFF: You may answer.

THE WITNESS: I don't remember seeing these pages, but after all, this was 1970, so what are we talking, 25 years ago.

BY MR. DUFF:

Q. Are you familiar with the information that appears on these two pages?

A. I would understand what they're talking about, yes.

Q. Have you ever heard of a six-point plan?

A. Of a what?

Q. A six-point plan, have you ever heard that term or phrase?

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A. No, I don't see it stated here. Is it on this page?

Q. I'm asking if you're familiar with that term?

A. No.

Q. When did Monsanto begin

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reformulating its [6] Pydraul products to remove PCBs?

[7] A. It's a guess, but I would think sometime [8] early in '68.

[9] Q. Do you have an understanding regarding when [10] Monsanto had totally removed PCBs from its Pydraul [11] fluids?

[12] A. Probably sometime in '73 or maybe late '72.

[13] Q. Are you familiar with the Pydraul A series?

[14] A. Yes.

[15] Q. And what does the A series refer to in the [16] context of Pydraul fluids?

[17] A. It was where we reformulated with a terphenyl [18] based on a judgment in research that that would [19] eliminate the problem of the chlorinated biphenyl.

[20] Q. So in other words, when you reformulated the [21] Pydraul products to remove the PCBs you replaced the [22] PCBs with PCTs, is that correct?

[23] A. PCTs and also a lower molecular weight [24] biphenyl.

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[1] Q. And by "lower molecular weight," what are you [2] referring to?

[3] A. 1221.

[4] Q. What molecular weights were supposed to be [5] removed from the Pydraul products when you reformulated [6] to create the A series for Pydrauls?

[7] A. There we were using terphenyl primarily, and [8] maybe in some of the formulations it contained some [9] 1221. I don't remember.

[10] Q. Do terphenyls have a specific molecular [11] weight?

[12] A. No, they do not.

[13] Q. Were the A series of Pydrauls reformulated to [14] remove the compounds that contained 54 and 60 percent [15] chlorine by weight?

[16] A. And lower.

[17] Q. Which other compounds?

[18] A. You're using 54 and 60. I'm sure that we had [19] some formulations that may have had 1242 or 1248 in [20] them.

[21] Q. And those were removed when you created the A [22] series of Pydrauls?

[23] A. Right.

[24] Q. Or at least intended to be removed?

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[1] A. Yeah. The problem is the bell curve that you [2] have in the manufacturing of biphenyls.

[3] Q. Would you explain that, please?

[4] A. It is not a pure product. So you end up with [5] high molecular weight and low molecular weight and you [6] can't fraction out to get an exact chlorine level.

[7] Q. When you're talking about molecular weight, [8] are you talking about an average molecular weight?

[9] A. You could term it that, an average molecular [10] weight or an average percentage of chlorine, which is [11] where these numbers come from, 42 percent chlorine, 48 [12] percent, 54, 60.

[13] Q. And when Monsanto reformulated its Pydrauls, [14] it intended to remove those higher percentages of [15] chlorine from its products, isn't that correct?

[16] MR. CHAMBERS: I'm going to object to the [17] form. When you say intended to remove higher [18] percentages of chlorine, I assume you're referring to [19] the Aroclor 1200 products with the higher percentages of [20] chlorine.

[21] THE WITNESS: The effort was to remove any 54 [22] percent, 48 percent chlorine on the biphenyl and go to [23] lower molecular weight materials with the initial [24] thought that they would be more biodegradable.

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[1] BY MR. DUFF:

[2] Q. And is it your understanding that this [3] reformulation of Pydraul fluids took place in 1970?

[4] A. Oh, it started before that.

[5] Q. Were the reformulated Pydrauls offered to [6] customers before 1970?

[7] A. I don't remember that.

[8] Q. I'd like to show you what's been marked [9] previously as Plaintiff's Exhibit 40. You can set aside [10] the documents in front of you for the time being. I [11] also have a copy for counsel.

[12] MR. CHAMBERS: Thanks.

[13] BY MR. DUFF:

[14] Q. This is a document that bears production [15] number TNGS 010761. Why don't you take a moment to look [16] at this document.

[17] A. Okay.

[18] Q. Are those your initials in the upper [19] right-hand corner of this document?

[20] A. Yeah, it sure looks like it.

[21] Q. Is that your writing?

[22] A. No.

[23] Q. Is this a document that you prepared?

[24] A. No, it is not.

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

[2] A. I don't ever remember doing it, and I

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would [3] not have had the detail of the numbers here in the [4] column of pounds of Aroclor.

[5] Q. Why would you have not had that level --

[6] A. This is more manufacturing. I was not [7] exposed to formulations. If any formulation was on a [8] need-to-know basis, if we really had to get something, [9] but this kind of thing was really for manufacturing [10] people and our research people to look at the products [11] involved.

[12] Q. Does this document project sales in 1971 of [13] $1.3 million of Pydraul AC?

[14] MR. CHAMBERS: Object to the form. It's [15] pretty clearly a pounds symbol in that column, not a [16] dollar symbol.

[17] MR. DUFF: Thank you.

[18] BY MR. DUFF:

[19] Q. Does this document reflect projected sales of [20] $1.3 million -- 1.3 million pounds for 1971 of Pydraul [21] AC?

[22] A. It could.

[23] Q. According to this document, what percentage [24] of Aroclor was contained in Pydraul AC for the projected

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[1] 1971 sales?

[2] A. Well, I guess what you would take is 57 [3] percent of 1.3, then that would give you the pounds of [4] Aroclor and those -- and Pydraul AC.

[5] Q. So is it your understanding that 57 percent [6] of Pydraul AC at this time was Aroclor?

[7] A. That's what I would believe it to be, yes.

[8] Q. And directing your attention to the last [9] column on this page, would that Aroclor have been [10] Aroclor 1254?

[11] A. Yes, it would have.

[12] Q. What are specialty products?

[13] A. Do you have a point of reference where you're [14] talking about it so it might clarify in my own mind what [15] you're suggesting?

[16] Q. I'm not speaking in the context of the last [17] document I showed you. I'm just asking for your [18] understanding of the term specialty products and the -- [19] for time frame 1970?

[20] A. In the chemical industry?

[21] Q. For Monsanto.

[22] A. Well, there was always a reference to [23] something which may be considered a commodity chemical [24] and something that might be considered a specialty

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[1] chemical. There were some unique products that Monsanto [2] made, and they would be termed a specialty product [3] because maybe we were the only ones who made the product [4] or it was made for very limited applications. [5] On the other hand, you had things that [6] Monsanto produced like sulfuric acid and phenol and [7] whatever. Those were just considered commodity [8] products. They were internally used in the production [9] of other products, but they were also sold to outside [10] customers.

[11] Q. Did specialty products include industrial [12] fluids?

[13] A. Yeah, it was classified as that kind of a [14] product area.

[15] Q. So did specialty products include more [16] products than the areas that you were responsible for in [17] 1970?

[18] A. Well, the Skydrols would have been considered [19] specialty products, the dielectrics, the heat transfers [20] were considered specialty products; the whole group, it [21] was not just the industrial fluids area.

[22] Q. Any other products that were considered [23] specialty products?

[24] A. At one time that was the title of our group,

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[1] and that's in either functional products or specialty [2] products. That term seemed to be interchanged.

[3] Q. Is the term specialty synonymous with the [4] term functional?

[5] A. Could be.

[6] Q. Was it at that time as far as you can recall?

[7] A. Not really. Every bit of our documentation [8] we always referred to ourselves as the functional [9] products group, but if you were to read Chemical Week or [10] some of the magazines, they would term that this [11] probably is a specialty area because it is not large in [12] dollar volume or pound volume; can't justify a [13] competitor coming into the business or there just isn't [14] enough business there to justify it.

[15] Q. Are you familiar with an ad hoc committee?

[16] A. I'm familiar with the term.

[17] Q. Are you familiar with an ad hoc committee [18] that existed at Monsanto around this time?

[19] A. There were always committees termed -- called [20] an ad hoc committee. I'm not sure that at any point in [21] time we had an ad hoc committee in the functional fluids [22] group. Could have. I don't remember.

[23] Q. Do you recall an ad hoc committee that was -- [24] that existed to deal with the PCB problem?

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A. Could have been and termed ad hoc, yeah.

Q. Do you have another term that you would use to describe the same committee?

A. Well, there was also such a thing as a business group where somebody from manufacturing, sales, research, accounting would meet as a group, but that was normally specific. If something was called an ad hoc committee, it might involve people from accounting and people from the medical department and various other functions within the organization but not a part of our business group.

Q. Were you part of an ad hoc committee that was formed to address the PCB issue?

A. I don't remember if they ever titled it as ad hoc. I was a part of the industrial fluids group, and when they had large meetings relating to PCBs or anything else, I would be a participant in that meeting. You might call -- term it a business meeting.

Q. So you participated in business meetings that were designed to address the PCB problem, is that correct?

A. Well, we used to have business meetings over -- almost every month, and certainly the question of

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PCBs and whatever would be brought up every month in terms of the status of where we were, what products we had developed replacement products for, whatever was going on, and that was communicated to everybody involved.

Q. Did you attend meetings such as that that were specifically geared towards discussing the PCB problem?

A. Oh, yes.

Q. And who else attended those meetings?

A. It would be the people from research, from manufacturing, maybe from production scheduling; because as we would phase out products, we would want people there to understand that we're not going to sell anymore of the old formulation and to start producing the new one. Whatever the details were, that was the mechanism for communicating the pace of progress to replace the PCBs and then ultimately to replace those products with phosphate ester.

Q. Did you prepare a marketing plan to address the PCB problem?

A. Not as such. A marketing plan, no, not that I remember.

Q. Did you devise any type of or participate in

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devising a management plan for the PCB problem?

