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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,)

PLAINTIFF,)

VS.)

NO. B C 026959

MONSANTO COMPANY AND)
DOES 1-200, INCLUSIVE,)

DEFENDANT.)

DEPOSITION OF ROGER E. HATTON, PH.D.
JANUARY 22, 1992

VOLUME II

G O R E R E P O R T I N G C O M P A N Y
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241-6750

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COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,)
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 PLAINTIFF,)
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 VS.) NO. B C 026959
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 DOES 1-200, INCLUSIVE,)
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 DEFENDANT.)

Deposition of Roger E. Hatton, taken on
behalf of the Plaintiff, at the law offices of Bryan,
Cave, McPheeters and McRoberts, 500 North Broadway,
in the City of St. Louis, State of Missouri, on the
22nd day of January, 1992 before Sandra L. Ragsdale,
Registered Professional Reporter and Notary Public.

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EXAMINATION

QUESTIONS BY MS. WELCH:

Q. Back on the record. Good morning, Dr. Hatton.

A. Good morning.

Q. This is a continuation of the deposition that we adjourned temporarily last night. Dr. Hatton, you understand that you're still under oath, do you not?

A. Yes, I do.

Q. Okay. I believe -- and maybe you can confirm this for me, Mr. Zimmer -- that we finished with Exhibit 35?

MR. ZIMMER: That's what I have.

Q. So I would request that this be marked as Exhibit 36 and to read the inside page of the deposition transcript. By the way Exhibit 36 is a one-page excerpt of the deposition transcript of Roger Hatton taken on March 15th, 1990 in litigation that's captioned: In re: Texas Eastern Transmission Corporation PCB Contamination Insurance Coverage Litigation. Dr. Hatton; do you recall giving testimony in this deposition?

A. Yes, I gave this deposition.

Q. And if I could direct your attention to

1 lines 13 through 20 on page 583 of the deposition
2 transcript. Does this refresh your recollection that
3 any of the past deposition testimony that you've
4 given related to litigation concerning PCB's?

5 A. No. Any such depositions that were in
6 my mind at that time, remembering back a couple years
7 ago, had to do with things that were -- occurred
8 while I was still with the company and I have no
9 records of those and I don't remember specifically
10 what the cases were.

11 Q. Do you know if those depositions that
12 you referred to in these lines involved PCB's?

13 A. They involved Pydrauls, yes.

14 Q. And do you recall what the names of
15 those litigations were?

16 A. No, I do not.

17 Q. Do you recall what the time period of
18 those depositions were, each one?

19 A. They were prior to 1982 at the time that
20 I was still employed by the company.

21 Q. Were they between 1970 and 1982?

22 A. I don't know.

23 Q. Approximately how many if you can recall
24 of those depositions involved Pydrauls?

25 A. Since I don't remember the names and so

1 on I don't know that I can give you an exact number
2 but it was one or two. Most of the depositions that
3 I gave while I was still working were on other
4 products than PCB's.

5 Q. I would like to focus on those one or
6 two depositions that involved Pydrauls. Do you
7 recall if either of those lawsuits or litigations
8 that you testified in related to any allegations of
9 damage from PCB products?

10 MR. ZIMMER: Objection. It calls for a
11 legal conclusion. You can answer, Doctor.

12 A. No, I don't. As I've already indicated
13 I don't remember these cases. I just vaguely
14 remember that this type of operation went on while I
15 was working and when the legal department called me
16 over whatever they asked I gave and I did not follow
17 up on the cases afterwards nor did I get very much
18 involved in what was going on.

19 Q. Do you recall who represented you at
20 these depositions?

21 A. Somebody from the law department.

22 Q. Do you recall the individual's name in
23 the law department?

24 A. No.

25 Q. Do you recall the name of Mr.

1 'Biceline'?

2 A. Certainly. I talked to Tom many times
3 over the past few years.

4 Q. Do you know if Mr. 'Biceline'
5 represented you in these depositions?

6 A. No, I do not.

7 Q. Do you have any idea where these
8 transcripts are located?

9 A. I can only state with certainty that I
10 don't have them.

11 Q. Okay. Do you know if Monsanto has them?

12 A. There's no way I would know whether
13 Monsanto's files contain things that I put in them
14 those many years ago.

15 Q. I'd like to turn back to Exhibit 35 if
16 we could for a minute. I have a few more follow-up
17 questions on this exhibit. This exhibit is a letter
18 if you recall, Doctor, from -- or a memo from Jack
19 Garrett of the medical department to Mr. Papageorge.
20 I'd like to refer you to the second page and ask you
21 whether you know whether at that time in February
22 1970 or any time around that period Texas Eastern was
23 informed about the danger of PCB's by any general PCB
24 information program from Monsanto?

25 A. I do not know.

1 Q. Do you have any idea who would know
2 about that?

3 MR. ZIMMER: Calls for speculation. I
4 assume you can start with maybe either the author or
5 recipient of this exhibit.

6 A. I don't have any -- I don't remember
7 seeing this memo until yesterday and I don't remember
8 exactly.

9 MR. ZIMMER: That's fine.

10 Q. I'd like to have this marked as Exhibit
11 37 please. Dr. Hatton, Exhibit 37 is a memorandum
12 from the State of Indiana State Board of Health dated
13 February 6, 1950 and it's addressed to the toxicology
14 department. My question to you is whether you have
15 any recollection at the time about hearing about the
16 incident that's described in this document, in other
17 words, the fact that several workers have reportedly
18 become ill due to the inhalation of vapor from
19 Aroclor 1258?

20 MR. ZIMMER: Assumes facts as you put
21 them not in evidence as to the truth of what was in
22 this letter which is directed to the toxicology
23 department of which Dr. Hatton is not a member. But
24 if you have heard about any of these things discussed
25 please tell her.

1 A. May I ask is this 1950 or 1960?

2 Q. I believe that it's 1950.

3 MR. ZIMMER: It's not clear from the
4 date on there but with that assumption, fine.

5 A. No. I would not have -- I do not
6 remember this specific incident and I was not
7 involved in heat transfer fluids at that time.

8 Q. You testified yesterday that you visited
9 Dr. Kelly in his office or had discussions with Mr.
10 Wheeler. Do you have any recollection of hearing
11 from either of those two gentlemen about this
12 incident?

13 MR. ZIMMER: Let me just object. The
14 question is argumentative as phrased because it's a
15 quantum leap that just because he did on occasion
16 visit Dr. Kelly or Mr. Wheeler that automatically he
17 would know about anything they learned. And so I
18 find that an unfair question in that regard. But if
19 you're asking him did he discuss this issue with
20 them.

21 Q. I think the question speaks for itself.

22 A. I don't know. I don't remember.

23 Q. I'd like to have this marked as Exhibit
24 38. If you could, Dr. Hatton, please take a few
25 minutes to read this. This is a letter to a Dr. Hunt

1 at Monsanto Company from the Department of Health,
2 Education and Welfare, Food and Drug Administration,
3 dated January 5th, 1967. Dr. Hatton, could you tell
4 me if you know who Dr. Hunt is?

5 A. Yes, Dr. Hunt had joined the medical
6 department and I believe he was trained as a
7 toxicologist but I'm not sure of his exact
8 background. But he did become a member of that
9 group.

10 Q. Do you recall approximately when he
11 became a member of that group?

12 A. No, I do not.

13 Q. And did you have much contact with Dr.
14 Hunt?

15 A. No.

16 Q. Do you know if Dr. Hunt is still alive?

17 A. I do not know.

18 Q. In or around 1967 did you ever hear
19 about this toxicology study that was performed by the
20 FDA at Monsanto's request?

21 A. I do not --

22 MR. ZIMMER: The question assumes facts
23 not in evidence. She's asking you about the subject
24 matter of this letter if this is indeed true.

25 A. I have no recollection of this.

1 Q. You have no recollections of any study
2 on chicks of the various formations of Aroclors and
3 the incidence of deaths and what the causes of deaths
4 were?

5 MR. ZIMMER: Asked and answered and I'll
6 object, the document speaks for itself and the
7 characterization of it is not necessarily accurate.

8 Q. You can answer.

9 A. I've never seen the document before.

10 Q. And you've never heard of this
11 particular study?

12 A. Not that I can remember.

13 Q. This will be Exhibit 39. This is a
14 document apparently authored by you, Dr. Hatton,
15 dated June 29th, 1964, a document entitled MCS-153,
16 Transfer to Marketing and Recommended Product
17 Strategy. Do you recognize this document, Dr.
18 Hatton?

19 A. Yes.

20 Q. Could you tell me what the document is?

21 A. The document is a report which was
22 required to be put together before a product could be
23 transferred to the marketing department. Prior to
24 this time the handling of MCS-153 had been primarily
25 as a development product. This was to transfer into

1 the marketing department and to make them completely
2 responsible for the product from then on.

3 Q. If you know could you tell me why the
4 product was transferred to the marketing department
5 at this point?

6 A. Any product that development ever worked
7 on that was going to be sold as a commercial product
8 eventually and hopefully large scale had to have a
9 transfer to a report to the marketing department and
10 this is the one for this particular product.

11 Q. So 1964 marked the approximate time when
12 the product was transferred from development to
13 marketing; is that correct?

14 A. That is correct, some time after this
15 because the document had to be prepared before the
16 exact date of transfer.

17 Q. I'm just going to ask you two questions
18 about this document. If you could turn to page 8 of
19 the document, the Bates stamp is TRANS 001347 please.
20 Read the section under the description of toxicity.

21 A. Yes.

22 Q. Is this paragraph correct, that the
23 toxicity statement for OS-81 was used for the
24 handling of MCS-153?

25 MR. ZIMMER: THE question asks for a

1 medical opinion as to the accuracy of the toxicity.

2 Q. I asked for the use. Is it correct that
3 the statement was transferred -- I'm not asking if
4 the statement is correct, if the toxicity statement
5 is correct -- but just was the same statement used?

6 A. What I wrote says that the medical
7 department has agreed to that statement and since I
8 wrote it my memory says yes, I remember that the
9 medical department supplied it.

10 Q. So there were no changes in the toxicity
11 statement when the product was changed from OS-81 to
12 MCS-153 to the best of your recollection?

13 MR. ZIMMER: Before you answer, Doctor,
14 please let me object that that mischaracterizes his
15 statement. He didn't say anything at all about
16 changes. He referred to the medical department's
17 agreement to do that as stated here. His answer also
18 evidences that he has no recollection of it other
19 than what is written in the document. The document
20 speaks for itself. I think you're asking him another
21 unfair question about whether there were changes in
22 something that he didn't supply. If you recall,
23 Doctor, whether there were any changes in the
24 document or not please tell her but don't assume
25 something just because it's written here.

1 Q. The question stands. Do you recall any
2 changes?

3 A. No, I do not recall. The complete
4 statement is attached to the document that was given
5 out to the customers.

6 MR. ZIMMER: You've answered her
7 question which was do you recall any changes.

8 A. And I don't recall whether they were
9 changed from one bulletin to the other.

10 Q. Let's turn to the statement which is
11 attached as Appendix VI, Bates stamp Tran 001380 and
12 please if you could read that. To the best of your
13 recollection, Dr. Hatton, is this the statement that
14 was given -- the toxicity statement that was given
15 for both OS-81 and MCS-153?

16 A. I don't recall. The indications in this
17 document are that it was but I do not recall it
18 specifically.

19 MR. ZIMMER: Let me caution you again.
20 She's not asking you to interpret a document. She's
21 asking you for your recollection. And so please just
22 tell her whether you recall or not and give her an
23 answer to her specific question.

24 A. I do not recall whether the exact words
25 her are the same ones that were used in the MCS-153

1 bulletin.

2 Q. Do you have any reason to doubt that
3 they were?

4 MR. ZIMMER: Don't answer that.

5 Q. Are you instructing him not to answer?

6 MR. ZIMMER: I'm asking him to let me
7 state my objection here. That was pausing him.

8 Q. If I might state something for the
9 record at this point, counsel. The record is going
10 to be replete with monologues from you basically
11 coaching the witness on how to answer a question. I
12 have no objection to you objecting, stating the basis
13 of your objection, but basically you're answering my
14 questions before the witness gets a chance to answer
15 them.

16 MR. ZIMMER: I think the record is also
17 going to be replete with questions from you about
18 documents that the witness neither authored nor was
19 copied on nor had anything to do with, that this is
20 one of the first documents that he had anything to do
21 with. However, you're focusing on a section that he
22 did not author. You're asking him whether he has any
23 doubt in his mind that that was not the same appendix
24 that accompanied two separate reports when he didn't
25 prepare the appendix. That's completely unfair,

1 calls for obvious speculation.

2 Q. The question stands.

3 MR. ZIMMER: Fine.

4 Q. The question stands.

5 MR. ZIMMER: I am compelled to make my
6 objection on that basis, Doctor. You can answer.
7 It's obviously so argumentative.

8 A. I'll answer it this way, the statements
9 that were included with both products were approved
10 by the medical department and much of the wording in
11 there was -- in fact almost all that wording is
12 theirs, not mine, and what they supplied for 153, I
13 don't remember the exact word by word interpretation
14 of it.

15 Q. Okay. But you attached what they worded
16 to your product study?

17 A. Yes, I did.

18 Q. Mark this as Exhibit 40 please and I'd
19 like you to take a few minutes to read this complete
20 document. Dr. Hatton, have you ever seen this
21 document before?

22 A. No, I have not.

23 Q. Can you tell me to the extent that you
24 recall which individuals in approximately 1970 were
25 responsible for the marketing of Pydraul products?

1 A. And the year you were referring to was
2 1970?

3 Q. That's correct.

4 A. I cannot remember the specific
5 individuals involved who would have worked at that
6 time in a product group who would have been
7 responsible for all Pydrauls.

8 Q. How about individuals who would have
9 been responsible for the Pydrauls that are included
10 in this document, in other words, Pydraul 625,
11 Pydraul AC, Pydraul AC Winter Grade, Turbinol 153;
12 those in particular?

