Superior Court of the State of California
For the County of Los Angeles

TRANSWESTERN PIPELINE COMPANY,	)	
Plaintiff,	)	
vs.	)	Case No. BC 026959
MONSANTO COMPANY and DOES 1 through 200, inclusive,	)	
Defendant.	)	

Volume I

October 21, 1992

Deposition of JOHN MASON, taken on behalf of Plaintiff.

GORE REPORTING COMPANY

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v.	)	No. BC 026959
MONSANTO COMPANY and DOES 1 through 200, inclusive, Defendants.	)	

Deposition of JOHN MASON, taken on behalf of Plaintiff, at the offices of Bryan Cave, One Metropolitan Square 500 North Broadway in the City of St. Louis, State of Missouri, on the 21st day of October, 1992, before J. Bryan Jordan, certified shorthand reporter and notary public.

HARTOLDMON0041636

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Whereupon. . .

JOHN MASON,

of sound mind, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth in the case aforesaid, testified upon his oath as follows, to-wit:

EXAMINATION

QUESTIONS BY MS. WELCH:

Q. Could you please state your name for the record?

A. John Mason.

Q. Mr. Mason, my name is Dana Welch, and I represent Transwestern Pipeline Company in a litigation that's been initiated in Los Angeles.

Have you ever had your deposition taken before, Mr. Mason?

A. In this case?

Q. In any case.

A. Oh, yes. Yes.

Q. Could you tell me how many cases you've had your deposition taken in?

A. Two.

Q. What were the cases?

A. One was Agent Orange. I can't

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remember the exact case, and the other one was a previous PCB case that was about Outboard Marine, I think it's called, the correct name.

Q. You may be familiar with some of the rules for depositions. Your attorney might have gone over them with you, but just for the sake of getting us on common ground, I'd like to describe them for you. First of all, even though this is a fairly informal setting, you understand you are under oath. Is that correct?

A. Sure.

Q. So you know that your obligation is to tell the truth, just as it would be if you were in a court of law.

A. I do.

Q. And make sure that you tell me if you don't understand a question and I'll be happy to rephrase it.

A. I will.

Q. If you answer a question that I ask, I will assume that you understood it. Is that understood?

A. Correct.

Q. And it's extremely important for the sake of Mr. Court Reporter, here, that everything that you say, everything that I say, be audible, so that means that any nods of the head, or shakes of the head, "Uh-huh," "Huh-uh," will not be sufficient. It's important to answer with "No" or "Yes."

A. I understand.

Q. And it's also extremely important to allow me to finish my question and I will attempt to allow you to finish your answer so that the transcript can be clear when a person is speaking.

After the transcript is prepared, you will have a chance to review the transcript and make any corrections that you deem necessary but I should tell you that if you do make any corrections in that transcript, at the time of trial, I or another attorney from Transwestern may comment upon those changes. Is that understood?

A. It's understood.

Q. What is your current employment, Mr. Mason?

A. I am retired.

Q. When did you retire?

A. 1984. I retired from full-time employment at that time.

Q. And do I take it that to mean that you are currently working part-time?

A. No. No, not now, but I, from 1984, I was for another, till 1988.

Q. What were you from 1984 to 1988?

A. I did a little consulting work for Monsanto and also doing some work with the -- well, it's called the CIA, but it's the Chemical Industries Association in the United Kingdom, where I was Chairman of the Training Council.

Q. What was the nature of your consulting work for Monsanto?

A. It was mainly in governmental relations in the United Kingdom.

Q. From what position did you retire from in 1984?

A. I retired as Chairman of Monsanto United Kingdom.

Q. You were Chairman of the Board of Monsanto United Kingdom?

A. Yes.

Q. How long had you held that position?

A. Give me one second. 19 -- 1981.

Q. And you began working in the Marketing Department of Monsanto, Ltd., in London in 1952?

A. I joined Monsanto in 1949 at one of its chemical plants in Ruabon in North Wales, R-u-a-b-o-n, where I was working in the technical area in rubber chemicals.

Q. Your training was in techni -- in rubber chemicals?

A. Was in rubber chemistry, yes, technology. I came to Monsanto from the tire industry, originally.

Q. When did you join the Marketing Department in London?

A. I think it was 1951-'52.

Q. What products were you responsible for?

A. At that time, I was selling rubber chemicals exclusively.

Q. Did you go out on the road as a salesman in 1953 to 1954?

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A. Yes.

Q. Were you still selling rubber chemicals?

A. Yes.

Q. If I use the term "Aroclors," will you know what I'm referring to?

A. Yes.

Q. To your understanding, does it include, are Aroclors a trade name for PCBs?

A. Aroclors is a Monsanto trade name, and it includes PCBs, polychlorinated biphenyls.

Q. Were you selling PCBs or Aroclors when you went on the road as a salesman in '53 to '54?

A. No, not at that time, no.

Q. In 1954, did you return to England? And -- to work at Monsanto in England?

A. 1954? Sorry, I don't understand the question. I was in the United Kingdom.

Q. Were you traveling in the continent from '53 to '54?

A. I did some continental travel, yes, but I was still based in London.

Q. I see. Did at any time you work overseas in the Rubber Chemical Division?

A. Not in the Rubber Chemicals Division. I have worked overseas, of course.

Q. How long did you stay in the position of salesman for Monsanto Rubber Chemicals?

A. I'm afraid my recollection of exact dates is not too good. It's a long time ago, but I think I spent about two, two years as a salesman, I then became Marketing Manager for rubber chemicals in the United Kingdom but that included sales to several other countries, primarily European.

Q. At some point, did you become General Manager of Sales for Chemicals?

A. In the United Kingdom?

Q. Yes.

A. Yes, I did.

Q. And about what year was that?

A. Let's see when I started -- I should think that would be about 1959, something like that. I'm afraid I -- I'd like to make clear these dates are approximate. I can't recollect exactly when.

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Q. That's fine. Did the products you were responsible for at that point include Aroclors?

A. Yes.

Q. Was that the first time you had direct contact with the Product Group of Aroclors?

A. It was the first time I had any responsibility in that area, yes.

Q. Were you previously familiar with the Aroclor Product Group?

A. Oh, yes.

Q. How were you familiar with them?

A. Well, in general, when one works for a company, one becomes familiar with all products to a degree. I mean, it's, a responsibility everyone has. Obviously, I was working alongside people who had that specific responsibility.

Q. What were your responsibility as General Manager of Sales at that time?

A. Responsibility for selling those products on a profitable basis.

Q. Was that for all European markets?

A. It was for European markets,

including the United Kingdom, plus some other markets overseas.

Q. What markets overseas?

A. I think I ought to digress for one second and explain something to you. At that point in time, Monsanto was not a completely integrated world-wide organization. Monsanto, which was Monsanto Chemicals, Ltd., at that time in the United Kingdom, had its own export business and export sales. Monsanto Company tended in those days to be much more a domestic oriented company than they became later. For example, we used to sell in Latin America, we used to sell in Canada and in the Far East.

Q. Out of the United Kingdom?

A. Yes. Product manufactured in the United Kingdom.

Q. Were Aroclors at that time manufactured at the Newport plant in Wales?

A. They were manufactured at the Newport plant in Wales from, I think the mid 1950's, and again, I stand to be corrected on that date.

Q. Were they manufactured anywhere in

the United Kingdom before that date?

A. No.

Q. So they were solely manufactured, as far as you know, in the United States before that date?

A. And in continental Europe, not by Monsanto.

Q. My reference is just to Monsanto's production.

A. Right, yeah.

Q. At the time you assumed the position of General Manager of Sales, were you familiar with the properties of Aroclors?

A. Yes.

Q. Were you familiar --

A. You are referring to the use properties of Aroclors? That is the way I understood the question.

Q. The inherent property of, inherent properties of Aroclors.

A. Yes.

Q. Were you familiar with the fact that Aroclors were flame resistant?

A. Oh, certainly.

Q. Were you familiar with the fact

that Aroclors were stable?

A. Yes.

Q. Did you assume by the fact that they were stable that Aroclors would not be biodegradable?

A. Yes, I'd have to say yes.

Q. At some point, did you move from the position of General Manager of Sales to Director of Marketing for Monsanto's operations in Europe?

A. Well, I moved from London and became Director of Marketing for the whole of Europe, operating out of Brussels.

Q. Was this in approximately 1966?

A. Approximately. I think it was something before that, '65-'66, I think.

Q. How did your job responsibilities change at that point?

A. I had responsibility for marketing of all Monsanto products excluding textiles, throughout the European area, irrespective of where they were manufactured. That could include product manufactured in the United States, in the United Kingdom, in Belgium, or even in Canada, or wherever they happened to

be manufactured.

Q. Did you at some point become the General Manager of the Organic Division in St. Louis?

A. No, I never became General Manager. I was Assistant General Manager.

Q. And what year was that?

A. That was in -- well, in 1969, I came across to the United States.

Q. Do you recall what month you came?

A. I came here, I think, in June. That's when I moved my family here. Prior to that, I had been commuting back and to for two or three months, something of that order.

Q. Did you actually assume your job responsibilities, say, mid 1969, then?

A. Mid 1969 would be a fair comment, yes.

Q. Did the Organic Division include Aroclor products at that time?

A. Yes, it did.

Q. Did it -- Was it the only division that included Aroclor products?

A. Yes.

Q. Was Monsanto divided into the

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Inorganic Division and the Organic Division at that point?

A. Organic Division, Inorganic Division, Plastics Division, Agriculturals Division, and also there was a New Enterprise Division.

Q. But as far as the sales develop-- and development of Aroclors, that would have been the responsibility of the Organic Division?

A. Most definitely, yes.

Q. Was the Organic Division, in terms of Aroclor sales, was it broken down when you came in 1969 into Functional Fluids and Plasticizers?

A. Yes. The overall responsibility for Aroclors was in the Functional Fluids Group, but certain of those products were marketed as plasticizers by the Plasticizers Business Group.

Q. Did the Plasticizers Business Group include products other than Aroclors?

A. Oh, yes.

Q. But Functional Fluids was the overall umbrella group that included all

Aroclors?

A. Yes.

Q. So you had management responsibility for Functional Fluids, then?

A. Yes, I did.

Q. What were your job responsibilities as Assistant General Manager?

A. My responsibilities included the overall management of Functional Fluids Group, Rubber Chemicals Group, Paper Chemicals Group, and I also had an overall administrative management responsibility for research and marketing.

Q. Of the products --

A. Across the division.

Q. Across the division, Organic Division?

A. Yes.

Q. When you say overall management, does that include the marketing of the various products you were responsible for?

A. Oh, yes, within those groups, but essentially, there were two assistant general managers. Our backgrounds were different.

Mine was marketing, the other guy, Charlie Smith, his was manufacturing, so he tended to have an overall umbrella responsibility for manufacturing, and I had the overall umbrella responsibility for marketing, but a direct responsibility of the groups I've mentioned.

Q. Did you have any other responsibilities other than marketing for -- let's focus in on the Functional Fluids Group?

A. Oh, yes, profitability.

Q. And what did that entail?

A. That included the manufacture and marketing of those products on a profitable basis.

Q. So it was ultimately your responsibility to make sure that the products that were produced were profitable for Monsanto?

A. Yes.

Q. To whom did you report?

A. I reported to Howard Minckler, who was General Manager of Organic Division at that time.

Q. If I use the term "Corporate

Development Committee" interchangeably with "Corporate Management Committee," will you understand what it is I mean?

A. I'll understand that Corporate Development Committee later changed to be the Corporate Management Committee.

Q. Was Mr. Minckler on the Corporate Development Committee?

A. Yes, he was.

Q. You were not on the Corporate Development Committee?

A. No.

Q. So your direct report was to him?

A. That's correct.

Q. Did Mr. Bergen and Mr. Springgate report directly to you?

A. No, Mr. Bergen did. He was Functional Products Business Director. Mr. Springgate was Plasticizers Business Director. He reported to Charlie Smith, who had the other product groups in the division.

Q. Was there anyone else from the Functional Products Group that was a direct report to you at that time?

A. No, not at that time.

Q. If I use the name of a product Turbinol 153, will you know what I'm referring to?

A. Yes.

Q. Was that a product that was within the Functional Fluids Product Group?

A. Yes.

Q. If I use the term MCS 153, will you know what I'm referring to?

A. Yes, it was a precursor to Turbinol 153.

Q. And you were familiar at that time with those products?

A. "At that time" is --

Q. 1969, mid 1969?

A. Mid 1969, I probably was not familiar, too familiar with that particular product at that time. I was in overall familiarity with Aroclors, but not specifically the product you mentioned.

Q. Through the course of your responsibilities as Assistant General Manager, you became familiar with those products?

A. Yes, I became familiar with them.

Q. How long did you stay as Assistant General Manager?

A. Until 19, the end of 1971, beginning of 1972. I left the United States at the beginning of 1972.

Q. What did you do at that point?

A. I went back to Brussels, where I became director of Monsanto Industrial Chemicals Company. I've slightly misled you. I said -- I think you asked me the question "Did you retain that responsibility" -- can I go, can I go back for one second?

Q. Of course.

A. I was Assistant General Manager of Organic Division until the corporation reorganized, and I think it was September 1971 when Organic Division and Inorganic Division were put together to make Monsanto Industrial Chemical Company.

I then became Director of Functional Products and Specialty Chemicals.

I still had total responsibility for functional products and for the Aroclors.

Q. Did your job responsibilities change at all?

A. They did because they included another group and I lost some rubber chemicals, for example, I was no longer responsible for and my boss chainged (sic), too, changed.

Q. Who did your boss become at that point?

A. Cunningham. C. P. Cunningham, who was Managing Director of Monsanto Industrial Chemicals.

Q. That was in September of 1971?

A. Yeah. (Nods head in affirmative manner).

Q. But you still had responsiblity for the Functional Fluids?

A. I still had, yeah.

Q. At any time during your tenure in either of these two jobs, and so I'm speaking of from mid 1969 to the beginning of 1972, did Mr. Papageorge report to you?

A. He never reported to me, he reported to Howard Bergen, who reported to me, but I obviously had a lot to do with Mr. Papageorge.

Q. Why do you say you obviously had a

lot to do with --

A. Well, I had overall responsibility for that Business Group and therefore, the Aroclors, and Mr. Papageorge, of course, was appointed specifically as environment manager for that group.

Q. For the Functional Fluids?

A. Yeah.

Q. So you left the United States the beginning of 1972, you went back to Brussels.

A. (Nods head in affirmative manner).

Q. Could you briefly recap what you did between 1972 and the time that you became chairman of the board in 1982?

A. When I went back to Brussels, I became Director of Monsanto Industrial Chemical Company in Europe, reporting still to Mr. Cunningham. I had overall responsibility for the profitability of that operation, including the manufacturing in Europe, and also the marketing of products wherever they came from in the European area. I stayed there till 19 -- well, I had three different bosses. Mr. Cu-- I, in 19 -- wait a minute; let me think of this, now. 1979 --

about 1975, my boss changed and became Mr. Bible, Mr. Howard Bible. About 1977, it became Mr. Jack Fitzgerald, who is now deceased. In 1978, I moved to Spain, where I took over as president of ~~Icecanbell~~ AISCONSEL (~~Phonetic~~), which was a joint operation of Monsanto and a number of Spanish banks. I worked there until I returned to the United Kingdom in 1981.

Q. At which point you became chairman of the board of Monsanto Ltd.?

A. Yes, I became Assistant Chairman, Deputy Chairman for about, a period of about two months. The other incumbent was retiring.

Q. Now, when you came to Monsanto United States in mid 1969, did you assume the responsibility or was the Business Group focused on the issue of withdrawing the Aroclor products from the market?

A. This issue was just developing at that time, and there were some broad plans being put together as to the, what action should be taken in view of the fact that PCBs, polychlorinated biphenyls.

Incidentally, that is an entirely new term, which until then was unknown to any of us. It was created by the press, PCBs. They are polychlorinated biphenyls, but --

Q. You are familiar with the term "chlorinated biphenyls"?

A. I was, but not PCBs, which was a term created by the press.

There were some preliminary plans being put together on the basis that these products were being found, some of these products were being found in the environment, and in fact, of course, there had been an initial report from some Swedish scientists that they had been found in birds.

Q. Are you referring to the reports of, from Sorjen Jensen and Widmark?

A. Yes.

Q. When did you first hear of those reports?

A. I think it was 1968 or late 1967. It was before I left Europe to come to the United States.

Q. How did you hear?

A. We had first of all, I think,

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through the press.