A. No, not that I know of.

Q. Who is William Papageorge?

A. He was brought in from the Anniston, Alabama plant. He had been plant manager down there, and of course that was a plant at which we produced PCBs. So he was designated to come in and oversee the overall procedure of getting out of the PCB business.

Q. And did you work directly with him when he came over in that capacity from Anniston?

A. I didn't work directly with him. I'd go up and talk to Bill or he'd come down and pound on my head. I mean, it didn't make any difference. We were all located in the same area.

Q. In the same building?

A. Yes.

Q. Who was located in the same area with you and Mr. Papageorge?

A. All the people in the marketing group of the Organic Division were on that floor. So you had the people with the aviation fluids, the dielectrics, our industrial group. There may have been some other business groups, like the fine chemical group could have been on that floor. I believe the oil additives group

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was also on that floor.

MR. DUFF: I'd like to have marked as Exhibit I believe -- are we up to 55? Is that the last exhibit? I can double check this. (Whereupon, Plaintiff's Exhibit 55 was marked for identification)

MR. DUFF: And I have a copy for counsel as well.

BY MR. DUFF:

Q. Placing in front of you, Mr. Johnson, what's been marked as Plaintiff's Exhibit 55, a document dated December 29, 1971 prepared by yourself to a distribution list of looks like eight individuals, and this document bears production number TNGS 013058. Have you had a chance to look at this document?

A. This is the first time I remember seeing it, so give me a chance.

Q. Please take as much time as you need.

A. Okay.

MR. CHAMBERS: For the record, this appears to be a document that was not previously listed in the -- at least in my list that you forwarded to us.

MR. DUFF: Actually for the record I believe it was. This document was --

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can we go off the record?

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[1] THE VIDEOGRAPHER: We're off the video [2] record. [3] (Recess taken)

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

[5] MR. CHAMBERS: Before we broke I'd interposed [6] an objection that the particular exhibit that was being [7] introduced had not been previously listed by Mr. Duff in [8] a list of documents he sent to us, but during the break [9] I did locate that on the list, so I withdraw that [10] objection.

[11] BY MR. DUFF:

[12] Q. Mr. Johnson, have you had a chance to look at [13] this document?

[14] A. Yes.

[15] Q. And what is this document?

[16] A. Well, it was a letter going out -- or a memo [17] going out to the regional managers and the product [18] managers indicating that we were going to have to revise [19] all of our product projections, product sales [20] projections for 1972 based on the changes in the product [21] line, the products we were dropping and the substitution [22] of non PCB-containing Pydrauls. It also included the [23] budget for ethylene vinyl chloride which was a resin and [24] then also the MIBP to N.C.R. which was being changed

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[1] also.

[2] Q. What is MIBP?

[3] A. Monoisopropyl biphenyl.

[4] Q. And what is that?

[5] A. Monoisopropyl biphenyl.

[6] Q. What type of chemical is that?

[7] A. It was a solvent for N.C.R.'s carbonless [8] carbon paper.

[9] Q. And was that a compound that contained [10] chlorinated hydrocarbons?

[11] A. The original product I think that they used [12] was 1242, and that whole application had to be replaced [13] for N.C.R. paper.

[14] Q. Who was P. L. -- well, let me go back. [15] Who is D. R. Hansen?

[16] A. He was a regional manager on the west coast.

[17] Q. Did all the people on this list report [18] directly to you?

[19] A. The first four. Those second four were [20] product group people.

[21] Q. Such as yourself?

[22] A. No, I was -- I would say at this point in [23] time I was back to the position of regional sales -- of [24] national sales manager for the consolidated group.

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[1] Q. And what region was P. L. Slayton responsible [2] for?

[3] A. East coast.

[4] Q. And how long had he or she been in that [5] position?

[6] A. In that particular job he was probably put in [7] in about 1978 in a reorganization.

[8] Q. Do you mean 1968?

[9] A. '68, I'm sorry. God almighty.

[10] Q. So was Mr. Slayton the regional salesman for [11] Pydraul products in the east coast?

[12] A. No. He was the regional manager who had a [13] number of salesmen reporting to him.

[14] Q. I understand. [15] Who was E. L. Shimley?

[16] A. He was a regional manager who had salesmen [17] reporting to him, and he was located in Akron, Ohio.

[18] Q. And who was B. G. Tibbetts?

[19] A. Tibbetts was a product manager for the paper [20] chemicals group, and he was -- he resided in St. Louis.

[21] Q. And who was L. D. Shand?

[22] A. L. D. Shand came into our group in the [23] product development area and was the one supplying [24] budget information on new products.

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[1] Q. Do you know what ASGAP means or stands for?

[2] A. I think it means annual sales goals and [3] projections. That's the best I can do.

[4] Q. That's your best recollection?

[5] A. Yeah.

[6] MR. DUFF: I'd like to show you what's been -- [7] actually I'd like to show you a document and have it [8] marked as an exhibit, Number 56, and I have a copy for [9] counsel as well.

[10] MR. CHAMBERS: Thanks. [11] (Whereupon, Plaintiff's Exhibit 56 [12] was marked for identification)

[13] BY MR. DUFF:

[14] Q. This document bears the title 1972 Pydraul [15] Marketing Plan?

[16] A. Yes.

[17] Q. And has the production number EQU 003143 [18] through 3149.

[19] MR. CHAMBERS: Let me object for just a [20] moment. I'm having trouble finding this one as well on [21] your list.

[22] MR. DUFF: This document was marked as an [23] exhibit at Mr. Johnson's

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deposition in the Equitable [24] Resources case.

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[1] MR. CHAMBERS: Okay.

[2] MR. DUFF: Which is on the list that was [3] provided to you.

[4] MR. CHAMBERS: Right.

[5] THE WITNESS: Okay.

[6] BY MR. DUFF:

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

[9] A. Yes, I've looked at it.

[10] Q. Is this a document that you helped to [11] prepare?

[12] A. I might have been involved in the [13] preparation, but I believe this was done by Larry [14] Bradford.

[15] Q. Was one of your responsibilities in 1971 and [16] 1972 to prepare a marketing plan for Pydraul products?

[17] A. No, this was actually probably -- well, it [18] may have been prepared in the latter part of '71 into [19] '72, and I was now responsible for the entire field [20] sales group and was no longer responsible for just the [21] Pydraul area or the industrial fluids area. This was [22] now the responsibility of Larry Bradford.

[23] MR. DUFF: I'd like to show you a document [24] which has been previously marked as Plaintiff's Exhibit

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[1] 50. This is a group exhibit in that it has two [2] documents that have been clipped together, and I have a [3] copy for counsel. [4] This exhibit bears production numbers [5] TRAN 085010 through 085014 and also production numbers [6] TRAN 085022 through 024.

[7] BY MR. DUFF:

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

[10] A. Not until today. Okay.

[11] Q. Do you recognize this document?

[12] A. Yes.

[13] Q. What is this document?

[14] A. These are sales analysis forms.

[15] Q. Are these the sales analysis forms that you [16] were referring to earlier when you were discussing the [17] mailing list that was prepared for your letter that went [18] out in 1970?

[19] A. Yes, it would have come from this type of [20] form.

[21] Q. Would these sales analyses also be known as [22] IBM runs?

[23] A. Yeah, they would be termed that sometimes, [24] yes.

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[1] Q. I'd like to discuss with you in more detail [2] the letter that you referred to earlier today that was [3] sent out to customers to advise them of the findings of [4] the Swedish scientists. Do you recall that discussion?

[5] A. I recall the discussion, but I don't recall a [6] letter that was mailed to the customers. I remember the [7] reference to the salesmen that we had.

[8] Q. What do you mean you remember a reference to [9] the salesmen?

[10] A. Well, I think there was something here that [11] you presented to me that represented a -- the pollution [12] studies that went out to the salesmen.

[13] Q. And you're indicating what document there?

[14] A. I'm indicating 058348.

[15] Q. What's the exhibit number at the bottom of [16] that document?

[17] MR. CHAMBERS: It's been marked as Exhibit [18] 51.

[19] THE WITNESS: 51. It doesn't have a copy of [20] any letter that was sent out.

[21] BY MR. DUFF:

[22] Q. Okay. I'd like to direct your -- I'd like to [23] discuss with you -- well, let me ask you this: [24] What efforts did Monsanto make to notify

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[1] its customers that PCBs were accumulating in the [2] environment?

[3] A. Well, I think as I've related before, we went [4] to these runs for the years 1969 which would include [5] 1968, plus we had the 1968 run which would include 1967. [6] I don't think we were able to find a 1966 run, so we had [7] the ability to contact any customer who had purchased in [8] that three-year period.

[9] Q. So any customer that would have appeared on [10] those IBM runs you could have sent a letter to, is that [11] correct?

[12] A. Yes.

[13] Q. And that would have been the prudent thing to [14] do in your opinion, to send a letter to anybody who [15] appeared on these IBM runs?

[16] MR. CHAMBERS: Object to the form, use of the [17] word "prudent," but subject to that...

[18] MR. DUFF: You may answer.

[19] THE WITNESS: Well, we tried to ensure that [20] we were reaching every customer in that -- who had [21] bought our product in the last three years.

[22] BY MR. DUFF:

[23] Q. And so your understanding that the prudent [24] way to go about doing that

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would be to send a copy of

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the letter to everybody who appeared on the IBM runs, isn't that correct?

A. On the sales analysis.

MR. CHAMBERS: Object. Go ahead.

THE WITNESS: Yes.

BY MR. DUFF:

Q. But you didn't do that, did you?

A. Oh, I'm sorry, we did.

MR. CHAMBERS: Object to the form. Argumentative. Come on. Let's ask about the facts.

THE WITNESS: We did.

