

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COPY

NEVADA POWER COMPANY, etc.,	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	CV-S-89-555-LDG
MONSANTO COMPANY, etc.,	)	(LRL)
et al,	)	
Defendants.	)	

Deposition of: RICHARD J. BIERNACKI,
taken before Bethany A. Carrier, Court Reporter and
Notary Public within and for the State of
Connecticut, pursuant to Notice and the Federal
Rules of Civil Procedure, at the Marriott, 180
Hawley Lane, Trumbull, Connecticut, on July 15,
1993, at 9:05 a.m.

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1 APPEARANCES:

2 For the Plaintiff:

3 BRADLEY & MERRELL
4 c/o JONES, JONES, CLOSE & BROWN, CHARTERED
5 700 Bank of America Plaza
6 300 South Fourth Street
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8 By: DAVID E. SCHALK, ESQ.

9 For the Defendant General Electric:

10 WILLIAMS & CONNOLLY
11 725 Twelfth Street, N.W.
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13 By: ROBERT J. SHAUGHNESSY, ESQ.

14 For the Defendant Westinghouse:

15 WESTINGHOUSE ELECTRIC CORPORATION
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17 Pittsburgh, Pennsylvania 15222
18 By: FRANCES L. GARRY, ESQ.

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23 ** By: BLAKE RHODES, ESQ.

24
25 ** Present by telephone.

S T I P U L A T I O N S

It is stipulated by counsel for the parties
that the deposition may be signed before any Notary
Public.

1 (The deposition commenced at 9:05 a.m.)

2
3 RICHARD J. BIERNACKI, Deponent, of 129
4 Birch Grove Drive, Pittsfield, Massachusetts
5 01201, being first duly sworn, was examined,
6 and testified on his oath as follows:
7

8 DIRECT EXAMINATION
9

10 BY MR. SCHALK:

11 Q Mr. Biernacki, would you state your full name
12 for the record.

13 A Richard Joseph Biernacki.

14 MR. SHAUGHNESSY: I just want to make a
15 statement for the record. Mr. Biernacki is tendered
16 here as the corporate designee on the subject of
17 document retention policies at General Electric as they
18 relate to documents relating to PCBs.

19 I know that this is not a 30(b)(6)
20 deposition that Nevada Power has noticed, it's one that
21 we've proffered in lieu of Mansfield Neal's deposition.
22 And I know, David, that Nevada Power reserves the right
23 to revisit the issue of whether they want to take Mr.
24 Neal's deposition, but that's an issue that we can
25 discuss after Mr. Biernacki has testified.

Records retention

warnings & representation
to customer

1 MR. SCHALK: Okay. So this is one that
2 isn't noticed at all. I just want to see what notices
3 we have, see what we're doing here.

4 Okay. We need to speak with someone
5 about all warnings and representations to everybody.

6 MR. SHAUGHNESSY: Right. That's Mr.
7 Biernacki's other hat today.

8 MR. SCHALK: Okay.

9 MR. SHAUGHNESSY: And then tomorrow we
10 have the 30(b)(6) on hazards, which will be Dr. Stephen
11 Hamilton, and then Dr. John Brown will be appearing in
12 his personal capacity.

13 MR. SCHALK: So Dr. Hamilton and Brown
14 will both be here tomorrow?

15 MR. SHAUGHNESSY: Right.

16 MR. SCHALK: Since this is a 30(b)(6)
17 deposition, let's get straight exactly what we're asking
18 Mr. Biernacki to testify about. Did you just state for
19 the record what your understanding is?

20 MR. SHAUGHNESSY: Right. The document
21 retention policies at General Electric, as they relate
22 to retention of documents concerning PCBs.

23 MR. SCHALK: What about just the overall
24 policies? I understand that there is a formal policy at
25 General Electric for the retention and destruction of

1 various types of documents.

2 MR. SHAUGHNESSY: Mr. Biernacki is
3 prepared to address that, if the question is asked.

4 MR. SCHALK: Okay.

5 BY MR. SCHALK:

6 Q Let's just take care of a few preliminaries
7 here. Mr. Biernacki, where do you live?

8 A 129 Birch Grove Drive, in Pittsfield,
9 Massachusetts.

10 Q Okay. Now, if during this deposition you
11 don't understand a question, be sure to ask me, let me
12 know. You can take a break when you feel like it. This
13 is a formal court proceeding and you are under oath, but
14 it's a lot less formal than trial. You may consult with
15 your attorney if you want to.

16 Have you ever been deposed before?

17 A Yes, I have.

18 Q How many times?

19 A Probably half a dozen.

20 Q What kind of cases were those?

21 A They were product liability cases.

22 Q Were you a 30(b)(6) witness in those
23 depositions?

24 A I'm not sure what 30(b)(6) means.

25 Q Okay. That's when you speak for the

1 corporation. But anyway, if you don't know, that means
2 we don't need to go into that.

3 What kind of things did you testify about?

4 A Primarily my function is to coordinate
5 response to discovery in litigation for our large
6 transformer operation. And therefore, I would be -- my
7 deposition would include records, people who I have
8 contacted, that kind of thing.

9 Q Okay. Where did you go to school?

10 A I graduated from North Adams State College,
11 business degree.

12 Q Do you remember when that was?

13 A That was in 1975.

14 Q Okay. And what did you do after that?

15 A Well, I was working for GE at the time. I was
16 taking -- that was all at night. I initially was on the
17 General Electric apprentice drafting program, and
18 completed that, and then following that I was a
19 draftsman for a while, and at the same time started
20 taking evening courses.

21 Q Okay. And what was your position with General
22 Electric while you were taking the business courses?

23 A It was a bit while I was still in drafting,
24 but shortly after I moved to quality assurance.

25 Q What were your duties in quality assurance?

1 A The title was process control specialist. My
2 area of responsibility was what we call finishing and
3 shipping operation, which meant taking a transformer
4 from final test through the shipment operation.

5 Q So were you involved in testing the fluids
6 that were put in the transformers?

7 A No, I was not.

8 Q Okay. Well, you obviously have been climbing
9 the corporate ladder of success. What was your next
10 position?

11 A Well, in 1971, I started working for a
12 customer service operation, which at that time was a
13 marketing responsibility. And the title of that job was
14 customer service administration specialist.

15 Q What years did you work in that capacity?

16 A From 1971 to 1977.

17 Q So then you were doing that while you were
18 working on your business degree?

19 A That's correct.

20 Q Okay. And how did your job change in 1977?

21 A At that time, my title became manager of
22 claims administration, and essentially the
23 responsibility turned more towards our preparation for
24 litigation.