Q. The European press?

A. Yeah.

Q. Do you recall what you heard?

A. That some products were being found in birds, primarily seabirds, in addition to DDT, which was being found there, and it was thought that these products were polychlorinated biphenyls.

Q. Did you personally do anything as the result of these reports?

A. I personally didn't do anything but we had one of the Product Group in Europe, go up with our agents in Sweden at that time to meet with some of the scientists concerned and discuss it and try and understand exactly what was happening. That information was reported back to the United States.

Q. Did you participate in any meetings in which reports were given of this visit to Sweden?

A. No, I did not.

Q. Did you hear reports of the visit to Sweden at the time?

A. Yes, I think so.

Q. Do you recall what you heard?

A. No, not in any great detail. I mean, mainly the fact I think that there wasn't -- yes, it was possible, it was possible that this could have occurred, that there were some PCBs, polychlorinated biphenyls, were being found in birds, in very, very small quantities. I think it's fair to say that I, amongst other people, was, I wouldn't say disbelieving at the time but I was more than surprised.

Q. Why is that?

A. I have no reason to expect that polychlorinated biphenyls should be sort of floating around somewhere up in northern Europe or close to the Arctic. As far as I was concerned, the majority of our products sold were sold for closed system operations, and I could see no logical reason why they should be picked up by birds.

Q. When you use the term "closed system operations," what are you referring to?

A. I'm referring primarily to things

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like transformers, where they are used as coolants, capacitors, and also at that time we were referring to things like hydraulic systems and heat transfer systems.

Q. What's your general definition of a closed system, or, if you have one?

A. A perfect definition, a perfect definition would be a system where the loop is completely closed where the material stays contained, and never escapes into the environment or elsewhere.

Q. Earlier you said that you were surprised, although not disbelieving. Can you describe for me, if possible, the evolution of your personal beliefs in terms of the findings in Sweden, from when you first heard about it at the end of 1967 to when you traveled to the United States in 1969?

A. I don't think that my feelings about it or understanding of it evolved significantly, because there was very little else which came out in Europe at the time which supported those findings or amplified that scientific work. I think it was not

until I came to the United States when I began to see other reports of other scientists, that I began to get a bigger, broader understanding of possibly what was happening, although even then, I was still extremely surprised at some of the reports that were coming back.

Q. Are you referring to reports from Dr. Risebrough?

A. I certainly am, amongst others, yes.

Q. What do you recall of those reports?

A. I recall of those reports that obviously, we were dealing with a scientist who understood the subject he was dealing with but at the same time I felt he was emotional and I felt he was a person that was liable to exaggeration. You asked my personal opinion, that was my personal opinion.

Q. Are you referring to any other reports that you heard at the time?

A. I can't specifically recall any other reports at that time. No, I don't

think I can, at that time, when I first came to the States.

Q. Now, referring back to the Corporate Management Committee, was it the responsibility, to your understanding, of the Corporate Management Committee to make decisions about the ultimate withdrawal of the polychlorinated biphenyls?

A. No. That was a decision of the president, in my book. The Corporate Management Committee or Corporate Development Committee as it then was, in my opinion, was to advise the president on such a decision, if it was necessary to take that type of decision.

Q. The ultimate decision was up to the president?

A. In my opinion, yes.

Q. And the president was a member of the Corporate Management Committee?

A. Yes. I think he acted as chairman of it at the time. I stand to be corrected on that, but I think so.

Q. And the president at this time from mid 1969 to 1971 was who?

A. Ed Bach. Not un-- until, until I left, no. Before I left, in September, when the corporation was reorganized that I mentioned previously, it was John Hanley came into Monsanto to join up.

Q. September 1971?

A. I think he came in August, in July, August. I cannot be exact on the date, but the reorganization was his.

Q. In terms of the decisions about the withdrawal for PCBs resting with the president, did that include the timetable for the withdrawal of PCBs?

A. Well, first of all, I think we're jumping ahead when we say that the decision for the withdrawal of PCBs. I think they, they, at the time we're talking about, which is mid 1969 and into '70, we were facing up to a problem which we were trying first of all, to understand, and then trying to develop plans which would enable us to deal with this problem. Firstly, to protect a business; secondly, to ensure that they were taking a responsible attitude vis-a-vis the United States, the people in the United

States, and I don't think anyone was looking at a decision at that time to withdraw completely from PCBs. The CMC on the advice and the information we were giving to them and the recommendations, would recommend to the president that he took appropriate action, i.e., operated the plan that we were laying out. But at that time, we were not looking into the decision of getting out of polychlorinated biphenyls like that.

Q. During the entire period that you were in St. Louis, do you recall the decision was made to withdraw from the PCB business?

A. No.

Q. Do you recall a decision to phase out the PCB business during that period?

A. Oh, yes.

Q. Was it up to the president, with the advice of the Corporate Management Committee, to make decisions about the specific timing of the phasing out of PCB products?

A. It would be up to, first of all, the division, or later the industrial chemicals company, to recommend what should

be done in that area, and it would be up to the president to finally decide and propose that, if necessary, to the board of directors of the company.

Q. During the period of time that you were in St. Louis from 1969 to the beginning of 1972 did you make presentations to the Corporate Management Committee?

A. Yes, I did.

Q. Did you also help others make presentations?

A. Yes, I did.

Q. Help prepare others?

A. Yes, surely.

Q. Who besides yourself or I should rephrase that. Did you give presentations on the situation with polychlorinated biphenyls to the Corporate Management Committee during this time?

A. Yes, I did.

Q. Who others besides you gave presentations on this issue?

A. The first one I recall was just when I moved to St. Louis in mid 1969. At that time, a presentation was made by Howard

Bergen, who is unfortunately deceased, he was the business director of the Functional Products Group, and Jim Springgate, with Howard Minckler as General Manager at that time. He had no assistant general managers until we came in. Following that, the presentations, or a majority of them certainly were given by myself with Howard Minckler present.

Q. Do you recall when in 1969 that presentation was given?

A. Oh, it would be several. I --

Q. That you were referring to --

A. Oh, yes, I think --

Q. -- initially that Howard Bergen --

A. Yes, I think it would be -- I think it was probably June. I think it was the time when I was still commuting back and to from Europe and sort of between jobs almost and I think that was my first real introduction to the, the problem.

Q. Do you recall what was said at that presentation?

A. No, I can't recall in detail what was said. I recall that the, there was the

beginning of the development of a plan, that we should try to ensure that polychlorinated biphenyls were sold only to what we believed at the time would be in closed systems. In the case of other pro -- other uses, where we could not guarantee that the product would be kept in a closed system, we should be looking at phasing out and providing alternate products. Primarily, today I'm talking about the plasticizer end of the business.

Q. And was that because of the concern that the polychlorinated biphenyls were being identified in the environment?

A. I think so, yes.

I would like to make absolutely clear at this time, if I may, that we were facing an entirely new problem. This was the first time, I think, that the corporation, or the chemical industry in the United States had been faced with this type of problem, and we were learning as we went along, and hence, some of our actions maybe in the very early stages were not as fast as we would have liked, but we were trying to understand what the problem was, trying to understand what

had to be done. At the same time, of course, we had responsibility as employees of a company, to continue with a profitable business and to ensure that the company took the proper action and maintained its reputation.

Q. Were you the member of any committees that were formed to address the PCB problem?

A. Not a member of any committees, no.

Q. Have you ever heard the term or did you hear the term in mid 1969 when you arrived, the ad hoc PCB committee?

A. Probably, yes.

Q. Do you know what the function of that committee was?

A. The function of that committee would be, I assume, although I don't know in detail, to face up to the problem which we've just been talking about. And I would expect it would contain, certainly, Howard Bergen and Jim Springgate, and other people involved in that business.

MS. WELCH: I'd like to have the

following document marked for identification as Plaintiff's Exhibit 1037.

(Plaintiff's Deposition Exhibit 1037 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1037 is a multipage document marked with the identifying numbers of TRAN 016442 to TRAN 016448, and it starts with the title, "1, Evidence of Problem."

Mr. Mason, I would first like to ask you to take some time to review this document.

A. I think I'd like to. I can't recall.

Q. Yes.

(Witness peruses said document.)

A. Have we got a date on this document?

BY MS. WELCH:

Q. I would ask you to turn back to the last page, page 7, and refer to the first line under the headline, which says, "As of this date, October 1969." Would you agree

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with me that this document reflects a document that was prepared sometime in October 1969?

A. I would think it's likely.

Q. Do you recognize this document?

A. No. Not as such, I don't. I recognize a lot of the information which is in there, but I don't recognize the document.

Q. When you say you recognize a lot of the information, is that because of your general knowledge, the general knowledge you obtained during the period that you were at first Monsanto St. Louis and then --

A. Yes.

Q. So I take it from that that you were not the author of this document?

A. I certainly am not. It's one I have no claim on this document.

Q. If this document were prepared by a PCB committee, say, the PCB ad hoc committee, would you have during that period, have seen the document?

MR. PREUSS: Objection; no foundation.

You may answer.

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A. I find that difficult to answer. I would say this: It does not appear to me to be a document prepared by a committee.

BY MS. WELCH:

Q. Please turn to page 2, and I'd like to refer you to the sentence which says, "After investigation, not complete in all cases, the committee has concluded"?

A. Mm-hmm.

Q. Do you know what committee is being referred to here?

A. No, I'm not certain of this at all.

Q. Turning again to page 2, were you aware as of October 1969 that a Monsanto committee had determined that the identification of polychlorinated biphenyls as a contaminant in the environment was certain?

MR. PREUSS: Objection, no foundation.

A. Could you repeat that question, please?

BY MS. WELCH:

Q. I'm referring to the first

paragraph, here, which says, paragraph 1, that "The identification of the PCB as contaminants of the environment is certain." My question to you was, were you aware in October 1969 that a Monsanto committee had determined that identification of PCBs as contaminants of the environment is certain?

A. No.

Q. Did you ever become aware that Monsanto, anybody at Monsanto had determined that identification of PCBs as contaminants of the environment was certain?

A. Oh, yes, certainly.

Q. Can you put a date on that?

A. No, I don't think I can. I think it was one of these things that you become aware of and the more information that you collect, you arrive at a point where yes, you'll say it is certainly contaminating the environment.

Q. Turning to the third paragraph on that page, were you aware that a committee of Monsanto again in October 1969 had determined that the possibility of natural origin of PCBs is so remote that it was not a

satisfactory explanation of their presence?

A. I was not --

MR. PREUSS: Objection; no foundation.

A. (Continuing) I was not aware that the committee had arrived at that decision or had arrived at that conclusion.

BY MS. WELCH:

Q. How about any individuals within Monsanto having arrived at that conclusion?

A. Yes, I would expect so. I would think in talking to some of our technical people, I think that they were of that opinion.

Q. Which technical people are you referring to?

A. I can't remember specifically by name.

Q. Do you recall a Mr., Dr. Richard?

A. Yes, surely.

Q. Do you know if that was his conclusion?

MR. PREUSS: Objection, speculation.

BY MS. WELCH:

Q. Based on your personal knowledge.

A. I can't answer that question.

Q. Referring back to the first paragraph, "The identification of the PCBs as contaminants of the environment is certain," do you know if, in October 1969, there were certain individuals within Monsanto who had come to that conclusion?

A. No. I'm not aware of that, to the best of my recollection.

Q. Turning to the fourth paragraph on that page, were you aware in October 1969 that a committee of Monsanto had determined that there may be significant toxic effects on some species of living organisms?

MR. PREUSS: Objection, no foundation.

A. I'm quite certain that the committee wouldn't arrive at that sort of -- that is a decision which an expert has to arrive at, not a committee.

BY MS. WELCH:

Q. Do you know any individuals at Monsanto who had that opinion as of October 1969?

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A. I don't have any specific individuals that had that opinion.

Q. How about generally?

A. Yes, generally, I think it would be a subject which would be discussed but you are trying to pin me down to say very specifically that, and I can't do that.

Q. When you say that it was a subject that was discussed, are you referring to any discussions that you recall?

A. Not that I specifically recall but it's obviously a subject that I would discuss with someone like Elmer Wheeler, who was concerned in this area.

Q. Do you know if the opinion expressed in Paragraph 4 was Mr. Wheeler's opinion at that time?

A. I do not know that. I can't say.

Q. Turning to the next page, please turn your attention to the paragraph, which states "Toxicological Aspects," first paragraph is "Man."

Were you aware in October 1969 that a Monsanto committee had evaluated data and determined that PCBs may be moderately

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toxic to man?

MR. PREUSS: Objection, no foundation.

A. I certainly was not aware that a committee had evaluated that. That, again, is in the evaluation of an expert. You are confusing me with this insistence on a committee, because I don't think a committee would -- the committee may have had a member who reported this.

BY MS. WELCH:

Q. Well, Mr. Mason, I'm referring to the sentence in the document which states, "After investigation not complete in all cases, the committee has concluded." I'm simply referring to the document.

A. I see, I know what you are -- but I'm finding this confusing because this is an expert's decision, or an expert's statement.

Q. Did you consider Mr. Wheeler an expert?

A. I certainly did, yes.

Q. Are you aware that Mr. Wheeler was a member of the ad hoc PCB committee?

A. I would assume he was. As I say,

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I can't remember, but I would assume he was.

Q. Would you say that his expertise pertained to areas of toxicity, both to man and animals?

A. Yes.

Q. Do you know if any individuals at Monsanto at this time in October 1969 were of the opinion that PCBs might be moderately toxic to man?

A. I would think yes, the word "moderately toxic" is a very woolly statement. I think one has to recognize that many chemicals can be considered as moderately toxic if improperly used.

Q. Were you aware in October 1969 that there were cases of workmen exposed to PCBs that had developed chloracne?

A. I have heard of such cases, yes.

Q. When did you hear of such cases?

A. I can't, I cannot put a date on that.

Q. Was it prior to coming to St. Louis in 1969?

A. No, I don't think it was. I think it must have been after coming to St. Louis.

Q. Do you believe that it was about the time that you came to St. Louis in mid 1969?

A. I would think it is possible.

Q. Do you know if you heard of these cases from Mr. Wheeler?

A. No, I would expect if I did hear of them that it would be from Mr. Wheeler, or again, it could be in the manufacturing area if such cases were referring to people who were involved in the manufacture of the products.

Q. Were you aware at the time, in this time, October 1969, that there were cases of workmen exposed to PCBs who had suffered more serious involvement of the kidneys? Again referring to the first paragraph under "Man."

MR. PREUSS: Objection, no foundation.

A. No, I was not aware of that.

BY MS. WELCH:

Q. Were you aware that there were cases of workmen who had been exposed to PCBs who had more serious involvement with the

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liver, again referring to the first paragraph?

A. No.

Q. Referring to Paragraph C under "Fish" in the second full paragraph, were you aware at the time in October 1969 of a concentrating of PCBs propensity of fish?

A. Yes, I think I had seen articles or references to papers concerning this.

Q. Do you recall what those articles were?

A. No, I do not specifically.

Q. What do you recall about that subject area?

A. Merely that, the statement that you have made. Nothing in any greater detail.

Q. Have you heard of the term "bioaccumulation"?

A. Yes.

Q. And is that what you are referring to?

A. Yes. A lot of that terminology of course, also referred to DDTs that came from that area.

Q. But you had heard of bioaccumulation when referring to PCBs?

A. Yes, I have.

Q. During this time period October 1969?

A. I think. It is a long time ago, and I can find it very difficult to be specific on these dates.

Q. All right turning to the next page under "Toxicological Aspects," the first paragraph refers to work done by the Fish & Wildlife Laboratories of the U.S. Department of the Interior at Patuxant, Maryland. Were you aware of that work that was done with bald eagles at Patuxant, Maryland, at that time?

A. Excuse me. Give me one minute to read this.

Q. Of course.

(Witness peruses said document.)

A. I recall being advised of this problem or this potential problem, but I cannot recall seeing the paper, which here it says, "Will be published sometime in the

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future after October 1969."

Q. Do you recall who advised you of a potential problem?

A. I would expect, again, it would be Elmer Wheeler.

Q. Did he have reporting relationship to you?

A. No.

Q. So was --

A. Sorry. No.

Q. Was this through informal contact?

A. (Nods head in affirmative manner.) Oh, yes.

Q. To the best of your recollection, I do realize this was a long time ago, was this in approximately 1969?

A. It would be late 1969.

Q. Turning to the paragraph under "Birds," if you would like to take a minute to review that again.

A. Mm-hmm, yes.

(Witness peruses said document.)