BY MR. DUFF:

Q. Did you send a copy to every customer who appeared on the IBM runs?

A. For that three-year period, absolutely.

MR. DUFF: I'd like to direct your attention to -- actually I'd like to have marked as an exhibit Number 57, and I have a copy for counsel.

MR. CHAMBERS: Thanks. (Whereupon, Plaintiff's Exhibit 57 was marked for identification)

BY MR. DUFF:

Q. This is a document dated March 4, 1970.

A. Right.

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Q. Authored by D. R. Pogue to Phocian Park?

A. Yes.

Q. And it bears production numbers TNGS 004860 through 4939. And this is a document that is a cover letter that attaches a rather lengthy list of entities with addresses, is that correct?

A. Yes.

Q. Is it your understanding that this was the list that was used to send out the pollution letter in February of 1970?

A. It wasn't the list that was used. We used this as the guidance to create this. So we had three years of sales analysis indicating the customers, and the girls that we brought in then created this master list of addresses and locations because that information wasn't on our sales analysis forms.

Q. So the women who prepared the mailing list for the February 1970 pollution letter pulled together the list that is attached to Mr. Pogue's memo here, is that correct?

A. I don't have the letter, though.

Q. Why don't I go ahead and show you --

A. Sure.

Q. -- what's been previously marked as

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Plaintiff's Exhibit 22. And I have a copy for counsel. This is a document which is dated February 9, 1970, and it bears production number TNGS 008899 through 8906. Is this the February 9, 1970 pollution letter that was sent to all Pydraul customers?

A. No.

Q. It's not?

A. I don't believe so, but it could have been. I just don't remember.

Q. Is it your understanding that this was the letter that was sent?

A. If I look at the dates, I would have to believe that this was the initial letter that was sent out to all of these customers and that what Don Pogue was doing was then supplying it over to our legal department with a copy of this letter to verify that we had notified customers all relating to the subject of PCB-containing products.

Q. And so it was your understanding that this February 9, 1970 letter which has been marked as Exhibit 22, Plaintiff's 22 --

A. Right.

Q. -- was sent to all Pydraul customers; is that

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correct?

A. Yes.

Q. And that it was sent to the customers that appear on the mailing list that's attached to Mr. Pogue's memo dated March 4, 1970; is that correct?

A. Yes.

Q. I'll direct your attention to TNGS 004882 which is part of Plaintiff's Exhibit 57.

A. Yes.

Q. Do you see there in the upper right-hand corner it says 2/9/70?

A. Yes, I do.

Q. And do you see where in the middle of the page there is a line that is drawn and it says "Pydrauls and Aroclors start here"?

A. Okay.

Q. Is it your understanding that this was the mailing list that was used to send the February 9, 1970 letter?

A. This was the mailing list that was created at that time. There may have still been some addresses that we could

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not locate. I know when this mailing came out we had some returns, but basically yes.

Q. So you understood that some of the letters

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that you sent out were returned as not received, is that correct?

A. These went out registered mail.

Q. Do you have a specific recollection of that?

A. Yes.

Q. That this letter went out under --

A. Because we had all these green cards coming back that we had to store in shoe boxes.

Q. I'd like to direct your attention to the page bearing production number TNGS 004908. Do you have that page in front of you?

A. Yes, I do.

Q. Do you see any references to Tennessee Gas on this page?

A. It's hard to read the whole thing. I see Tennessee Gas Pipeline Company something New York 12123, director of purchases, the third one down on the right-hand side.

Q. Any others?

A. No, I don't.

Q. I'd like to direct your attention back to the document that's been marked as Exhibit 50, which is the IBM runs.

A. Yes.

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Q. Direct your attention to the third page of that document.

A. Yes.

Q. Do you see any references to Tennessee Gas on this page?

A. Yes, I do.

Q. How many references to Tennessee Gas can you count on this page?

A. Campbellsville -- it's one, two, three, four, five, six, seven, eight. I see 13.

Q. 13 different locations for Tennessee Gas?

A. Yes.

Q. Does that mean that Tennessee Gas purchased Pydraul for use at 13 different locations?

A. Yes.

Q. What's the year that appears in the upper right-hand corner of the --

A. 1969.

Q. So these 13 Tennessee Gas locations appeared on the IBM runs for 1969, is that correct?

A. That's what it says.

Q. But these -- none of these locations appear on the mailing list that has been marked as Plaintiff's Exhibit 57, do they?

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A. Because it didn't make any sense to send them to the shipped to location. You had to send it to the purchasing location, which is what we did, in New York.

Q. There were at least 12 locations that appear on this page that you did not send a letter to directly, isn't that correct?

A. That's what it says.

Q. And these are the listings for Tennessee Gas that appear on the IBM runs here, isn't that correct?

A. That's right.

Q. And this is where Tennessee Gas from this document appears to have been using Pydraul products, is that correct?

A. That's right.

Q. But they didn't receive a letter, is that correct?

MR. CHAMBERS: Object to --

THE WITNESS: No, the director of purchases in New York received the letter because he was the one who had the power to cause change.

BY MR. DUFF:

Q. Do you know if Tennessee Gas had a director of purchases in Nassau, New York in 1970?

A. I believe, sure.

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Q. Do you know if Tennessee Gas --

A. Specifically, no.

Q. So you don't know if anybody with that position ever received a letter -- ever received this pollution letter, do you?

A. Yeah, we do, because we got cards back. And we had the green cards that came back since the material was sent registered mail, and if it didn't come back, then we had -- we got the letter back and we would dig until we could find someplace to send it.

Q. Do you have a specific recollection that a receipt received card was received for Tennessee Gas?

A. For Tennessee Gas, no, but I remember all the cards that were there that we were putting in shoe boxes in alphabetical order.

Q. But you don't know if Tennessee Gas ever received such a letter, do you?

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A. I would strongly believe that they received a letter to the director of purchases at the home office.

Q. But you don't have any recollection that they in fact received such a letter, do you?

A. Did I see the letter? I saw hundreds of letters going out represented by this. And I believe the girls that produced this list were very responsible,

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and everybody that was entitled to receive a letter was given a -- was sent a letter.

Q. And over 2,000 letters were sent out, isn't that correct?

A. We tried to be as comprehensive as we could be. We were not trying to miss anybody.

Q. But you didn't want more than one letter going out to any one customer, isn't that correct?

A. We had no problem with that. Most of us who had called on the gas transmission people over the years knew that at these consuming locations there was never any response, there was never anything done. You had to get to the management of the organization to cause any change.

MR. DUFF: Would you please read the last answer back? Actually the question and answer. (Question and answer read)

MR. DUFF: Move to strike that last response after the words there was never any problem with that. I'd like to have marked as Plaintiff's Exhibit 58, and I'm providing a copy to counsel for Monsanto and I'm placing in front of -- (Whereupon, Plaintiff's Exhibit 58 was marked for identification)

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MR. DUFF: And I'm having placed in front of Mr. Johnson a memorandum dated February 4, 1970 prepared by Norman T. Johnson regarding pollution letter and addressed to seven individuals and copied to several others. This is a document bearing production number TNGS 008932.

BY MR. DUFF:

Q. Mr. Johnson, would you take a moment to review this document?

A. Okay.

Q. Have you seen this document before?

A. Seems as if I wrote it.

Q. In fact you did, didn't you?

A. That's what it says.

Q. Does this document concern the February 9, 1970 letter that was sent out regarding the pollution aspects of PCBs?

A. I believe it was.

Q. And in fact this document refers to the fact that the February 9, 1970 letter contained an attachment of an article printed in Chemical Week, isn't that correct? Directing your attention to the first paragraph.

A. Okay.

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Q. And directing your attention back to the document that's been marked as an exhibit, the February 9, 1970 letter?

A. Yes.

Q. Which is also in front of you?

A. Yes.

Q. That's Plaintiff's 22?

A. Yes.

Q. That's the document that attaches the Chemical Week article, isn't it?

A. I would believe so, yes.

Q. So Exhibit 22, the February 9, 1970 letter is the document that you're referring to here in the first paragraph of your February 4, 1970 letter; isn't that correct?

A. Please say that again.

Q. The document that you are referring to --

A. Yes.

Q. -- in the first paragraph of your February 4, 1970 memo --

A. Yes.

Q. -- is in fact the document that's been marked as Plaintiff's 22 in this case?

A. I believe so, yes.

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Q. And we have looked at the mailing list that was prepared for sending this letter out, haven't we?

A. Yes.

Q. Would you please read the second paragraph of your memo dated February 4, 1970 into the record?

MR. CHAMBERS: Note an objection just to take the time to read stuff into the record that we all agree it says whatever it says. Let's take the time.

THE WITNESS: Yes.

BY MR. DUFF:

Q. Would you please read that paragraph into the record?

A. "Our fluids mailing list is inadequate, and since we are required to send this letter to all customers, a mailing list was generated here from our accounts receivable customer list. By using this list, we avoid sending a letter to each shipped to location of the gas

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transmission companies, for example." Yes. Understand.

Q. And the list that was used to send out the February 9, 1970 letter was inadequate; isn't that correct?

A. I disagree.

Q. Isn't that what you wrote in your February 4,

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1970 letter -- I'm sorry, memorandum?

MR. CHAMBERS: Objection. It's argumentative. Object to the form.

THE WITNESS: We said the mailing list. We didn't say the letter.

BY MR. DUFF:

Q. The mailing list that was used --

A. Right.

Q. -- to send the February 9, 1970 letter --

A. Yes, because --

Q. -- was inadequate; isn't that correct?

MR. CHAMBERS: Object to the form. I see a reference to a fluids mailing list and a mail list. Which one are you inquiring about?

MR. DUFF: You can answer the question.

MR. CHAMBERS: Well, he can answer if he knows which mailing list you're inquiring about, the fluids mailing list or the other mailing list?

