IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA; THE UTILITIES SERVICE BOARD OF BLOOMINGTON, INDIANA; and MONROE COUNTY, INDIANA, Plaintiffs,	)	
vs.	)	Civ No. IP 83-9-C
WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania corporation; and MONSANTO COMPANY, a Delaware corporation, Defendants.	)	

The deposition of THOMAS L. GOSSAGE, called for examination by the Plaintiffs, pursuant to notice and pursuant to the provisions of the Federal Rules of Civil Procedure of the United States District Courts, pertaining to the taking of depositions for the purpose of discovery, taken before Jesse A. Longoria, a Notary Public and Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at 216 North Meramec, Clayton, Missouri 63105, commencing on September 3, 1986, at the hour of nine o'clock a.m.

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APPEARANCES:

Mr. Joseph V. Karaganis and
Mr. James G. McConnell
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-and-

Mr. Geoffrey M. Grodner
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appeared on behalf of the Plaintiffs;

Mr. Michael R. Fruehwald
Barnes & Thornburg
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appeared on behalf of Defendant
Monsanto Company.

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I N D E X

WITNESS:

THOMAS L. GOSSAGE

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E X H I B I T S

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MR. MC CONNELL: Would you swear the witness, please.

(Witness sworn.)

Let the record show this is the deposition of Mr. Thomas Gossage taken pursuant to notice and the applicable provisions of the Federal Rules of Civil Procedure and continued to this date by agreement of counsel.

Let the record further show that Mr. Lamb for the County of Monroe indicated that he probably would not be here today and he is not here, and, therefore, we are proceeding in his absence.

THOMAS L. GOSSAGE,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. McConnell:

Q Would you state your full name, please.

A Thomas Layton Gossage.

Q What is your business address, Mr. Gossage.

A 800 North Lindbergh, St. Louis, Missouri.

Q And that is Monsanto Company?

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Q What is your home address?
A 53 Portland Place, St. Louis.
Q How long have you worked for Monsanto?
A Twenty-five years this past April.
Q What is the extent of your formal education?
A Bachelor's and Master's Degree in Chemical Engineering.
Q And from where did you receive your degree?
A Georgia Institute of Technology.
Q What year did you get your Master's Degree?
A 1957.
Q What was the first job you had after you graduated from Georgia Tech?
Q I went to work with Exxon at their Baton Rouge Refinery in Louisiana as a process engineer.
Q Did you have any work study type of program that you were in at Georgia Tech?
A Meaning outside?
Q Yes.
A No. One year of summer employment at DuPont in Texas.

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Q What did you do at DuPont?

A Project work in one of their plants, their Victoria Plant, mostly in their analytical laboratory.

Q You yourself were doing analytical work?

A No, I wasn't doing any analytical work. I was doing project work in the analytical laboratory, not working with instruments, and so forth, but doing engineering calculations on assays of different products, and so forth.

Q What were your duties as a process engineer for Exxon at Baton Rouge?

A Doing process design work on some refinery projects.

Q Was that design in connection with production of new products, or was it revision to existing processes?

A It was either revision or modification to existing processes.

Q What kinds of products are produced at the Baton Rouge Refinery?

A Heating oil, aviation gasoline, automobile gasoline, and so-called light ends, meaning the lower hydrocarbon ring, C4, C3

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chemistry.

Q How long did you work for Exxon at Baton Rouge?

A Initially from June of '57 until August of '57, at which time I went into the Air Force on a leave of absence for two and a half years, and then back to that same position in Exxon, early 1960 until April of 1961.

Q After you came back from the Service, you were still working as a process engineer?

A Correct.

Q Did your work in the Air Force have anything to do with chemical engineering?

A Yes, I was at Wright-Patterson Air Force Base in the fuels and lubricant laboratory, working specifically on jet engine fuels.

Q What was your rank when you were discharged?

A First Lieutenant.

Q Did any of your work either in the Air Force or at the Exxon Baton Rouge Refinery have anything to do with chlorinated biphenyls?

A No.

Q Where did you go after you left the Baton

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Rouge Refinery?

A Joined Monsanto Research Corporation in Dayton, Ohio, in April 1961.

Q And you have been with Monsanto ever since?

A Correct.

Q What was the first job you had at Monsanto Research?

A Assistant Director of Government Relations. This was a subsidiary of Monsanto involved in government research programs.

Q When you say government, are you referring to the Federal Government?

A Yes.

Q What were your duties as Assistant Director of Government Relations?

A It was a marketing job. I was the interface between our research people at the laborabory in Dayton and the various government agencies for which we either were seeking or doing government research. I negotiated the contracts, made the proposals to the government, and monitored the research effort and the reporting back to the government during the contract period.

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Q How long were you in that position?

A Well, I changed titles a few years later, eventually became Director of R&D-Marketing, but it was essentially the same position, except I was running the department, rather than being No. 2 in the department. I stayed in that general area until the end of 1968.

Q When you were Assistant Director, who was the Director?

A Warren Easley.

Q Is he still with Monsanto?

A No. He retired last year.

Q What were the various federal agencies that you dealt with between April of 1961 and 1968?

A Primarily the Army Air Force, Navy, Atomic Energy Commission, some NASA contracts.

Q What kind of work, if you can describe it generally, did you do for those agencies?

A Mostly developing new materials for various government applications.

Q Were these petroleum base materials?

A Some were.

Q What other kind of things?

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A Polymers for high temperature adhesive applications, structural reinforced plastics, foam, synthetic lubricants, a lot of classified work.

Q Did any of that work involve PCBs either as plasticizers or lubricants or other products?

A Not that I can remember.

Q What was the next position you had at Monsanto?

A I came to St. Louis with the New Enterprise Division, which was formed in Monsanto in December of 1967. So it was December of 1967 that I came to St. Louis, and the New Enterprise Division was formed in December of '67.

This was a unit in Mosanto created at that time to try to diversify Monsanto into some other areas.

Q What was your job responsibility in the New Enterprise Division?

A Marketing Director.

Q Was that a promotion?

A Yes.

Q What kinds of things were you making for the New Enterprise Division when you started?

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A We were working on new product developments, graphite fiber, steel wire for tar cord, and other reinforced plastics. Those were the primary areas that I was responsible for at the time.

Q How long were you Marketing Director for the New Enterprise Division?

A From late 1967 until 1970, October 1970.

Q During that period of roughly three years, were any other products added other than the three that you mentioned?

A None of any significance. Those were the primary ones, mostly related to Monsanto's fiber technology at our laboratory at Durham, North Carolina.

Q But you were based in St. Louis?

A Correct.

Q What was the next job you had at Monsanto?

A Group Marketing Director for Specialty Chemicals.

Q From October of 1970 to when?

A To the end of 1975.

Q At the time that you went into the

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specialty chemicals group, or Division, what was it?

A It was a business group.

Q That included PCBs, is that correct?

A That is right.

Q And did that remain true through the end of 1975?

A Yes.

Q I do have some recollection from other testimony that that was reorganized from time to time.

A We combined various groups but the PCBs stayed in that group for that entire period.

The only exception I would make to that is the use of PCBs and plasticizers, prior to October of 1970, was in another business group called the Plasticizer Business Group, and those products at about the time I joined the unit were transferred to my group because we were at that time getting out of that part of the PCB business, and that was all done by my business group.

Q The phase-out was under you, then?

A Yes.

Q Was there at any time during October of

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1970 to the end of 1975 a group or some subset of the Monsanto organization known as Functional Fluids?

A Yes, Functional Fluids might have been the unit's name in October of 1970. Before the end of 1970 that group was combined with the Paper Chemicals Group, and it was at that time that the name Specialty Chemicals was used as the combination of the two business groups. So I would correct what I said earlier.

When I first came in in October I was Group Business Director of Functional Fluids. Then by the end of that year we had changed the name to Specialty Chemicals and it included also Paper Chemicals.

Q And that was another use of PCBs at that time?

A No, no, PCBs were not used as paper chemicals.

Q Paper chemicals refers to what chemicals are used in paper manufacturing?

A That's correct.

Q Before this new name and new organization took effect at the end of 1970 as the Specialty

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Chemicals Business Group, where was the use of PCBs in carbonless paper?

A It was originally a part of the Plasticizer Group and must have been transferred to Functional Products and then later Specialty Chemicals just about the time I joined the unit, because I had responsibility for it from the very beginning. So it must have transferred when we transferred the other PCB-containing plasticizers.

Q In any event, by the end of 1970 all of the various uses of PCBs were under the Specialty Chemicals Group and under your responsibility?

A For which I had marketing responsibility, that is correct.

Q Would it be fair to say that your marketing responsibility also included the responsibility for unmarketing in those areas where the product was being discontinued by Monsanto?

A That is correct.

Q Just by way of background, what other chemicals were there in the Specialty Chemicals Group, other than PCB?

A Let me start with the Functional Fluids

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Group as it was when I took it over. It had fire resistant fluids for aircraft under the trade name Skydrol.

It had heat transfer fluids under the trade name Therminol. Some of those fluids were PCB-containing, and others were not PCB-containing.

It had a line of industrial hydraulic fluids under the trade name Pydraul, most of which were PCB-containing at that time, some of which were not.

It had the dielectric fluids, a series of vacuum fluids which at that time were also PCB-containing, some special lubricants for the Air Force, the carbonless paper business. That was essentially the product mix in the Functional Products.

When we added paper chemicals it was really two businesses, the paper chemicals and a latex polymer and ethyl vinyl chloride latex product sold primarily to the carpet industry.

Q For rug padding?

A For the backing, yes.

Q The Skydrol aircraft hydraulic fluids,

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did those contain PCBs?

A No.

Q I take it some of the dielectric fluids did and some did not? Or were they all --

A All the dielectric fluids which we sold at that time were PCB materials.

Q And how about the vacuum fluids?

A Some were PCB and some were not.

Q And the Air Force special lubricants?

A Were not.

Q How about the NCR paper?

A At that time it was.

Q Shortly after, or at about the time, you became Group Marketing Director of Specialty Chemicals the Plasticizers were brought under that group as well?

A Yes. And probably at that time the carbonless paper, if not before.

Q And the plasticizers, were those all PCBs?

A The ones we took over were PCBs, and we took over that portion for getting out of the plasticizer business.

Q Was there some other group that continued

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to deal with non-PCB plasticizers?

A Yes.

Q What group was that?

A The Plasticizer Business Group.

Q Who was in charge of that back in '70?

A Jim Springgate.

Q So in the course of your phase-out of PCB plasticizers you would have been dealing with people who were at least before you took over customers of Mr. Springgate?

A Yes. But the getting out of the plasticizers-PCBs was a joint effort between our business group and the Plasticizer Business Group.

Most of the customer notification of our withdrawal was by the Plasticizer Business Group. We coordinated and managed the getting out of that business.

From a manufacturing-research contact, we had a modest amount of customer contact, some customer contact, but they handled most of the customer contact because they had an ongoing business.

Q And was he, or were you, in charge of the effort to find a substituted plasticizer?

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A He was.

Q Your responsibility in that regard, if I understand correctly, was limited to whatever changes in the PCB manufacturing and production schedules, and so forth, were necessary to close down the PCB plasticizer business?

A That's correct, and also the handling of any disposable material that came back to us from plasticizer customers. Primarily, it was put together so that all the manufacturing responsibilitity was under one business unit as we went through the transition.

Q At the end of 1975, what job did you take?

A I became Director of Results Management reporting to the Group Vice President-Managing Director of the Monsanto Industrial Chemicals Company, of which the Specialty Chemicals Business was a part.

Q So that is another promotion, I take it?

A Yes.

Q And also broadening of your responsibilities?

A Yes.

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It was, so-called, giving me a staff assignment for a period of time to broaden my experience.

Q. What else, other than specialty chemicals, came under the Industrial Chemicals Company?

A The plasticizer -- I am going to have to change terms on you because we went from business groups to divisions; the Plasticizer Division, the Detergent and Phosphate Division, Process Chemicals Division, Food and Fine Chemicals, Rubber Chemicals, and Specialty Chemicals, which was at this time a combination of yet another group added into that.

Q What had been added in besides the ones we have already discussed?

A Another series of specialty products that I managed in a different part of the company included swimming pool chemicals, water treatment chemicals. I think that is essentially all.

Q What were your responsibilities as Director of Results Management?

A We had put into place a new management concept in the company that could be described as Results Management, Management by Objective used

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to be the term, and it was this position's responsibility, reporting to the Group Vice President, to get this new program, this new management program in place in all of the divisions and staff groups of the Industrial Chemical Company, and to conduct a series of organizational studies within the operating company to recommend reorganizations to the Group Vice President that would better position the company to carry out this new management approach called Management by Results.

Q Did you ultimately come up with some program of reorganization within the Industrial Chemicals?

A We studied various business units within the Industrial Chemical Company and, yes, we made several reorganizations during the time I was in that job.

Q Well, I take it one of the results that you would be responsible for managing is profitability of that part of Monsanto's organization, is that a fair statement?

A Say that again?

Q As Director of Results Management, you

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were supposed to set up a program of managing by results. One of the results that you would look at in the context of such a program, I take it, would be profitability?

A Yes, one of the results of the people in the groups that I was studying. I had no profit responsibility myself at that time.

Q What other kinds of results did you incorporate into your program of management by results

A Well, you would look at each individual and each unit in terms of what it was trying to accomplish. Other results that you might try to get people to focus on would be new product development for research people or commercial development people, sales growth, profit growth, return on capital would be financial results that you might be focusing on, the proper handling of environmental issues would be appropriate for some of the management people in the Chemical Company at that time.

Q Anything else that you can recall right now?

A I think that is a general description.

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Q How long were you the Director of Results Management in the Industrial Chemicals Group?

A Until February of 1977.

Q At the time you left that position, had you put in place a program of Management by Results within that group?

A The entire chemical company, Industrial Chemical Company, was on the results program when I left, yes, which means that every salaried employee had a result goal document that he operated under each year.

Q And part of his performance review was whether he met those results?

A Absolutely; and it included putting in place the result review process, also.

Q So the top people, one of their results was to get the result program in effect for the people they supervised?

A Exactly.

Q Down the line?

A Yes.

Q What job did you take in February of 1977?

A Assistant General Manager of the

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Plasticizer Division.

Q That is back on the line, I take it, as opposed to a staff responsibility?

A That's correct, profit responsibility for the Plasticizer Division.

Q Let me back up just a second. To whom did you report when you were Director of Results Management?

A Jack Fitzgerald, the Group Vice President-Managing Director of the Industrial Chemical Company.

Q And I take it as Assistant General Manager of the Plasticizer Division you reported to the General Manager?

A The position was Mr. Harbison's, and he was for this short period of time called General Manager of Plasticizers, Detergents and Phosphates, two different divisions. Each of those divisions had an Assistant General Manager in February of 1977.

Q So you were in the Plasticizer Division, and you had a counterpart in the Detergents and Phosphates Division?

A Yes, and both reported to Jack Harbison,

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who reported to Jack Fitzgerald.

Q And how long were you in that job as Assistant General Manager of the Plasticizer Division?

A Until, I believe, November of 1977, I became General Manager then of the Plasticizers Division, reporting directly to Mr. Fitzgerald.

Q And Mr. Harbison?

A He became Managing Director of another unit of the company.

Q He went somewhere else?

A That's right.

Q And he was not replaced?

A That's correct.

Q How long were you General Manager?

A Until early 1979, or late 1978, by December or January, I can't remember exactly when that occurred.

Q I take it your responsibilities, both as Assistant General Manager and General Manager were essentially the same?