13 A. Your question was, was the marketing
14 department and the marketing department product group
15 would have handled all Pydraul products, whatever
16 their number?

17 Q. Okay. Do you have any recollection of
18 any of those individuals?

19 A. No. I've already answered that.

20 Q. Do you have any recollection of who
21 within the Monsanto organization would have been
22 responsible for the decision to terminate sales to
23 Pydraul customers?

24 A. There's no name on this document and I
25 can't remember one.

1 Q. I'm not asking you for the author of
2 this document, I'm asking you to tell me who was
3 responsible for the termination of Pydraul products?

4 A. Same answer.

5 Q. You have no idea who that person would
6 be?

7 MR. ZIMMER: Asked and answered twice.

8 Q. If you could turn to the page Bates
9 stamped TRAN 002542, the headline on that page or
10 heading on the page is Major Customers and focus on
11 the dates that are mentioned there, 1969 sales and
12 1970 sales through March. This document is not only
13 unauthored, it's undated. And would you agree with
14 me that the indication where it says 1970 sales
15 through March places this document some time in early
16 1970?

17 MR. ZIMMER: That's your interpretation
18 of the document. I mean he doesn't have to comment
19 on a document that speaks for itself without an
20 author indicated and without a date.

21 Q. Again you're coaching the witness.

22 MR. ZIMMER: No, I'm not coaching the
23 witness and I wasn't coaching the witness before.
24 I'm objecting to the objectionable portions of your
25 question and when they're unfair I'm going to point

1 that out. So I don't appreciate your colloquy on the
2 record about how I'm coaching the witness. He
3 doesn't have to agree with your interpretation. You
4 can save it for the jury.

5 Q. It's up to the doctor to tell me whether
6 he agrees with me, not for you to tell him not to
7 agree with me.

8 MR. ZIMMER: I told you to ask a fair
9 question which is what you're supposed to be doing.

10 Q. I think that's a fair question. Do you
11 agree with me this places the document some time in
12 early 1970, Doctor?

13 MR. ZIMMER: Objection that the document
14 speaks for itself, calls for speculation.

15 A. I have no additional comment.

16 Q. Okay. I'd like you to turn to the page
17 that's Bates stamped TRAN 002540 under the section
18 Turbinol 153. Do you know if in early 1970 Texas
19 Eastern -- Strike that. Do you know if in early 1970
20 Monsanto was still selling Turbinol 153 to Texas
21 Eastern?

22 A. Your date was early 1970?

23 Q. That's correct.

24 A. Yes.

25 Q. Until March 1970?

1 A. Yes.

2 Q. Do you know from your recollection
3 whether Monsanto had informed Texas Eastern at this
4 point that it would terminate sales of Turbinol 153?

5 A. The date I remember of the meeting that
6 announced this which was preceded by some
7 negotiations was 1972. I believe sometime in
8 January.

9 Q. So your testimony is that as of this
10 point there had been no information given to Texas
11 Eastern that there would be termination of the sales?

12 MR. ZIMMER: Let me object. That
13 completely mischaracterizes what he just said. He
14 didn't comment at all on whether there was any
15 information given to them or not.

16 Q. Then I'll restate the question. To your
17 knowledge was any information given to them prior to
18 March 1970 that sales of Turbinol 153 would be
19 terminated?

20 A. I do not know.

21 Q. Your only knowledge of the termination
22 stems from that January 1972 meeting; is that
23 correct?

24 MR. ZIMMER: That also mischaracterizes
25 his testimony. He specifically referenced

1 negotiations that preceded that date.

2 A. I was aware that there were discussions
3 going on before the official meeting was held.

4 Q. Do you have any recollection of the time
5 of those discussions?

6 MR. ZIMMER: Asked and answered.

7 A. A few months. I think I answered before
8 and that's my memory.

9 Q. But certainly it wouldn't have been as
10 early as early 1970, would it have?

11 MR. ZIMMER: Argumentative, asked and
12 answered?

13 A. I do not remember.

14 Q. I'd like you to turn to the page that's
15 Bates stamped 002545 under the heading Summary, the
16 second sentence: We hope to have a straight
17 phosphate ester in 1971. Could you explain to me
18 what a straight phosphate ester is?

19 MR. ZIMMER: You're asking him to
20 comment on what this undated and unsigned document
21 refers to as a straight phosphate ester, what that
22 term, if it's one that means something to him, means.

23 Q. What does the term mean to you, Dr.
24 Hatton?

25 A. Straight phosphate ester was commonly

1 accepted by people working in these fields at that
2 time as being a material which contained only
3 chemically phosphate esters plus minor amounts of
4 additives. Phosphate esters is a chemical class of
5 materials which have been known since -- at least for
6 a hundred years -- and you can prepare phosphate
7 esters of many different chemical types. And the
8 term straight phosphate ester just means that you did
9 not put anything else in the fluid, you didn't add a
10 PCB to it, you didn't add petroleum to it, nothing
11 else other than minor additives.

12 Q. To your knowledge in 1970 was Monsanto
13 working on a straight phosphate ester?

14 A. Yes, they were.

15 Q. In 1970 did Monsanto have a commercially
16 viable straight phosphate ester?

17 MR. ZIMMER: For what application,
18 counselor? For any application?

19 Q. For any application?

20 A. We sold phosphate esters. They were
21 part of the product line when I came with the company
22 in 1946 and they were being sold commercially.

23 Q. Was there a straight phosphate ester for
24 the application that would have been used for Texas
25 Eastern gas turbines?

1 MR. ZIMMER: That calls for speculation
2 as to what would have been used for that purpose.

3 A. I can only indicate that the people who
4 were doing the research program at that time decided
5 that they needed a specific group of straight
6 phosphate esters for the Pydraul and similar
7 applications and were doing the work. Why the
8 decision was made not to take what was on the shelf I
9 do not know.

10 Q. Okay. Do you know who those people
11 were?

12 A. They were members of Bill Richard's
13 activities. I do not know the specific people. I
14 know they were in his group.

15 Q. I might have asked you this yesterday
16 but is Bill Richards still alive?

17 A. No, unfortunately within the last eight
18 or -- eight to ten months.

19 Q. Is there anybody else who you remember
20 who headed that group or had contact with the group?

21 A. I don't remember the organization that
22 well. I just don't remember organization charts that
23 well.

24 Q. Please turn to the last page of the
25 document. And I'd like you to turn your attention to

1 the paragraph that begins with: Replacement of
2 remaining Aroclor 1242 is continuing. Did you ever
3 have any discussions with anyone at all about the
4 three alternatives that are presented in this
5 paragraph to the replacement of remaining Aroclor
6 1242?

7 MR. ZIMMER: Object, the question lacks
8 foundation in that you haven't even asked him whether
9 he ever saw this document.

10 Q. I did ask him that and he answered that
11 he didn't. I'm asking him about discussion, not the
12 document.

13 A. I do not remember such a discussion.

14 Q. Did you know that Monsanto was
15 considering different alternatives for the
16 replacement of remaining Aroclor 1242?

17 MR. ZIMMER: In this time frame being --

18 Q. Early 1970?

19 A. Yes.

20 Q. What's your recollection of the various
21 choices that faced Monsanto?

22 A. That any logical program that you would
23 develop for the replacement of any given product were
24 all being considered by those who were responsible.

25 Q. Do you know what the possibilities that

1 were being considered were?

2 A. I do not remember outlining these
3 before. If you want me to sit here and speculate on
4 what they -- you might do if you had to take a
5 product off the market I can.

6 Q. I don't want speculation. I want your
7 recollection from that time period.

8 A. I do not have a recollection of all the
9 points of the replacement programs.

10 Q. Do you remember -- again I'm not asking
11 you to speculate, I'm asking for your recollection --
12 any problems that Monsanto faced in supplying a
13 replacement fluid?

14 A. I don't remember holding such
15 discussions.

16 Q. Do you remember in your general
17 knowledge of any problems that Monsanto might face?

18 A. No.

19 Q. From the time period early 1970?

20 A. No.

21 Q. I'd like to mark this as Exhibit 41
22 please. Dr. Hatton, can you tell me who C. L.
23 Bradford is?

24 A. That's Larry Bradford, usually referred
25 to. He at that point was my supervisor.

1 Q. And what was his official position?

2 A. In '71 he was in the marketing activity.
3 I'm not sure that I know his title but he had several
4 people working for him who did similar things to what
5 I did in terms of service and support products that
6 were in marketing.

7 Q. Do you know who else he had working for
8 him?

9 A. I think Jerry Davidson was in the group
10 at that time and maybe -- I won't say maybe -- there
11 was one or two others and I'm not sure of the
12 organization pattern within that group.

13 Q. Did Jerry Davidson have responsibility
14 for different products than you did?

15 A. Yes.

16 Q. Do you recall which products he had
17 responsibility for?

18 A. On February 23rd, 1971, no, I do not
19 remember which products fell under which person.

20 Q. Do you recall when Larry Bradford came
21 to Monsanto?

22 A. No.

23 Q. Who did Larry Bradford report to?

24 A. Again you're asking for my memory of
25 that organization chart at the time and I am not

1 certain. I believe it was Cumming Paton but I am not
2 certain.

3 Q. Okay. This letter refers to a product
4 called Santovac 2; is that correct?

5 A. Right.

6 Q. Was that one of the products that you
7 were responsible for at this time?

8 A. At this particular point in time I was
9 assigned the responsibility of introducing Santovac 1
10 and 2.

11 Q. And so at this time in 1971 Monsanto was
12 still selling and promoting Santovac 2; is that
13 correct?

14 A. Yes. I would like to point out that
15 Santovac 1 and 2 were very short-lived products. We
16 had not sold them as trade name products for only a
17 matter of months before they were removed from the
18 market.

19 Q. When did you first start selling them to
20 the best of your recollection?

21 A. Some time in 1970.

22 Q. And when did you stop selling them to
23 the best of your recollection?

24 A. Very shortly after the date of this
25 letter, early '71 -- no, may I retract my --

1 Q. Certainly.

2 A. I just remembered it was more like
3 Christmastime of '71.

4 Q. So you sold them for approximately a
5 year?

6 A. Yes.

7 Q. And what was the application of Santovac
8 2, in this letter?

9 A. It is a vacuum pump fluid, a working
10 fluid in a vacuum pump system.

11 Q. And referring back to our discussion
12 yesterday of closed and open systems, what kind of
13 system is a vacuum pump?

14 A. I think I indicated then that my example
15 of a closed system, the most closed system I knew of
16 was a vacuum pump application. A vacuum pump is used
17 to remove air and gases from a system. So that the
18 pressure within the system is quite low.

19 Q. And forgive me if I sound crude and
20 layman like but this again refers back to the
21 discussion of closed and open systems. Yesterday you
22 stated that you considered -- and today -- that you
23 would consider a vacuum pump the most closed system?

24 A. Yes.

25 Q. I believe yesterday you stated -- and

1 correct me if I'm wrong -- that it was even more
2 closed than a gas compressor?

3 A. Yes.

4 Q. Could you tell me why it's more closed,
5 what about it makes it more closed? To the best of
6 your ability?

7 A. That is a very difficult question
8 because of the complexity of the two systems. I'll
9 see if I can --

10 Q. If you can reduce it to its most
11 explainable?

12 A. In a vacuum pump system the fluid is
13 actually boiled, turned into vapor. The vapor then
14 passes through certain parts of the system and as it
15 does it drags the gases out of the system. The
16 working fluid in the system is then condensed, turned
17 back to liquid form, and goes through the system and
18 repeat that. So that the amount of exposure to the
19 atmosphere is extremely small.

20 Q. And could you contrast that with a gas
21 compressor?

22 A. In a gas compressor system you are first
23 dealing with much larger systems to begin with and
24 you are also circulating the fluid by pumps at
25 atmospheric pressure around through the system.

1 Atmospheric pressure and above in most cases. In a
2 vacuum pump you are dealing mostly under vacuum.

3 Q. So the difference -- I'm getting two
4 differences from what you're stating, the size of the
5 system and the atmospheric pressure of the system; is
6 that correct?

7 A. Yes, those are two significant
8 differences. Another one is that in one case you're
9 using it as a vapor in a completely closed system
10 from which it can't escape and in the other you are
11 circulating it out at atmospheric pressure.

12 Q. Can it escape in that kind of system,
13 the second system you described?

14 MR. ZIMMER: Calls for speculation as to
15 the type of maintenance observed, what application is
16 used. I mean we're getting a little far afield here.
17 The Doctor is not an engineer nor an expert in either
18 of these two types of systems. I've let you get a
19 fair amount of free expert advice from him but I
20 think that's who you ought to be consulting. The
21 question calls for speculation. You're not entitled
22 to his opinion on everything. I'm going to cut it
23 off will soon.

24 Q. I'm not asking for an expert opinion.
25 To the extent that you know?

1 A. In a vacuum system, the use of a vacuum
2 system, if you get any exposure to the atmosphere it
3 means you've broken the system and it's no longer
4 useful. It takes a major type of leak in a vacuum
5 system to get material out into the atmosphere. In a
6 circulating system of any type, breakage of a line, a
7 connection that isn't tight, things like that will
8 give leaks.

9 Q. Thank you. Correct me if I'm wrong but
10 I believe yesterday you testified that or you looked
11 at some documents from 1969, 1970 time period, that
12 there had been a decision at the corporate management
13 level to withdraw products that contained Aroclor
14 1254 and 1260. Am I wrong in that characterization?

15 MR. ZIMMER: Do you want to refer him to
16 a specific document that you looked at yesterday? Or
17 if you remember, Doctor.

18 A. I don't remember the dates that well.

19 Q. Certainly previously to 1971. We can
20 take a minute and look at the previous documents if
21 you want.

22 (A brief recess was taken.)