25 Q Is that your position right now?

1 A Yes, it is.

2 Q So that has been your position since '78 until
3 the present?

4 A Yes.

5 Q You're here to testify about your corporation
6 in two separate capacities today, and I want to ask you
7 about your capacity as the spokesman on document
8 retention policies. And my question is: How did you
9 prepare to testify on document retention?

10 A I reviewed some of my own files. Also, met
11 with counsel to review some policies.

12 Q Did you speak with anybody else?

13 A I talked with my division counsel, also.

14 Q Maybe another attorney. Did you speak with
15 non-attorneys?

16 A I didn't -- I did. I talked on the phone with
17 a nurse in the health area over in Hudson Falls, our
18 capacitor department.

19 Q Did you tell her that you were going to be
20 deposed today?

21 A Yes.

22 Q Or about this deposition? You might not have
23 known the date.

24 And what did you discuss with her?

25 A I was a bit more unfamiliar with the capacitor

1 in Hudson Falls, so I asked, and her name was given to
2 me by Mansfield Neal, our division counsel.

3 Q Do you recall her name?

4 A I can't recall it right now.

5 Q That's fine. And where is she located?

6 A In Hudson Falls.

7 Q Okay. Now, continue telling me what you
8 discussed with the nurse in Hudson Falls.

9 A Just a bit about the retention of their
10 records, particularly with the PCB-type records.

11 Q And what did she tell you?

12 A She told me that she had records that went
13 back to 1975, and there had been sort of a stop hold at
14 some point relative to these records put on by a
15 division counsel. What this did really was suspended
16 the normal policy on retention of records.

17 Q And that deviation from the policy, if I
18 understand you, and tell me if I'm correct, was to
19 destroy nothing?

20 A That's correct.

21 Q And is that, in fact, what happened at Hudson
22 Falls since 1975?

23 A Yes.

24 Q Do you know that through any means other than
25 your discussion with the nurse?

1 A In Hudson Falls you mean?

2 Q Yes.

3 A Also Mr. Neal told me about the same thing.

4 Q Did he say that was a policy initiated by him?

5 A No, he didn't.

6 Q Do you know who made the decision to deviate
7 from the normal policy with respect to PCBs?

8 A It would have been a division counsel probably
9 at that point, but I don't know who that was at that
10 time.

11 Q Would that be something that the division
12 counsel would have discussed with an administrator in
13 the organization?

14 A I would say that would be likely.

15 Q I'm going to ask you a few questions about how
16 General Electric is organized. I think that will help
17 things go more smoothly.

18 Who is the chief executive officer?

19 A John Welch.

20 Q Now, who would you say are the people directly
21 under him?

22 A There are various organizations. I'm pretty
23 much familiar with our own, but not the others.

24 Q Okay. How does your organization go up to the
25 top levels of administration in GE?

1 MR. SHAUGHNESSY: Just to clarify, you
2 mean today? I mean, with the recognition this has
3 changed very possibly over the period at issue in this
4 case, but you just want him to comment on today?

5 MR. SCHALK: Yes. I recognize that.

6 BY MR. SCHALK:

7 Q And right now my question is: What's the
8 chain of command today?

9 A Okay. Let's start by, reporting to Welch
10 would have been an individual called David
11 Geneva-Watling, and his operation is industrial power
12 systems.

13 Q Okay.

14 A Now, there are various other divisions
15 reporting to Mr. Watling, but the one I work for is
16 power delivery and control.

17 Q Do you know what the other ones are that
18 report to David Watling?

19 A They would be dealing with power generation
20 and field service, et cetera. But I don't know all the
21 names.

22 Q Okay. Do you know about how many there are?

23 A Probably about a dozen.

24 Q Okay. All right. Now, tell me about the line
25 leading to you.

1 A Okay. Reporting to Mr. Watling would be our
2 power delivery and control division, and that would be
3 headed up by Jack Lavin, L-a-v-i-n.

4 Q Okay.

5 A And next step would be medium transformer
6 department.

7 Q Okay.

8 A And the manager there is Tom Curley,
9 C-u-r-l-e-y.

10 Q Got it.

11 A And then we get to the large transformer
12 support operation, which I work for, and I report to a
13 John Perry.

14 Q Now, is large transformer support under the
15 medium transformer division?

16 A Yes. That's a recent change.

17 Q Does that strike you as being odd?

18 A Well, we went out of the large transformer
19 business back in '86, and what was left in Pittsfield
20 was several people to handle various items as they come
21 up on equipment that's been shipped.

22 Q Who's the head of large transformer?

23 A Oh, support operation. Right now it's John
24 Perry, P-e-r-r-y.

25 Q And who reports to John Perry?

1 A I do. And another individual in the office is
2 Ned Alibozek and a Ray Tuggey.

3 Q Do you know how to spell those names?

4 A Yes. Alibozek is A-l-i-b-o-z-e-k.

5 Q Okay.

6 A Tuggey, I believe it's T-u-g-g-e-y.

7 Q What's Mr. Alibozek's responsibility?

8 A He assists Mr. Perry on some of the questions
9 that come up on fuel problems, and also has
10 responsibility for our file, print file, drawing file
11 type of thing in Pittsfield.

12 Q What kind of file does he keep in Pittsfield?

13 A Well, the drawings and microfilm of the
14 products that were built in Pittsfield.

15 Q And would those be large transformers?

16 A It would be some large and other equipment,
17 also. Parts for transformers.

18 Q Okay. Why did GE get out of the large
19 transformer business?

20 A As I understand it, it was market conditions.

21 Q Who's got the lion's share of the market now?

22 A I don't know.

23 Q Is Westinghouse still involved in that?

24 A Westinghouse, I understand, sold the business
25 to Asea Brown Boveri.

1 Q Now, you've mentioned Pittsfield. Did you
2 call that the Pittsfield division or --

3 A Currently what we work in is large support,
4 transformer support operation.

5 Q What I'm trying to understand is how many
6 other operations you have that would be maybe on the
7 same level as the Pittsfield operation around the United
8 States, or maybe even in foreign countries.

9 A Well, Pittsfield, of course, is not building
10 transformers at this point, so the people in Pittsfield
11 are just a few. We also have transformer plants in
12 Rome, Georgia, which would be medium transformers; in
13 Hickory, North Carolina, which is distribution
14 transformer; and Shreveport, which I believe reports to
15 Hickory, but builds some products there.

16 Q In preparing for this deposition, did you
17 speak with people in Rome, Hickory or Shreveport?

18 A No.

19 Q How did you go about finding out the document
20 retention and destruction policies in Rome?

21 A I was given a copy to review and look at.

22 Q A copy of what?

23 A Of the operating instruction or retention
24 policy.

25 Q Did you bring that with you?

1 A No, I did not.

2 MR. SHAUGHNESSY: I'll just state for the
3 record it's been produced. That was among the documents
4 that we sent you on Monday.