A That's right, in the interim period until Mr. Harbison's next job became available.

Q In either one of those jobs were you

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responsible for the overall operation and profitability of the Plasticizer Division?

A In both jobs.

Q By February of 1977 had the phase-out of the PCBs and plasticizers been complete?

A Yes.

Q What job did you take over in '79?

A General Manager of the Detergent and Phosphate Division.

Q Is that a larger part of the organization than plasticizers?

A Yes.

Q So that is a promotion?

A Yes.

Q How long were you in that job?

A Until June or July of 1980.

Q What job did you take then?

A Assistant Managing Director of the Industrial Chemical Company.

Q And to whom did you report at that time?

A Mr. Harbison, who by then had become Group Vice President and Managing Director of the Industrial Chemical Company.

Q So he took over from Fitzgerald?

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A Yes.
Q Did Mr. Fitzgerald leave the company?
A No, he went to Europe to head up our European operations.
Q How long were you the Assistant Managing Director of Industrial Chemicals?
A Eighteen months.
Q Where did you go next?
A Managing Director of Industrial Chemical Company, replacing Harbison.
Q Did he leave the company?
A No, he went to another job. He became, I think at that time, Executive Vice President of Monsanto.
Q How long were you Managing Director of Industrial Chemicals?
A Until January of 1981.
Q What job did you have then?
A Group Vice President-Managing Director of Monsanto International.
Q By the time you became Assistant Managing Director of Industrial Chemicals, which was June or July of 1980, if I recall your testimony correctly, was Monsanto out of the PCB business

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altogether?

A Yes.

Q Would it be fair to say, then, that the last job that you had that involved either line or staff responsibility in a group that included PCB products was Director of Results Management in Industrial Chemicals?

A That's right.

Q Did the results that were being managed -- or was one of the results that was being managed ultimately while you were in that job the phase-out of PCB production altogether?

A For those people in the Specialty Chemicals Group at the time, one of their major responsibilities was getting out of the then remaining PCB applications.

Q And one of the last remaining ones at that time included sales to customers for use in manufacturing capacitors, I take it?

A That and the so-called dielectric area was the last area that we went out of.

Q And your responsibility as the Director of Results Management was to introduce the line managers to the process by which they established

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those goals and then worked to achieve them, rather than supervising their achievement or non-achievement of the goals, is that a fair statement?

A That is correct.

Q In any of the -- well, let's finish this little history before I get into anything else or I will forget.

When we left you, you had become Group Vice President and Managing Director of Monsanto, International?

A Yes.

Q Is that still your present title?

A No. We are at the end, though. There is one more.

Q All right. Where did you go from there?

A That was from January of '83 to April of 1986, at which time I became Senior Vice President of Monsanto Chemical Company and Group Vice President of the Monsanto Company.

Q And that is your present job?

A That's correct.

Q What are your duties today?

A I am the No. 2 manager in the 3.5 billion

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dollar Chemical Company of Monsanto, reporting to the President of the Chemical Company, and have responsibility for managing all of the staff functions for the Chemical Company.

Q The Chemical Company, I take it, is only a part of the Monsanto Company?

A In terms of revenue, about half the company; but is one of six units of Monsanto that resulted from the January 1, 1986 reorganization.

Q It seems obvious, but maybe it is not, what lines of Monsanto's present business comes under Monsanto Chemical Company?

A The fiber business, plastics business, resins, rubber chemicals, specialty chemicals, detergents and phosphates. That is six, that is all of them.

Q That is six.

A Okay.

Q So in your present job you said you manage all the staff functions. Is your job itself a staff function, or is it a line function?

A Yes, it is a staff function.

Q Have you ever been in any of these various jobs that we have described a member of

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the CMC?

A CAC, Corporate Administrative Committee.

Q Okay. Was it ever called the CMC, Corporate Management Committee, or something like that?

A No. CMC is Chemical Manufacturing Association. That is something separate.

Q So it is CAC?

A Yes.

Q Was that ever known in the vernacular as the Policy Committee?

A It was at one time, yes; and, yes, I was a member of that.

Q When were you last a member?

A It was disbanded in January of 1986, or December of '85, I can't remember when, and I was a member of it, up until then from the time I became Managing Director of MIC, which would have been 1981.

Q When you first became a member of the Policy Committee, or the CAC, was Monsanto already out of the PCB business completely?

A Yes.

Q Until it was disbanded, what was the role

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of the CAC in the management of Monsanto?

A About the time that I joined it another management group was formed called the EMC, Executive Management Committee, and from the beginning of the formation of the EMC it became more the policy-making and decision-making executive group of the company.

The CAC role then moved from the policy-making group to a group of fifteen, sixteen, senior executives that was used to discuss and debate issues, to communicate feelings to the CEO, but not to make decisions.

Q Organizational grapevine, to let the people at the top know what the people in the middle were doing?

A Both ways, communicating upwards to the CEO, but also an opportunity for the CEO to communicate down through his organization through the small group of executives.

Q So before the creation of this Executive Management Committee, the CAC was also in a policy-making function, is that correct?

A That's right, and we went through a transition about that period of time as the EMC

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took over more and more of the policy-making role.

Q If you can tell me, before this division took place, before the transition process began, was there some kind of formal written understanding of the role of the CAC with respect to the CEO? I mean, who was it that really made the ultimate decisions?

Q CEO.

A Okay. So the committee would hand up to the CEO its determination of what the corporate policy should be, and he would either accept it or reject it, or change it?

A Yes. The CEO was a member of the Corporate Administrative Committee prior to the formation of the EMC, and afterwards he was also a member of the EMC.

He used the CAC as a group to debate issues and to make recommendations, frequently to vote on issues, but clearly he had the ultimate -- he had one more vote than the total number of the members.

Q Okay. Was it, to your knowledge, common for him to deviate from the recommendations of the CAC, or was that kind of an unusual --

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A I would say that would be the exception.

Q I take it that would be true without regard to who the individual was that occupied the position of CEO?

A Yes.

Q How frequently did the CAC meet?

A When it was originally formed, I believe it met weekly. By the time I became a member of it I believe it was meeting twice a month, and by the end it was only meeting once a month, as the EMC took on a bigger and bigger role.

Q Is there still an EMC?

A Yes, there is.

Q So now the role that originally was in the CAC that was then divided is now back together in the single EMC, is that a fair statement?

A No. The -- for a large part, yes, but the role of the CAC toward the end and throughout it was merely a mechanism for communication upward and downward.

There is a new organization of about sixty to seventy of the senior executives of the company called the MMC, I guess Monsanto Management Committee, that now plays the role of merely a

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mechanism for the CEO to communicate within the company and receive communications.

Q Was that originated about the same time the CAC was disbanded in January of '86?

A Yes. It was a combination of what at the time was called the CAC and the Senior Management Group into a group that is now called the Monsanto Management Committee, or Council. But the policy-making role is presently in the EMC.

Q If it is anywhere?

A If it is not totally in the CEO's hands, yes.

Q All right. Let's take a look at the period of time between roughly October of 1970 when you first became part of the Specialty Chemicals, what was then a division.

A No, business group.

Q Business group, Specialty Chemicals.

Anyway, It hung onto that name throughout its --

A History.

Q Whatever, the last word may have changed from time to time until your responsibility as, I lost the title.

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A Director of Results Management.

Q At the period of time when you had something to do with PCBs.

A Let me just correct one other thing. As you look at the records, or the documents, you may find Functional Products Business Group, which was the original group that contained most of the PCBs. I then said Specialty Chemicals Business Group. I think it was Specialty Products Business Group after Functional Products; and then when it became a division it became Specialty Chemicals. When I said it was combined with some other Specialty Chemicals, that is when it was changed to Specialty Chemicals.

So there was a period of time when it was called Specialty Products Business Group. So you could find any one of those three terms, that would have been the businesses that contained PCBs.

Q Okay. And at one time plasticizers was separate from any of those, in the early days?

A Yes.

Q During this period of time, beginning in October of 1970, one of the major -- well, let me

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as this question: Is it true that during
thriod of time, beginning in October of '70,
anuntil the final phase-out of the PCB,
diric products by Monsanto, that Westinghouse
wajor customer for PCBs?
That's correct.
And can you give me any kind of rough
ese of the proportion of the total PCB sales
tire represented by the total sales to
Whouse?
No, other than to say they would have
br second largest PCB customer.
General Electric was the first?
General Electric was the first; but the
dsize of that I could only guess at.
Can you give me an estimate of what
pion of the total PCB sales were represented
b dielectric sales?
In 1970-71, after the combination into
ecialty Products Group, the sales of the
ed group was about $70 million. Dielectrics
whave been less than $20 million, or about
llion of that.
Does that seventy million include other

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products other than PCBs?

A Yes. That would have been the entire group, paper chemicals, ethylene vinyl chloride and the functional products, would have been about a seventy million dollar business.

Q What was the volume of the PCB business as a whole, if you can recall?

A The so-called functional products business was about $35 million.

Q That also included some non-PCB products?

A Yes; and I would guess that the PCB portion of that would be twenty to twenty-five to thirty million, in that range.

MR. FRUEHWALD: For clarification, what time period are you referring to in this question?

MR. MC CONNELL: It is my understanding he is talking about the 1970-71 time period.

THE WITNESS: Yes.

By Mr. McConnell:

Q Obviously, as other uses of PCBs were phased out the dielectric eventually became a hundred percent of what you were selling?

A But the PCBs out of the total became less and less of a factor, of the total.

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Q So of the 25 to 30 million roughly PCB sales in 1970-71, approximately twenty million of that was for dielectric uses?

A I believe that would be about right.

Q Okay. So in any event, it is more than half of the total for PCBs?

A Oh, yes.

MR. MC CONNELL: I forgot what number you told me.

THE WITNESS: Number for what?

MR. MC CONNELL: The exhibit number.

MR. KARAGANIS: 164 was the last exhibit number.

MR. MC CONNELL: Okay. Would you mark this as 165, please.

(The said document was marked Exhibit No. 165.)

By Mr. Mc Connell:

Q Mr. Gossage, I am going to show you a document the court reporter has marked as Deposition Exhibit No. 165, which is a two-page letter dated November 9, 1970, from you to Mr. Keith Kelly of Westinghouse, and I will ask you if you recognize that.

WATER_PCB-00044697

MR. FRUEHWALD: It is also Exhibit 44.

MR. MC CONNELL: Well, this one is a little different, I think.

MR. FRUEHWALD: Okay.

THE WITNESS: Yes.

By Mr. Mc Connell:

Q There is a notation on the first page of that document footnoting a change in the second line of the second paragraph from Aroclor 1254 to Aroclor 1232. Do you recall why that change was made?

A No.

Q Do you know whether the earlier version of the letter that is mentioned in the footnote was actually sent and then a revised letter was sent later?

A No, I don't.

Q Do you recall what the contract language was that is referred to in that letter, generally speaking what it had to do with?

A You are talking about this paragraph?

Q Right, the contract termination clause, as it is referred to.

A Yes, I am familiar with the clause.

WATER_PCB-00044698

Q Okay. And that refered to a provision in the contracts between Monsanto and Westinghouse for the sale of PCBs, that in the event Monsanto determined that Westinghouse was not able to stop discharges of PCBs into the environment that Monsanto reserved the right to discontinue selling the product?

MR. FRUEHWALD: Let me object to the question. We have got the exhibit around which shows the actual language. I don't know that your characterization can be called as being an accurate quotation from the document.

MR. MC CONNELL: I don't mean to make it be a quotation, but rather a paraphrase of what the substance of the agreement was. If he disagrees with that he can tell me.

MR. FRUEHWALD Go ahead.

THE WITNESS: I don't think that is the substance of the statement because there was a disagreement on whether that clause was to allow us the right to withdraw the product if the "industry" did not clean up and maintain the proper use of PCB, rather than Westinghouse specifically.

WATER_PCB-00044699

By Mr. Mc Connell:

Q Which position did Monsanto take, and which position did Westinghouse take?

A Westinghouse's position was why should they be responsible for the entire industry. Monsanto's position was if the heat got too bad, if some lesser user of the product wasn't properly using it we were going to withdraw it regardless of what Westinghouse did.

Q In any event, as your letter of November 11, 1970 to Mr. Kelly reflects as of that time you thought there had been sufficient progress that the termination clause could be changed?

A I don't think that is what this letter says.

Q If you will read that paragraph that starts on the bottom of the first page, and goes over to the second page.

A Okay.

Well, it says that Monsanto would terminate an agreement with a given customer if the industry in general or that specific customer does not adequately prevent product from entering the environment. That was the intent of the

WATER_PCB-00044700

clause, and continued to be the intent of the clause.

Q Also, if a substitute product became available, is that correct?

A That's correct; that was a second intent.

Q Take a look at what has previously been marked as Deposition Exhibit 46, which is a one-page letter dated February 2, 1971. Do you recognize that document?

A Yes.

Q Does that document include a change in the termination clause?

A It deals with a recommended change that Westinghouse was making, I think; and then we go on to recommend an alternative ourselves.

Q Do you know whether that alternative was ever adopted, that is, the alternative that Monsanto put forth?

A I don't know whether that exact language was eventually adopted or not.

Q The language that you are referring to is a change from the idea of termination because of industry inability to control it to a termination only on the basis of the individual customer's

WATER_PCB-00044701

inability to control it?

A That's correct. That is the whole debate that went on between Westinghouse and Monsanto.

Q Was that debate ultimately resolved sometime at or after February 2, 1971 in favor of the customer by customer view?

A I don't recall.

Q Isn't it a fact that Westinghouse's Bloomington, Indiana, plant was one of the worst offenders in terms of PCB discharges into the environment?

A I can't say.

Q Did you ever visit the plant?

A Yes.

Q The Westinghouse plant?

A Yes.

Q On how many different occasions?

A Two, I think.

Q Do you recall about when they were?

A There was one early on after I took the job. Then I can remember seeing Keith Kelly on that occasion. There was a second one, and I can't tell you how much later it was, my recollection is that Keith wasn't there and I met

WATER_PCB-00044702

with others at that time.

Q How long were you there on the occasion of the first visit?

A I don't remember but, you know, a partial day or a full day.

Q Did you go with some other people from Monsanto?

A Yes.

Q Who else went?

A I can't tell you everyone that was there, but it was a series of visits that I made with Paul Benignus, where he was introducing me to some of the key dielectric accounts.

Q What was his job responsibility at that time?

A He was the Product Manager, or Market Manager reporting to me with responsibility for dielectrics, and he had two specialists reporting to him, Graham and Bryant, and either of those two, or both, might have also been on that visit.

Q So Graham, Bryant and Benignus were the people with direct responsibility for the PCB dielectric sales?

A That's correct.

WATER_PCB-00044703

Q And they were the primary contacts with Westinghouse in respect to those products?

A That's correct.

Q And they were taking you around to introduce you as their new boss?

A That's correct.

Q Okay. Before you went on that first visit to the Westinghouse plant, did any one of those three people, or anybody else at Monsanto, brief you about what you might expect to see?

A Expect to see?

Q Right.

A There would have been a briefing of the customers and our involvement with the customers, but not what I "expect to see."

Q Did you take a tour of the plant?

A Not that I remember.

Q It was just an office meeting sort of thing, as far as you recall?

A Yes. Certainly, there was a meeting in Keith Kelly's area, in a conference room, or in his office, but I have no recollection of a plant tour.

Q Were you told at or about the time of

WATER_PCB-00044704

this first meeting that there had been a plant tour by other Monsanto representatives?

