

Wm. Papageorge - Glenn Brown Trial Testimony 10/31/91 A.M.

1 THE COURT: All right, Mr. Carney. You may
2 continue, sir.

3 Q. (By Mr. Carney) Mr. Pap pageorge, a couple
4 days ago -- I'm losing track of days, but I think it's a
5 couple days ago -- Mr. Kotoske asked you questions about
6 the testing that Monsanto did, and I think you brought out
7 that Monsanto did some tests in the '30s called the
8 Drinker studies, correct?

9 A. I remember that, yes.

10 Q. And then he mentioned the IBT studies in
11 1971?

12 A. Yes, I remember that.

13 Q. p Did Monsanto do other toxicity studies, and
14 I'm talking about animal toxicity studies, other than
15 those two?

16 A. For PCBs?

17 Q. Yes.

18 A. Oh, yes.

19 Q. I'd like to hand you a book, and which was
20 supplied to Mr. Kotoske yesterday. And, Judge, you have
21 one on your desk.

22 THE COURT: Thank you.

23 Q. (By Mr. Carney) And, first of all, I'd like
24 p to read into the record the deposition exhibits that are
25 contained in this book.

1 THE COURT: Just a minute, Tom. What
2 (inaudible)?

3 MR. CARNEY: I think it's called "Toxicity
4 Testing, 1938 to 1966."

5 THE COURT: Got it.

6 Q. (By Mr. Carney) Just for the record,
7 these -- the exhibits, defendant's exhibits in this book
8 are Defendant's Exhibit 192, 193, 196, 197, 198, 199,
9 Exhibits 200 through 209. That's nine exhibits. Exhibit
10 211, and Exhibits 216 through 220, that's four exhibits.
11 And a few days ago did I ask you, Mr. Papageorge, to
12 review the documents in that book?

13 A. Yes.

14 Q. And could you generally describe what's in
15 those documents?

16 A. These documents describe studies of PCBs with
17 test animals and reports the results of those tests.

18 Q. There are several groupings, and I'd like to
19 just go through the groupings. The first documents in
20 that book are two studies by Dr. Drinker dated September
21 15, 1938, and that's Exhibit 192 and 193?

22 A. They are.

23 Q. And Dr. Drinker was from Harvard University?

24 A. Yes, sir.

25 Q. And he did some studies, animal studies of

1 PCBs at that timep ?

2 A. Yes.

3 Q. And were those studies published in journals?

4 A. Yes.

5 Q. And were copies of those studies furnished to
6 the United States government?

7 A. Yes.

8 Q. And then the next group of studies are
9 Defendant's Exhibit 196 and 197. Are those studies by a
10 company called Scientific Associates?

11 A. They are.

12 Q. Oh, by the wayp , the Drinker studies, did
13 Monsanto have anything to do with those Drinker studies?
14 Did they authorize them to be done?

15 A. No. The only role Monsanto played was supply
16 samples.

17 Q. Okay. Now, what about the Scientific
18 Associates studies? That's Defendant's Exhibit 196 and
19 197.

20 A. Yes. Those were authorized or sponsored by
21 Monsanto.

22 Q. And the one Scientific Associap tes study,
23 Defendant's Exhibit 196, is dated November 1953?

24 A. It is.

25 Q. And the other study is dated February 1955?

1 A. Yes.

2 Q. And these were animal studies done on PCBs?

3 A. Yes.

4 Q. And then go to Exhibits 198 and 199. Are
5 those studies that Monsanto sponsored and asked that
6 Dr. Treon do?

7 A. Yes.

8 Q. And those studies are titled "The Toxicity of
9 a Vapor of Aroclors 1242 and 1254."

10 A. Yes.

11 Q. And both of those studies are dated different
12 dates in June of 1955?

13 A. Yes.

14 Q. And these were animal studies done on PCBs
15 1242 and 1254?

16 A. Yes.

17 Q. And do these reports by Treon mention among
18 other effects, liver effects from the animals?

19 p A. Yes.

20 Q. And I think you've already indicated that
21 those Treon studies were sent to Westinghouse?

22 A. Yes.

23 Q. And they were also sent to the U.S.
24 government?

25 A. Yes.

1 Q. Now, let's look at the next group of
2 exhibits, Exhibits 200 through 209, 211 and Exhibits 216
3 through 220. Are these all animal studies that Monsanto
4 had done p by the Younger Laboratories?

5 A. They are.

6 Q. And I'd like you to just give -- or maybe I
7 can just give the dates and you can follow along. I'll
8 just go through each report and give the dates. These
9 were all animal studies, weren't they?

10 A. They were.

11 Q. Using PCBs?

12 A. Yes.

13 Q. And the first one is dated February 22, 1958?

14 A. Yes.

15 p Q. The next one is October 22, 1958?

16 A. Exhibit 201, sir?

17 Q. Well, let me check. I may have the wrong
18 document. Okay. Yeah. Exhibit 201, is that --

19 A. It's October 20th.

20 Q. October 20th. I'm sorry.

21 A. Yes.

22 Q. And then Exhibit 202 is December 8, 1958?

23 A. Yes. I see the date, yes.

24 Q. And then Exhibit 203 is June 6, 1962?

25 A. Yes.

1 Q. And here, just for example, they are not all
2 rat studies, are they?

3 A. No, different animals. Rats, rabbits.

4 Q. There is a skin absorption on rabbits
5 included in Exhibit 203, for example?

6 A. Yes.

7 Q. And then Exhibit 204 is dated June 13, 1962?

8 A. It is.

9 Q. And they were fed PCBs -- PCBs were fedp to
10 rats?

11 A. Yes.

12 Q. And some of the studies on that exhibit were
13 skin absorption studies on rabbits?

14 A. Yes.

15 Q. And then Exhibit 205 is dated June 19, 1962?

16 A. It is.

17 Q. Exhibit 206 is dated June 25, 1962?

18 A. Yes.

19 Q. And Exhibit 207 is dated June 25, 1962?

20 A. Yes.

21 Q. 208, the same date?

p 22 A. Yes.

23 Q. 209 is July 9, 1962?

24 A. Yes.

25 Q. Exhibit 211 is dated March 4, 1963?

1 A. It is.

2 Q. And this study I noticed just has feeding of
3 rat (inaudible) feeding rats?

4 A. Yes, sir.

5 Q. Then it has skin absorption for rabbits?

6 A. Yes.

7 Q. Skin irritation with rabbits?

8 b A. Yes.

9 Q. Eye irritation with rabbits?

10 A. Yes.

11 Q. And vapor inhalation with rabbits?

12 A. Yes.

13 Q. And then what about 216? Is that dated
14 December 19, 1963?

15 A. It is.

16 Q. Then Exhibit 217 is dated June 12th --
17 January 12, 1966?

18 A. It is.

19 Q. Exhibit 218 is the Younger Laboratory test
20 report datedp October 17, 1966?

21 A. Yes.

22 Q. And some of these studies I noticed they
23 tested both sexes of the various types of animals?

24 A. Yes.

25 Q. Exhibit 219 is dated November 9, 1966?

1 A. It is.

2 Q. And so is the Exhibit 220?

3 A. Yes.

4 MR. CARNEY: Your Honor, I'd like to offer
5 into evidence these test reports that Monsp anto had done or
6 were done.

7 MR. KOTOSKE: I have no problem if the
8 witness can identify for me the PCBs that were tested in
9 Exhibit 200, 201 and 202.

10 THE COURT: All right. You want to cover
11 that, Mr. Carney?

12 Q. (By Mr. Carney) Yeah. I think -- Why don't
13 we take 201. Let me ask you this, just so we can cover
14 these generally. Were these animal tests done on various
15 typ pes of PCBs?

16 A. They were.

17 Q. And 201, I believe is -- Can you --

18 THE COURT: Let me ask you a question --

19 Q. (By Mr. Carney) Let me ask you this --

20 THE COURT: Were you moving for 192 through
21 202 or just the one you're referring to of the Younger
22 Labs? In other words, are you moving --

23 MR. CARNEY: I'm moving -- I think the
24 Drinker studies may hap ve already been in.

25 MR. KOTOSKE: That is right. Exhibit 11, I

1 have no objection to that.

2 THE COURT: So it's the late ones that we
3 need to look through.

4 MR. CARNEY: All the other exhibits I
5 mentioned I'm offering that are in this book that I've
6 read into the record. And I believe, Judge, since
7 Dr. Kelly's deposition is going to be played, he
8 identifies p all these studies as PCB studies. And he was
9 the one that actually asked for the studies to be done.
10 So I think he covers this point. Maybe we can wait until
11 then.

12 THE COURT: I'll withhold my ruling, if
13 that's the way you two want to do it.

14 MR. CARNEY: That's fine. He identifies them
15 very clearly. He's more familiar with the tests since he
16 was the one that led the (inaudible).