5 MR. SCHALK: I'm going to want to know
6 every document that Mr. Biernacki reviewed in preparing
7 for this deposition, and if they have already been
8 produced, I wonder if there is any way you can give me
9 your stamp numbers, your -- some information that would
10 help me to identify them.

11 MR. SHAUGHNESSY: I don't think that's
12 really our obligation. I mean, our obligation at best
13 is to produce to you the documents that the witness has
14 reviewed. If you wish to ask him questions about those
15 documents, you're free to do so.

16 MR. SCHALK: Yes. I just suggested that
17 to save time. Otherwise, I can write down a description
18 of every document.

19 BY MR. SCHALK:

20 Q How many documents did you review preparing
21 for this?

22 A Well, the policies, I recall looking at four.

23 Q And is it your understanding that those were
24 produced to Nevada Power on Monday?

25 MR. SHAUGHNESSY: I mean, I object. The

1 witness has not suggested he's involved in document
2 production. I mean, I can represent to you, as I
3 represented to you on the phone on Monday, I believe,
4 that those were on the way, and I think Bradley &
5 Merrell can confirm if they looked at the documents that
6 they were sent and received.

7 MR. SCHALK: Okay. Were all the other
8 documents that Mr. Biernacki reviewed sent on Monday?

9 MR. SHAUGHNESSY: Yes. A smaller number
10 were sent on Tuesday.

11 MR. SCHALK: Okay.

12 MR. SHAUGHNESSY: But everything he's
13 reviewed has been produced.

14 MR. SCHALK: Were they identified in the
15 production as the documents that Mr. Biernacki reviewed?

16 MR. SHAUGHNESSY: No, they weren't. They
17 were responsive to discovery requests, and that's why we
18 produced them.

19 BY MR. SCHALK:

20 Q Well, we can begin with the four policy
21 documents.

22 Mr. Biernacki, if you could pick one and tell
23 me what it says?

24 A Well, I'll pick the one that was used in
25 Pittsfield. I'm a bit more familiar with that one.

1 It's an operating instruction on document retention, and
2 was put together by our finance section as a guide for
3 the balance of the department to use. And it's a fairly
4 lengthy document which itemizes various documents,
5 primarily financial, but also others and gives the years
6 of retention.

7 Q How long are financial records retained?

8 A It does vary depending on the type of record.

9 Q Which kind are kept the longest?

10 A I don't know, but I would believe that we do
11 at taxes.

12 Q Would you describe for me all parts of the
13 Pittsfield operating instruction document retention
14 destruction policy that would apply to PCBs,
15 polychlorinated biphenyls, or chlorinated dibenzofurans,
16 or dioxins? And that three-part question is confusing.
17 We could do each part separately. In fact, why don't we
18 do it that way.

19 Maybe we can do it all together if you tell me
20 is there anything in that policy that would distinguish
21 -- is there anything that would apply to dibenzofurans
22 but not PCBs?

23 A I don't recall seeing anything like that.

24 Q You don't recall seeing the words
25 polychlorinated dibenzofurans?

1 A Right.

2 Q Or PCDFs?

3 A Right. I don't recall that.

4 Q Okay. But you have seen PCB?

5 A Yes.

6 Q All right. Well, describe for me in detail --

7 A Not on that policy, I'm sorry, just in
8 general. Not on that policy.

9 Q Well, even though it doesn't mention PCBs,
10 there is undoubtedly sections that would apply to PCBs;
11 is that correct?

12 A There could, over the years. I'll give one
13 example. Someone's letter book.

14 Q What's a letter book?

15 A This would be an individual, probably
16 personnel, have their own copies of letters they issue,
17 and I believe in that case it was like a two-year
18 retention policy.

19 Q These are letters that are kept in the
20 personnel file?

21 A No, individuals. Individual personnel would
22 have their own letter books. That's quite common. And
23 that would be throughout the department, not just the
24 finance.

25 Q You describe it as a book. Is it actually

1 bound up into a book?

2 A I suppose some people have a folder. Depends
3 how many letters they write. I used to have a book, I
4 recall.

5 Q All right. Would that be the only keep of the
6 letter, or is there a central location for
7 correspondence?

8 MR. SHAUGHNESSY: I object. I mean,
9 you're just asking in general about any piece of
10 correspondence, or about specific categories of
11 correspondence?

12 MR. SCHALK: Well, I'm asking about
13 correspondence at Pittsfield, and I'm asking about all
14 correspondence. And I understand that the individuals
15 who generated and receive correspondence keep their own
16 correspondence book or file.

17 BY MR. SCHALK:

18 Q And my question regarding all of that is: Is
19 there a place where copies or the originals are kept,
20 other than in the personal books of the individuals?

21 A I believe the originator would have the
22 original copy, and copies would be sent out to whoever
23 -- whatever the distribution list said.

24 Q Would it go anywhere other than to the people
25 on the distribution list?

1 A Some of the letters may have gone into a
2 particular booklet, like a requisition file. Not one
3 individual but a -- just to keep in one file for the
4 particular production order we're talking about. Not in
5 all cases, but it depends on what the letter is all
6 about.

7 Q Could there be a case where a letter referring
8 to PCBs would go into that central location like that?

9 MR. SHAUGHNESSY: Objection. Calls for
10 speculation. You can answer, Mr. Biernacki.

11 A I'm not sure what you mean by central location
12 again. There's not one central location. The
13 particular folder. Just one folder.

14 BY MR. SCHALK:

15 Q What kind of folders are you talking about? I
16 need to understand that more clearly.

17 A One example would be a requisition folder for
18 a particular job order where all documents would go in
19 that would apply to the marketing and engineering
20 portion of it.

21 Q And is there a requisition folder like that at
22 Pittsfield?

23 A There is more than one folder. Each job would
24 have its own folder.

25 Q And what are the categories of jobs that would

1 have their own folders?

2 A Well, Pittsfield we made large transformers
3 primarily, and they're individual orders, so it would be
4 an individual folder for the particular order. It may
5 be more than one transformer on the order, but in one
6 folder would be called a requisition, and it would be
7 one folder for each requisition.

8 Q Who maintains the large transformer
9 requisition folder?

10 MR. SHAUGHNESSY: You mean now?

11 BY MR. SCHALK:

12 Q Yes. Just right now.

13 A As I recall, they are in a file. I believe
14 the overall responsibility for it would come under Mr.
15 Perry.

16 Q Did you speak with Mr. Perry about the large
17 transformer requisition folder?

18 A No.

19 Q How long are documents retained in that?

20 A I don't know.

21 Q What sorts of documents go into that folder?

22 A There would be letters from -- back and forth
23 from customers to our salespeople in the districts.
24 There would be instructions to our -- probably our
25 factory, engineering notices, probably references to

1 instruction books, things of that nature.