A I don't remember.

Q At the time of your first visit to Keith Kelly at Westinghouse in Bloomington, was that before or after the PCB problem began to receive wide general publicity?

A After the problem started receiving wide publicity, as it relates to so-called non-closed systems, or open systems, in other words, as far as plasticizers and Pydraul, the publicity on the environmental problem was beginning to be a big issue.

Q Was the question of environmental control of PCB discharges any part of your discussions with Mr. Kelly on the occasion of that first visit?

A Yes.

Q Can you remember anything about what was said, what you said to him, or what he said to you?

A No, no specifics.

Q Did you ask what Westinghouse was doing in the area of attempting to control PCB

WATER_PCB-00044705

discharges from the plant?

A I have no memory of that. I would have been on the job probably only a month or so. So I wouldn't have gone up to that meeting with any great specifics. Mostly it was to get acquainted with the customer.

Q But you had a general awareness that there was some environmental problem with PCBs?

A Absolutely.

Q And, in fact, you knew that one of your responsibilities was to phase them out of the plasticizer business?

A Yes.

Q How long after that first visit was the second visit to Westinghouse at Bloomington?

A I don't know. I can't tell you whether it was '71, '72 or '73. I just remember having been there twice. And I may have been there more than that. But I remember being there twice.

Q On this second occasion, was there a plant tour involved?

A No.

Q So to the best of your recollection you were never out on the factory floor at the

WATER_PCB-00044706

Westinghouse Bloomington plant, is that a fair statement?

A I have no memory of being in their plant.

Q Did you ever receive either from Westinghouse or from others at Monsanto any reports concerning conditions at the Westinghouse Bloomington plant with respect particularly to PCB control or lack of control?

A No, I have no memory of that.

Q Okay. When you took over in October of 1970 as being in charge of marketing for Specialty Chemicals, was Mr. Papageorge already in place as the PCB coordinator?

A Yes, he was.

Q So whatever responsibility you might have had in that area was secondary to his?

A I had a secondary role as far as the environmental issues. He would have had the direct contact with the customer on our concern about their environmental problems, or our concern about the problems of PCBs. We were, myself, Benignus, just in on the commercial part of it.

Q How much it was going to cost, the terms and conditions of the sale, is that correct?

WATER_PCB-00044707

A That's correct.

Q And to the extent that there was -- well, let me see if I can divide it up.

It was your responsibility to get into the sales agreement whatever terms and conditions Mr. Papageorge thought might be necessary and whatever Westinghouse would agree to concerning the environmental problem, but whether those conditions were being followed or not was his responsibility to determine?

A He had the primary responsiblity for that.

Q Okay. Did there ever come a time when Mr. Papageorge suggested to you, or discussed with you, the possibility that Monsanto would have to terminate the sales of PCBs to Westinghouse?

A Not that I can recall.

Q I am going to show you a document that has previously been marked as Deposition Exhibit 19A, and I will ask you if you recognize that. It is a one-page letter dated November 30, 1970.

A Yes.

Q And that is from you to Mr. Tyson?

A Yes.

WATER_PCB-00044708

Q Who was Mr. Tyson?

A He worked for Keith Kelly. He was a buyer for PCB.

Q The first paragraph of that letter refers to an increase in the sales price of PCB products necessitated by higher manufacturing costs and other increases due to the PCB environmental problem. You see the paragraph I am referring to?

A Yes.

Q What was it about the PCB environmental problem that caused Monsanto's manufacturing costs to go up?

A I think the two phrases, higher manufacturing costs -- as we went out of PCBs, our plant occupancy came down and it required that the fixed costs be flowed against the remaining businesses. That drove the cost up.

Q So your cutback in production caused the cost per unit produced to go up?

A That's correct. And then there was environmental capital that we were putting into our plant to prevent any leakage of PCBs into the environment of our plant. That was driving our cost up. That would have been related to the

WATER_PCB-00044709

increases due to the PCB environmental problem.

We were also at that time putting in an incinerator to burn returned liquid PCBs. That also was an environmental issue driving our costs up.

And let me just add another thing that would come to mind. We were beginning to spend some of our research money on trying to develop alternative fluids to PCBs, and that would have been another cost factor implied by the environmental problem.

Q Okay. There was a charge to customers who returned waste liquid PCBs for incineration, was there not?

A Yes.

Q The fourth paragraph of your letter refers to toxicological testing expenses, in the next to the last line. Do you recall specifically what kind of toxicological testing that refers to?

A No.

Q Were you aware at the time you wrote that letter that Monsanto had retained Industrial Biotest Laboratories to do some animal studies on the toxicology of PCBs?

WATER_PCB-00044710

A No.

Q Are you aware of that now?

A Yes.

Q Do you know whether there was ever any other toxicological testing of PCBs by Monsanto other than that which was done in conjunction with Industrial Biotest?

A I don't know.

Q Did Monsanto ever do a study on its own production workers of PCB toxicology?

A Specifically, I don't know.

Q That would generally come under the responsibility of the medical department, would it not?

A Yes, and would have been coordinated by, probably, Papageorge and our research people.

Q If it was something that was going on about this period of time, after Mr. Papageorge was PCB coordinator?

A Yes.

Q Okay. You are not aware of what may or may not have been done at a much earlier date with respect to toxicological testing of PCBs?

A No.

WATER_PCB-00044711

Q The next to the last paragraph of the letter says in the second sentence, "We will continue to operate under the same policy with respect to price and have approached this price change as one which would provide Monsanto only the minimum necessary revenue required by the true increases in our cost of operation."

Is that intended to suggest that there was no profit in the ongoing PCB sales, or only that there was no increase in profit?

A I can only interpret what it would mean to me now. I have no memory of what it meant at that time.

Q What would it mean to you now?

A It would suggest passing through the cost increase.

Q That the profit after the price change would be the same?

A That's what it would suggest to me.

Q What was the gross margin, if you know, on PCB products, generally, in 1970?

A I could give you a range of what I remember it being.

Q What is your best memory?

WATER_PCB-00044712

A About 35 percent.

Q How does that compare to -- how did it compare in late 1970 to the chemical business, generally? Is that a good, bad or indifferent mark up?

A Well, it would be about what most of the functional products ran at, the so-called specialty chemicals were at about that kind of margin, some were better, some were worse, some were as high as 60 or 70 percent.

Q Were they larger volume or smaller volume products?

A Smaller volume.

Q The last sentence in the last paragraph of the letter, which is only one sentence, says, "We solicit your assistance in the proper handling of these products to minimize losses to the environment."

Did Monsanto ever suggest to Westinghouse and other customers specific actions they might take to accomplish minimization of losses to the environment?

A We had a system that if any of the capacitor or transformer manufacturers had

WATER_PCB-00044713

questions about the handling of PCBs that those questions could be directed specifically to Papageorge.

Q Do you know whether Monsanto either through Mr. Papageorge, or otherwise, would offer unsolicited advice, that is, to customers other than in response to a direct inquiry about a specific issue from the customer?

A I don't know that. I can't say whether he did or didn't offer any unsolicited advice. His purpose was to be helpful to the customers when they inquired of PCB-related issues, and to attempt to be helpful. But I can't go beyond what he might have done unsolicited.

Q I am going to show you a letter that was previously marked as Deposition Exhibit 45, which is a letter dated December 29, 1970 from Mr. Kelly to you, and I will ask you if you recognize that document.

A Yes.

Q Is that part of the continuing negotiations over the specifics of the contract termination clause that we talked about earlier?

A Yes.

WATER_PCB-00044714

Q Did you respond to that letter?

A Yes, probably. I guess this is the response to the letter. Yes, this is the response.

Q Your letter of February 2, 1971 --

A References his December 29 letter.

Q And we talked about it, which I have marked as what?

MR. FRUEHWALD: Exhibit 46.

MR. MC CONNELL: Exhibit 46.

Q Did there come a time when the American National Standards Institute set up a committee to study the PCB environmental problem and perhaps establish some standards for industrial handling of PCBs?

A I have no spcific recollection of that.

Q Do you recall the ANSI Committee that was designated as C-107 with Mr. Papageorge as Chairman?

A I think I remember that term, yes.

MR. MC CONNELL: Would you mark that whatever the next exhibit is.

(The said document was marked Exhibit No. 166.)

WATER_PCB-00044715

MR. MC CONNELL: It is a June 1, '71 memo from Benignus to Bergen, Gossage, Munch, Savage and others.

Do you recognize that memo?

A Not specifically.

Q There is a reference on the first page there to "McClain will join ANSI-PCB Pollution Committee."

A Yes.

Q Mr. McClain was an employee of Westinghouse, was he not?

A That's correct.

Q Do you recall whether either yourself or Mr. Benignus or Mr. Papageorge had been encouraging Mr. McClain to join that Committee?

A No, I certainly was not. I can't speak for the other two.

Q Do you know whether there was a program or an effort by Monsanto through Mr. Papageorge to encourage Monsanto's PCB customers to join that committee?

A I don't know that.

Q The next paragraph of the -- well, let's take them in order.

WATER_PCB-00044716

The first paragraph refers to "Earlier aberrations on Aroclor 1016." As I understand it, 1016 was a different polychlorinated biphenyl mixture that was produced in an effort to find a less environmentally problemmatic dielectric fluid for 1254 and 1242, is that a fair statement?

A Yes.

Q And if I recall correctly on the earlier product designations, 1254, 1260, 1242, 1221, the last two digits represented the percent by weight of chlorine in the overall product mixture, is that a fair statement?

A Yes.

Q 1016, however, did not -- that is, 1016 was not merely 16 percent chlorine, is that correct?

A I don't know that. I don't know whether it was or it wasn't. It was a lower chlorinated material, but I can't tell you whether it was 16 percent.

Q When you say lower chlorinated, do you mean to indicate that it had a total chlorine content that was less, or, rather, that the higher chlorinated isomers had been eliminated?

WATER_PCB-00044717

A Had been removed by distillation.

Q That might in fact not change the overall chlorine content of the product?

A Well, the product isn't a single chemical. All of the 1254 and 1242 is a mixture of various levels of chlorination of biphenyl.

Q I understand that. I am saying that if you take out the higher chlorinated portion of the mixtures and also take out some portion of the lower chlorinated isomers you could end up with the same total chlorine content by weight, but you would still eliminate the top end isomers, chemically, physically that is a possibility?

A That is possible.

Q You don't know whether that is the case with 1016 or not?

A No.

Q Do you know what the "earlier aberrations" were that are referred to?

A No, I don't.

Q In any event, Westinghouse eventually did purchase commercial quantities of 1016 for dielectric use, is that correct?

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

WATER_PCB-00044718

is suggested here.

Q The next paragraph refers to Kelly -- let me ask you, this is a call report, essentially, from Mr. Benignus to you, is it not, and others?

A Yes.

Q And he is reporting on a meeting or conversation that he had with Mr. Kelly at Westinghouse Bloomington?

A That's what it appears to be.

Q Okay. The second paragraph mentions that Kelly is appreciative of the revision of the contract clause.

Does that refer to the end process of the negotiations that we have already discussed?

A That's what it suggests.

Q Okay. The next paragraph we have already talked about, it mentions Mc Clain joining the ANSI-PCB Pollution Committee.

Following that is a paragraph referring to the fact that Mr. Benignus showd Mr. Kelly the latest news article by Representative Ryan.

Was it Monsanto's practice to keep its PCB customers abreast of what was going on in Congress and in the press with respect to PCB

WATER_PCB-00044719

environmental pollution?

A Say that again? Was it Monsanto's practice --

Q Was it Monsanto's practice to keep its customers abreast of what was happening in the press and in Congress with respect to PCBs in the environment?

A Well, I can't confirm it as a policy. I can't answer that. It doesn't surprise me to see in a memo that we showed Kelly some article that had appeared in a news article. But to say that was our practice, you know....

Q Well, you certainly wouldn't have discouraged your sales people from doing that, would you?

A No.

Q In fact, it would be kind of embarassing to Monsanto as the seller if a problem came to the buyer's attention through some other means other than you, would it not?

A I don't think that would be embarassing.

Q Do you know whether Monsanto ever solicited its customers to comment on proposed government regulations of PCBs?

WATER_PCB-00044720

A I have no memory of that, except in some correspondence that I have looked at recently.

A Okay. There is also reference in that same paragraph to a visit by Jack Sterling of Westinghouse to the D Building of Monsanto. Do you know what that refers to?

A D Building is where our senior executives' offices are.

Q So that would be another one of these office visits.

What role did Jack Sterling have at Westinghouse, if you know?

A I don't know -- again, I have seen Jack Sterling in some recent correspondence I reviewed, but I have no memory of Jack Sterling's position.

Q Did you review some documents in preparation for our deposition today?

A Yes.

Q Okay. About how much material did you look at?

A About that much. (Indicating.)

Q About an inch, maybe less.

Was there any material in there other than your own in and out correspondence?

WATER_PCB-00044721

A Other than my --

Q In other words, the letters that you either wrote or received, or memos?

A Or call reports.

Q Or call reports that were either addressed to you or prepared by you?

A Or that I was copied in on.

Q Yes.

A Right, that's all.

MR. MC CONNELL: Do you have those, Mr. Fruehwald?

MR. FRUEHWALD: I have a copy of what Mr. Gossage looked at, certainly.

MR. MC CONNELL: May we look at it?

MR. FRUEHWALD: No.

MR. MC CONNELL: What is the basis for your refusal?

MR. FRUEHWALD: Same basis as Mr. Papageorge, it is work product, in this context attorney-client privilege, as well as there being no foundation for having to produce it.

MR. MC CONNELL: Well, I think it is pretty clear that anything a witness looks at to refresh his recollection in preparation for testimony is

WATER_PCB-00044722

produceable, whether a lawyer gave it to him, or somebody else.

MR. KARAGANIS: I will also indicate for the record that I apprised Mr. Fruehwald by telephone that we have done some research on this question and there is a requirement that documents submitted to a deposition witness for his inspection prior to the deposition are produceable, are required to be produced.

I have the material coming down by mail. I will show it to you again tomorrow. But the fact is that the law is very clear, when you show a witness documents in preparation for his deposition he must produce the documents to the other side so they can examine regarding those.

We will seek to compel production of the documents and we will seek Mr. Gossage's return to be examined regarding those documents.

MR. FRUEHWALD: Let me just say my position has not been taken without our own research, and we believe the position is sound, and we will stand by it.

By Mr. Mc Connell:

Q There is a reference in the sixth

WATER_PCB-00044723

paragraph to something about Australia. To your knowledge does that have anything to do with PCBs?

A Yes.

Q And what does Australia and Plessey-Ducon have to do with PCBs?

A One of these two companies, either Plessey-Ducon or Endurance Electric, would appear to be an Australian company that has acquired an American company, both of which are in the electrical industry and producing capacitors or transformers, or otherwise using PCBs.

Q The next paragraph refers to failed capacitors and says, "One percent of power capacitors fail annually. Utilities holding them awaiting other instructions."

I take that to mean that Westinghouse's customers are asking Westinghouse what to do with the failed capacitors in the possession of the customer, is that your understanding?

A That's the way I would interpret it.

Q And Westinghouse is turning to Mr. Benignus in the context of this call for some suggestions about what to do with those failed capacitors?

WATER_PCB-00044724

A I can't tell from this whether they were seeking his advice, or whether he was merely reporting what they told him. I can't tell from this, and I have no memory of it.

MR. MC CONNELL: Do you want to mark this as 167, and then mark this as 168.

(The said documents were marked Exhibit Nos. 167 and 168.)

