COPY

IN THE MATTER OF:

Tennessee Gas Pipeline Co.
vs.
Monsanto Co.

Cause No. 94-CI90145

Deposition of Cumming Paton
November 1, 1995

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COMMONWEALTH OF KENTUCKY

ROWAN CIRCUIT COURT

CIVIL BRANCH

TENNESSEE GAS PIPELINE COMPANY,

Plaintiff,

vs. NO. 94-CI90145

MONSANTO COMPANY,

Defendant.

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

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CUMMING PATON,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

EXAMINATION

QUESTIONS BY MR. ROEDER:

Q: Good morning, Dr. Paton.

A: Good morning.

Q: This is the resumed deposition of Dr. Cumming Paton. Dr. Paton, you recognize you're still under oath from when we adjourned last Wednesday, correct?

A: Yes.

Q: Okay.

MR. CHAMBERS: Last Wednesday or Thursday?

MR. ROEDER: Thursday. I'm sorry. Thursday.

MR. CHAMBERS: We did adjourn Wednesday, too.

MR. ROEDER: And he was under oath on Thursday as well.

MR. CHAMBERS: That's right.

MR. ROEDER: All right. As long as we got

that straight.

Q: (By Mr. Roeder) In the intervening three or four days, as you sat and reflected, is there any portion of your testimony you wish to correct at this time?

A: Not that I can think of.

Q: All right. Have you reviewed any additional documents between when we adjourned last week and today in preparation for your testimony?

A: No.

MR. ROEDER: Okay. Let's mark this as the next exhibit, and I believe that will be 238.

(Plaintiff's Deposition Exhibit No. 238 marked for identification.)

MR. ROEDER: Okay. I did identify, I think, about five more exhibits on Monday, and we had -- our office had faxed you a copy of that letter.

MR. CHAMBERS: Right.

MR. ROEDER: I hope you received it.

MR. CHAMBERS: Right. I had. And my question was whether the exhibits that we'll be using that you only currently have two copies of are from the set you identified initially?

MR. ROEDER: That's correct.

MR. CHAMBERS: Okay. I don't see any

problem.

MR. ROEDER: Yeah, the only -- the additional copies, luckily, I have three copies. Additional exhibits I have three copies if we get to them and I presume we will, because I don't anticipate taking a great deal more time with this witness.

MR. CHAMBERS: Very good.

Q: (By Mr. Roeder) All right. Sir, Exhibit 238 is a memorandum from Mr. Davidson to you regarding distributor contracts. I don't have the contract attached to it, but it says -- it's a memorandum dated August 4, 1972, which lists different distributors that Monsanto had of among other things Pydraul and Santovac. Do you see that?

A: Yes.

Q: Okay. And production numbers TNGS 6119. Sir, what was your understanding as to the relationship Monsanto had with its distributors for Pydraul?

A: Well, I knew we had distributors for fluids products which would -- which is standard type industry practice that sometimes you have distributors for certain products.

Q: Okay. But this is early on in your tenure

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as someone who has responsibility for Pydraul --

A: Yes.

Q: -- in addition, correct?

A: Yes.

Q: Because it's dated August 4, '72?

A: Yes.

Q: And I think your earlier testimony was toward the middle of '72 you got the Pydraul responsibility?

A: Yes, exactly.

Q: Okay. Did you review, when you became marketing manager for Pydraul, the distributor contracts with respect to the Pydraul distributors?

A: This would indicate I did, but I have no recollection of, you know, that, and I wouldn't have been able to recall who we had without looking at this memo.

Q: All right. Petroleum Distributors, which is referenced in the first paragraph of this memorandum, who are they?

A: I probably couldn't recall independently now. I've seen documents in the last week or so that mention them that they were people that we had used and, I think, were looking at as well for Therminol as I recall. And that's, again, from my

testimony from the memos that have been put in front of me in the last week.

Q: All right. What was your understanding of your relationship to your distributors from -- and I'm asking this question in reference to the Pydraul distribution Monsanto, not you personally but Monsanto's distributors.

A: There's nothing that I can recollect specifically about the relationship.

Q: Well, did you understand that the distributors had the authority to speak on behalf of Monsanto?

A: I -- that's a very broad statement, and without looking at the actual contracts it would be hard for me to say, to know how that should have been interpreted.

Q: All right. Is it fair to say that you never authorized your distributors to speak on behalf of Monsanto?

A: I cannot recall personally doing that.

Q: And that would be something which would deviate from your normal practice?

A: Well, again, you know, I'm not sure -- normal practice that our contracts sometimes are standard boilerplate. Others there's specifics that

apply to that product or, you know, something specific between them. And so without looking at each contract, I wouldn't like to hazard a guess as to where they had responsibility or whether they had responsibility. I just don't -- I can't recall.

Q: All right. But more narrowly, sir, is it fair to say that on issues relating to PCBs in the products Monsanto produced and giving notification to customers that would be something that you would have made sure was handled only by Monsanto and not by distributors?

A: I couldn't be that broad, because it would depend what the question was.

Q: All right. Let me see if I can ask it in a different way. We looked last Thursday at your -- during your deposition, sir, at a sort of PCB task force organizational chart. Do you recall that?

A: Yes.

Q: Okay. And that showed you at the top, and there were some conversion engineers who were specifically identified, correct?

A: Yes.

Q: And in that testimony you indicated that any questions regarding Monsanto's changeover with respect to the PCB products would be something that

you wanted to handle personally and did not want your conversion engineers to be discussing with customers?

A: As I recall my testimony, it referred to the Therminol series of heat fire resistant heat transfer fluids, number one, in late 1971. Secondly, I think it had to do with if these conversion engineers got questions relating to the reasons why Monsanto was exiting the business.

Q: Right.

A: So, you know, I wouldn't necessarily say that what I said then on that particular group of products and that particular situation, you know, was taken wholesale into the Pydraul arena.

Q: All right.

A: At that time, I didn't have responsibility. And I just -- you know, I'm not trying to be evasive. I honestly don't -- you know, I cannot recall what these contractual relationships were.

Q: All right. But specifically, as you sit here today, you cannot recall authorizing petroleum distributors to speak on behalf of Monsanto with respect to any issues relating to PCBs?

A: I personally cannot recall whether I did or didn't.

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Q: All right.

(Plaintiff's Deposition Exhibit No. 239 marked for identification.)

(Whereupon, excerpted portion of confidential testimony is contained in confidential transcript Volume III.)

(Plaintiff's Deposition Exhibit No. 240 marked for identification.)

Q: (By Mr. Roeder) All right. Exhibit 240 is a letter to Mr. Louis Williams at Tenneco Oil Company, Lafayette, Louisiana, dated August 16, 1972, from Paul W. Gann, project coordinator, and you are a carbon copy recipient of this memorandum, correct?

A: Yes.

Q: Okay. And you would have received this letter in the ordinary course, correct?

A: Yes.

Q: The letter dated August 16th, 1972, states it confirms a conversation concerning the incineration of Therminol FR fluids that Mr. Gann had. Do you see that on the first paragraph?

A: Yes.

Q: And Mr. Gann encloses 50 preaddressed labels "Marked disposal only" that would be affixed to

drums. What was this to be used for as you understood it?

MR. CHAMBERS: Let me object to the form when you say "this." Are you referring to labels?

MR. ROEDER: The labels. The labels.

A: Well, the labels --

MR. ROEDER: Thank you for the clarification.

A: The labels were to go on to drums which apparently they were planning to send to our Sauget plant for incineration.

Q: (By Mr. Roeder) Right. So this was pursuant to Monsanto's offer that customers could send back some of the Therminol FR to Sauget for incineration; is that correct?

A: Yes.

Q: And then once they said -- before they sent it back Monsanto wanted the drums to be appropriately labeled so they would go to the right spot and everyone would know what's in it, correct?

A: Exactly.

Q: All right. Was it your policy in the Therminol area to follow up with customers to determine whether they were going to send back product for incineration? Not you personally, but I

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mean people under your direction.

A: I cannot recall to the extent that the Monsanto people were proactive as opposed to, you know, customers first approaching us. I don't -- you know, both I'm sure were done, but I can't recall now.

Q: Well, there -- there was a letter that we saw last week where you had sent out to the customers and informed them that the free freight offer was going to expire July 1, '72, correct?

A: I believe that is right. Again, I think something like that, yes.

Q: Yeah. And that was part of your, you being Monsanto, your attempt to encourage people to send back the product?

A: As quickly as they could.

Q: Right. And also to, hopefully, stimulate sales of the replacement product as well?

A: Well, I think the first was the more important one on this particular project.

Q: That was to get the PCB containing materials out of use?

A: Yes.

Q: Back to Monsanto so that they could be incinerated properly?

A: Yes.

Q: Okay. That was part of Monsanto's corporate policy with respect to Therminol?

A: Yes.

Q: Okay. Again, I notice the date is August 1972. This is when you're early on in the job on the Pydraul side of the business. Did you ever cause anyone under your direction to send out letters to Pydraul customers requesting that they return to Monsanto Pydraul that had been used in their operations for incineration?

A: I can't recall doing that myself.

Q: Okay. Do you recall ever causing any of your staff to send out letters similar to Plaintiff's Exhibit 240 to anyone at Tennessee Gas requesting that they return Pydraul for incineration?

A: I'm not sure except that in the last -- during this deposition I've seen various, you know, pieces of correspondence about Tenneco that have been put in front of me. I can't now recall the specifics.

Q: Sure. We've seen Tenneco Chemical, correct?

A: I think so, yes.

Q: Okay. But I'm asking about Tennessee Gas,

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which is a separate entity.

A: I thought I had seen something on that, too, but I cannot recall. I cannot really recall a great deal about that.