THE WITNESS: The decision was made that it made no sense to ship letters to shipped to locations at the gas transmission locations and that we would send it to the director of purchases at the home office of the gas transmission company.

BY MR. DUFF:

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Q. Pydraul fluids were shipped to the locations at which they were used for gas transmission companies, weren't they?

A. Yes. That's where they were consumed, yes.

Q. And sales calls were made at the locations at which Pydraul fluids were used, weren't they?

A. No.

MR. CHAMBERS: Object to the form. That's been asked and answered.

THE WITNESS: They never got in.

BY MR. DUFF:

Q. Did your salesmen make sales calls at locations at which Pydrauls were used for gas transmission?

A. But not in the case of gas transmission companies because you never got in. There was nobody who would ever respond. Gas transmission locations are surrounded by a huge gate. You can stand out at the gate and look down the road and see the transmission facility. There is no telephone, there is no buzzer, there is nothing. And we grew up during the time after talking to management at the home office of the gas transmission companies, they would say don't waste your

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time going to any one of our pumping station locations because they are instructed not to see you.

MR. DUFF: Move to strike as nonresponsive.

THE WITNESS: That's okay.

BY MR. DUFF:

Q. And by using the mailing list that you used for the February 9, 1970 letter you avoided sending a letter to each of the shipped to locations of Tennessee Gas, didn't you? MR. CHAMBERS. Object --

THE WITNESS: We did not avoid.

BY MR. DUFF:

Q. That's what you wrote here in your February 4, 1970 letter, didn't you?

A. Poor selection of words.

Q. Well, that's the way you wrote it, didn't you?

A. But that's -- what we did was to send the letter directly to the home office of the gas transmission company to the chief lubrication engineer.

MR. DUFF: Move to strike as nonresponsive.

THE WITNESS: That's okay.

BY MR. DUFF:

Q. Didn't you avoid sending a letter to each of

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the shipped to locations of Tennessee Gas by using the mailing list that you used?

MR. CHAMBERS: Object to the form. Asked and answered. Tell him again.

MR. DUFF: You may answer.

THE WITNESS: We did not do this to avoid sending a letter. We knew there was no value in sending a letter to the shipped to location. It had to go to the home office, to the chief lubrication engineer and/or the director of purchases for the gas transmission company.

BY MR. DUFF:

Q. You drafted this letter, this document -- strike that. It was your word choice to say that we avoid sending a letter to

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each shipped to location of [17] the gas transmissions companies, wasn't it?

[18] A. Yes, but the implication is we avoided [19] sending it to the shipped to location because it wasn't [20] worth sending. It wouldn't accomplish anything.

[21] MR. DUFF: Move to strike everything after the [22] first word. And would you please read that last answer [23] back? [24] (Answer read)

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[1] BY MR. DUFF:

[2] Q. Your salesmen had contacts at Tennessee Gas, [3] didn't they?

[4] A. Where?

[5] Q. Did they have individuals that they called on [6] at Tennessee Gas?

[7] A. No. Why would they?

[8] Q. There were no -- so did your salesmen ever [9] make calls on Tennessee Gas?

[10] MR. CHAMBERS: Which salesmen? Are you [11] talking about Pydraul salesmen?

[12] THE WITNESS: What? Where? You tell me [13] where.

[14] BY MR. DUFF:

[15] Q. I'm asking if your salesmen ever made sales [16] calls for Pydraul fluids on Tennessee Gas?

[17] A. At the home office probably.

[18] Q. Did your salesmen make sales calls on [19] specific individuals for Tennessee Gas?

[20] A. I would believe so.

[21] Q. That's your understanding that your salesmen [22] had contacts at Tennessee Gas?

[23] A. At Tennessee Gas.

[24] Q. But you didn't send a letter to the contacts

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[1] that your salesmen had at Tennessee Gas, did you?

[2] MR. CHAMBERS: Object to the form. It's been [3] asked and answered. We've been over this and over this. [4] The same page the witness was looking at has director of [5] purchases, Tennessee Gas Pipeline, P.O. Box something, [6] Houston, Texas. It's there. It's over on this [7] left-hand corner, on this left-hand column. It's there. [8] It's in the document for everybody to read and do with [9] as they please.

[10] MR. DUFF: I don't believe you're offering [11] testimony today, Mr. Chambers.

[12] MR. CHAMBERS: I'm not testifying. I'm just [13] reading into the record like we've been doing all day. [14] I'm just reading right off this page of the exhibit.

[15] MR. DUFF: Nobody has requested that you read [16] anything into the record, and I object to your coaching [17] the witness and directing your witness --

[18] MR. CHAMBERS: I am not coaching the witness. [19] I am just pointing out what's in front of all of us, [20] you, me and the witness and everybody else to see. [21] Let's move on.

[22] MR. DUFF: Would you read my last question to [23] the witness? [24] (Question read)

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[1] THE WITNESS: What contacts?

[2] BY MR. DUFF:

[3] Q. The individuals that your salesmen made sales [4] calls on at Tennessee Gas?

[5] A. It was sent to the office of the president, [6] and I believe if you go back in some of the latter pages [7] there may be copies of where we actually identified a [8] person, and sometimes we were capable of doing that.

[9] Q. Where do you see that it was addressed to the [10] office of the president?

[11] A. Well, office -- actually director of [12] purchases.

[13] MR. CHAMBERS: Let's refer him to page TNGS [14] 004931 where it says --

[15] MR. DUFF: Mr. Chambers, this is not your [16] deposition. If you want to give sworn testimony, I'll [17] depose you tomorrow if you'd like.

[18] THE WITNESS: Well, if you check on what is [19] 004929 I see where Wynn Chemical we sent a letter to the [20] office of the president, okay? I see on that same page [21] we sent to the office of the president at a location in [22] Whitebear Lake, Minnesota. So there's another one to a [23] company in Richland, Washington to the office of the [24] president. Others we sent to the director of purchases.

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[1] MR. DUFF: Would you please read the previous [2] question that I asked to the witness? [3] (Question read)

[4] MR. CHAMBERS: How far are we going to go [5] back reading questions?

[6] MR. DUFF: Please read the question that I [7] asked you to read into the record last back to the [8] witness. [9] (Question read)

[10] MR. DUFF: Mr. Johnson, would you --

[11] THE WITNESS: I don't know.

[12] BY MR. DUFF:

[13] Q. No individuals are named as having received a [14] copy of the pollution letter at Tennessee Gas, are [15] there?

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[16] A. Not that I know of.

[17] Q. Do you see any on this mailing list?

[18] MR. CHAMBERS: Let me object to the form. [19] This is not a list of people who received anything. [20] It's a mailing list for addresses that letters -- and [21] locations that letters were sent to.

[22] BY MR. DUFF:

[23] Q. Do you see any individuals at Tennessee Gas [24] that were mailed letters -- these pollution -- this

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[1] pollution letter in February of 1970?

[2] A. I don't.

[3] Q. I'm sorry. I didn't hear you.

[4] A. I guess not. I see one general mailing to [5] the company.

[6] Q. But you don't see any mailings to any of the [7] contacts that your salesmen had at the company, do you?

[8] A. I'm sorry, the mailing list was not intended [9] to go that way.

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

[13] THE WITNESS: Not in this list, and that was [14] not the intent. [15] We felt this was a serious problem. We [16] were not going to put it in the hands of just some [17] lubrication engineer. It was too important. That's why [18] it went to the director of purchases or the office of [19] the president, not to some lubrication engineer, not to [20] some oiler on the floor or not to some local purchasing [21] agent.

[22] MR. DUFF: There was no question pending. [23] Would you please read that last testimony into the [24] record?

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[1] (Portion of record read)

[2] MR. DUFF: Move to strike the witness' [3] response after the statement "not in this list, and that [4] was not the intent" to the extent that that testimony [5] appears as a response in the transcript; however, there [6] was no question pending after that statement.

[7] BY MR. DUFF:

[8] Q. Mr. Johnson, directing your attention to the [9] fourth paragraph on the document that's been marked as [10] Plaintiff's Exhibit 58.

[11] A. Yes.

[12] Q. You could look at the -- you'll see that the [13] third sentence in that paragraph is a parenthetical, do [14] you see that?

[15] A. Yes.

[16] Q. The fourth sentence begins "We realize"?

[17] A. Yeah.

[18] Q. Would you please read into the record that [19] fourth sentence beginning with the words "We realize" [20] and including the next two sentences?

[21] A. Why?

[22] MR. CHAMBERS: Let me if I can just have him [23] read the whole document into the record so that we get [24] the full flavor of the entire document. I think that

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[1] would be fairer than picking out sections to be read in [2] if we're going to have to do reading.

[3] BY MR. DUFF:

[4] Q. Mr. Johnson, would you please read the [5] fourth, fifth and six sentences --

[6] A. I will read the last paragraph, that's all.

[7] Q. I'm not asking you to read --

[8] A. I understand you're not, but I am.

[9] Q. Are you refusing to read --

[10] A. Yes.

[11] MR. DUFF: Would you please mark this point [12] in the transcript?

[13] BY MR. DUFF:

[14] Q. Why are you refusing?

[15] A. Because you're destroying my testimony.

[16] Q. And how is it that I'm destroying your [17] testimony?

[18] MR. CHAMBERS: Let me object to --

[19] THE WITNESS: Because you're taking my letter [20] out of context and paragraphs out of context, and that's [21] wrong.

[22] MR. CHAMBERS: Let me --

[23] BY MR. DUFF:

[24] Q. Did you write this document?

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

[2] MR. CHAMBERS: Let me suggest that we take a [3] break.

[4] BY MR. DUFF:

[5] Q. Did you mean everything that you wrote in [6] this at the time you wrote it?