MR. MC CONNELL: 167 is a memo dated July 23, 1971, one page, from Benignus; and 168 is a one-page letter dated July 23, '71, from Benignus to Harvey Pickett.

Q Showing you what has been marked by the reporter as Exhibits 167 and 168, Mr. Gossage, I will ask you if you recognize those documents.

A No.

Q Exhibit 167 refers to a purchase by Monsanto from Westinghouse of recovered Aroclor 1242. Is this the beginning of work on the incineration of scrap liquid Aroclor? Or does this have to do with reclamation, if you know?

A I don't know, but it doesn't look like material that we were bringing in to burn because it indicates we are paying them for returned

WATER_PCB-00044725

goods, they paid us.

Q To be incinerated, is that right?

A Yes.

Q Was there an attempt at one time to reclaim scrap Aroclor and see if it could be upgraded?

A I have no memory of that.

Q Have you heard of a company around St. Louis, or over in Illinois, called Findett?

A Yes.

Q You have no recollection of an attempt by Monsanto to have Findett repurify scrap liquid Aroclor?

A They reclaimed Pydrauls for industrial hydraulic applications for us and had a contract for that purpose. I have no knowledge of anything they were doing with Aroclor.

Q In any event, Exhibit 167 indicates that Monsanto was paying $900 to Westinghouse for 18,000 pounds of recovered Aroclor 1242?

A That's what the memo suggests.

Q Okay. And the next to the last paragraph of the letter that has been marked as Exhibit 168 also refers to the purchase of 18,000 pounds by

WATER_PCB-00044726

Monsanto from Westinghouse of what the letter describes as returned scrap, is that correct?

A It refers to returned scrap.

Q It says, "We plan to enter a purchase order from you for 18,000 pounds of returned scrap at five cents a pound."

A Yes, that's what it says.

Q The next sentence says, "This is not routine."

Does that refresh your recollection at all as to what the purpose was for that purchase?

A No, I have no recollection of the purpose.

Q Okay. There is also a reference in that letter to a phone conversation about trichlorobenzene. Do you know what that was in regard to?

A What paragraph are you referring to?

Q Right in the beginning, "Thanks for phoning this morning about trichlorobenzene."

A Yes. I think trichlorobenzene was used as an additive to our PCBs in some of the products that we supplied, and it suggests to me that some inquiry is being made whether Westinghouse could

WATER_PCB-00044727

buy the trichlorobenzene themselves directly, or whether we would continue to buy it. Hooker seems to be the supplier.

Q So to make up the ultimate dielectric fluid that they put into their capacitors they added some amount of trichlorobenzene to the PCBs, is that your understanding?

A I believe that some formulations that we sold contained some purchased trichlorobenzene, not all. 1242, for example, is all PCBs.

Some of the things that might have been sold as Inerteen something, or whatever GE's trade name is, Pyranol, might have had some specified TCB to be added, trichlorobenzene.

Q The issue the letter raises is whether Monsanto is going to mix it in or Westinghouse.

A That is what it suggests to me, but I have no memory of it.

Q But it doesn't suggest to you a change in formulation of the Westinghouse material?

A No.

Q Did Monsanto produce trichlorobenzene?

A I don't think so.

WATER_PCB-00044728

Q So that is why they purchased it from Hooker to make up the mixture, is that correct?

A That's what it would appear to be.

Q The letter also refers to a product that is called Inerteen 54201KJ. Do you have any idea what that is?

A Yes. That is a trade name for Westinghouse's product that we supply to them under their specification.

Q Was that also used in the manufacturing of capacitors?

A Capacitors or transformers, I can't recall which.

MR. MC CONNELL: Would you mark this two-page document as Exhibit 169. It is a letter dated -- or it is a memo dated August 4, 1971, from Benignus to Gossage with a specification sheet attached, also dated August 1. The specification sheet is dated August 1, 1971.

(The said document was marked Exhibit No. 169.)

By Mr. Mc Connell:

Q Take a look at Exhibit 169, and I will ask you if you recognize that.

WATER_PCB-00044729

A No, I don't recognize it.

Q Does that suggest to you that as of the date of that memo, which is August 1971, that 54201KJ was a new product?

A The attached memo -- it is hard for me to see, but it looks like new blend.

Q That is what it looks like to me, too.

A It would imply a new blend for a specific type of capacitor.

Q Okay. And it also says in the last paragraph of the memo that this material will be sold only to Westinghouse and, therefore, no pricing sheet is being prepared.

A That's what it says.

Q Does that also suggest that it is a new product?

A For Westinghouse, for a specific capacitor.

Q In other words, they said we want you to make up this stuff for us and send the specification and you figure out how much to charge?

A That's what it suggests.

Q Do you have any recollection whether that

WATER_PCB-00044730

Aroclor 54201KJ was a substitute for some other PCB product?

A No.

Q I guess it says in the memo that it is for mineral oil?

A Replacement of a non-PCB in a coupling capacitor.

Q In 1971, in August of 1971, there had been a great deal of public controversy about PCBs in the environment, is that a fair statement?

A I think that's right.

Q Why would Monsanto be participating in a change from a non-PCB dielectric fluid to a PCB dielectric fluid, in view of all of the problems that PCB was causing for the company?

A I can only speculate on an answer to that.

Q What is your thought?

A The memo suggests that this was previously a mineral oil capacitor which would have supported a fire; and for whatever reason, they wanted to go to a fire resistant capacitor. So it would be logical for us to be willing to supply such a fire resistant product. It is a

WATER_PCB-00044731

matter of safety versus the environment.

Since we were operating under the assumption that capacitors were closed systems and the user was using them as such, it wasn't increasing the amount of material going into the environment as we understood the capacitor industry in 1971.

Q Did your understanding ever change? When I say "you" in that question I mean you, Mr. Gossage.

A Well, I can't say whether it was before or after I left this assignment that it became clear that the electrical industry -- that there were leakages in the electrical industry. But I can't tell you whether it was when I was Director of Results Management or when I was Marketing Director. But it was during this period of time we believed the industry was a closed system. That is why we were selling this versus the other applications.

Q What was it that you learned later that changed your belief, and again I am referring to you as Mr. Gossage, that the electrical industry was a closed system?

WATER_PCB-00044732

A I can't give you a specific answer to that. Again, I would be guessing. If you would like for me to guess, I would be happy to.

Q Well, you just testified that at some point you changed your view and concluded that the electrical industry was not able to eliminate leakages, to use your word.

What was it that you learned, from whatever source, that caused you to change your view?

A Well, it was a series of things that changed my mind, personally.

There were, from time to time, transformer leakages or wrecks, or whatever, on the highway where a transformer was dropped off of a truck and leaked on the highway.

At some point in time I had a capacitor go out in my office and it started dripping on my carpeting. It was those kinds of things that at least over time I realized that there was some product that obviously was getting into the environment.

Q The failed capacitor in your office, was that in an air conditioning unit?

WATER_PCB-00044733

A No, in a light fixture.

Q It was relatively small, as capacitors go, I take it?

A Yes. Nevertheless, it had that black stuff dripping out.

Q In this series of events that you described, were any of those events related to things that you were told by others about conditions they observed in capacitor manufacturing plants?

A No.

Q Did you ever discuss that subject with Mr. Papageorge or others?

A No; and my feeling would be it was after I left. The direct responsibility would have been closer to the time when we actually got out of PCBs for dielectric applications.

Q At which point it was of less concern to you, personally?

A I wouldn't say that. I just didn't have any direct responsibility for it.

MR. MC CONNELL: Do you want to mark this as 170, and it is a one-page memo from Mr. Gossage to Mr. Paton, dated February 8, 1972, and attached to

WATER_PCB-00044734

it are three form letters, two of them are two pages long, and the third is only one page long.

(The said document was marked Exhibit No. 170.)

By Mr. Mc Connell:

Q Do you recognize those documents?

A Yes.

Q Two of the form letters that are attached to the memo were for your signature, and the other one was Mr. Bergen, I believe?

A Yes.

Q Why didn't you sign them all, if you can recall?

A I can only speculate for you.

Q What is your thought?

A It appears that these are letters that went to different classes of customers, and for whatever reason Mr. Bergen decided that some of the customers he wanted to sign himself.

Q Was he above you in the organizational hierarchy at that time?

A Yes, he was.

Q So it is just a question of customer relations, in essence, some people were used to

WATER_PCB-00044735

hearing from someone at Mr. Bergen's level, rather than from you?

A That's what it would appear to me.

Q The subject of all of the letters is the same, is it not?

A Yes.

Q What determined, if you can recall, which customers got one or the other of the two-page letters, and which ones got the one-page letter?

A I have no recollection.

Q The subject of the letters, if I interpret them correctly, is the discontinuation of sales by Monsanto of PCB replacement fluids for transformers. Is that a fair characterization?

A That's what it appears to me.

Q In other words, Monsanto was taking the position, as of the sending out of these letters, that transformer owners will have to go to their transformer manufacturer for replacement fluids, rather than coming directly to Monsanto?

A Yes. I would only broaden that to say transformer owners and transformer repair shops.

Q All right. What was the reason for that change?

WATER_PCB-00044736

A Because Monsanto felt that they could not assure themselves that all of these customers, either transformer users or transformer repair shops, were properly handling the PCBs. It was an attempt to reduce our involvement and exposure with PCBs.

Q When you use the word "exposure," I take it you are referring to liability exposure?

A That, but also our responsibility and our having to do deal with so many customers. Anybody could have walked in -- prior to this time, anybody could have placed an order on us for some type of material for some transformer, another company could have, a repair shop, any number of customers. There were just more customers than we could deal with, or our staff could deal with.

Q So the effort is to remove Monsanto one degree from the repair shop? In other words, the material would go after the letters were sent from Monsanto to Westinghouse to the repair shop, rather than from Monsanto directly to the repair shop?

A Or on the order from Westinghouse -- as I recall, we would also deliver to Company X if

WATER_PCB-00044737

Westinghouse placed an order on us to send the material to Company X.

Q Drop shipment, in other words?

A Yes, that's right

Q But the paper work would reflect that the repair shop ordered it from Westinghouse, and Westinghouse ordered it from you?

A That's correct.

Q So as far as you were concerned, if it was Westinghouse's order, it was their responsibility what happened to it after that?

A Yes.

Q Okay. Were these letters in connection with some agreement by Westinghouse to indemnify Monsanto for environmental problems that would arise in order to continue Westinghouse's supply of PCBs from Monsanto?

A I don't know that. I don't know whether this was an independent action before the hold harmless, or was in anticipation of the hold harmless.

Q Can't say one way or the other?

A No.

Q In any event, there did come a time in

WATER_PCB-00044738

Monsanto's dealing with Westinghouse and other dielectric PCB customers where Monsanto insisted on a hold harmless clause in the purchase contract, is that correct?

A That's correct.

Q And did you have the responsibility of dealing with the addition of that term in the purchase contracts with Westinghouse Bloomington?

A We had the commercial responsibility for implementing that new clause into the industry's contracts. I can't say whether specifically it included Bloomington. But we had the responsibility for all the accounts.

Q Okay. But were you the one that had to give them the bad news?

A No.

Q Who did that?

A I don't remember for sure. I don't know for sure.

Q When you said you had the responsibility, then, you are saying you had to see to it that the contracts that went out had the appropriate language in them or papers attached to reflect that?

WATER_PCB-00044739

A That's correct.

Q Okay.

Just to avoid me spending ten minutes looking at my notes here, what job were you in in 1974, do you recall?

A Director of Marketing for Specialty Products.

Q So you were still in a line position with responsibiity for PCBs, is that correct?

A Yes.

MR. MC CONNELL: Would you mark this as Exhibit 171. It is 39 pages -- I guess it is really 40 pages, and the top portion of the exhibit is a form letter dated January 15, 1974, three-page form letter signed by Mr. Gossage.

(The said document was marked Exhibit No. 171.)

MR. FRUEHWALD: All right, let's take a lunch break.

(Whereupon, the deposition was recessed until 1:00 o'clock p.m. this day, September 3, 1986.)

WATER_PCB-00044740

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA; THE UTILITIES SERVICE BOARD OF BLOOMINGTON, INDIANA; and MONROE COUNTY, INDIANA,

Plaintiffs,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania corporation; and MONSANTO COMPANY, a Delaware corporation,

Defendants.

Civ No. IP 83-9-C

The continued deposition of THOMAS L. GOSSAGE, called for examination by the Plaintiffs, pursuant to notice and pursuant to the provisions of the Federal Rules of Civil Procedure of the United States District Courts, pertaining to the taking of depositions for the purpose of discovery, taken before Jesse A. Longoria, a Notary Public and Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at 216 North Meramec, Clayton, Missouri 63105, commencing on September 3, 1986, at the hour of 1:00 o'clock p.m.

WATER_PCB-00044741

APPEARANCES:

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appeared on behalf of Defendant
Monsanto Company.

WATER_PCB-00044742

THOMAS L. GOSSAGE,

being previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. Mc Connell:

Q Take a look, Mr. Gossage, at Exhibit 171, and tell me if you recognize that form letter?

A No, except where it was in the package of the stuff that I read in preparation, no, I have no recollection.

Q Is that your signature that appears on the third page?

A Yes.

Q You have no recollection of writing to apparently a number of customers bringing them up to date on EPA activities and inviting them to comment on the proposed PCB regulations?

A No. In looking at it, this would be a letter written by someone else in the organization. I would have signed it because of my position.

Q Would that someone else possibly be Papageorge?

A If you want me to speculate, I would

WATER_PCB-00044743

guess so.

Q And is it possible that the same letter, or similar letter, was prepared for someone else's signature besides yourself to go to a different set of customers, or were you the only one dealing with the PCBs?

A I don't know.

MR. FRUEHWALD: Were all these attachments together?

MR. MC CONNELL: They were together when you produced them, and they are numbered.

MR. FRUEHWALD: Are they referred to in the cover letter as being attached?

THE WITNESS: I didn't look through the whole package.

MR. MC CONNELL: They appear to me to be the items that are mentioned in the numbered paragraphs, but the letter doesn't actually say that they are enclosed.

MR. FRUEHWALD: There is a letter attached in the exhibit. It has a signature space for Mr. Papageorge. So there are additional things I am sure Mr. Gossage didn't page through when he looked at it.

WATER_PCB-00044744

By Mr. Mc Connell:

Q You have no recollection of this letter or the attachments, is that a fair statement?

A That's correct.

Q Do you have any reason to believe that it didn't go out over your signature?

A No.

Q Do you recall any contact that you may have had at or about the time period of January 1974 with PCB customers, or representatives of PCB customers, concerning comments on the proposed regulations?

A No, no recollection.

Q If you had received an inquiry about that from a customer, would it have been the policy that you should refer it to Mr. Papageorge?

A An inquiry on this?

Q On PCB regulations, right.

A Yes, that would normally have gone to Papageorge.

Q So the reason that you are shown as the author of the letter is that you are the person in charge of those customer relationships?

A That's correct.

WATER_PCB-00044745

MR. MC CONNELL: Do you want to mark this as 172. It is a three-page letter dated January 15, 1974, to Harry Sheppard of Westinghouse from T.L. Gossage.

(The document above referred to was marked Deposition Exhibit No. 172 for Identification.)

MR. MC CONNELL: It appears to me to be the same letter as Exhibit 171 except that it is actually addressed to a specific person.

Q Does that appear to you, the text of that letter, to be the same as Exhibit 171?

A Yes, it looks the same.

