

IN THE UNITED STATES DISTRICT COURT
IN THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

INDEPENDENT LIFE AND
ACCIDENT INSURANCE
COMPANY, a Florida
Corporation,

Plaintiff,

vs.

GENERAL ELECTRIC COMPANY,
a foreign corporation,

Defendant.

CIVIL ACTION

FILE NO. 83-613-CIV-J-12

VOLUME I

- - -

Deposition of HOWARD S. BERGEN, JR.,
taken on behalf of the Plaintiff, pursuant to
Notice, in accordance with the Federal Rules
of Civil Procedure, before Sharon D. Upchurch,
Certified Court Reporter and Notary Public,
at 1200 Candler Building, Atlanta, Georgia,
on the 10th day of December, 1985, commencing
at the hour of 10:30 a.m.

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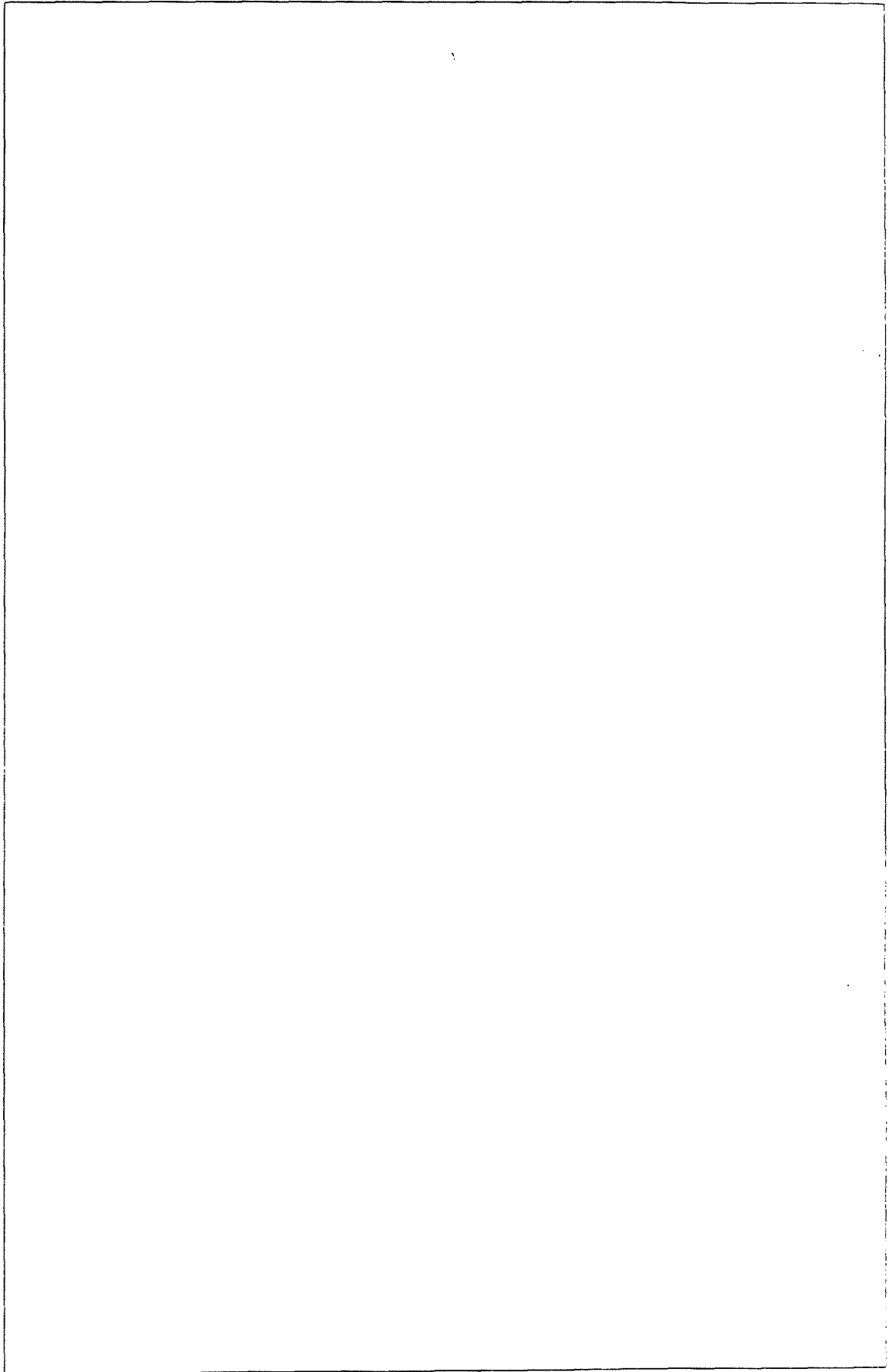
STUART S. HUSEBY & ASSOCIATES, INC.