17 p THE COURT: Counsel, give me those numbers
18 again that you mentioned.

19 MR. KOTOSKE: Again, Your Honor, there is no
20 product described in 200, 201 and 202. To speed things
21 along, all the rest of these exhibits can go in evidence,
22 but I want you to reserve your ruling on those three until
23 we find out if it was a PCB product, and if it was, which
24 one.

25 THE COURT: For the record, 192, 193, 196,

1 197, 198, 199, skipping to 203 through 209, 211, 216 and
2 220 are admitted into evidence. No ruling on 200, 201 and
3 202 until they are connected up.

4 MR. CARNEY: I'll have that done (inaudible)
5 with Dr. Kelly.

6 Q. (By Mr. Carney) You can put that book aside
7 now, Mr. Papageorge. I want to -- You were also examined
8 by Mr. Kotoske about a document in Plaintiff's Exhibit 11
9 at pages 80 through 82, and in particular, this is a --
10 page 81 is where the focus of the question was. And do we
11 have copies for Mr. Papageorge? I'll give you a copy so
12 you can take a look at that exhibit.

13 THE COURT: Have we left this volume now?

14 MR. CARNEY: Yes. We're finished with that
15 volume.

16 Q. (By Mr. Carney) Do you remember the
17 questions about that bottom paragraph? What I'd like to
p 18 do just for the record, for the jury, Mr. Kotoske read a
19 couple of sentences out of this paragraph, and I'd like to
20 read what he didn't have you read.

21 THE COURT: Where is this from?

22 MR. CARNEY: This is page 81 of Plaintiff's
23 Exhibit 11.

24 THE COURT: Okay.

25 MR. KOTOSKE: This is the letter by

1 Dr. Wheeler.

2 THE COURT: Thank p you.

3 MR. KOTOSKE: It's dated March 3, 1969.

4 MR. CARNEY: That's correct.

5 MR. KOTOSKE: That I recall.

6 MR. CARNEY: Your recollection is accurate.

7 Q. (By Mr. Carney) Mr. Kotoske read this
8 sentence -- or I don't know if he read it or had you read
9 it. I can't remember -- "The Swedish and American
10 scientists also imply that polychlorinated biphenyls are
11 'p highly toxic' chemicals. This is simply not true." Now,
12 that was read, but what wasn't read was the next sentence,
13 the next couple. "The toxicity of any material, whether
14 it be chemicals, drugs, natural plants or even foods, is
15 relative. Compared to the thousands of industrial
16 chemicals and home products, PCBs are not toxic unless
17 they are mishandled or misused." That was not read, was
18 it?

19 A. That is true.

20 p Q. And then Mr. Kotoske did read the next --
21 part of the next sentence. "During more than thirty years
22 of U.S. production and use, cases of any toxic effect have
23 been extremely rare." He read that, but didn't read the
24 rest, "And then only where the simple precautions
25 recommended for use were not followed." Did I read now

1 the entire paragraph?

2 A. You did.

3 Q. Now, I'd l^b ike to look at the group Exhibit --
4 and I think this is where we kind of broke off yesterday.
5 This is group exhibit, letters to the government, the
6 scientists.

7 MR. CARNEY: Your Honor, I think you have a
8 copy.

9 MR. KOTOSKE: Does this start with Exhibit
10 16?

11 MR. CARNEY: It starts with Exhibit 16, and I
12 think I read the exhibits into the record.

13 THE COURT: p You did.

14 MR. CARNEY: I'm pretty sure I did. So I
15 won't have to read those again because there are a lot of
16 them.

17 THE COURT: I think it's 16 through 115.

18 MR. CARNEY: Yeah, not all the exhibits, but
19 they do run 16 through 115.

20 Q. (By Mr. Carney) And I think you've already
21 indicated you have reviewed those letters. Are these
22 representative examples of letters that y^p ou or someone
23 else at Monsanto sent providing information and PCB
24 samples to the United States government and to researchers
25 at universities who were studying the PCB environmental

1 issue?

2 A. They are.

3 Q. And these letters are organized by page? I
4 think the first letter is February 15, 1968?

5 A. It is.

6 Q. And it runs through April 13, 1977?

7 b A. Yes.

8 Q. And is this stack of letters that's in this
9 book, are these the only letters that Monsanto sent where
10 they sent samples to people who were investigating PCBs?

11 A. No. This is just -- this represents some of
12 the group of letters that were sent.

13 Q. And are these, in addition to sending samples
14 of PCBs to researchers and universities and the U.S.
15 government, did these letters also include information
16 about how -- what Monsanto's procedures were for the
17 proper identification of PCBs in the environment?

18 A. Some of them do, yes.

19 Q. Did they also indicate in these letters to
20 the universities and to the government agencies that
21 Monsanto would be happy to answer any further questions?

22 A. Yes, they do.

23 MR. CARNEY: Your Honor, I'd like to offer
24 these exhibits in evidence.

25 THE COURT: Which ones?

1 MR. CARNEY: The ones that are in this book
2 that I've read.

3 THE COURT: Just the ones you've read?

4 MR. CARNEY: No, the ones -- the exhibits
5 numbers that I read into the record at the end of
6 yesterday.

7 THE COURT: 16, 18, 52 and 101.

8 MR. CARNEY: No, the entire group of them.

9 b MR. KOTOSKE: My specific objection is some
10 of these exhibits have notations in handwriting on them.
11 I think we can -- and I'll identify them for you. I'll
12 have no objection if those notations are blacked out.

13 THE COURT: All right.

14 MR. KOTOSKE: And those exhibits are 66, 73,
15 76, 78 and 79, 82, 83, 85, 90, 96, 99. Now, I ask you to
16 reserve your ruling on 101. When you read that exhibit
17 b you will immediately know why.

18 THE COURT: Are we talking about the same
19 one? It's the one page, October 8, 1975.

20 MR. KOTOSKE: It is.

21 THE COURT: Do you want to go over?

22 MR. KOTOSKE: I think we should. This will
23 just take a minute.

24 THE COURT: Sure.

25 MR. KOTOSKE: We don't need the reporter.

1 (A bench conference was held.)

2 MR. KOTOSKE: So, Your Honor, in summary
3 (inaudible).

4 THE COURT: State, Mr. Carney, what
5 (inaudible).

6 MR. CARNEY: Yeah, I'm withdrawing Exhibit
7 101.

8 THE COURT: So continue, Mr. Kotoske, please.

9 MR. KOTOSKE: That's it. So if we withdraw
10 the Exhibit 101 from this group and erase all those
11 notations -- They can't be p erased, just black them out,
12 they can go in.

13 THE COURT: The ones you named, the ones with
14 the notations which you would like obliterated, which I
15 think is understandable.

16 MR. KOTOSKE: Precisely.

17 THE COURT: Except for that, I will admit
18 Exhibit 16 through 115 which were referred to. And why
19 don't I go through them to make sure. That includes
20 Defendant's Exhibit --

21 p MR. CARNEY: Well, okay. Judge, I just
22 looked at some of the notations, and I think they just
23 identify which type of PCB it is. I don't see a problem
24 with it, but for now let's just leave them out, and then
25 we can -- I think they ought to be in (inaudible).

1 THE COURT: So far they are out. And then
2 I'll listen to you. So it's Defendant's 16, 18, 52, 60,
3 62, 63, 64, 65 through 69, 72 through 80, 82 through 90,
4 95, 96, 97, 98, 99, 100, delete 101, then continuing with
5 102, 103, 104, 105, 114 and 115 are admitted into evidence
6 except for the deletions which we've talked about in the
7 exhibits noted by Mr. Kotoske. Proceed.

8 Q. (By Mr. Carney) I'm going to try to get some
9 dates in sequence, Mr. Papageorge. And first is the date
10 when the U.S. government task force told Monsanto that
11 they should continue to make PCBs for capacitors because
12 it was necessary because of the risks of fires and
13 explosions. What date was that?

14 A. That's May 1972.

15 Q. Okay. If I can find a piece of chalk that
16 works. Okay. Now, at some point in time did you make a
17 recommendation to management that Monsanto should announce
18 to the government and to the customers that Monsanto
19 (inaudible) stop making PCBs altogether?

20 p A. I did, yes.

21 Q. And what was that date?

22 A. September 1975.

23 Q. And then Monsanto agreed with your
24 recommendation and made an announcement to the government
25 that they were going to stop making PCBs as soon as a

1 substitute was found. What was that date?