Q Okay. As I understand it, the Sharon, Pennsylvania, Westinghouse facility was a transformer manufacturing facility, is that right?

A That's my recollection.

Q Do you know whether the letter was also sent to Westinghouse Bloomington?

A I don't know.

Q Do you know whether in fact Westinghouse submitted any comments on the proposed regulations that are the subject of Exhibits 171 and 172?

A I don't know.

WATER_PCB-00044746

MR. MC CONNELL: Do you want to mark that as 173.

(The document above referred to was marked Deposition Exhibit No. 173 for identification.)

MR. MC CONNELL: 173 is a memorandum from David Wood to T.L. Gossage dated September 20 -- I am sorry, September 2, 1975. It is a one-page memo, and then there are eight pages of attachments.

Taking a look at Exhibit 173, Mr. Gossage, I will ask you if you recognize that exhibit.

A Yes.

Q And that is a memorandum about an impending meeting with various people from Westinghouse, is that correct?

A That's correct.

Q Did you attend the meeting to which that memorandum refers?

A I don't know.

Q Do you recall attending any meetings in September of 1975 with representatives of Westinghouse?

WATER_PCB-00044747

A Since 1975?

Q No, in September of '75.

A No, no specific recollection.

Q What would your role have been in the meeting that is referred to in Exhibit 173?

A What role would I have had if I attended the meeting?

Q If you were there?

A I don't know. I would have had some general comments to make about the status of the PCBs; but I don't know that I would have played any role.

Q Can you tell me from reviewing the memorandum whether this was a meeting that was requested by Monsanto or by Westinghouse?

A No, I can't.

Q To your knowledge, were there several meetings between Monsanto personnel and Westinghouse personnel at which the problem of PCBs in the environment was discussed?

A Say that again.

MR. MC CONNELL: Read it back, would you, please.

(The question was read.)

WATER_PCB-00044748

THE WITNESS: I have no specific recollection of that.

By Mr. Mc Connell:

Q. Well, you have already testified that you had a couple of meetings with Keith Kelly early on in your involvement, beginning October of '70, at which you discussed that question with him in a general way.

This memorandum indicates that there was to be a meeting in 1975, in the fall, at which some specific aspects of that issue were discussed.

A I said that the two meetings that I had at Westinghouse, the first meeting was just to meet Keith Kelly and the company, because I didn't have any exposure to him before, and I did say there were general discussions, in general, about PCBs in the environment.

This meeting, just in looking at it, appears to have been a meeting in which we were discussing an alternative non-PCB fluid with them. Now, whether it was at their request or our request, I can't tell from this. 1238 is a non-PCB alternative capacitor fluid.

WATER_PCB-00044749

Q Right. But as I understand it, the only reason Monsanto was working on the development of non-PCB dielectrics was because of the situation with the escape of PCBs into the environment and the thought that eventually production of PCBs would have to be discontinued. Is that a fair statement?

A I don't know that in September, 1975 we had concluded that PCBs would have been withdrawn from dielectrics. We were doing some research on alternative fluid. But I don't know that at this date we had reached a conclusion that we were going to have to withdraw PCBs from dielectrics.

Q I understand that. My question is the impetus for doing the research and alternatives was at least the possibility that you might ultimately have to get out of the PCB business?

A Yes, that is a fair statement.

Q It wasn't part of any general effort on the company's part for overall product improvement?

A No.

Q In fact, as I understand it, Monsanto itself never went into production of an

WATER_PCB-00044750

alternative dielectric fluid?

A My recollection is we supplied some samples, and we had several alternative products, but we never produced any in commercial quantities.

Q And the product that was ultimately adopted by the capacitor industry is isopropyl biphenyl, is that correct?

A I don't know whether that is the product being used now or not. That is a product that at one time we produced, and it was certainly one of the products that we sampled to industry.

Q But you never produced it in commercial quantities?

A We never produced it in commercial quantities, but I don't know that we sold it for that application. It was looked at as a solvent for carbonless paper. I think it had some heat transfer applications, also.

Q Was there any environmental problem with that, to your knowledge?

A Not to my recollection.

Q When was it that Monsanto last produced PCBs for any purpose?

WATER_PCB-00044751

A I don't know the date. This is one or two months before I left the job, and we were still producing them at the time that I moved on to the other job. Now, when after late 1975 we actually made that decision, I don't recall.

Q As of the time that you left the -- when you say left the job, now, which job are you referring to?

A I moved from the Marketing Director job to the Director of Results Management job.

Q Was it during the period of time that you were still Director of Results Management that PCBs were ultimately phased out of production altogether? I think I already asked you that.

A I think so. But I can't tell you whether it was '76 or '77; somewhere in that time frame.

Q Did you have any part in the decision making at Monsanto that led up to the ultimate decision to discontinue PCB production for all purposes?

A No.

Q Do you know who it was that was involved in making that decision?

A Well, I can tell you who the people in

WATER_PCB-00044752

the chain of command were at that time; but where the decision was made, I don't know.

Q It is safe to assume, I suppose, that it was at a fairly high level?

A Well, it is safe to assume that Jack Fitzgerald would have been party to the decision. Now, whether the decision -- I can't even say whether a decision might have been made above him or at his level, or below him. But he certainly would have been knowledgeable of it.

Q Okay. We are talking about a decision that involved discontinuing what was then probably closer to a twenty million a year product and putting -- well, I don't know if that is true. Is that a fair figure, at this time, '75, '76?

A It would not have been any more than that. I would say that is probably an order of magnitude.

Q All right. And at the same time when PCB production was discontinued did that result in the idling of a substantial investment in equipment, production equipment?

A It resulted in the idling of some production equipment. I would not describe it as

WATER_PCB-00044753

being substantial.

Q Was that equipment ultimately dismantled?

A Yes.

Q So it couldn't be used for some other purpose?

A No.

Q How was it disposed of when it was dismantled?

A I don't know.

Q After PCB production was discontinued, was it necessary, if you know, for Monsanto to continue efforts to prevent or reduce the loss of PCBs from its premises to the surrounding environment?

A I don't.

Q Did the incineration of returned PCB materials that came back from your customers continue after production was discontinued?

A I don't know.

Q Did Monsanto ever have a program for the return to it of solid PCB waste, that is, solid waste contaminated with PCB from customers?

A Did you say did we have a policy?

Q Did you have a program where customers

WATER_PCB-00044754

could send it back to you?

A I can't remember. I can only remember visiting a solid waste incinerator and some consideration as to whether we should build one, which we eventually decided not to do. How solids were disposed of, I have no memory of it.

Q In any event, Monsanto never built a solid waste incinerator?

A Absolutely. We looked at it and considered it, did an engineering calculation on it and decided not to do it, and I don't even remember why we decided not to do it.

Q So the incinerator you had was only designed to handle liquids?

A That's correct.

Q And I take it the incinerator was further limited to liquid wastes that were primarily PBCs, as opposed to small concentrations of PCBs in a large volume of some other liquid, is that a fair statement?

A Primarily, we did burn some other materials in that incinerator, but it was built for PCBs and primarily it burned PCBs.

Q Did the company ever do any

WATER_PCB-00044755

experimentation with possible ways of removing small concentrations of PCBs from water?

A Not that I can recall.

Q Did the work that Monsanto did with Findett, to your knowledge, involving the regeneration or recycling of liquid scrap PCBs ever come to a commercial scale of operation?

A We had a program with Findett for reclaiming Pydraul hydraulic fluids which contained PCBs and so-called PCTs, as I recall. That was a commercial reality.

Q Was there ever a commercial reclamation program for dielectric fluids?

A Not that I can recall.

Q Was that tried on an experimental basis, if you recall?

A I don't recall.

Q Who would know about such an experimental program, if it existed?

A It would be speculation, but Benignus would be the most likely person to know about it.

MR. KARAGANIS: Can we take a break here?

(Short recess had.)

WATER_PCB-00044756

MR. MC CONNELL: Do you want to mark that as Exhibit 174.

(The document above referred to was marked Deposition Exhibit No. 174 for Identification.)

By Mr. Mc Connell:

Q Showing you a document that has been marked as Exhibit 174 by the court reporter, which is covered by a memo dated April 7, 1970, and a multi-page attachment to that, I will ask you if you have ever seen that before.

A I don't remember seeing this.

Q The first page of that exhibit refers to, in the last paragraph, a final plan for presentation to the CMC. To your knowledge, is that the same, or some prior incarnation, of the group we referred to this morning as CAC?

A I would interpret that to be the same organization. If it was called the CMC at one time, I don't remember, but it could very well have been.

Q The date of this is sometime before you became connected with the Specialty Chemicals Group, is that correct?

WATER_PCB-00044757

A Yes.

Q By a period of a few months.

Was this plan to your knowledge ever shared with you, either by being shown a copy of it, or someone talking to you about it when you came into the marketing function in the Specialty Chemicals Group?

A I have no knowledge of that. I was given a rather complete set of files on the functional fluid business, and it could well have been in there. It could have been, well, something that I read when I came on the job. I just don't remember.

Q Do you recall ever having occasion to refer to this document, or one like it, during the course of the PCB phase-out?

A No, I don't.

Q Would it be fair to say that this --

A Let me just make an observation. From the people that are listed on here, the person whom I replaced is not listed as being copied in. I took over his file. Now, whether he had a copy of it, I have no recollection of that.

Q Didn't you report to Springgate?

WATER_PCB-00044758

A No, to Bergen. Springgate had plasticizers and Bergen had functional products.

Q So it might have been the person you took over from?

A He wasn't listed on here. He would have been working for Bergen at the time. He is not listed. It may or may not be in the files he transferred to me.

Q Is the document that has been marked as Exhibit 174 a business record of Monsanto Company?

MR. FRUEHWALD: You don't need to ask this witness about that. We have produced it. We will work that out as part of our stipulation. It is a document he doesn't know anything about. But it appears to be a business record.

MR. MC CONNELL: All right. Let's mark this as 175.

(The document above referred to was marked Deposition Exhibit No. 175 for Identification.)

By Mr. Mc Connell:

Q Taking a look at the document the court reporter has marked as Exhibit 175, which is a three-page excerpt from the minutes of the

WATER_PCB-00044759

Corporate Management Committee, April 20, 1970, I will ask you if you have ever seen that before.

A Not to my knowledge.

Q Well, let me ask you this. On the first page it refers to Item 2, Organic Division. Was that a subdivision of Specialty Chemicals, or was that a larger part of the organization?

A It was a larger part of the organization. Functional Fluids was part of the Organic Division.

Q Was this before Specialty Chemicals was created?

A That's correct.

Q Okay. Who is H.L. Hinckler?

A He was the General Manager of the Organic Division.

Q Who was J. Mason?

A He was Assistant General Manager.

Q Of the Organic Division?

A Yes.

Q And who was C.J. Smith?

A Assistant General Manager. They subdivided between them the various business groups that the division was divided into.

WATER_PCB-00044760

Q Which of those two was in charge of the PCB part of the business, if you recall?

A Well, at that time I think Mason was.

Q We know who Mr. Papageorge is, or was, at the time. And Mr. Bergen was your boss?

A Well, not at the time of this. But he was the head of the Functional Products Business Group. Springgate was the head of the Plasticizers Business Group, which at the time of this had PCBs; and I believe that Smith had plasticizers under him. In other words, Springgate, I believe, reported to Smith, and Bergen reported to Mason.

Q Okay. Mr. Kelly is the medical director?

A Correct.

Q And E.P. Wheeler?

A Reported to Kelly, as I recall.

Q According to this, the total Aroclor business as of the date of this represented about 21M sales, I take that to be a million, and that is an annual figure?

A Yes.

Q Returning ten million in gross profits on thirteen million gross investment.

WATER_PCB-00044761

Ten million gross profit on 21 million sales is a little better margin than the 35 percent you testified to earlier. It is almost 50 percent?

A A little less than that.

Q A little less than 50 percent.

The return on investment of ten on thirteen is pretty good, too, is it not, as the chemical business goes?

A No, the ten million is gross profit. Take out some, oh, what must have been generally running about 10 percent MAT, marketing, administrative and technical expense, would get it down to about eight million operating income, and then taxes on that would get it down to about four million or so.

So four million on thirteen million is a good investment, but not a great investment.

Q Twenty-five percent?

A Yes.

Q Little less than that.

That is a reasonable figure for the chemical industry, and that is after tax profit, right?

WATER_PCB-00044762

A What I just took you through was after tax.

Q So we are talking about 25 percent after tax, return to shareholders on PCB sales?

A That is the calculation I just went through.

Now, whether I had all the corporate charges in there, I don't know. But that would be a good return for a specialty chemical.

Q As of April 1970, what was the status of the pollution control projects, if you know, that were undertaken to control the release of PCBs from Monsanto's own plant?

A I don't know. I wasn't involved in the business at that time.

Q Which figure is considered in Monsanto's management to be a more appropriate measure of performance, the gross profit of ten million on twenty-one million, or the 25 percent, roughly, that you calculated return on investment?

A At that particular time, we were more focused on what is shown here as gross profit, or what would be operating net income as compared to return on capital, which is the other alternative

WATER_PCB-00044763

that you were suggesting. It has changed in the company from time to time as to their focus.

Q Is that something that you changed when you became the Director of --

A No.

Q -- whatever it was, Management by Results?

A No, that has been changed in more recent times.

Q Okay. But those two things are two ways of measuring the performance of a particular product, is that correct?

A That's correct.

Q Okay. The document goes on to describe Aroclors 1260, 1254 and 1248 as non-degradable. Does that agree with your understanding from what you learned once you got involved in the Aroclor product line?

A Yes, within reason.

Q Okay. Do you agree with the next statement that solid Aroclors and A1221 are degradable and pose no environmental threat, as you see it today?

A It certainly was my understanding when I

WATER_PCB-00044764

was involved that the lower chlorinated materials, like 1221, was more biodegradable and was not perceived at that time to be an environmental threat.

The solid Aroclors were the plasticizers, and I have no recollection of biodegradation of those.

Q It wasn't too long after this that the plasticizers were discontinued, in any event?

A That's correct. Now, plasticizers also included 1260, 1254 and 1248, as well as the solids.

Q But the solids were used as plasticizers and not as dielectrics?

A That's correct.

Q And the 1260, 1254 and 1248 were used as dielectrics and plasticizers?

A They had numerous applications, including plasticizers and dielectrics. 1260, I can't remember; 1254 and 1248 were used as dielectrics. I am just not sure about 1260. 1242 was the dominant dielectric.

Q That is not really listed here in either category as being degradable or non-degradable?

WATER_PCB-00044765

A And I can't tell you why.

Q Which category do you understand it to be in, 1242?

A The 1242 would also contain some 1248, 1254 and 1260. Therefore, it would be more on the non-biodegradable side; and it probably isn't mentioned because, as I recall, it was the components 1260 and 1248 that were really found in the environment; and whether that came from 1242, or whether it came specifically from 1248 and above, it wasn't known at the time.

Q Probably still isn't known.

A Probably isn't.

Q The next paragraph says the "Division has maintained an aggressive program of customer education, and cooperative efforts with research organizations, government agencies and wildlife groups to identify the scope of the problem, eliminate discharges, improve analytical methods and conduct toxicity studies."

Is that a description of what Mr. Papageorge was in charge of, among other things?

A Yes, I would say that was part of the scope of his responsiblities.

WATER_PCB-00044766

Q Other than signing letters, such as Exhibit 173, which we discussed earlier, 172, did you have any role in the customer education program in connection with the PCBs?

A No.