Q: All right. Well, would you like to look at any of the previous exhibits so that could refresh your recollection?

A: I don't -- you know, I don't know that would do much good.

MR. ROEDER: Okay. Could we go off the record for just one second?

(Discussion off the record.)

Q: (By Mr. Roeder) Sir, just so that the record is complete, I'll give you a binder that contains all of the exhibits that were marked at your previous days' deposition starting from Exhibit 197 through the present exhibit, and take as much time as you'd like. But if you can point me to a document that references a discussion with Tennessee Gas, I would appreciate your directing my attention to it.

MR. CHAMBERS: Let -- let me object to the form. Anybody can look through that document, whether it's the witness or you or me, for something that either has those words on it or not, and I

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object to taking up the time to do that now. If he's got independent memory or recollection, I think, yeah, that's -- that's certainly appropriate to inquire about.

MR. ROEDER: Well, if you can stipulate that none of the exhibits that we have thus far contain a reference to Tennessee Gas, that's fine but, otherwise, I'd like -- I can't testify. Only the witness can.

MR. CHAMBERS: Okay. I guess, if that's what you want to take up time to do, we'll do that. I'd like to go off the record so we don't waste the tape. But also note that this notebook appears to have the exhibits from about number 204, but there were also a number of exhibits that had been marked in previous depositions that were referred to in the course of this case. So maybe we ought to review all the binders.

MR. ROEDER: Well, if you would like to do that, that's fine, but my point is the witness says he thought he saw something. And, I guess, I'm entitled to the answer on the record whether it's there or not. Frankly, I don't think there is anything that he saw.

THE WITNESS: If there is, I wouldn't

disagree. I'm not necessarily disagreeing with you. I've seen a lot of documents passing backwards and forwards.

MR. ROEDER: Sure. But if there's a stipulation to that effect, then we can move on.

MR. CHAMBERS: No, there's no stipulation to that effect.

Q: (By Mr. Roeder) Okay. Well, I'll tell you what, in any event, what you have in front of you, sir, is Exhibit --

A: 237.

Q: Right. And we started in your deposition with Exhibit 197, and I have that in this binder. If you could just page through any of those exhibits and see if there's any such communication with Tennessee Gas, I'd like you to draw my attention to it if you could.

MR. CHAMBERS: Do you want to do this on the record and use up the tape?

MR. ROEDER: Sure. I don't care.

MR. CHAMBERS: I just -- I really am just thinking about saving type while he's looking through.

MR. ROEDER: Well, I understand that, but it won't take very long.

MR. CHAMBERS: Well, there are 37 or so exhibits, some of which are several pages.

MR. ROEDER: And I think he's gone through 10 already.

MR. CHAMBERS: Do you want to keep the tape running, or can we take a little break and just come back on when he's done?

MR. ROEDER: I think he's almost done. It looks like he's at about Exhibit 228.

MR. CHAMBERS: Well, I'll note an objection to the waste of tape.

MR. ROEDER: Well, we're paying for it. Thank you. My client appreciates that.

A: No, there's nothing in here about Tennessee Gas in this particular lot. I was mistaken.

Q: (By Mr. Roeder) All right. And I would anticipate, sir, and I'll just ask the question at this point, that you would exercise the same right that you did when you had been --

A: I'm sorry. I didn't hear that.

Q: I would anticipate, and tell me if I'm wrong, that you will exercise the same right that you have in other depositions to review the transcript when you're done. So I would request on the record that in review of the transcript, if you

find anything that would change the testimony, if you would mark that.

A: Sure.

Q: Would you do that for us?

A: Yes, certainly.

Q: Okay.

MR. CHAMBERS: Just so I'm clear, what is it you're asking now if he --

MR. ROEDER: Well, it's in -- the record is pretty clear. It relates to Tennessee Gas and Pydraul, but the question is in the record. The witness can review it in that context.

MR. CHAMBERS: Well, let me just be -- I want to be clear that what you're asking him to do is, if he sees something that concerns Tennessee Gas, that it be noted in his review of the deposition?

MR. ROEDER: No, the question was "Was there ever any such letter to Tennessee Gas with respect to Pydraul?"

MR. CHAMBERS: Okay.

MR. ROEDER: And he thought that he may have seen something in previous exhibits reflecting a request that it be returned. And so in review of the transcript, if he finds that, he can perhaps

note that.

MR. CHAMBERS: Okay. Thanks for clarifying that.

MR. ROEDER: Okay. Mark this as the next exhibit, please.

(Plaintiff's Deposition Exhibit No. 241 marked for identification.)

Q: (By Mr. Roeder) If you will note, sir, in Exhibit 240 on the second page of it there is a blind carbon or a blind note to carbonees, which would include you, which states "Mr. Williams stated that the remaining two FR systems were going to Dow G. That decision was made prior to their seeing on July 19th Dr. Paton's 5-25-72 letter. Their decision was not reversed." What was Dow G?

A: It was a product made by Dow. I think the actual -- the correct name for the product was Dow Therm G, but it was made by Dow Chemical. And it was a non-PCB fluid that Monsanto had fluids that were competitive to that.

Q: Right. It was -- it was competitive to the Therminol FR use?

A: No. Well, application. It wasn't fire resistant. It would have been competitive to a product we had, I think, called Therminol 66, if my

memory serves me right.

Q: And Therminol 66 was going to be the product that would replace Therminol FR?

A: That would have been in some applications and in this particular one that apparently was the best one to do the job.

Q: All right. Well, this reflects, does it not, that Tenneco was not going to purchase the Therminol 66 that had been suggested as a fluid for their uses; is that correct?

A: You mean 240? That's what 240 would suggest, right.

Q: Right. Blind carbon?

A: Yes.

Q: Did you follow up any further with respect to that issue whether or not you would be losing the business on Tenneco with respect to the Therminol 66?

A: I can't recall that I did that, after I saw this 240, that I did anything.

Q: Okay. Well, Exhibit 241, sir, --

A: Yes.

Q: -- that you're looking at right now it's a call report regarding Tenneco to you from Mr. Roder dated 9-14-72, and it bears production number TNGS

4134 to 4135. This reflects a last attempt to see if you could or if Monsanto would be successful in selling Therminol 66 for Tenneco's proposed offshore platforms, correct?

MR. CHAMBERS: Object to the form.

A: As I read it, it's talking about proposed offshore platforms that they are in the process of developing or putting in to commission in the next six months as opposed to existing ones is my understanding of that first sentence.

Q: (By Mr. Roeder) All right. So the record is clear, you understood this was a visit. It reflects a visit that was intended to follow up with Tenneco regarding whether they would purchase Therminol 66 for three new offshore platforms they were planning?

A: Yes.

Q: Okay. If you note on the last page, the second page of it, Louis Williams, who was the contact at Tenneco, says "All of their Therminol FR systems have been drained, changed and fluid returned for disposal." That would mean, would it not -- do you see that, sir?

A: Okay. Just a second. I'm trying to read.

Q: Toward the very bottom.

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A: Yes, but I was trying to just see if there was nothing in the earlier part that had anything to do with -- yes. Okay. I'm done with the very last note, yes.

Q: Right. But Mr. Williams told Mr. Roder that all of the Therminol FR systems had been drained, changed and the fluid had been returned for disposal?

A: Yes.

Q: That would have been to Monsanto, correct?

A: I'm sorry. To Monsanto.

Q: That would have been to Monsanto. That's how you would interpret that, correct?

A: Yes.

(Plaintiff's Deposition Exhibit No. 242 marked for identification.)

Q: (By Mr. Roeder) Before you look at that document, sir, Exhibit 242 that the court reporter has handed to you, the term "Pydraul AC" what is your understanding of what the AC referred to?

A: I think it meant air compressor, I think, but I can't swear to that now.

Q: I think you're correct. That's my understanding. I wanted to be sure that we had that same understanding. So that was a formulation that

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was intended to be used in their compressor applications?

A: That's my recollection.

Q: All right. Exhibit 242, sir, is a memorandum to you from J. Wriston, W-R-I-S-T-O-N, dated October 18th, 1972. You received this memorandum, correct?

A: Yes.

Q: Was it your practice that on any document that you received that you would put the sort of squiggle line through your name?

A: Yes.

Q: So on all the other documents that we've looked at, for example, on Exhibit 240 there's a squiggle through your name. That would reflect your having reviewed that document?

A: Usually, yes. You probably could find some where I didn't, but quite often I did that.

Q: But that was something that you internally would be able to look at and -- or when you were done with it, that's how you would know you were done, and you would put it in the out box?

A: I would usually every night have to read a pile of these things, and that was one way that I could set to one side the ones with my squiggle

through it and then plow on through the others.

Q: That's how you know which ones you read and which ones -- what mountains remained to be climbed?

A: Exactly.

Q: All right. And that's your writing that says "Accounting and please handle," right?

A: "Accounting" doesn't look like my writing. But "Please handle" is my writing.

Q: All right. Okay. So this would be -- Mr. Wriston, who is he?

A: He's someone at our Krummrich plant.

Q: Okay. He was the guy who would list what was being sent in for incineration?

A: Yes.

Q: And he basically prepared the information that accounting would need to bill these people for incinerating?

A: Yes.

Q: All right. Now, I notice, sir, in here return for incineration, return Aroclor for incineration. On the second page of that document, the third page of the exhibit, there is a listing from Tenneco Oil on 7-31-72 and 9-20-72.

A: Yes.

Q: And do I understand the -- let's make sure I

understand it. You have the customer listed, the date the product was returned and the material name. That's Therminol that you got back from Tenneco, correct?

A: Yes.

Q: All right. "Number of C-O-N-T," that's containers?