2 A. That was in January 1976.

3 Q. And then in October 1976 the TSCA law was
4 passed; is that correct?

5 A. That is correct, yes.

6 Q. And the effective date of that law was
7 January 1977?

8 A. Yes.

9 Q. And was it January of 1978 that there was a
10 ban on the manufacture of PCBs for all open uses?

11 A. 1978, yes, one year later.

12 Q. One year after the effective date?

13 A. Yes.

14 Q. I want to stop you there. So the ban on all
15 open uses of PCBs was on January 1978?

16 A. Yes, sir.

17 Q. Now, Monsanto -- when did Monsanto stop
18 manufacturing for open uses?

19 A. August 30, 1970.

20 Q. So it was up here about almost seven years
21 before?

22 A. Yes.

23 Q. And then finally when was the ban on the
24 manufacture of PCBs for closed uses?

25 A. 1979. Another year went by.

1 Q. And this law that was passed in 1976 with an
2 effective date of January '77 banned the manufacture of
3 PCBs for open uses in 1978?

4 A. Yes.

5 Q. And banned manufacture of PCBs in 1979?

6 A. Yes.

7 MR. CARNEY: Can we get a stipulation on
8 that, Mr. Kotoske?

9 MR. KOTOSKE: Yes, we can stipulate that the
10 EPA pursuant to -- Excuse me for not standing g -- pursuant
11 to the Toxic Substance Control Act enacted regulations
12 banning the use, manufacture of PCBs generally as counsel
13 has stated, so the jury knows and everybody knows.

14 THE COURT: I think we have agreed we may put
15 it in an instruction.

16 MR. KOTOSKE: In a jury instruction.

17 MR. CARNEY: That would be fine, Judge, so we
18 eliminate all this confusion.

19 Q. (By Mr. Carney) So, Mr. Papageorge, prior to
20 the law being enacted in October of 1976, this is when the
21 law was enacted, Monsanto announced -- you had already
22 recommended that Monsanto get out of the PCB business
23 altogether?

24 A. I did.

25 Q. And Monsanto had announced to the government

1 that it was getting out of the PCB business just as soon
2 as a substitute would be found?

3 A. Yp es.

4 Q. And Monsanto, when did it actually stop the
5 manufacture of PCBs?

6 A. In July of 1977.

7 Q. For closed uses?

8 MR. KOTOSKE: Well --

9 A. That was all that was remaining then, yes.

10 Q. (By Mr. Carney) So that's right in here.
11 That would be a year and a half before the government ban
12 went into effect; is that correct?

13 A. That is correct.p

14 MR. CARNEY: Judge, here's the statute, a
15 copy of.

16 Q. (By Mr. Carney) Now, I believe two of the
17 plaintiffs, Mr. Papageorge, testified that they saw
18 Monsanto labels on some drums, but they didn't read the
19 labels. Do you think by putting more information on the
20 labels that the -- it would help people read the labels?

21 MR. KOTOSKE: Well, that calls for
22 speculation, but I would likep to have the answer as a
23 (inaudible) summary.

24 THE COURT: I'll sustain it as to the form of
25 the question. Mr. Carney?

1 MR. CARNEY: Sir, I --

2 THE COURT: Rephrase it. I sustained the
3 objection as to form. Calling for what (inaudible).

4 MR. CARNEY: I thought he wanted to hear the
5 answer.

6 MR. KOTOSKE: No. (Inaudible) objection.

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THE COURT: It's noted.

8 Q. (By Mr. Carney) You think putting more
9 information on a label than Monsanto put on the labels
10 would encourage people to read the label?

11 A. Not necessarily. It's been my experience in
12 40 years in the chemical industry that --

13 MR. KOTOSKE: You know, I don't mind --

14 THE COURT: (inaudible).

15 MR. KOTOSKE: Absolutely.

16 p THE COURT: Sustained. You can have him
17 (inaudible).

18 Q. (By Mr. Carney) What has been your
19 experience in the chemical industry with regard to putting
20 more and more information on the label?

21 A. The typical worker handling a material day
22 after day after day, seeing the same kind of label doesn't
23 stop to read that label. And in Monsanto we pointed out,
24 of course, when he was first assigned to the job what was
25 on the label, not only Monsanto's products, but other

1 products we purchased from others, and a worker that
2 handles materials day after day tends to accept it and
3 doesn't read any further. Even though a change has been
4 made, the chances are very, very slim that he will read
5 that new piece of information. The best information in my
6 experience is one where action to prevent harm is
7 described. Symptoms are sometimes not understood by the
8 worker, and it doesn't make the impact that the action
9 word does.

10 Q. "Avoid skin contact," that kind --

11 A. Avoiding skin contact has a lot of meaning to
12 most of us, but to talk about medical symptoms may not
13 have the same urgency about them because they are not
14 understood.

15 Q. It's important in your 40 years of experience
16 that you supplement the labels with meetings, safety
17 meetings describing how to safely handle the product?

18 A. Oh, yes. The meetings are more important
19 than the label in my opinion.

20 Q. Let's look at some of the labels, and we've
21 got a book -- For the record, I've supplied these
22 documents to Mr. Kotoske after court yesterday. Did I ask
23 you, again, a few days ago to review the exhibits in this
24 booklet so that we could save some time and not have to go
25 through each one?

1 A. Yes, you did.

2 Q. And are these -- There are 39 exhibits here.
3 Are they representative examples of warning labels that
4 were placed on Monsanto PCB products?

5 A. They are.

6 Q. And I'd like to just read into the record the
7 exhibits that are covered, Defendant's Exhibit 147 through
8 149, 153, 154, 157, 160, 17p 0 through 187.

9 MR. KOTOSKE: Wait, wait. What about 161?
10 Did I miss something here?

11 THE COURT: Just 160, right?

12 MR. CARNEY: Yeah, I do get back to those in
13 order. Let me just do them. I do include 161. But 173
14 through 187.

15 THE COURT: 170?

16 MR. CARNEY: 173.

17 THE COURT: I'm sorry.

18 Q. (By Mr. Carney) Through 187. 1p 50 through
19 152, 155, 156, 163, 164, 166 through 172, 161, 162 and
20 165. I think that's the order they appear in the
21 notebook.

22 MR. CARNEY: At this time I'd like to move
23 for the admission of these exhibits.

24 THE COURT: Any objections?

25 MR. KOTOSKE: Yes. On the following exhibits

1 no product is even identified. And they are 155, 162,
2 165, 166, 168, 171, 172 p and 173, 179 and 180 and 186. On
3 the following exhibits the second page is illegible. They
4 are 181, 182, 183, 184, 185 and 187. The following
5 exhibits don't even relate to PCBs sold to Bloomington.
6 They are 156 and 161. Additionally, none of these labels
7 are dated.

8 THE COURT: Of all the ones you've mentioned?

9 MR. KOTOSKE: That's right, all the ones in
10 this book. At least I can't find the date. p I will tell
11 you that if you look at Exhibit 63 and 64, it appears that
12 those labels may have the date of 1954 to 1958 or 1954 to
13 1953, but I can't be sure. Those are my objections to
14 this group of exhibits.

15 THE COURT: Do you want to respond to those
16 objections or do you want to lay a foundation pursuant to
17 the objections?

18 MR. CARNEY: Well, again, Your Honor, I think
19 these documents are covered in part in Dr. Kelly's
20 deposition.

21 MR. KOTOSKE: Let's reserve it, then.

22 MR. CARNEY: But I would like to ask a couple
23 questions real quick with regard to dates.

24 THE COURT: I'll reserve ruling. You
25 (inaudible) lay a partial foundation here and then with

1 Mr. Kelly. Proceed.

2 MR. CARNEY: Let me go through a couple of
3 them. I don't think there is any objection to -- I'm not
4 going to go through all of them. Some that you didn't
5 have an objection to that I haven't (inaudible).

6 THE COURT: (inaudible)

7 MR. KOTOSKE: Yes, there is. There is a
8 foundational matter, unless I can be shown how these are
9 dated. None of them are dated, and we don't know when
10 they were used and at what time.

11 THE COURT: You have a right to know. p Let's
12 proceed.

13 MR. CARNEY: I will (inaudible).

14 THE COURT: Sure.

15 Q. (By Mr. Carney) Take a look at Exhibit 151.

16 A. I have it.

17 Q. Now, is this a label that was used for
18 Aroclor 1242?

19 A. Yes.

20 Q. Is that the type of PCB that was sent to
21 Bloomington?

22 A. Yes.

23 Q. In fact, that was the vast majority of PCBs
24 sent to Bloomington?

25 A. Yes.

1 Q. And can you tell was this label -- Let me ask
2 you this. Was there an environmental warning put on the
3 labels after a certain date?

4 A. Yes, there were.

5 Q. Can you give me that date?

6 A. May of 19 -- Sorry. Let me think. Yes, May
7 of 1970.

8 Q. And would the labels in this book that havep
9 the environmental warning be labels that were used during
10 the period 1970 through 1977?