2 Q Now, the document retention destruction policy
3 for Pittsfield is called the Pittsfield operating
4 instruction; is that correct or --

5 A I believe it's called an operating
6 instruction.

7 Q Do you know if it has a number designation?

8 A I believe Pittsfield is 20.7.

9 Q Would it be correct to call that policy 20.7?

10 A Yes.

11 Q Is there any special provision in policy 20.7
12 for the preservation of records relating to
13 polychlorinated biphenyls, or as I call it, PCBs?

14 A Not in that particular document. We did have,
15 when we moved the business to -- or sold the business to
16 Westinghouse, around that time, there was a letter put
17 out by division counsel not to destroy any PCB
18 documents.

19 Q When was the large transformer business sold
20 to Westinghouse?

21 A It was in 1986, I believe.

22 Q Were you involved in the negotiations for that
23 sale at all?

24 MR. SHAUGHNESSY: I object. That's way
25 beyond the scope of the subject matter of this

1 deposition.

2 Mr. Biernacki, you can answer if you can.

3 A No, I was not.

4 BY MR. SCHALK:

5 Q Did the instruction not to destroy PCB-related
6 documents originate at Westinghouse?

7 A No.

8 Q Do you know who was responsible for
9 formulating that policy with respect to PCBs?

10 A It was Mansfield Neal, our division counsel.

11 Q Do you know why he wanted to turn all PCB-
12 related documents over to Westinghouse?

13 MR. SHAUGHNESSY: Objection. I don't
14 think that's what's been said at all. You can go ahead
15 and answer, Mr. Biernacki.

16 A No.

17 BY MR. SCHALK:

18 Q I didn't mean to mischaracterize your
19 testimony. As I understood it, Westinghouse bought the
20 business, and at that time, Mr. Neal said to make sure
21 not to destroy any PCB-related documents; is that your
22 testimony?

23 A Yes.

24 Q Okay. My next question, then, is: Do you
25 know why Manny Neal gave that instruction?

1 A Yes. At the time, of course we were building
2 transformers in Pittsfield since the turn of the
3 century, so there were many documents in Pittsfield.
4 And with the transfer of the business, sale of the
5 business, there would be people leaving, changing jobs,
6 et cetera, and I believe Mr. Neal wanted to just put a
7 hold on everything at that point relative to PCBs.

8 Q Was a search of the documents made to make
9 sure that there weren't any trade secrets regarding
10 capacitors?

11 A I don't know.

12 Q Was there any searches to make sure that no
13 trade secrets were given over to Westinghouse?

14 A I don't know.

15 Q Was an inventory taken of the documents prior
16 to the sale? In other words, were lists made of
17 documents in various categories?

18 A There were -- the agreement categorized
19 various documents, I understand, although I was not
20 involved in that, but there were categories of documents
21 that did go to Westinghouse, and we maintained copies in
22 Pittsfield, if they got the original.

23 Q Are you referring only to correspondence
24 between GE and Westinghouse?

25 A No. We essentially sold the technology to

1 Westinghouse, so Westinghouse got some documents such as
2 engineering folders, what we call calculations folders,
3 in some cases they got drawings, that kind of thing. It
4 was all set up in the agreement.

5 Q Was GE ahead of Westinghouse in large
6 transformer technology?

7 MR. SHAUGHNESSY: I object as beyond the
8 scope. You can try to answer, Mr. Biernacki.

9 A I don't know.

10 BY MR. SCHALK:

11 Q Do you know if documents relating to the
12 negotiations between General Electric and Westinghouse
13 are still maintained?

14 A I believe so.

15 Q Over what period of time did those
16 negotiations take place?

17 A I don't know.

18 Q Do you know when an agreement in principal was
19 reached?

20 A No, I do not.

21 Q Do you know whether or not there was a period
22 of time, prior to 1986, during which General Electric
23 and Westinghouse cooperated in sharing technology?

24 A I don't know.

25 MR. SHAUGHNESSY: I belatedly object as

1 beyond the scope.

2 BY MR. SCHALK:

3 Q Are there any other policies at Pittsfield
4 other than policy 20.7 that would apply to PCBs?

5 A I don't know of any.

6 Q Is there an overall corporate policy that
7 applies to PCB-related documents at Pittsfield?

8 A I don't know.

9 Q Do you have files at Pittsfield relating to
10 hazards that are associated or allegedly associated with
11 PCBs?

12 MR. SHAUGHNESSY: Object to the vagueness
13 of "hazards." You can try and answer that, Mr.
14 Biernacki.

15 A Well, there are various files in Pittsfield
16 covering a long period of time, and any environmental
17 issue is involved in that.

18 BY MR. SCHALK:

19 Q Would environmental issues include possible
20 adverse health effects on individual humans?

21 A I would say published literature along those
22 lines would be filed.

23 Q Would adverse health effects and effects on
24 the general ecology of the earth be filed together, or
25 would there be two separate files maintained?

1 A I believe those type issues would be handled
2 by our environmental and facilities operation in
3 Pittsfield.

4 Q It's environmental and facilities?

5 A And facilities.

6 Q Let's take a short break.

7

8 (Recess: 9:50 to 9:55 a.m.)

9

10 BY MR. SCHALK:

11 Q Mr. Biernacki, you were telling me about files
12 pertaining to environmental and health effects of PCBs,
13 and I assume related compounds such as dibenzofurans?

14 A I don't know that.

15 Q But you do know they pertain to PCBs?

16 A Yes.

17 Q How are those files broken down?

18 A In the environmental and facilities operation,
19 they actually have a little office or a library type.
20 I'm not so sure how they broke them down.

21 Q Have you ever had occasion to look at those
22 files?

23 A Yes.

24 Q Did you look at those files in preparation for
25 today's deposition?

1 A No.

2 Q Do you have occasion to look at those files
3 while you're performing your responsibilities?

4 A Yes.

5 Q In what use do you make of those files?

6 A It would depend on the request -- the
7 discovery request.

8 Q Does it have old articles, old published
9 medical articles and things like that?

10 A We have a lot of published material. I don't
11 know how old they are.

12 Q Is there a librarian responsible for that
13 collection?

14 A I'm not sure if there is a librarian or not.
15 There are several people in that office, but --

16 Q Would one of Mr. Perry's assistants be in
17 charge of it?

18 A No. The environmental and facilities
19 operation is really separate from our large transformer
20 support operation.