Q If you turn to the next page, the first paragraph on the second page of the exhibit, it says the "Program has been established to curtail discharges" and "has reduced levels by 90 percent."

Do you interpret that to mean that as of April 1970, the former levels of discharges had already been reduced by 90 percent?

A Yes, I would interpret that to mean by that date that we had reduced the amount of discharges by 90 percent.

Q In other words, discharges in April of 1970 were 10 percent of what they had formerly been at some earlier time?

A That's my interpretation.

Q If you will look a little further down the page, after the part about terminating sales for pesticides -- well, let's take each one of those one at a time. What is a pesticide

WATER_PCB-00044767

extender?

A I have no idea.

Q Okay. Do you know what the medicinal, dental and cosmetic use of PCBs were?

A No.

Q Are you familiar with the use of PCBs as cutting oils?

A I know what a cutting oil is, and it could have been one of the specialty fluids that we were at some time selling.

Q Would that fall into the general category of lubricants that you talked about earlier?

A Not lubricants. I think I referred to aviation lubricants, which were not PCBs, but they were some specialty fluids that contained PCBs that I believe this group sold at one time, and cutting oil was probably one of those.

Q Distributor sales, I take it, refers to the type of transformer repair shop and similar types of businesses that we talked about earlier?

A No. Distributor sales to me would mean that we were selling various fluids to second parties who were reselling them to someone else. That would be my definition of a distributor.

WATER_PCB-00044768

Q PCBs and other fluids?

A Yes, that's what I would interpret from distributor sales.

Q And according to this, then, PCBs were going to be withdrawn from that kind of distribution?

A That's my interpretation.

Q Do you know what applications there were for using PCBs as sealants?

A The area of sealants, coatings and adhesives I interpret to be the various plasticizer applications that were transferred sometime later in '70.

Q Paper coatings refers primarily to NCR paper, or is that something else?

A Possibly. I just don't know what they mean by paper coatings. We refer to the carbonless paper as solvents, at least when I was involved in it. Whether it was at one time called paper coatings or not, I don't know. It could well be that would be one way that you can describe that application.

Q The next paragraph says, "Sales will be continued for transformers, capacitors and heat

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transfer uses which are closed systems or sealed units and which permit reclamation or other control of material." Were there --

Q Right. It seems to be cut off there, but I think that's what it says.

Were there any other so-called closed systems other than transformers, capacitors and heat transfer uses that you are aware of?

A I believe that vacuum pumps, at the time that this was being presented, that vacuum pump applications were also considered to be closed systems.

Q Okay.

A The industrial fluids in the preceding paragraph refers to the Pydrauls which we were getting out of, apparently, at the time this was being communicated.

Q That is a hydraulic application?

A Yes.

Q And the reason for that is because, as I understand it, once a hydraulic fluid is out in the field there is no way to insure that there isn't going to be a leak in the system somewhere?

A The way hydraulic equipment was run, the

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fluid just came right out of the equipment into a sump, or into ditches, and went wherever the companies let it go. There wasn't any way to control it. It was, so to speak, somewhat consumed in the use of the material, and it got into the environment.

Q Do you know what the nature of the "special responsibility" is as referred to in the last paragraph on that page, "As the sole domestic producer of the product, we have a special responsibility"?

A The terminology there means if we were to withdraw there would be no other source for the material in the United States. We were the sole producer at this time in the United States. And from our marketing standpoint that terminology means we have a special obligation to the industry to continue supplying that material until there is some other alternative product available.

Q Okay. It doesn't have any reference to a special responsibility for protection of the environment?

A As the sole domestic producer -- that is not my interpretation.

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Q In that same paragraph it goes on to say that "It was decided that the division should discontinue sales by June 1," which I take it is June 1 of 1970, "for all uses except for transformers and capacitors/ballasts and to NCR, for which there are no substitute products."

Was that in fact the phase-out that you were involved in when you finally came into the Specialty Chemicals Group?

A Yes, except I am surprised to see it makes no reference to the heat transfer fluid, which was and is described in this memo earlier as being a closed system, and it was not decided at the time of, well, apparently this memo, that we would go off the heat transfer fluid.

Q Well, it is not clear to me. If all sales are going to be discontinued except transformers and capacitors/ballasts and NCR, that means that heat transfer is going to be discontinued, as I read it?

A Yes. What I am saying is when I took over the operation in '70, heat transfers were still a commercial use of PCBs.

Q And how long did they continue?

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A I don't know whether it was six months or twelve months before the decision was made to go out of it.

MR. MC CONNELL: Do you want to mark this as 176.

(The document above referred to was marked Deposition Exhibit No. 176 for Identification.)

By Mr. Mc Connell:

Q Looking at what the court reporter has marked as Exhibit 176, which is a memo to Mr. Bergen and Mr. Springgate, from John Mason, I will ask you if you have ever seen that document before, or the charts which are attached to it.

A I don't remember. Again, it was before the time I became involved. It could have been in the files. I don't remember reading it.

Q When you came over to Specialty Chemicals and got involved in phasing out certain of the applications of PCBs, which is, I guess, one of the first projects you undertook, were you introduced in some fashion to the concept of the closed loop with respect to PCBs?

A Yes, I guess I would have called it a

WATER_PCB-00044773

closed system. But if they called it a closed loop, yes.

Q A closed loop, or closing the loop, was a term that was used in a lot of internal Monsanto communications with respect to the PCB problem, in your experience?

A I think that there are two different terms. One is a closed system, which was the terminology we used for those applications where it didn't leak into the environment.

The closed loop, I don't recall being involved in that terminology.

Q So you make a distinction in your mind between a closed system and a closed loop?

A Yes. Closed system is terminology I can recall. Closed loop, and this drawing, I don't have any memory of ever having seen.

Q Okay. The closed system in your mind is an application where the PCB as part of a finished product is sealed up in a container in such a way that it can escape?

A That's correct.

Q Okay. And that included as of mid-1970 what?

WATER_PCB-00044774

A Capacitors, transformers, heat transfer systems and vacuum fluids, vacuum pump fluids.

Q What is the function of the PCB liquid in a vacuum pump?

A It is a lubricant.

Q What is there, if you know, about PCB that makes it uniquely or especially suitable for that use, as opposed to mineral oil or some other lubricant?

A Well, one would have been buying this because of its fire resistance, so they would have been using it in those vacuum pump applications where they had concern about fires.

Q And the vacuum pump itself, then, is a sealed unit?

A Yes.

Q The same thing would be true of a heat transfer system, at least in theory?

A At that time, we thought heat transfer systems were closed systems.

Q Had you become aware, you personally, Mr. Gossage, at this time of the -- well, let me strike that.

Did you ever become aware of the incident

WATER_PCB-00044775

in the Far East where PCBs that were used as heat transfer fluids in the preparation of rice oil leaked out into the rice oil and a number of people were poisoned as a result?

A I am aware of that incident. I can't tell you exactly when I first became aware of it; sometime after 1970.

Q Okay. Was that one of the things that ultimately led Monsanto to conclude that heat transfer systems were not in fact closed systems?

A Yes, but my recollection would be it was the so-called Holly Farms incident.

Q In this country?

A In this country, where some chickens were contaminated, or chicken feed, and subsequently a number of chickens were slaughtered, or were required to be slaughtered.

My memory is that is the single incident that probably changed our mind about heat transfers.

Q What couldn't happen here did happen here, in other words?

A That sounds familiar.

Q And the heat transfer application in

WATER_PCB-00044776

connection with the Holly Farms was part of the production process of the chicken feed, is that correct?

A That's my recollection, yes; and the heat transfer system leaked into the chicken feed.

Q And the chickens ate the PCB contaminated feed and then they had to be destroyed?

A That's my memory.

Q We talked this morning about your own personal experiences that led you to conclude that in fact transformers and capacitors were not closed systems, that is, leaks that you experienced or heard about in the context of transformers and capacitors?

A Correct.

Q Okay. That leaves us with something on the list. Well, I don't know. Do you still think the vacuum pump --

A Vacuum pumps, I believe we got out of vacuum pumps at the time we got out of the heat transfer system. The only thing that was left was the dielectric use.

Q So that was the last of the closed systems as far as you are concerned, transformers

WATER_PCB-00044777

and capacitors?

A Yes.

Q And that was the biggest use, was it not, in any period of time when you were involved?

A I think so, yes.

Q Now, the letters that were looked at this morning about discontinuing direct sales of transformer PCBs from Monsanto to repair shops and transformer owners suggests to me that there is some need in the life of a transformer to either replace or replenish the PCB liquid in the transformer, is that also your undestanding?

A Yes. I don't know whether there is a predictable time in which transformers had to be reworked, but there were so-called repair shops for transformers, where transformers were occasionally sent, for reasons I don't have any memory of, and we sold directly to them. So they were draining for some reason. Whether there was some other part they had to repair, I don't remember.

Q Either in connection with other repairs, or solely for the purpose of replacing the fluid, the transformers were being drained and refilled?

WATER_PCB-00044778

A Yes. But I am not sure it was for the purpose of the fluid being at fault. I think there were other reasons why the transformer was brought in, and in the repair shop it had to be drained partly or totally, and we were supplying make-up fluid, if you will.

Q There was a reference in one of the letters to the term topping off.

A Yes.

Q Is that something different, or is that the same process of draining and refilling that we are talking about?

A Yes. It would suggest to me that sometimes the transformer was partially drained, for whatever purpose, and topped off. If it were totally drained, it would be refilled.

Q It doesn't suggest to you, I take it, a fluid loss in the course of operation of the transformer?

A No. Like sometimes I don't have water in my car radiator because the water evaporated.

A I think the system is sealed and closed.

Q Do you know what the transformer repair shops would do with the PCB liquid that they

WATER_PCB-00044779

drained out of the transformer?

A No.

Q Did Monsanto ever take liquid back from repair shops for incineration, to your knowledge?

A Not to my knowledge.

Q Did Monsanto in fact discontinue sales of transformer PCBs to the repair shops as the letters indicate they would?

A Yes.

Q It was within a short time after the letters were sent out?

A I assume so.

Q I think we said this morning that was done because Monsanto didn't feel they could control what the repair shops were doing with respect to environmental protection?

A Monitor or control, or even frequently know who they were, we were getting orders from company A, B and C, and whether they were repair shops or not we really had no way of knowing that.

We knew who our capacitor and transformer customers were, but we didn't always know who else would be ordering from us.

Q To your knowledge, when that sale to

WATER_PCB-00044780

repair shops was discontinued, did the anticipated loss of volume occur, or was it made up by greater sales to the transformer customers who were then shipping it, or having it drop shipped, to the repair shops?

A I don't have any memory on what the volume effect of that decision was.

Q Now, if you will look at the diagram that is stamped at the bottom 3000544, which is part of Exhibit 176, it describes in graphic fashion something that is entitled The Closed Loop. Do you see that? Do you have that in front of you?

A Yes.

Q And that is something different from what we have been discussing, which was a closed system, is that correct? A. That's correct.

Q Now, the closed loop, I guess it would be fair to characterize, is a description of a process, rather than just a description of the end product, is that a fair statement?

A Yes, okay, I would describe it as an engineering concept of the disposition of PCBs.

Q And the concept that is described is that the PCBs are all supposed to be captured and

WATER_PCB-00044781

either contained in the product or disposed of and destroyed in some fashion, is that a fair characterization of what it described on this diagram?

A Yes, with one exception, as far as I am concerned.

Q What is that?

A I don't know how -- it shows the line down here going to adsorption from air and water. How it gets back into the incinerator, I don't know. I don't know how you get air contaminated with PCBs back into the incinerator, but that is what it suggests happened.

Q Well, it suggests to me that whatever it is adsorbed on, wheher it is activated charcoal or the like, is then incinerated, is that a possibility?

A That is what is suggested.

Q You are telling me as an engineer you don't think that would work?

A I don't know what they mean by adsorption from air and water. If PCBs were in some waterway I guess one could try to filter the waterway and capture it on carbon and put the carbon into an

WATER_PCB-00044782

incinerator.

Q Or more likely filter the wastewater before it reaches the waterway so that the PCBs are captured on site?

A Okay.

Q And then destroyed by incineration of whatever the adsorption media is?

A Okay.

Q Does that make some sense to you?

The point is, I guess, there is no allowance on this diagram for the escape of PCBs into the environment?

A That's right. There is no allowance for it.

Q And that is the engineering concept?

A Except down here at the biodegradation, they don't say how long it takes to biodegrade. One can assume that the line down here is the material that escapes into the environment and biodegrades.

Q That means to you biodegradation in the environment, rather than, say, in a sewage treatment plant?

A I have never seen this before, so I can't

WATER_PCB-00044783

tell you.

Q Do you know who created this sketch?

A No.

Q It was part of John Mason's presentation. I don't know if that gives us a clue or not.

Do you kow if this diagram that we are discussing, the closed loop, was ever a part of any Monsanto presentation to any government agency or to the Congress?

A No, I have no idea.

Q Did you as the marketing person have occasion to discuss either the diagram itself or the concept it illustrates with any of your PCB customers?

A No.

Q As I look at this diagram I see two arrows, both going upward from PCBs usage to the box that is labeled regeneration and recycle.

Would I be incorrect in suggesting that one of those arrows is meant to be going in the other direction? Is that supposed to be a loop process, that is, it is regenerated and put back into use?

A Yes, I would interpret it that way.

WATER_PCB-00044784

Q The box on here that is labeled PCBs production, at least with respect to the United States, that was Monsanto?

A That's correct, not for all times, but at the time of this.

Q There was an earlier time, I take it, when there were others?

A There was another PCB producer at one time.

Q How long ago?

A I don't remember. It was before my involvement.

Q And the box that is labeled PCB usage represents your customers?

A That would be my interpretation.

Q Okay. Regeneration and recycle would either be Monsanto or Findett, as we have discussed it. Is there anyone else that you know of that was in that business?

A You said Monsanto. I don't think Monsanto -- I don't recall Monsanto regenerating. Findett did it for us.

As to the latter part of your question, there were some studies in the '70 to '75 time

WATER_PCB-00044785

period about going to regeneration as a business, both on the part of Monsanto and some other customers -- some other companies, and there were some other companies that went into reclamation of fluids.

But I can't tell you, it was at a point in time when PCB fluids were reclaimed. Findett did. But these other companies may have been reclaiming other fluids. I just don't remember.

Q Presumably, it would also be possible for one of your customers to do that at their own facility, is that correct?

A Well, the lines would even suggest that. They don't show it coming back to Monsanto's production. They show it, as you have described it, between the customer and someone on the outside.

(Whereupon, a recess was had.)

By Mr. McConnell:

Q The box that is marked incinerate, I take it as of April 1970, it could have been Monsanto -- now, you weren't operating that.

A No, I don't think our incinerator was built until '71.

WATER_PCB-00044786

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Q Okay.

A During '71.

Q Were you receiving liquid PCB wastes and holding them pending completion of that incinerator, to your knowledge?

A I don't think so. I think that the idea of the incinerator came up later, later than this document.

Q There were other --

A I could be wrong.

Q There were other facilities in the United States that were operating incinerators as of April 1970, is that correct?

A I believe that's right.

Q And the biodegradation box applied to the lower chlorinated fractions, to your knowledge?

A That's what it would mean to me.

Q As of April of 1970, was Monsanto conducting some studies on animal toxicity of its various PCB products?

A I don't remember. Just reading Page 6, if you want me to volunteer something about what this biodegradation might mean, on Page 6 it talks about biodegradation. Ruabon is another PCB plant

WATER_PCB-00044787

we had in the U.K. We were conducting about this time some experiments with bugs to biodegrade Aroclors.