CERTIFIED SHORTHAND COURT REPORTERS

Suite 400 One Park Place
1900 Emery Street, N.W.
Atlanta, Georgia 30318
(404) 351-0300



P. O. Box 719
Gainesville, Georgia 30503
(404) 536-7028



1 APPEARANCES OF COUNSEL:

2 On Behalf of the Plaintiff: THOMAS M. BAUMER, Esq.
3 LAWRENCE J. HAMILTON, II, Esq.
4 Gallagher, Baumer, Mikals,
5 Bradford, Cannon & Walters
6 2525 Independent Square
7 Jacksonville, Florida 32201

8 On Behalf of Monsanto
9 Corporation: CHARLES B. LEE, Esq.
10 Miller & Martin
11 10th Floor
12 Volunteer State Life Building
13 Chattanooga, Tennessee 37401

14 On Behalf of General
15 Electric Company: THOMAS M. BURKE, Esq.
16 Rumberger, Kirk, Caldwell,
17 Cabaniss & Burke
18 11 East Pine Street
19 Orlando, Florida 32802

20 On Behalf of the
21 Deponent: DOUGLAS P. ROBERTO, Esq.
22 Georgia-Pacific Corporation
23 113 Peachtree Street, N.E.
24 Atlanta, Georgia 30348-5605

25 - - -

26 HOWARD S. BERGEN,
27
28 being first duly sworn, was examined and testified as
29 follows:

30 EXAMINATION

31 BY MR. BAUMER:

32 Q Would you give us your name, please.

33 A Howard S. Bergen.

34 Q And what is your office and home address?

1 A My office address is 133 Peachtree Street,
2 N. E., Atlanta, Georgia, 30303.

3 Q And your home address?

4 A 4615 Graywood Trace, Norcross, Georgia,
5 30092.

6 Q And how long have you resided in the Atlanta
7 area?

8 A Approximately six years.

9 Q And where did you reside prior to that?

10 A Portland, Oregon.

11 Q And before that?

12 A Houston, Texas.

13 Q And in Houston, how far back does that take
14 us in years?

15 A I was in Houston from '76 to the fall of '77.

16 Q And where were you residing prior to that
17 time?

18 A In St. Louis, Missouri.

19 Q How long were you there?

20 A Off and on, most of my life. I was born and
21 raised there; but during my working years, I spent some
22 time in Los Angeles for Monsanto.

23 Q You were with Monsanto in St. Louis?

24 A That's correct.

25 Q What is your educational background?

1 A I'm a chemical engineer.

2 Q What institution?

3 A Washington University, class of 1942.

4 Q Do you have any postgraduate degrees?

5 A No, sir.

6 Q Have you taken any postgraduate courses?

7 A No.

8 Q Have you had any continuing educational
9 courses since you graduated?

10 A A series of management courses.

11 Q Would you trace for us, please, Mr. Bergen,
12 your work experience from the time you graduated. Tell
13 us the names of your employer and your specific duties.

14 A I graduated in '42 and went into the service
15 right away. I got out of the service in February,
16 approximately February of '46. I was at Monsanto for 30
17 years until '76 and left in about May of '76, May or
18 June.

19 Q And by whom were you employed?

20 A Monsanto. And then I left Monsanto, and I
21 was employed by Shintech, Incorporated, which is
22 owned by Shinitzu in Japan. I was president and
23 chief executive officer.

24 Q And how long were you president?

25 A A little over a year.

1 Q And that takes us to '77?

2 A Yes, through '77, in the '77. And I
3 joined Georgia-Pacific in late '77, and I'm still at
4 Georgia-Pacific.

5 Q When you first joined Monsanto, what job did
6 you hold?

7 A I was in the technical service and
8 development department of the organic chemicals
9 division.

10 Q What were your duties?

11 A Primarily developing new plasticizers and
12 doing technical service on plasticizers.

13 Q Were you in research?

14 A No, sir.

15 Q Were you expanding in existing products then
16 when you were developing new products?

17 A Introducing new products to the marketplace
18 and also doing technical service on established
19 products.

20 Q Tell us what technical service means.

21 A Calling on the customer and helping him with
22 his problems.

23 Q Is it sales oriented?

24 A It's sales oriented, yes.

25 Q But your job wasn't to sell?

1 A That's correct.

2 Q Did one need a chemical engineering degree to
3 hold the job you had?

4 A Yes.

5 Q How long were you in that position?

6 A Four or five years.

7 Q So then where did you go?

8 A Then I went -- they transferred the technical
9 service function into sales, and I went into sales at
10 that time and then did about another three or four years
11 in that kind of a role. And then I went to a field
12 office and did field sales, selling a line of products.
13 That's when I was out in California, Los Angeles.