A. Yeah.

Q. First, before we discuss that, I

have a note from our worthy court reporter that we have to allow each other to finish questions and answers so I can --

A. Excuse me.

Q. He has a very hard job, so if we can help him along.

Were you aware in 1969 in October that the effects on birds appear to be due to an upset of the liver enzyme metabolism as described in this paragraph?

A. No, I think at that time, whilst I had heard of the phenomenon of so-called eggshell thinning, I don't think I understood that it was due to an upset of the enzyme metabolism of the liver. It's a highly technical area and I'm not an expert in that area, by any means, but I had heard of eggshell thinning, yes.

Q. So your area of expertise is, is in rubber chemistry --

A. My area of expertise in this particular case was in management. My job was to manage, to try and take a balanced view of the experts' opinions.

Q. Had you, subsequent to October

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1969, heard that the effect on PCBs was on the liver enzyme metabolism?

A. No.

Q. So this is a new concept to you?

A. I think so, yes.

Q. Referring to the second paragraph of the section on birds, did you know that Industrial Bio-Test was a test -- was a contracted testing laboratory for Monsanto at this time?

A. Yes.

Q. Were you aware in 1969 of their tests on the diet of White Leghorn chickens?

A. I was aware that work was going on in this area and again, it was Elmer Wheeler who advised me of this. As I understand it, he was responsible for this.

Q. Did you know that they had determined that feeding a hundred parts per million of Aroclors 1242, 54 and 60 in the diet caused reduction in the eggshell thickness?

A. No, I was --

MR. PREUSS: Objection; no foundation.

A. (Continuing) No, I was not aware at that time. I'm quite certain of that. That was something that came later, certainly, in my education in this area.

BY MS. WELCH:

Q. Can you pin down any date that you might have become aware?

A. No, I could not pin down a date.

Q. Turning to the paragraph under "Shrimp" --

A. Yes.

Q. -- please take a few minutes to read that.

(Witness peruses said document.)

A. Yes.

Q. Were you aware in October 1969 about the loss of Aroclor 1254 in the Escambia River at Pensacola, Florida?

A. Yes, I was advised of this.

Q. Who advised you?

A. I would think, probably at that time, it would be either Bill Richard or Howard Bergen.

Q. Were you aware that the

contamination of the river occurred due to a loss of approximately one to three gallons a day?

A. I could not answer that question. I don't recollect the details.

Q. Speaking of the details, were you aware that the loss came from a leak in an air compressor?

A. So I was told.

Q. Were you aware that there had been a finding of 40 to 45 parts per billion in the Escambia River?

A. I was aware that polychlorinated biphenyls had been found there. I cannot recall what the quantities were.

Q. Were you aware of the work that was done in Pensacola by the Gulf Breeze laboratories of the Bureau of Commercial Fisheries which was a part of the U.S. Department of Interior that reported that 40 parts per billion killed baby shrimp in 96 hours?

A. I recall being advised of that, but again, I cannot be specific on the date.

Q. Do you know if it was sometime in

1969?

A. I should think it would be late 1969.

Q. Would this be in your general area of responsibility because it was part of Functional Fluids, the problem in Pensacola?

A. The what.

Q. The problem in Pensacola with leakage.

A. No. I -- well, let me -- excuse me, let me put it this way. That was a manufacturing problem. I would be -- it would be my responsibility to ensure that Manufacturing were taking the course of action to correct that situation, which I'm quite certain was done.

Q. Is there any other reason that you know of that you were being kept abreast of the developments in Pensacola?

A. Well, on the basis that Functional Fluids had the overall responsibility for the polychlorinated biphenyls, and if such reports were coming in from various agencies or Department of the Interior, obviously, we had to take action and be advised of it,

because it was part of the problem.

Q. Turning to page 6 --

A. 6?

Q. 3-D, and please take a moment to review that.

A. Mm-hmm.

(Witness peruses said document.)

A. I find it quite difficult to understand that paragraph at the moment.

Q. Why do you say that?

A. I just don't quite understand what it's saying.

Q. Can you refer me to what you don't understand?

A. "The lack of data up to now indicating that lower chlorinated PCBs are interfering in the pesticide residue analysis in spite of the equivalent usage of some of them."

Q. Well, let me ask you a specific question about it as opposed to general.

A. Sure.

Q. Were you aware that a Monsanto committee had reported undoubted losses of,

to the environment, of Aroclors at this time in October 1969?

A. That, will you repeat the question, please?

THE COURT REPORTER:

"Q. Were you aware that a Monsanto committee had reported undoubted losses to the environment, of Aroclors at this time in October 1969?"

MR. PREUSS: Well, I'm going to object on no foundation, argumentative, and uncertain, taking a phrase out of context in a sentence which he has just told you he doesn't understand.

BY MS. WELCH:

Q. To the best of your ability, if you could answer my question.

A. The last question you put to me?

Q. Yes.

A. I was not aware that the committee had reported this. You are confusing me with this constant reference to committee. Certainly, Monsanto was aware that there had been some losses of polychlorinated biphenyl into the environment. For example, we just

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covered the point at Pensacola.

Q. As you sit here today, do you recall any other specific instances of losses to the environment at this time?

A. Specific?

Q. Yes.

A. No, I can't be specific.

Q. How about generally?

A. Certainly, over the period of time that I was in the United States, there were cases where polychlorinated biphenyls were lost to the environment.

Q. Do you recall any instances?

A. It's a little difficult for me to do it off the top of my head. I can probably, with documentation, I could probably answer some of those questions, but I find it very difficult to generalize.

Q. Turning to the next page, which is the last page, and please review the first paragraph.

A. Read?

Q. The first paragraph of the last page.

(Witness peruses said

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document.)

A. Yeah.

Q. Are you aware of any individuals within Monsanto who reported that "The evidence proving the persistence of 1254 and 1260 in the environment and their universal presence as residues" is beyond question at this time, in 1969?

A. I cannot recall any specific person. I'm quite sure that a number of people had the opinion such that there was evidence to the polychlorinated biphenyls were leaking into the environment and it was a problem, there were persistent chemicals and there was a problem, yes. My own opinion was that at that time. I'm not denying it for one moment.

Q. In October of 1969 that was your opinion?

A. I would think again in October, certainly in late 1969, yes.

Q. So it was your opinion at that time, or would you have agreed with the statement that's made here in this document in the third paragraph, "It would be

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impossible to deny the presence and persistence of Aroclors 1254 and 1260 at least"?

A. Yes. That's correct.

Q. Okay, after going through this document, do you recall hearing any part of this document during a Corporate Management Committee presentation in October 1969?

A. No, not this particular document. Obviously, some of the material in here, certainly would have been discussed at various Corporate Management or Corporate Development Committee meetings, yes, but not specifically in this document. I just do not recall it. That's what I'm saying.

MS. WELCH: All right, why don't we take a break.

(Recess)

MS. WELCH: Are you ready to resume?

THE WITNESS: Yes.

MS. WELCH: I'd like to mark for identification as Plaintiff's Exhibit 1038 the following document.

(Plaintiff's Deposition

Exhibit 1038 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1038 is a three-page document with the identifying stamp of TRAN 058372 to TRAN 058374 and it's entitled "The Monsanto Organic Chemicals Division Public Relations Report, October 1969." And please take a few minutes to read this document, Mr. Mason.

A. You want me to read the whole document, or just the part --

Q. I'm must planning to --

A. -- pertaining to --

Q. I'm just planning to ask you questions --

A. Certainly.

Q. -- about the paragraphs that refer to PCBs which are the second and third paragraphs.

A. Okay.

(Witness peruses said document.)

A. Yes.

Q. Referring to the paragraph on PCBs

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in the first page, there is a reference to the PCB committee and task force members. Do you know what PCB committee existed in October 1969?

A. The committee referred to previously, the ad hoc committee.

Q. Do you know what the task force that's existed in --

A. I would assume that is the same thing. I would assume it's merely described in a different, different way by a publication -- public relations man putting out a report.

Q. So you are not aware of two PCB --

A. No, I'm not aware. I think that's the same group.

Q. For the court reporter, we have to remember to keep our lines separate.

A. Sorry.

Q. Turning to the next page, did you become aware in around October 1969 of the bird kill in the Irish Sea?

A. A reported --

MR. PREUSS: Let me object; no foundation.

A. A reported bird kill, if my memory serves me correctly, in the longer term, was found to be an erroneous report.

Q. By longer term, you mean sometime later?

A. Yes.

Q. And do you know what was found to be erroneous about it?

A. I think the fact that they report on the implication that the PCBs were the cause of the birds' death was incorrect.

Q. Do you know what caused the birds' death.

A. I believe, starvation, I believe, but I could not be specific, but I seem to recall that that was the case.

Q. How did you become aware of, at least, the reported bird kill?

MR. PREUSS: You mean other than being copied on the memo?

MS. WELCH: Well, if he recalls any --

A. I would assume a press cutting, it had been reported in a journal, newspaper or something of that sort but I can't be

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specific.

MS. WELCH: Please mark for identification the following document as Plaintiff's Exhibit 1039.

(Plaintiff's Deposition Exhibit 1039 marked for identification.)

BY MS. WELCH:

Q. Plaintiff's Exhibit 1039 is entitled, "Minutes of Meeting of the Corporate Development Committee" dated November 17th, 1969, with the identifying stamp of TRAN 023298, to TRAN 023301, and I note here that Mr. Mason is noted as present --

A. Yeah.

Q. -- at least for the section that's included in this document. And please take a few minutes to review this document.

(Witness peruses said document.)

A. Yes.

Q. Mr. Mason, do you recall seeing this document before?

A. Yes.

Q. Or some semblance of it, in any

event?

A. Yes, yeah.

Q. Could you identify the document for me?

A. The document is the minutes of -- an extract from the minutes of a meeting of the Corporate Development Committee on November the 17th, 1969.

Q. Now, when you or if you appeared at -- to make a presentation to the Corporate Development Committee, did you receive minutes of those portions of the Corporate Management Committee meeting that you were at?

A. The minutes or the extract from the minutes would be sent, in this particular case, to the General Manager of the Organic Division who was also a member, and he, of course, would disseminate that information to the people who were present. That was the normal procedure.

Q. Do you recall this meeting on November 17th --

A. Yes, I do.

Q. -- 1969?

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A. Mm-hmm.

Q. Once again, we have to wait.

A. Sorry.

Q. Just --

A. Okay.

Q. It's perfectly understandable. It's not normal conversation, but he has a hard time.

A. (Nods head in affirmative manner).

Q. Okay, I'd like to turn to the last page of the document. The first point that's established, or that's stated here, is that there is a recommendation that there be an appointment of a project manager. Was Mr. Papageorge the product manager who was appointed?

A. He was.

Q. And do you know if he was appointed subsequent to this meeting?

A. Yes, subsequent to the meeting, and a very wise decision it was, too.

Q. Why do you say that?

A. Because he was extremely efficient in this area in my opinion, an outstanding job in a very difficult situation.

Q. Okay, turning to point 10, which states, "Determine the feasibility and the cost of eliminating 5/6" -- I assume that's -- I'm not a chemist, but I assume that's chlorinated biphenyls --

A. Yes.

Q. -- in Aroclors; am I right?

A. Yes.

Q. "-- in Aroclors 1242 and 1248." Were you aware at this time that Aroclor 1242 contained some percentage of the 5 and 6-chlorinated biphenyls?

A. I was, yes.

Q. When were you first aware of that?

A. I think I would have always been aware of it. The Aroclor products and the Aroclor range were not perfectly clean cut chemicals. They couldn't be. They tended to have a slight flow across a range of different degrees of chlorination. Significant factor, of course, was the only ones being found in the environment were 1254 and 60, which are the two referred to, the 5 and 6 chlorination products.

Q. At this time, the ones that were

being found were identified as 1254 and 1260 --

A. Yes.

Q. -- is that what you stated?

A. Yes.

Q. Do you recall the decision that was made at this meeting that the Division should withdraw all products containing 1254 and 1260?

MR. PREUSS: Let me just object on the basis of no foundation, given his testimony as to what the function of the CMC was to do in terms of advice versus decisions.

A. A recommendation made by the people making the presentation was that once you develop and implement -- excuse me, introduce to the market replacement products for those two, 1254 and 1260, on the basis that they were materials being found in the environment.

Q. I'd like you to turn to the section that's stated "Conclusions."

A. Yes.

Q. Where it states, "We should plan

to discontinue the manufacture of Aroclor 1254 and 1260. The Division is instructed to develop a program to discontinue these products and report this to the Committee."

My question to you is, do you know who made that conclusion?

A. I would expect, and I have to say "I expect," because I can't recall the specific statement -- that statement would be made by Mr. Block.

Q. Was it a statement that was made at the presentation at which you were present?

A. I would expect so, yes. If it appeared in the minutes, yes, it would be.

Q. So the minutes would not include conclusions that occurred subsequent to the meeting? Is that correct?

A. To the best of my knowledge, no, but my understanding of minutes, they should record exactly what took place at a meeting. That is my understanding of minutes. I may be wrong, and I can't give you a legal definition.

Q. Were you personally charged,

because of your position, with the development of a program to discontinue these particular products?

A. I can't remember, but I expect I would be. I certainly would be by Howard Minckler after the meeting.

Q. Referring to the last paragraph on that page, do you recall that the Corporate Management Committee concluded that Aroclor 1242 should continue to be tested to determine whether it contributes to this problem?

A. Certainly, it was, as I understand it, the committee was saying just that, that we should continue to investigate whether Aroclor 1254 did contribute to the problem or was contributing to the problem; excuse me.

Q. And to the best of your understanding, was this because there was an understanding that there were 5 and 6-chlorinated biphenyls present in Aroclor 1242?

A. I would believe that, first of all, there was a recognition that the material being found in the environment was

1254 and 1260. There was an understanding that 1254 and 1260 were included in the product Aroclor 1254.

Q. Do you mean the product 1242?

A. Excuse me. Did I say -- excuse me. My apologies. In 1242. Hence, it was important that we began to investigate this further to see if, in fact, the 54 and 60 in some cases were coming, remaining in the environment from 1242.

Q. Now, by 1254 and 1260 being present in 1242, are you referring to the actual products, or are you referring to the 5 and 6-chlorinated biphenyls?

A. The 5 and 6-chlorinated biphenyls.

Q. And is it your understanding that 1254 and 1260 also contained a range of biphenyls; not only 5 and 6, but others?

A. Yes, yeah.

Q. In fact, all of the various Aroclors --

A. Yes.

Q. -- contained biphenyls?

A. Yes.

Q. But the lower chlorinated

biphenyls contained a lower average chlorination; is that correct?

A. Yes, very much so, yes.

Q. Was there any other reason that the status of Aroclor 1242 was being examined at that point?

A. Not to the best of my knowledge, no.

Q. Do you know what was done with this recommendation that Aroclor 1242 should continue to be tested at this point?

A. I can only assume that it was, that the continuation was carried out. I can't be specific at this particular point in time.

Q. Do you know if that involved the biodegradation studies at St. Louis and Ruabon?

A. Yes.

Q. Anything else that you can recall?

A. No. Not on that particular item.

MS. WELCH: Please mark for identification the following exhibit as Plaintiff's Exhibit 1040.

(Plaintiff's Deposition

Exhibit 1040 marked for identification.)

BY MS. WELCH:

Q. Plaintiff's Exhibit 1040 is a multipage document dated April 7th, 1970, from W. B. Papageorge to a number of recipients including Mr. Mason. It has a number of identifying stamps, but I'm going to use the one that's 300 053 -- I believe it's "0," and it continues to 300 0539, and please take a few minutes to review this document.

(Witness peruses said document.)

A. Sorry it takes me a long time. There's a lot of meat in this.

(Witness continues to peruse said document.)

A. Yes, thank you.

Q. All right, do you recognize this document?

A. Yes.

Q. You have seen this document before?

A. Yes.

Q. Do you recall seeing it at approximately the time that it's dated, April 7th --

A. I would expect so.

Q. -- 1970 --

A. I would think so, Papageorge had been on the job about three months.

(Clarification by the court reporter.)

MS. WELCH: I asked him if he recalled seeing the document in approximately April 1970.

THE WITNESS: Yes, I do.

BY MS. WELCH:

Q. And then you responded that Papageorge had been on the job?

A. Papageorge had been on this job for about three months at that time.

Q. And during that three months, as far as you know, he was working on a plan to present to the CMC?

A. Correct. The development of this plan.

Q. Do you recall that Papageorge's proposal included the conclusion that in

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certain instances, the manufacture of 1254 and 1260 should be continued?