23 Q. Back on the record. Dr. Hatton, I found
24 two exhibits that I would like you to look at that we
25 referred to yesterday that talk about the termination

1 of PCB Aroclor 1254 and 1260. One is Exhibit 29 and
2 one is Exhibit 25 and if you could -- I'm sorry to
3 disturb your exhibits, Mr. Zimmer, thank you for
4 letting me use them -- under recommendations -- this
5 is the recommendation of the Aroclor ad hoc
6 committee, and this is the report, we're unclear who
7 the author was. But if you could read just the
8 recommendations about 1254 and 1260 and the first
9 paragraph of this report to refresh your recollection
10 about the testimony yesterday.

11 MR. ZIMMER: I'll just object that both
12 of these exhibits obviously lack foundation in that
13 he had neither seen them before nor authored either
14 of them. So to that extent, Doctor, you can read
15 this section again then respond to her questions.

16 A. And the specific question again please?

17 Q. The specific question was do you recall
18 that as you testified yesterday -- I believe I'm
19 correctly characterizing your testimony -- that
20 around this time period which is the end of 1969 that
21 there had been a decision to terminate sales of
22 Aroclor 1254 and 1260?

23 MR. ZIMMER: Doctor, if you recall that
24 that's what you should tell Miss Welch. If you're
25 only responding to confirm what these documents say

1 which have yet to be established as true, that's not
2 what you should do.

3 A. I remember that 1254 and 1260 were
4 singled out from the rest of the Aroclors.

5 Q. Okay. Do you recall ever being told as
6 this document states that there should be a
7 notification of all -- and the document underlines
8 all -- Aroclor 1254 and 1260 customers of the
9 environmental contamination problem?

10 A. I do not remember the last part of that
11 was true. I just remember that 54 and 60 were
12 considered to be different than the rest of the
13 products.

14 Q. Back to Exhibit 41 then. Do you recall
15 if Santovac 2 contained Aroclor 1254?

16 A. Yes, it did.

17 Q. I can't read the name of this client
18 here. It's Howmet Corporation. Do you recall this
19 client?

20 A. Not specifically.

21 Q. Do you recall if there was any
22 notification of this client of the hazards of Aroclor
23 1254 at this time, 1971?

24 A. Certainly the second paragraph puts him
25 on notice as to what the product is and what the

1 potential hazards may be.

2 Q. Let's review what paragraph two says.

3 It says that it contains PCB's --

4 Which some studies have shown to be an
5 environmental contaminant and that extreme
6 care should be taken to prevent any entry into
7 the environment through spills, leakage, use,
8 disposal, vaporization or otherwise.

9 Do you recall if there was any other
10 notification of any other possibilities, for
11 instance, of liver damage?

12 A. No, I do not.

13 Q. Do you recall if there was any other
14 notification of the possibility of environmental
15 damage beyond what was included in this letter?

16 A. I do not know. I do know that any such
17 questions would have been referred over to the people
18 involved and if this raised any questions he would
19 have come back to us.

20 Q. Do you have any recollection of why,
21 given the singling out of 1254 and 1260, this product
22 was still being sold as of February 1971?

23 MR. ZIMMER: He hasn't given you any
24 time frame as to when that singling out occurred.

25 Q. I believe he did.

8 1 MR. ZIMMER: The record will speak for
2 2 itself on that. I think your exhibits did and your
3 3 interpretation of them did. But the question is
4 4 argumentative.

5 A. I'd like to make this statement, during
6 6 the time period that we're talking about my functions
7 7 were extremely broad. I was primarily concerned
8 8 about aviation hydraulic fluids and that was where I
9 9 spent 95 percent of my time. Projects such as the
10 10 Turbinols, the Santovac's and these other things were
11 11 handled on an assignment basis, the boss would come
12 12 in and say will you take a day or two days and work
13 13 on this. So they were not my full-time
14 14 responsibility. The types of products I was working
15 15 with contained no PCB's at all, they were different
16 16 types of products and that's where I spent my time
17 17 and most of my intellectual curiosity was involved in
18 18 those products. And these other things were handled
19 19 on an assignment basis. I was assigned both the
20 20 product, that is of handling Santovac 2 in this type
21 21 of letter, any type of inquiry, getting it started,
22 22 and I was eventually handed the problem of getting --
23 23 telling people they couldn't buy them any more.

24 Q. Who was your boss who gave you these
25 25 assignments?

1 A. The man I sent the copy to.

2 Q. And were there any other products
3 besides Turbinol 153 and Santovac 2 that you were
4 responsible for on an assignment basis during this
5 period that contained PCB's?

6 A. I can't remember all the assignments
7 that I had. These two I have cited because I
8 remember those two.

9 Q. Okay, fair enough. Mark this as Exhibit
10 42 please.

11 (A brief recess was taken.)

12 Q. Back on the record. Dr. Hatton, do you
13 recall contacts with this client, American Hospital
14 Supply Corporation?

15 A. Only as triggered by the letter I wrote.

16 Q. Does that trigger your recollection or
17 just --

18 A. It just indicates that they were one of
19 many people that I talked to at this time period.

20 Q. Do you recall discussing with either
21 Jack O'Connell or David Swendson the composition of
22 Santovac 2?

23 A. I do not recall doing it but the letter
24 says I did.

25 MR. ZIMMER: Doctor, when a letter says

1 something you don't need to respond that that is a
2 true statement unless it jogs your memory that that
3 occurred. Her question to you was do you recall
4 talking to them about it, not what the letter said.

5 A. The direct answer to that is no, I do
6 not recall these names.

7 Q. Do you recall any concern being raised
8 by this client about the composition of Santovac 2?

9 A. No.

10 Q. Do you recall discussing with them
11 anything further beyond what's indicated in this
12 letter about the hazards of PCB's?

13 A. No.

14 Q. Now I want to apologize for the next
15 exhibit and we're going to have to take some time to
16 read it. It is extremely difficult to read it. And
17 I have been able to decipher it so if we need reading
18 out loud again I'll be glad to do it. That's just
19 the way it was produced to us. This is Exhibit 43.
20 I think perhaps I should read it because it takes a
21 while.

22 MR. ZIMMER: I just want the record to
23 indicate we're not necessarily accepting the reading.
24 I appreciate your efforts in deciphering it but it is
25 virtually illegible.

1 Q. This is dated March 30th, 1970. The
2 names in the upper right hand corner are H. S.
3 Bergen, M. L. Minckler, P. S. Park and J. E.
4 Springate. And on the left hand or left hand corner
5 it says W. D. Papageorge. The text of the letter
6 reads:

7 We have been in communication with a Dr. Hill
8 of the Ohio State Board of Health. He has
9 found PCB, particularly Aroclor 1254, in
10 samples of milk from at least three herd in
11 Ohio. He has traced this contamination back
12 to silos from three different -- to silage --
13 from three different silos. Dr. Hill reported
14 concentrations of 0.2 PPM of PCB in the silage
15 in the center of the silo and up to
16 20 PPM in the material next to the walls. He
17 also stated that concentrations in the milk
18 were between 0.1 PPM and 0.6 PPM and that some
19 of the milk had been destroyed. The silos are
20 concrete silos whose interior surfaces were
21 painted in 1967 using a formulation that
22 contained 1254. I don't know if there was any
23 other Aroclor in the formulation nor do we
24 know the coating manufacturer although this
25 could be found out if important. The presence

1 of PCB in the silage came from flaking off of
2 the material and possibly from leaching out
3 during the silage storage. At present they
4 would have to destroy about 150 tons of silage
5 which is valued at about \$30 per ton. As a
6 rough guess they consider there may be 50
7 other silos involved in Ohio that were painted
8 with the same formulation. They are also
9 looking into the fat contamination of the cows
10 themselves. All in all this could be quite
11 a serious problem having legal and publicity
12 overtones. This brings us to a very serious
13 point. When are we going to tell our
14 customers not to use any Aroclor in any paint
15 formulation that contacts food, feed or water
16 For animals or humans. I think it is very
17 important that this be done. It may be that
18 some of the customers will assure themselves
19 on the basis of non-extractability that a
20 particular formulation might be safe but I
21 think we should make a blanket recommendation
22 against these uses.

23 And it's signed R. Emmet Kelly, M.D.

24 Again you're not agreeing with the rendition but did
25 you note any differences in what you could decipher

1 from the document than what I read?

2 A. I wasn't even sure it was Hill. I
3 thought it was Mill.

4 MR. ZIMMER: Let me note there's a
5 couple of places too where there might be either
6 something redacted from the document but there's some
7 blank spaces in between paragraphs that I can't tell
8 are just white space otherwise because of the fashion
9 in which it's blotted out but I'm not sure that's
10 significant. I also want to note for the record that
11 as to this document and the one that came up
12 yesterday which on its face referred to legal advice
13 and/or recommendations, that we're not waiving the
14 privilege even if such things were inadvertently
15 produced. This one has such a reference in it and it
16 also notes a copy to an attorney named Park at the
17 top that I think was identified yesterday as such.
18 So.

19 Q. Okay. Did you ever hear about this
20 incident in 1970 of leakage into silos?

21 MR. ZIMMER: If that indeed occurred.

22 A. I do not remember hearing about it.

23 MR. ZIMMER: Assumes facts not in
24 evidence.

25 Q. Were you aware in 1970 whether there had

1 been disclosure of the hazards of PCB's to customers
2 who used Aroclors in these kinds of applications?

3 MR. ZIMMER: In paint?

4 Q. That's correct.

5 A. I don't remember. I'm not sure.

6 Q. Do you remember any concern being raised
7 about disclosure to customers who used Aroclors in
8 paint application? This is 1970.

9 A. I have no specific memory.

10 Q. Do you recall who the individuals were
11 at Monsanto who were responsible for these kinds of
12 products at this point in time, 1970?

13 A. I can only indicate that paint is not
14 considered a functional fluid if I may and therefore
15 it would not have fallen under the group of people
16 that I dealt primarily with. It would have been
17 another application group. I think we mentioned
18 plasticizers, for example. But I do not really know
19 who would handle paints.

20 Q. Okay. This is Exhibit 44. If you
21 could, Doctor, take a few minutes to read this
22 document. This document is the Minutes of a meeting
23 of the corporate management committee dated March 8,
24 1971. My first question -- I believe that most of
25 the individuals here have been previously

identified -- can you identify J. Mason for me?

A. I believe it refers -- the only J. Mason that I know is a man by the name of Jay Mason -- John Mason, I'm sorry. And he was -- may or may not have been in St. Louis at this time but was heavily involved in Monsanto Chemicals Limited in London and that is where I first met him.

Q. Did you have any contact with him in St. Louis?

A. No direct contacts other than personal.

Q. Do you know if he was responsible for any aspect of the PCB program in 1971?

A. I do not remember what his assignments were.

Q. This document refers to the six point program which was previously approved by the committee and I believe we discussed that six point program yesterday.

MR. ZIMMER: We didn't establish that it was approved by the committee, however. You've shown him documents that refer to that which he had not seen before nor participated in.

Q. This document states it was a six point program previously approved by the committee.

MR. ZIMMER: This document can state

1 whatever it wants. He doesn't have any foundational
2 information to establish that for you, that's all I'm
3 saying.

4 Q. Referring to those six points I'd like
5 to ask you if you were involved in any of those --
6 any aspect of this program? Were you involved in the
7 first point which is termination of sales of
8 non-biodegradable PCB's to non-controllable end uses?

9 A. No.

10 Q. Were you involved in the discontinuation
11 of the sale of Aroclor 1242 to NCR?

12 A. No.

13 Q. Were you involved in closing the loop on
14 heat transfer applications where fire retardancy is
15 essential?

16 A. No.

17 Q. Were you involved in replacing
18 non-biodegradable PCB's in hydraulic applications?

19 A. This is in March of '71?

20 Q. That's what this document says.

21 A. I believe previously I indicated that at
22 that point in time I took whatever assignments would
23 be added to my list of projects and certainly the
24 Santovac and the Therminol we've talked about were
25 included.

1 Q. Do you mean Turbinol or Therminol?

2 A. Turbinol, I'm sorry. Therminol is the
3 previous one which I didn't have any contact with,
4 Therminol.

5 Q. So we're speaking of Turbinol and
6 Santovac?

7 A. Yes.

8 Q. Here it says that conversion has been
9 completed through substitution of phosphate esters
10 and terphenyls. Was conversion completed as of March
11 '71 with respect to Turbinol?

12 MR. ZIMMER: As you use that term,
13 Doctor, not reacting to whatever the author of this
14 had in his or her mind.

15 A. I do not know.

16 Q. Had there been conversion at Texas
17 Eastern to phosphate esters at this point in 1971 to
18 your knowledge?

19 A. No.

20 Q. Had there been conversion to terphenyls
21 at Texas Eastern to this point?

22 A. I have no specific knowledge as to what
23 that statement means.

24 Q. What is a terphenyl?

25 A. A chemical compound which has three

1 benzene rings instead of two like a biphenyl.

2 Q. Were you involved in closing the loop on
3 non-biodegradable PCB's in transformer applications?

4 A. No.

5 Q. Were you involved in closing the loop on
6 capacitors?

7 A. No.

8 Q. This is Exhibit 45. This is a letter
9 apparently from you dated May 10th, 1971 to a Mr.
10 Galbraith of the Tennessee Valley Authority. First
11 of all, who is Mr. Benignus?

12 A. Paul at this time period was working in
13 one of the product groups in marketing which would
14 have been responsible for dielectric fluids.

15 Q. Do you know if he's still alive?

16 A. The last I heard he was still alive.

17 Q. Was he on the same level of supervisor
18 as Mr. Bradford?

19 A. I believe so.

20 Q. Did you report to him?

21 A. No.

22 Q. Would it be safe to say that as of May
23 10, 1971 that Monsanto was still promoting Turbinol
24 153?

25 A. Yes.

1 Q. Do you recall any discussions with Mr.
2 Galbraith or anybody else at Tennessee Valley
3 Authority about the possible hazards of PCB's?

4 A. No.

5 Q. This is Exhibit 46. Take a few minutes
6 to read this, Dr. Hatton. Exhibit 46 is a memorandum
7 apparently authored by you, Dr. Hatton, and it's to
8 Mr. Bradford. First of all, who is P. D. Fowlkes?