14 Q For how long?

15 A About two and a half years, approximately. I
16 think '55 to '57, somewhere in there.

17 Q And thereafter?

18 A Then I returned as products manager of
19 plasticizers to St. Louis, and I was in that for five or
20 six years. Then I was made a director of sales for
21 three or four different business areas.

22 And then after that, I was made a business
23 director of what we call speciality chemicals. And then
24 they enlarged my scope, and I became business director
25 of paper chemicals and specialty chemicals. They

1 combined the two groups.

2 Q Specialty and paper?

3 A Yes.

4 Q And was that the job you were holding when
5 you left Monsanto?

6 A No. Shortly before I left, maybe six months
7 to a year, I became development director, business
8 development director.

9 Q And that was in what year?

10 A That was late '75.

11 Q Through your departure?

12 A Yes.

13 Q Did you retire from Monsanto?

14 A I took early retirement.

15 Q The years that you were business director,
16 what years were those?

17 A As I recall, it was 1970 to '75.

18 Q And what years were you business director of
19 just specialty chemicals?

20 A '68 to '70.

21 Q What uses were the chemicals put to that you
22 were involved with when you were just with specialty
23 chemicals as business director?

24 A These were various products that went into
25 many different end uses. One of the uses was the

1 dielectric fluids of transformers and capacitors.

2 Another area was the what we call functional
3 fluids, and these were hydraulic fluids, they
4 were hydraulic fluids for dye casting machines,
5 compressors, materials like that; they were also heat
6 transfer fluids.

7 Q Now, the dielectric fluids, these were used,
8 you say, in transformers?

9 A Yes.

10 Q Capacitors?

11 A Yes.

12 Q Were you involved with the same type of
13 products then when you were business director of
14 specialty chemicals and paper chemicals?

15 A Yes; they just enlarged my scope.

16 Q What were your day-to-day duties as a
17 business director between '68 and '75?

18 A Well, the general functions of the business
19 director was that he was the general manager of the
20 business, and he ran all the aspects or was responsible
21 for the research and development, the manufacturing, the
22 sales, marketing, commercial development of products,
23 anything pertaining to the business area.

24 Q How many people did you have working for you
25 in that time frame?

1 A Which time frame?

2 Q Well, when you were business director of
3 specialty chemicals?

4 A Directly reporting to me? I'd say
5 approximately 50 to 70, somewhere in this range.

6 Q And how many?

7 A Not including the plant people. The plant
8 people reported in through a matrix organization at
9 all times.

10 Q How about then when you became business
11 director of specialty chemicals and paper chemicals?

12 A It added about probably another 50 people.

13 Q What is the next position above general
14 manager in that respect when you were business director?

15 A I reported to at that time it was the general
16 manager of the division, which was the vice president
17 position.

18 Q Did you have personal contact with customers
19 when you were in the job of business director?

20 A Yes.

21 Q Did you have contact with particular
22 customers or just customers in general?

23 A Not all the customers; but typical customers
24 of each of the segments, I would get involved with.

25 Q And what type of involvement did you have

1 with those customers, in general terms?

2 A Primarily, what you would normally do in the
3 business relationship. You'd talk about products and
4 markets and applications of your products --

5 Q Did you have --

6 A -- prices, availability, all those things.

7 Q Did you have any communication with General
8 Electric Company during that time frame, say, '68 to
9 '75?

10 A Yes, we did.

11 Q Did you, personally?

12 A Yes.

13 Q Did you have any specific assignments while
14 you were at Monsanto and during the year '68 through '75
15 that related specifically to G. E.?

16 A No.

17 Q What were the trade names of the dielectric
18 fluids that you were involved with during the years 1968
19 through '75?

20 A Pyranol, Inerteen, Aroclors.

21 Q There were a number of different Aroclors,
22 were there not?

23 A That's correct.

24 Q How many, do you recall?

25 A Well, I think we marketed maybe ten to 15

1 different grades.