11 A. Yes.

12 Q. May of 1970 through 1977 when PCBs were --
13 you stopped manufacture?

14 A. Yes.

15 Q. The labels in this book that don't have that
16 environmental warning, were they all used prior to May
17 1970?

18 A. Yes, but some of those labels were used
19 during 1970 with an adp ditional label with the
20 environmental statement until new labels could be printed
21 containing the entire message.

22 Q. Before you could get the environmental label
23 printed, you had a stick-on that you would put on the
24 labels with the environmental warning?

25 A. Yes.

1 MR. CARNEY: Your Honor, at this point I
2 would like to move just for the admission of Exhibit 151.

3 p THE COURT: All right. Any further
4 objections?

5 MR. KOTOSKE: No date.

6 THE COURT: And what's your response to that?

7 MR. CARNEY: Well, Your Honor, it's clearly
8 used prior to May 1970. It's the 1242 that was shipped to
9 the plant. I think in some of these instances Kelly can
10 give a more refined date. I don't think this witness can,
11 and so I'm -- but it was clearly a label usedp during the
12 time that these plaintiffs worked at the Bloomington
13 plant.

14 MR. KOTOSKE: Let me urge my objection that
15 (inaudible) I'll save a lot of time.

16 THE COURT: Sure.

17 MR. KOTOSKE: It is very crucial in this case
18 to know the exact date of warnings with respect to when
19 these people were exposed. It is crucial.

20 THE COURT: I understand. I'll hold my
21 rup ling also on this one for now.

22 Q. (By Mr. Carney) Well, Your Honor, let me ask
23 this question. Mr. Papageorge, was this warning that's
24 Exhibit 151 used and placed on the drums of PCBs that were
25 sent to the Bloomington plant prior to May of 1970?

1 MR. KOTOSKE: Pardon me. I must object.

2 Speculation. He does not know the date of this label, and
3 he cannot tell us with any certainty.

4 p A. I think I can answer the question.

5 THE COURT: Overruled. You may answer, sir.

6 A. This wording appeared on all labels of the
7 PCB type shipped to Bloomington.

8 MR. KOTOSKE: I move to strike. He doesn't
9 know that.

10 MR. CARNEY: Your Honor, he does. He was in
11 the plant. He was in charge of the labeling, and he
12 described how it was put on.

13 THE p COURT: Overruled. Overruled.

14 MR. CARNEY: Your Honor, at this point --

15 THE COURT: Can you lay any further
16 foundation as to how he knows?

17 Q. (By Mr. Carney) How do you know that,
18 Mr. Papageorge?

19 A. I saw it with my own eyes and watched the
20 shipments leave the plant.

21 THE COURT: What is the date again? You said
22 it was used on PCBs prior to May of '71.

23 p Q. (By Mr. Carney) Let me ask you this,
24 Mr. Papageorge. The Westinghouse plant opened in 1958,
25 approximately?

1 A. Yes, sir.

2 Q. The Westinghouse Bloomington. Was this label
3 used on PCB drums that were sent to Bloomington before --
4 between 1958 -- Let me ask you this, was the language
5 that's on this label used from 1958 when the Bloomington
6 plant was opened until May of 1970 when the environmental
7 warning was added?

8 A. Yes, it was.

9 (Ms. Wann replaced Ms. Carter.)

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1 MR. KOTOSKE: Note my objection. That's pure
2 speculation. The label was not dated -- a number of these
3 labels were not dated. We don't know when they came to
4 the factory, but as a practical matter the system -- if he
p 5 is telling us this label was being used prior to the
6 environmental warning which we now know is May of '70,
7 I'll allow this one exhibit in, and I'll ask you to
8 reserve on the others.

9 THE COURT: It will be so admitted. 150 is
10 admitted into evidence.

11 MR. CARNEY: Your Honor, this is a blowup of
12 Exhibit 151.

13 MR. KOTOSKE: Would you give me just a chance
14 to look at my 151?p

15 MR. CARNEY: Are you prepared?

16 MR. KOTOSKE: Oh, yeah.

17 THE COURT: Proceed.

18 Q. (By Mr. Carney) Is this a blowup of
19 Defendant Trial Exhibit 151?

20 A. It is.

21 Q. It's got the same (inaudible),
22 826.12.240.04/53?

23 A. It does.

24 MR. KOTOSKE: I'd like the jury -- they all
25 can't see it.

1 p MR. CARNEY: This one I think they -- did
2 everybody see it?

3 Okay. Would you just read the language under
4 the (inaudible) through the line where it starts with
5 "Avoid"?

6 A. "Avoid prolonged breathing of vapors on
7 mists. Avoid contact with eyes or prolonged contact with
8 skin. If skin contact occurs, remove by washing with soap
9 and water. Following eye contact, flush with water. If
10 p clothing becomes soaked with fluid, launder before wearing
11 again.

12 Q. (By Mr. Carney) Okay. Now, does this --

13 MR. KOTOSKE: Can the jury just have a chance
14 to absorb this exhibit, please?

15 MR. CARNEY: All right.

16 THE COURT: Has everybody seen it, looked at
17 it?

18 MR. CARNEY: They can look at it as long as
19 they need.

20 Is this -- Mr.p Papageorge, is this the
21 language that appeared on all of the labels that were put
22 on drums that were sent to the Bloomington plant between
23 the time the Bloomington plant opened and about 1958 until
24 May of 1970 when the environmental warnings were added?

25 A. It is.

1 MR. KOTOSKE: That's on all PCBs that went to
2 that plant up to May of '70 had that warning?

3 MR. CARNEY: Well, I -- I think it's my turn
4 to ask questions. I will ask them just --

5 THE COURT: If you want something clarified,
6 that's fine.

7 MR. KOTOSKE: That's all I want to know.

8 Q. (By Mr. Carney) This was on every drum of
9 PCBs; isn't that correct?

10 A. That's right. Every drum of material that
11 left the plant that contained PCBs.

12 Q. Now, with regard to the tank cars, p and that's
13 how most of the PCBs were shipped, the tank cars did not
14 go into the plants?

15 A. Yeah, they --

16 Q. The customers?

17 THE COURT: The railroad tank cars.

18 Q. (By Mr. Carney) The railroad tank cars and
19 any other tank cars that delivered PCBs?

20 A. The railroad tank cars stayed outside on the
21 railroad (inaudible), yes.

22 Q. And was that true of the Bloomington plant
23 when you watched -- when you toured, the tracks went up to
24 the outside of the plant?

25 A. Yes, sir.

1 Q. And you saw where they pumped fluid in from
2 outside the plant?

3 A. Yes.

4 Q. And then it was piped in to the plant?

5 A. Yes.

6 Q. And at some point in time were there labels
7 put on tank cars?

8 A. Yes.

9 Q. Was there a decision made to put labels on
10 all tanks cars, or was it just PCB tank cars?

11 A. This was all tank cars of chemicals.

12 Q. Chemicals of Monsanto or --

13 A. Well, those that left Monsanto plants were
14 Monsanto's chemicals, yes.

15 Q. And when was that done?

16 A. Well, the program started in 1972.

17 Q. And this was a program where Monsanto had put
18 labels on tank cars?

19 A. Yes.

20 Q. Was it the idea to put the labels on tank
21 cars so that workers in plants would see the labels?

22 A. Well, certainly those workers that climbed up
23 on top and made the connections of pipe lines, those were
24 very few. The principal reason for that kind of labeling
25 was --

1 MR. KOTOSKE: Move to strike.

2 p THE COURT: Sustained.

3 Q. (By Mr. Carney) Well, I'd like -- what was
4 the purpose of Monsanto's putting labels on tank cars?

5 A. To provide information about the material in
6 the tank cars should that tank car be involved in an
7 accident on its way to the customer's plant.

8 Q. So that would give information if there was
9 an accident of what was in the tank?

10 A. Yes.

11 Q. p Is that --

12 A. Yes.

13 Q. Now, just for the record, and maybe I can do
14 this. This might take -- there are certain exhibits in
15 this book that have the environmental warnings. I'd like
16 you to just read those and then I'll ask the witness to go
17 through them at this time if I made a mistake.

18 MR. KOTOSKE: You cannot read them. They're
19 not in evidence.

20 MR. CARNEY: I'm not going to read them, just
21 read the exhibit numbers to (inaudible).

22 MR. KOTOSKE: Oh, no problem.

23 Q. (By Mr. Carney) Those are Exhibits D47
24 through 149, 153, 154, 157, 160 and 173 through 187. And
25 I -- you don't need to check that because we'll take a

1 little too much time. If I made a mistake on that that
2 will be pointed out (inaudible).

3 On those exhibits, assuming those p all have
4 the environmental label on them, would those labels all
5 have been used between 19 -- after May, 1970 through 1977?