21 Q Okay. Who's responsible for it?

22 A Ron Desgroseiliers. I believe it's spelled
23 D-e-s-g-r-o-s-e-i-l-i-e-r-s.

24 Q Are any medical files on individual GE
25 employees maintained in Pittsfield?

1 A I believe they are.

2 Q Is there a nurse at that facility?

3 A I'm sure there is. I believe they have been
4 moved over to our plastics -- GE plastics department in
5 Pittsfield.

6 Q Is a medical doctor employed in Pittsfield?

7 A I believe so.

8 Q I take it you don't know his name?

9 A I do not.

10 Q So far you've mentioned large transformers and
11 plastics in Pittsfield, and also environmental and
12 facilities operation?

13 A That's right.

14 Q Are there any operations or divisions in
15 Pittsfield other than those three?

16 A No.

17 Q Is there one person in Pittsfield who's over
18 all three?

19 A I don't believe so.

20 Q How many buildings are in Pittsfield? I mean,
21 you know, how many buildings owned by General Electric?

22 A I don't know.

23 Q Are all the General Electric buildings in one
24 area, or do you have to drive across town to get from
25 one to the other?

1 A You have to drive a distance of perhaps a mile
2 or two.

3 Q To get from the large transformers to
4 plastics?

5 A Yes.

6 Q How about to get to environmental and
7 facilities?

8 A Environmental area is located fairly close to
9 the large transformer office.

10 Q If you wanted to go there, would you walk or
11 drive?

12 A To the environmental?

13 Q Yes.

14 A You just walk. It's the next building over.

15 Q Are the basements connected?

16 A What basements?

17 Q Okay. Never mind. That's also outside the
18 scope of this deposition.

19 MR. SHAUGHNESSY: I was indulging you.

20 BY MR. SCHALK:

21 Q How is policy 20.7 broken down into
22 categories?

23 A As I recall, it describes various documents,
24 financial-type documents, and it would commonly occur
25 that an individual section would take that and make

1 their own individual policy for a particular area.

2 Q Do you recall how many pages there are in
3 policy 20.7?

4 A No, I don't.

5 Q Is it more than 10?

6 A I believe so.

7 Q Does it specifically address the three -- I'm
8 going to call them divisions in Pittsfield -- would you
9 please tell me the right way to --

10 A Division is not the word for large transformer
11 or environmental. They would be, I would say,
12 operations.

13 Q Operations. Okay. Is plastics an operation?

14 A I'm sorry?

15 Q Would you call plastics an operation?

16 A No.

17 Q What would you call that?

18 A I'm not sure what the current terminology is.

19 It's the world headquarters for plastics, I can tell you
20 that.

21 Q Does policy 20.7 specifically address
22 plastics, large transformers, or environmental and
23 facilities?

24 A No. It would -- as far as I recall, it was
25 large transformer operating policy.

Q So it does not address plastics and environmental and facilities?

A The environmental and facilities at one time was, I believe, part of transformer. I'm not so sure who they report to right now. They may have their own policy.

Q It's my understanding that you reviewed four policies in preparation for today's deposition; is that correct?

A That's correct.

Q Would one of those four policies cover environmental and facilities?

A I'm not sure if they adhered to the transformer policy or not, currently.

Q If they don't, are they outside of those four policies?

A Yes. I would say they would be outside somehow.

Q Okay. If there is a written policy pertaining to environmental facilities, assuming that the large transformer policy does not apply, who would have that policy?

A I'd say overall responsibility is Mr. Desgroseilliers.

MR. SCHALK: Mr. Shaughnessy, would you

1 want to provide another 30(b)(6) witness to answer
2 questions about policies in environmental and
3 facilities, or could you prepare Mr. Biernacki to maybe
4 continue his deposition later this afternoon?

5 MR. SHAUGHNESSY: We'll take that under
6 advisement.

7 MR. SCHALK: Okay.

8 MR. SHAUGHNESSY: I mean, I'm not saying
9 we will, or that we believe Mr. Biernacki is inadequate,
10 but we simply can revisit the issue.

11 BY MR. SCHALK:

12 Q Let's go on to one of the other four policies
13 that you reviewed. Can you tell me about another one,
14 please.

15 A Actually, they were all quite similar. All
16 put out by a finance function.

17 Q Put out by finance function you said?

18 A Finance function in the operation itself.

19 Q Which operation?

20 A Well, we'll take Rome, that would be the
21 medium transformer.

22 Q So in Rome, Georgia, which produces medium
23 transformers, the finance function is responsible for
24 the document retention and destruction policy?

25 A Yes.

1 Q Well, could you tell me about the Rome policy?

2 A It was similar in nature to the large
3 transformer policy, and it described various documents.

4 MR. SHAUGHNESSY: Let's go off the record
5 a second.

6
7 (Off-the-record discussion.)

8
9 BY MR. SCHALK:

10 Q You were telling me about the Rome, Georgia
11 policy. Does it have a number?

12 A I believe it did, but I don't know what it is.

13 Q Okay. In what ways does it differ from the
14 large transformer policy?

15 A I couldn't say exactly how it differed. It
16 was similar in nature, but I don't know of any
17 particular difference.

18
19 (Recess: 10:10 to 10:14 a.m.)

20
21 BY MR. SCHALK:

22 Q Mr. Biernacki, you recall telling me about the
23 policy for Rome, Georgia, and --

24 MR. SCHALK: Was there a question
25 pending?

1
2 (The last question and answer were read.)
3

4 BY MR. SCHALK:

5 Q Does it address documents other than financial
6 documents?

7 A I believe the policy is a guide for all
8 documents.

9 Q What kind of documents are maintained in Rome,
10 Georgia?

11 A Well, the brunt of them would have been
12 financial records, but the balance would be
13 manufacturing, engineering-type records, production-type
14 records.

15 Q Would there be correspondence with customers
16 there?

17 A I assume there would be, sure.

18 Q Would there be documents similar to those that
19 are maintained in Pittsfield under environmental and
20 facilities?

21 A I believe they would have also an
22 environmental group. I don't think it's the size of
23 Pittsfield, but I understand there is a nurse there,
24 also, and an environmental engineer.

25 Q Do you know the environmental engineer's name?

1 A I believe his last name is Lester.

2 Q Do you know what Mr. Lester's job
3 responsibilities are?

4 A No, I don't.

5 Q Do you know if the Rome document retention and
6 destruction policy would apply to documents maintained
7 by Mr. Lester?

8 A I believe in that case it would be.

9 Q Could you please tell me why you believe that?

10 A Well, because Rome is still manufacturing
11 transformers, so Mr. Lester would report directly to --
12 I don't know about directly, but to the general manager,
13 eventually, in Rome.

14 Q Do you know for a fact whether or not the
15 general manager's document retention and destruction
16 policy identifies Mr. Lester?

17 A No.

18 Q What is the policy in Rome, Georgia regarding
19 document retention and destruction?

20 A I don't know the number.

21 Q I mean --

22 MR. SHAUGHNESSY: You mean with respect
23 to PCB-related documents?

24 BY MR. SCHALK:

25 Q No. Just in general, how long does it say the

1 document should be kept, what documents should be kept,
2 and what discarded?