2 Q What is the distinction between the various
3 grades of Aroclors?

4 A The degree of chlorination and whether it was
5 biphenyl or terphenyl derived.

6 Q And which Aroclor had the highest degree of
7 chlorination?

8 A Higher numbered ones.

9 Q 1254, 1260?

10 A Yes.

11 Q Were 1254 and 1260 involved with Pyranol?

12 A I believe they were.

13 Q And Pyranol is a trade name for the
14 dielectric fluids that went to General Electric, was it
15 not?

16 A I believe that's correct.

17 Q Do you know whether General Electric had the
18 copyright or trade name on Pyranol?

19 A I don't recall.

20 Q Was it a name that was owned by Monsanto, to
21 your knowledge?

22 A I don't believe.

23 Q What other companies did Monsanto sell a
24 fluid similar to Pyranol to for the dielectric fluids?

25 A We sold the product nationwide to all the

1 transformer and capacitor people that were in the
2 business. We were the sole United States supplier.

3 Q Is that true at all times that Monsanto
4 was the sole supplier?

5 A As long as I was involved, yes.

6 Q To your knowledge, was there ever anyone else
7 that manufactured the product?

8 A I believe later on, towards the latter period
9 when they began to go to other products, some other
10 products were eventually approved that we did not make;
11 but that was after I left.

12 Q For dielectric fluids?

13 A Yes.

14 Q Do you know what polychlorinated biphenyls
15 are?

16 A Yes.

17 Q Do you find those in Pyranol?

18 A Yes.

19 Q And do you know the characteristics of PCB's?

20 A What do you mean by characteristics?

21 Q Why are they in dielectric fluids?

22 A Because of their dielectric properties, their
23 expandability, their fire resistance.

24 Q Are they biodegradable?

25 A Yes, some are.

1 Q Are those that have Aroclor 1254 and 1260
2 biodegradable?

3 A I believe certain segments of them are.

4 Q When did you first become aware, Mr. Bergen,
5 that Pyranol contained polychlorinated biphenyls or
6 PCB's?

7 A As soon as I got involved in the business.

8 Q When was that?

9 A 1968.

10 Q And how did you become aware that PCB's were
11 in Pyranol?

12 A Part of my business area, my job, is to learn
13 that.

14 Q Did you ever learn that there was any
15 question about whether or not PCB's should be introduced
16 into the environment in any manner?

17 A I did not know that for quite a long period
18 of time.

19 Q When did you first become aware that there
20 was a question about whether or not PCB's should be
21 introduced into the environment?

22 A The question of whether they were in the
23 environment was first brought to light by some Swedish
24 investigators in approximately 1968, '70, in that time
25 frame.

1 Q Is that when you first learned of it, that
2 they were in the environment?

3 A That's when I first learned that they might be
4 in the environment. We had not confirmed that.

5 Q How did you learn that, though? How did you
6 learn that from the Swedish?

7 A We read their publications.

8 Q Were these publications in technical
9 journals?

10 A I believe so, I'm not sure.

11 Q Was it in the general media?

12 A Not general, I don't believe.

13 Q And how is it that you came to read the
14 technical journals that had the Swedish information in
15 it?

16 A Our people read them and then brought them to
17 my attention.

18 Q When you say our people, you mean Monsanto?

19 A Yes.

20 Q What type of people are you speaking of,
21 scientists?

22 A Yes.

23 Q Did you, yourself, authorize or request any
24 investigation as to the validity of the Swedish
25 information?

1 A I guess you'd say collectively we questioned
2 the validity of it, and so we decided to investigate to
3 see if we could verify it.

4 Q What was the initial information? What did
5 the Swedish scientists write?

6 A I don't specifically recall now.

7 Q Well, did they write that there were PCB's in
8 the environment? Was there some concern about that?

9 A I believe they were zeroing in on some
10 wildlife and saying that it was affecting some wildlife.

11 Q In what manner was it affecting wildlife?

12 A Possibly causing birth defects.

13 Q And this was, then, in the time frame 1968 to
14 1970?

15 A Approximately.

16 Q What studies, to your knowledge, did Monsanto
17 undertake when it learned of the information contained
18 in the Swedish report?

19 A We did biodegradation work, and we did some
20 animal or fish feeding studies and things like that.

21 Q Over what time frame were these
22 biodegradation and fish studies undertaken?

23 A I believe they were probably about 1970 to
24 '74, '75, or pretty much of an ongoing study.

25 Q And do you know where they took place?

1 A Not precisely.

2 Q Was it in St. Louis?

3 A Some was in St. Louis.

4 Q Who would have been in charge of those
5 studies, to your knowledge?

6 A I forget some of the names now.

7 Q Give me any names you can recall.

8 A Dr. Bill Richard was our research director;
9 but some of the actual biodegradation studies were done
10 by a different group. I think it's Scott Tucker.