A: Yes.

Q: That would be drums?

A: In this case I would think so, yes.

Q: All right. So then the pounds right next to it is 11,700 pounds and 12,500 pounds. That would be the weight of the product that was being incinerated?

A: And that would square with them being 55 gallon drums.

Q: All right. Okay. And there's a freight charge that Tenneco was billed for with respect to these, one or both of these deliveries, of almost $600.00, right?

A: Yes.

Q: Okay. So you would have approved the billing of Tenneco 1,323.60 for the freight and incineration of the Therminol that was delivered at Krummrich, right?

A: The way this works, as I look at the memo, was that, if I had had reason to say there was something wrong with that, it would have been reviewed. If I didn't, it would have been passed on to Gann who would have then sent it to accounting and it would have been billed.

Q: All right. Okay. I notice just up at the top of it Ralston Purina. They had sent in one container of Pydraul for 460 pounds, and they were billed for $13.80. Do you see that?

A: Yes.

Q: So, in fact, this was a listing of all of the potential Aroclor PCB products that were returned in this time period for incineration?

A: Yes.

Q: Because, if you look on the previous page, Santovac 2 is listed, Aroclor 1254 and Pyranol. That was a trade name, was it not?

A: Yes.

Q: That was Westinghouse's?

A: I think so. Interteen was GE. Again, I forget. But one was GE and one was Westinghouse.

Q: Interteen was one, either GE or --

A: Yes, exactly.

Q: -- Westinghouse. And Pyranol was whatever

the other one wasn't?

A: That's right.

Q: Okay. So anyway, so by this memorandum you could tell that Ralston Purina had at least sent back Pydraul for incineration and then they were billed for that, correct?

A: Yes, that's what it looks like here, yes.

Q: That's all I have for that document, sir.

(Plaintiff's Deposition Exhibit No. 243 marked for identification.)

Q: (By Mr. Roeder) Sir, Exhibit 243 is a memorandum from Mr. Davidson to you regarding the 1973 marketing plan, and the production numbers are TRAN 85493 through 85511. It's a pretty long document, sir, but I will only ask you to review the Pydraul references.

MR. CHAMBERS: Is that the first part of the document?

MR. ROEDER: Yes, it is. It says "Pydraul" at the top.

MR. CHAMBERS: Okay.

Q: (By Mr. Roeder) Sir, this reflects, does it not, the marketing plan that Mr. Davidson had prepared for the lines, the product lines, that were under your supervision as it were as marketing

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manager, correct?

A: They were the ones that were under -- for which Davidson was marketing manager.

Q: That's correct. Because you had, for example, dielectrics?

A: And heat transfer and whatever else, yes.

Q: All right. So these are the marketing plans for -- would these be called the functional fluids?

A: Well, I think by then they were all functional fluids. They were divided more by type of product and application.

Q: All right. But so, anyway, as the memorandum to you from Mr. Davidson indicates, this was the 1973 marketing plan for Pydraul, Santosafe, Turbinol, Santovac and Coolanol?

A: Yes.

Q: Okay. And I had drawn your attention to the Pydraul product summary and plans that are the first three, four, five or so pages of this document double-spaced. Were these, in fact, the 1993 marketing plans for Pydraul?

MR. CHAMBERS: Object to the form. I think you've misspoken. You said '93 instead of '73.

MR. ROEDER: '73. You're correct. 1973.

A: This was at least what Jerry Davidson would

have regarded as one that he and his people were in agreement with, and they were ready to discuss it to get my approval on it.

Q: (By Mr. Roeder) All right. Would it be fair to say, sir, that the general strategy as reflected in here would be to sell Pydraul to the steel and automotive industries, larger purchasers?

A: Not entirely, no.

Q: Well, the only potential large accounts that are referenced in this 1973 marketing plan are pretty big purchasers potentially, correct, U.S. Steel, Bethlehem Steel, Inland Steel, Republic Steel, JNL Steel, Chevrolet, Ford?

A: Yes.

Q: Alcoa. That's what the memorandum reflects, right?

A: That's what this memorandum reflects, yes.

Q: All right. In terms of the Pydraul portion of the business in 1973, how was it performing in relation to the other lines, Turbinol, dielectric?

A: I cannot recall. I have no recollection of that whatsoever.

Q: Well, just so it's clear, on page three of the memorandum Mr. Davidson tells you that "Following your scrambling to retain our market

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share, we expect to return to more normal selling conditions in 1973." Then he goes on "We will emphasize the technical advantages of our fluids where applicable and return to offensive selling to increase our Pydraul business primarily in the steel industry where our market share is lowest and business is the most concentrated." That's what he wrote there, correct?

A: Yes.

Q: What did you understand him to mean by "offensive selling"?

A: I -- you know, I can't, at this point in time, recall what, you know, what discussion we had about that, and he would be the best person to ask about it.

Q: Well, if you look at the previous page, does it not indicate that there is a second reformulation of Pydraul fluids in the beginning of Monsanto's marketing of straight phosphate esters and that there's much turbulence in the marketplace?

A: I see that statement, yes.

Q: Okay. And does that refresh your recollection as to what the market situation for this was?

A: Well, I think I would not disagree with this

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statement about what was happening in the marketplace.

Q: And during 1972 Pydrauls had been reformulated a second time, correct?

A: That's my recollection, yes.

Q: That's all I have for that document, sir.

(Plaintiff's Deposition Exhibit No. 244 marked for identification.)

Q: (By Mr. Roeder) While you're looking at that document, sir, Exhibit 244 is a memorandum from you regarding dielectric fluids complaints to a number of people and various recipients or carbonees copies, including Mr. Benignus, Mr. Munch, Mr. Richard, Mr. Savage, Mr. Johnson, Mr. Gossage, Mr. Potter and Mr. Maddox.

A: Yes.

Q: Okay. Sir, Exhibit 244 is a memorandum you wrote dated January 2nd, 1973, production number TRAN 88451 through 88458. Sir, was there a point that Monsanto closed the Anniston, Alabama, plant?

A: I can't recall. This document would indicate that it did, but I cannot recall now specifics about that.

Q: You do recall that there was -- there did come a point when all of the PCB dielectric products

were manufactured out of the Krummrich plant as opposed to the Anniston, Alabama, plant, correct?

A: Well, I think your statement has kind of refreshed my memory a bit, and I think that was right. But I wouldn't probably have had an independent recollection of that.

Q: All right. This memorandum that you wrote regarding dielectric fluids and complaints was this early on? Since your memory is now refreshed, was this early on in the time that all the dielectric fluid was being produced by Krummrich?

A: I can't say for sure. Some comments in here would indicate that was the case, but I -- again, I can't recall all the chronology of these events.

Q: All right. But, in any event, you had written a memorandum to the recipients of this, including Mr. Bryant, Mr. Hansen, Mr. Mellon, Mr. Ford, Mr. Slayton and Mr. Goodwillie to review the complaints that had been received with respect to the product the Krummrich plant had produced, right?

A: Yes.

Q: Okay. And it was important to maintain the quality of the dielectric fluid product?

A: That's right.

Q: For the dielectric fluid customers, correct?

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A: Yes.

Q: Okay. And had you been receiving objections or complaints as to the quality of the product that was shipped and packaged at Krummrich?

A: I don't recall what led me to spend the half day at the Krummrich plant, but obviously what I was doing was to review with them and compare where they stood in '72 versus '71 on complaints and what the complaints were and what was being done to correct them.

Q: Okay.

A: To reduce the number.

Q: Were these complaints corrected, to the best of your knowledge?

A: I can't recall now.

Q: All right.

(Plaintiff's Deposition Exhibit No. 245 marked for identification.)

Q: (By Mr. Roeder) Sir, Exhibit 245 is a memorandum from Mr. Papageorge to Mr. Bergen, Mr. Corey and Mr. Stapleton. I think we've discussed all of them in your testimony thus far. Bergen and Corey were senior Monsanto executives, correct?

A: That's right.

Q: And Mr. Stapleton was in the law department?

A: Yes.

Q: Okay. Do you know what position he held in the law department?

A: I can't recall now.

Q: All right. Davidson, Gossage and you received carbon copies, correct?

A: Yes.

Q: All right. And there was a handwritten notation on Exhibit 245 which says "Bill Papageorge comments 'inked in' on letters H. S. B." Do you see that?

A: Yes.

Q: That's Mr. Bergen, right?

A: I assume so, yes.

Q: Okay. Well, you've seen his handwriting before, have you not?

A: Yes, but it's a long, long time ago because, unfortunately, Mr. Bergen is now dead.

Q: We had discussed last Thursday before we adjourned your deposition, I believe, the August 3, 1973, letters that had been sent out that you had prepared a draft of in July 1972. Do you recall that testimony?

A: Yes. Yes.

Q: Okay. And when I asked you why it had taken

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as long as it had to send out the letters, you said you didn't recall?

A: That's right.

Q: Okay. Now, this memorandum from Mr. Papageorge to senior management at Monsanto indicates that the draft letters attached are intended for mailing with copies of the new FDA regulation on PCBs when it becomes available. Do you see that?

A: Yes.

Q: Okay. Was it, in fact, the decision that the new -- that these letters would not be sent out until the FDA regulations became not only available, but were finally put in effect?

A: I'm reading here that that's what Mr. Papageorge is indicating to Bergen, Corey and Stapleton with copies to me that that was the intent on January 22nd.

Q: All right. So that would, in your view, account for the reason that -- why there was a delay from July 1972 when you first prepared the draft of the letters to August '73 when the letters were finally sent out?

A: That -- yes.

Q: Now, if you look through Exhibit 245, sir,

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you could see Mr. Bergen's handwritten comments where he inked them in, correct?