(Pause)

Q. I'm referring to Pages 1 and 2, at the bottom of 1 and the beginning of 2.

A. Mm-mm, yes. Yes.

Q. Was that in contrast to the previous conclusion of the Corporate Management Committee in November 1969 to discontinue completely 1254 and 1260?

MR. PREUSS: Well, let me object. It's a mischaracterization of the testimony. I think the testimony was that to develop a plan to discontinue.

A. I think his statement, here, is perfectly clear, that in attempting to develop a plan, we found it impossible to go along with that recommendation, that we should discontinue these two products mainly because of their usage in electrical systems, which were closed systems, and where the high degree of fire resistance was extremely critical.

Q. And you are speaking of capacitors and transformers here?

A. Yes.

Q. Turning to the paragraph under "Objectives," which is on the second page, do you agree with the statement, here, or did you agree at the time in April 1970, "that the overall objective of the plan was to manage the PCB pollution problem to prevent it from adversely affecting the established return on investment objectives of the Functional Fluids and Plasticizers Groups while maintaining the corporate image of Monsanto as a responsible and respected member of the industry, world-wide"?

A. Yes.

Q. What was, if you could recall, the return on investment objective of the Functional Fluid Group at that time?

A. To the best of my knowledge, it would be of the order of 10 percent, and I cannot be specific. That's a long time ago to remember those numbers.

Q. Yes. Do you recall what the return on investment for 1969 had been? Was it on the order of 10 percent?

A. I would think it ws on the order

of 10 percent.

Q. How did the division at that time plan to accomplish the objective of maintaining the return on investment objective?

A. I think they had planned to do it by maintaining some of this business as it is indicated in this report on the polychlorinated biphenyls, those enclosed systems where we were certain we were dealing with customers who could control emissions to the environment, and in addition to that, by replacing with new products, in applications where we were not happy, the customers either were willing to or were able to control emissions to the environment. Two very good examples, I think our plasticizers area where we were convinced that the customers were not in a position where they could do that, and secondly, in the use of some of the hydraulic-type fluids in hydraulic-type applications.

Q. Earlier, you referred to hydraulic-type applications as closed systems.

A. I think --

Q. In this deposition.

A. Well, I can't argue with what you are saying, but I thought that I said at that period of time, we felt that hydraulic systems were closed applications. I think we're referring back to your questions about mid 1969.

Q. That's correct. What had changed, in your opinion, between mid 1969 and the date of this document, which is mid 1970 to change your conclusion?

A. Evidence in looking at some of our customers' operations where it was quite obvious that in the use of these fluids in hydraulic systems, there was very significant leakage in some areas and obviously, the material could, and probably was, getting into the environment.

Q. Was the purchase of replacement products, in other words, replacement fill for various machines a consideration to determine --

A. At that time, it was. We began to investigate that in more detail.

Q. And if a product was being sold as a replacement fluid, what conclusion would you draw from it at that point?

A. I think at this point in time, we are talking now at the beginning of 1971 --

Q. Yes.

A. -- in the early part of 19 -- excuse me, '70.

Q. April 1970.

A. Excuse me, the early part of 1970, we were beginning to query very much more than we had in the past what had happened to the original material.

Q. Well, I believe my question still stands, which is, what conclusions were you drawing from the fact, if there had been sales of replacement material to various users?

A. Well, there could be several conclusions I think one could draw. One, first of all, could say that for some unknown reason, the piece of equipment had been taken down, and the material had been safely disposed of, or secondly, you could say that there had been a spill and some material had

been lost.

Q. But you would generally conclude that the machinery was actually using the product. Is that correct?

A. Yes.

Q. For instance, for a capacitor or transformer, there would be one fill of the fluid and no more; is that correct?

A. That is correct, yes. Unless you had, for example, in the case of a transformer, you could have what would be tantamount to a major leakage situation. Something had happened to the transformer specifically.

Q. But that wouldn't be the usual course?

A. That would not be the usual, and of course, in the case of the capacitors, the material was sealed in there.

Q. And that would be, as far as you were concerned, a good example of a closed system?

A. Yes, we believed that that was a very good example of a closed system.

Q. Where there was just one sale of

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initial fluid?

A. That is correct.

Q. Was another way of accomplishing the objective stated in Paragraph 3 to sell out existing stores of inventories? And I'm talking about the objective to maintain or to not adversely affect the established return on investment.

A. Sell out inventories? That would not have achieved that objective. It would be a short term situation where you would make some cash but you'd be out of a business.

Q. Well, how about selling out inventories prior to the introduction of replacement fluids? Would that be one way of achieving this goal?

A. I don't think that the amount of inventories normally held would have had a really significant factor on what you are proposing.

Q. Can you think of any other way that there would be the management of the PCB problem to prevent it from adversely affecting the established return on

investment, at this time?

A. Not at that time. I think this objective, here, I think covers correctly what we should do. I think it's a balanced objective, I think it's important to recognize that in addition to trying to establish, trying to hold our return on investment objectives, we're also endeavoring to make sure we behave as a responsible company. And I think it's important to recognize that these actions were taken on behalf of Monsanto without any directives from government agencies or other such organizations. And I think we're the first company ever to do this type of thing.

Q. Do you recall about this point in time in April 1970, a press conference that was held by a Congressman Ryan?

A. Yes.

Q. What do you recall about that press conference?

A. I recall first of all, you say a press conference, may I say my first real indication was a letter from Congressman Ryan to Mr. Bach, President of Monsanto.

Q. What's your recollection about that letter?

A. That letter raised a number of issues which he stated that in his opinion, these products were dangerous, they were leaking into the environment, they were toxic, and various other statements of that type. Mr. Bach asked me to reply to the letter on his behalf.

Q. Do you have a recollection of a press conference held by Congressman Ryan at that time, as well?

A. Yes.

Q. Do you recall whether the statements in the press conference paralleled the statements in the letter to Mr. Bach?

A. Yes, pretty accurately, I would think. I would like to emphasize, I concentrated on the letter because I had something in front of me which I could react to and take what I thought were the correct actions.

Q. All right.

A. Which was to go and have a meeting with Congressman Ryan.

Q. You actually had a meeting with --

A. I had a meeting with Congressman Ryan.

Q. And when was this, approximately?

A. Can I say mid 1970. Early to mid 1970.

Q. All right, we'll return to that later.

Turning to page 4 of this document, the objective is stated, of informing the customers of the PCB problem and the importance of preventing environmental pollution both at their plants or by their products. My question to you is, how did management check to determine if a specific customer had been informed of the PCB problem?

A. The Business Group of Functional Products was organized in such a fashion, it ~~was~~ reporting is the business director, who was the Director of Marketing and there was a Director of Field Sales. Salesmen in many cases are located across the United States and not here in St. Louis, of course, and they have a local regional sales manager who

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has overall administrative responsibility for all the sales, all the Monsanto salesmen in that office. And on two occasions and I personally can recollect, we had meetings with the Functional Products Group where we brought in salesmen and regional sales managers, and explained to them our plans, what we were trying to do, what the problem was, and emphasized that it was critical that they went out and talked to all customers and explained the situation to them, and ensured that they completely understood what the problem was, and what we were taking in the way of action.

Q. Do you know what follow-up was conducted, if any, to ensure that these salesmen had done what they were instructed to do?

A. Follow-up by whom?

Q. By -- are you aware of any follow-up?

A. I'm quite certain that they, the field sales manager would follow up on that, yes.

Q. Why are you certain of that?

A. Because it was his job to do so.

Q. Did you, yourself, take any actions to ensure that the field salesmen manager followed up?

A. No, I did not, I did not think that it was proper that I should do that.

Q. Why do you say it wasn't proper that you should do that?

A. Because I think you can finish up trying to do everything yourself which is quite impossible. My job was to give an overall management guidance to the group which I endeavored to do.

Q. Turning to page 6, the paragraph, third paragraph begins with "Biodegradability studies," please just take a second to review those, that paragraph.

(Witness peruses said document.)

A. Yes.

Q. Were you aware at this time in April 1970 that the biodegradation studies indicated that the mono and some of di- and trichlor biphenyls degrade, but the remaining PCBs were highly resistant to degradation?

A. Yes, I would have had this general information from this plan if from no other source.

Q. Do you recall making a response to Mr. Papageorge's report to him?

A. I'm quite certain, not only making a response, I'm quite certain that during the preparation of this report, he discussed it with myself and with Howard Bergen.

Q. Do you recall telling Mr. Papageorge that you didn't think that this report would satisfy the Corporate Management Committee?

A. I don't recall making that statement, no.

MS. WELCH: Please introduce as Exhibit 1041 the following document.

(Plaintiff's Deposition Exhibit 1041 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1041 is a three-page document dated April 9th, 1970, to Mr. Papageorge from John Mason, identifying stamp TRAN 005549 to TRAN 005551.

Would you please take a few moments to review this document.

(Witness peruses said document.)

A. Yes.

Q. Does this refresh your recollection that you told Mr. Papageorge that his argument would not satisfy --

A. Evidently, that is correct. My recollection was false.

Q. Do you know why you thought the document wouldn't satisfy --

A. I think mainly --

Q. -- the CMC?

A. -- the reasons which I've listed -- sorry, but --

Q. It's all right. It's really hard.

A. Mainly, for the reasons I think I've given in this memo. It was an attempt to discuss various parts of it again with him and give my opinion as to how it should be amended.

Q. So you recognize this document?

A. Yes, I do.

Q. You are the author of this

document?

A. Oh, yes. I wrote it myself.

Q. And this is your signature on the last page?

A. Oh, yes.

Q. What did you mean when you stated that you thought that "We need to take a much more aggressive attitude to this subject"?

A. I think I meant that Papageorge's plan, I think, was good, I think it was very detailed, but I felt that my job as Assistant General Manager of the Organic Division was to take an aggressive attitude to the problem. We were responsible for maintaining profitability of the division's products but we had to balance that with ensuring that we behaved like good citizens, and I felt that in some ways, he was not being positive enough as to exactly what we should do. And I think I tried to clarify that in the points laid out in this memo.

Q. In the first paragraph, you refer to that you "may otherwise find ourselves directed to a course of action which may not be in the division's best interests." Were

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you referring to a possible decision by the Corporate Management Committee and/or the president to completely terminate PCB products?

A. I was referring to a decision by the president which might not be in the best interests, I felt, at the time, of the division. Whether that would be a decision to close down the entire operation or the decision to close down a significant part of it, or to get out of a major part of the business, I did not know but I was trying to understand that and make sure that we put a reasonable and fair case before the Corporate Management Committee to enable the president to take what I believe was the correct decision, in the interests of the division and the corporation.

Q. And what was that reasonable and fair case -- what did you want to accomplish at that point?

A. I wanted to accomplish a continuation of the business, which included replacing some of these products by other materials which were much more biodegradable,

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but to ensure that we supplied our customers with products which we felt were critical for the other side of safety. For example, transformers, some of the explosions, the potential explosions of large transformers in high-rise buildings are quite horrific to think of, and I was trying to make sure of that we put forward a balanced recommendation which would be in the best interests as I've said of the division, the corporation, and also ensuring that we behaved like responsible citizens.

Q. So that recommendation would include, or you hoped that it would include, the ability of the division to continue to sell some Aroclor products?

A. Certainly. The closed systems, in systems where we felt that we were dealing with responsible customers who had the technical expertise and the knowhow to ensure that the material did not escape to the environment.

Q. What do you mean by response -- how could you determine if a customer was a responsible customer?

A. We determine -- I think it's always going to be an opinion. If you take companies, for example, that don't have any technical and qualified staff, we'd be extremely concerned about that sort of thing, but if you take a large corporation where you have large numbers of graduate engineers and scientists of various types and manufacturing people, then I think we could be looking at a company we could talk to very clearly and we would feel some comfort in the fact that they would take sensible and responsible actions with those products.

Q. Can you give me any examples of companies that you would at the time have included in this category?

A. Oh, certainly. I mean, it's almost unfair to pick out one company or two companies, and I'd have to go and refer back to the files to give you a list of all of these companies, but for example, let us take the electrical industry. I feel that corporations like General Electric and Westinghouse fell into that category very clearly.

Q. Are you familiar with a company by the name of Texas Eastern?

A. Yes, I am.

Q. Did you at the time determine that Texas Eastern was an example of that kind of company?

A. I'm quite certain they were.

Q. When you say --

A. They had been instrumental, their engineers in developing, working with us, developing a product which later turned into Turbinol 153, and there's no question that those engineers who were involved in that were people who clearly understood what the product was all about, what it had to do, and I would expect they would be a highly responsible operation.

Q. When you say that Texas Eastern had been instrumental in developing the product did you obtain this knowledge when you arrived in St. Louis?

A. I obtained it not when I arrived, but during the courses of discussions after that time. I was not around, obviously, at the time this product was developed. I was

in Europe.

Q. Who told you that Texas Eastern was involved and instrumental in developing the product?

A. I could not be specific but I would expect that people like Howard Bergen, and probably Bill Richard, people who had worked in this area for a significant period of time.

Q. Was T. K. Smith your counterpart in the manufacturing end?

A. No, C. J. Smith. T. K. Smith was Howard Minckler's boss at the time. He was a group vice-president that had Textiles, Organic, I think those are the two divisions he had under him, and he reported then to Mr. Bach.

Q. Do you recall why you would review your presentation with him and Howard Minckler before the Corporate Management Committee presentation?

A. Certainly, certainly.

Q. Why?

A. Howard Minckler was my boss, he was going to be present, he was a member of

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the Corporate Management Commission -- Committee, excuse me, and Tom Smith was also, of course, Howard Minckler's boss and was a member of the CMC, or CDC. We agreed that there was a ~~Tommy~~ change the name.

Q. All right, turning to where it says listing the major developments and there's a reference to Risebrough discussions, what did you know at the time about the Risebrough discussions in referring to April 1970?

A. Well, I'd seen some of the papers which he published, primarily the one, of course, I think it was in "Nature," I was also aware of meetings which had been held, now I could be wrong on the timing when I say that, where I think Elmer Wheeler, I think Bill Papageorge, and I think it was somebody else, also attended some meetings with him, and discussed with him the work he was doing and his feelings and approach to this problem.

Q. Turning to Paragraph 3, there is a reference to the need for a modification of strategy. Are you referring to the

modification with respect to the continued use of 1254 and 1260?

MR. PREUSS: I'm sorry, could you give me the reference, please?

MS. WELCH: Paragraph -- It's numbered paragraph 3. It says, "The progress we have made to date and the need for a modification in our strategy."

MR. PREUSS: All right.

BY MS. WELCH:

Q. Do you have the question in mind?

A. Could you repeat the question, please? I lost it.

THE COURT REPORTER:

"Q. Turning to Paragraph 3, there is a reference to the need for a modification strategy. Are you referring to the modification with respect to the continued use of 1254 and 1260?"

MS. WELCH: It was "a modification in our strategy."

A. Yes, I would think primary.

BY MS. WELCH:

Q. Turning to Paragraph 4 C, and you state that "Refer to probable intervention of

FDA to fix minimum level -- levels of PCBs in foodstuffs." What intervention are you referring to?

A. I'm not referring to any intervention --

Q. Probability.

A. -- I'm referring to the possibility, or the probability, there could be an intervention by the FDA.

Q. And --

A. I felt it was something that the CMC should be aware of.

Q. Now, were you aware of any contacts with the FDA that alerted you to that?

A. No, not at that particular point in time.

Q. Why did you raise this issue?

A. Because I think it was an issue which to me looked a possibility. It was something that could come up.

Q. And why was that?

A. If polychlorinated biphenyls were escaping into the environment, particularly if that happened to be the case near

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foodstuffs, it could be a problem in which the FDA would obviously be greatly interested and could take some form of action. We should be aware of that and we should be taking whatever action necessary to avoid such an occurrence.

Q. How about the meeting with the Federal Water Pollution authorities? To what meeting are you referring?

A. I can't remember.

Q. Do you recall the Water Pollution Authority meeting --

A. I'm quite sure there was a meeting.

Q. -- meeting with water pollution authorities?

A. Meetings, I should say, rather than a meeting, but I can't be specific.

Q. What concern were you speaking of in the U.K. when you refer to the intervention of administrative agricultural fisheries and food?