3 A Again, it would vary depending on the type
4 document, just like the large transformer document.

5
6 (Off-the-record.)

7
8 BY MR. SCHALK:

9 Q Mr. Biernacki, you were telling me that the
10 policy for retaining documents in Rome, Georgia varies
11 according to the category of document. And I'd just
12 like you to continue with that. Tell me how it varies.

13 A Well, as I recall, it was, again, similar to
14 the large transformer policy in that it would list a
15 particular document, and over on the right-hand side it
16 would give the retention.

17 Q You mean it would give you --

18 A Yes, how many years to hold.

19 Q Are there numerous pages in that policy?

20 A It was similar in size, yes, to the
21 transformer, large transformer.

22 Q Is that because there are so many categories
23 of documents?

24 A There is a large number of documents. I'm not
25 so sure of categories.

1 Q In other words, you know, are all the pages or
2 most of them due to the fact that there is just document
3 after document with a time for retention next to it?

4 A Yes.

5 Q Is there also some text just describing what
6 the document is?

7 A Yes. I recall reading a sort of a foreword
8 type of thing about what the policy does.

9 Q Do you know how long that policy has been in
10 effect?

11 A No, I don't. As long as I've worked in GE,
12 though, I think I've seen retention policies of one type
13 or another.

14 Q Do they get revised from time to time?

15 A Yes, they do.

16 Q All right. So far we've covered two of them.
17 Could you tell me about a third?

18 A Distribution transformer department.

19 Q Where is that located?

20 A It's at Hickory, North Carolina.

21 Q Okay. How did that policy differ from the
22 other two?

23 A Again, they were very similar in nature, and I
24 didn't compare one to the other to determine any
25 differences.

1 Q What's a distribution transformer?

2 A Well, I guess the best way to describe it,
3 it's a smaller transformer than medium and large.

4 Q Are there any other operations or divisions,
5 or whatever, under a similar name in Hickory, North
6 Carolina other than distribution transformers?

7 A I don't believe so.

8 Q What categories of documents are maintained in
9 Hickory, North Carolina?

10 A Again, there would be production records,
11 engineering, finance, marketing.

12 Q Is there an environmental operation there?

13 A I believe there is.

14 Q I take it you don't know who's in charge of
15 it?

16 A I don't.

17 Q Okay. Do you know for a fact whether or not
18 the document retention policy for distribution
19 transformers applies to the environmental operation?

20 A I don't know it for a fact.

21 Q What's the fourth policy that you looked at?

22 A It was from Hudson Falls, our capacitor and
23 protection department.

24 Q Capacitor protection department?

25 A Capacitor and protection department, I believe

1 it's called.

2 Q Why is it named protection?

3 A They also sell arresters, which are used for
4 protecting transformers.

5 Q Other than capacitors and arresters, is
6 anything else produced at Hudson Falls?

7 A Not that I'm aware of.

8 Q Who did you speak with at Hudson Falls?

9 MR. SHAUGHNESSY: I believe he's answered
10 that, but you can say it again.

11 A I still don't recall the name, but it was with
12 the nurse.

13 BY MR. SCHALK:

14 Q Did the policy in Hudson Falls originate with
15 finance?

16 A Yes, it did.

17 Q How do you know that?

18 A I recall reading the block that indicated
19 where it was published, who published it.

20 Q I'm handing you what's marked as Plaintiff's
21 Exhibit 1739. And my first question to you is: Do you
22 recognize that document?

23 A Yes, I do.

24 Q When did you first see that document?

25 A I wrote it.

1 Q Oh, okay. And what's the date on it?

2 A March 17th, 1987.

3 Q Is that a true and accurate copy of the
4 original?

5 A I believe there is another page.

6 Q Other than that, is there any -- other than
7 that and the exhibit marked on it, is there anything
8 else that's different from the original?

9 A I don't believe so.

10 Q Would you please tell me the circumstances
11 that prompted you to write that memo?

12 A Yes. This was shortly after the exit of the
13 business was announced. It followed up some discussions
14 with our division counsel, Mr. Neal, and it was to get
15 the message out to the various people who were in
16 Pittsfield to maintain the records per the letter.

17 Q When you wrote, "In order to take advantage of
18 the service opportunities and to minimize our liability
19 exposure, a careful consideration must be given now,"
20 underlined, "to records disposal and retention." What
21 did you mean?

22 A I meant that since the business was exiting,
23 steps had to be taken by the various people who were
24 there at that time to be sure that the records were kept
25 in accordance with -- well, the letter states it as you

1 go on. Can I look at that?

2 Q Sure. Yes. Go ahead. In fact, you can read
3 whatever portion you want.

4 A We had three particular areas that we were
5 concerned with. One was the agreement with Westinghouse
6 to provide them various documents, and so they had to be
7 retained, and Mr. Neal had previously written an order
8 on that. And we had to make copies ourselves.

9 The second was the area of PCBs. Mr. Neal had
10 written another instruction on that to be sure that all
11 PCB records were kept.

12 And finally, if there was any current
13 litigation that was going on, it was my job to mark or
14 to warn -- I would say just advise them to hold those
15 records in the normal course of doing business. I'm not
16 sure what's on the next page.

17 Q Probably your signature. That would have
18 reminded me that you wrote it. That indicates that some
19 records should be destroyed. What kind of records were
20 you recommending GE should destroy?

21 A Anything that would go beyond the scope of the
22 items I listed.

23 Q Now, surely you don't mean anything? In other
24 words, you didn't list financial records there.

25 A Well, I say in my letter that the retention is

1 still to be in accordance with the operating policy
2 G-20.7, which was in effect at the time of the exit
3 announcement.

4 Q Mr. Biernacki, I'm going to hand you the copy
5 with both pages and substitute that for this one.

6 Did you write this memo -- I'm still talking
7 about Plaintiff's Exhibit 1739 -- did you write that on
8 your own initiative, or did someone ask you to write
9 that?

10 A This is a joint decision between Mr. Neal and
11 myself.

12 Q It begins by saying, "Warranty obligations,
13 out of warranty repair and service and products claims/
14 liability will be facts of life after the last large
15 transformer and bushing is shipped from Pittsfield."
16 Then goes on to say just that "Now is the time to
17 dispose of some records."

18 And my question to you is --

19 MR. SHAUGHNESSY: Well, in fairness it
20 also says retention.

21 BY MR. SCHALK:

22 Q In fact, the very precise words are, "Careful
23 consideration must be given now to records disposal and
24 retention." And what I'm curious about is just what
25 kind of things should be thrown away, according to yours

1 and Mr. Neal's instructions?