A: Yes.

Q: Can you look, while you have that exhibit in front of you, sir, at Exhibit 13. And I'll get you -- I'll open up the exhibit to that number. That was a memorandum to Mr. Gossage from Mr. Bradford and Mr. Davidson. Do you see that exhibit, sir?

A: Are you finished with this one now, are you?

Q: I want you to keep it in front of you. And also while you have that -- have Exhibit 13 in front of you as well, I will represent to you, sir, that I have reviewed Mr. Gossage's deposition transcript, and he testified that the notations on the margins were not his, but the changes in the text were his.

MR. ROEDER: Is that fair enough, Mr. Chambers?

MR. CHAMBERS: It squares with my recollection, but I'm like anybody else. I would like to look back at the transcript to be sure.

MR. ROEDER: And in light of the objection you raised before, I went back and looked at the transcript. Mr. Gossage's are in the text. And he did not identify the written notations on the side.

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Q: (By Mr. Roeder) Are the written notations on Exhibit 13 similar to Mr. Bergen's inked in comments?

A: I can't get in to that. I'm not a handwriting expert.

Q: You can't tell if they look similar?

A: Well, we're looking now at things that were written almost 24 years ago and the other better than 22 years ago and, you know, I can't speculate whether they are or they aren't.

Q: Well, you've seen Mr. Bergen's testimony, had you not, or seen his handwriting before?

A: I've seen it, but I said it's a long time ago and, unfortunately, he's now deceased. I have not been in touch or seen Mr. Bergen or seen anything from him in writing for many years.

Q: Okay. So it's your testimony that comparing the handwritten notations from Mr. Bergen on Exhibit 245 and then handwriting on the side of the margin on Exhibit 13 you can't make any conclusion yourself as to whether or not that's Mr. Bergen's handwriting?

A: I couldn't positively identify it.

Q: Do you have any view as to whether that is his handwriting or not?

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A: You know, I don't want to speculate on that.
Q: The proposed letters in Exhibit 245.
A: Yes.
Q: Those would be for your signature, correct?
A: Well, let's see. Two of them are for my signature and, I think, the final one was for David -- the intent apparently was for Davidson to send it out.
Q: All right.
MR. CHAMBERS: Can we move the binder?
MR. ROEDER: Sure, you can. That's all I have for that document, sir.
(Plaintiff's Deposition Exhibit No. 246 marked for identification.)
Q: (By Mr. Roeder) Exhibit 246 is a short memorandum from you, sir, to a number of individuals regarding fluids product review. Is this a periodic review that you would schedule with respect to issues --
A: Yes.
Q: -- under your jurisdiction?
A: Yes. These were periodic reviews, yes.
Q: Okay. What would you do in these periodic reviews, sir?
A: They would let the people, who came from all

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the functions in primarily at the headquarters, be brought up to speed with, you know, what was happening in the business, what issues were being faced, and this would be put together by the business people, normally the people reporting to me with some -- obviously with oversight from me, and this would cover commercial, technical, manufacturing, whatever the situation was. And it would be -- you know, partly it would be a communication vehicle and, secondly, it would be a discussion vehicle on any issues that came up, an opportunity for people to bring forward points of view or appraise others of what they were thinking and so on in doing.

Q: How often would you schedule these product reviews?

A: Oh, it's hard now to say. You know, I really at the moment can't recall how often they were done. It was just once a year or maybe twice or even four times. I can't recall.

Q: All right.

(Plaintiff's Deposition Exhibit Nos. 247, 248 marked for identification.)

Q: (By Mr. Roeder) Exhibit 247, sir, I believe, is a memorandum dated May 30th, 1973, and

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Exhibit 248 is one dated June 15th, 1973. The Exhibit 247 is your memorandum to G. F. Fague, F-A-G-U-E, regarding hydraulics, lubricants and heat transfer. Do you recall writing this memorandum, sir?

A: I have no reason to say that I didn't write it.

Q: All right. And the purpose of this was to hold a review in 12 separate areas that you had listed dealing with -- strike that. Your review was intended to look at products related to the hydraulics, lubricants and heat transfer areas, correct?

A: Pardon.

Q: Your review was intended to -- strike that. Your memorandum was intended to schedule reviews of a number of the products and the sales performance of the product not only in the United States but worldwide, correct?

A: Yes, I'm sure it would have been, yes.

Q: Okay. Number five and six on the first page of your memorandum indicates that you want to get completely briefed with respect to compressor lubricants and Turbinol, correct?

A: Yes.

Q: And four would be Pydraul, hydraulic fluids, correct?

A: Yes.

Q: Okay. Is it safe to say that you were not satisfied with the performance of sales of these products as of this date?

A: I don't think you can draw that inference at all.

Q: If you look at the second page of the memorandum, there is a looks like an asterisk and a footnote at the bottom. You say "I am not looking for tables of quote or actual results as I can get these from 6/8/C, et cetera. I'm interested in reasons for deviations." That's what you wrote, correct?

A: Yes.

Q: And that's what you were interested in, weren't you, sir, to determine why it is you weren't selling what you thought you'd be selling?

A: I can't remember if that's the case or not. It could have just as easily been we were selling more in which case I would have been interested in deviations, but I can't recall now the reasons why I wrote this memo. And that I wouldn't see this as being different than the normal way of how I might

have handled the business.

Q: Okay. Well, if you look, sir, at Exhibit 248, it's Mr. Fague's memorandum to R. E. Hatton, to R. L. Koch, K-O-C-H, and D. E. Roush, R-O-U-S-H, and it refers to a memorandum from you, correct?

A: Yes.

Q: It lists on the fourth paragraph "Cumming has listed 12 separate items that he would like covered in these meetings," and that corresponds to the 12 typewritten points that you want brought up in Exhibit 247, right?

A: Yes.

Q: So is it fair to say that you would expect that Mr. Fague had attached your memorandum to him as part of his exhibit as part of his June 15th, 1973, memorandum?

MR. CHAMBERS: Object to the form.

A: I see what he's written. He wrote that he had attached it.

Q: (By Mr. Roeder) Right.

A: Have you still got more questions on it?

Q: Yes, briefly. The memorandum, which is Exhibit 248, references Mr. Fague's statement that "I have added a 13th category which I have added called special situations (Pydraul for Houghton, BBC

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fluid, et cetera)." Do you see that?

A: Yes.

Q: Is this Mr. Fague's handwriting on Exhibit 247?

A: It looks a bit like it.

Q: Okay. And the arrow is to Mr. Fague on Exhibit 247, correct?

A: Yes.

Q: Okay. What were the special situations relating to Pydraul for Houghton that's referenced?

A: I can't recall what that would have been.

Q: All right. One last question on this. R. E. Hatton, H-A-T-T-O-N, who is he?

A: Hatton would have reported to Fague and would have had responsibility for technical customer technical service in most of the areas involving Pydraul, Skydrol, I think, Skydrol as well, Turbinols, compressor lubricants, Santovac, that kind of-- Coolanol.

Q: At these product review meetings that Monsanto held, would there be decisions made as to whether to continue or not continue producing certain products or recommendations, I should say, at these meetings?

MR. CHAMBERS: Let me object to the form.

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You're referring to the reviews?

MR. ROEDER: No, it was a more general question, and I'll rephrase the question in light of the objection.

Q: (By Mr. Roeder) In the product -- strike that. Mr. Fague's memorandum references an overall product review meeting on August 1, which is in the first paragraph of that.

A: Yes.

Q: In such meetings, sir, would there be discussion of whether or not Monsanto would continue to produce certain products?

A: It could conceivably come up, but these reviews were meant to cover the whole range of the business. If that came up, well, there would be reasons. Whoever suggested it would give reasons. Others would listen. It's unlikely that a decision or even a recommendation will be taken there if that was the first time it had been raised. It would probably be investigated and reported back later on in a separate situation, a separate context involving those that would be involved.

Q: So the entire aspect of the product would be reviewed at one of these meetings, profitability, for example?

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A: It's hard to be specific. I don't know if any came up then or were even that I was aware that it might come up then, but if -- these were open meetings. If somebody had some reason for suggesting something, certainly they were free to bring it up and give the reasons why, and then we would decide how best to handle it.

Q: All right.

(Plaintiff's Deposition Exhibit No. 249 marked for identification.)

Q: (By Mr. Roeder) Exhibit 249, sir, is a memorandum dated July 3rd, 1973, and it's to Mr. Gossage, carbon copy to Mr. Papageorge and has production number TRAN 28073 to 28075. This is a memorandum you sent to Mr. Gossage, correct?

A: Yes.

Q: Okay. And, again, this is Mr. Bergen's handwriting on the sides?

A: Well, his initials are there. Therefore, I would assume it's his handwriting.

Q: Okay. Where it says "Okay H. S. B." that would be Mr. Bergen?

A: Yes, I assume so.

Q: That's all I have for that right now, sir.

(Plaintiff's Deposition Exhibit No.

WATER_PCB-SD0000076840

250 marked for identification.)

Q: (By Mr. Roeder) Sir, as of July 1973, had you become the point man that Mr. Bergen wanted you to be with respect to PCB issues?

A: I don't know about being a point man on PCB issues. What do you mean by "point man"?

Q: Fair enough. Mr. Papageorge had been involved with respect to PCBs as a -- well, since certainly beginning approximately 1970 when he was brought in, correct?

A: I think so.

Q: Previously he had been plant manager at Anniston?

A: Yes.

Q: Okay. What's your understanding of what Mr. Papageorge's duties were in that position?

A: It was a term that, I think, was talked about as being product stewardship. He was responsible for being sure that we were as best we could in compliance with various environmental or government agency actions, FDA, whatever, on products and preparing what were called marketing safety data sheets, I believe, and that if -- from my standpoint in the product manager area,.

