COPY

IN THE MATTER OF:

Tennessee Gas Pipeline Co.
vs.
Monsanto Co.

Cause No. 94-CI90145

CONFIDENTIAL

Deposition of Cumming Paton
November 1, 1995

Gore & Perry Reporting Company
100 North Broadway, Suite 1175
Saint Louis, Missouri 63102
(314) 241-6750 621-4790
(800) 878-6750

ARR

WATER_PCB-SD0000076783

COMMONWEALTH OF KENTUCKY

ROWAN CIRCUIT COURT

CIVIL BRANCH

TENNESSEE GAS PIPELINE COMPANY,

Plaintiff,

vs. NO. 94-CI90145

MONSANTO COMPANY,

Defendant.

CONFIDENTIAL

Deposition of CUMMING PATON, Confidential Volume III, taken on behalf of the Plaintiff, at the offices of Thompson & Mitchell, One Mercantile Center, in the City of St. Louis, State of Missouri, on the 1st day of November, 1995, before Dawn L. McTeer, Registered Professional Reporter and Notary Public.

ARR

WATER_PCB-SD0000076784

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

Mr. Steven J. Roeder
Hedlund, Hanley & John
Sears Tower, Ste. 5700
Chicago IL 60606

FOR THE DEFENDANT:

Mr. Rolly L. Chambers
Smith, Helms, Mulliss & Moore
227 North Tryon Street
Charlotte, NC 28202

- - - - - - - -

CUMMING PATON,

CONFIDENTIAL EXAMINATION

QUESTIONS BY MR. ROEDER:

(Confidential testimony regarding Exhibit 239.)

MR. ROEDER: Okay. For the record, this is -- this is, in fact, one of the confidential documents in this case, Mr. Chambers.

MR. CHAMBERS: Okay.

Q: (By Mr. Roeder) It is a memorandum dated August 11, 1972, from P. W. Gann to Cumming Paton. Production numbers TNGS 4253 to 4263. And the subject of the memorandum is Therminol FR conversion project. If you can take a moment to review this document, sir. Okay. Sir, Exhibit 239 this is a memorandum you received from P. W. Gann, G-A-N-N, correct?

A: Yes.

Q: Okay. And it relates to a Therminol FR conversion project. What was that project?

A: That would have arisen from the discontinuation of all FR sales back at the end of 1971, I believe.

Q: All right. And this was the attempt to

WATER_PCB-SD0000076786

convert the Therminol customers from PCB containing Therminol fluids to non-PCB products that Monsanto had developed to replace them, correct?

A: Well, we always had non-PCB fluids, nonfire resistant. This was the -- the kind of a status report on what had happened as a result of our action.

Q: All right. We had looked last Thursday at a letter that you had signed that contained a little statement at the bottom for the customer to sign and send back. Do you recall that?

A: Yes.

Q: Does this memorandum refer to the receipt of signed letters from customers indicating whether they had or had not stopped using Therminol FR with respect to their food operations, their food customers?

A: Well, number one does. You know, even though it was just a week ago, I can't recall whether my letter applied to all FR Therminol fluids or just to the food customer ones. I cannot, you know, recall that.

Q: All right.

A: But to the extent it did, this would be included, and certainly food customers, I think, was

one of that group.

Q: All right.

MR. CHAMBERS: Should we go off the record?

MR. ROEDER: Yeah.

(Discussion off the record.)

Q: (By Mr. Roeder) All right, sir. Now, the memorandum lists conversions that are priority A, priority B and priority C. What was the distinction that you understood Mr. Gann was trying to make to you with respect to these different priorities in conversions?

A: I can't recall the specifics now.

Q: Well, if you look at page two of the document, priority B were uncommitted conversions with systems of less than a thousand gallons. Those would be your smaller potential customers, correct?

A: Yes.

Q: And priority A, number three, were uncommitted conversions with systems over a thousand gallons; is that correct?

A: Yes.