2 A Well, you would have to go back to the
3 operating policy covering retention, as stated right up
4 above. Right above, the number 1, I'll just read it
5 again. Essentially decisions relative to retention of
6 documents ought to be made in operating policy 20.7,
7 which was in effect at the time of the exit
8 announcement. And thus far, the only exceptions were
9 those three exceptions that I gave.

10 Q So your testimony is that the plan was just to
11 make sure that operating policy G-20.7 was thoroughly
12 implemented?

13 A Yes.

14 Q With these exceptions that are listed?

15 A That's correct.

16 Q And it was yours and Mr. Neal's understanding,
17 I take it, that by fully implementing policy G-20.7, you
18 would reduce your claims and liability exposure?

19 MR. SHAUGHNESSY: Objection. I don't
20 think that's been said.

21 BY MR. SCHALK:

22 Q Actually, what I'm just trying to understand
23 is this first sentence. It says -- has a reference to
24 "Product claims/liability being a fact of life long
25 after the last large transformer and bushing is shipped

1 from Pittsfield. And in order to take advantage of the
2 service opportunities and to minimize our liability
3 exposure, careful consideration must be given now to
4 records disposal and retention."

5 And my understanding now is that your
6 testimony is that in order to minimize liability
7 exposure, you and Mr. Neal were instructing people to
8 fully implement policy G-20.7?

9 A Yes, with the exceptions.

10 Q Of course. Yes. And there are a list of
11 exceptions on this exhibit.

12 Would you please tell me what categories of
13 documents were destroyed which, in your opinion, would
14 help minimize liability exposure?

15 A I don't understand your question.

16 Q Well, I take it from this memo that if policy
17 G-20.7 were to be fully implemented, some documents
18 would be destroyed, and that process would minimize GE's
19 liability exposure. And my question is: What kinds of
20 documents would be destroyed which would have that
21 effect?

22 MR. SHAUGHNESSY: I object to counsel's
23 interpretation of Mr. Biernacki's testimony. You can
24 answer without -- with the presumptions delivered by
25 counsel.

1 A Sure. I don't interpret it that way either.

2 BY MR. SCHALK:

3 Q Tell me in your own words how you interpret
4 it. I take from this that something would be destroyed
5 that would minimize liability exposure, but if I'm
6 wrong, just explain to me how I'm misunderstanding it.

7 A The liability exposure pretty much deals with
8 the exceptions. And service opportunities would
9 primarily relate to production-type records that you
10 might want to use later on when you get a repair job,
11 for example.

12 Q Now, the exceptions don't involve disposal; is
13 that correct?

14 A That's correct.

15 Q So when you answered that, the reduction and
16 liability exposure involving disposal pertaining to the
17 exceptions, I think you must have misunderstood my
18 question. All I'm trying to get at is what would be
19 disposed of that would reduce liability exposure.

20 MR. SHAUGHNESSY: I don't think he's
21 suggested that that's the interpretation of that
22 sentence, but try to answer, Mr. Biernacki.

23 A The records -- you know, the policy covers --
24 it's a retention policy. And I'll try to give one
25 example, although I don't know what the retention date

1 might be, but say a letter book, like we discussed
2 before, is strictly an individual keeps that document
3 until, say, two years, and then he can dispose of it.
4 That's what the retention policy means. If it fell into
5 -- in the liability sense if it fell into one of the
6 categories such as number 2 or 3, we would not be -- the
7 retention policy would be superseded and we would hold
8 it.

9 BY MR. SCHALK:

10 Q Do you know why PCBs were singled out as an
11 exception?

12 A Well, Mr. Neal wrote a specific directive on
13 that. I think primarily because of the litigation that
14 was going on at the time.

15 Q Well, we've been through this a few times. I
16 just want to make sure I get your testimony clear on the
17 record.

18 Are you saying that this memo does not say
19 that disposing of some records would help minimize GE's
20 liability exposure?

21 A If someone disposed of something not in
22 accordance with the policy, it could affect the
23 liability. I would give you an example of that. A
24 contract document.

25 Q Just to elaborate on that example, you might

1 have the original contract and somebody might sue you
2 with an altered version, it would help minimize your
3 liability exposure to produce the original?

4 A That's correct, in accordance with the policy.

5 Q Right. So that's -- if the policy says
6 maintain contracts at least until they expire, I can
7 understand why that should be enforced. That makes
8 sense to me. But going from the retention aspect of it
9 to the disposal, I wonder if you could answer that -- my
10 same question, could disposing of things minimize
11 liability exposure?

12 MR. SHAUGHNESSY: Objection as
13 speculative. You can answer, Mr. Biernacki, if that
14 question makes any sense.

15 A It really doesn't make any sense to me.

16 BY MR. SCHALK:

17 Q Okay. I withdraw it. I don't want to ask any
18 senseless questions today.

19 What I'm trying to do is understand --

20 MR. SHAUGHNESSY: May I try to cut
21 through this? Your question is whether minimizing
22 liability exposure can be furthered by disposal, as well
23 as retention, those two concepts are used conjunctively
24 at the end, and it's -- it appears obviously from the
25 document it's talking about both concepts together. But

1 your question, I guess, is: Does Mr. Biernacki believe
2 that liability could be minimized through records
3 disposal as opposed to records retention?

4 MR. SCHALK: That's the question I've
5 been asking.

6 MR. SHAUGHNESSY: You can try to answer
7 that, Mr. Biernacki.

8 A Well, I'll try again. Our retention policy
9 tells you to keep a record for a certain amount of time.
10 If it doesn't fall into one of the other exceptions, it
11 can be destroyed. And I don't see an effect on
12 liability exposure there.

13 BY MR. SCHALK:

14 Q Well, you've been involved in litigation and,
15 I gather, documents for litigation. Have you never in
16 your experience had a document that you produced to a
17 plaintiff in a lawsuit used against you?

18 MR. SHAUGHNESSY: Object. Certainly
19 outside the scope of his experience and knowledge and
20 the scope of the subject matter of this deposition, but
21 you're free to answer, Mr. Biernacki, if you can.

22 A I would say the opposition has used some
23 documents from time to time to try to make their case.

24 BY MR. SCHALK:

25 Q So you can, then, conceive of situations in

1 which disposing of documents would minimize liability?

2 MR. SHAUGHNESSY: Objection.

3 Speculative. You can try to answer.

4 A I suppose that could happen.

5 BY MR. SCHALK:

6 Q Is that something you and Mr. Neal were
7 anticipating when you decided to write this memo?

8 A No, I don't think in that context.

9 Q Then, as I understand it, the second sentence
10 would express your intent better if it just said, In
11 order to take advantage of the service opportunities and
12 to minimize our liability exposure, careful
13 consideration must be given now, underlined, to records
14 retention, and that disposal in there just doesn't mean
15 anything; is that right?