11 Q Dr. Richard, what was his position?

12 A He was the R and D director for the
13 specialty products business group.

14 Q Each group had its own director of R and D?

15 A If R and D was required, yes. In our group
16 we did require it.

17 Q Did you have a medical director in the
18 specialty group?

19 A No, not in our group. We used the corporate
20 medical.

21 Q Who was the corporate medical director in
22 1978 to 1970?

23 A Dr. R. Emmett Kelly, I believe.

24 Q Now, did you at some point in time read in
25 the literature of general circulations such as

1 newspapers and magazines circulated to the general
2 public any articles dealing with PCB's and the fact that
3 they might be in the environment and the effect of their
4 being in the environment?

5 A As I recall, the media began to pick up on
6 some of the stories; and so there were various press
7 articles that would appear from time to time.

8 Q Was in this 1968 and 1970?

9 A I believe it came later, more like '71, '72.

10 Q And can you recall what those articles would
11 have indicated?

12 A Not precisely, no.

13 Q Well, generally, what did they indicate?

14 A Well, mostly, it was speculation about what
15 might be happening. There was very little scientific
16 proof.

17 Q What was the speculation?

18 A Well, I don't recall.

19 Q Was it speculation that it was harmful to the
20 environment, to have PCB's interjected into the
21 environment?

22 A That's what they were speculating.

23 Q And it was harmful to wildlife and fish?

24 A That's what they were speculating.

25 Q Did you ever receive the results of any of

1 the Monsanto tests or experiments or studies?

2 A Yes.

3 Q When did you start receiving results of those
4 studies?

5 A As soon as they started making the tests.

6 Q Well, in the '68, '69, '70 time frame?

7 A I think it was more in the '70 time frame.

8 Q What do you recall having been told as to the
9 results of the Monsanto tests?

10 A I don't recall the details, but we did find
11 that the lower chlorinated biphenyls were rapidly
12 biodegradable and passed through the fish or not
13 retained in the fat tissues of the fish, and the more
14 highly chlorinated ones were more retained and more
15 slowly biodegradable. That's the basic thing I
16 remember.

17 Q Meaning that the higher chlorinated ones
18 remained in the environment for a considerable longer
19 period of time? Is that what you are saying?

20 A They were less biodegradable.

21 Q Were any of them not biodegradable?

22 A To my knowledge, everything could eventually
23 be biodegradable.

24 Q Wasn't it determined that Aroclor 1254 and
25 1260 were effectively not biodegradable?

1 A They were very resistant to biodegradation.

2 Q In general, did Monsanto take any action with
3 respect to the further production of Aroclors and
4 Pyranol when it received the information that you have
5 just discussed from Sweden and its own experiments and
6 investigations?

7 A Well, I don't recall exactly when, but we did
8 begin to categorize those uses that were self contained
9 or contained in the system, a closed system versus those
10 systems which we felt had high potential for leakage.

11 And we replaced and phased out our Aroclor
12 products and those open system type of applications
13 which was primarily the dye casting area and the closed
14 systems which was mainly the heat transfer area and the
15 dielectric areas. We were looking for replacement
16 products, but that was not an easy task to do. And we
17 never did totally replace the performance of the other
18 products.

19 Q At some point in time, though, Monsanto
20 ceased altogether producing Pyranol, did it not?

21 A Eventually, yes. After I left, I believe.

22 Q And before you left, it was selling Pyranol
23 only for closed systems; is that correct?

24 A That's correct.

25 Q And by closed systems, do we mean effectively

1 transformers and capacitors?

2 A That's correct.

3 Q And so at some point in time, you correct me
4 if I'm inaccurate, around 1970 or '71, Monsanto ceased
5 selling Pyranol or Aroclors for any use other than
6 closed uses?

7 A I'm not sure of the time frame. It might
8 have been a year or so later than that, but I think you
9 probably have some records.

10 Q We'll get to those in a minute.

11 A I don't recall the exact time frame.

12 Q I'm just trying to get your best
13 recollection. But it was sometime, though, before '72,
14 was it not, that Monsanto ceased selling Aroclors or
15 Pyranol for any use other than closed systems as we've
16 identified, transformers and capacitors?

17 A I can't confirm that date.

18 Q In that time frame, though?

19 A It was somewhere in the time frame, I
20 believe, of '71 to '73 or '74 that we restricted the
21 sale and use.

22 Q Why did Monsanto restrict the sale or use?

23 A We became concerned that it was a potential
24 threat to the environment, and we also sensed the
25 liability feature as a company.