[7] MR. CHAMBERS: Don't answer that question. [8] Let me object to your arguing with the [9] witness. You can ask him questions about facts. [10] Arguing with him goes across the line. He's not here to [11] argue with lawyers like you and me. [12] Now I suggest we take a break for five [13] minutes and let tempers cool down and we'll come back [14] and start fresh and maybe we can move on through this.

[15] BY MR. DUFF:

[16] Q. Mr. Johnson, would you like to take a break?

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[17] A. I sure would.

[18] THE VIDEOGRAPHER: We're now off video [19] record. [20] (Recess taken)

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

[22] BY MR. DUFF:

[23] Q. Mr. Johnson, I apologize if I in any way [24] upset you before the break. I did not intend to.

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[1] A. I think we should read the whole letter into [2] the record. It is a part of the record. Do you want -- [3] I'll read it all into the record if you --

[4] MR. DUFF: Actually we're having a brief [5] interruption, so... We're off the record. [6] (Telephone interruption)

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

[8] BY MR. DUFF:

[9] Q. Mr. Johnson, I'd like to direct your [10] attention to the fourth paragraph of the document that's [11] been marked as Plaintiff's 58. Do you see that?

[12] A. Yes, I do.

[13] Q. Would you please read the fourth, fifth and [14] sixth sentences of this paragraph into the record?

[15] A. No. I will read the whole letter into the [16] record.

[17] Q. I'm not asking you to read the entire letter [18] into the record.

[19] A. I understand that, but I don't feel it's [20] right to take that out of context.

[21] Q. Well --

[22] A. We didn't write the whole letter with just [23] that one paragraph. There was a reason for writing the [24] letter the way we wrote it.

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[1] Q. When you wrote in that fourth paragraph "We [2] realize that most of your contacts will not receive the [3] letter. This is both good and bad. Unfortunately, we [4] have no alternative," what did you mean?

[5] A. The lawyers of our company instructed us to [6] send it to the director of purchases or the office of [7] the president rather than attempt to send it to [8] individuals who may not recognize the serious nature of [9] the problem and take appropriate action when it was [10] required.

[11] Q. So the legal department left you with no [12] alternative, is that correct?

[13] A. That was their direction.

[14] MR. CHAMBERS: Objection.

[15] MR. DUFF: Would you please read the last [16] answer back? [17] (Answer read)

[18] BY MR. DUFF:

[19] Q. What did you mean "This is both good and [20] bad"?

[21] A. Exactly what I said, because some of the [22] people that we dealt with on a week-to-week, [23] month-to-month basis would not be getting the letter, [24] but the office of the president or the director of

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[1] purchases would be getting the letter, and it was our [2] legal -- legal department's opinion that these people [3] were in a position of control and would take appropriate [4] action.

[5] Q. And you instructed your salesmen by this [6] memorandum to not send additional copies of the February [7] 9, 1970 pollution letter to your Pydraul customers; [8] isn't that correct?

[9] A. Well, we didn't want to add to the burden on [10] these girls, because we had to bring in temporary help. [11] But we sent out additional copies to all the salesmen, [12] and if they wanted to go in and hand deliver a copy to [13] the lubrication engineer or whatever it was, they were [14] certainly allowed to do so.

[15] Q. Well, didn't you write "We would prefer you [16] not send additional copies--one is enough"?

[17] A. Well, we could end up with just an enormous [18] mailing to everybody all over the continent. It didn't [19] really make that much sense.

[20] Q. You did write that, didn't you?

[21] A. Yes. You've got to direct it to the [22] appropriate decision-maker within a corporation or [23] nothing gets accomplished.

[24] Q. But you did tell your salesmen that one copy

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[1] of the letter to each customer was enough, isn't that [2] correct?

[3] MR. CHAMBERS: Objection. That's not what [4] this language says.

[5] MR. DUFF: Isn't that what you wrote?

[6] MR. CHAMBERS: Objection. That's not what [7] this paragraph says at all.

[8] THE WITNESS: I also said on this paragraph [9] "We have tried to satisfy the objectives established by [10] our legal and medical departments. We also felt it [11] would be impossible to accomplish this task in the [12] district office. Therefore we have utilized what was [13] available here in St. Louis. We will send out over [14] 2,000 letters and this includes many multi-location [15] clients."

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

[17] THE WITNESS: Well, we'd better go on to [18] something else.

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[19] MR. CHAMBERS: Is there a question?

[20] MR. DUFF: There is no question pending.

[21] THE WITNESS: Shall I make faces at the [22] camera?

[23] MR. CHAMBERS: Shall we go off the record for [24] a few minutes?

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[1] MR. DUFF: That's not necessary.

[2] MR. CHAMBERS: We're wasting a lot of [3] videotape.

[4] MR. DUFF: We can go off the record for a [5] minute.

[6] THE VIDEOGRAPHER: Now off video record. [7] (Discussion held off the record)

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

[9] BY MR. DUFF:

[10] Q. In February of 1970, Mr. Johnson, were you [11] responsible for supervising the field salesmen for [12] Pydrauls?

[13] A. Yes, the seven salesmen indicated on this [14] memo.

[15] Q. Were you responsible for any other salesmen [16] at that time?

[17] A. No.

[18] Q. Who were the other field sales managers for [19] Monsanto for their PCB-containing products at this time [20] and what were their -- what were the products with which [21] they were responsible?

[22] MR. CHAMBERS: Object to the form. It's [23] compound.

[24] MR. DUFF: You may answer.

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[1] THE WITNESS: Paul Benignus was responsible [2] for two salesmen who handled the dielectric products. [3] Jack Fallon was responsible for the heat transfer fluids [4] and he had three salesmen. Frank Langenfeld had [5] responsibility for Skydrol and I think two salesmen. [6] Paul Benignus had responsibility for the dielectrics and [7] he had one salesman. And that was the way our group was [8] divided up.

[9] BY MR. DUFF:

[10] Q. And who had responsibility for Plasticizers [11] at this time?

[12] A. That was a different part of our group, and I [13] suspect that that was being handled by Cuming Paton in [14] their group.

[15] Q. So Cuming Paton was the field sales manager [16] for Plasticizers in 1970?

[17] A. No, no. He was a product manager responsible [18] for the Aroclors, the chlorinated biphenyls, and he was [19] responsible for discontinuing the sale of those products [20] into those applications.

[21] Q. And he directly managed salesmen who sold [22] Plasticizers, is that correct?

[23] A. I don't think so. I think they were [24] structured differently than us.

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[1] Q. Did you work with the managers for the other [2] product groups to ensure that all of Monsanto's [3] customers that purchased PCB-containing fluids were -- [4] received a copy of the pollution letter?

[5] A. They no longer had any involvement with our [6] customers.

[7] Q. Who is "they"?

[8] A. The people who were responsible for dibasic [9] acids going to the paint industry or intermediates going [10] to various chemicals manufacturers or the group that was [11] supplying fine chemicals to some of the pharmaceutical [12] houses and whatever. Plasticizers were sold primarily [13] to people processing vinyl. The oil additives group [14] sold directly to the major oil companies.

[15] Q. Who was W. E. Schalk?

[16] A. At this point in time probably he was a [17] product manager in either the Plasticizer or resin [18] group. I don't remember.

[19] Q. Did you work with Mr. Schalk with respect to [20] the mailing of the pollution letter to Monsanto's [21] customers?

[22] A. I don't remember. I think the Plasticizer [23] group which may be where Walter was at the time handled [24] their own mailing for the discontinuing of the sale of

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[1] those products.

[2] Q. Prior to the pollution letter that went out [3] on February 9, 1970, had Monsanto ever sent a mailing to [4] all of its Pydraul customers on any topic?

[5] A. To my knowledge, no.

[6] Q. So the February 9, 1970 letter was a [7] one-of-a-kind event at its time, wasn't it?

[8] A. Yeah, I would think so.

[9] Q. It was a pretty significant mailing, wasn't [10] it?

[11] A. Absolutely.

[12] Q. Do you know when the decision was made to [13] send the February 9, 1970 letter out to Monsanto's [14] customers?

[15] A. I think it had been contemplated for a couple [16] of months, and it was when everything fell into place [17] and we had the mailing list created, the letter could be [18] put together to the satisfaction of the legal department [19] and everyone else. As

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soon as that was done, it was sent.

Q. You were intimately involved in the mailing of this letter, weren't you?

MR. CHAMBERS: Object to the form. Object to the term "intimately." It could mean any number of

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things, so I'd say it's vague.

MR. DUFF: You may answer.

THE WITNESS: Yeah, I was responsible to -- or had picked up the responsibility. Nobody told me to do it. I just recognized that it had to be done.

BY MR. DUFF:

Q. I'd like to direct your attention back to the document that's been marked previously as Plaintiff's Exhibit 5. This is the Functional Fluids 1970 Total Marketing Plan. Do you have that document in front of you?

A. I'm sure I do. Yep, I see 5.

Q. If you'd like to, you may set the other documents over to the side. I'm sure our court reporter would be happy to hold onto those for the time being.

A. Shoot.

Q. Do you have that document in front of you now?

A. Yes. What page?

Q. If you could look at the -- if you could look at the page bearing the production numbers TRAN 003766 through and including 3771, that's 66 through 71, would you agree that these pages include the overall objectives for functional fluids for 1970?

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A. Well, it tells me it was a review of '69.

THE VIDEOGRAPHER: This will be all for Tape Number 3. (Brief interruption)

THE VIDEOGRAPHER: This will be the start of Tape Number 4.

BY MR. DUFF:

Q. Well, then you see where it does say Review of 1969 on the page marked TRAN 003766?

A. Yes, I do.

Q. Let's take a moment and look at that. Do you see toward the top of that page where there are a -- is a list of the most significant challenges faced in 1969?