6 MR. KOTOSKE: Objection. Pure speculation.

7 THE COURT: Overruled. As long as you show
8 how he (inaudible). What were the dates again?

9 MR. CARNEY: It would be May, 1970 through
10 1977. I think it would be summer, '77 (inaudible).

11 THE COURT: You may anp swer.

12 A. That environmental statement was started --
13 we started using that in May of 1970 and by the time in
14 1977 there were additional statements added to that
15 environmental statement.

16 Q. (By Mr. Carney) Who made the recommendation
17 to put the environmental warning on PCB contaminants?

18 A. I did.

19 MR. CARNEY: Then we have some internal memos
20 where this is confirmed, Judge, ap nd I don't think we need
21 to go into that level of detail.

22 Were there also labels that Monsanto prepared
23 for use on PCB products bearing the Westinghouse trade
24 name for PCBs, and that is Inerteen?

25 A. Yes, there were.

1 Q. (By Mr. Carney) Take a look at Exhibit 157
2 in the 'label' book.

3 A. I have it.

4 Q. And that's a label -- that's a label word
p 5 Inerteen in big bold letters?

6 A. It is.

7 Q. And it contains the standard warnings that
8 was on Exhibit 151?

9 A. It does.

10 Q. And it indicates on there that this was May
11 of --

12 MR. KOTOSKE: Judge, please.

13 MR. CARNEY: Oh, I'm sorry.

14 THE COURT: You can lay a foundation if you
15 want.

16 MR. KOTOSKE: But he cp an't read from the
17 exhibit. It's not in evidence.

18 THE COURT: I agree. But as far as laying a
19 foundation (inaudible).

20 Q. (By Mr. Carney) Did -- are you familiar with
21 this particular label?

22 A. Yes, I am.

23 Q. And this was a Monsanto label or Monsanto
24 prepared the label for Westinghouse, and it was used
25 between the dates 19 -- May of 1970 and the summer of

1 1977?

2 A. Yes.

3 MR. CARNEY: Your Honor, I'd like to offer
4 into evidence Defendant's Exhibit 157.

5 THE COURT: Any objections, sir?

6 MR. KOTOSKE: Look, it's not dated. None of
7 these labels are dated. If we have to rely on this man's
8 testimony (inaudible), I guess that's my objection. I --
9 Judge, I don't want to take up time on how important dates
10 are in this case, but if you want to use that as an
11 example of what was after a certain date, it's up to you.
12 I think it's improper.

13 THE COURT: It will be admitted over the
14 objection, and it will speak for itself. It will stand
15 for itself based on the foundation. Proceed.

16 Q. (By Mr. Carney) And this label as well as
17 having in gold print Inerteen, it also says made for
18 Westinghouse Electric Corporation?

19 b A. It does.

20 Q. What was this -- was this a label that
21 Monsanto prepared for Westinghouse or so that Westinghouse
22 could put on their products when they shipped it out from
23 Bloomington and other plants of Westinghouse?

24 A. No.

25 Q. Okay. Tell me how this label was used.

1 A. This was the label that was placed on drums
2 of material prepared for Westinghouse Corporation
3 according to their specifications, and that material did
4 contain the PCBs and other ingredients. It was a mixture.

5 Q. Okay. Take a look at Exhibit 185. Can you
6 identify Exhibit 185?

7 A. This is a Monsanto label for the product
8 Aroclor 1016. This was used on the yellow drums.

9 MR. KOTOSKE: Move to strike. Judge, can you
10 read the second page of your volume?

11 THE COURT: No.

12 MR. CARNEY: I can't either, but I think the
13 witness testified what it generally concerns.

14 THE COURT: As long as we -- could we get a
15 replacement copy? And I don't know what --

16 MR. KOTOSKE: I'd like to read what it says
17 is my problem.

18 MR. CARNEY: What -- your Honor, this is --

19 THE COURT: Why don't we have the witness
20 generally explain what the second page is --

21 Q. (By Mr. Carney) Do you know what the second
22 page is? Maybe we can clarify this.

23 A. I do.

24 Q. Okay. What is it?

25 A. The second page is a copy of the wording that

1 appeared on the yellow drum in seven languages. The
2 message is the same except that it's in different
3 languages.

4 MR. CARNEY: And as far as I'm concernp ed, I
5 don't really care to --

6 THE COURT: I will say this. Some of the
7 words are readable, but the smaller words are not
8 readable.

9 Q. (By Mr. Carney) And I'm not interested in
10 showing the jury these labels except in their languages.
11 I don't speak any of them, Portuguese, Italian, Spanish,
12 et cetera, and as far as I'm concerned we can either leave
13 it the way it is, or we can take it out. I hap ve no
14 preference.

15 THE COURT: The English, at least my copy, is
16 somewhat readable, but I agree it's hard to read.

17 What is your pleasure, Mr. Kotoske?

18 MR. KOTOSKE: I think my clients would fire
19 me if they let me put into evidence things that I can't
20 read.

21 THE COURT: Fine. I'm willing to admit the
22 first page and then --

23 MR. CARNEY: That's fip ne.

24 THE COURT: -- and let you look further at
25 it.

1 MR. CARNEY: You know, I don't have any
2 interest in (inaudible) other languages. The other thing
3 I'm interested is the label (inaudible) that's in clear
4 writing.

5 THE COURT: The first page of Exhibit 185 is
6 admitted. The second page is not.

7 Q. (By Mr. Carney) Exhibit 185, what Aroclor
8 p did that concern?

9 A. This is the Aroclor 1016.

10 Q. And I think the jury has heard what 1016 is.
11 That was the replacement for 'Aroclor 2'?

12 A. It was.

13 Q. Did this -- when did this label first start
14 to be used?

15 A. 1971.

16 Q. And for what period of time would this label
17 have been used on the drums of PCBs sent to --

18 A. Until the sales were stopp ped in 1977.

19 Q. Your Honor, I may try to get a better copy of
20 this.

21 Does this label contain the seven -- safe
22 handling information in the seven languages on the second
23 page?

24 A. Yes.

25 Q. The same kind of safe handling information

1 that we've already shown the jury?

2 A. The same kind, yes, sir.

3 Q. Did all of the Aroclor 1016 labb els contain an
4 environmental warning?

5 A. Yes.

6 MR. CARNEY: Okay. Next I'd like to -- I
7 think this is my final group exhibit. And it's -- this is
8 two volumes. I think you have it. It's labeled
9 brochures, your Honor. Here's Volume II, Judge, your
10 copy. Maybe -- okay. Here's Volume I.

11 THE COURT: All right.

12 MR. CARNEY: And I have a skinny version
13 (inaudip ble).

14 That first page. Mr. Papageorge, did you
15 again review these documents at my request a few days ago?

16 A. Yes, I did.

17 Q. (By Mr. Carney) Can you generally describe
18 what's in these two volumes?

19 A. These are brochures or bulletins that
20 describe Monsanto's Aroclors, and they -- this collection
21 includes the various editions that came out through the
22 years.

23 p Q. So these are PCB brochures?

24 A. Yes, they are.

25 Q. And first -- and in the first volume I

1 believe are Exhibits 134 through Exhibit 146. Do these
2 brochures contain any information about product toxicology
3 and safe handling?

4 A. They do.

5 Q. Who prepared the section on toxicology and
6 safe handling of these PCB brochures?

7 A. Monsanto's Medical Dep partment.

8 Q. To whom were these brochures given?

9 A. To customers of course and anyone that was
10 interested in this material with the idea that they might
11 want to buy it and use it.

12 Q. Were these brochures given to Westinghouse?

13 A. Yes.

14 Q. Were they -- let's talk about -- let's go to
15 one of the brochures, Exhibit 141. Can you identify this
16 brochure?

17 A. My tab is torn. I think I have 141.

18 Q. Is it --

19 A. I'm not certain.

20 Q. Let me check to make sure. It should be on
21 the bottom. That's '440'. I guess it's the next line.
22 I've got it.

23 A. I have it.

24 Q. Read the title of this brochure. Or first of
25 all, when was the date?

1 A. This is dated January, 1960.

2 Q. And it p has on the bottom (inaudible)

3 Monsanto employee?

4 A. Yes.

5 Q. And it says "Revised January, 1960"?

6 A. Yes.

7 Q. This is a Monsanto brochure?

8 A. Yes.

9 Q. And what's the title of the brochure?

10 A. The problem --

11 MR. KOTOSKE: Just to speed things along, I
12 want all of these in evidence.

13 THE COURT: 134 through 1p 46.

14 MR. CARNEY: That would speed things along.
15 I would move for the admission of all of them.

16 MR. KOTOSKE: All of them.

17 THE COURT: So admitted as to Exhibits 134
18 through Exhibit 146.

19 MR. KOTOSKE: How about 257? I'd like to
20 have that in evidence also, at least one of these Monsanto
21 (inaudible).

22 MR. CARNEY: Well, your Honor I'll take a
23 loop k at that one.

24 THE COURT: Yeah, let me know later.

25 MR. CARNEY: It may be a -- I have a

1 suspicion I know what it is.