Q: So that would be where you would want your customer or your sales force to focus their attention initially, wouldn't it, on the large volume purchasers?

A: Not necessarily. The food customers would be important just from the, you know, the potential problems with food applications given what we had learned about the incidents that had occurred.

Q: The fish meal incident, for example?

A: Yes. And secondly, we had a -- you know, we had finite resources in the terms of conversion engineers that were available or qualified to assist in that. So you wanted to be using them in the most effective way possible. So it wasn't a case of not getting to it. It was just, you know, we have to do it in some kind of order.

Q: All right. But so after the food customers in priority A, there were the people who had agreed to convert, right?

A: Yes.

Q: There were 50 customers who had ordered it, but actual conversions weren't confirmed. And then you had the uncommitted conversions where you had wanted your sales force to focus their initial efforts after the food customers, because these would be the large purchasers, correct? You have to answer yes or no.

A: Yes. Yes.

Q: I notice, sir, and you can confirm for the

record that Tenneco does appear here, but they appear as a -- as a smaller user of Therminol, and they would be on page five of six as in the uncommitted column of less than a thousand. Do you see them "uncommitted conversions"?

A: Yes, I do. I see two locations.

Q: Right. One would be the Tenneco Colors Division at Reading, Pennsylvania, that we've got 20 gallons?

A: Yes.

Q: And then Tenneco Chemicals at Lobeco, South Carolina, that would have been about 500 gallons?

A: Yes.

Q: And that would have represented 520 potential gallons of Therminol out of a total listed under this of almost 38,000 gallons in terms of potential sales, correct?

A: Yes. I don't think that it is accurate to say that the major criteria was the potential for future sales or conversions. It had to do with, one, the resources, two, if it was a large system, they tended to need more make-up in the normal course of events because, you know, fluid does break down. So if it was more important to get these, you know, converted to something whether it was Monsanto

or somebody else's fluid or they may, you know, come up with a different method of heating because, if they, indeed, needed, you know, a lot of stuff to make up, it wasn't available as FR.

Q: All right.

A: It was the smaller system the less -- you know, it needed very little make-up.

Q: Well, would you agree with me that of the -- just as I look through the document, the uncommitted conversions of greater than a thousand gallons and of the total sites that Mr. Gann reflects in his memorandum would have been 164,800 gallons that were potentially involved with these customers?

MR. CHAMBERS: Are you --

A: You're looking at page 4257; is that right?

Q: (By Mr. Roeder) Right.

A: Yes.

Q: So that's 164,800. And then on the uncommitted conversions of less than a thousand you have another 37,967?

A: Yes.

Q: So we add the two of those up. We're talking about a potential uncommitted market that's referenced in this memorandum of about 200,000 gallons, right?

A: Yes.

Q: And out of that number the Tenneco customers at two locations were approximately 520 gallons as reflected on this memorandum?

A: Yes.

Q: Okay.

A: Finished with this?

Q: Yes.

(Confidential testimony regarding Exhibit 253.)

Q: (By Mr. Roeder) Exhibit 253 is a very large document. It has production number TNGS 5834 to TNGS 6000, and this is a confidential document in this litigation. It's a memorandum that you wrote on August 24th, 1973, correct?

A: Yes.

Q: And it attaches the letter of August 3, 1973, that we've been discussing?

A: Yes.

Q: And it also attaches a list of Pydraul customers, correct?

A: Let me see here. I think it does. Yes.

Q: Okay. And your short one-page memorandum with all the attachments was sent to Mr. Papageorge, right?

A: Yes.

Q: Who else was it sent to?

A: According to this, it was sent to Stapleton and Papageorge.

Q: Okay. Stapleton was in the legal department?

A: Yes.

Q: Any particular reason that you had sent the listing like this to the law department?

A: I can't recall now specifically, but I seem to recall that, you know, record retention was part of their responsibility, but I can't recall why.

Q: Okay. And looking at this document doesn't help refresh your recollection in that regard?

A: No.