If I had questions or so on about anything

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involving regulatory affairs on our products, I would approach him as being the best source of knowledge. If customers had questions that they relayed to salesmen, the salesmen would normally either through the product group or maybe even on occasion directly to him. Although I think it normally went through the product group, he would be the one that would prepare what seemed to be the best, you know, the most factual response we could make at the time on the situation.

Q: Were you higher or lower than he was in terms of seniority in --

A: Oh, I can't recall. But I would have seen him as at least at my level if not somewhat above it on a grade level basis. So I would have deferred a great deal to Mr. Papageorge's experience and helpfulness. And so I had a good working relation with him, and I never really thought of it much in terms of who was, you know, who was where or what on the pecking order. It never really bothered me.

Q: You were -- would it be fair to say you were more in a front line responsibility in terms of actually selling product and managing product lines at this point in 1973?

A: Yes, I mean I was the business -- kind of

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the business person for that group of products and was giving -- working a lot directly with the sales folk but then also with research and manufacturing and whatever other functions were necessary to keep the whole machine, you know, moving smoothly.

MR. ROEDER: Okay. Can you show the witness Exhibit 250?

Q: (By Mr. Roeder) Exhibit 250, sir, is a memorandum from you on the subject of PCBs to a host of individuals. I won't belabor the record by indicating who they were, and probably eight or ten carbon copy recipients. And it attaches, does it not, sir, relevant sections of the "Federal Register" that relate to new FDA regulations concerning PCBs in food, animal feed and packaging plants?

A: Yes.

Q: For the record, this is a document dated July 23rd, 1973, TNGS 9028 to 9054. Part of my questioning earlier is I'm wondering why you would have written this memorandum other than Mr. Papageorge?

A: Well, because I had primary responsibility for communications, or my group had primary responsibility for communications to sales and

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marketing departments worldwide.

Q: Okay. So it would be natural for this to come from you. It would be different if it came from Mr. Papageorge, for example?

A: Possibly, yes.

Q: I'll show you, sir, what's already been marked as Exhibit 122. This includes the letters that we talked about earlier, sir, the August 3, 1973, letter that we discussed last Thursday, but your memorandum of July 30th, 1973, encloses for many of the same people in your July 23rd who received your July 23rd memorandum, Exhibit 250, the letters that you intended to send out relating to the FDA regulations, correct?

A: Yes.

Q: Okay. Now, we had discussed, I think, a portion of this exhibit last time, but only with respect to examining the letters that were attached to it. Do you recall that testimony?

A: I think I do, yes.

Q: All right. Now, your memorandum dated July 30th, 1973, says "It has been decided that we should notify all customers who bought PCB or PCT containing Pydrauls of this regulation. We will also notify those Therminol FR customers who were

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direct fluid related users and who got our March 1972 survey letter." Do you see that on the first page?

A: Yes.

Q: Now, that decision to send them out was the decision that was made at the beginning of 1973?

A: I don't know when the decision was made. There's a memo that you just showed me that referred to at some point that seemed to be in contention in January. Yes, this one here.

Q: Exhibit 245 where mailings -- it is intended that the mailings of the new FDA regulation would be made when it becomes available, right?

A: That's right.

Q: So that was a decision to wait until after the regulations were actually issued to send it out?

A: That's right. Exactly.

Q: Okay. Would you agree with that decision?

A: I can't recall, but I have no reason to even -- I can't recall anything that said I didn't.

Q: Did you have any concerns about waiting long?

A: I can't recall now. If I did, I can't recall them.

Q: All right.

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A: I have no reason to think I did have reservations.

Q: Now, you indicate in your memorandum that the Pydraul letters will be sent to the "Director of purchasing (hydraulic fluids) ABC company, XYZ street, nowhere." Do you see that?

A: Yes.

Q: And then you say "We realize that in some companies this may take time to get to the proper person," correct?

A: Yes.

Q: Was that your understanding and belief at the time you wrote the memorandum?

A: I'm sure it was. Otherwise, I wouldn't have put it down, but I can't recall.

Q: You also wrote, did you not, that "Furthermore, the contents of these letters may become garbled in transmission through various levels and channels," right?

A: Yes.

Q: Okay. Why would that be? What was the basis for making that statement?

A: I can't recall on what specific basis I have, other than it might have passed on in a second or thirdhand manner. I don't know.

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Q: But it was your understanding as of July 30th, 1973, that, when a letter is sent out to a director of purchasing, that the contents of the letters may become garbled in transmission through various levels and channels?

A: Not as a general rule, no, but it could possibly happen, and I was asking the salespeople to try to assist in that effort through the contacts they might have.

Q: Right. So you understood that, to ensure to get the notice you wanted to the people who you wanted to get it, you would send out the letter and somebody would follow up?

A: I was suggesting that as a possibility, but sending it to the director of purchasing, hydraulic fluids, in my view, at the time would have been the person that had responsibility, and it was, you know, a position in that company, send it there and then, if anything else could be done that our salespeople knew about, they could contact or suggest to them that they think they're doing that, too. That was, you know, more general guidance. I knew I had sent out the letters suggesting they were in a better position to look at anything else.

Q: One of the carbon copy recipients on Exhibit

122 was Mr. Stapleton, right?

A: Yes.

Q: Again, in the legal department?

A: Yes.

Q: And Mr. Park who was in the same department?

A: I think they worked together, yes.

Q: Okay. So the law department had approved the form of this letter before it was sent out?

A: I can't recall, but it's possible.

Q: Was there any discussion that you participated in that discussed how this was a different policy with respect to giving additional copies of letters than Monsanto had done previously with respect to PCB letters to its customers?

A: I can't recall any discussion of that. I'm not sure that there was, but I can't recall.

Q: Well, do you recall seeing any memoranda from Mr. Johnson indicating that only one copy of the February 1970 letter would be sent to Monsanto's customers and that was both good and bad?

A: I can't remember that at all.

Q: Now, you write in your letter "We realize that this letter may reopen old wounds." What old wounds would the letter reopen?

A: Well, some people were irritated that they

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had to deal with several reformulations. They had to drain out product and, you know, in the food applications in the Therminol, for example. So there were people who were fairly irritated about all the inconvenience and efforts they had had to go through, you know, but that's, you know, the things that happened. People react differently to different situations.

Q: Okay. You also write "We never really sent out as many letters on PCBs to all our Pydraul customers as we did on heat transfer." That's what you wrote, correct?

A: Yes.

Q: That was correct when you wrote it, wasn't it?

A: As far as I know. There had been more formulations in the case of Pydraul away from PCBs, whereas, in Therminol that was not, you know, that wasn't an option.

Q: Was it a concern to you that Monsanto had never sent out as many letters on PCBs to its Pydraul customers as it had on heat transfer?

A: No.

Q: Why did you write that statement then?

A: Because, you know, -- I can't recall now why

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I put in the statement in, but the answer I gave you, no, but I didn't think it was a problem.

Q: It never occurred to you that the notice given to the Pydraul customers, who had purchased Pydrauls with PCBs, may be less than the notice that had been given to, for example, Therminol customers?

A: Not that I recall.

Q: Not that you recall. You also write that "Our management, therefore, feels this is a public service announcement to our customers." Do you see that?

A: Yes.

Q: Okay. Was that true the management thought this was a public service announcement?

A: At the time, I guess, I must have thought so, or I wouldn't have put that down there.

Q: Do you know who told you from management that it was a public service announcement?

A: I can't remember.

Q: Then you indicate that your competitors may try to blow this out of proportion. Do you see that statement?

A: Yes.

Q: Did that happen?

A: I have no way of -- I can't recall.

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Q: Finally, you express your hope. You say "Hopefully, this is the last mass mailing on PCBs. Soon they will be collectors items."

A: Yes.

Q: You wrote that statement?

A: Yes.

Q: Do you know if there were any further mass mailings on PCBs?

A: I can't remember.

MR. ROEDER: It's noon. Do you want to take a short break?

THE WITNESS: I would like to see if we could continue on and finish it, because I really have -- you know, I was hoping -- I thought we were going to be finished at lunchtime, and I really have a lot of things to do this afternoon that I'm committed on.

MR. ROEDER: Sure. Well, let's go off the record for a minute.

(Discussion off the record.)

(Plaintiff's Deposition Exhibit No. 251 marked for identification.)

Q: (By Mr. Roeder) Exhibit 251, sir?

A: Yes.

Q: Is a document entitled "Presentation to

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Field Sales Personal and Confidential," and it bears production number TRAN 12547 to TRAN 12571. This document, sir, has a handwritten E at the top of it. But it seems to be a presentation made to the plasticizer group. I'd like you to -- I mean just see if I can draw your attention to a portion of it that will help you and confirm that that's correct. If you look at the second page toward the second -- toward the bottom of that document, it reads "Accordingly, the letter has been cleared by our legal department for mailing to each of our direct Monsanto customers. This letter goes to plasticizer customers only." And that indicates that a very similar letter will be mailed by the functional fluids group to their customers. Do you see that?

A: Yes.

Q: Okay. As of 1969 and early 1970, I think we had previously established that you had responsibility for plasticizers, correct?

A: That's right.

Q: Okay. Is this a document that you wrote?

A: It's -- I can't even recall having ever seen this. At the moment, I'm not sure I did write it. It doesn't -- I can't recollect having written anything like this.

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Q: All right. Well, if you'll see, it indicates that the letter would be signed by Mr. Schalk. Let me see if I can point that out for you. Page three it says "The plasticizer letter will be signed by W. E. Schalk, and a copy of the letter will be mailed to the head office of each of our Aroclor distributors."