2 THE COURT: Just proceed.

3 MR. KOTOSKE: So these are all in evidence.

4 THE COURT: 134 through 146 is so admitted.

5 MR. KOTOSKE: Thank you. He can read
6 anything he wants from them.

7 MR. CARNEY: Okay, good. I'm not going to
8 read too much, but I am going to read a few things. This
9 is the final subject.

10 Take a look at Exhibit 141, page 98, and I'm
11 going to have a blowup of that. Now, I've got here
12 Exhibit 141-A, and before I show that to the jury, can you
13 tell, is that -- can you identify that as the same as
14 Exhibit 141 (inaudible) handwriting on it?

15 MR. KOTOSKE: Stipulate.

16 THE COURT: Okay.

17 Q. (By Mr. Carney) And can you identify, does
18 that handwriting indicate that that's a brochure that came
19 out of Westinghouse's files?

20 A. Yes.

21 Q. It has a Dakin, a handwritten name Dakin on
22 it. Do you know who that is?

23 A. Dr. Dakin, yes.

24 Q. He's a Westinghouse researcher?

25 A. Yes, sir.

1 p MR. CARNEY: Any objections to showing this
2 Exhibit 141-A?

3 MR. KOTOSKE: No. I want them to see it.

4 MR. CARNEY: Okay. Good.

5 Would you take a look at page 98, and I'd
6 like to -- I'll just read, and you go along, and this is
7 with the sentence under skin exposure.

8 Can everybody see that and read it?

9 THE COURT: Please show the alternates.

10 p MR. CARNEY: The problem is, if I get too
11 close then the alternates have problems. How about here?
12 Is this -- okay.

13 It says on page 98 under skin exposure,
14 "Prolonged skin contact should be avoided. If work
15 clothes become impregnated with these fluids, they should
16 be removed and washed. When sampling tank cars, canvass
17 gloves and safety glasses or goggles should be worn. No
18 special clothing is required, but the workers' garments
19 should be laundered at least weekly and changed if
20 Aroclors or Askarels are still on the clothes."

21 Did I read it correctly?

22 MR. KOTOSKE: We'll stipulate that you read
23 it correctly.

24 Q. (By Mr. Carney) It then says, "Exposure to
25 vapors". Do you see that section? And I think it's page

1 99?

2 A. I found it.

3 Q. Vapors from hot Aroclor or Askarel have a
4 degree of toxicity and shouldn't be inhaled over a
5 prolonged period of time. Capacitor impregnations may be
6 done at temperatures as high as 260 degrees Fahrenheit
7 (130 degrees centigrade).

8 Let me just stop there for just a second.
9 There's been testimony about how hot these ovens got in
10 the Bloomington plant, and I think the testimony was in
11 the 130 or 140 degree centigrade range. This is -- is 130
12 degrees since this country doesn't -- we use Fahrenheit
13 most of the time -- is 130 degrees centigrade the same as
14 266 degrees Fahrenheit?

15 A. It is.

16 Q. All right. "Following impregnation and
17 draining, the chamber, exhaust ventilation should be
18 applied to the chamber to prevent Askarel vapors entering
19 the work room. Also when opening a heated capacitor
20 impregnating chamber the workmen should wear a respirator
21 during this short interval of exposure."

22 Did I read that correctly?

23 A. You did.

24 Q. Now, again this -- we've got Aroclor or
25 Askarel. What's Askarel?

1 A. Askarel was the generic word to describe fire
2 resistant capacitor fluids.

3 Q. But Aro- --

4 A. But Aroclar is a Monsanto trademark for the
5 p same kind of term when in that use.

6 Q. Okay. I guess at the end of the -- the last
7 two paragraphs of this Monsanto brochure are the words
8 "For many years of satisfactory and safe use of Aroclors
9 or Askarels I would like to (inaudible) the industry for
10 impregnating capacitors and filling transformers has
11 demonstrateed the industry's ability to handle these
12 fluids without hazard to workmen. It is both simple and
13 inp line with good housekeeping and personal cleanliness to
14 exercise the suggested precautions in all cases."

15 Did I read that correctly?

16 A. You did.

17 Q. And this was a brochure that was in
18 Westinghouse's files and dated January, 1960?

19 A. That is correct.

20 MR. KOTOSKE: Objection. He doesn't know if
21 it's in Westinghouse files or not.

22 MR. CARNEY: Well, Ip think he already
23 testified that handwriting --

24 MR. KOTOSKE: He can't be a handwriting
25 expert.

1 THE COURT: Lay a foundation.

2 Q. (By Mr. Carney) Okay. I think you've
3 already testified this was in Westinghouse's files. And
4 how do you know that?

5 A. Well, I know Dr. Dakin personally, and his
6 name does appear on that document.

7 Q. Wp here?

8 A. It's shown on the blowup there in the upper
9 right-hand corner of the title page.

10 MR. KOTOSKE: Now, do you see what he's
11 looking at, Judge?

12 THE COURT: Let him finish his -- are you
13 finished with your foundation as far as how he knows it
14 was in Westinghouse files?

15 Q. (By Mr. Carney) And you know Dr. Dakin to be
16 a Westinghouse employee?

17 A. I dp o.

18 MR. CARNEY: And, your Honor, just so we
19 don't have any confusion, we have a Westinghouse
20 deposition that indicates that this came out of the
21 Westinghouse files.

22 THE COURT: I'll -- I'll say so far that it
23 hasn't been connected up as far as his knowledge that it
24 is absolutely in the file, but certainly the jury can
25 consider the fact that Dakin is shown thereof and

1 (ip audible).

2 MR. CARNEY: We have that.

3 THE COURT: (Inaudible), so I'll strike maybe
4 just that part of the question. You may proceed.

5 Q. (By Mr. Carney) Take a look at Exhibit No.
6 146. Is this another Monsanto brochure?

7 A. It is.

8 Q. Is there anything in this brochure where he
9 refers to the -- refers to assistance from Westinghouse in
10 the preparation of the documents?

11 A. There is.

12 Q. And where is that found?

13 A. On page 1 of the document in the introduction
14 portion.

15 Q. Would you read that portion of this Monsanto
16 brochure where it talks about the contributions of
17 Westinghouse?

18 A. "Monsanto greatfully acknowledges the
19 assistance, guidance and contributions of certain data by
20 the following", and it lists Dr. T. K. 'Slope',
21 Westinghouse Electric.

22 Q. And you've mentioned Mr. Slope's name? You
23 knew him personally from Westinghouse?

24 A. Yes, I did.

25 Q. Personally.

1 Now, I believe I asked you probably three or
2 four days ago, you may have forgotten this, but to look at
3 this document to give a best estimate of the date of this
4 brochure?

5 A. Yes, you did.

6 Q. And are you able to give an estimate by
7 looking at the warnings as to the date of this brochure?

8 MR. KOTOSKE: That's speculation. This
9 document is not dated. We don't know when it was
10 prepared.

11 THE COURT: Well --

12 MR. KOTOSKE: He's not (inaudible).

13 MR. CARNEY: What I'd like to do is, I think
14 he can give an estimated date.

15 THEp COURT: I will let him -- I'll let him
16 answer. I don't know if that's going to be enough --

17 MR. CARNEY: Okay.

18 THE COURT: -- but I'll let him answer.

19 A. There is a reference in this document to the
20 ANSI C-107 standard. And since that standard was
21 available in January of 1974, this brochure certainly was
22 prepared after that date.

23 Q. (By Mr. Carney) Do pages four and five of
24p this brochure contain safe handling information?

25 MR. KOTOSKE: Stipulated they do -- that it

1 does.

2 A. They do.

3 Q. (By Mr. Carney) It says to avoid skin
4 contact and exposures to heat and vapors?

5 A. It does.

6 Q. Mr. Papageorge, does the toxicity and safe
7 handling section of the Monsanto customer brochures that
8 are marked D-134, 135 and 136 contain a warning that
9 repeated bodily contact with PCBs may lead to an acneform
10 skin eruption?

11 A. They do.

12 Q. Do these three --

13 MR. KOTOSKE: Excuse me. Could I have that
14 read back again? Just the question.

15 MR. CARNEY: I think I can probably -- go
16 ahead.

17 THE REPORTER: Mr. Papageorge, does the
18 toxicity and safe handling section in Monsanto cusp tomer
19 brochures that are marked D-134, 135 and 136 contain a
20 warning that repeated bodily contact with PCBs may lead to
21 an acne eruption --

22 MR. CARNEY: Form.

23 THE REPORTER: -- an acneform eruption?

24 MR. CARNEY: Skin.

25 THE REPORTER: -- skin eruption?

1 THE COURT: And your answer was?

2 A. They do.

3 Q. (By p Mr. Carney) Do these same brochures
4 contain a warning that PCB vapors evolved at high
5 temperatures or by repeated oral ingestion will lead to
6 systemic toxic effects?