1 Q You mean legal liability?

2 A Yes.

3 Q For injuries or harm to either animals or
4 humans?

5 A Just legal liability, broadly.

6 Q As broad as it could be?

7 A As broad as could be interpreted those days.

8 Q Back then you were concerned about that?

9 A Yes.

10 Q And the concern as to the threat to the
11 environment, what was that concern? What do you mean by
12 that?

13 A Well, I think it was a broad concern from the
14 standpoint of first of all, wanting to get the
15 scientific accuracy of knowing what were facts versus
16 what was rumor and allegation. And you have to recall
17 that some of this work came out of the allegations on
18 DDT, and DDT was the first wave of the environmentalist
19 problems.

20 And PCB's, while they were looking at DDT,
21 they found some of these other things out there; and
22 they tended to identify them as PCB's. And we found out
23 in some cases that was correct and some cases that was
24 incorrect. That really led to where we are at the
25 present state of the industry, where now many, many,

1 compounds are out in the environment.

2 And so the world was really by that time
3 equipped with the instruments that could measure these
4 things, and so we were just really finding out what was
5 going on in the world.

6 Q But getting back to the time frame we're now
7 speaking of, in the early 1970s, Monsanto felt that it
8 had an obligation to the environment to withdraw the
9 product, did it not?

10 A We felt that if we could develop replacement
11 products that had the same benefits, the cost benefits,
12 that PCB's did, that it would be a desirable thing to
13 do.

14 Q The product was withdrawn from the market
15 except for capacitors and transformers, as you've told
16 us, I think, because Monsanto had a concern as to the
17 threat to the environment and because of the legal
18 liability; is that correct?

19 A We felt that if we could develop better
20 products that had a cost benefit performance and did not
21 endanger the environment, it was a definite plus.

22 Q Were there substitute products prepared and
23 developed for all uses of the Aroclors at the time they
24 were taken off the market?

25 A We were doing research and trying to replace

1 all the applications, yes.

2 Q Listen to my question. Was there a
3 substitute product available for sale at the time the
4 Aroclors were taken off the market for every use except
5 capacitors?

6 A Well, the Aroclors were not taken off the
7 market until after I left, so I can't answer that
8 question.

9 Q The use of Aroclors and Pyranol for products
10 other than transformers and capacitors was discontinued
11 by Monsanto at some point in time in the early 1970s;
12 correct?

13 A Correct.

14 Q And at the time that was accomplished,
15 Monsanto did not have a substitute product for all the
16 various uses, did it?

17 A That's correct.

18 Q So it took the product off the market before
19 it had developed a substitute, all the necessary
20 substitute products?

21 A There were substitute products for the open
22 system type of products, the dye casting areas and the
23 hydraulic fluids. They were more biodegradable; and on
24 the cost benefit trade-off, from our view they were
25 replacement products. There were no replacement

1 products for dielectric fluids as long as I was in that
2 position.

3 Q But I think you told us earlier, and correct
4 me if I misstate that, that there was a decision made by
5 Monsanto to phase out Aroclor production in the early
6 '70s; correct?

7 A That's correct.

8 Q And, in fact, the use of Aroclors in certain
9 products were discontinued in the early '70s?

10 A By early '70, if you're saying '72, '75, yes.

11 Q But they were still being used in
12 transformers and capacitors as a dielectric fluid;
13 right?

14 A That's correct.

15 Q And the reason they were removed from the
16 market was that Monsanto had a concern for the threat to
17 the environment and because of legal liability?

18 MR. BURKE: Let me object to the form.
19 It's repetitious, and it is leading. Go ahead and
20 answer.

21 THE WITNESS: As I think I said earlier,
22 we had developed replacement-type products which we felt
23 offered the same to the customer, the same cost
24 benefits, and they also were more biodegradable than the
25 Aroclors. But they were the lower chlorinated Aroclors,

1 which were biodegradable.

2 BY MR. BAUMER:

3 Q Those were removed from the market, also,
4 were they not?

5 A No.

6 Q Which ones were not, what numbers?

7 A Well, the MCS 1016 was retained for
8 capacitors and that could have been used -- I'm not
9 saying it was, but it could have been used in certain
10 other formulations.

11 Q Was it used?

12 A I don't recall.

13 Q Now, the information that Monsanto was
14 developing and that you were aware of in your job, did
15 you pass that information on along to the customers of
16 Monsanto?