9 A. Fowlkes. If I can just correct
10 pronunciation.

11 Q. Fowlkes, okay. If you recall. If you
12 don't recall.

13 A. The question is whether I remember this
14 document?

15 Q. No, no, no. Could you tell me who Mr.
16 Fowlkes is?

17 A. Research chemist that worked for Stark
18 in research. I thought I'd answered your question,
19 I'm sorry.

20 Q. Turn to page 2 and could you tell me if
21 you know what Fyrquel 150 was?

22 A. Yes, Fyrquel 150 was a competitive
23 straight phosphate ester fluid marketed at this time
24 I think by Stauffer Chemical. The reason I cannot
25 answer this exactly is that the business was

1 transferred from Celanese Chemical to Stauffer and I
2 do not recall the exact dates.

3 Q. By straight phosphate ester do I take it
4 to mean that there were no PCB's in this product?

5 A. Straight phosphate ester does not mean
6 no PCB's in the product. But yes, there were no
7 PCB's in this product.

8 Q. Do you know -- if you do please tell
9 me -- when Fyrquel 150 first came on the market if
10 you know?

11 A. No, I do not know.

12 Q. When were you first aware of Fyrquel
13 150?

14 A. Early fifties.

15 Q. Referring to the last paragraph, in this
16 memorandum you refer to the deep seated prejudice of
17 turbine OEM's toward chlorine containing lubricants.

18 A. On page 2, okay. I had the wrong page,
19 I'm sorry.

20 Q. What were you referring to?

21 A. There was a phenomenon that was found in
22 turbines, both gas turbines and steam turbines, which
23 involved a bearing problem. This bearing problem was
24 eventually related back to a chlorine additive that
25 was used in petroleum base lubricants. An example in

1 the laboratory did show that OS-81 could cause the
2 same phenomenon under certain circumstances, test
3 procedures. This whole field then led the
4 manufacturers of these turbines to be concerned about
5 anything that contained any kind of chlorine, either
6 as a major component or as an additive.

7 Q. So that's what that refers to is the
8 bearing problem?

9 A. Yes.

10 Q. On the last page of the document, page
11 3, under Recommendation you recommend that Monsanto
12 follow option 2 which is: Run field test and sell
13 fluid at same price as MCS-974. Can you tell me, do
14 you recall what you were recommending that there be a
15 field test run of, of what fluid?

16 A. No, I don't remember.

17 MR. ZIMMER: Don't speculate, Doctor.

18 A. I don't remember what specific fluid I
19 was referring to here.

20 Q. The last line says:

21 It will also provide us with an alternate
22 if Turbinol 153 must be discontinued due to
23 the PCB situation.

24 Do you recall what that alternate was?

25 A. No, I do not recall.

1 Q. Do you recall whether it was a straight
2 phosphate ester that you were referring to?

3 MR. ZIMMER: Asked and answered. If he
4 doesn't recall what it was --

5 A. I can only speculate so.

6 Q. Referring back to the first page where
7 it refers to MCS-979 and MCS-974, are those
8 PCB-containing lubricants?

9 A. I do not remember.

10 Q. Referring to New Formulation, under the
11 paragraph New Formulation, please read that
12 paragraph. This paragraph says that this formulation
13 does not contain PCB's. Does that help you
14 understand what option 2 refers to on the last page?

15 MR. ZIMMER: She's asking you if this
16 refreshes your recollection as to what the last page
17 option 2 means.

18 A. It still does not refresh my memory
19 completely so I cannot answer what option 2 really
20 meant.

21 Q. Does it refresh your memory partially?

22 MR. ZIMMER: He's indicated he can't
23 answer what option 2 is so he would be speculating.

24 Q. Do you recall at this time which was May
25 of 1971 if Monsanto was actively considering non-PCB

11 1 lubricants for at least AGTL?

2 A. Yes.

3 Q. Exhibit 47. If you could please read
4 this document. This is a call report dated 6-28 '71.
5 First of all, I note, Dr. Hatton, that there are
6 initials here that are crossed out. The initials are
7 REH. Are those your initials?

8 A. Yes. I assume so. My initials are REH.

9 Q. Okay. Have you ever seen this call
10 report before?

11 MR. ZIMMER: Except as it may have been
12 shown you by counsel.

13 A. I do not recall this one at all.

14 Q. Have you ever seen a document with
15 initials crossed off before, a call report?

16 MR. ZIMMER: At any point in time?

17 A. At any --

18 Q. I'm just wondering what it means that
19 your initials are crossed off if you know. Does it
20 mean that you saw the document or didn't see the
21 document if you know?

22 MR. ZIMMER: The question is if you know
23 what that means, that there are initials REH here
24 that are crossed out, tell her. How could you
25 possibly know that?

1 Q. Don't coach the witness please.

2 MR. ZIMMER: I'm not coaching the
3 witness. I'm talking about how silly your question
4 is.

5 Q. I'm entitled to ask whatever questions I
6 want and if it's silly it's silly and the record will
7 show that. Please answer the question.

8 A. I do not know specifically what it means
9 in this case.

10 MR. ZIMMER: That's it, the question has
11 been answered, Doctor.

12 Q. Did you ever have any discussions with
13 anyone listed on this document about this call to
14 Texas Eastern Transmission Company?

15 A. I do not recall discussions on this
16 specific call, no.

17 Q. Who is Mr. Ford if you know?

18 A. At that point the Shreveport location
19 fell under the Atlanta office in the Monsanto
20 organization and Mr. Ford was in charge of the
21 Atlanta office.

22 Q. And by the Shreveport location you're
23 referring to Texas Eastern's office there I assume?

24 A. Yes.

25 Q. And who is Mr. Regold if you know?

1 A. That does not ring a bell.

2 Q. Do you by any chance know when Mr.
3 Stegen started working at Monsanto?

4 A. No, I do not.

5 Q. Would it be safe to say that as of this
6 date which is May 28th, 1971 that Monsanto was still
7 selling Turbinol 153 to Texas Eastern?

8 A. What was the premise of your question?

9 Q. Would it be safe to say that as of this
10 date of the call report --

11 A. Yes.

12 Q. It was still being sold?

13 A. Yes.

14 Q. Turn to page 2 please. Did you ever
15 hear that a competitor, possibly Stauffer, had
16 discussed Monsanto's position on the PCB problem as
17 of this date?

18 MR. ZIMMER: Discussed it with whom?

19 Q. Apparently Texas Eastern.

20 A. I was generally aware that our
21 competitors were discussing the problem.

22 Q. Did you hear any specifics of what they
23 had said about the PCB problem?

24 A. No.

25 Q. Do you know how you were aware of that?

1 A. Reports back from field salesmen.

2 Q. Would those field salesmen include Mr.
3 Stegen?

4 A. Might have.

5 Q. How about Mr. Frederiksen?

6 A. I talked to all our field salesmen.

7 Q. What other field salesmen to your
8 knowledge had contact with Texas Eastern?

9 A. Based on documents that counsel has
10 shown us in the past I think I've seen some from Carl
11 Clay.

12 Q. Was this of concern to Monsanto?

13 MR. ZIMMER: Was what of concern, Carl
14 Clay was having contact --

15 Q. The discussion about the PCB problems
16 coming from competitors.

17 MR. ZIMMER: Hang on a second before you
18 answer that, Doctor. The question is incredibly
19 argumentative. It implies that there was more than
20 one discussion about that. All he has told you that
21 he knows so far is that he was generally aware that
22 competitors brought that issue up.

23 Q. My question is perfectly legitimate,
24 which is, was this of concern to you, you --

25 A. To me personally, yes.

1 Q. Why was it of concern to you?

2 A. Anything any competitor said about any
3 products of ours I would be concerned about.

4 Q. Were you aware of anything that was done
5 in response to these discussions --

6 A. No.

7 Q. -- with customers? Are you aware of
8 whether there was any discussion with Texas Eastern
9 in response to these discussions?

10 A. I was not present at this meeting so I
11 do not know what the response was.

12 Q. Did you hear what the response was after
13 the meeting?

14 A. No.

15 Q. Okay. Did you hear about the concern
16 that was expressed apparently by Mr. Woods that
17 Turbinol 153 had been reformulated without Texas
18 Eastern's knowledge?

19 MR. ZIMMER: The question assumes facts
20 not in evidence.

21 A. This I do remember being of concern and
22 being raised by John Frederiksen and that my answer
23 back to him was that we would not formulate any
24 product with any of our customers without informing
25 them and specifically we would not reformulate 153

1 without informing Texas Eastern.

2 Q. So to your knowledge there had been no
3 such reformulation to this date?

4 A. That's right.

5 Q. Doctor, this document as it came to us
6 includes two call reports. I'm just going to ask you
7 about the first call report on the first page and
8 we'll talk about the second call report later in
9 another document. So if you could just read the
10 first page. This is Exhibit 48. This is a call
11 report dated July 1st, 1971 and it is from apparently
12 Don Stegen and once again your initials appear
13 crossed out. Do you recall ever seeing this call
14 report?

15 A. Not specifically.

16 Q. Did you do you recall ever hearing a
17 report of this call?

18 A. I believe I received an invitation to
19 come to Houston to visit with Ollie Fletcher.

20 Q. Did you in fact do that? In response to
21 this?

22 A. And we're talking about this time
23 period?

24 Q. Yes.

25 A. No, I did not make a special call to

1 Houston.

2 Q. Did you at any time during the summer of
3 1971 make a special visit to Houston to have dinner
4 with Mr. Fletcher?

5 A. Unfortunately, no.

6 Q. Or to meet with him?

7 A. No.

8 Q. So you had no contact -- no direct
9 contact with him during this time period?

10 A. We're talking the summer of 1971?

11 Q. Yes.

12 A. No.

13 Q. Did you ever have contact with Ted
14 Harrison?

15 A. No, I did not.

16 Q. This is Exhibit 49. Please read the
17 document. Actually I'm most interested in paragraph
18 4 on the second page. You can scan the rest and just
19 get to paragraph 4. This is a document dated
20 September 16th, 1971 from Mr. Bradford to Mr.
21 Papageorge and you're cc'd on the top. Do you recall
22 ever seeing this document before?

23 A. Yes.

24 Q. Directing your attention to paragraph 4,
25 is it true that there was a decision made not to

1 approach Texas Eastern until Monsanto received
2 approval from General Electric for the use of the new
3 NC esters in gas turbines?

4 MR. ZIMMER: I'll object that the
5 question misstates what the document says but you can
6 answer, Doctor.

7 A. The next step in the program would have
8 been to have gotten General Electric approval and
9 that would have been important at that point.

10 Q. Prior to contacting Texas Eastern?

11 A. Prior or coincident with.

12 Q. To this date which was September 1971 do
13 you know if that contact had been made?

14 A. With whom?

15 Q. General Electric?

16 A. I'm having very much problems with dates
17 by month. We're talking about here many years ago.

18 Q. It's a long time ago.

19 A. And whether it was just before, just
20 after or during I cannot pin down without further
21 documents.

22 Q. Okay, that's fair. Do you have any
23 recollection of when General Electric if ever
24 approved the use of the NC esters?

25 A. No, I do not remember the date that we

1 were given permission to use them in turbines.

2 Q. Do you recall if you were given
3 permission?

4 A. Yes, we were.

5 Q. Do you recall who the individuals who
6 contacted General Electric were?

7 A. I made at least one visit there. In
8 this time period, yes.

9 Q. Anybody else?

10 A. I do not remember who was with me at
11 that time.

12 Q. Why was it important to receive approval
13 from General Electric for the use in gas turbines?

14 A. In doing functional fluids work it is
15 extremely important that the people who make the
16 machinery in which you are going to put the fluid
17 know that you're doing it and why you're doing it and
18 what may happen. Therefore the manufacturers of
19 equipment were always contacted by us with regard to
20 any new products we were trying to introduce. On
21 that basis then since GE sells the turbines we would
22 go see them.

23 Q. Why would you not go see Texas Eastern
24 first?

25 A. We had long -- many years before -- seen

1 Texas Eastern on the lubrication of gas turbines back
2 in the early fifties. We had discussed with Ollie
3 Fletcher the fire-resistant turbine lubricants and
4 reports are available indicating this. So they were
5 well aware that we were working in the area of
6 lubricants for these turbines. So they knew what was
7 going on in general terms and specifics in most
8 cases.

9 Q. But in this document which is dated
10 September 1971, which is as we'll see close to the
11 termination of this product, it states that there's
12 no plan to approach Texas Eastern until approval is
13 received from General Electric. So the question is
14 time specific.

15 MR. ZIMMER: Right. And the question
16 assumes facts not in evidence, that that was the plan
17 that was adopted. And since once again he didn't
18 author the document nor make that decision as he's
19 already told you, it's argumentative.

20 Q. So the extent you know why was the
21 decision made?

22 A. No, I don't know.

23 MR. ZIMMER: If that decision was made.

24 A. Both had to be done. I have no
25 reference as to which was due when.

1 Q. Do you recall visiting General Electric
2 before you visited Texas Eastern with respect to this
3 issue?

4 A. I think I indicated before that the
5 visit to General Electric was to discuss approval of
6 a new product, therefore -- period.

7 Q. Do you recall whether that occurred
8 before there was a discussion with Texas Eastern
9 about the termination of Turbinol 153?

10 A. Any discussion with anybody?

11 MR. ZIMMER: Any discussion?

12 Q. That's correct.

13 A. No, I do not recall.

14 Q. Do you recall if it was in the fall of
15 1971 that you visited GE?

16 A. The visit to GE?

17 Q. Yes.

18 A. Somewhere around that time, yes.

19 Q. I apologize again. This document is
20 hard to read but again this was the way it was
21 produced to us. This is a Customer Problem Report
22 dated October 4th, 1971 and apparently authored by
23 you, Dr. Hatton. So if you could take a minute to
24 read it please. Dr. Hatton, do you recall this
25 customer, Columbia Gulf Transmission?