7 A. Yes.

8 Q. Now I'm going to just switch to Exhibits 144
9 and 145.

10 A. I have them.

11 Q. Do these two exhibits both warn of the
12 possibility of Chloracne if there's excessive exposure to
13 PCBs?

14 p A. Yes, they do.

15 Q. Did Westinghouse receive copies of these
16 brochures, 134, 135, 136, 144 and 145?

17 A. Yes.

18 MR. KOTOSKE: Your Honor --

19 Excuse me, Mr. Papageorge.

20 Objection. Lack of foundation.

21 THE COURT: (Inaudible).

22 Q. (By Mr. Carney) And how did do you know
23 that?

24 A. The practice within Monsanto when these
p 25 bulletins are printed is to make certain that the users of

1 the material get copies, and that is done two ways: One
2 by mail and the other by the salesman personally
3 delivering copies to make certain that the representatives
4 of Westinghouse actually receive them.

5 Q. Turn to Exhibit -- and this is in your --
6 this isn't in the brochure (inaudible) -- Exhibit 250 --
7 it's 257.

8 TP HE COURT: (Inaudible).

9 MR. CARNEY: It would probably be in about
10 the third book I gave you. It's the last exhibit other
11 than group exhibits.

12 MR. CARNEY: I have a copy here --

13 THE COURT: Well --

14 MR. CARNEY: -- I can probably give you.

15 THE COURT: I'll listen to you.

16 MR. CARNEY: Okay.

17 MR. KOTOSKE: Are we going to admit 25p 7?

18 MR. CARNEY: They've already been admitted, I
19 think all of the brochures.

20 MR. KOTOSKE: Well, we don't have a ruling.
21 I want Exhibit 257 in evidence, Judge.

22 THE COURT: Are you moving -- 257, I might be
23 wrong, I don't show in evidence.

24 MR. KOTOSKE: It's a 'Monsanto document'
25 dated 1976. It's the last publication. I want it in.

1 It's not.

p 2 THE COURT: Mr. Carney, are you moving for
3 its admission?

4 MR. CARNEY: Your Honor, this is a
5 Westinghouse document, not a Monsanto document, but I
6 don't have it -- that's fine with me --

7 THE COURT: All right.

8 MR. CARNEY: -- to put it in.

9 THE COURT: Exhibit 257 is admitted into
10 evidence.

11 MR. KOTOSKE: Thank you.

12 p MR. CARNEY: Does -- is that the document you
13 referred to earlier?

14 MR. KOTOSKE: Might have been, yes.

15 Q. (By Mr. Carney) Okay. Can you identify
16 Exhibit 257?

17 A. This was a Westinghouse Electric Corporation
18 bulletin entitled Instructions for Handling Inerteen
19 insulating fluid, PBS 54 201 CM, and installation and
20 maintenance of Inerteen transformers.

21 Q. I know this is p a Westinghouse document. I
22 really don't know what the answer is to the question, but
23 I'm just going to ask you, do you know how this document
24 was used?

25 A. I have an understanding that this is the kind

1 of document that Westinghouse Company gave to its
2 customers of transformers or potential customers of
3 transformers.

4 Q. And take a look at the Bates Stamp No. 3189.
5 I think it'sp about the third -- third or fourth page.

6 A. I have it.

7 Q. Are there any Westinghouse brochure safety
8 precautions for the handling of PCBs?

9 A. Yes.

10 Q. It said not to breathe the Inerteen fumes in
11 excess of 'a maximum of volatile' concentrations?

12 A. Yes.

13 Q. Says that the Inerteen can be absorbed
14 through skin and skin contact should be avoided?

15 p A. Yes.

16 Q. And it suggests (inaudible) this equipment?

17 A. Yes.

18 MR. KOTOSKE: Can we have the (inaudible) --

19 MR. CARNEY: That's Bates Numbers 3189. It's
20 the second page of the brochure after the index.

21 MR. KOTOSKE: Thank you.

22 MR. CARNEY: I've got one last question, Mr.
23 Papageorge, and I'm finished asking questions. On a scale
24 of 1 to 10p , one being the worse and 10 being the best,
25 what grade would you give Monsanto with regard to

1 informing Westinghouse about PCBs?

2 A. Well, sir, comparing what was done in this
3 case, I'd have to call it a 10.

4 MR. CARNEY: I have no further questions.

5 MR. KOTOSKE: Can we take a little break?

6 THE COURT: Certainly.

7 MR. KOTOSKE: Of less than --

8 THE COURT: Certainly. (Inaudible.)
9 Do not discuss the case among yourselves or
10 others.

11 [Ms. Wann was replaced by Ms. Olliges.]

1 THE COURT: All right. Mr. Kotoske, you may
2 proceed sir. And ladies and gentlemen, we'll go to
3 approximately ten or five to 12:00. You may proceed.

4 MR. KOTOSKE:p Thank you, Your Honor. Your
5 Honor, will you cut me off then?

6 THE COURT: I'll let you know.

7 Q. All right. Now, Mr. Papageorge, if you'll
8 listen to my questions and just answer those questions,
9 we'll try to get you out of here. All right?

10 A. Yes, sir.

11 Q. First, PCB, we're talking about as a
12 substitute 1016, Aroclor 1016. I want to ask you a very
13 simple question. That'sp PCB; isn't it?

14 A. Yes, sir.

15 Q. 100 percent 1016 is polychlorinated biphenyl?

16 A. Yes.

17 Q. You're not trying to tell the jury it wasn't
18 PCB; you're trying to convey the idea it was, according to
19 you, more biodegradable?

20 A. That's correct.

21 Q. Next subject. We talked about profitability
22 from PCB sales on your examination by Mr. Carney. In 1969
23 the PCp B sales were \$22 million. Did you think that was a
24 significant or an insignificant amount of money on the
25 overall of Monsanto sales?

1 A. Since I don't recall the overall sales, sir,
2 that is significant, but I don't know how else to describe
3 it. It was a respected product in Monsanto's listing of
4 products that they sold to their customers.

5 Q. However, 1969 was not your peak year. Peak
6 p year for sales of PCBs Monsanto was 1968. How much money
7 did you make in 1968 on the sales of PCB, if you know?

8 A. I do not know.

9 Q. You do know that 1969, which is Exhibit 11,
10 page 87, you made 22 million?

11 MR. CARNEY: I'm not sure by the question if
12 he's talking about sales or profits.

13 MR. KOTOSKE: Sales.

14 MR. CARNEY: His question asked about if he
15 made p that, which would imply there's a profit.

16 Q. Sales.

17 MR. CARNEY: It's misleading. I would object
18 to the question.

19 THE COURT: He's amended it to sales. You
20 may answer, sir.

21 A. I forgot the question now.

22 Q. Very simple. Sales of PCB, 1969, \$22
23 million?

24 A. I don't remember the number, sir. I'd like
25 to see a document to help me.

1 Q. Turn to page 87, Exhibit 11. I'll try to
2 turn to it, too, and be sure we're on the right track.
3 Reading from the bottom of the page, this is already in
4 evidence. "Monsanto's world-wide Aroclor business amounts
5 to 104 million pounds a year, 70 million used in
6 functional fluids, 34 million in plasticizers. This
7 represents 22 million in sales." Correct?

8 A. That is correct.

9 Q. Let's move on to another subject. You told
10 this jury that PCBs won't burn; is that true?

11 A. I didn't mean to say they won't burn. They
12 resist burning is a more correct term.

13 Q. Well, of course. Have you heard of
14 transformer fires in this country?

15 A. Certainly I have.

16 Q. Have you heard of capacitor fires in this
17 country?

18 A. Certainly.

19 Q. Let me ask you a question. There's a famous
20 PCB incident in Binghamton, New York.

21 MR. CARNEY: Your Honor, could we approach
22 the bench?

23 (A bench conference was held.)

24 THE COURT: Proceed, sir.

25 Q. All right. How many transformer fires have

1 you heard of in this country? Just roughly.

2 THE COURT: Without any details.

3 Q. Just a number.

4 A. About three.

5 Q. How about capacitors?

6 A. None.

7 Q. Do you still use IBT as a laboratory?

8 A. No, sir.

9 Q. Why not?

10 A. They're out of business.

11 Q. A Cadillac -- That Cadillac ran out of gas;
12 is that right?

13 MR. CARNEY: Your Honor, objection, and I
14 think you know what my objection relates to.

15 p THE COURT: Well, he's covered it. The
16 witness stayed away from it, so I think you can move on.