17 A Yes. As we developed the information, we
18 shared that with our customers.

19 Q You shared it just as quickly as you
20 received it, did you not?

21 A As soon as we felt the information was
22 correct, yes.

23 Q What do you mean by that?

24 A Well, in any research work, you have to do a
25 lot of verification and checking and cross-checking to

1 be certain of your facts. One test alone doesn't make a
2 fact.

3 Q Did you advise any of your customers about
4 the Swedish discovery and pronouncement?

5 A Yes.

6 Q And did you do that about the time you
7 learned of it, '68, '69?

8 A It may have been months later, I don't know
9 how long; but it wasn't instantaneous, I don't think.

10 Q But it was in that same year, perhaps?

11 A Perhaps.

12 Q It wasn't after 1970, was it?

13 A I don't recall.

14 Q But it was within months of your learning of
15 it?

16 A Within months, which could be 20, 30, months.

17 Q Twenty or 30 months after you learned about
18 it, you told your customers?

19 A Could have been.

20 Q Do you recall whether that was the case?

21 A I don't recall.

22 Q What did you tell your customers concerning
23 the threats to the environment from the use of Pyranol
24 or Aroclors?

25 A We just called attention to the articles and

1 said, You can read them like we can read them, and we
2 were at work trying to verify if it's correct.

3 Q Did you tell them that there was some concern
4 about leaks or spillage or vaporization of Pyranol?

5 A Not immediately, because we didn't know if
6 the information was correct.

7 Q Well, at some point in time, did Monsanto,
8 through you or others under your supervision or your
9 co-workers, commence to tell your customers that there
10 were dangers concerning leaks, spillage or vaporization
11 of Pyranol?

12 A After we became convinced that there were
13 certain problems, we did then take the actions that
14 you're referring to.

15 Q When was that first done,?

16 A I don't recall the precise date. It was
17 somewhere in the '72, '73 period.

18 Q Now, before that, though, before you sent out
19 official notices or official information in letters or
20 correspondence about these findings, did you have
21 occasion to have personal discussions with the employees
22 of your customers concerning the Swedish pronouncements
23 or the general literature, discussions, of the potential
24 harm to the environment by the release of PCB's?

25 A We had various conversations with them, yes.

1 Q Did that include General Electric people?

2 A I believe so.

3 Q Did you have personal discussions yourself
4 with General Electric people in those early years
5 concerning that subject matter?

6 A Yes.

7 Q Who is it, Mr. Bergen, that you can recall
8 first discussing PCB's in the environment with that was
9 an employee of General Electric?

10 A I can't recall his name. He's the general
11 manager of the capacitor group. I think it was Luke
12 something or other; I'm not sure.

13 Q And this was in what year now? Before 1970?

14 A I may have met him before 1970, but I don't
15 think our discussions on the Swedish work were until
16 maybe after 1970.

17 Q '71, '72?

18 A Possibly.

19 Q You weren't letting this thing just slide by?
20 You were giving it some serious attention, were you not?

21 A We were interested and concerned about it,
22 and that's what we said. We had to, first of all, verify
23 whether it was really happening and could we get data
24 ourselves to verify, and that takes time. It took a
25 year or so, maybe two years.

1 Q But at some time you then came to the
2 realization that it was true, and you started taking
3 action in that respect, did you not?

4 A Yes.

5 Q And by that action, you started taking formal
6 legal action by getting indemnity agreements, by writing
7 customers often and advising them of the potential
8 harmful effects on the environment of PCB's?

9 MR. BURKE: Excuse me, that's a leading
10 question.

11 THE WITNESS: We informed them of some of
12 the allegations of potential threats, and we tried to
13 keep them abreast of our work what was going on.

14 BY MR. BAUMER:

15 Q Did Monsanto ever suggest to its customer
16 that those customers, likewise, tell their customers
17 about the potential harmful effects of PCB's?

18 A I don't recall.

19 Q Do you know whether that was ever done by
20 General Electric?

21 A I don't recall.

22 Q Do you know whether it was done by any
23 customers of Monsanto, that they pass that information
24 on along to their respective customers?

25 A I can't say precisely what so and so did do.

1 Q Did you ever receive any copies of
2 correspondence along those lines?

3 A I may have, I don't recall any specific one.

4 Q Who else do you recall having discussions
5 with at General Electric relative to PCB's and their
6 effect on the environment back in the years 1970, '71,
7 '72?

8 A Our group talked to many people, both in the
9 transformer side and the capacitor side. I was not
10 involved with the day-by-day conversations myself, but
11 our sales people and our research people would do that.

12 And Paul Benignus, who was our product
13 manager, was the one that was the main contact with the
14 industry. And he had been involved in that industry for
15 many, many years; and he knew most people.