Q By bugs you mean bacteria?

A Yes. And this second sentence says, "Lower chlorinated isomers responding well, but 5 and 6 chlorine isomers either not responding or very slow."

I would interpret that to be referring to the studies that were being conducted in the U.K. on those bugs, and that is probably what they mean by that little box over there.

Q Okay. It is more of an experimental possibility at the date of this than it is any established reality?

A Yes.

Q And the bugs that you referred to, were they environmentally ubiquitous, or was this working toward some kind of waste treatment system with bacteria, to your knowledge?

A I thought I was doing pretty good just by giving you that last statement. You are going beyond my capability.

Q Any time I do that, you just speak right

WATER_PCB-00044788

up.

A I think it was something that was going to be in some sort of a sewage treatment, that you could treat this. And the next page also looks to me like some of that work.

Q There are a number of graphs behind Page 6. I take it that all of those refer to the biodegradation work, is that your understanding?

A Well, I think we get into some fractionation, where I think it is dealing with taking the higher chlorinated materials out of the 1242. Look at Item 4, it says, "Work in hand on fractionated 1242." I think this is what this chart called Figure 1 is.

Q Those would be gas chromatograms?

A That's what it looks like to me.

Q The reference in the text part of Page 6, biodegradation, Paragraph No. 3, "Critical product is 1242," what does that mean to you?

A That means to me it is the product that we were producing the largest quantities of, particularly for the dielectric industry. That was the largest volume item amongst the PCBs.

Q And that was a mixture of 1260 and 1254

WATER_PCB-00044789

and 1248?

A As it says here, it contains more than 50 isomers. You would have the whole range from the lower chlorinated to the higher chlorinated. The average chlorination level was the 42 percent.

Q If you go past the graphs there is a chart No. 7 which is stamped on the bottom 3000550. Do you see that?

A Yes.

Q The first reference on that page is to 1242B. Do you know what that was?

A I think that was a modification of 1242 that took -- I don't know whether it was 1269 or 1254. It took some of the higher chlorinated materials out of it by distillation.

Q Did that end up being 1016, or was there some difference between those two, if you know?

A I think there was a difference between those. It seems to me we converted from 1242 to this product, getting some of the more serious isomers out. I think that was the 1216.

Q 1016?

A 1016. I think that was a very heavily cut later product.

WATER_PCB-00044790

Q The second paragraph refers to hydraulic fluid applications, and there is kind of an alphabet soup there of what I take to be substitute products, TCP, CDP and TBP, are those substitutes for PCB in a hydraulic application, if you know? I won't even attempt to pronounce that last one.

A I can pronounce that before I can answer your question. The TCP is tricresyl phosphate.

CDP is cresyl diphosphate, it could be.

And that TBP, I believe, is tertiary butyl phosphate. Yes, those were the kinds of products that we were looking at to replace. They are all phosphate esters, which is referred to up there, which is ultimately the product that we went to as a replacement to PCBs in hydraulic applications after we went through a period of time where we supplied trichlorobiphenyl.

So we went through two transitions, from PCBs to trichlorobiphenyls -- I am sorry, chlorinated tribiphenyl -- let me get it straight -- chlorinated terphenyl, which is three phenyl rings chlorinated. So we went through that transition to get to the phosphate esters that we

WATER_PCB-00044791

are referring to here.

Q And the third item is heat transfer fluids and it describes HB40. What kind of a product is that?

A Hydrogenated biphenyl -- wait, hydrogenated terphenyl, 40 percent hydrogenated, no chlorine in it.

Q So when you hydrogenate, you are converting double bonds into single bonds?

A That's correct. That, by the way, is what is called Therminol 66, which we were selling as a non-fire-resistant heat transfer fluid at the time.

Q Was that ultimately substituted for the PCBs?

A Yes.

Q On a commercial basis?

A Yes.

Q The next page is headed toxicity, and Item No. 1 says, "No change since last report - have discussed results with Dr. Burger, Executive Office of the President."

Do you have any idea what it was in the last report that hadn't changed?

WATER_PCB-00044792

A No.

Q Who was Dr. Burger?

A I am not even sure which president they are referring to.

Q Whether it was Monsanto or the United States?

A I don't think it was Monsanto. I would almost wonder if they don't mean the United States.

Q Well, that is a term I have heard used in connection with the United States Government.

The next two paragraphs refer to analysis of some of the PCB products, your own and those of other manufacturers, for dioxins and furans. Why was that done in connection with the examination of toxicity, if you know?

A I don't know.

Q The next page, which is numbered at the top right-hand corner 10, is headed Incineration, and the first item refers to John Zinc Company in Tulsa. Is that one of the companies that was operating an incinerator, to your knowledge?

A Not to my knowledge. My recollection is that there was one company approved by the EPA for

WATER_PCB-00044793

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incineration. That is a company that still exists today. I want to say Purle.

Q P-u-r-l-e?

A Rollins-Purle, yes, and that was the only company that we, before we had our own incinerator, recommended to the customers.

Q Okay. That same paragraph refers to estimated cost of $250,000M, without a line. Does that mean thousand?

A That would be $250,000.

A Okay. Is that the estimated cost of building Monsanto's incinerator?

A I thought it was more than that when we actually built it, but I don't know how much it was.

Q But it wouldn't be something unusual for something to be costing something more than it was estimated at, would it?

A Correct. The second paragraph refers to something called "still bottoms." What is a still bottom?

A You do a distillation of a product, that portion which is left behind in the bottom of the still is the still bottoms.

WATER_PCB-00044794

Q After the distillation is complete and you take the product off, there is some material left in the bottom of the still?

A That's correct.

Q That is what you call still bottoms?

A Yes.

Q And I take it one of the things that Monsanto wanted its incinerator to be capable of doing was getting rid of that in an environmentally acceptable fashion? It doesn't say that here. I am just extrapolating.

A Yes, that which would be left behind would be very highly chlorinated, high molecular weight, and would require higher temperature to incinerate. I think your conclusion is probably correct.

Q And it would also, therefore, be the most environmentallY problemmatic?

A Probably.

Q And I take it the incinerator did end up being located at the Krummrich facility?

A That's correct.

Q Am I saying that right?

A Yes.

WATER_PCB-00044795

Q Okay. The next page, which is No. 11, in the upper right, is a graph representing -- it is headed Control of Plant Emissions, and at the bottom there are some figures given for Anniston, Krummrich, and Newport in terms of pounds per day.

Is it your understanding, or can you tell, whether those figures represent the present, as of the date of this chart?

Did those figures represent the loss to the environment in pounds per day as of the date that this chart was prepared, if you can tell?

A That would be my interpretation of that.

Q The various bars on the graph are measured along the vertical axis, I guess, as parts per billion, which suggests to me that the PCB is being lost in water. Is that a fair statement?

A That would be my interpretation, yes.

Q So if you took the figure, for example, 200 pounds per day for the Krummrich plant, and 325 parts per billion present you could figure out how many pounds of water a day are going out of the plant into the sewer by calculating backwards?

A Maybe. You could also probably figure

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out how much we were producing of the PCBs. I don't know whether the 200 pounds per day is the PCBs in the water; I would assume so. And by taking that number and the parts per billion you could calculate our production, I think.

Q Okay. I think then if that is right, then I don't understand what this chart is. As I understand the chart, the graph -- the graph --

MR. FRUEHWALD: This is not his chart. You are both guessing about what the chart means.

MR. MC CONNELL: You are right. This is fruitless. We will ask somebody who knows.

MR. KARAGANIS: Let the record reflect that there was more going in before than after.

THE WITNESS: I think you are right, though.

By Mr. McConnell:

Q Unfortunately, the rules only permit me to ask you what you know.

If you turn back aways there are two pages, what would be Page 18, except it is not numbered. It is 300560 at the bottom, and it is headed present plan. Do you see what I am referring to? There are two pages which describe six number paragraphs of things that are

WATER_PCB-00044797

proposed to be done and dates by which they are to be complete.

Would you take a look at this and tell me if the phase-out as it was presented to you when you came into the marketing function in the Specialty Chemical Groups was essentially the same as what this two pages describes as the Present Plan?

A Item 1 refers to plasticizers and industrial hydraulic fluid applications.

Item 2 is carbonless paper.

3 is the heat transfer programs -- I am sorry Item 4 is industrial hydraulic.

Items 1, 2, 3 and 4 I am familiar with; 5 and 6 is this chart that we just went through, and I am just not sure what that all means.

Q Was the phase-out that you carried out consistent with Items 1, 2, 3 and 4 of what this document describes as Present Plan?

A I was involved in Item 2, and we completed that. Item 3 says that we are going to get out of certain heat transfer applications that can't be closed. But we didn't actually go out of all of the heat transfer applications for a period

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of time. I don't know when that was, but '71, maybe '72. I think on Item 4 it was probably into '71 before we made the transition from PCBs to PCTs.

It was some time later before we got on phosphate esters. As I say, I am not sure what 5 and 6 mean.

Q Who would know, Mr. Papageorge?

A Whomever put together this presentation, and I don't know who that was. If closed loop means to begin to work with the customers, we were certainly doing that in that time period. But we didn't have all those little boxes in place.

Q Look at the next page which is headed New Capital Needed. The total new -- well, let me ask you, can you interpret what each one of these items is?

A Yes. HB-expansion is an expansion of our biphenyl, terphenyl unit at our Anniston plant, to make the transition from supplying PCBs to carbonless paper, and heat transfer is from PCBs to Therminol 66.

Santowax R Refining is part of that same plant in preparing for the transition away from

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PCBs and to HB-40, or derivatives of HB-40.

HB-40 capacity at Newport plant refers to expanding that capacity to take a company, Wiggins-Teap, off of PCBs and carbonless paper and putting them on HB-40.

Q Wiggins-Teap is a customer?

A Yes, they were a customer in Europe, the same as NCR in the United States. They were a licensee of NCR.

MIBP --

Q Any chance of spelling Wiggins-Teap?

A W-i-g-g-i-n-s, T-e-a-p.

MIBP, monoisopropyl biphenyl, that is the product that was selected to move NCR off of the PCB in their carbonless paper to this solvent for their carbonless paper.

Q In the United States?

A In the United States. Cumyl/nonyl phenyl diphenyl phosphate, that is adding capacity at our Queeny plant in St. Louis to move the Pydraul products eventually off of PCTs to phosphate esters.

Q Okay.

A The incinerator is the incinerator that

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was ultimately built at Kummrich. This was the total estimate of what it would take for us to take Pydraul, heat transfer fluids, and the carbonless paper off of PCBs and put them on new products and still maintain the dielectric business.

Q Although the incinerator had a role in that as well, did it not?

A Yes, and that would have been by my interpreting these documents part of the closing of the loop, if you wil.

Q And that came to a total of something over three and a half million dollars?

A That's what this says. As I recall, though, the incinerator cost considerably more than what it shows here.

Q Do you know how much it ultimately cost?

A My recollection is eight hundred thousand to a million dollars, but Papageorge, I think, could give you an accurate figure. I want to say around a million dollars.

Q So whatever the total ended up being, that is reflected here as $3,585,000, would go into the investment against which you would

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measure the return on investment of the substitute products and the continued sale of dielectric fluids after the work was completed, is that a fair statement?

A Yes. Wait a minute. This was new capital. But there was already capital in place for HB-40. The rest of this is new equipment. But the HB-40 -- the Anniston and Newport, this would merely be the new capital necessary to expand the existing capacity, and as we made that transition we would have to measure our return against the entire capital.

Q The total?

A Right.

Q And you would also have to include --

A The old capital from PCBs.

Q The old capital from PCBs?

A Right.

Q If you turn the page, I take it that this next sheet headed Profitability Forecast, 1971, is the reflection of the results of just such a calculation?

A Yes.

Q And it shows the return on investment o

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nine and a half percent of the Aroclors, plus substitute products, as opposed to eleven and a half percent of the existing Aroclor business?

A Yes, which would suggest my earlier quick off-the-top of my head calculation on this earlier document was somewhat understated.

Q How does eleven and a half percent stack up with the specialty chemicals business as a return on investment?

A Low.

Q Nine and a half percent, then, I take it, is even lower?

A Correct; but as compared to the total Monsanto Company at the time, these were probably better than we were doing overall.

Q So any reduction here is going to take down -- well, let me ask you, the total twenty million, roughly, or $21 million, we are talking about annual sales volume in this group of products, whether it is the old PCB group, or the new PCBs and substitutes, how does that stack up in 1970 and 1971 against the total annual sales volume of the company?

A I don't remember the total company

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numbers at that time, but it would not have been a significant factor. It would not be something that would even show up in our annual report as an event, if we had gone out of the entire business.

Q Not even a footnote?

A Not big enough to be a footnote.

Q You mentioned at some point --

A I can't volunteer something? Or would you rather I not?

Q That is up to Mr. Fruehwald. I rather you volunteer whatever happened to be on your mind.

MR. FRUEHWALD: We are here to answer questions.

MR. MC CONNELL: Yes, I understand.

Q In your testimony this morning, I am looking through my notes and trying to find it in connection with the history of your career at Monsanto, as we approach your present status you -- there it is, you described yourself as being the Senior Vice President of Monsanto Chemicals and a Group Vice President of Monsanto.

A Yes.

Q Then you went on to say the number two

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manager in a 3.5 billion dollar chemical company.

A Correct.

Q Is that the annual sales figure?

A Yes.

Q For Monsanto Chemicals?

A Yes.

Q And how does that stack up as a portion of the overall Monsanto sales?

A Half of the total sales, about seven billion dollars.

Q That is why $20 million doesn't even warrant comment, it wasn't much back then?

A No, Monsanto sales in '70, '71 were nowhere near that amount, probably not even half that amount. You can look back in the record and find out what our sales was, but $20 million was not a significant event in '71.

Q To Monsanto?

A To Monsanto Company.

Q It would have been a significant event to those customers who needed PCBs, I take it?

A They made that very clear to us.

Q All right.

MR. MC CONNELL: Mark this as the next number.

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(The document above referred to was marked Deposition Exhibit No. 177 for Identification.)

MR. MC CONNELL: It is a memo dated May 15, 1970, from J.N. Ehlers to Mr. Minckler, Mr. Harris, Mr. Kelly and Mr. Smith, and attached to it is a two-page excerpt of some minutes of the Corporate Management Committee.

Have you ever seen that document before today?

A Not that I remember.

Q I take this to be an entry in the minutes approving the plan that was presented in the exhibit we last discussed, or at least that part that was two pages long and headed Present Plan, does that agree with your understanding?

A What confuses me is this is called April 20 minutes of the Corporate Management Committee. This was used in the May presentation to the Corporate Management Committee, and it must be the minutes of that presentation. I don't know what that is. But this appears to be the minutes from this presentation.

Q Okay.

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MR. KARAGANIS: Can we get clear for the record what we are referring to?

MR. FRUEHWALD: Exhibit 177 is the minutes --

MR. MC CONNELL: Minutes of the presentation that is 176. Okay.

Q Now, if you would look at the first page of the minutes, which is the second page of Exhibit 177, I see the second bulleted item "Close the loop on heat transfer applications where fire resistance is vital and replace with alternates in other cases." Do you see that?

A Yes.

Q And then two items further down, it is bulleted "Close the loop on all non-biodegradable chlorinated biphenyls in transformer applications."

The next paragraph immediately following that is bulleted "Close the loop on capacitors as far as possible."

What was it about capacitors that warranted the modifier "as far as possible," where it wasn't applied to transformers or heat transfer applications?