16 A I think once it's not retained, it's disposed.

17 Q Did you review any Westinghouse documents in
18 preparing for this deposition?

19 A No, I did not.

20 Q Have you seen a draft memorandum, 22 pages in
21 length, with the names Bair and Bickerstaff, B-a-i-r and
22 B-i-c-k-e-r-s-t-a-f-f at the end?

23 A No.

24 Q Did GE and Westinghouse trade ideas regarding
25 document retention and disposal?

1 A Not to my knowledge.

2 Q So you don't know if General Electric has ever
3 supplied Westinghouse with your policies just as a
4 courtesy to help them devise their own retention and
5 disposal policies?

6 A No. I would say no.

7 Q Was it part of your duty when you wrote this
8 memo to -- part of your duty as a GE employee to write
9 this memo?

10 A Yes.

11 Q Just doing it during the course of your job?

12 A Yes.

13 MR. SHAUGHNESSY: I don't know if this is
14 the beginning of a long line, but I believe this was
15 proffered to us to authenticate it, and we did.

16 MR. SCHALK: That was the litany of
17 the --

18 MR. SHAUGHNESSY: The signature is
19 genuine, and it's dated on or about the time it
20 reflects.

21 MR. SCHALK: So this is a business record
22 of General Electric?

23 MR. SHAUGHNESSY: Yes.

24 MR. SCHALK: Thanks for sparing me.

25 BY MR. SCHALK:

1 Q Other than the four policies, what else did
2 you -- what other documents did you review in
3 preparation for this deposition?

4 A I had a file which included a number of
5 documents that either were written to me, or copied to
6 me, or authored by me, relative to the retention, pretty
7 much following this letter of March 17th, 1987.

8 Q Did any of them precede this letter? I
9 mean --

10 A I don't recall. Well, Mr. Neal's, of course,
11 did, because I referred to them in this letter and they
12 both preceded it. It included those.

13 Q You gave me an example of how retaining a
14 document could minimize GE's liability exposure. And
15 you gave the example of a contract. Could you give me
16 an example of how it could minimize exposure to a
17 product claim? And I'm looking at the first sentence of
18 the memorandum, March 17th, 1987 memorandum that we've
19 been discussing.

20 A Well, I'll try. We have -- every transformer,
21 for example, undergoes factory tests; therefore, you
22 keep the test records for a certain amount of time. And
23 if we had a field complaint where there is a question of
24 whether the unit was properly tested, you'd want to look
25 at those records. That would minimize your claim

1 exposure there.

2 Q Is there any way a document could help you on
3 a personal injury lawsuit?

4 A I would say quality control documents
5 covering, for example, preparing the unit for shipment,
6 again, testing, and if someone got hurt then we had to
7 show that we did, indeed, again, test it or prepare it
8 for shipment properly, or whatever. I think that would
9 be another type liability.

10 Q Okay. How many documents all together did you
11 review in preparation for this deposition?

12 A Probably around 20, including the policies.

13 Q Okay. So other than the four policies, that
14 leaves 16?

15 A Approximately.

16 Q Yes, approximately. Were all those memoranda
17 and letters that you either received or sent?

18 A I'm sorry, were they all --

19 Q Yes, were they all in that category, or was
20 there anything else that you reviewed other than
21 correspondence?

22 A No, I think that was it.

23 Q Did you tell me every person who you spoke
24 with about this deposition?

25 A Relative to retention?

1 Q Right.

2 MR. SHAUGHNESSY: I believe that question
3 was asked and answered. If you want to --

4 MR. SCHALK: I know he gave me some
5 names, but I wasn't sure we had exhausted everybody.

6 A I believe we have.

7 BY MR. SCHALK:

8 Q Okay.

9 MR. SCHALK: Well, I'd like to suspend
10 this deposition for the time being and possibly resume
11 it later, or possibly go ahead and end it later.

12 MR. SHAUGHNESSY: We object. I mean, Mr.
13 Biernacki is here to answer questions, and we're not
14 planning to bring him back. So I would say, you know,
15 we will consider it closed, we can fight about that
16 afterwards, but if you want to draw the line here on
17 document retention, that's fine.

18 MR. SCHALK: Just for the time being I
19 do, and I hope that if we need to resume that, we can do
20 that this afternoon for a brief period and get some
21 questions answered that we didn't have answers to.

22 So, I mean, I don't want to have to bring
23 him back. I'm primarily curious about documents that
24 would come under the category of adverse health effects,
25 adverse effects on the environment, and hazards in

1 general associated with PCBs and related compounds.

2 MR. SHAUGHNESSY: Well, I mean, I think
3 you are free to ask him questions about that. I don't
4 think we, by any means, exhausted the scope of Mr.
5 Biernacki's awareness. I think perhaps if we broke down
6 the concept of hazards that was something less vague and
7 more concrete, he would be able to comment on that.

8 MR. SCHALK: Well, the problem was,
9 though, we weren't sure what policies applied to
10 environmental and facilities operation in Pittsfield,
11 and similar operations in the other divisions. And I
12 just want to talk to somebody who can be a 30(b)(6)
13 witness for GE regarding those areas.

14 MR. SHAUGHNESSY: I just don't think Mr.
15 Biernacki's deposition testimony so far should lead you
16 to believe that the only place those documents -- such
17 documents and those subjects are located are in those
18 facilities.

19 Obviously Mr. Biernacki is here also in a
20 different capacity, to talk about warnings. And if you
21 want to ask him about retention of warnings, and similar
22 subjects, I think he's prepared to address those. I
23 mean, I obviously can't take the deposition for you, but
24 I think you're being premature in declaring that you
25 have come to a dry well here.

1 MR. SCHALK: Well, we both made our
2 statements for the record, and we both agree that we
3 will now go on to the next deposition; is that correct?

4 MR. SHAUGHNESSY: Okay. That's fine. I
5 mean, for the record, we object to the continuation of
6 this deposition. Why don't we take a break and I'll
7 talk to Mr. Biernacki for a second and we can put on his
8 different hat and come back into the room.

9
10 (The deposition adjourned at 11:02 a.m.)
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JURAT

Richard J Biernacki

Subscribed to and sworn before me on this

_____ day of _____ 1993.

My Commission Expires:

STATE OF CONNECTICUT

I, BETHANY A. CARRIER, a Notary Public, duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to notice there came before me on the 15th day of July, 1993, the following-named person, to wit: Richard J. Biernacki, who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor related to nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

IN WITNESS THEREOF, I have hereunto set my hand
this _____ day of _____, 1993.

Bethany A. Carrier
Notary Public

My Commission Expires:
October 31, 1998