A. Yes.

Q. And do you see where it says environmental questions about PCB products?

A. Yes.

Q. Is that consistent with your recollection of 1969 as being a year in which one of the most significant challenges that faced the functional fluids group was environmental questions about PCB products?

A. I frankly don't believe that the person who wrote this, this stuff recognized the seriousness of the

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problem.

Q. In your mind at that time it was a very serious problem, wasn't it?

A. Yes.

Q. And in fact is that one of the reasons that you believed that a decision was made to send out the 19 -- the February 9, 1970 letter?

A. Yes.

Q. I'd like to direct your attention to the pages marked TRAN 03769 through 71. This is a section marked 1970 Objectives. Do you see that?

A. Yes.

Q. Do you see any reference in these objectives of this 1970 total marketing plan for functional fluids to the need to advise customers of this serious environmental issue relating to PCBs?

A. I do on Page 3771 where it refers to the introduction of a new phosphate ester fluid, a water glycol fluid, all of which was basic to replacing the PCB-containing fluids. Now, who wrote the 1970 objectives I think it's probably wonderful words and it did well getting over to the corporate management to read these things, but the important things were stated on -- as

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far as industrial fluids on Page 3771.

MR. DUFF: Move to strike as nonresponsive. BY MR. Duff:

Q. Although directing your attention to these 1970 objectives once again, is there any reference in these objectives to the need to notify customers of the serious PCB problem with the Pydraul fluids or any other PCB-containing fluids?

A. If I can answer.

Q. If you would answer that question, yes.

A. 1970 objectives is a broad-based definition of what the functional fluids group was to attain. The next section is a part of the department where we're talking about better planning, better management, all aspects of the organic management system will be in effect with special emphasis on economy of time, operation, expense and whatever. Then we came as a part of it to the individual groups talking about the aviation products, then the dielectrics, then the heat

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transfer products and then the industrial products.

Q. If I may interrupt for just a moment.

A. Please do.

Q. I don't want you to stray too far afield from my question, which is, is there any reference in these

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pages to the need to notify customers of the PCB problem?

A. Not that I read.

Q. I'd like to direct your attention then to the pages that are -- bear production number TRAN 003806 to the end of the document which ends at TRAN 003824. Do you see those pages?

A. Yes, I do.

Q. And these are the pages that you said that you were responsible for overseeing the information that went into these pages, isn't that correct?

A. I really don't know if I did it or it was done by Larry Bradford.

Q. Are you aware of any reference in these pages to the need to notify customers of the PCB problem in 1970?

MR. CHAMBERS: Let me object to the extent you want us to just read through this now and look for that, is that -- because we may do better going off the record to take the time to read through this.

BY MR. DUFF:

Q. Well, Mr. Johnson, do you see that?

A. Yes. I see one line though that does pertain to what we were talking about, which is Line 9 on Page

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003807 where specifically Item 6 we say "Introduce new phosphate ester fluid to OEMs and customers. Sell 200,000 pounds in 1970. Gain endorsements of approvals for the use of these fluids and conduct pump tests when necessary." Then we talked about the water glycol.

Q. If I may interject.

A. Sure.

Q. I don't mean to cut you off. I just don't want you to go too far afield from my question. Is there any reference in that line to the need to notify customers of the PCB problem?

A. Well, I would think that this strategy was probably written in July of 1969. We normally budgeted about seven months before the year started. And with all the problems we were going through, I don't think anyone went back and revised this thing. They just let it stand.

MR. DUFF: Would you please mark as Exhibit 59 this document. (Whereupon, Plaintiff's Exhibit 59 was marked for identification) (Discussion held off the record)

THE VIDEOGRAPHER: Back on the video record.

BY MR. DUFF:

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Q. Mr. Johnson, I've had placed in front of you a document that's been marked as Plaintiff's Exhibit 59, and I've given a copy to counsel. This is a February 4, 1970 memo prepared by yourself regarding personal objectives addressed to Donald A. Olson bearing production numbers TNGS 006086 through 87. Did you prepare this document?

A. I must have.

Q. Have you seen this document before?

A. Well, if I prepared it, it had to be.

Q. What is this document?

A. Just a definition of personal objectives in terms of customers to make contact with, defining contact with the salesmen.

Q. Was this your personal objectives for 1970?

A. Probably.

Q. Is there any reference in your personal objectives to the need to notify customers of the PCB problem?

A. I don't consider that a personal objective.

Q. Although you were intimately involved with the mailing to customers of the PCB letter, weren't you?

A. Yes.

MR. CHAMBERS: Object.

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BY MR. DUFF:

Q. But yet you didn't consider that to be a personal objective to ensure that that was accomplished, is that what you're saying?

A. No, I did not. That's the routine of the business.

Q. In fact this document which has been marked as Plaintiff's Exhibit 59 is the same date as your memo addressing the Pydraul -- addressing the pollution letter that was marked as Plaintiff's 58, isn't that correct?

A. Yes.

Q. Yet there's no reference in this personal objectives memo to the pollution letter, is there?

A. No. That would be too detailed.

MR. DUFF: Move to strike as nonresponsive everything after the first word of the witness' answer. I'd like to have marked as Exhibit 60 --

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(Whereupon, Plaintiff's Exhibit 60 was marked for identification)

MR. DUFF: And I'm providing counsel with a copy as well -- a document dated February 16, 1970 prepared by N. T. Johnson addressed to a lengthy list of individuals and copied to another lengthy list of

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individuals bearing production number TNGS 008683 through 008696 and regarding pollution letter.

BY MR. DUFF:

Q. Did you prepare this document, Mr. Johnson?

A. I would believe so because it has my name on it.

Q. Let me ask you have you had a chance to review this document?

A. I don't think so, not until now.

Q. Why don't you take a few moments or as much time as you need to review this document.

A. Yes.

Q. Do you recall this document?

A. Not really, but it's 25 years ago.

Q. Now, this is a two-page memo prepared by you that attaches a document called Possible Customer Questions on PCBs, isn't that correct?

A. Yes.

Q. Directing your attention to the attachment, do you recall if this is a document that you prepared or contributed to the preparation of?

A. No, I did not; and I don't know who did it. I would think this may have been done by Papageorge or somebody.

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Q. I want to direct your attention to the second paragraph --

A. Yes.

Q. -- of the memorandum. This is the first page of the document?

A. Yes.

Q. Do you see where you wrote "We want to avoid any situation where a customer wants to return fluid"?

A. Right.

Q. What did you mean by that?

A. We did not have an incinerator. Most customers out there wouldn't return fluid anyhow. It was just a comment if somebody wanted to do it, it would be better if he would just continue to use and top off with his existing product. I personally don't know of one customer who changed out fluid. Our biggest problem was people were buying increased quantities of the old products and we had to cut them off.

Q. And your preference was that your customers use up their existing inventory, isn't that correct?

A. Most of it didn't amount to a hill of beans.

Q. Is that correct that your --

A. That's correct.

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Q. Is it correct that your preference was that your customers use up their existing inventory?

A. Yes.

Q. And the existing inventory referred to the PCB-containing Pydraul products that they had, is that correct?

A. Yes. What was the alternative?

MR. DUFF: Move to strike the last sentence as nonresponsive. There's no question pending.

BY MR. DUFF:

Q. Do you see the second to the -- I'm sorry, the third to the last sentence of that paragraph where you wrote "He will then top off with the new fluid and eventually all Aroclor 1254 and Aroclor 1260 will be out of his system"? Do you see that?

A. Yes.

Q. What did you mean by that?

A. Obviously people are always topping off systems because they don't maintain the integrity of the system, and so they're adding make-up fluid, and ultimately the addition of the new products would eliminate 1254 and 1260 from his system.

Q. So your understanding was that if the customer topped off with a new fluid, then eventually

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all the old fluid would leak from the system; is that correct?

A. Probably true.

Q. And you didn't want to take any of the PCB-containing Pydraul fluids back from your customers, did you?

A. Well, that's what I said. At this point we did not have the incinerator.

Q. In fact you wrote "We don't want to take the fluid back. Sell him the replacement"; is that right?

A. Right.

Q. This document was sent to whom?

A. This document that you're referring to?

Q. Let me rephrase my question for you. Is there anything about the individuals

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who are listed as both recipients and copyees of this letter that suggests to you the individuals as groups or collectively that you were sending this letter to?

MR. CHAMBERS: You mean whether it was salesmen or product managers, is that --

MR. DUFF: Yes.

MR. CHAMBERS: Okay.

THE WITNESS: Well, the to refers to salesmen around the world.

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MR. DUFF: When you say the to -- oh, I see.

THE WITNESS: We sent to Melbourne, we sent two in Melbourne.

BY MR. DUFF:

Q. You're saying the word T-O, to?

A. Pardon?

Q. The word T-O, to?

A. Yes. And then in addition on the other side, and I'm not sure I understand why that was done, but we then had copies going to people in Brussels which meant Europe, and Dale Smith down at the bottom would have been the individual who would have handled the transmissions to Japan, and Montreal is on there for Canada.

Q. I direct your attention to the second to the last paragraph of this memo on Page 2 of the memo.

A. Yes.

Q. Do you see the last paragraph is actually a parenthetical sentence? Do you see the paragraph right above that?

A. Right.

Q. Would you please read the first sentence of that paragraph into the record?

A. The one that says "We have no replacement

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products"?

Q. No, the paragraph right below that.

A. "We can't afford to lose a dollar of business. Our attitude in discussing this subject with our customer will be the deciding factor in our success or failure in retaining all our present business. Good luck." Then we went out of the business.

Q. I want to direct your attention back to the document that's been marked as Plaintiff's Exhibit 57. This is the document we referred to as the pollution letter mailing list. After you had sent the February 1970 pollution letter out you subsequently learned that some of your customers never received that letter even though they were on this mailing list, isn't that correct?