13
1 A. I remember a trip down to Louisiana in
2 which I visited with them.

3 Q. Is it safe to say that as of this date,
4 October 4th, 1971 that Monsanto is still selling
5 Turbinol 153?

6 MR. ZIMMER: To whom?

7 Q. To Columbia Gulf Transmission.

8 MR. ZIMMER: You haven't established
9 that they ever sold it to them. But if you know,
10 Doctor.

11 A. I am not really aware that they were a
12 customer at this time or I don't remember that they
13 were.

14 Q. This is Exhibit 51. I'd like to direct
15 your attention on this report which is dated October
16 6, 1971 and which you're cc'd on to the two
17 paragraphs that refer to Columbia Gulf Transmission
18 and to Solar Engineering and ask this if that
19 refreshes your recollection that indeed Columbia Gulf
20 Transmission was a customer for Turbinol 153 in at
21 least September 1971 as was Solar Engineering?

22 MR. ZIMMER: Do you understand the
23 question, does this document refresh your
24 recollection if they were? You don't need to assume
25 this document is true.

1 A. I still do not remember that Columbia
2 Gulf was an actual customer.

3 Q. Have you ever seen this document before?
4 Do you remember seeing this document before?

5 A. I do not recall ever seeing this
6 document before.

7 Q. Do you have any doubt that the cc
8 reflects that the document was sent to you?

9 MR. ZIMMER: Calls for speculation as to
10 whether it was or not.

11 Q. I asked him if he had any doubt.

12 MR. ZIMMER: It's argumentative too.

13 A. My name's on it. I assume I saw it.

14 Q. Do you have any recollection of whether
15 Columbia Gulf or Solar Engineering were told about
16 the hazards of PCB's at this time?

17 MR. ZIMMER: Argumentative since he
18 doesn't even remember them being customers.

19 A. I have no memory.

20 Q. Do you have any knowledge of why the
21 decision was made to continue to sell at this time
22 Turbinol 153 to new customers?

23 MR. ZIMMER: Again that assumes facts
24 not in evidence. If you're aware of such a decision,
25 Doctor, you can answer.

1 A. As long as the product was still being
2 sold we would sell it to anyone.

3 (A brief recess was taken.)

4 Q. Back on the record. This is Exhibit 52.
5 The first page other than a little bit of the
6 handwriting is completely illegible but I'd like to
7 focus on the second page. Just turning to the first
8 page for a minute. Dr. Hatton, is this your
9 handwriting on the first page?

10 A. Yes.

11 Q. So I take it that -- do you recall
12 seeing this document before?

13 A. No, I do not.

14 Q. This is a document dated October 12th,
15 1971 from Larry Bradford to Don Stegen and Dr. Hatton
16 and Mr. Ford are cc'd on it. The front page has a
17 handwritten note by Dr. Hatton. Turning your
18 attention to the first paragraph, Mr. Bradford states
19 that the economics of Turbinol 153 have been severely
20 damaged in recent months. Do you remember during
21 this time period of knowing that that was a concern
22 of Monsanto?

23 MR. ZIMMER: Calls for speculation as to
24 what Mr. Bradford meant by that. You can respond.

25 A. No, I don't recall that.

1 Q. Do you recall any worries about the
2 success in terms of marketability of Turbinol 153 at
3 this time?

4 A. Your question was regarding the
5 marketability?

6 Q. The marketability of Turbinol 153?

7 A. What do you mean by marketability?

8 Q. The ability to sell the product at the
9 time. Let me rephrase that. The receptivity of
10 customers to the product at this time.

11 A. No.

12 Q. Do you recall whether Monsanto was
13 actively promoting the product at this time, October
14 1971?

15 MR. ZIMMER: Objection, it's vague and
16 ambiguous as to what actively means. You can answer,
17 Doctor.

18 A. The product was still in our line. I do
19 not know.

20 Q. Do you recall any discussion with either
21 Mr. Bradford, Mr. Stegen or Mr. Ford about what is
22 referred to in this paragraph about the long and good
23 history on this product with Texas Eastern in
24 reference to sales to Columbia Gulf?

25 A. I'm quite aware of the past history. I

1 was involved in much of it. The past history was
2 also reported in the public record at that time in
3 some papers by Ollie Fletcher in the technical
4 literature and by Earl Farmer in 1970 that related to
5 the successful use by Texas Eastern of these
6 products.

7 MR. ZIMMER: I think her question was do
8 you recall discussing that history.

9 Q. I'll rephrase the question. Do you
10 recall any of these gentlemen discussing that history
11 with Columbia Gulf at the time of 1971?

12 A. No, I do not recall discussing it.

13 MR. ZIMMER: Do you recall any of these
14 gentlemen doing that which calls for speculation.

15 Q. Do you recall them discussing it with
16 you?

17 A. I do not, no.

18 Q. Did any of them come to you and ask for
19 that history that it so that it could be conveyed to
20 Columbia Gulf?

21 A. I don't know.

22 Q. Does this help refresh your recollection
23 about sales to Columbia Gulf at this time?

24 A. No.

25 Q. This is Exhibit 53. I just want you to

1 look at the front page which appears to be a letter
2 from you to a Mr. David Moy at Columbia Gulf
3 Transmission Company on October 25th, 1971. Dr.
4 Hatton, does this help refresh your recollection
5 about any contacts with Columbia Gulf during this
6 period?

7 MR. ZIMMER: About any contacts with
8 them?

9 Q. Yes.

10 A. I still do not remember other than the
11 documents you've given me.

12 Q. Do you recall telling them that all the
13 lab data which are attached point to good fluid
14 performance?

15 A. I do not recall telling them that.

16 Q. So you similarly don't recall telling
17 them about any of the hazards of PCB's; is that
18 correct?

19 MR. ZIMMER: Asked and answered.
20 Assumes facts not in evidence. The document speaks
21 for itself.

22 Q. You can answer.

23 A. The answer is no.

24 Q. This is Exhibit 54. This is a letter
25 dated October 26th, 1971 from Mr. Papageorge to Mr.

1 Mason. Have you ever seen this document before?

2 A. No.

3 Q. Were you aware in October of 1971 that
4 samples were being sent of Aroclor 1254?

5 A. No.

6 Q. Were you aware in October 1971 that
7 Aroclor 1232 was no longer being manufactured?

8 MR. ZIMMER: Assumes facts not in
9 evidence.

10 A. No.

11 Q. I think we established yesterday that
12 Aroclor 1232 was one of the components of Turbinol
13 153; is that correct?

14 A. I would have to refer to the earlier
15 documents to confirm that but I believe we --

16 Q. Let's refer to them. Referring to
17 Exhibit 3 which you testified yesterday accurately
18 referred to the composition. Is Aroclor 1232 still
19 part of the composition?

20 A. Yes.

21 Q. Okay. My question to you, if you know,
22 was Turbinol 153 still being manufactured as of
23 October 1971 given that at least this document states
24 that Aroclor 1232 was no longer being manufactured?
25 If you know.

1 MR. ZIMMER: Now you made it
2 argumentative. The question is defective in that
3 sense. If you know.

4 A. I do not remember specific manufacturing
5 details.

6 Q. Who would know whether Turbinol 153 was
7 still being manufactured at this time; do you know?

8 A. The manufacturing department.

9 Q. Would that be Mr. Springate who would be
10 responsible for that?

11 A. I do not know who it was at that time.

12 Q. This is Exhibit 55. Just take a few
13 minutes to read this which is a document to T. L.
14 Gossage from C. L. Bradford and N. T. Johnson. You
15 might scan it and I'm going to ask you questions
16 about the section on Turbinol 153. Who is N. T.
17 Johnson?

18 A. N. T. Johnson was in the marketing area
19 primarily working on Pydrauls.

20 Q. And what was his -- was he the same
21 level as Bradford or did he report to Bradford if you
22 know?

23 A. I don't know.

24 Q. Okay. Do you remember knowing that
25 Texas Eastern would require 5,000 hours of running

1 time before agreeing to the switch, to a replacement
2 for Turbinol 153?

3 MR. ZIMMER: It assumes facts not in
4 evidence.

5 A. I don't remember the exact time but I'm
6 sure that -- I do not know -- remember the exact time
7 that would be required for testing.

8 Q. Do you know if any time was required for
9 testing?

10 A. Certainly, always, by the manufacturer.

11 Q. And would it be -- to your knowledge was
12 it an extensive time or a short time?

13 MR. ZIMMER: The question is vague and
14 ambiguous as to what extensive or short mean. He's
15 told you he doesn't know what the time required is or
16 was.

17 A. The time varied by manufacturer.

18 Q. Do you know in particular what GE's time
19 was?

20 A. No. As I've indicated before no, I
21 don't.

22 Q. Okay. On the second page these authors
23 recommend that Monsanto absorb the cost to incinerate
24 the current charge of Turbinol 153. Do you know if
25 in fact Monsanto did absorb that charge?

1 A. I do not know.

2 Q. Do you know if at this time which is
3 November 1971 that it was accurate that there was no
4 approved fire-resistant lubricant that can directly
5 replace Turbinol 153?

6 A. I do not know exactly what they mean by
7 the term approved in this case.

8 Q. Do you know if there was no GE-approved
9 fire-resistant lubricant that could replace Turbinol
10 153?

11 A. I can't remember.

12 Q. This is Exhibit 56. This document has
13 many attachments to it. I would just like you to
14 take some time and read the print part of the
15 documents rather than the attachments. This appears
16 to be a document dated December 8th, 1971 and appears
17 to be written by Tom Gossage or maybe it was written
18 by Bradford and Davidson to Tom Gossage and you're
19 cc'd on it. I think that's correct. Have you ever
20 seen this document before?

21 A. I don't remember seeing it.

22 Q. Do you have any recollection of when you
23 first heard about the decision to terminate sales of
24 Turbinol 153 to Texas Eastern?

25 A. No, I do not have a specific date.

1 Q. Do you have a general date, general time
2 frame?

3 A. In about the time of this memo.

4 Q. So some time late fall 1971 would be
5 accurate?

6 A. Yes.

7 Q. Where it refers to -- let me back up.
8 Do you recall who told you of that decision?

9 A. No.

10 Q. Do you recall a meeting you were at
11 where the decision was announced?

12 A. No.

13 Q. Do you have any recollection of any
14 communication about the decision?

15 A. No.

16 Q. Did the decision come as a surprise to
17 you?

18 A. I cannot remember.

19 Q. Turning to the paragraph under Objective
20 where it states that the objective is to be out of
21 PCB's, PCT's by June 30th, 1972. Do you recall
22 agreeing with that plan, that there would be
23 termination within six months?

24 MR. ZIMMER: Objection, that it was up
25 to Dr. Hatton to agree or otherwise.

1 A. I was asked --

2 MR. ZIMMER: Let me finish, Dr. Hatton,
3 before you go on.

4 A. My temper got mad at this one.

5 MR. ZIMMER: The point is this is not
6 authored by him as you already pointed out and
7 whether he agreed or disagreed the implication is
8 that somehow that was requested of him. Go ahead,
9 Dr. Hatton.

10 A. I worked for Monsanto, Monsanto made the
11 decision and I have my choice of leaving or abiding
12 by their decision.

13 Q. Okay. That's fair. Did you have any
14 personal feelings about the six-month termination
15 plan?

16 A. I do not remember specific feelings.

17 Q. Were you worried about your relationship
18 with Texas Eastern given this plan?

19 A. Of course.

20 Q. Why were you worried?

21 A. I was worried about all of my customers.

22 Q. What made you worried?

23 A. Any time I would change relations or
24 products with a customer you worry until you get it
25 accomplished.

1 Q. Were you worried that Monsanto would
2 lose the business?

3 A. That would be part of the concern.

4 Q. What was the other part of the concern?

5 A. Inconvenience to a customer and to their
6 customers if it affected production or some other
7 reason. For example, if they were pumping gas up
8 north and they suddenly had to change all of that
9 that would be of concern to me. If it was a
10 hydraulic area and they were selling die cast parts I
11 would be concerned about their customers as well.

12 Q. So in the Texas Eastern case were you
13 worried that it would cause a shut down of the
14 pipelines?

15 A. Yes.

16 Q. Turn to page 4 of the document please.
17 I want to direct your attention to the section under
18 Field Sales/Product Group Relationship. Reference is
19 made to a meeting that will be held in St. Louis
20 which will focus on strategic salesmen and their
21 managers who will be in attendance. Do you know if
22 such a meeting was held?

23 A. No, I don't remember.

24 Q. So you've no recollection of attending
25 such a meeting?

1 A. No.

2 (A brief recess was taken.)

3 Q. Back on the record. This is Exhibit 57.

4 Would you know take a few minutes to read this
5 exhibit. Let the record reflect that there's
6 consultation and conversation between Mr. Zimmer and
7 Mr. Hatton.

8 MR. ZIMMER: So stipulated. I thought
9 that since I represented him I could do that.

10 Q. You can. I just want the record to
11 reflect it. Could you tell me if you know who Don
12 Olson is?

13 A. Yes, and the title given for him is
14 correct.

15 Q. He is director of sales?

16 A. He was director of field sales at this
17 time period.

18 Q. Do you know if he's still alive?

19 A. Yes.

20 Q. Did you report to him or have any
21 relationship, business relationship, with him?

22 A. No, I think Larry Bradford's boss would
23 have been on an equivalent level with him but I can't
24 remember for sure who Larry's boss was. But it was
25 up in the management ladder at Monsanto, above where

1 I was in the functional fluids activities.

2 Q. Have you ever seen this letter before?
3 Except in the context of your deposition dated 1-25
4 '90. It's noted that it was Exhibit 23 to that
5 deposition. But other than that have you seen this
6 document before?

7 A. Yes, I have. I received copies of all
8 of the withdrawal letters.

9 Q. Directing your attention to numbered
10 paragraphs 1 and 2 at the bottom of the first page.
11 Is it fair to say or is it accurate to say that
12 Turbinol 153 has a chlorine content of less than 54
13 percent?