17 Q. When did they go out of business? Do you
18 know?

19 MR. CARNEY: Objection, Your Honor.

20 THE COURT: Again, I don't think that's -- I
21 don't see the relevance. I'll sustain the objection.

22 Q. You identified a lot of toxicological reports
23 in some of these group exhibits from p Drinker, Scientific
24 Associates, the Treon reports, a whole batch from Younger
25 Labs. I was curious, in all these animal studies that

1 you've taken, how come you didn't include the IBT study?

2 A. At what point in time, sir?

3 Q. Anytime.

4 MR. CARNEY: Well, Your Honor, I think he's
5 asking the witness to speculate on why I didn't include
6 them in the notebook and that was because p it's already in
7 evidence. That's the only reason I didn't. He doesn't
8 know the reason.

9 MR. KOTOSKE: Let me back up.

10 Q. You brought these toxicological animal
11 studies that Monsanto has done over the years into court,
12 put them in evidence; didn't you?

13 A. I personally? I don't understand, sir.

14 Q. Monsanto's lawyers showed you a lot of
15 toxicological animal studies; didn't they?

16 A. They did.

17 Q. How come they didn't show you any IBT
18 studies?

19 MR. CARNEY: Your Honor --

20 THE COURT: Sustained as to form.

21 MR. CARNEY: Calls for speculation. They
22 were already evidence at the time.

23 THE COURT: Yeah. That's the only reason I
24 didn't. He doesn't know the reason..

25 Q. Does Monsanto still rely on those IBT p studies

1 talking about PCBs?

2 MR. CARNEY: Your Honor, I'm going to object.

3 He's been retired since '86.

4 Q. Up through '86 --

5 THE COURT: Sustained.

6 Q. Up through 1986 did Monsanto rely on those
7 IBT studies?

8 MR. CARNEY: Can we approach the bench, Your
9 Honor?

10 (A bench conference was held.)

11 THE COURT: Proceed, sir.

12 MR. KOTOSKE: Thank you.

13 Q. After Congress passed the the statute in '76,
14 there was a period of time when the implementation of the
15 regulations as apart from the statute followed. Do you
16 remember that?

17 A. I do.

18 Q. Okay. And that's when EPA was having its
19 hearings; was it not?

20 A. Yes.

21 Q. On how to ban and when to ban and p so forth?

22 A. Yes, sir.

23 Q. Did you participate in those hearings?

24 A. I did not.

25 Q. The electric industry, principally General

1 Electric and Westinghouse, fought EPA on those
2 regulations; did they not?

3 A. That I don't know, sir.

4 Q. You don't know that?

5 A. No, sir.

6 Q. You don't know what happened in those
7 p hearings that went for two or three years before PCBs were
8 finally banned?

9 A. I was not involved in any of those hearings.
10 I only read an occasional newspaper article or magazine
11 article on that.

12 Q. You were not involved?

13 A. That is correct.

14 Q. Was Paul Wright from Monsanto, the manager of
15 toxicology, involved?

16 A. I do not know.

17 Q. You have no knowledge?

18 A. That is correct.

19 Q. Did Monsanto participate on behalf of the
20 electrical industry to forestall the implementation of
21 those regulations?

22 A. Sir, I know nothing about that activity. I
23 can't help you.

24 Q. I'm going to read to you from an exhibit
25 about Paul Wright --

1 MR. CARNEY: Your Honor, can we approach the
2 bench?

3 p Q. -- where he receives a cash award.

4 THE COURT: You want to approach?

5 MR. CARNEY: Yes.

6 THE COURT: All right.

7 (A bench conference was held.)

8 Q. Did Paul Wright participate in hearings with
9 EPA to regulate PCBs in effluents?

10 A. I believe he did, yes.

11 Q. And he sought to forestall the implementation
12 of those regulationp s; did he not?

13 A. That's not my understanding, sir.

14 Q. And he was a Monsanto employee when he
15 executed those efforts; was he not?

16 A. He was. He was involved in Monsanto's
17 efforts to help the EPA arrive at what we thought were
18 scientifically-based standards.

19 MR. KOTOSKE: At this time, Your Honor, I'm
20 going to read from page 522 of Exhibit 12, particularly --
21 This is about Pp aul Wright when he was getting cash from
22 Monsanto. It says, "Achievement Award. Particularly
23 noteworthy were his efforts on polychlorinated biphenyls,
24 Aroclors, and chlorinated" -- I can't pronounce that word.
25 It's spelled I-s-o-c-y-a-r-a-t-e-s. What is that? ACL

1 products?

2 A. ACL. Those are swimming pool chemicals.

3 Q. "Particularly noteworthy were his efforts on
4 polychlorinated biphenyls, Aroclors, and 'chlorinated pool
5 products'. In the former instance, his excellent analysis
6 and synthesis of widely-scattered observations played a
7 prominent role in forestalling EPA's promulgation of
8 unrealistic regulation to limit discharges of PCBs. EPA's
9 proposed regulations would have precluded the use of these
10 materials by Monsanto's customers." By that time you had
11 very few customers. They were electrical customers;
1p 2 weren't they?

13 A. Yes, sir.

14 Q. Now, are you telling us that Monsanto was a
15 good neighbor, corporate responsible, when it sought to
16 deter the implementation of EPA's regulations?

17 A. Yes, sir. You could be both.

18 Q. Now, I want to go to a different subject
19 matter. You first learned of -- According to your
20 testimony, in 1966 you first became aware of environmental
21 damage caused by your products -- excuse me -- by PCBs?

22 A. That's not -- I would not describe it as
23 environmental damage. I would describe it as
24 environmental presence.

25 Q. It caused you some concern?

1 A. Yes.

2 Q. Why did you increase production of PCBs in
3 1969?

4 A. Because the customers wanted more material.

5 Q. Why in 1970 did you seek to increase
6 production of PCB?

7 A. I don't recall that there was increased
8 production of PCBs there. You're talking about
9 chlorinated terphenyls, I believe.

10 Q. Between 1966 and when the first concern first
11 arises at Monsanto's headquarters here in town, it wasn't
12 until 1970 that they set up this job for you, this
13 environmental concern program; is that right?

14 A. That is accurate. That's true.

15 p Q. And in the intervening four years when a
16 concern first popped into Monsanto's head, it kept
17 increasing sales of PCBs; did it not?

18 MR. CARNEY: I'm going to object to the use
19 of the four years because it's at the end of '66. I think
20 it was December 28th --

21 THE COURT: Well, I'm going to let him answer
22 the question.

23 MR. CARNEY: -- the letter was sent.

24 p THE COURT: Overruled.

25 A. Sir, the interval of three years from '66 to
'A ô

1 early '70, Monsanto had an unusual effort regarding this
2 kind of activity in getting the necessary equipment and
3 technology and whatever it took to understand whether or
4 not the information they heard in '66 was truly connected
5 somehow with their product.

6 Q. You could have choked the flow of PCBs off in
7 1966; cp ouldn't you?

8 A. That's easy to say, sir.

9 Q. The question is could you?

10 A. We -- I don't know quite how to interpret
11 your word "choke off". We were not in control of all of
12 the PCBs in the world.

13 Q. I didn't ask you that question. I asked you,
14 you at Monsanto could have stopped in 1966 when the
15 concern about the environmental problem first came to your
16 attention?

17 p A. There was no concern at that time. There was
18 an indication that there might be PCBs in the environment.
19 You don't choke off a supply of a valuable chemical based
20 on somebody's suspicion.

21 Q. In fact, you increased your sales in 1969
22 despite the fact that you had a concern because you wanted
23 to make the \$22 million; isn't that right?

24 MR. CARNEY: Your Honor, he's talking about
25 making a profit ofp 22 million again, and the profit wasn't

'B ô

1 anywhere close to that, so that it's very misleading to
2 the jury that they were making that kind of money.

3 THE COURT: If the witness disagrees with the
4 question, he can say so. He can explain it. You may
5 answer.

6 MR. CARNEY: I'm going to object to the form
7 of the question. He puts about four sentences together.
8 It's compound. And I dop n't know which question he wants
9 to have answered. So I object to the form.

10 THE COURT: Overruled. You may answer the
11 question.

12 A. While the studies relating to determining
13 whether or not PCBs were a problem in the environment were
14 going on, yes, the material was sold to the uses to which
15 it had been sold to for 40 years, during which no problems
16 were made known.

17 MR. KOTOSKE: Yoâ ur Honor, could we stop here
18 and we'll pick it up with Monsanto's action plan when we
19 come back?

20 THE COURT: That's fine. Step down. Ladies
21 and gentlemen, why don't we take a lunch break, let's say
22 until about 1:10, and then we'll continue. Again, do not
23 discuss the case among yourselves or with others, and I'll
24 have an announcement for you as to what we're going to do
25 tomorrow. Okay.

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