A I don't know.

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Q The last paragraph on that page says, "The Committee asked that there be no delay with reference to the action taken to achieve the above plans without CMC approval."

Do you know whether approval for a delay was ever sought from the Corporate Management Committee?

A I don't know.

Q And then it goes on to say, "The Division," which I guess was the Organic Division still, as of the date of this?

A Yes.

Q "...is to review progress made against achieving the above objectives with the CMC in September, 1970."

Do you know whether such a review was ever held?

A I don't know.

Q Did anybody ever ask you for input about customer activities in connection with what might have been a September 1970 review of -- well, you wouldn't have been there?

A No, I wasn't on the job until October.

Q But on the next page, near the end of the

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paragraph, it says, "The Division was requested to be certain the pricing policy set on these products in the future is sufficient to give Monsanto an acceptable return on its investment, taking into account the expenses which are necessary to accomplish the overall objectives."

Did you do that in the price increases that we talked about this morning, in connection with the PCBs?

A Probably, but I can't tell you how, or what the earnings were on those investments after I took over. I don't recall.

Q But the letter that you wrote to Westinghouse in particular reflected that it was these kinds of investments that were the reason for the price increase?

A Yes. That earlier letter to me sounded consistent with what this said that you just read.

MR. MC CONNELL: Let's take a short break.

(Whereupon, a recess was had.)

MR. MC CONNELL: Go ahead and say what you want to say.

MR. FRUEHWALD: We had designated Mr. Papageorge to attempt to answer on behalf of the

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corporation those questions which he could pursuant to Rule 30(b)(6). Two categories in which Mr. Papageorge said he did not have the background to answer were the termination clause in the Westinghouse-Bloomington-Monsanto sales contract and the hold harmless agreement of early 1972.

We, therefore, designated Mr. Gossage as a company representative to testify or answer questions on those subject matters, and suggest that those questions be asked today in the 30(b)(6) matter as part of this deposition.

By Mr. Mc Connell:

Q With respect to the first thing that Mr. Fruehwald mentioned, which is the termination clause, I am going to show you again the document that was marked earlier as Exhibit 46, and I will ask you if the wording that is reflected in that letter -- let me read it. "Monsanto will terminate an agreement with a given customer if that specific customer does not adequately prevent the product from entering the environment."

To the best of your knowledge, is that the final language that was ultimately arrived at

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with respect to the termination clause in the PCB purchase agreement between Monsanto and Westinghouse Bloomington?

MR. FRUEHWALD: Let me interpose an objection here. For my information, since the witness is testifying on behalf of the corporation, you have already Deposition Exhibit 48, which purports to be a later document signed by Mr. Bergen as a version of the termination clause, with a note saying Mr. Kelly plans to sign it.

MR. KARAGANIS: Maybe we can get a stipulation on that.

For the record, so there is either a stipulation and/or a copy of an executed document by both parties as to what the exact contract language was, so there won't be any confusion on it, the document you referred to, Exhibit 48, this exhibit is unsigned by Westinghouse.

MR. FRUEHWALD: This assumes that there was a final signed document, and that would still exist. We have searched, and this is right now the best we can come up with. But this appears to be a later document than the one that was being asked about. That is why I thought the question was

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misleading, or could be misleading, in the sense to which the witness was not shown the other exhibit.

MR. MC CONNELL: Well, I thought what I had was the latest one, but it apparently is not.

Q Let me ask you, with respect to this document which was previously marked as Exhibit 48, which is a two-page letter, which is addressed to Keith Kelly dated May 17, 1971, with places at the bottom for Mr. Bergen, who I guess was your boss at that time --

A Yes, he was.

Q -- and Mr. Kelly.

Do you know whether Mr. Kelly ever signed Exhibit 48?

A I do not know whether he ever signed the document.

Q Do you know whether there ever was a different version of that letter later in time that was signed by Mr. Kelly?

A No, I don't know.

Q Do you know whether the language, with respect to termination that is used in Exhibit 48, which is this one, May 17, 1971, was in fact the

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language that Monsanto and Westinghouse Bloomington operated under with respect to the termination of the sales contract for environmental reasons?

A No, I don't.

MR. KARAGANIS: Perhaps for purposes of record clarification, Exhibit 49 is a contract dated December of '73, which is signed by both Monsanto and Westinghouse.

THE WITNESS: Is that the one signed by Mellon?

MR. KARAGANIS: It is signed by Mellon, yes.

Now, can we get a stipulation that the contract existing between '71 and '73 had the same language?

MR. FRUEHWALD: I don't think we can. I think this language is slightly different in terms of notice periods, or whatever.

We have produced to you that contract in '73, plus later contracts, which all contain the repeated termination clause, and which is slightly different from the language in Exhibit 48.

Again, Mr. Bergen is not here, and the best this witness can say is what he can testify

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to. I don't know that we have anything better in terms of a document or a witness who has more recollection as to what the contract was.

We gave it our best shot today. If we turn up with a better witness or a better document we will produce it, but this is the best we can find.

By Mr. Mc Connell:

Q For as long as you were in the marketing function in Specialty Chemicals, did the termination clause continue to evolve over time?

A Yes. This was a big emotional issue with Mr. Kelly, and I cannot tell you whether prior to this time we ever had a signed agreement with them.

It was something that went back and forth, playing with the words, three months, six months, the industry doesn't clean up, he doesn't clean up. It was just a big deal with him.

Q So the possibility exists, to the best of your knowledge, that there was no effective termination clause until Exhibit 49?

A I do not know whether this was the first time we had a signed document, or whether there

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was one before this. But I can only tell you it was back and forth for a long time.

Q And when you say that it was an emotional issue for Mr. Kelly, I take it his principal concern was the possibility that his supply would be terminated for reasons that were beyond his company's control?

A Most issues were big important issues with Mr. Kelly, and this was merely one of them. I won't necessarily interpret this problem with what you just said. It was the fact that he may not have been in total control of his purchasing job. So, you know --

Q For whatever reason?

A For whatever reason. He was a very difficult purchasing person.

Q And, of course, he was behind the eight ball, so to speak, in this situation, if for no other reason than Monsanto was his only source of supply for PCBs?

A I don't know or can say that he was behind the eight ball. We were a very generous supplier to Westinghouse.

Q All right. I didn't mean to say he was

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behind the eight ball. He may have felt behind the eight ball because there was nobody else he could turn to.

A I could recall him using similar words, yes.

Q And I think we already established this morning, but I will ask you again, to your knowledge was there ever a threat by anyone at Monsanto to terminate Bloomington Westinghouse as a PCB customer under whatever clause then may have been in effect?

A No. To my knowledge, we never threatened Westinghouse to discontinue Bloomington's supply.

Q Did you ever threaten Westinghouse to discontinue to supply any of their other facilities?

A No, not to my knowledge.

Q Were there similar termination clauses in the contracts with other dielectric PCB customers?

A Yes, specifically with General Electric.

Q Was there ever a threat to terminate General Electric?

A No, not to my knowledge.

Q And neither Westinghouse nor General

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Electric was ever in fact terminated until Monsanto withdrew completely from the production of PCBs, is that correct?

A That's correct.

Q All right. Did you ever participate in, or hear or learn, of any discussion with Mr. Papageorge or others during any of the time period when you were involved with PCBs about the relative effectiveness of GE and Westinghouse in controlling PCB discharges to the environment?

A Comparison of the two?

Q Right, which was cleaner and which was not?

A No.

Q Did you ever hear of, or learn of, any discussion within Monsanto about a comparison among the different Westinghouse facilities with respect to the control of environmental discharges of PCBs?

A Well, the only Westinghouse plant that I can remember going through their manufacturing facility was South Boston, Virginia, which was a transformer manufacturing facility, and that was a very clean plant. But that was the only

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Westinghouse plant that I was ever allowed to go into, to go into their manufacturing, that I can recall.

Q Did you ever hear Mr. Papageorge or anyone at Monsanto talking about the relative merits?

A No, It is my own view of South Boston that I have a recollection.

Q Although you visited Bloomington you were never in the plant?

A I have no recollection of being allowed in that plant.

Q Now, in addition to the termination clause there came a time when Westinghouse agreed to indemnify Monsanto as a condition of the continued supply of PCB dielectric fluids to its Westinghouse Bloomington plant;do you recall that?

A Yes.

Q I may have asked you this this morning, but at the risk of repeating myself, who was it in Monsanto that made the decision to impose that condition on Westinghouse?

A I don't know.

Q Was it also imposed on other dielectric

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customers?

A All dielectric customers, if they were to continue to be supplied, had to enter into that agreement. That was something I implemented for the company.

Q Was that also a big issue for Mr. Kelly?

A I don't recall ever having any discussions with him on it. I don't know who handled specifically the implementation of that end of Westinghouse's contract. It wasn't me.

Q Was it somebody above you?

A Yes.

Q Probably Mr. Bergen?

A Or higher.

Q Higher up?

A Yes. And I don't think it was Bergen. I don't know who it was. But it wasn't my level or below.

Q And on the Westinghouse side, was it somebody above Mr. Kelly, if you know?

A I don't know. But I doubt that anyone above me would have called on Mr. Kelly.

Q Who is E.J. Putzell?

A He was the chief counsel of Monsanto.

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Q Let me show you a copy of a document that has already been marked earlier as Exhibit 53, which is a three-page letter dated January 15, 1972, on Westinghouse's stationery, addressed to Monsanto, I will ask you if you have ever seen that before.

A I believe I saw it in the package of information I reviewed before the meeting. I have no recollection of having seen it before.

Q Is that Exhibit 53 the indemnification agreement that we have been talking about?

A It looks like it.

Q Do you recognize the name of the individual for Westinghouse who signed that document?

A No. I can't even read it.

Q I couldn't, either. I was hoping maybe you could help me out. That was at least on the Monsanto end. It was the legal department that approached Westinghouse and dealt with them?

A I assume it was the corporate Westinghouse offices, rather than any location that I was dealing with.

Q In other words, there was one

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indemnification clause between Monsanto and Westinghouse that covered all of the PCB dealings between the two companies?

A My recollection is that both in the case of General Electric and Westinghouse, because there were multiple locations, it was dealt with on a corporate basis.

Q And what was the reason for Monsanto seeking such an indemnification agreement, as you understood it?

A Well, it came to me as a condition of Monsanto continuing to produce. The industry was saying that there were no substitutes. The government was saying that there would be black-outs if we withdrew the product from the dielectric industry; and corporate Monsanto, and I don't know who that was above me, said these are the conditions that we will allow you to continue to sell.

Q In other words, Monsanto wanted to stop making it, and the customers and the government wanted to have it continue to be available at least until a substitute was found?

A The senior management of Monsanto no

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longer enjoyed taking the heat of continuing to produce this product. GE and Westinghouse, and the industry in general, and the government was taking the position that there were no alternatives, and the terms I remember were that we would black out a major part of the United States if we withdrew this product; and corporate Monsanto, again who specifically I can't tell you, said, okay, if we must continue it will be under these conditions.

Q And these conditions are that "Our customers pick up whatever liability we may ultimately suffer as a result of continued production"?

A That was the intent by this, yes.

Q So it was not only the heat in the sense of whatever bad publicity there may have been, but also the financial exposure as a result of liability?

A Yes. I think both of them could have been a factor. But, again, we were dealing with someone up there, who I don't know who it was, and what was in his thought process at the time.

Q Right. But I am asking you your

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understanding of it after it was presented to you as an accomplished fact.

A It was given to me as an ultimatum, if we were to continue the business it would be under these circumstances.

Q And you did continue under those circumstances?

A For a period of time.

Q Was that letter, Exhibit 53 that is dated January 15, 1972, was that the first such indemnification agreement to your knowledge?

A My memory is that they all went out at about the same time, and we, the marketing organization, handled most customers.

I have no recollection of Westinghouse or GE, and I suspect they were handled corporately, because of the size and nature of them.

Q My question is, was there an earlier version of that document, earlier than '72, if you know?

A I don't remember.

Q Okay. Do you know as you sit here today whether Monsanto has made a claim against Westinghouse for indemnification in connection

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with this litigation by the City of Bloomington and Monroe County against Monsanto?

A I do not know that.

Q Is it your understanding that this is exactly the type of thing that was contemplated, or one of the things that was contemplated, by the Exhibit 53 indemnification agreement?

MR. FRUEHWALD: Clarify what the question is.

By Mr. Mc Connell:

Q Is it your understanding of the indemnification or hold harmless agreement between Westinghouse and Monsanto that it is intended to cover such things as the City of Bloomington's and Monroe County's claims against Monsanto for the cost of cleaning up PCBs in Bloomington, Indiana, and its environs?

A It was my understanding at the time we put this in place that there was some concern that third parties could go after either one of our customers and us, or directly to us, for claims resulting from the action of our customers, and it was that which we were trying to protect ourselves against. Whether Bloomington falls into that category, I can't answer.

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Q And you don't know whether any kind of claim under the agreement has been made with respect to Bloomington?

A No, I do not know.

Q Is there anybody who would know better than you?

A I don't think so.

MR. FRUEHWALD: As to what question?

MR. MC CONNELL: As to whether a claim has been made under the indemnification agreement concerning the Bloomington --

MR. FRUEHWALD: Yes, I know. Mr. Gossage has not been informed of all of the litigation.

MR. KARAGANIS: Well, you indicated that you were providing Mr. Gossage as a 30(b)(6) witness having knowledge of the existence of the impact, the genesis, all aspects of the indemnification agreement.

MR. FRUEHWALD: Well, he is the best witness we have got on the historical events of the implementation of that in the '72 period when he was back there. As to what has occurred since this litigation, he is not the best witness for that. To the extent that that is relevant, and I

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don't see the relevancy to any subject matter, someone else will have to be designated for that.

By Mr. Mc Connell:

Q Well, to your knowledge, without regard to this lawsuit, during the time that you were in Specialty Chemicals and this agreement was in effect, which is from January of '72 to whenever you moved on to be Director of Results Management --

A It was always a funny title!

Q -- did Monsanto ever make a claim, to your knowledge, against anybody as a result of one of those indemnification agreements?

A To my knowledge, during that period of time it was never used or was there any reason to use that clause during that period of time.

Q Has it ever been used since?

A I don't know.

MR. MC CONNELL: That's it.

DEPOSITON CONCLUDED

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA; THE UTILITIES SERVICE BOARD OF BLOOMINGTON, INDIANA; and MONROE COUNTY, INDIANA,

Plaintiffs,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania corporation; and MONSANTO COMPANY, a Delaware corporation,

Defendants.

Civ No. IP 83-9-C

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 through 167 inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, as it now appears.

_____
Thomas L. Gossage

SUBSCRIBED AND SWORN TO
before me this_____day
of_____, 198___.

_____
NOTARY PUBLIC

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UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) SS:
STATE OF ILLINOIS)
COUNTY OF C O O K)

I, Jesse A. Longoria, a notary public and Certified Shorthand Reporter in and for the County of Cook and State of Illinois, do hereby certify that the aforesaid deponent was by me first duly sworn to testify the whole truth, and that the foregoing deposition was recorded stenographically me and was reduced to typewriting by computer-aided transcription under my personal direction and supervision; and, that the said deposition constitutes a true and accurate record of the testimony given by said deponent.

I further certify that the reading and signing of said deposition was not waived by the deponent or counsel.

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I further certify that we I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Chicago, Illinois, this 26th day of September A.D. 1986.

Jose C. Longoria

Notary Public/Certified Shorthand Reporter

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