A. I would think the Ministry of Agriculture, Fishes and Food, like any other organization of that type, of course, had

seen reports and published papers on the polychlorinated biphenyls, and to the best of my recollection, they had approached Monsanto in the United Kingdom, expressed concern, and wished to have discussions to understand what actions we had taken.

Q. Paragraph H on the next page --

A. Yes.

Q. When you state that, "We are currently very much on the defensive," are you referring to the various contacts with governmental agencies?

A. Not particularly with governmental agencies, I don't think. I'd say primarily with the press and with individuals such as Congressman Ryan, for example.

Q. Any other reasons that you felt that Monsanto was on the defensive?

A. Well, I did, I think you could go back to almost that first paragraph that I wrote where I said we should be more aggressive. I felt we were intending to defend, whereas, I felt we should go on the attack, clearly state what we were doing, and bring people to understand that we were doing

a job which was protecting the environment, at the same time, of course, preserving our business. We have shareholders who have a right that we should make a reasonable profit.

Q. So you were aware at the time that there were a lot of press articles or there were press articles that raised the PCB issue?

A. Oh, yes. Yes.

Q. Turning to the very last page, actually the sentence that begins on page 2, it's Paragraph 10, when you say, "Restriction of their uses" -- and you are referring back to 1254 and 1260 -- "is far more likely to get us off the hook and enable us to maintain maximum profitability while preserving responsible image as a company," were you referring to the appeasement of the pressures from the various points of pressure that you referred to before when you, when you made the statement "get us off the hook"?

A. May I just read this in its entire -- just number 10 in its entirety?

Q. Of course.

(Witness peruses said document.)

A. Yes, primarily I was referring to that.

Q. Did you mean anything else?

A. No, I don't think so. I've got to come back to the question you asked me about the FDA, somewhere. I don't remember exactly but --

Q. It's Paragraph C which refers to probable intervention of the --

A. That would be in my mind. I'm quite sure of that.

Q. You were concerned about the intervention of governmental agencies?

A. Yes. This is, my whole feeling of being aggressive, is I felt that this should be a problem which Monsanto should tackle, itself, should solve, and should not be in the position where it was forced to do various things by governmental agencies. I honestly believe that Monsanto did a very good job in tackling this problem, going out, doing the job it had to do without being forced to do it by regulations by government

agencies.

Q. And at this point, that included maintaining certain uses of Aroclors?

A. Yes. It did.

Q. And at this point you were also concerned about possible future intervention of governmental agencies?

A. Yes.

Q. All right, are you feeling like you want to take a break, Mr. Mason?

A. I'm okay at the moment, thank you.

MS. WELCH: Well, these are the two people we're concerned about here.

MR. PREUSS: We're concerned about you, too.

MS. WELCH: I'm doing fine.

THE WITNESS: I'm just get a drink of water, if you don't mind. It's cooler now; it's more pleasant.

MS. WELCH: We turned town the thermostat. It's very pleasant.

BY MS. WELCH:

Q. Do you recall make a presentation to the Corporate Management Committee on April 20th, 1970?

A. I recall making several. One could have been on April in 1970.

Q. Do you recall being present at a Corporate Management Committee in April -- on April 20th, 1970?

A. I can't be specific on that date after 22 years. I'm sorry, but --

Q. All right, well --

A. I recall making a presentation, yes, in the early part of 1970.

MS. WELCH: Let's look at this document and see if that helps. This is Exhibit 1042.

(Plaintiff's Deposition Exhibit 1042 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1042 is a multipage document with the identifying stamp of TRAN 009525 to TRAN 009537, and it -- the title of the document is "Presentation of PCB Management Plan" with handwritten marginalia which says, "To CMC, April 1970," and please take a minute to review this document.

(Witness peruses said

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document.)

A. Okay.

Q. Okay? Have you seen this document before?

A. I can't recall this particular document. They -- the way it is written doesn't seem to me that I made this presentation.

Q. Is this your handwriting in the upper right-hand corner?

A. No, it doesn't look like it.

Q. Do you know if Mr. Papageorge made this presentation?

A. I would think it was probably. It's not my way of presenting things; that's all I can say. I can't recall it.

I don't know what -- they're the minutes of the CMC at this date and time. If the minutes say I made it, I must have made it, but I don't recall it.

Q. We'll see in a minute. Turning to page 8, it's very faint on the upper right-hand corner, the page numbers. The stamp at the bottom says, "TRAN 009532."

A. Yes.

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Q. And the last paragraph states, refers to the biodegration (sic) studies, states "We were disappointed in the resistance to degradation of some of the isomers in Aroclor 1242." Do you recall that the bird studies demonstrated the resistance to ~~demonstration~~ biodigration of some of the isomers of Aroclor 1242?

A. I don't recall specifically at this time, but I do recall that that was turning out to be a problem.

Q. How did you learn this?

A. I would probably, at this point in time, have learned this either from Elmer Wheeler or from Bill Papageorge, or possibly again from the research people, the analytical people.

Q. And that would be Mr. Richard --

A. Nick Richard, or --

Q. -- or Dr. Richard?

A. -- it could have been even Dr. Keller who was working in this area specifically.

Q. All right, turning to the next page, it states, beginning on the prior page,

"This would tend to confirm the belief that some of the 5 and 6-chlorinated biphenyls found in the environment could be residue of degraded Aroclor 1242." Is that consistent with your understanding at the time?

A. Excuse me. You lost me. I've got the wrong page, I think.

Q. I'm sorry. We're at the bottom of page 8, which is --

A. Bottom of page 8?

Q. It goes over into page 9.

A. Right. We were disappointed. Thank you.

Q. The next sentence, please read that to yourself.

A. Yes. That is correct.

Q. That is consistent with your understanding at the time, is it not?

A. I think so, yes.

Q. Is it true that you had a plan at the time to substitute distilled Aroclors with degradable components as a substitute for 1242 at the time?

A. My interpretation of this would not be that we had a plan, but that we were

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working in this area to see how feasible it was. That's my understanding of that wording.

Q. Was it your intention at the time to develop or to see how feasible it was to substitute degradable components for 1242 for all uses?

A. No, I wouldn't, I wouldn't think it necessarily was that. I would think we were probably looking in areas where we felt that the degree of closed system was not sufficient to guarantee that nothing could escape the environment. It has to be, I think, clearly understood that in looking at a problem like this, it's always a question of balance. Fire resistance in many of these applications is absolutely critical and to the best of our knowledge, nothing was achieving the degree of fire resistance which could be achieved by many of these Aroclor products, and we had to balance against that the problem of the material getting out into the environment, so always you were looking at balance, and anytime that we felt that we were dealing with a closed system with a

reputable company, as I described previously with the technical capabilities, I think we had to say we'd go for the maximum fire resistance.

Q. Are you familiar with the development of a product named 1242 B?

A. Yes.

Q. And later that product was called MCS 1016?

A. I'm trying to remember which way around it was, whether it started off with 1016 and became 12.

Q. Well, regardless, are you familiar --

A. Well, I'm familiar with, yes in general.

Q. And are you familiar with the fact that 1016 or 1242 B was developed as a more biodegradable substitute --

A. Yes, I think that --

Q. -- for 1242?

A. That was the objective, certainly, of developing it.

Q. And are you familiar with the fact that it was developed for use in capacitors?

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A. Yes.

Q. And earlier, you testified that a capacitor is considered a closed system?

A. Yes, it is, but may I add to that, please?

Q. Go ahead.

A. I think the thing we had not taken into sufficient account is when there are capacitors are made in the tens of thousands, there can be very big ones, very tiny ones, and at some point at the end of their life or when the piece of equipment in which the capacitor is operating is finished, the capacitor is disposed of, and that, I think, is something it still could be a closed system but some point in time, the rest of the capacitor, which is metal, could corrode away and you would be left with a situation where PCBs were getting into the environment, albeit in a landfill ~~or somewhat have you,~~ and therefore, I think we were looking at that point in time not the concern that during the product life, the capacitor's life, did we have a problem, but there could be a problem in the later disposal.

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Q. So even in a system which during its period of use would be considered closed, there could be some ultimate concern of escape into the environment?

A. Yes, there could. I can't emphasize too much that we were facing something entirely new here and we were learning and developing as we went along.

Q. Turning to page 12, which the identifying stamp is TRAN 009536 --

A. Yes.

Q. -- there is a sentence in the middle of the page which states, "Aroclor business which we will retain is shown on this chart." Unfortunately, we don't have the transparency that's referred to.

A. I don't have the chart, either.

Q. Well, do you have a recollection of what was presented to the CMC at this meeting of the business that would be retained?

A. We're talking April 1970; correct? I think that chart at that time, would certainly refer to the two major electrical applications, transformer coolant fluids and

capacitors, I think it would refer at that time to fire resistant -- excuse me, not fire -- heat transfer fluids, and I think it would refer to hydraulic and other systems, specialty systems where we believed we were looking at a closed system, I think that would be probably what that chart would refer to.

Q. Do you recall that the Corporate Management Committee was not satisfied with this presentation?

A. No --

Q. Do you recall --

A. -- because I'm not sure who gave the presentation. I just can't recall that.

Q. Do you recall that the Corporate Management Committee and/or President ~~Bach~~ Bork wanted more affirmative action from the Business Group?

A. I think it's very likely. Most occasions, I think we were pressured by management for more action, quite correctly.

Q. And are you speaking specifically in reference to the PCB problem?

A. Yes. Yes, I am.

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Q. So you sensed a general concern on the part of the Corporate Management Committee that the problem --

A. There was a very great concern, yes.

Q. You've got to wait to let me ask the question.

A. Sorry.

MS. WELCH: I'd like to introduce as Exhibit 1043 the following document.

(Plaintiff's Deposition Exhibit 1043 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1043 is a two-page document that is, has no title on it other than a handwritten marginalia which says "CMC 4/20/70" and the identifying stamp is TRAN 008615 to TRAN 008616.

Please take a few minutes to review this document.

(Witness peruses said document.)

A. Yes, thank you.

Q. Mr. Mason, do you recognize this

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document?

A. I think so, yes.

Q. Could you identify it for me?

A. It's an extract from minutes of, I think it would be the CMC at that time, on the 20th of, I think that's April.

Q. Is this your handwriting in the upper right-hand corner?

A. No.

Q. Turning to the last page, under "Conclusions," there is a statement, "The committee felt that while the division had taken major steps to resolve this problem, more affirmative action must be taken." Does that refresh your recollection in any way about the CMC wanting the division to take more affirmative action?

A. Yes, I think I'm -- I did state that, didn't I, that they were constantly making this point?

Q. Do you recall that the CMC wanted the development on the crash basis of an alternative product for NCR paper?

A. Yes.

Q. What do you recall about that?

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A. I recall that that's what they wanted, and to the best of my knowledge, we did just that. I can't remember the exact dates on which those replacement products were made available to NCR.

Q. Do you recall that NCR paper, when it contained Aroclors, contained Aroclor 1242?

A. Yes.

Q. Do you remember if the CMC was referring to anything other than the development of a replacement product for NCR applications when it talks about affirmative action?

A. No.

MR. PREUSS: I would object. That's calling for speculation.

A. (Continuing) No, not in that particular case. That is what they were talking about. I think that was a very big concern, and rightly so.

BY MS. WELCH:

Q. Do you recall what the recommendation from, or if there were any recommendations from Mrs. Eck, Putzell or

HARTOLDMON0041749

Gillis that are referred to under the conclusions?

A. No, I never saw, I definitely never saw any recommendations, no.

MS. WELCH: All right, why don't we take a break for a few minutes.

(Recess)

MS. WELCH: Back on the record.

BY MS. WELCH:

Q. Did you make a presentation to the Corporate Management Committee on May 11th, 1970?

A. I can't recall the exact date. I think it's highly likely, in view of the minutes of the meeting --

VIDEOTAPE TECHNICIAN: Could you start over? We weren't rolling just yet. Sorry.

MS. WELCH: Sure. Show business, you know; you get used to it.

(Discussion off the record)

BY MS. WELCH:

Q. The question was, did you make a presentation to the Corporate Management Committee on May 11th, 1970?

HARTOLDMON0041750

A. I can't remember the exact date, but I think it's highly likely that I made a presentation to the Corporate Management Committee at about that time. Particularly in the last minutes which you showed me, there was a call for reporting back to the committee, I think it was on May the 1st, or May.

Q. How was the decision made about who would make a presentation from the division to the Corporate Management Committee?

A. In most cases, it would be made by me, subject to agreement from the General Manager, who I reported to.

MS. WELCH: Would you please mark this as Exhibit 1044?

(Plaintiff's Deposition Exhibit 1044 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1044 is a fairly lengthy document with numerous identifying stamps. I'm going to use the one which I believe is 300 0540. It is dated May 11th, 1970. It is

HARTOLDMON0041751

a document which contains, purports to contain various charts used in presentation with the CMC, and it's -- purports to be a document authored by John Mason.

(Witness peruses said document.)

Q. All right?

A. Yes, thank you.

Q. Do you recognize this document?

A. That is my presentation. That's my style of presentation. I can recognize it.

Q. And what is this document?

A. This document is a copy of a presentation or the information given to the CMC at the meeting on -- I've forgotten the date. Does it say -- no, that's the date of my memo. This morning; correct.

Q. It was May 11, 1970?

A. Yes. Excuse me.

Q. Did you prepare this document on or around May 11, 1970?

MR. PREUSS: Are we talking about the cover page or are we talking about the attachments?

HARTOLDMON0041752

MS. WELCH: All of the attachments.

A. That would be before the presentation was made, obviously.

BY MS. WELCH:

Q. Did you prepare it at or around May 1970?

A. Yes.

Q. Did you prepare the cover page on May 11th, 1970?

A. Yes.

Q. Did you prepare this document in the normal course of your business?

A. Yes.

Q. And was it part of your job responsibility to make a presentation to the Corporate Management Committee --

A. Yes.

Q. -- of this sort?

Turning to the first inside page, there is the statement, "Cost of rapid phase-out, all chlorinated biphenyls except dielectric." My question to you is, was this the projected cost if the Corporate Management Committee should decide to adopt

a, quote, "rapid phase-out," end of quote?

A. Yes, it would have been. It's normal in these cases to look at extreme alternates to see what the impact is. That is an attempt to do that.

Q. And was this what you would consider an extreme alternate?

A. Yes.

Q. And were you recommen -- was it your recommendation that it was contrary to Monsanto's interests to have a rapid phase-out?

A. Yes.

Q. And why was that?

A. Because I still believed that we had a profitable, ongoing business in this area which we could carry out, and at the same time avoid massive escape to the environment or minimize the escape to the environment, I should say.

Q. So you recommended a more staged phase-out?

A. Yes.

Q. With the perspective in part of maintaining a profitable business?

HARTOLDMON0041754

A. Yes.

Q. Does page 2, where it states "Objective," accurately describe the objective as far as you were concerned in terms of the PCB plan at this point?

A. Yes.

Q. Turning to page 6 --

A. 6?

Q. Yes. On the upper right-hand corner, it states "6." You reported that 1242 was the critical product. Is that right?

A. Yes.

Q. And was that because it was the largest Aroclor currently in use?

A. Yes.

Q. Was it also because it contained some of the non-biodegradable isomers?

MR. PREUSS: I'm going to object to the characterization as non-biodegradable as being no foundation.

MS. WELCH: Well, he can tell me if it's not.

BY MS. WELCH:

Q. Do you need the question repeated?

HARTOLDMON0041755

A. Please.

Q. Was 1242 a critical product also because it contained some of the non-biodegradable isomers?

A. Yes.

Q. Turning to page 7, which states, "Replacement products --"

A. Yes.

Q. -- at the time, this is in May 1970, your division was working on phosphate ester replacements for hydraulic fluid applications? Is that correct?

A. That is correct.

Q. And with respect to hydraulic fluids, you recognized that control of spillage and pump leakage made the use of non-biodegradable PCBs undesirable? Is that correct?

A. Yes. As a general statement, that is true.

Q. All right, turning to page -- the page which states that it's "Present Plan," and it's kind of an illegible identifying stamp, but I believe it's 300 0560, it says "Present Plan" at the top. All right?

HARTOLDMON0041756

A. Yes.

Q. The plan you presented called for the termination of all non-biodegradable chlorinated biphenyls to noncontrollable end uses by August 30th, 1970?

A. Yes.

Q. And the discontinuance of the sale of Aroclor 1242 to NCR and replacement by July 1st, 1970, in the United Kingdom and January 30th, 1971, the United States?

A. Yes.

Q. And it also called for closing the loop on heat transfer applications where fire resistance is vital and replacing with alternates by December 30th, 1970?