14 A. Yes, it is.

15 Q. Do you recall Monsanto saying or stating
16 at this time, which is February 18th, 1970, that
17 PCB's with a chlorine content of less than 54 percent
18 which would include Turbinol 153 have not been found
19 in the environment and appear to present no potential
20 problem to the environment?

21 MR. ZIMMER: Saying or stating in what
22 context, in this letter?

23 Q. In any context do you recall that?

24 A. No. I read the letter. But recalling
25 it other than from the letter, no, I don't. I do not

1 remember that.

2 Q. But you testified earlier that you
3 recall getting this letter?

4 A. Yes.

5 Q. But you don't recall that statement as
6 part of the letter?

7 MR. ZIMMER: That's not what he said.
8 He said he didn't recall the statement independently
9 of the letter.

10 A. So I received the letter, I just accept
11 it.

12 Q. Does this refresh your recollection
13 about that statement having been made at that time?

14 MR. ZIMMER: Asked and answered. He
15 says he doesn't remember the statement except for
16 reading it in the letter.

17 Q. But I'm trying to understand the time
18 period that he understands.

19 A. The letter was dated February 18th. We
20 were undoubtedly -- I was supplied a copy either at
21 that time or within days.

22 MR. ZIMMER: Don't start guessing,
23 Doctor. You don't know -- unless you remember when
24 you got it?

25 A. I don't remember the day that the letter

1 arrived in my office, no, but I do remember having
2 received the letter.

3 Q. Do you remember ever telling anybody at
4 Texas Eastern or showing them this letter or a letter
5 like this?

6 A. I do not remember showing it to them,
7 no.

8 Q. Do you remember ever telling Texas
9 Eastern that Turbinol 153 had not been found in the
10 environment and appeared to present no potential
11 problem to the environment?

12 A. I do not remember making such a
13 statement.

14 Q. Do you know if any such statement was
15 ever made to Texas Eastern?

16 A. I do not.

17 Q. This is Exhibit 58. This is a memo from
18 Dr. Hatton to Mr. Bradford dated December 13th, 1971.
19 Could you please take a little bit of time to read
20 this document. Do you recall writing this
21 memorandum?

22 A. Yes.

23 Q. Was this memorandum written if you
24 recall at Mr. Bradford's request?

25 A. Yes.

1 Q. And what did he ask you to do that
2 prompted this memorandum?

3 A. He asked me to assist him in the
4 withdrawal of the PCB-containing Turbinols at Texas
5 Eastern. And in formulating the steps that might be
6 required to do this.

7 Q. Do you have any recollection of how
8 quickly you generated this memo after his request?

9 A. No, I do not.

10 Q. Do you have any recollection of when he
11 first asked you to formulate this program?

12 A. No.

13 Q. Do you recognize the handwriting over to
14 the left, the marginalia?

15 A. No.

16 Q. It's not your handwriting?

17 A. That is not my handwriting.

18 Q. Does this help refresh your recollection
19 at all to any more specific date about when you were
20 first told about the termination of Turbinol 153
21 sales?

22 A. No, it does not.

23 Q. Were there any meetings that were held
24 in this time frame that involved a large group of
25 people besides you and Mr. Bradford about the

1 termination program?

2 MR. ZIMMER: That implies that there
3 were meetings between him and Mr. Bradford about the
4 termination program.

5 Q. He just testified that Mr. Bradford
6 asked him.

7 MR. ZIMMER: He didn't say he had a
8 meeting with him, he said he was asked to do a memo.
9 That's different. But you can answer, Doctor.

10 A. I do not recall any meetings.

11 Q. Do you recall if it was your
12 recommendation that Texas Eastern be given six months
13 regardless of whether they had a hold harmless
14 agreement in which to stop using Turbinol 153?

15 A. I do not recall the source of that
16 statement.

17 Q. Okay. Referring to point A, what were
18 you referring to when you wrote about the general
19 Monsanto PCB announcements?

20 A. My reference was with regard to I think
21 the previous exhibit that was sent out by Don Olson.

22 MR. ZIMMER: Doctor, when you say I
23 think, remember that she's not asking you to guess or
24 speculate. If you have a recollection that that's
25 what you mean please tell her. If not --

1 A. I recollect receiving that as being the
2 general announcement to the world that we were
3 withdrawing and I think that's what we were referring
4 to.

5 Q. This document, the previous exhibit, if
6 you might look at it, is dated February 18, 1970 and
7 still promotes Turbinol 153.

8 MR. ZIMMER: I completely disagree with
9 that characterization, counsel. It doesn't promote
10 Turbinol 153. That's your read on it.

11 Q. It says that Turbinol appears to present
12 no potential problem to the environment. This cannot
13 be a termination --

14 MR. ZIMMER: Save your argument for the
15 jury. There's not a pending question.

16 Q. There is a pending question.

17 MR. ZIMMER: So this could not be a
18 termination document, is that the question?

19 Q. The question is do you recall what the
20 general Monsanto PCB announcement referred to?

21 A. I do not -- I am not sure what this memo
22 would include in that.

23 Q. Do you know if there was any general
24 Monsanto PCB announcement that postdated this letter?

25 A. Postdate means after, doesn't it?

1 Q. Yes.

2 A. I can't recall the specific.

3 Q. Do you recall if management agreed to
4 the cut-off date of June 1st, 1972?

5 A. Would you define what you mean by
6 management?

7 Q. Whoever had the ultimate decision-making
8 authority about the sale of this product?

9 A. And the question then was whether I
10 remember any other documents?

11 Q. No, do you know --

12 A. Would you rephrase the question or I
13 mean not rephrase it, wrong word. Would you repeat
14 the question please?

15 Q. The question was whether you knew
16 whether management agreed with the cut-off date
17 that's stated in this document of June 1st, 1972?

18 A. That date was supplied to me by
19 management.

20 Q. Can you tell me what you understood
21 about why Monsanto wanted a hold harmless agreement
22 from Texas Eastern?

23 A. I was not involved in that negotiation
24 so I do not understand all of the implications.

25 Q. When was a hold harmless agreement first

first presented to you?

2 A. It was not presented to me. This was
3 handled by others in my group. Specifically I
4 believe Larry Bradford.

5 Q. When did you first learn about the hold
6 harmless agreement?

7 A. I do not remember.

8 Q. Do you recall if at this time which was
9 December 1971 MCS-1223 was available?

10 A. MCS-123 was available in quotation marks
11 meaning that samples and data had been developed on
12 the product.

13 Q. In what sense was it not available then?

14 A. I do not have a specific date on
15 manufacturing startup and I cannot say on quantities,
16 I can only talk about the data.

17 Q. Do you know if it was contemplated that
18 MCS-1223 would be the replacement fluid for Turbinol
19 153?

20 A. We contemplated that a straight
21 phosphate ester would be the replacement fluid.
22 MCS-1223 and MCS- --I think you said 1122, you
23 referred to both products -- were straight phosphate
24 esters in different viscosity ranges.

25 Q. Those were the two products that were

1 considered replacement fluids for the Turbinol 153?

2 A. Yes.

3 Q. Exhibit 59. This appears to be a letter
4 dated December 15th, 1971 by you, Dr. Hatton, to a
5 Mr. K. Flanagan at Industrial Hydraulics Department.
6 Would it be fair to say that Turbinol 153 was still
7 being marketed as of December 15th, 1971?

8 A. Yes.

9 Q. Do you know why this was, given that
10 there were already plans to withdraw it, according to
11 the last document, from sale to Texas Eastern?

12 A. No.

13 Q. Did this raise certain concerns in your
14 mind?

15 MR. ZIMMER: If he doesn't know why it
16 was then how can he comment on your argumentative
17 question?

18 Q. He knew that it was being marketed and
19 he also knew that it was being withdrawn.

20 MR. ZIMMER: There were discussions
21 about its withdrawal.

22 Q. I'm wondering whether he was concerned
23 about this seeming contradiction.

24 MR. ZIMMER: That's a problem, it's a
25 contradiction to you perhaps but he hasn't given you

1 any --

2 Q. We'll find out if it's a contradiction
3 to him.

4 MR. ZIMMER: My objection stands.

5 A. I cannot remember personal feelings from
6 twenty years ago so I do not know how I felt about it
7 right then.

8 Q. Did you raise any questions with anybody
9 about why it was still being marketed to one customer
10 when it was being withdrawn from another?

11 A. I don't remember.

12 Q. Do you recall ever telling anybody at
13 Industrial Hydraulics Department that there were
14 concerns about the product and in fact it was being
15 withdrawn from use with Texas Eastern?

16 A. I recall no discussions with them.

17 Q. Do you know who would have made the
18 decision to sell the Turbinol 153 to this customer?

19 MR. ZIMMER: Objection. That lacks
20 foundation incredibly because there was no such
21 decision either evidenced in this letter or anything
22 else that you've shown him. You can answer, Doctor,
23 if you know that such a decision was made.

24 A. I think your specific question related
25 to if I knew who made the decision, I do not.

1 Q. Did anybody ask you to take care of this
2 customer, Industrial Hydraulics Department?

3 MR. ZIMMER: Same objection. It implies
4 that it's a customer. This letter indicates on its
5 face that it relays information.

6 Q. Customer or potential customer?

7 A. I'm not aware of the source of this
8 inquiry.

9 Q. By the way do you have any recollection
10 about whether Industrial Hydraulics Department ever
11 bought the Turbinol 153?

12 A. I have no information.

13 Q. This is Exhibit 60. This is a
14 memorandum dated January 7th, 1972. I'm not sure who
15 wrote this but the -- oh, C. L. Bradford wrote this,
16 Larry Bradford, and your name is on here, Dr. Hatton,
17 as is Tom Gossage's. So could you take a minute to
18 review this. Do you recall seeing this document
19 before?

20 A. No.

21 Q. This document states that it's -- or it
22 mentions the REH memo to CLB of 12-13 '71 and the CLB
23 memo to TLG of 12-15 '71. Exhibit 58 is the 12-13
24 '71 memo to CLB. So is it a fair assumption that
25 this is referring to that memo?

1 MR. ZIMMER: Whether it's an assumption
2 or not this memo was not authored by Dr. Hatton and
3 so asking him what's in the mind of someone else and
4 what he referred to is an impossibility. You can
5 deduce that for yourself.

6 Q. You can respond to the question.

7 MR. ZIMMER: No, actually I'm going to
8 instruct him not to answer it because --

9 Q. If he can't determine it he can say
10 that.

11 A. I can't -- I don't know.

12 Q. Thank you for coaching the witness.

13 MR. ZIMMER: I didn't coach the witness.
14 You don't need to tell me how to handle the witness.
15 And, Doctor, if I instruct you not to answer
16 something please don't do so.

17 Q. My understanding under California law is
18 the only time a witness should not answer is when the
19 material is privileged and if you have a new
20 interpretation of California law I'll be happy to
21 take that up to the judge. Your understanding should
22 be in accord with mine because you've attended many
23 depositions.

24 MR. ZIMMER: Thank you for noting that I
25 have indeed and I can instruct my witness to answer

when I feel it's appropriate or not to answer when I feel it's appropriate.

Q. Do you recall, Dr. Hatton, that there was at this point, January 7, 1972, that there had been a decision made not to sell Turbinol 153 to Texas Eastern after January 15th, unless they signed a hold harmless agreement?

A. I was aware that such a program was proposed. I do not remember when it was approved, when it was started and what the dates specifically were.

Q. Do you remember disagreeing with the termination as of January 15th, 1972 unless the hold harmless agreement was signed?

MR. ZIMMER: He just gave you an answer that said he did not remember when the dates were. So the question is just -- we keep doing this, you keep trying to insert language, either words in his mouth or have him assume what somebody else meant in a particular document. That is argumentative, calls for speculation and it completely flies in the face of what his prior answer was.

Q. If you can answer.

A. Larry Bradford was in charge of this withdrawal program. I did the items on the dates

1 told.

2 Q. Referring back to your December 13th,
3 1971 memo which was Exhibit 58, you recommended
4 termination as of June 1st, 1972. And it seems
5 irrespective of the hold harmless agreement. I'm
6 just wondering if you know did Larry Bradford ever
7 tell you why that recommendation was not accepted?

8 A. I do not remember.

9 Q. Okay. Did Larry Bradford ever tell you
10 why the hold harmless agreement was necessary?

11 A. I do not remember discussion on that
12 question.

13 Q. Anyone else besides Larry Bradford ever
14 tell you?

15 A. Not to the best of my memory.

16 Q. Exhibit 61 is a letter dated January
17 7th, 1972 to Ted Harrison signed by Larry Bradford
18 and enclosing a hold harmless agreement or a proposed
19 agreement that's entitled Special Undertaking. If
20 you could briefly review the cover letter which is
21 what I'm going to ask you questions about.

22 A. Yes.

23 Q. Do you remember seeing this letter
24 before?

25 A. No.

1 Q. Do you know whether the date of January
2 7th, 1972 is the first time that anyone at Texas
3 Eastern was informed of the withdrawal of Turbinol
4 153?

5 A. I do not know.

6 Q. Did you ever inform anybody else prior
7 to that date?

8 A. I do not remember.

9 Q. Did anyone ever tell you why Larry
10 Bradford wrote that if you or Ollie Fletcher would
11 like to bring our lawyer with us please phone me. Do
12 you ever recall any discussion about a lawyer being
13 present?

14 A. No, I do not.

15 Q. Do you know if there were lawyers
16 present at the meeting that's referred to?

17 A. No, I do not.

18 Q. It states here that the meeting is set
19 up for January 14th which is one week subsequent to
20 this letter. Do you recall any discussions with
21 Larry Bradford about the immediacy of the meeting
22 after the letter?

23 A. I do not recall anything in that
24 specific time frame that you spelled out. Larry
25 Bradford was my boss and as as such we discussed the

1 general things to be discussed at such a meeting.