A: Yes, I read that.

Q: Okay. And you recall, do you not, that the first letter that went out to the plasticizer customers was signed by Mr. Schalk in 1970?

A: I can't recall, but it could have been.

MR. ROEDER: Well, I will so represent to speed things along. If not, I can look for the document itself. Do you have an objection to that?

MR. CHAMBERS: I think we better look for the document on that one if you don't mind.

MR. ROEDER: I don't mind.

MR. CHAMBERS: I understand. I think it will clarify what's probably a significant point.

MR. ROEDER: All right. Why don't we just go off the record for a minute.

(Discussion off the record.)

Q: (By Mr. Roeder) Sir, Exhibit 159 which you've just been handed a copy of.

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A: Yes, I remember looking at -- having seen this last week.

Q: Okay. And that's the letter that says "Sent to plasticizer customers" in handwriting up at the top corner?

A: Yes.

Q: And that's signed by Mr. Schalk, correct?

A: Yes.

Q: Okay. And that refreshes your recollection, doesn't it, that Mr. Schalk was the person who signed it?

A: Yes.

Q: That's the exhibit, right?

A: Yes.

Q: Okay. Now, Exhibit 251 summarizes what Exhibit 159 would say. And in looking at page three, sir, it indicates that "Just a copy of the letter together with the cover letter will be mailed to the head office of each of our Aroclor distributors."

A: Yes.

Q: Does this refresh your recollection that the first document, the first letter that was sent out with respect to plasticizers was only mailed one to a customer?

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MR. CHAMBERS: Object to the form.

A: I don't know if it's one for a customer. You know, I see a letter that was sent out that Mr. Schalk sent out.

Q: (By Mr. Roeder) All right. Okay. All right. Well, let me ask you it summarizes Monsanto's letter which says "First, its primary function is to alert customers to potential environmental pollution problems." Do you see that?

A: Yes.

Q: Okay. And then "Confidentially our legal department believes this will minimize and, hopefully, eliminate claims made against us for environmental pollution damage." Do you see that?

A: Yes.

Q: Was that one of the purposes, as you understood it, of the original letter that was sent out?

A: I can't recall.

Q: This would be a presentation that would be delivered to the field sales force with respect to the plasticizer group, correct?

MR. CHAMBERS: Object to the form.

A: That's what the title says, but I can't recall anything about this document.

Q: (By Mr. Roeder) Okay. But do you recall whether or not confidentially that, as it indicates here, that the legal department believed that sending the letter out would minimize and, hopefully, eliminate claims made against Monsanto for environmental pollution damage?

A: I have no recollection of that at all.

Q: All right. And this doesn't refresh that recollection?

A: No. No.

Q: Do you know if, in fact, that was an intent behind Monsanto's sending out of additional letters to additional customers with respect to the PCB problem?

A: No, I don't.

Q: Okay. Was, in fact, your concern that, as indicated in your memorandum of July 30th, 1973, that "We never really sent out as many letters on PCBs to our Pydraul customers as we did to heat transfer." Was that related to any concern that there weren't enough or sufficient letters to minimize or, hopefully, eliminate claims against Monsanto for environmental pollution damage?

A: I don't think there was a connection, as I recall, at all to anything like that.

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Q: All right. So your testimony is you didn't think that there was a connection made at all at Monsanto between sending out the August 3, 1973, letters and the attempt to minimize legal liability?

MR. CHAMBERS: Object to the form.

A: I can't recall that being part of the decision at all. I can't recall that.

Q: (By Mr. Roeder) Was it part of your decision?

A: It wasn't part of mine as I recall.

MR. ROEDER: Mark this as the next exhibit.

(Plaintiff's Deposition Exhibit No. 252 marked for identification.)

Q: (By Mr. Roeder) Exhibit 252 is a one-page document from D. L. Mellon to it says A and B and then additional people. And the (A) is "C. P. memo 7-30-1973." It says "(attached)." And then B is "C. P. Memo 7-23-1973 (attached)." Do you see that?

A: Yes.

Q: Those are the two documents we just looked at, right?

A: Yes.

Q: Okay. So that would indicate that attached

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to Mr. Mellon's memorandum would be those other memoranda, correct?

A: It would seem to indicate. I don't know if it did or didn't.

MR. CHAMBERS: When you say "other memoranda," just to clarify the record, --

MR. ROEDER: Absolutely.

MR. CHAMBERS: -- you're referring to Exhibits 122 and 250.

MR. ROEDER: 250. I believe that's right, yes.

Q: (By Mr. Roeder) Who was Mr. Mellon?

A: Mr. Mellon was a regional sales manager.

Q: Okay. And who were Craska, Fowlkes, Moore, Seger and Slowikowski?

A: They were -- they would have been salesmen reporting to Mellon.

Q: Did Mellon report to you?

A: No.

Q: Who did he report to?

A: He reported to Gossage, as best I recall. It might have been Johnson, but I think more likely Gossage, but I can't be sure of that today. But it certainly wasn't me.

Q: All right. But in any event, the salesmen

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were not managers, for example, right?

A: No.

Q: They were a grade below that?

A: Yes.

Q: Okay. They were not senior management?

A: No.

Q: You didn't consult with them with respect to matters relating to company policy?

A: No, I wouldn't have done.

Q: All right. And you would have received a copy of this letter in the ordinary course, right?

A: Yes. Yes.

Q: And the same is true, is it not, of the field sales that would be referenced in Exhibit 251? Those would not be senior management, correct?

A: I -- you know, I don't want to make any comment on that, because that's a document that I don't even know that I was involved in. You know, I see no reference to me, no date. That's not a document I recall at all.

Q: Okay. And that handwriting or, excuse me, the writing style doesn't look familiar to you?

A: Some of it doesn't quite seem like mine but, you know, I honestly cannot remember anything about this presentation or me preparing a document like

this.

Q: Exhibit 252, Mr. Mellon's memorandum of August 7, 1973, says he's going to give his salesmen "A little of the philosophy behind the mailing program." Do you see that?

A: Yes.

Q: And that's what he wrote, correct?

A: Yes.

Q: And then for number three he says "The letters are being sent to all former PCB type Pydraul and Therminol fluid users to avoid legal problems." That's what it says, right?

A: That's what it says, yes.

Q: Did you object to Mr. Mellon's characterization of why these letters were being sent on or about the time this was sent out?

A: I can't recall if I did or didn't.

Q: Now, looking at this philosophy behind the mailing program as Mr. Mellon relates it, does this refresh your recollection as to whether or not one of the intentions behind sending these letters out was as part of the legal department's intent to minimize or avoid potential liability for environmental pollution problems?

A: No, it doesn't.

Q: Okay. I've got a big document for you, but I'm not going to ask you to look all the way through it.

(Plaintiff's Deposition Exhibit No. 253 marked for identification.)

(Whereupon, excerpted portion of confidential testimony is contained in confidential transcript Volume III.)

Q: (By Mr. Roeder) Okay. I'd like to show you, sir, what's been marked previously as Exhibit 98. It should be in this binder.

A: 98.

Q: 98. Do you have it, sir?

A: Yes.

Q: All right. In July 1974 there was a dielectric seminar that Monsanto hosted, wasn't there?

A: Yes, I remember that.

Q: Okay. And you attended that seminar?

A: Yes, if it's the one I'm thinking about, yes.

Q: Okay. This was toward the end of Mr. Benignus' employment; is that correct?

A: Yes. If I recall, if this was -- our longest seminar went in the evening. Then there was

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a sort of retirement party and presentation to Paul Benignus.

Q: Okay. They were combined?

A: Yes.

Q: Now, this is the same David Wood who is now your partner who wrote this memorandum, right?

A: That's right. That's right.

Q: Okay. And this would have been a copy of the document that was sent to you, based upon what looks to be a copy of a highlighting by your name?

A: Yes.

Q: Okay. And did Monsanto adopt that policy later on as opposed to an arrow that would highlight the copy that was delivered to somebody?

A: I have no way of knowing.

Q: All right. In any event, Mr. Wood's memorandum of July 18th, 1974, says "It should become clear -- it became clear during our discussion that the program, referring to the dielectric seminar, should follow a sequence definition of environmental problems surrounding PCBs and in depth review of the defense of PCB continued use and conclusion that use of PCB can be continued." Do you see that?

A: Yes.

Q: Okay. Now, was there, in fact, a defense of PCBs that Monsanto attempted to put forth?

A: I can't recall, you know, the specifics of what that meant now. You know, defense of PCB, I can't recall what went into that.

Q: You don't recall whether Monsanto wanted to defend the continued use of PCBs?

A: My recollection is that Monsanto wanted to do what seemed appropriate for the industry and also to, you know, to support the position that the government had been taking that, you know, PCBs could continue in that regard. At the same time, industry, other people, Monsanto were looking to see if we could come up with acceptable PCB replacements.

MR. ROEDER: Could you read back my question, please?

(The requested portion of the record read by the reporter.)

Q: (By Mr. Roeder) I think that called for a yes or no question, sir.

A: It's yes, but within certain parameters, if you will.

MR. ROEDER: Okay. I'd move to strike the response to the original question to the extent it

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exceeded that.

Q: (By Mr. Roeder) What was the conclusion at this meeting? Was it, in fact, that PCBs should be continued, use of PCBs should be continued?

A: I can't recall what the conclusion was.

Q: At this dielectric seminar, General Electric was invited, correct?

A: Yes.

Q: Westinghouse was invited?

A: Yes.

Q: Any others that you could recall who were invited?

A: My recollection is that it would have been the -- from a customer standpoint, it would have been those that were continuing to buy PCBs from us for capacitor or transformer use, but I can't remember, you know, what the invitation list was. Some might have come primarily because they had known Benignus over the years and wanted to attend on that basis. I can't recall that.