A. I don't know that to be true. I know there were some that were returned either because an address was incorrect or the company was out of business or whatever; and whatever was returned, I know the girls made every effort to try and define through whatever mechanism they could the location that the letter should go to.

Q. Was it your standard practice to read all documents that were addressed to you?

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A. I tried to. I spent a lot of time out of town. I was out seeing all these customers. You can't read letters when you're traveling around to talk to customers.

Q. Well, would it be your practice to read whatever mail you had received when you returned from a trip?

A. I would try, but in most cases I was flying one week after another. I was gone for six weeks in a row. I didn't even have time to fill out an expense report.

Q. Was it your practice to read all documents that were addressed to you?

MR. CHAMBERS: Object to the form. That's been asked and answered. Next question, please.

MR. DUFF: You may answer.

MR. CHAMBERS: Tell him again it was your practice to try to --

THE WITNESS: Stay in touch.

MR. DUFF: Please do not coach the witness or offer testimony.

MR. CHAMBERS: I'm not coaching the witness.

MR. DUFF: You're suggesting a specific answer for the witness, and I object to that.

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MR. CHAMBERS: Read back the witness' answer.

MR. DUFF: No, this is not your deposition.

MR. CHAMBERS: I'm not --

MR. DUFF: I'm not asking you -- giving you -- you're going to have an opportunity to ask questions or to ask the court reporter to do what you'd like at the end of this deposition after I'm finished.

MR. CHAMBERS: Would you please read back the witness' answer to the previous question about his practice regarding the reading of the correspondence addressed to him, please?

MR. DUFF: And I'm asking -- directing

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that during my examination of this witness that the court reporter not succumb to the wishes of the opposing counsel for Monsanto.

MR. CHAMBERS: Will you be able to read back the response then?

THE REPORTER: You two agree on something.

MR. DUFF: Mr. Johnson?

THE WITNESS: I don't remember the question.

MR. CHAMBERS: You won't read back -- wait, wait. The court reporter then won't read it back?

THE REPORTER: That's not it. I never said that.

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MR. DUFF: Mr. Johnson --

MR. CHAMBERS: Wait, wait.

THE REPORTER: I'm sorry. I can't take down and talk to you at the same time.

MR. DUFF: The court reporter is not part of this deposition. She is not a witness here, and it's inappropriate for you to be asking the court reporter to do anything when it's not your turn for examination.

MR. CHAMBERS: Let's go off the record, please?

MR. DUFF: Sure.

THE REPORTER: Is that okay?

THE VIDEOGRAPHER: We're off video record. (Discussion held off the record)

MR. DUFF: Madam Court Reporter, would you please read back into the record the last question that I asked of the witness and if there was an answer, the accompanying answer. (Portion of record read)

THE WITNESS: If possible.

BY MR. DUFF:

Q. I'd like to direct your attention to the document that's been marked as Plaintiff's Exhibit 57, and specifically to the page that's marked TNGS 004902.

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A. Okay.

Q. What is on this page?

A. Customer names.

Q. Customer names and addresses?

A. Yes.

Q. Do you see a mailing address for a Monsanto customer Owens Illinois?

A. Yes, I do.

Q. And where is that?

A. I believe it's Fairmont, West Virginia.

Q. Direct your attention to the -- do you see there are three columns on this page?

A. Yes, I do.

Q. The first column four entries up from the bottom, do you see that?

A. I see one for Streator, Illinois.

Q. Yes. What -- could you read that mailing address, who it was addressed to and the mailing address into the record, please?

A. Well, I'm sure on the original copy it probably defined an address, and so it was director of purchase, an address which is Illinois whatever, Streator, Illinois.

Q. And do you know if this customer ever

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received a copy of the 19 -- the February 1970 pollution letter?

A. I can only assume that if he received it, it's checked off, and I assume that a green card came back from a post office saying it was signed for.

Q. Is it your understanding that the check mark means that a green card was received saying the customer had received it?

A. I don't remember what the check marks referred to.

MR. DUFF: I'd like to have marked as Exhibit 61.

THE WITNESS: I would point out that Streator, Illinois is not that big. (Whereupon, Plaintiff's Exhibit 61 was marked for identification)

BY MR. DUFF:

Q. I'm showing you a document that's been marked as Plaintiff's Exhibit 61, and I'm giving a copy to counsel for Monsanto as well.

A. Owens, Illinois.

Q. This is a document dated -- well, with several dates in the upper right-hand corner. The date of call which is 4/23/70?

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A. Yes.

Q. This is a call report, Organic Division?

A. Yes.

Q. Do you see that this document was addressed to N. T. Johnson?

A. Everything was addressed to me.

Q. And who is the salesman on this call?

A. Bob Damiani.

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[9] Q. And this was copied also to R. A. Garcia and [10] G. F. Fague?

[11] A. Right.

[12] Q. And was this the call report based on a call [13] that Mr. Damiani made with Owens Illinois in Streator, [14] Illinois in April of 1970?

[15] A. Yes.

[16] Q. This was only a little over two months after [17] the pollution letter was mailed out, isn't that correct?

[18] A. Yes.

[19] Q. And could -- do you see on this call report [20] that there is a section called Results?

[21] A. Yes.

[22] Q. Could you please read the first paragraph -- [23] I'm sorry, the first sentence under the section entitled [24] Results into the record?

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[1] A. We're playing a game. "Mr. Pillash was not [2] aware of the pollution letter we had sent out concerning [3] Pydraul AC and other chlorinated products."

[4] Q. So in fact you knew that Mr. Pillash at Owens [5] Illinois in Streator, Illinois was not aware of the [6] pollution letter that had been sent out -- allegedly had [7] been sent out to that location in February of 1970; [8] isn't that correct?

[9] A. It was our intent to mail the letter to the [10] director of purchases, not plant maintenance people, [11] people on the die cast floor because we recognized they [12] would not take action necessary to control fluids and be [13] prepared for new products.

[14] Q. I'd like to have marked -- actually I'd like [15] to show you a document that's been previously marked as [16] Plaintiff's Exhibit 26, and I'm providing a copy to [17] counsel as well. [18] This is another call report which has [19] several dates in the upper right-hand corner, one of [20] which is 2/26/71. And the customer name appearing on [21] this is Republic Steel Company (Headquarters), and then [22] the city and state is Cleveland, Ohio. Do you see that?

[23] A. Yes, I do.

[24] Q. And do you see that N. T. Johnson is a

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[1] recipient of this call report?

[2] A. Yes, always.

[3] Q. And Don Pogue was also a recipient?

[4] A. Yes.

[5] Q. And who was the salesman that prepared this [6] call report?

[7] A. Charles Seger.

[8] Q. And who did Mr. Seger meet with on this call?

[9] A. Joe Mullally.

[10] Q. And Mr. Mullally was with purchasing, isn't [11] that correct?

[12] A. That's true.

[13] Q. And do you see the section entitled [14] Results --

[15] A. Yes, I do.

[16] Q. -- on this call report? Do you see that?

[17] A. Yes, I do.

[18] Q. Do you see the last sentence in the Results [19] section?

[20] A. Yes.

[21] Q. Could you please read that sentence into the [22] record?

[23] MR. CHAMBERS: I object to the form to the [24] extent you're assuming the reference to the PCB letter

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[1] concerns the February 9th letter that's been the subject [2] of testimony. I don't think you've established the [3] foundation for this question.

[4] MR. DUFF: You may answer.

[5] THE WITNESS: Are you saying that Republic [6] Steel at Cleveland, Ohio was a customer?

[7] BY MR. DUFF:

[8] Q. My question to you is if you would please [9] read the --

[10] A. He was not a customer. He did not buy [11] Pydraul. There is no indication that he used Pydraul.

[12] Q. Well, I'd like to direct your attention then [13] to --

[14] A. Read the results. It says "Mullally [15] indicated he had attempted to sway Don Copac of Republic [16] Steel to use Pydraul. He said he was eased off because [17] he was making no headway. John gave the PCB letter to [18] Mullally who had not received a copy." He was not a [19] customer, so he wouldn't have been on our customer list [20] to receive a copy if he didn't use Pydraul.

[21] Q. I'd like to direct your attention to [22] Plaintiff's Exhibit 57 which is the pollution letter [23] mailing list.

[24] MR. CHAMBERS: Let me object because you're

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[1] mixing apples and oranges. You see a reference to the [2] words PCB letter in this call report as do I. You see a [3] date of '71, but you're assuming that that reference is [4] to this February 9 letter and mailing list, and there [5] were -- and though we haven't covered it in this [6] deposition, you know as I do there were plenty of [7] mailings, there were plenty of letters that went out to

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customers, and I object that your association of that expression PCB letter in this call report with this mailing list, that there's no foundation for it.

BY MR. DUFF:

Q. Directing your attention to Plaintiff's Exhibit 57, the page bearing production number TNGS 004905, do you see that page?

A. Yes.

Q. And do you see in the upper right-hand corner where the entity listed is Director of Purchases, Republic Steel Corp., Cleveland, Ohio?

A. Yes, I do.

Q. I'd like to show you a document which has been previously marked as Plaintiff's Exhibit 25, and I'm providing a copy to counsel as well.

A. Are we through on this Republic Steel?

Q. Yes. You may set that document aside.

A. I don't even know why I looked at it.

Q. This is a document dated February 9, 1971, It's prepared by N. T. Johnson, addressed to D. Goodwillie and C. L. Clay and copied to R. A. Garcia and C. L. Bradford. And this document bears production number TNGS 008940 through 42. Mr. Johnson, did you prepare this document?