A. (Nods head in affirmative manner) Yes.

Q. What did you mean by "closing the loop"?

A. Ensuring that the systems in which it was being used as a heat transfer fluid were closed systems, where leakage could be controlled and contained.

Q. All right, and turning to the next page, your plan called for the replacement of

all non-biodegradable chlorinated biphenyls in hydraulic applications, 100 percent by December 30th, 1970?

A. Yes.

Q. And there's no qualification on that in terms of the type of system that's involved. Is that correct?

A. We are talking about, we believe, hydraulic systems, which are used with systems where you have moving parts and you can certainly get leakage in those areas.

Q. Is it correct that there's no qualification on the type of hydraulic systems, that the intent was for 100 percent replacement by December 30th, 1970?

A. Of the systems which I've described, yes.

Q. And you intended to close the loop on all non-biodegradable chlorinated biphenyls in transformer applications by August 1st, 1970?

A. Yes.

Q. And by closing the loop, you are referring to earlier making sure that there's no leakage and the system --

A. Yes.

Q. -- is entirely closed?

And number 6, you intended with this plan to close the loop on capacitors as far as possible and replace 1242 with 1242 B by December 31st, 1970?

A. Correct.

Q. And 1242 B was the fractionated version of 1242 --

A. That is correct.

Q. -- we spoke of earlier --

A. That is correct.

Q. -- which eliminated most of the 5- and 6-chlorinated biphenyls?

A. Correct.

Q. Do you recall that the response of the committee was that there should be no delay with the reference to the above plans without a Corporate Management Committee approval?

A. Yes, I think I do.

Q. All right, referring to the reference in this document to, on page 15 -- not page 15, but where it says, "Replace all non-biodegradable chlorinated biphenyls in

HARTOLDMON0041759

hydraulic applications, as well as in transformer applications, closing the loop," do you recall that, or isn't it true that by non-biodegradable chlorinated biphenyls, the only biodegradable biphenyls that you were referring to at that time were 1221 and 1242 B?

A. Could you repeat the question, please?

Q. That was phrased poorly. All right.

Isn't it true that at this point in time, which is in May 1970, when you referred to non-biodegradable chlorinated biphenyls, that that included all Aroclors, with the exception of 1221 and 1242 B?

A. We are referring, here, specifically to hydraulic applications, are we?

Q. Well, let's make it to a larger, to a larger question. Was there a general understanding at that point that non-biodegradable chlorinated biphenyls refer to all Aroclors which contained PCBs with the exception of 1221 and 1242 B?

A. That is a different statement from your question, which was you are talking about eliminating. No, we were not going to eliminate them we were going to continue, for example, with dielectric uses.

Q. Well, that wasn't the question. The question was specifically what non-biodegradable biphenyls referred to, and the question is, does it refer to all Aroclors containing PCBs with the exception of 1221 and 1242 B?

A. I find that a difficult question to ask (sic), because it's quite a complex area, this, and I'm trying to clear my mind. In general, I think your statement is true, but there are degrees of biodegradability. This is what I'm talking about, and I'm not an expert in this area. It is not black and white, this area, it's very much much more complicated.

MS. WELCH: All right. Well, let's look at this exhibit, which is Exhibit 1046 -- 1045.

(Plaintiff's Deposition Exhibit 1045 marked for

HARTOLDMON0041761

identification.)

BY MS. WELCH:

Q. Exhibit 1045 is a document from W. B. Papageorge to J. R. Durland in Tokyo, dated May 27, 1970, with the identifying stamp of TRAN 085321 to TRAN 085323, and please review the front page of this document.

(Witness peruses said document.)

THE WITNESS: Yes. May I make a brief statement, here, that --

MS. WELCH: Well, there's no question pending.

THE WITNESS: No, but I made an incorrect statement earlier in the evidence. I did not mention the fact that PCBs were manufactured by Monsanto in Japan.

MS. WELCH: All right, thank you.

THE WITNESS: I knew there was something in the back of my mind, but I couldn't remember what it was. Sorry.

MS. WELCH: That's fine.

BY MS. WELCH:

Q. Turning your attention to the

HARTOLDMON0041762

third paragraph, does this help refresh your recollection about the Aroclors --

A. Yes.

Q. -- which -- wait a minute, let me finish the question.

A. Sorry.

Q. -- which contained polychlorinated biphenyls, that the only ones that were considered biodegradable at the time were 1221 and the fractionated 1242 or 1242 B and possibly, here, it's stated 1232?

A. Yes.

Q. So in other words, at this point in time, which is May 1970, Aroclor 1242 would be considered a non-biodegradable Aroclor?

A. That is correct. That is what that says, yes.

Q. All right, and then turning to the present plan, which is the next two pages, in part 4, where it says, "Replace all non-biodegradable chlorinated biphenyls in hydraulic applications," it's referring to the replacement of chlorinated biphenyls including the Aroclor 1242; is that correct?

HARTOLDMON0041763

A. That's correct.

Q. By December 1970; is that correct?

A. (Nods head in affirmative manner). Yes.

MS. WELCH: All right, I'd like to introduce into evidence -- identification, rather, the following exhibit, marked as 1046.

(Plaintiff's Deposition Exhibit 1046 Marked for identification.)

MS. WELCH: Exhibit 1046 is a two-page document with the identifying stamp of TRAN 085307 to TRAN 085308. It states that it's minutes of the meeting of the Corporate Management Committee dated May 11th, 1970.

And please take a few minutes to review this document.

(Witness peruses said document.)

THE WITNESS: Yes.

BY MS. WELCH:

Q. All right, do you recognize this document?

HARTOLDMON0041764

A. Yes.

Q. What is it?

A. It is an extract from the minutes of the Corporate Management Committee of May 11th, 1970.

Q. And the reference on the bottom, here, where it says, "The committee asked that there be no delay with reference to the action taken to achieve the above plans without CMC approval," that was your understanding at the time?

A. Yes.

Q. That if there was to be any deviation from the six-point plan, you would have to present to the Corporate Management Committee?

A. Yes.

Q. The division could not act unilaterally?

A. No.

Q. Was the response to this presentation on May 11th, 1970, or would you characterize it as more favorable than the response of the CMC to the prior presentation on April 20th?

A. Yes.

Q. And why was that?

A. Because it was a more positive plan; it stated clearly what we intended to do.

Q. By "more positive," do you mean that there were various action points that were included?

A. Yes, correct.

Q. Anything else that you mean by "more positive"?

A. I think we were taking a tougher line with some of the areas than we had done in the past.

Q. Was it also, was the positive reaction also due to the fact that there was the timetable set?

A. Oh, yes. That's what I meant by the plan was an action plan. The previous one was much more of a report of the situation, in my opinion.

MS. WELCH: I'd introduce as Exhibit 1047 the following document.

(Plaintiff's Deposition Exhibit 1047 marked for

HARTOLDMON0041766

identification.)

MS. WELCH: Exhibit 1047 is a two-page document dated May 11th, 1970, from H. S. Bergen to Mr. Papageorge, with the identifying stamp of TRAN 085305 to TRAN 085306.

(Witness peruses said document.)

THE WITNESS: Yes.

BY MS. WELCH:

Q. Had you been worried that the Corporate Management Committee would put your division out of business in terms of Aroclors --

A. Had I?

Q. Yes.

A. No.

Q. Do you know if Mr. Bergen was worried?

A. Yes, I think he probably was.

Q. Why was that? Do you know?

A. I think he was -- I had the broader responsibilities of the products in addition to the product of polychlorinated biphenyls. I think he was a very commitment

(sic) in this area. He spent quite a large part of his career in this area, and I think he had a greater concern than I did that the Corporate Management Committee would put us out of the business. I still felt and my presentation indicated that we could have a balanced situation and continue in the business.

Q. Do you know if his concern was developed because of the reaction to the April 20th meeting?

MR. PREUSS: Well, objection; calling for speculation.

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

BY MS. WELCH:

Q. Here, he states that, "Division has until the end of the year to complete the reformulations and transfer of customers." Do you agree with that statement in terms of the summary of the plan?

A. I think that is correct. I'd have to look at the plan again to be a hundred percent certain.

Q. Turning to page 2, is any of that

HARTOLDMON0041768

marginalia in your handwriting?

A. No.

Q. Do you know whose handwriting it is?

A. I would think, I think -- please, I have to use that word -- I think it looks like Howard Bergen's, himself.

Q. Did anyone ever tell you that or were you aware that there was a consideration of using 1242 B in Pydrauls?

A. No, I don't think so.

Q. Turning to the last paragraph where there's a statement that -- about non-electrical Aroclors, it says that by May 15th, "All customers will be notified. . . that we will no longer sell non-electrical Aroclor after July 31st, 1970." Do you know to which customers, what customers are being referred to, non-electrical Aroclors?

A. I would think --

MR. PREUSS: Don't guess, Mr. Mason, if you are not sure.

A. (Continuing) I really don't know.

BY MS. WELCH:

Q. Do you know if there was

discussion in the division about proceeding more quickly with the phase-out plan than was presented to the Corporate Management Committee?

A. No, I don't know that.

Q. Please review the second paragraph in the first page and see if that refreshes your recollection about that. The first page, Mr. Mason.

A. I read that.

(Witness peruses said document.)

I don't know why he made that statement and I don't know if you are trying to achieve a date. It is a good idea to send a little before that and go after it, but that's the only explanation I can give. I am not aware of any plan to do it deliberately.

Q. You don't recall a conversation with him where he stated that?

A. No, I do not.

Q. Now, earlier you testified that you were familiar with the product Turbinol 153; is that correct?

A. Yes, from the -- in its broadest

sense, yes.

Q. Would you agree with the statement that Turbinol 153 is considered a Pydraul product?

A. No. It was a specialized product designed for a particular company who had a particular type of equipment.

MS. WELCH: Please introduce as Exhibit 1048 the following document.

(Plaintiff's Deposition Exhibit 1048 marked for identification.)

MS. WELCH: Exhibit 1048 is a one-page document or two-page document from W. R. Richard to C. W. Roos, and Mr. Mason is cc'd on here, date of September 20th, 1971, with the identifying stamp of TRAN 085106 and TRAN 085110.

Please take a minute to review this document.

(Witness peruses said document.)

BY MS. WELCH:

Q. I'm just going to ask you about the first page.

HARTOLDMON0041771

Dr. Richard was the head of research for Functional Fluids?

A. Yes.

Q. So he was familiar, as far as you know, with the various products that come from Functional Fluids?

A. Very familiar.

Q. And that included Pydrauls; is that correct?

A. Yes.

Q. Would you please turn your attention to the sentence which states, "Research next developed formulations to remove all chlorinated biphenyls from Pydrauls, feeling this would be a desirable step."

The next sentence says, "Exceptions for Turbinol 153 and Pydraul being sold in Germany, where we could not pass the fire tests." The question to you is, does this now refresh your recollection that Turbinol 153 was considered a Pydraul?

A. In my mind, no. Pydraul is, was a generic term which had been used for a series of products, but I think the very fact that

HARTOLDMON0041772

Turbinol has the name Turbinol defines very clearly as a specific usage, it is not a general Pydraul which can be used in a variety of hydraulic applications.

Q. My question was not as to usage, my question was as to classification as a product, whether Turbinol 153 was considered one of the Pydraul family.

A. No, not in my mind.

Q. So you believe that Dr. Richard, who was the head of research for the Functional Fluids Group, is just mistaken?

MR. PREUSS: Objection: Argumentative, misstates the memo.

A. I did not make that statement.

BY MS. WELCH:

Q. But you would take exception with his categorization, here, of Turbinol 153 as a Pydraul?

MR. PREUSS: Objection; mischaracterizes the memo. The document speaks for itself. No foundation.

A. I don't think anything he says here classifies it particularly as a Pydraul. He's listing a whole host of products and

talking about them.

BY MS. WELCH:

Q. Well, turn your attention to the title of the document mwhich is entitled "Pydraul Reformulations."

A. Yeah. Yeah.

Q. You would agree with me that the document is not entitled "Reformulation of Miscellaneous Fluids."

A. No, it's not.

MR. PREUSS: Objection. It's argumentative.

A. Yes.

BY MS. WELCH:

Q. Can you see any reason, other than the classification of Turbinol ~~is 53~~ 153 as a Pydraul, why it would be listed on this document, Mr. Mason?

A. I think this document is a general attempt to update Bill Roos on the work which research in the Functional Products Group had been doing and replacing a variety of products and updating him. Bill Roos was Director of Research for the division.

MS. WELCH: Please introduce the

HARTOLDMON0041774

following document as Exhibit 1049.

(Plaintiff's Deposition Exhibit 1049 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1049 is a multipage document from Mr. Papageorge to a number of people including, I guess, Mr. Mason is not cc'd on here. Oh, he is; he's cc'd on here.

A. Yes, I got a copy.

Q. Dated December 7th, 1970, with the identifying stamp of TRAN 039080 to TRAN 039090, and I'm actually going to ask you specific questions about parts of this document, so perhaps we can refer to the specific parts, rather than taking the time to review the whole document.

I'd like you to review the section that starts on page 7 that's entitled "Pydraul Reformulation" and it ends in the bottom of page 8.

(Witness peruses said document.)

A. Yeah.

Q. All right, do you recall seeing

HARTOLDMON0041775

this document before?

A. No, I don't recall this particular document, but I'm sure, as it was a November status report from Bill Papageorge, I would have seen it, yes, but I don't recall it.

Q. All right, turning to the paragraph under the heading of "Pydraul Reformulation," that's Turbinol 153 A, does reviewing that paragraph in there now help refresh your recollection that Turbinol 153-A was considered a -- or Turbinol 153 was considered a Pydraul?

MR. PREUSS: Well, let me just object, because the date of this document is almost nine months prior to the Exhibit 1048, which is the Richard memo of September 20, 1971.

BY MS. WELCH:

Q. You can answer the question.

A. No, I don't think it's a matter of refreshing my memory. I've always understood that the product Turbinol was a specialty application and should not be considered in the general group of Pydrauls, which to me, have always been hydraulic fluids.

HARTOLDMON0041776

Q. Have you -- Do you recall that reformulation of Turbinol 153 was considered in December 1970 as part of the overall Pydraul reformulations?

A. I was not aware of that. At least, I can't recollect that; let me put it that way.

Q. Turning to page 6, under "Environmental Studies -- Ruabon," please read that paragraph.

A. Yes.

You want me to go on with biodegradation?

Q. No, just that one paragraph.

A. All right.

Q. Turning to the sentence which says, "Their analyses have indicated what we have, ourselves, suspected that the residues tend to resemble 1254 and 1260," and this is talking about feeding Aroclor 1242.

A. Yes.

Q. And the statement is then made, "Discussions" (sic) "with Bailey and Bunyan from this laboratory shows that they now believe that Aroclor 1242 may be a major

HARTOLDMON0041777

source of the environmental pollution." Is that in conformity with your understanding as of December 1970?

A. Yes, I think it is. I think it confirms some of the statements we've already made.

THE COURT REPORTER: I'm sorry, I couldn't -- "confirms some" --

A. (Continuing) Yes, it is. I think it confirms some of the statements that we've already seen in other reports.

BY MS. WELCH:

Q. Going back to Exhibit 1048 for a moment --

A. Is that this one?

Q. -- do you know why the exception was made for Turbinol 153 to the formulations to remove all chlorinated biphenyls from Pydrauls?

A. Yes, I think for two reasons: One, I think it was, in our opinion, it was a closed system. After all, if one is transmitting gas through a system, one would expect it to be a very closed system, and secondly, again, I think we were to reinforce

HARTOLDMON0041778

that, we were dealing, as I mentioned previously, with a very responsible company with a high degree of technology availability.

Q. Now, you made the statement that if you were transmitting gas, that you would expect it to be a closed system. Why is that?

A. Well, if one was not, one would expect gas would be leaking all over the place.

Q. Now, with the transmission of gas, ultimately, that gas ends upcoming out at some point. Isn't that correct?

A. Yes.

Q. In somebody's stove or --

A. Yes.

Q. -- to heat somebody's home?

So the question I now have to you is, how does that comport with your understanding of gas transmission as a closed system?

A. Well, we're talking about a material which was used in compressors for their gas system. We weren't talking about

HARTOLDMON0041779

introducing polychlorinated biphenyls into the actual gas line.