Q: Did Monsanto reach a point where it believed that it had to prepare contingency plans in the event that the continued use of PCBs would not be allowed?

A: I seem to remember that being discussed at

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some point, yes. Exactly when I can't recall.

Q: Okay. What was your participation, if any, in developing such a plan?

A: I can't recall. I think if this was 197 -- getting beyond 1974, that conceivably could have fallen more on David Wood than me but, again, without knowing the dates I can't answer to you more specific.

Q: Why would that conceivably fall more on David than you?

A: Because I was from sometime -- and I can't, again, remember when. But in the mid '70s I took on other product responsibilities in addition to functional fluids. And then at some point I moved out of fluids, if that's what the group was called, functional products maybe into -- into plasticizers as director of commercial development or something. So, you know, I was proceeding to change jobs, and I can't remember when it --

Q: Did David take your job then?

A: I don't remember if he did or didn't. As I recall, he would have been responsible for dielectrics for some time after 1974 because, you know, he was brought in -- he was brought over from Europe originally to be Paul Benignus' replacement.

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Q: All right. So if the September 1974 dielectric seminar was in part Mr. Benignus' retirement party, it would have been about that time that Mr. Wood would have taken over --

A: Yes.

Q: -- Paul's position?

A: That's right. It would have been some transition period and then he would have gone on on his own. Are we finished with this binder?

Q: Yes, I am.

MR. ROEDER: Let's mark these as the next exhibits, 254 and 255.

(Plaintiff's Deposition Exhibit No. 254 marked for identification.)

MR. ROEDER: You know, I think it might -- perhaps we could break out what is part of Exhibit 255. Can I have that? Does it include more documents? Let's mark this as Exhibit 255. Put the label on that. Okay. I've remarked Exhibit 255.

(Plaintiff's Deposition Exhibit No. 255 marked for identification.)

A: So 254 we don't need.

Q: (By Mr. Roeder) You will need that. But what I've removed are a number of documents.

A: It's a different memo. I'm sorry.

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Q: So that it's a smaller document, hopefully, more manageable. For the record, Exhibit 254 is a memorandum from H. S. Bergen dated August 8, 1975. You are a blind carbon copy recipient and the letter -- strike that. The memorandum, which is Exhibit 255, is a July 28th, 1975, memorandum from Mr. Bergen to F. J. Fitzgerald and has production number 35171 through 35184. Exhibit 254 has production number TRAN 76182. Let's look at Exhibit 255 first, sir.

A: Yes.

Q: Who is F. J. Fitzgerald?

A: He was head of -- well, he was a very senior executive in Monsanto with a lot of responsibility for the chemical part of Monsanto.

Q: So he would -- was he a member of the board?

A: I'm not sure if he was then. He was later. I can't recall if he was a member of the board at that time, but he was in a very senior capacity.

Q: And Exhibit 255 is Mr. Bergen's memorandum to Mr. Fitzgerald regarding a PCB contingency plan?

A: Yes.

Q: Do you see this document?

A: Yes.

Q: Did you participate in preparing this

contingency plan?

A: I would have had a role in it I'm almost certain.

Q: While the contingency that Mr. Bergen and Mr. Fitzgerald were attempting to plan against would be an outright ban assuming an October 1, 1976, ban effective 1-1-77, right?

A: That was one scenario, yes.

Q: Okay. And there is a second contingency plan assuming that a government ban announced 1-1-76 would be effective 1-1-78, right?

A: Yes.

Q: At this point, Monsanto, is it fair to say, was reasonably convinced that some type of ban may be put in place?

MR. CHAMBERS: Object to the form.

Q: (By Mr. Roeder) Let me rephrase the question in light of the objection. Monsanto was planning for a possibility that an outright ban would be put in place in the United States as it had been put in place in Japan, correct?

A: I think that -- that would be fair from the memo that Mr. Bergen wrote, yes.

Q: Did you form a belief yourself that such a ban would be put in place?

A: I can't recall, but I have no reason to think that wasn't a possibility.

Q: As of this point in 1975, do you recall if Monsanto informed its customers of the possibility of an outright ban?

A: I can't recall, but I seem to recall, you know, that arising from time to time and some speculation on their part but, you know, I can't recall specifics. I vaguely seem to remember one or two people in the industry talking about would it be a possibility or wouldn't it.

Q: But you can't recall any specifics?

A: I can't recall the specifics, but our seminar agenda talks about our actions to find a replacement so --

Q: Well, if you look at Exhibit 254, sir, Mr. Bergen indicates that or attaches copies of contingency plans one and two, and he writes "It's clear that the environmental issues and toxicological issues are escalating both on Monsanto and its customers." Do you see that?

A: Yes.

Q: Was that correct as of the time Mr. Bergen wrote that, in your view?

A: I can't recall, but I have no reason to

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dispute what he said.

Q: Okay. We had spent some time, sir, talking about -- hold on.

MR. ROEDER: Let's mark this as the next exhibit.

(Plaintiff's Deposition Exhibit No. 256 marked for identification.)

Q: (By Mr. Roeder) Exhibit 256, sir, contains three pages in sequence of production number TRAN 79525 to 79527. I think -- and you can tell me if I've got it incorrect. But I think the last two pages should be transposed.

A: It looks a bit like it, doesn't it?

Q: But these were your thoughts regarding PCB action plans to Mr. Savage, correct?

A: Yes.

Q: Did you -- strike that. Does this memorandum accurately reflect your views as to PCB action plans at that time?

A: I'm sure it did reflect --

Q: All right.

A: -- what I thought the situation was.

Q: Now, the second page of your memorandum, which is the third page of the exhibit --

A: Yes.

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Q: -- reflects a "Post Dispatch" article of November 24, 1975, on the Chicago conference. What was the Chicago conference, sir?

A: I saw a reference to it here, and I draw a total blank on that.

Q: You draw a blank on that?

A: Yes.

Q: You don't know whether it was a hearing as to whether or not PCBs should be allowed to be continued to be used?

A: I can't remember anything about it.

Q: All right. Looking at paragraph two on the second page, the page that has production number TRAN 79527, you write "I also question (in view of the 'Post Dispatch' article) the wisdom of shipping PCB contaminated MCS 1238 or 1839 to customers. Samples are going to be demanded and tested by EPA and others. PCB contamination could blacklist the products before they get off the ground." Do you see that?

A: Yes.

Q: That's what you wrote, right?

A: Huh-huh.

Q: You also wrote "(We could be in the Pydraul PCT mess all over again)." That relates, doesn't

it, sir, to the statement that Pydrauls, when they were reformulated with terphenyls -- the statements made by Monsanto that those reformulations had no PCBs in them when, in fact, they did have PCBs in them?

A: Yes, that could be part of it.

Q: You then write "Admittedly, our customers have the problem of cleaning out their equipment, but I think they could claim with reason that this is unavoidable for some time." What did you mean by that, sir?

A: "That our customers have the problem of cleaning, but I think they could claim with reason it is unavoidable for some time." That the -- that there would be possibly several, you know, traces around for some time, you know, after they had stopped using it, and that's what I meant by that.

Q: Okay. Did you communicate that belief or that concern to any of the customers of Monsanto?

A: I can't recall, because that this -- this memo was an internal document deciding what to do apparently about some research samples. The MCS number normally implies a research type sample.

Q: But this was in the context of what should Monsanto do if the government should require an

outright ban?

A: Well, this -- this paragraph has to do with what we should be doing about samples we're sending out for customers to test.

Q: All right.

(Plaintiff's Deposition Exhibit No. 257 marked for identification.)

Q: (By Mr. Roeder) Okay. Sir, were you a member of the PCB study group?

A: I've seen that and you've asked me, I think. I've seen that name bandied about. I can't recall if that -- if there was really an "official" title or whether it was just an easy way of referring to the people that were involved in working on the PCB issue.

Q: But that would include you, right?

A: If there had been one, yes, I would have been included.

Q: All right. And for the record, you've been looking at Exhibit 257, correct?

A: Yes.

Q: Okay. And that is a memorandum from Pierre Wilkins to Mr. Earle Harbison dated December 10th, 1975. Who was Mr. Wilkins?

A: He was in public relations or some such

thing based in our New York office, I believe.

Q: How about Mr. Harbison?

A: Mr. Harbison might have been general manager or assistant general manager or something of our chemical operations at that time.

Q: Okay. Senior to Mr. Bergen?

A: Yes, definitely, yes.

Q: Up at the top it says "Sent two CCs to Fitz." That refers to Mr. Fitzgerald?

A: Yes, I'm sure it was.

Q: Was he Mr. Harbison's boss?

A: He might have been at the time. I can't recall now.

Q: On this memorandum the group assumed that the Toxic Substances Act would become law in 1976. Do you see that on the second page?

A: Yes.

Q: Okay. Is that your assumption at this time?

A: I can't remember, but I would -- probably wouldn't have any reason to dispute it.

Q: Now, in connection with this issue, sir, were you concerned about potential liability Monsanto might have as a member of the PCB study group? Were you so concerned because of its manufacture of PCBs?

A: I can't recall that I ever thought of the liability as something that was foremost in my mind or that I was doing things for that reason. That was never that I can recall an item that was high on my list of concerns.

MR. ROEDER: Mark this as the next exhibit.

(Plaintiff's Deposition Exhibit No. 258 marked for identification.)

MR. ROEDER: An additional copy of this one with a different number.

MR. CHAMBERS: Let's go off the record just a second.

(Discussion off the record.)