2 Q. Did you yourself have any concerns about
3 having a meeting one week subsequent to this
4 notification?

5 A. Since I didn't know about this
6 notification I don't know as to how I could have any
7 concerns about it.

8 Q. When did you first hear that you were
9 supposed to be present at a meeting on January 14th?

10 A. The specific date I can't tell you the
11 first time I knew that the meeting was set for the
12 14th of January.

13 Q. Was it in 1971 that you first knew about
14 the meeting?

15 A. The assignment that Larry Bradford gave
16 said I should be prepared to get involved in a
17 meeting with Texas Eastern and as to the preparation
18 of the document which you've already put in that I
19 wrote for the program I do not know when he said we
20 were going to be at a certain place at a certain
21 time.

22 Q. Do you remember any concerns that you
23 had about the meeting?

24 MR. ZIMMER: Like what, whether there
25 would be lunch served, what time of day it would be?

1 Q. Whatever comes to his mind.

2 A. No.

3 Q. Were you worried about your relationship
4 with Texas Eastern?

5 A. I've already testified that I was
6 concerned about withdrawal of any product from any
7 customer. That would include Texas Eastern.

8 Q. Say the week before the meeting were you
9 particularly concerned about the meeting?

10 A. I can only answer no.

11 Q. You felt completely confident about the
12 meeting?

13 MR. ZIMMER: Don't answer that.

14 A. Wait a minute.

15 MR. ZIMMER: Don't answer that. That is
16 completely argumentative and you can call the judge
17 to see if he'll make him answer that or not. Don't
18 harass him, just ask him questions.

19 Q. I'm trying to determine whether he was
20 worried or his anxieties increased as the meeting
21 approached.

22 MR. ZIMMER: And he told you he did not
23 think they did so. He said --

24 Q. So you felt completely confident of
25 that.

1 MR. ZIMMER: Don't say anything else,
2 Doctor. Let her ask you a question.

3 Q. What kinds of preparation did you make
4 for the meeting during the week of January 7th?

5 MR. ZIMMER: January 7th, 1972 what
6 preparation did you make, Doctor?

7 A. I don't know.

8 Q. This is Exhibit 62. This appears to be
9 a call report from Don Stegen and you are cc'd on
10 this, Dr. Hatton. Could you take a few minutes to
11 read it. Who is Joe Kleffner; do you know?

12 A. Joe Kleffner worked in marketing
13 services.

14 Q. What were his responsibilities to the
15 extent that you know?

16 A. Scheduling deliveries, handling orders,
17 handling direct customer complaints and such similar
18 things. I don't know all his functions by any means.

19 Q. Did Mr. Stegen ever tell you why he was
20 not prepared to discuss replacement products for 153
21 as of this date on January 7th?

22 MR. ZIMMER: The question assumes facts
23 not in evidence, that that is indeed how Mr. Stegen
24 felt.

25 Q. That's what he stated in his memo.

1 MR. ZIMMER: That may be and of course
2 you can ask him tomorrow when you take his
3 deposition.

4 Q. You can answer the question.

5 A. I do not remember.

6 Q. Did he ever tell you what he explained
7 to Ted about the action he was preparing to take or
8 Monsanto was taking regarding PCB's?

9 A. I don't remember that direct
10 conversation.

11 Q. Do you remember any discussions about
12 this call report or the discussion between Mr. Stegen
13 and Mr. Harrison?

14 A. I do recall being told that some drums
15 delivered down to Texas Eastern were leaking and I --
16 since this was not my area I just indicated to
17 whoever called that they should contact somebody in
18 marketing services which they did.

19 Q. Okay. Any other discussion that you
20 recall about this pertaining to the upcoming meeting?

21 A. All I remember from this, from the call
22 that I received, was that the drums were leaking. I
23 do not remember any of the rest of that.

24 Q. This is Exhibit 63. This is a call
25 report dated February 8th, 1972 about a call on

19

1 January 14th, 1972. And the author of the report
2 appears to be you, Dr. Hatton. And if you could I'd
3 like you to take some time and read it. Okay?

4 A. Yes.

5 Q. Have you seen this document before or do
6 you remember authoring this document?

7 MR. ZIMMER: Which question do you want
8 him to answer?

9 Q. The second question, do you remember
10 authoring this document?

11 A. Yes.

12 Q. And is this a report of a January 14th
13 meeting which is mentioned in the previous letter,
14 January 7th letter?

15 A. Yes.

16 Q. Just some identification. Who is Mr.
17 Herber?

18 A. February '72, a group leader in
19 research.

20 Q. Why would he have been on this cC List?

21 A. The letter refers to providing data on
22 phosphate ester replacement fluids and John would
23 have been my source of such data.

24 Q. Do you know if he was at least partially
25 responsible for developing the phosphate esters?

1 A. He reported to Bill Richard and I do not
2 know what John's specific assignment was at this
3 time.

4 Q. How about Mr. Slayton?

5 A. In 1972 the United States was divided
6 into four geographical sales territories or districts
7 or some such title. And they were headed by various
8 people. And I believe at that time that Slayton had
9 the New York office.

10 Q. Why would he have been copied on this
11 document?

12 A. I don't know.

13 Q. How about Mr. Hansen?

14 A. Hansen worked -- Doug Hansen worked out
15 out of the -- I believe the office was in Santa
16 Clara, it was the West Coast office, and I believe
17 that's where it was at that time.

18 Q. Was he in the sales group?

19 A. Yes.

20 Q. And do you have any idea why you cc'd
21 him on this document?

22 A. Same answer as with Slayton, that list
23 was obviously provided by the department.

24 Q. How about Mr. Shimley?

25 A. I do not remember what his position was

1 in this.

2 Q. Do you recall why it fell to you to
3 write this report?

4 A. I was the lowest man on the totem pole
5 at the meeting.

6 Q. That answers it. That means that in
7 terms of responsibility that you were lower than Mr.
8 Stegen or Mr. Frederiksen?

9 A. They were in a completely different
10 operation than I was. They were in field sales where
11 I was working out of the product groups in St. Louis
12 and I do not know the relationship of members between
13 the two groups.

14 Q. Okay. Do you recall who did most of the
15 speaking in this meeting for Monsanto if anyone did?

16 A. I discussed the new products, the new
17 products and their potentials, and that was my part
18 of the meeting. Mr. Bradford did most of the
19 discussion of the problems.

20 Q. And how about Mr. Stegen or Mr.
21 Frederiksen?

22 A. I do not remember specifically their
23 inputs.

24 Q. And if you recall do you recall who did
25 most of the speaking for Texas Eastern?

1 A. No, I do not remember.

2 Q. Did you expect that there would be as
3 many as the nine people from Texas Eastern present as
4 were present?

5 A. Did I expect that there would be that
6 many?

7 Q. Was the meeting larger than you had
8 expected?

9 A. I can't answer that question. I don't
10 remember my expectations at the time.

11 Q. Do you recall the general tenor of the
12 meeting?

13 A. Somewhat strained but generally business
14 like.

15 Q. Turning to the part on Summary, the
16 statement that Texas Eastern will not sign such a
17 letter and has sufficient material to finish out the
18 current season. Do you recall what was said if
19 anything by Texas Eastern about why they would not
20 sign the special letter?

21 A. I do not recall.

22 Q. Do you recall any discussion after the
23 meeting with anybody from the Monsanto group about
24 this decision by Texas Eastern?

25 A. I do not recall a specific conversation.

1 Q. Do you recall generally conversations?

2 A. Two people from St. Louis would not have
3 traveled to Shreveport and back again without
4 discussing something. So I do not remember what we
5 discussed.

6 Q. Do you remember being disappointed that
7 they wouldn't sign the special letter?

8 A. I do not remember being disappointed.

9 Q. Turning to the second page, first full
10 paragraph: The environmental situation with the
11 PCB-containing Turbinol 153 was discussed in detail.
12 To the extent you can recall could you relate for us
13 what was said concerning the environmental situation
14 with PCB-containing Turbinol 153?

15 A. That part of the meeting was handled by
16 Larry Bradford and I do not remember what was -- what
17 he said.

18 Q. Do you have any recollection -- and I
19 know the answer is you don't recall but I'm going to
20 mention some things to see if they jog your memory --
21 do you recall whether he mentioned that there was
22 danger to wildlife?

23 A. I do not recall.

24 Q. Do you recall whether he mentioned that
25 there was some evidence that PCB might cause liver

1 damage?

2 A. I do not remember.

3 Q. Do you recall whether he talked about
4 the biodegradability of PCB's?

5 A. I do not remember.

6 Q. Okay, fair enough. Do you recall
7 whether anybody at Texas Eastern raised questions
8 during this discussion?

9 A. I do not recall any specific questions
10 or people.

11 Q. Do you recall whether there was a lively
12 give and take or whether it was primarily a
13 presentation about this specific issue?

14 A. Which?

15 Q. The environmental situation with the
16 PCB-containing Turbinol 153?

17 A. No, I do not recall that portion of it.

18 Q. Do you recall whether any portion of the
19 meeting was a lively give and take or was it just a
20 presentation?

21 A. I recall some questions, some general
22 questions being asked me about the replacement
23 products.

24 Q. Do you recall --

25 A. And the reason I remember that they were

1 there is because I made such notes so that I could
2 take care of the specific questions later.

3 Q. Did you retain those notes or did you
4 throw them away?

5 A. Threw them away as soon as I did this.

6 Q. Do you recall any of those questions?

7 A. Yes. They asked for more properties on
8 the replacement products, general compatibilities of
9 the replacement products and such questions. And
10 requested that I come back as soon as I had the data
11 and give them a detailed presentation on the
12 products.

13 Q. Did you have the data with you?

14 A. No, I did not.

15 Q. And by replacement products are we
16 referring to the two formulations that you referred
17 to earlier?

18 A. MCS-1122 and MCS-1223.

19 Q. Referring to the last paragraph on the
20 page. Was there discussion about GE approval of the
21 product?

22 A. Yes.

23 Q. Can you relate for us what that
24 discussion was?

25 A. Questions related to when, if and how

such approvals would be given.

Q. Were you able to supply any answers?

A. The answer supplied at the time was that we were working with General Electric in that area.

Q. This is Exhibit 64. This is a call report dated February 3rd, 1972 by Mr. Stegen to Mr. Bradford and you're cc'd on it. Do you recall seeing this document before?

A. No, I do not recall it.

Q. Do you remember ever being asked for your position on mixing Turbinol 153 with MCS-1223?

A. Yes.

Q. And do you recall what your response was?

A. My response to the first time it came up was that we would run some data and that I would be back to Texas Eastern with it when it was obtained.

Q. And that was approximately this time period?

A. Approximately is correct.

Q. Do you remember what your ultimate response to that question was?

A. That they were mixable and compatible.

Q. That they were?

A. Yes.

1 Q. And what was that based on?

2 A. Based on laboratory tests.

3 Q. Do you know if that decision was
4 reported to Texas Eastern?

5 A. Yes, it was.

6 Q. This is going to be Exhibit 65. This is
7 a call report dated February 4th, 1972 which I guess
8 is a call to Texas Eastern at Shreveport in which you
9 appeared to be present at this meeting. Can you take
10 a minute to look at this. And you appear to be the
11 author as well. Dr. Hatton; do you recall authoring
12 this document?

13 A. I recall the visit to Texas Eastern.

14 Q. Can you tell me the purpose of the
15 visit?

16 A. To provide further information on the
17 potential replacement products.

18 Q. Was anything else discussed besides the
19 replacement products at this meeting that you can
20 recall?

21 A. After reading the document things were
22 brought to mind but not prior to that.

23 Q. Anything else that's not reflected in
24 the document, for instance --

25 A. No.

1 Q. Were there any discussions about why
2 Turbinol 153 had been terminated?

3 A. I do not remember specific discussions.

4 Q. I'd like to turn your attention to the
5 second page, the second full paragraph that begins:
6 The results of the undersigned's visit. It says it
7 was pointed out that this group -- meaning General
8 Electric -- will probably not give approval but will
9 hopefully indicate no objections to running actual
10 turbine tests on MCS-1223 or other synthetic
11 phosphate esters. Do you know why, was it ever
12 stated to you why the GE gas turbine group would not
13 give approval?

14 A. The explanation given by the General
15 Electric people was that this was a change in their
16 policy and that instead of approving products for use
17 they would give a no objection to using the various
18 fluid suppliers and I do not know why General
19 Electric changed their positively.

20 Q. I'm not asking for that, just whether it
21 was product specific or as you seemed to indicate an
22 across the board change?

23 A. This was a general change.

24 Q. So I take from that that you could
25 proceed to use the MCS-1223 in GE turbines from this

1 point forward, am I wrong?

2 A. No, that is correct.

3 Q. The next page, page 3, the paragraph
4 that begins with Walter Woods, the first full
5 paragraph, there's a reference to the opposition by
6 certain units of GE to chlorinated materials. Is
7 this referring to the bearing problem that you
8 mentioned before?

9 A. Yes.

10 Q. Does it refer to anything else?

11 A. No.

12 Q. Do you know where things stood at the
13 end of this meeting in terms of the decision by Texas
14 Eastern with respect to the new product?

15 A. I don't have any specific recollection.

16 Q. Exhibit 66. I apologize. This Exhibit
17 is very hard to read. Dr. Hatton, Exhibit 66 is a
18 letter dated May 11th, 1972 apparently to Mr. Colvin
19 and Mr. Hughes from an E. L. Riall and it talks about
20 an incident in 1972 of apparent liver damage to a Mr.
21 Gordon Wood who was a station attendant at the
22 Huntsville station. Do you have any recollection of
23 any communication regarding this incident?

24 A. No, I do not.

25 Q. Have you ever had any contact with Mr.

1 Riall?

2 A. Yes.

3 Q. Can you tell me who he was?

4 A. Works for Texas Eastern and I think
5 primarily in a supervisory type of function over
6 stations, gas pumping stations.