A. I must have. It's got my name on it.

Q. I'd like you -- have you had a chance to review this document?

A. I'm looking at it right now. Yes, what questions would you have?

Q. In the first paragraph about halfway down -- a little bit more than halfway down do you see where it says "Mr. Pugh also related that he did not understand why Monsanto had not advised him in advance of the PCB problem and that he had never received any information on the subject"? Did you write that?

A. Yes. Do you notice what it says, "in advance"? It's pretty hard to advise somebody in advance of.

MR. DUFF: There's no question pending. Move to strike the last statement as nonresponsive.

BY MR. DUFF:

Q. I'd like to direct your attention to the third paragraph of this document. Would you please read this paragraph into the record beginning "I advised"?

A. "I advised both gentlemen that letters had been sent to their companies either to the director of purchases or the office of the president indicating Monsanto's position on the PCB problem. In addition, a letter had been mailed to our customers on specific products we reformulated to eliminate PCBs. They were also advised that a letter would be forthcoming approximately February 1 indicating the reformulation of Pydraul 312 to eliminate PCBs. Both gentlemen indicated they would be interested in receiving copies of our letters since the originals had never filtered through their organization."

Q. I'd like to direct your attention to Plaintiff's Exhibit 57 which is the pollution letter mailing list. If you'd turn to the page bearing production number TNGS 004888.

A. Yes.

Q. Do you see a listing for Carter Carburetor in St. Louis on this page? And specifically I direct your attention to the second column, the third entry down.

A. Yes, I see director of purchases, Carter Carburetor Corporation, 2840 South Spring Avenue, St. Louis, Missouri.

MR. DUFF: Would you please mark this as Exhibit 62. (Whereupon, Plaintiff's Exhibit 62 was marked for identification)

BY MR. DUFF:

Q. Mr. Johnson, I'm showing you a document which has been marked as Plaintiff's Exhibit 52 -- I'm sorry, 62 which is a call report with a date of call of 7/22/70, and the customer's name is Empire Die Casting Company in Cleveland, Ohio. And do you see that you were the recipient of this document?

A. That was standard procedure for them to go in. At the right you see where the initials of all the people in the group so that the call report was circulated to them also.

Q. And directing your attention to those initials.

A. Yes.

Q. NTJ is you, correct?

A. Right.

Q. And who is DAH?

A. Hall, Dave Hall.

Q. Who is DRP?

A. Don Pogue.

Q. And can you make out the --

A. I would suspect it's Dale Smith.

Q. Have you had a chance to review this

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document?

A. No. It's the first time I've seen it.

Q. Please take as much time as you need.

A. Yes, what? Interesting.

Q. Do you see the second paragraph under Results?

A. Yes.

Q. Do you see the language "I also gave him copies of the PCB letters which he apparently did not get, or at least did not pay attention to at the time." Do you see that language?

A. Yes.

Q. I'd like to direct your attention to Plaintiff's Exhibit 57, the pollution letter mailing list, and specifically the page bearing production number TNGS 004892.

A. Yes.

Q. And do you see a reference to Empire Die

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Casting on this page?

A. Yes, I do.

Q. Do you see the entry in the second column at the top of the page?

A. Yes, I do.

Q. And is that a mailing that was sent to Empire Die Casting Company in Cleveland, Ohio?

A. Yes.

Q. Do know if all of the customers listed on this pollution letter mailing list received copies of the letter --

MR. CHAMBERS: Object to the form.

MR. DUFF: -- that was sent out?

MR. CHAMBERS: That's been asked and answered already.

THE WITNESS: A letter was sent to the office of the president, Empire Die Casting Company, 198 Miles Avenue, Cleveland, Ohio, and this looks like the location without the specific address. So what it would say is that the office of the president received our letter, and the fact that he did not hand it down to his manager of purchasing or whatever is something we can't control.

BY MR. DUFF:

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Q. You're assuming that that's how it happened, isn't that correct?

A. The --

MR. CHAMBERS: Objection. That's argumentative.

MR. DUFF: You may answer.

THE WITNESS: The assumption was made that if we were to send the letter in to a lubrication engineer, he ain't gonna pay any attention to it. So it was sent to the director of purchases or the office of the president with the thought that these people would read the letter, would understand the nature of the problem and would be able to take appropriate action within their company.

BY MR. DUFF:

Q. If you thought that the purchasing agent for your customers would receive -- would appropriately respond to the pollution letter, why didn't you specifically address it to the purchasing agent individually rather than just the title?

A. Because we didn't have the names.

Q. Did you try to get the names?

A. It would have been too herculean to try and find every purchasing agent's name for over 2,000

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customers at all the shipped to locations.

Q. Couldn't you just go to the file for the individual customers that were maintained in St. Louis and pull that information out of the file?

A. That's where some of the addresses came from, but that didn't necessarily require us to send it to specific individuals at each location.

Q. But you didn't even attempt to do that, did you?

A. We attempted to get the letter out. You would have been arguing with me if this took two or three months longer because we had taken the time to get the specific names of people, and I know you'll strike that from the record too.

MR. DUFF: Move to strike as nonresponsive.

BY MR. DUFF:

Q. Your salesmen could have given you the names of those purchasing agents that they had for specific customers, couldn't they?

A. It would have just taken more time. We can be criticized because we didn't send it out six months earlier. Now we're criticized because we sent out a letter but we didn't have everybody's name.

MR. DUFF: Move to strike as nonresponsive.

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THE WITNESS: You bet strike it.

MR. DUFF: This is a good stopping point for the evening.

MR. CHAMBERS: Very well.

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MR. DUFF: Off the record.

THE VIDEOGRAPHER: Off the video record. (At 5:50 p.m., the deposition of Norman T. Johnson was continued to Wednesday, August 23, 1995 at 9:30 a.m.)

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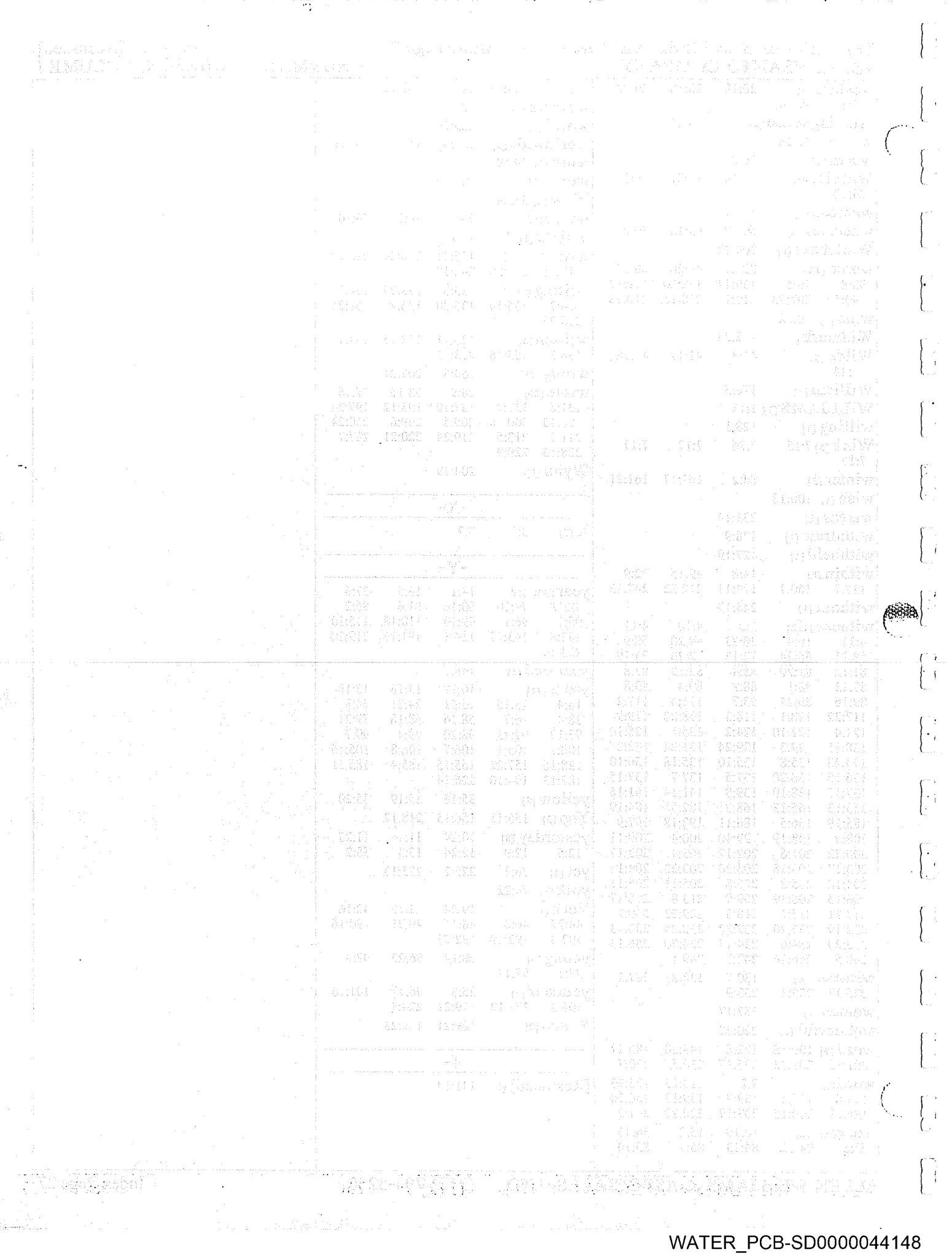
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WATER_PCB-SD0000044148

COPY

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

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before me this 2nd day
of October, 1995.

Steven Alexander
Notary Public

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STEVEN ALEXANDER
NOTARY PUBLIC STATE OF ILLINOIS
My Commission Expires 07/26/99

WATER_PCB-SD0000044149