Q: (By Mr. Roeder) Sir, Exhibit 258 relates to recent PCB letters to Pydraul and Therminol customers, and you received a copy of this, correct?

A: Yes.

Q: Okay. This is dated May 6th, 1976. Mr. Slowikowski writes the memorandum and you're listed as a carbon copy. Production numbers TRAN 81023 to 81026. Mr. Slowikowski was who again?

A: At one time, Bill Slowikowski was a field salesman for Monsanto. He was then, I think, in a reorganization we had. He was brought in to St. Louis as a market manager in a market manager

position, and I think George Fague then went out to California as a regional -- I think he went to California and became a regional sales manager. So he would have been writing this in his capacity as a market manager. And I can't recall now exactly what products he had responsibility for, but I assume it had to do with Pydraul and Therminol.

MR. ROEDER: Okay. Mr. Chambers, this is the same document the witness has but with a different bates stamp.

MR. CHAMBERS: Thank you.

Q: (By Mr. Roeder) As of this time in May 1976, were you actively involved in this PCB issue?

A: It looks as though I still was. Also probably I know by then I must -- I had other products, in fact, but, yes, I would have been involved in it. It looks as though it went on later than I had indicated to you earlier. It was going to be moved fairly soon after that, I think.

Q: Well, this memorandum references action by the Federal Environmental Pollution Agency identifying and quantifying possible sources of PCBs entering the environment. Did this raise concerns in your mind as to Monsanto's previous production of PCBs?

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A: I don't think so, no.

Q: Did you do anything with respect to this memorandum?

A: I can't recall. It seems as though Bill had, you know, sent out suggestions in what to do, and so I assume that that went ahead and was done.

Q: That's all I have for that right now, sir. Just a couple of questions, sir. I'd like to bring you right back to the initial letter that was sent out in February of 1970. We looked at exhibit -- an exhibit that referred to a presentation to field sales, and then we looked at the exhibit that went to the plasticizers. Did you participate in reviewing that February 1970 letter before it was sent out?

A: I can't recall now if I did or didn't.

Q: Okay. Would you have reviewed other correspondence or forms of letters that would be sent out to customers with respect to PCB products other than what you testified today?

A: I can't recall. I wouldn't have seen -- I would not have seen or participated in looking at drafts or had responsibility for reviewing any letters that didn't involve products -- that didn't involve products for which I had no, you know,

responsibility. I hope I'm not using double negatives. Are you worried about that? Well, if I -- if I -- if I saw draft copies before they were sent out, that would have only been on products for which I had responsibility in a marketing or product manager function.

Q: All right. Now, you had testified -- we've gone through a large number of documents. Are these documents that you had not seen since your tenure at Monsanto in this area?

A: I've not seen them unless -- I can't recall if some came up in other depositions. And you asked me questions about the ones that I saw the day before my deposition and ones here. So, no, I have not been looking at any in the intermediate years.

Q: All right. Well, I guess that's fair, sir, because you had testified in a case involving Equitable Resources versus Monsanto. That was here in St. Louis in 1992. Do you recall that?

A: I think I vaguely recall that one.

Q: Okay. Do you vaguely recall that Mr. Chambers had represented you at that deposition as well?

A: I know, when I met Mr. Chambers again last week, I know I had met him before in a case, but I

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couldn't -- you know, you've refreshed -- you've told me who it was and that's why.

Q: Okay. And you had testified -- before I continue, in the Equitable Resources case you had reviewed the deposition testimony, had you not?

A: Yes.

Q: Transcript?

A: Yes.

Q: And I will not mark this as an exhibit now, but you had made changes to that document, correct?

A: Yes, that's my -- yes.

Q: So you had --

MR. CHAMBERS: You're referring to the errata sheet?

MR. ROEDER: The errata sheet, right.

A: Yes.

Q: (By Mr. Roeder) You had -- you had made changes to the transcript in that case, correct?

A: Yes.

Q: Okay. Is everything else that is contained in that deposition transcript true and accurate, to the best of your knowledge?

A: Yes.

Q: Okay. And if it weren't, as far as you were concerned, you would have made that change when you

reviewed the transcript?

A: I would have hoped so.

Q: All right.

A: In fact, as best I know, I did.

Q: All right. I'm not marking this as an exhibit unless Mr. Chambers wants me to. I don't want to. But there was a deposition that you had given on July 22nd, 1992, in the case of Transwestern Pipeline Company versus Monsanto Corporation, Monsanto Company. That was also taken here in St. Louis. Do you recall giving testimony in that case?

A: Yes.

Q: All right. The deposition that Mr. Chambers represented you on in was October 7th, 1992. This was July 22nd, 1992. And would you confirm that you also had the opportunity to review that transcript and make changes to that transcript as well?

A: I don't see the same set of corrections that there was on the other one.

Q: Here. It was attached to the exhibits.

A: Okay.

Q: So the answer is yes?

A: Yes.

Q: All right.

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A: Do you want me to put this back with this?

Q: Yes, why don't you put that with the transcript itself. And I'll show you, and I won't mark it. But these are the exhibits that were part of that transcript. And if you'll look through there, sir, would you just confirm that many of those exhibits are exhibits that we used in this deposition as well?

A: I don't see many, but there are certainly some that seem to be the same.

Q: You had testified in the case of Nevada Power Company versus Monsanto. Before I -- other than the changes that you made with respect to that transcript, was your testimony true and accurate in the Transwestern deposition?

A: Yes.

Q: All right. You testified as well in the Nevada Power Company case versus Monsanto on March 18th, 1993, again here in St. Louis, correct? I'll show you what's a minuscript version of that transcript.

A: Yes, the name Nevada Power, I think, rings a bell.

Q: Okay. And the testimony you gave in that case was true and accurate, correct?

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A: Yes.

Q: You testified in a case of Independent Life and Accident Insurance Company versus General Electric Company again here in St. Louis, and I'll show you a copy of the transcript in that case.

A: It's in 1986, is it?

Q: That's what I believe it says. Your testimony in that case was true and accurate?

A: Yes.

Q: All right. Just so the record is clear with respect to the Nevada Power Company case, I'll show you what are errata sheets to the original transcript, and you could confirm, for the record, if you could, sir, that you exercised your right to make changes to that transcript as well?

A: Yes.

MR. ROEDER: Could we go off the record for about two minutes?

(Discussion off the record.)

(Plaintiff's Deposition Exhibit No. 259 marked for identification.)

Q: (By Mr. Roeder) The last exhibit I'll mark in your deposition, sir, is a memorandum from Mr. Papageorge -- let's try that again. The last exhibit I'll mark in this deposition, sir, is a

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memorandum from Mr. Papageorge to Mr. Bergen and Mr. Springgate, and you are listed as a carbon copy recipient. Is this Exhibit 259? Dated February 19th, 1970, TNGS 13384 to 13389. This is a memorandum that you would have received in the ordinary course of business at Monsanto in 1970, correct?

A: Yes.

Q: Okay. And attached to Mr. Papageorge's memorandum is a memorandum from D. S. Cameron in Brussels dated February 16th, 1970, correct?

A: Yes.

Q: Okay. So you would have gotten the memorandum and the attachment?

A: Yes.

Q: All right. Who is Mr. Cameron?

A: He was with Monsanto Europe. I can't recall his position now.

Q: All right. But this is a draft letter that Mr. Cameron had prepared to send to Monsanto's United Kingdom customers of PCB products, correct?

A: Yes.

Q: Mr. Cameron indicates to Mr. Papageorge that he believed that the letter should be somewhat more detailed than the one mailed in the U.S. Do you see

that on the second page in the first paragraph?

A: Yes.

Q: Did you share that belief?

A: I can't recall that at all. At the time, I would have only been involved in plasticizers. So I probably wouldn't have had much opinion what it did for products outside plasticizers.

Q: But plasticizers were sold worldwide, correct?

A: Yes.

Q: And you had responsibility for the worldwide sales?

A: Of plasticizers.

Q: That would be one of the reasons that this memorandum would have been sent to you, correct?

A: Yes.

Q: If you look at the very last page of the document, sir, "Precautions to observe with PCB wastes." There are eight precautions that are listed here on the draft letter. Number five says "PCB waste may be disposed of by (A) burying in relatively dry ground on a site approved by the local authority." Do you see that, 5(A)?

A: 5(A), yes.

Q: Okay. Was that, in fact, an approved way of

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disposing of PCB wastes, based upon what Monsanto knew in 1970?

A: I can't -- I have no way of knowing whether it was or wasn't. I can't remember anything about that.

MR. ROEDER: All right. That's all I have, sir. Thank you for your time.

THE WITNESS: Not at all. Thank you.

MR. CHAMBERS: I don't have any questions, but we will need to have the witness read and sign.

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COMES NOW THE WITNESS, CUMMING PATON, and having read the foregoing transcript of the deposition taken on the 1st day of November, 1995, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_ _ _ _ _ _ _ _ _ _ _ _ _ _

CUMMING PATON

Subscribed and sworn to me before this

_ _ _ _ day of _ _ _ _ _ _ _ _ _ _ _ , 1995.

My Commission expires: _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Notary Public

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State of Missouri

SS.

City of St. Louis

I, Dawn L. McTeer, and Registered Professional Reporter and Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the civil cause now pending and undetermined in the Commonwealth of Kentucky, Rowan Circuit Court, Civil Branch to be used in the trial of said cause in said court, I was attended at the offices of Thompson & Mitchell, One Mercantile Center, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 1st day of November, 1995.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned

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witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this 16th day of November, 1995.

My Commission Expires September 21, 1999.

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Notary Public in and for the

State of Missouri

Dawn L. McTeer
Notary Public-Notary Seal
State of Missouri
St. Louis County
My Commission Expires 09/21/99

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