7 Q. Have you ever heard of a Mr. Gordon
8 Wood?

9 A. I do not remember that specific name.

10 Q. Were you ever contacted by anybody at
11 Texas Eastern about any personal injury that they
12 claim may have stemmed from PCB's?

13 A. I do not remember beyond this document.
14 And again we're back to the same place. I'm sorry.

15 MR. ZIMMER: I just don't want you to
16 take as true what's in this document, Doctor, since
17 you didn't write it. That's my only point. He's
18 already said he didn't remember.

19 Q. Do you recall seeing this document
20 before this time?

21 A. No.

22 Q. Do you recall any discussions with Dr.
23 Kelly about any personal injury at Texas Eastern?

24 A. No, I don't recall any.

25 Q. Would it have been out of the ordinary

1 or was it out of the ordinary for you to be contacted
2 about a personal injury with a product that you were
3 involved with? Was it unusual?

4 MR. ZIMMER: Don't answer anything yet.
5 To be contacted did you say about personal injury?

6 Q. Regarding a personal injury stemming
7 from a product you were involved with.

8 MR. ZIMMER: It's vague and ambiguous as
9 to what out of the ordinary means. Go ahead, Doctor,
10 if you have an answer.

11 A. My contacts at various companies would
12 have referred -- may have referred the question to me
13 since I was the one they knew within Monsanto and any
14 such question would have immediately been either
15 transferred or the number given so that they could
16 contact the medical department because I would not
17 attempt to answer such questions.

18 Q. Okay. This is Exhibit 67. This is a
19 call report dated July 24th, 1972 or the date of the
20 call is that. The memo was dated August 2nd, 1972.
21 It appears to be authored by Dr. Hatton. If you
22 could take a minute to read it please, Doctor. I
23 want to direct your attention to page 3 of this
24 document. First before that do you recall authoring
25 this document?

1 A. Yes.

2 Q. Do you recall the visit to Texas Eastern
3 that it describes?

4 A. Yes.

5 Q. I want to direct your attention to the
6 first paragraph and particularly to Walter Woods's
7 question as to what Monsanto's responsibility would
8 be along with Texas Eastern if the EPA banned PCB's
9 and told Texas Eastern that they would have to change
10 out all the remaining units. Do you recall that
11 question from Mr. Woods?

12 A. Yes.

13 Q. Do you recall indicating that you'd have
14 to take that question back to management?

15 A. Yes.

16 Q. And did you take the question back to
17 management?

18 A. Yes.

19 Q. Did management ever respond to the
20 question?

21 A. I do not know.

22 Q. Did they ever respond to you?

23 A. I do not recall such a response but --

24 Q. Do you recall ever providing Texas
25 Eastern with a response to the question?

1 A. No.

2 Q. Was the question ever asked to you again
3 subsequent to this time?

4 A. I don't remember.

5 Q. By the way who did you convey this
6 question to in management?

7 A. To Bill Papageorge although he is not
8 copied in on this. That was the gentleman to whom I
9 talked.

10 Q. So you actually had a face-to-face
11 discussion with him when you got back to Monsanto?

12 A. Yes.

13 Q. Do you recall what he said to you in
14 response to the question?

15 A. He'd take care of it.

16 Q. Did you have any subsequent discussions
17 with him about that question?

18 A. No.

19 Q. Or about the status of the question?

20 A. No.

21 Q. This is Exhibit 68. This is a
22 memorandum dated August 28th, 1972 authored by Mr.
23 Davidson to Mr. Paton and you appear to be cc'd on
24 this document. And if you could please take a minute
25 to look at it.

1 Q. Have you ever seen this document before?

2 A. I do not recall.

3 Q. Do you recall the call report or the
4 meeting that you had some time in August with Texas
5 Eastern?

6 A. No.

7 Q. Do you recall a decision some time that
8 summer around August by Texas Eastern that they would
9 not use Turbinol 1122 in the gas turbine?

10 A. Yes, I recall that decision but I do not
11 remember who told me or if I heard it in a meeting.

12 Q. What was the impact of that decision on
13 Monsanto as far as you know?

14 MR. ZIMMER: The question is very vague
15 and ambiguous. If you have any understanding of
16 that, Doctor, you can tell her. Do you mean
17 economically, I mean it could be anything.

18 A. My only memory here is that I was really
19 not handling this project and I think it resulted in
20 somebody being assigned to it full time.

21 Q. By this project you mean the change
22 over?

23 A. I mean the development of new turbine
24 lubricants.

25 Q. I know you didn't author this but Mr.

1 Davidson states that we are essentially dead in the
2 water for six to eight months until we are able to
3 convince TransCanada Pipeline or another gas pipeline
4 to test Turbinol 1122 this fall. I don't want you to
5 tell me what was in Mr. Davidson's mind but I would
6 like to know whether to you there was a serious
7 impact by Texas Eastern not using the Turbinol 1122?

8 A. What do you mean by serious?

9 MR. ZIMMER: Yes, the document speaks
10 for itself. The question is vague and ambiguous,
11 calls for speculation.

12 Q. I want to know if there was any -- why
13 it was so critical or whether it was critical for
14 Turbinol 1122 to be used by Texas Eastern?

15 MR. ZIMMER: Same objections. Whenever
16 we start using words like that that are argumentative
17 and thrust your interpretation of a particular event
18 into the question it makes it objectionable.

19 Q. He can tell me if it was not critical.

20 MR. ZIMMER: What do you mean by
21 critical. That's vague and ambiguous in and of
22 itself. He's just told you that he wasn't even
23 involved in this program to get the other lubricants
24 started.

25 A. If you'll define what you mean by

1 critical then I will --

2 Q. How important was it to Monsanto to have
3 Texas Eastern use Turbinol 1122?

4 A. In terms of product development, having
5 some customer use the product was quite important.

6 Q. And why was that so?

7 A. Because future application of the
8 product would depend upon how the first customer's
9 equipment worked.

10 Q. At this approximate point in time which
11 is August 1972 was any customer using Turbinol 1122
12 to your knowledge?

13 MR. ZIMMER: Using -- do you mean that
14 to include testing, trialing?

15 Q. Yes, in use.

16 A. 1122 or 1223 or both?

17 Q. First 1122?

18 A. We had a field trial at TransCanada and
19 I am not -- I cannot remember the exact dates. That
20 would have been 1122.

21 Q. How about 1223?

22 A. I can remember none.

23 Q. I want to refer you to the paragraph
24 that's numbered 2. It starts with residual bad
25 feeling on the part of Texas Eastern toward Monsanto

1 due to our precipitous withdrawal of Turbinol 153.
2 Did anyone at Monsanto tell you that they had bad
3 feelings about the withdrawal of Turbinol 153?

4 MR. ZIMMER: This they being Texas
5 Eastern?

6 Q. Yes.

7 A. I do not remember a specific reference
8 to that.

9 Q. Did you think that there were residual
10 bad feelings at Texas Eastern?

11 A. First the definition of what bad
12 feelings means obviously depends on a wide range from
13 minor irritation to complete irritation.

14 MR. ZIMMER: I think she's asking for
15 your opinion, Doctor.

16 A. In my opinion based on attending the
17 meeting which we've already described in one of the
18 attachments was that they were not enthused about the
19 decision.

20 Q. Did anyone ever say to you that they
21 viewed the withdrawal as precipitous?

22 MR. ZIMMER: When you say they once
23 again --

24 Q. I mean Texas Eastern. Did Texas Eastern
25 ever say to you this withdrawal was precipitous?

1 A. I do not remember that phrase.

2 Q. Did anyone ever use a phrase which was
3 synonymous with precipitous?

4 A. I do not remember.

5 Q. Did you ever have any contact with
6 Roland Moore?

7 A. If you look at attachment 63 you will
8 notice that an R. E. Moore attended the meeting of
9 January 14th, 1972. He was an attendee at the
10 meeting.

11 Q. Was that your first contact with Mr.
12 Moore?

13 MR. ZIMMER: We're looking at Exhibit
14 63.

15 A. I do not know.

16 Q. Do you recall any discussions in between
17 January and August of 1972 with Mr. Moore that you
18 may have had?

19 A. I do not recall any.

20 Q. This is Exhibit 69. This appears to be
21 a call report based on a December 6th, 1972 call.
22 The report was written by Mr. Frederiksen. It's of a
23 contact with Walter Woods and you are cc'd on it. Do
24 you recall ever seeing this call report before?

25 A. I do not recall seeing this specific

1 call report, no.

2 Q. Do you recall any of the events that are
3 described in this call report?

4 A. I recall a request and I do not know how
5 it was related from Texas Eastern that I prepare a
6 presentation on the Turbinol 1122 and that it be
7 given to Vice-president Moore.

8 Q. And did you prepare that?

9 A. Yes, I did.

10 Q. And did you give that presentation to
11 Vice-president Moore?

12 A. Yes, and others at the same meeting.

13 Q. I'd like to refer you to the last
14 paragraph on that page. The sentence where it says:
15 Texas Eastern was put in a very difficult
16 position by our rapid exit of Turbinol 153.
17 We were sole supplier and we gave them very
18 little time to choose a replacement fluid.

19 Did anyone at Texas Eastern ever convey
20 this to you, what these two sentences say?

21 A. I do not remember a specific instance
22 when this happened.

23 Q. Were you under the impression that there
24 was a rapid exit of Turbinol 153?

25 A. My opinion was that it was a timely

1 series of events based on the development of
2 information as it came about.

3 Q. Did you feel that Texas Eastern was
4 given adequate notice about the withdrawal of
5 Turbinol 153?

6 MR. ZIMMER: Objection, vague and
7 ambiguous as to adequate. It calls for a legal
8 conclusion. But you can answer, Doctor, if you have
9 an opinion about that.

10 A. I really don't remember an opinion at
11 that time.

12 Q. You had a long history that you've
13 testified to in both days of relations with Texas
14 Eastern that had built up through the years and I
15 gather good feelings between the two companies?

16 A. Yes.

17 Q. Did the events in January 1972 and
18 subsequent change that relationship?

19 A. Not as far as I know. I was no longer
20 responsible for such products and therefore the
21 contacts with Texas Eastern became less and less.
22 But the ones I did have were not unfriendly or --

23 Q. Okay. This is Exhibit 70. Exhibit 70
24 appears to be a memorandum dated December 14th, 1972
25 from Mr. Davidson to Mr. Frederiksen and you are cc'd

1 on this. Do you recall ever having seen this
2 document before?

3 A. No.

4 Q. This document refers to a meeting that
5 it states that you had in August at Texas Eastern
6 with Mr. Davidson and Mr. Woods. Do you recall that
7 meeting?

8 A. No, I don't recall that specific
9 meeting.

10 Q. Do you recall ever hearing from Mr.
11 Woods or anybody else at Texas Eastern that Mr. Moore
12 was very upset with not having any notice on the
13 discontinuance of Turbinol 153?

14 A. No, I do not remember.

15 Q. Turning your attention to the first
16 paragraph, the sentence that says that:

17 Texas Eastern, because of their
18 standardization fluids, is virtually our only
19 opportunity to get into a GE turbine in the
20 near future.

21 Do you recall a concern at Monsanto
22 about the necessity to get into a GE turbine?

23 MR. ZIMMER: She's not asking you
24 whether you agree with that statement.

25 A. The start of your question is what's

1 bothering me. Would you repeat it?

2 MS. WELCH: Can we have that read back?

3 (RReporter read from the record as directed.)

4 A. Yes.

5 Q. What was the basis of that concern as
6 far as you know?

7 A. It was necessary to get a field test
8 somewhere and relations with Texas Eastern were
9 better than any other potential customer at that
10 time.

11 Q. And was the necessity for a field test
12 as you stated before for future product development?

13 A. Yes. And to obtain the GE -- to get GE
14 to say something beyond it's okay to do it.

15 Q. What was the end result of that attempt,
16 in other words, did you ever get into a GE turbine?

17 A. Yes.

18 Q. And where was that GE turbine?

19 A. Texas Eastern.

20 Q. Which turbine; do you know?

21 A. No, I don't remember which station it
22 was in.

23 Q. Let me just ask you if you remember
24 whether it was at the Corona station, New Mexico?

25 A. Until the time of this deposition I

1 didn't know there was a Corona station.

2 MS. WELCH: Okay, that's all I have so
3 that concludes the deposition unless you have any
4 questions for Dr. Hatton.

5 MR. ZIMMER: I don't.

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1 COMES NOW THE WITNESS, ROGER E. HATTON,
2 and having read the foregoing transcript of the
3 deposition taken on the 21st and 22nd days of
4 January, 1992 acknowledges by signature hereto that
5 it is a true and accurate transcript of the testimony
6 given on the date hereinabove mentioned.

7
8
9
10 _____
11 ROGER E. HATTON

12
13
14 SUBSCRIBED AND SWORN to before me this

15 _____ day of _____, 1992.

16
17 My Commission expires: _____

18
19
20 _____
21 [Notary Public]

State of Missouri)
)
City of St. Louis)

I, Sandra L. Ragsdale, a Registered Professional Reporter and Notary Public within 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 cause now pending and undetermined in the Superior Court of the State of California for the County of Los Angeles, to be used in the trial of said cause in said jurisdiction, I was attended at the law offices of Bryan, Cave, McPheeters and McRoberts, 500 North Broadway, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 21st and 22nd days of January, 1992.

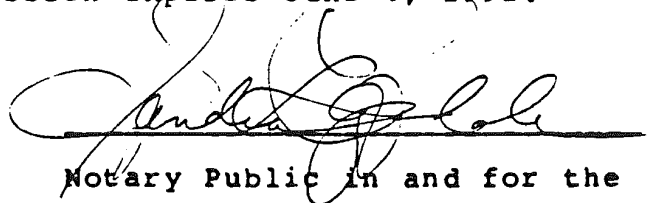
The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand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

into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned 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.

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 27th day of January, 1992.

My commission expires June 4, 1992.

A handwritten signature in cursive script, appearing to read "Andrew G. Cole", is written over a horizontal line.

Notary Public in and for the
State of Missouri