Q. Okay. Are you familiar with the use of Turbinol 153 as a seal oil in the gas compressors?

A. I'm not greatly familiar, no; I wouldn't pretend to be.

Q. That would be too detailed for your area of responsibility?

A. Absolutely, yes. I wouldn't attempt to.

Q. Now, earlier, you testified that you recalled a press conference and some correspondence with Congressman Fitz Ryan about this time, and do you recall that Congressman Fitz Ryan requested production and sales figures --

A. Yes.

Q. -- from Monsanto?

MS. WELCH: Exhibit 0150.

(Plaintiff's Deposition Exhibit 1050 marked for identification.)

MS. WELCH: Exhibit 1050 is a two-page document that purports to be a

HARTOLDMON0041780

letter to Mr. Edward J. ~~Bach~~ Buck from a William Fitz Ryan with Mr. John Mason's name at the top, and it has a number of identifying stamps. I'm going to use with the one 3468 to 3469.

(Witness peruses said document.)

THE WITNESS: Yes.

BY MS. WELCH:

Q. All right, is this the letter that you were referring to that you saw --

A. Yes, it is.

Q. -- that Mr. Bach forwarded to you?

A. Yes.

Q. And is this your handwriting on the second page?

A. Part of it is, yeah. There's one, the "other European manufacture" is mine. I -- the other, I can't make out; appears to be a series of hieroglyphics. It possibly is mine, but certainly by the last paragraph, it is mine, yes.

Q. Do you recall that Fitz Ryan requested that Monsanto state clearly whether, during the manufacturing process,

HARTOLDMON0041781

Aroclor would be released into the environment?

MR. PREUSS: I'm sorry, where are you reading from?

MS. WELCH: It's the last paragraph of the first page.

A. Yes.

MR. PREUSS: Okay, thank you.

BY MS. WELCH:

Q. Turning to the second page of the first paragraph, do you recall that Fitz Ryan requested that Monsanto release to the public a complete list of uses of Aroclor?

A. Yes.

Q. At this point in time in April 1970, were you aware of an incident that's referred to as the Usho incident in Japan?

A. I'm sorry.

Q. The Usho incident in Japan.

A. Yes.

Q. Do you recall approximately when you heard of that incident?

A. No.

Q. But it is --

A. I cannot give the date, but it

HARTOLDMON0041782

sounds about that sort of time.

Q. It was before April 1970?

A. I can't be specific.

Q. Are you aware that at that time of that incident, there had been accidental ingestion of PCBs by a number of Japanese people?

A. Yes.

Q. And that it had resulted in a number of injuries to people?

A. Yes.

Q. Including chloracne?

A. Yes.

Q. Are you aware that it caused liver damage?

A. I believe so, yes.

Q. Are you you aware that ultimately, it caused birth defects?

A. I believe so, but I cannot recall the document.

Q. And you are also aware at that time of the Pensacola incident that you testified earlier; is that right?

A. Shrimp.

Q. Yes.

HARTOLDMON0041783

A. Yes. It's a very different type of incident, but I recall it.

Q. Right. We're going just to various effects of PCBs that you were aware of at the time.

And earlier, you testified that you were aware that 40 parts per billion, if baby shrimp were exposed to 40 parts per billion, that they would be killed within 96 hours?

MR. PREUSS: Well, objection. I don't think his testimony was that.

MS. WELCH: Well, he was aware of the study.

A. Yes, I was aware of the study, yes.

MS. WELCH: He was aware of the study that showed that.

THE WITNESS: Correct.

BY MS. WELCH:

Q. All right, but you reported, you wrote a letter back to Congressman Fitz Ryan in response to his letter; is that right?

A. Yes.

Q. In the letter, you reported that

HARTOLDMON0041784

the PCB problem only related to possible effects on birds? Is that true?

A. Excuse me.

Q. That the PCB problem only related to possible effects on birds?

A. I can't answer that question without seeing a copy of my letter.

MS. WELCH: All right. This is Exhibit 1051.

(Plaintiff's Deposition Exhibit 1051 marked for identification.)

MS. WELCH: Please take a few minutes to review this document.

Oh, 1051 for identification purports to be a letter to honorable William F. Ryan dated April 20th, 1970; purports to be by John Mason, with the Bates stamp of TRAN 060800 to TRAN 060803.

MR. PREUSS: And you would like him to review the letter to respond to your last question?

MS. WELCH: Well, I'll turn his attention to page 2, to the second full paragraph.

THE WITNESS: Second paragraph?

BY MS. WELCH:

Q. Yeah, second full paragraph. Could you please read into the record what the second full paragraph says?

A. "We have been investigating the relationship --

Q. No, the second full paragraph, "It should be emphasized --"

A. Oh, I see. "It should be emphasized that the apparent PCB problem relates only to the possible effects on some species of birds. Manufacturing and use experience of thirty years, early animal toxicity studies, and the interim reports on current extensive toxicological studies with various species of animals indicate that there is no threat to the public health."

Q. So does that refresh your recollection that you wrote to Congressman Ryan that the PCB problem related only to the possible effects on some species of birds?

A. That was certainly what I said there, yes.

Q. And do you recall in this letter

that you refused or declined to release to Fitz Ryan a complete list of, complete list of production figures? Or let me correct that: A complete list of the Aroclor names of products and manufacturers as stated on page 3, first full paragraph.

A. Page 3: Which paragraph, please?

Q. It states, "In my opinion, to release a complete list of uses for Aroclor --"

A. All right. "-- names of products and manufacturers. . . would only cause undue alarm to the public and would make no contributions in this area." Yes, I read that, certainly.

MS. WELCH: Please mark for identification Exhibit 1052.

(Plaintiff's Deposition Exhibit 1052 marked for identification.)

(Witness peruses said document.)

BY MS. WELCH:

Q. Well, I want to go back, just for purposes of identification, to -- excuse

me -- to 1051. Do you recognize this as the letter that you wrote to Congressman Fitz Ryan?

A. This is 1051?

Q. Yes.

A. Yes.

Q. Exhibit 1052 is dated June 18th, 1970, and it's identified with the stamp TRAN 059762 to TRAN 05964, and I just wanted to ask you to identify this document as to whether this was, you had seen this response to you from Congressman Fitz Ryan.

A. Yes.

Q. This is the response to your letter that you saw?

A. Yeah.

MS. WELCH: Please mark for identification Exhibit 1053.

(Plaintiff's Deposition Exhibit 1053 marked for identification.)

MS. WELCH: 1053 is a multipage document that purports to be a letter to Congressman Ryan from John Mason, dated June 30th, 1970, with the identifying stamp of

HARTOLDMON0041788

TRAN 0088218 to TRAN 088224.

(Witness peruses said document.)

BY MS. WELCH:

Q. And please take a few minutes to review this document.

A. It's a long letter.

Q. Well, I can ask you specific questions about it.

First of all, for identification purposes, is this the response that you prepared to Congressman Ryan?

A. Yes.

MR. PREUSS: His letter of June 18th?

MS. WELCH: To his letter of June 18th.

A. Yes.

MR. PREUSS: The letter was 52.

BY MS. WELCH:

Q. Do you recall mailing this letter to Congressman Ryan?

A. I wouldn't mail it. It would be mailed by the Mailing Department, but --

Q. Do you recall it was sent?

HARTOLDMON0041789

A. I assume so, yes.

Q. Referring to the third full paragraph on the first page, the last sentence states that, "All of our customers have been contacted both verbally and by letter, and I am now in a position to explain our plans and actions in detail.

A. Yes.

Q. As far as you know, to the best of your information, you were under the -- you were of the opinion that all of Monsanto's customers had been contacted, both verbally and by letter, about the PCB problem?

A. Yes, with one exception. I think, if I remember, earlier in either Papageorge report or Bergen writing to Papageorge, he made the point that the Europeans hadn't all been advised. I think that was -- my letter is written before they had all been advised, but certainly, it is my opinion that all United States domestic customers have been advised, either verbally or by letter.

Q. And I want you --

A. I don't think I would have made that statement to a Congressman of the United

HARTOLDMON0041790

States if I hadn't believed that was true.

Q. And on what did you base that opinion?

A. What?

Q. On what did you base that opinion?

A. On the opinion that it was something we discussed at meetings, and I think I told you previously, we brought in salesmen, we brought in regional sales managers, and we taught them all and explained the situation, and they were directed to advise all customers of what the position was.

Q. Whose responsibility was it in the Functional Fluids Group to follow up and make sure that all customers were notified?

A. It would be the field sales director.

Q. And who was that?

A. That was Norman Smith, I think, at the time. No, I meant John Smith, it was.

Q. Norman Johnson?

A. Yeah, that's right. I'm sorry, I know a Norman Smith. I've done it twice already.

HARTOLDMON0041791

Q. On page 2, Paragraph 2, please review that paragraph which is enumerated number 2.

A. "In many of the applications"?

Q. Yes.

Okay, and this is a reference to the Pydraul products?

A. Yes. Hydraulic fluids, yes.

Q. And you informed Congressman Fitz Ryan that there would be, there would be a complete withdrawal of all PCB-containing products for hydraulic fluids by the end of 1970?

A. Yes, by sending the letter.

Q. Turning to the third page, the third paragraph, please read that to yourself.

(Witness peruses said document.)

A. Yes.

Q. All right, this is a reference to the meeting that you referred to earlier that you had heard about with Dr. Risebrough?

A. Yes.

Q. Did any of the attendees, Monsanto

HARTOLDMON0041792

attendees at that meeting, tell you that there had been discussions with Risebrough about toxicity?

A. To the best of my knowledge, of course, there would have been a report written. I cannot recollect that report at this point in time, but I'm quite sure toxicity would have been discussed.

Q. Did any of the attendees at that meeting raise with you concerns about the analytical technique that Dr. Risebrough was using for the identification of PCBs?

A. Yes, I believe so.

Q. And what were those concerns that were raised?

A. They were not happy that they were completely the best analytical techniques available at that time.

Q. And do you recall in specific what they critiqued?

A. No, that, again, is a very complex subject, and I would not pretend to be an expert in that area. Dr. Keller, of course, was there, and Dr. Keller is an expert in that area; very much so.

Q. Do you recall what they told you or if they told you anything about the meeting in terms of Risebrough's work on the effects of PCBs on fish and birds?

A. No, I cannot recollect, in detail, anything.

MS. WELCH: All right, please mark for identification the following document as Exhibit 1054.

(Plaintiff's Deposition Exhibit 1054 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1054 is a four-page document dated August 31st, 1970, from W. B. Papageorge to a number of recipients including Mr. Mason. It bears a number of identifying stamps, I will use the one of 3002643 to 3002646. And please take a few minutes to review this document.

(Witness peruses said document.)

A. Yes.

Q. Have you ever seen this document before?

HARTOLDMON0041794

A. I don't recall seeing it, but my name is on it.

Q. Do you know whether there was ever a draft or suggestions that were sent to PCB customers with respect to PCB control?

A. I'm sure there was, yes.

Q. Why do you say that you are sure there was?

A. There was a rough draft here, and there is no question that once we had the incinerator available at Krummrich Plant, that all customers were advised of the capability we had and the fact they could return material to us, and in advising them of that, I'm quite sure we also sent them general information on other methods of control.

Q. Have you seen a document that advised all customers about the incineration capabilities?

A. I can't recall a specific document.

Q. Were you ever at a meeting in which the instruction was given to, sent to all customers, information about the

HARTOLDMON0041795

incineration at Krummrich?

A. I can't recall a specific meeting, but I'm quite sure that it was done.

Q. Why are you quite sure it was done?

A. There would have been no point in building a highly expensive high-temperature incinerator unless we wanted our customers to use it.

Q. Now, as far as you know, which customers did this information go out to?

A. It would go out to all customers who were using polychlorinated biphenyls.

Q. Do you know when this document went out?

A. No, I do not. It must have been sometime after August 31st, 1970.

Q. Do you know if the document was sent out to customers whose use was being discontinued?

A. I cannot be specific, no. I don't know that. I would think it highly likely if they were being discontinued at that time because they would have material available for return.

Q. I see.

A. And I certainly have seen copies of letters, writing to people where the material was being changed, asking them to return the material to us, it would be fully credited with the cost they paid for the material, and also with the shipping.

Q. So to the best of your understanding, this would be sent to customers whose use was being discontinued as a way of figuring out how to dispose of the no-longer- used material?

A. Yes.

MS. WELCH: All right, please mark for identification the following document as Exhibit 1055.

(Plaintiff's Deposition Exhibit 1055 marked for identification.)

MS. WELCH: Exhibit 1055 is a three-page document with the identifying stamp of TRAN 037752 to TRAN 037754, and one of the titles is, "Organic Division PCB Status Report." There is, appears to be a memo on it which says, "From the desk of John

Ellers, revised ~~expert~~ extract of Corporate Management Committee meeting 9/14/70 meeting per Mr. Mason's memo 9/30/70."

Please take a few minutes to review this.

(Witness peruses said document.)

A. Yes.

BY MS. WELCH:

Q. Did you make a presentation to the Corporate Management Committee on 9/14/70?

A. Yes, I did.

Q. So this presentation that's summarized here was your presentation?

A. Yes.

Q. Do you recognize this document?

A. Yes, I think so.

Q. And can you describe for me what it is?

A. It's an extract from the Corporate Management Committee minutes of the 14th of September 1970. By the appearance of this, I must have objected to some of the original minutes on the basis that they were incorrect or that I submitted a memo from John ~~Ellers~~ Ehlers

HARTOLDMON0041798

refers ?
to per Mr. Mason memo of 9-30-70.

Q. That's your interpretation of that?

A. That's what I would assume from looking at that. It might have been a minor typographical error, but I was asked for a correction.

Q. All right, turning to the second page, under number 4, there is a statement, "An additional three months would be required to remove all PCBs from Pydraul 300 to accomplish a 90 percent phase-out when 1242 B is available."

A. Yes.

Q. Do you recall now that 1242 B was being considered as a substitute for the non-biodegradable Pydrauls?

A. Yes.

Q. And is that the same thing as 1016, MCS 1016, as far as you know?

A. Yes. I think it is. I don't recall saying that it wasn't being considered as a possible --

Q. I think we saw a document earlier where it says -- there was a question mark

HARTOLDMON0041799

with handwritten marginalia which says "1242 B and Pydrauls" and a question mark, and you said that you didn't recall that 1242 B was being considered.

A. I cannot be insistent, but I don't think I said that.

MR. PREUSS: It's a question of interpretation as to what -- I don't recall one way or the other. I just don't recall it being --

BY MS. WELCH:

Q. All right. Well, now, by looking at this, now do you recall?

A. Yes.

Q. All right, was this an example of -- or, strike that.

Did you go to the CMC to request an additional three months for the phase-out of hydraulic fluid PCBs?

A. No, to the best of my recollection, I went to report to them again in September, which I think, in the last CMC extract from the presentation, asked that we come back again to report progress. I took the opportunity to request a further three

HARTOLDMON0041800

months' extension. That would have been my understanding of this.

Q. And that was per the earlier agreement with the CMC not to make any deviations from the plan without CMC approval?

A. Yes.

Q. Did you ever present to the CMC, to the best of your recollection, that Turbinol 153 would be continued in use?

A. I don't remember specifically, no.

Q. All right, turning to the conclusions, the statement is, "The three months' extension requested for phasing out of products in hydraulic fluids was approved with a caution that the Division continue to exert pressure to move this program as fast as possible." Was this a statement that was made by President ~~Bach~~ Bick --

A. Yes.

Q. -- or was there a changeover at this point?

A. I'm sure it was. No, no, it was still in 1970; that would be President ~~Bach~~ Bick?

MS. WELCH: All right, can we take

HARTOLDMON0041801

a break for a few minutes?

THE WITNESS: Yes.

(Recess)

BY MS. WELCH:

Q. Are you ready, Mr. Mason?

A. Yes.

Q. Do you recall at the September 1970 CMC meeting that the CMC told you that the three-month extension they granted you would be the last extension granted for reformulating 1242 Pydraul products?

A. No, I don't recall that at all, and I don't think it was shown in the minutes.

MS. WELCH: Please mark this as Exhibit 1056.

(Plaintiff's Deposition Exhibit 1056 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1056 is a multipage document dated October 6, 1970, from W. B. Papageorge, "cc" to a number of people including Mr. Mason, and it is identified with a stamp of TRAN 004016 to TRAN 004028,

it is entitled PCB environmental report, September status report," and I would first ask you to turn your attention to and read the section entitled "General," which is the first page and a half, page and a quarter.

(Witness peruses said document.)

A. Yes.

Q. All right, does the paragraph that's enumerated number 2 refresh your recollection that the CMC told you that the three-month extension to the first quarter of 1971 would be the last extension granted for substitution of Pydraul products containing Aroclor 1242?

A. No, it doesn't refresh my memory at all. As written here, I'm not denying that, but that's not -- I do not recall that statement being made to me. I might well have pushed Papageorge in this area, but I don't recall that statement being made, categorically. If it was made, why did it not appear to the CMC minutes?

Q. After the CMC meeting, did you have a meeting with Papageorge to report to

him what happened happened there?

A. I would have done it. I can't recall specifically, but I certainly would have done it.

Q. So if he hadn't been at that meeting, he would have then met with you --

A. Yes, he would have met with me.

Q. -- to discuss the meeting?

A. And so would Bergen and probably, I would have talked to the whole Business Group after that.

Q. In one meeting?

A. Yeah, it was normal, after a presentation of that type, I'd go back and talk to probably immediately the same day, as I came out of the meeting.

Q. Turning to the first paragraph, under "General," Mr. Papageorge states, "We must ensure that these warnings are fully documented, so that they'll support the action we have taken in this area should we become involved in legal actions."

Is it your understanding that as of that October 6, 1970, that all of the warnings that were to go to customers were to

be written warnings because of the concerns that are expressed here?

A. That is what Papageorge is saying. I would have certainly hoped that all those, all such warnings were documented.

Q. For the reasons expressed by Mr. Papageorge?

A. Yes. That would be part of the reason. Part of the reason, in my opinion, would be good practice, too.

Q. And Mr. Papageorge came from manufacturing; isn't that correct?

A. Yes.

Q. To your knowledge, was he familiar with all of the products groups, the functional fluids groups -- the products in the functional fluid groups?

MR. PREUSS: As of this time, you mean?

MS. WELCH: Yeah, as of this time.

BY MS. WELCH:

Q. Would you expect him to be familiar with all of those products?

A. All a function -- yes, functional fluids, yes, excuse me, I was merely talking

about the name of the Business Group, of course, was Functional Products, which included other products apart from the fluids. That was the point I was making.

Q. Would you expect him to be familiar with all the PCB-containing products that --

A. Oh, yes. Yes, most certainly.

Q. You need to wait till I finish the question.

A. Sorry. You were drinking water.

Q. All right. Let's turn to page 5, under "Industrial Hydraulics," and please read to yourself the two paragraphs under "Industrial Hydraulics."

(Witness peruses said document.)

A. Yes.

Q. Isn't it true that as of this time, which is October 6th, 1970, that the reformulation of Pydrauls containing Aroclor 1242 included the reformulation of MCS 153?

A. That is what this states. I cannot recall that that was so, but it states so here.

Q. Do you have any reason to disagree with this statement?

A. No, I cannot disagree with respect to -- (Witness trails off).

Q. Do you recall giving a status report to the Corporate Management Committee on March 8th, 1971?

A. '71; not specifically, but I would agree that I probably did.

MS. WELCH: Please introduce as Exhibit 1057 the following document.

(Plaintiff's Deposition Exhibit 1057 marked for identification.)

MS. WELCH: Exhibit 1057 is a three-page document entitled "Minutes of Meeting of the Corporate Management Committee" dated March 8th, 1971, with the identifying stamp of TRAN 039155 to TRAN 039157.

BY MS. WELCH:

Q. Please take a few minutes to review this.

(Witness peruses said document.)

A. Yes.

BY MS. WELCH:

Q. All right, do you recall making this presentation?

A. Yes.

Q. So you were the one who made this?

A. (Nods head in affirmative manner).

Q. Do you recall reporting to the Corporate Management Committee that conversion had been completed in hydraulic applications of all non-biodegradable PCBs?

A. Yes.

Q. And there had been a substitution of phosphate esters and terphenyls?

A. Yes.

Q. Turning to the last page, there is a statement that "PCB usage has been reduced from 75 million pounds in 1969 to 45 million pounds in 1971 without a major reduction in profitability." How do you account for the, the success in not reducing profitability?

A. On the basis that we had substituted other products for PCBs in those particular applications and those products were profitable.

Q. Was there some consideration given to withdrawing a product until a substitution was available?

A. I don't quite understand that.

Q. Was there any instance where you waited to provide a replacement product until the substitute was available?

A. Yes, I think we, we did.

Q. You wouldn't want to leave the customers in the lunch, in other words?

A. Well, we couldn't leave the customers. It wouldn't be a matter of only wanting to, we could have exposed ourselves to fairly dire consequences if we closed down major operations, yes.

Q. So in other words, you kept on selling the PCB-containing product to a particular usage until a replacement product was available for that particular usage?

A. In certain cases, not in cases where there obviously was a really serious problem of expo -- emissions to the environment or something like that, or a situation where foodstuff was concerned, for example, there was no question, once that was

identified, we discontinued immediately.

Q. But in other applications, you waited until a replacement product was available?

A. I think so, particularly where we felt that we were dealing with a responsible, responsible customer.

MS. WELCH: Please mark this as Exhibit 1058.

(Plaintiff's Deposition Exhibit 1058 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1058 is -- has a memo on the front which states. It is "Info used by J. Mason to report to CMC on March 1971. No written commentary was prepared." It is a multipage document with the identifying stamp of TRAN 086384 to TRAN 086414, and please take some time, or actually, why don't I direct your attention to specific pages, because it's a rather lengthy document.

First of all, just glancing through here, does this look like the infcrmation that you used?

A. Yes, that looks like my type of -- except there's a massive detail, here, about chickens and what have you. I don't know whether all that would be presented in detail to a CMC. I'm talking about the massive amount of figures, for example. After all, a Corporate Management Committee meeting probably between 2:00 o'clock in the afternoon and 6:00 might have, you know, twenty or thirty different people making presentations and, obviously, dealing with senior management of this type, one has to condense it down to a digestible amount of information. This could well be the total package which I took to give a presentation.

Q. Do you recognize this as your --

A. Yes, the front, the earlier stuff is definitely my style, but all the information at the back sounds somewhat excessive to me to present to the CMC.

Q. Turning to the page, I believe it's the third page of the document, which is, has the title "Hydraulic Applications," please read that page to yourself.

(Witness peruses said

document.)

A. Yes.

Q. Okay, earlier, you testified that you didn't consider the use of Aroclor 1242 in Turbinol 153 as a hydraulic application. Can you please explain for me why you classified it as such in your presentation to the Corporate Management Committee?

MR. PREUSS: I object as mischaracterizing the document.

BY MS. WELCH:

Q. Go ahead.

MR. PREUSS: Argumentative.

A. I find that difficult to explain. I think I was trying to probably condense to a small number the particular charts and presentations, but it makes it abundantly clear in here that Aroclor 1242 is still present in two fluids used in gas transmission closed systems. That is the key thing. Part of the plan was to continue to supply PCBs to companies operating with closed systems.

BY MS. WELCH:

Q. But did --

A. We commit -- excuse me.

Q. You did, in your presentation to the Corporate Management Committee, did you not classify it as a hydraulic application?

A. I don't think I classified it. I think that's what it says at the top of the page, but I was saying I put it in a transparency with other information about hydraulic applications.

Q. So it was contained in the information about hydraulic applications.

A. It appears so on this page, yes.

Q. What is MCS 974?

A. I can't recall. 974, no, I can't recall.

Q. And you planned to try MCS 1016 when it was available as a replacement fluid?

A. That would appear so, yes.

Q. For Turbinol 153?

A. It would appear so, yes.

Q. And 1016 was the fractionated 1242?

A. Yes.

Q. Turning to the page that is stamped TRAN 086397 --

HARTOLDMON0041813

A. 397 --

MS. WELCH: Why don't we go off the record.

A. (Continuing) Turbinol 15 --

MS. WELCH: Let's go off the record.

(Pause for telephone call.)

BY MS. WELCH:

Q. Did you find that page?

A. Yes.

Q. And I note that there is actual sales in 1970 of 333 thousand and predicted sales in 1971 of 400 thousand.

A. Yes.

Q. Are you aware of the fact that there was one customer for Turbinol 153 and that was Texas Eastern?

A. Yes.

Q. Do you know why there was predicted to be an increase in Turbinol 153 sales?

A. No, I could only assume in that case that at the end of the first quarter of 1971, the pattern of sales to that time and, presumably, information from the customer.

HARTOLDMON0041814

Q. That the sales would increase in 1971?

A. That would be my interpretation of that. I cannot recall the details, but --

Q. All right, turning to the last page of the document, which is entitled "Chlorinated Bi- and Terphenyls Business Group Plan," there is a statement, "New warning labels." Do you recall in or about, at or about this time, which is in 1971, that there were new warning labels that were being used?

A. Yes.

MS. WELCH: Please introduce as Exhibit 1059 the following document.

(Plaintiff's Deposition Exhibit 1059 marked for identification.)

BY MS. WELCH:

Q. Exhibit 1059 is from W. B. Papageorge to a number of recipients, including Mr. Mason is cc'd. It's identified as TRAN 088183 to TRAN 088184.

Now, I note here that this document is actually a document dated a full

year before that presentation. Do you know whether this is the label that you were referring to in this presentation, or was there another label?

A. In that presentation?

Q. Yes.

A. The last one?

Q. March 1971.

A. I think there were modifications to this label, but I cannot quote chapter and verse, and I can't show the label because I don't have it. I think this was the first label we put out.

Q. Now, you are referring to the second page?

A. Yes, sorry, the second page.

Q. Which ways, Caution! Contains chlorinated hydrocarbons."

A. Mm-hmm.

Q. How about the first page; do you have any idea when that label was put on, or if it ever was?

A. It does not say that that label was put out. It appears to be a recommendation from Phocian Park, who was a

HARTOLDMON0041816

lawyer, that that was the sort of wording that should go into the label. I cannot tell you that that wording actually went on because I just don't know. I can't get any date from this.

Q. You made the presentation in March 1971 to the CMC and you stated that part of the manufacturing plan was to put warning labels on products, as we saw before.

A. Yeah.

Q. Do you recall that later --

MR. PREUSS: Well, I'm going to object as to a mischaracterization of the document. The document, all it says is number 3, "New Warning Labels."

BY MS. WELCH:

Q. Is your testimony that -- it's on the last page. Do you recall that that was part of the Business Group plan, in other words, to place new warning labels on the product?

A. Yes.

Q. Let's go back to my question, which is, later that month, do you recall writing to Congressman Ryan to tell him that

HARTOLDMON0041817

new warning labels were less important because of the restriction of sales?

A. I can't recall that particular statement. No doubt if I did write that, I wrote it, but --

MS. WELCH: Please introduce as Exhibit 1060 the following document.

(Plaintiff's Deposition Exhibit 1060 marked for identification.)

MS. WELCH: Which is a multipage --

THE WITNESS: I'm sorry.

MS. WELCH: I don't think there's a question pending yet.

THE WITNESS: My mind was just working ahead.

MS. WELCH: Exhibit 1060 is a multipage document dated March 24th, 1971 to Congressman Fitz Ryan from John Mason, with the identifying stamps of TRAN 063812 to TRAN 063815.

(Witness peruses said document.)

BY MS. WELCH:

Q. All right, do you recognize this document?

A. Yes, I think this is my second letter to Ryan. You've already put in a third letter to Ryan, which is much more explicit than this in much greater detail.

Q. We saw a letter that was dated in 1970. This is a letter that's dated in 1971. If you want to refer back to an earlier exhibit, please feel free to do so, but I believe that your earlier letter was dated April -- there were two letters, the --

A. Two letters.

Q. April 1970 and June 1970, I believe.

MS. WELCH: This is the only 1971 letter, but if you'd like to have him look at the exhibits, --

THE WITNESS: Okay.

MR. PREUSS: Would you like to look at the other two?

BY MS. WELCH:

Q. Would you like to look at the other two?

A. No, just let me read it first.

HARTOLDMON0041819

There are only a few pages.

(Witness peruses said document.)

A. (Continuing) Thank you. I was just confusing the date.

BY MS. WELCH:

Q. All right, I have one question, and that relates to the second paragraph on page 3, so first of all, do you recognize this letter as a letter that you wrote in --

A. Yes.

Q. And as far as you know, was this letter sent?

A. Yes.

Q. Okay, please read to yourself the second paragraph.

A. Yes, I have read it.

Q. Now, do you now recall that you wrote Congressman Fitz Ryan that now that, "We have discontinued sales of polychlorinated biphenyls for end uses where disposal cannot be controlled, the question of labeling becomes far less important"?

A. Yes, I do, but I also recall writing in the same paragraph that "Usage of

HARTOLDMON0041820

these products is now restricted to closed system applications and the public is unlikely to come into contact with such systems." His question always and his pressure was, we should label everything for the public, and that's the very point I'm making there.

Q. You think it's important to label for the customer?

A. Yes. We were selling a product to a customer.

Q. Is your reference, here, to labels to the public, as opposed to customers?

A. That's what he was talking about.

Q. Now how do you --

A. He wanted to go into very great detail on every possible conceivable usage where polychlorinated biphenyls have ever been used, going right down to end products that disclose all this information. We could not do that. It is our customer's responsibility. We didn't have the right to disclose a lot of that information, and this is exactly the same point he was bringing up with the labels.

Q. What end products are you referring to?

A. I don't know. He was referring to every end product. As you know, in the early stages of the sales of polychlorinated biphenyls, we sold to a number of applications; for example the plasticizer applications, there were a number of products in there. The information that these products contained polychlorinated biphenyls was confidential to the particular customer concerned.

Q. I see.

A. And I'm differentiating between the two. I'm not saying we didn't label, I'm saying that we labeled to the people we were selling to, which is perfectly true.

Q. Who was charged with the responsibility of making sure that labels were put on all products that were going to customers, as far as you know?

A. Well, that would be a manufacturing responsibility.

Q. And who had ultimate oversight over that?

HARTOLDMON0041822

A. Charlie Smith, I've mentioned, but really, it would be the Director of Manufacturing for the division who would make sure that that was complied with, and the plant manager, of course, where the products were made.

Q. And that was Mr. Savage at that point, do you know, Director of --

A. No, Ben Savage wasn't -- 1971, the Director of Manufacturing for Organic Division before the change then was Holzapfel, Fred Holzapfel, H-o-l-z-a, apfel, a-p-f-e-l.

Q. And how about in 1970, when the environmental sticker first at least, appeared on that document, who was the director of manufacturing?

A. I think he was then. I think he was. I cannot be sure of the dates of that.

MS. WELCH: Introduce this as Exhibit 1061.

(Plaintiff's Deposition Exhibit 1061 marked for identification.)

BY MS. WELCH:

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Q. Exhibit 1061 is a one-page document from T. L. Gossage to C. P. Cunningham, with cc's to a number of people including, Mr. Mason. It is dated November 16th, 1971, and the identifying stamp is TRAN 005156. Please take a minute to read this document.

(Witness peruses said document.)

A. Yes.

Q. C. P. Cunningham was your boss at this point?

A. Yes, he was, but I had been relieved of the responsibility for PCBs.

Q. By this point?

A. In time, just --

Q. In November 1971?

A. Yes.

Q. And when had you been relieved?

A. You see the handwritten thing in there which says "Wink," that's Wink Corey.

Q. Took over from you?

A. He took over from me, and they phased me out of this to do, to get, start phasing into Europe and do various -- I was

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still involved to a degree, but here you can see that Cunningham has referred this to Corey but I will still answer questions.

Q. Did Mr. Cunningham ever tell you that he smelled a lot of holes in reference to this document, as the handwritten marginalia refers to?

A. No, he didn't. He didn't give me a copy of this with a handwritten thing on it.

Q. Did you ever --

A. My copy came directly from Tom Gossage?

Q. Did you ever have any casual conversations with him about the program that's --

A. I had a lot of serious conversations with him about the program.

Q. But about the issues that are referred to in this document?

A. I can't recall specifically any of these, although there certainly would be.

Q. Did he raise to you any concerns that sales were still being made to Texas Eastern and Columbia Gulf Transmission

Company?

A. No. No, definitely not.

Q. Did Wink Corey ever tell you that he had talked to Mr. Cunningham about that?

A. Not specifically about that, no.

MS. WELCH: I have no further questions at this time, subject to redirect after Mr. Preuss's examination, so we will reconvene this deposition at 8:30 tomorrow morning.

MR. PREUSS: That's agreeable.

MS. WELCH: Well, thank you, very much.

THE WITNESS: Thank you.

(Whereupon, at 5:30 p.m., the deposition was recessed to the following day.)

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