16 Q Did he work under you?

17 A He reported to somebody else that reported to
18 me. He was several levels down.

19 Q And what was Mr. Benignus' job in the '68,
20 '75 time frame?

21 A He was in charge of the dielectric fluid
22 sales.

23 Q And it would be Mr. Benignus or people who
24 worked with him that had the direct contact with the
25 G. E. people?

1 A That's correct.

2 Q But you were aware by reports from your
3 employees that those contacts were going on?

4 A Yes.

5 MR. BURKE: Obviously, it's a leading
6 question.

7 If you would give me a chance to make an
8 objection if you're asked a question in which the answer
9 is suggested to you, I'd appreciate that. Thank you.

10 BY MR. BAUMER:

11 Q Did your employees report to you on a regular
12 basis as to any contact they might be having with
13 General Electric?

14 A Yes.

15 Q Did they ever report to you that they had
16 contact with General Electric people and discussed
17 during the years '70 through '72 the possible harmful
18 effects of PCB's on the environment?

19 A Again, I can't confirm the dates. We had
20 conversations, but I can't confirm the dates.

21 Q Did you have numerous conversations?

22 A Yes.

23 Q You also had numerous correspondence, did you
24 not?

25 A Yes.

1 Q And would the correspondence that you were
2 having correspond with the verbal discussions?

3 A I would assume so.

4 Q If there is correspondence dated in 1968 or
5 '70 with General Electric people concerning PCB's and
6 their potential harm to the environment, would it be
7 also at that same time frame that these conversations
8 would have been taking place?

9 A I would assume so.

10 Q You wouldn't disagree with that, would you?

11 MR. BURKE: Objection, leading.

12 THE WITNESS: I think the records might
13 be verified at Monsanto as to the exact dates and the
14 occasions. I don't know if they're still retained or
15 not. There were records of that, but I'm not aware of
16 dates.

17 BY MR. BAUMER:

18 Q During the course of your employment, '68
19 through '75, was there a routine and systematic contact
20 with General Electric people concerning dielectric
21 fluids?

22 A Yes.

23 Q And did Monsanto attempt to communicate to
24 General Electric all of the knowledge it had concerning
25 dielectric fluids and any harmful qualities of those

1 dielectric fluids?

2 A Yes.

3 Q And was that a practice of Monsanto during
4 the entire time frame, '68 through '75, while you were
5 involved in the sale of dielectric fluids that contained
6 PCB's?

7 A Yes.

8 Q And do you know whether or not your people
9 ever veered from that practice and did not make the
10 various contacts and communicate the information?

11 A Not to my knowledge.

12 Q You, on occasion, did you not, had discussions
13 with General Electric employees concerning PCB's?

14 MR. BURKE: Objection. Leading and
15 repetitious.

16 BY MR. BAUMER:

17 Q You may answer the question.

18 A I met with General Electric on several
19 different occasions.

20 Q Were you not a member of several committees
21 that were dealing with matters relating to PCB's that
22 contained General Electric employees, also?

23 MR. BURKE: Objection, leading.

24 THE WITNESS: I don't recall that.

25 BY MR. BAUMER:

1 Q Were you on any governmental committees that
2 dealt with any type of water quality rules in the early
3 '70s?

4 A Monsanto had various contacts with the
5 government. I personally did not have those contacts.
6 They were people that worked for me or in related staff
7 departments.

8 Q Was Paul Benignus involved in that?

9 A Quite possibly. I forget who all was
10 involved with it.

11 Q Were you not on a management committee or
12 were you not instructed by a management committee to
13 involve yourself with certain aspects of PCB's and their
14 effect on the environment?

15 MR. BURKE: Objection, leading.

16 THE WITNESS: My job was involved in
17 PCB's, and that was my job responsibility.

18 BY MR. BAUMER:

19 Q Let's look at some documents, Mr. Bergen, and
20 maybe I can help you get some dates from these
21 documents.

22 (Thereupon, the court reporter
23 marked Plaintiff's Exhibits 1,
24 2, and 3 for identification.)

25 BY MR. BAUMER:

1 Q Mr. Bergen, let me show you a document that's
2 been marked Exhibit 1 for the Plaintiff and consists of
3 one, two, three, four, five sheets of paper. Would you
4 take a look at that? Do you recognize that document?

5 A Yes.

6 Q For the record, would you tell us what the
7 document is?

8 A This is a document addressed to customers.
9 We're advising them that we're attempting certain
10 restrictive policies of the sale and delivery of
11 polychlorinated biphenyls and that we'll sell and
12 deliver these products only to manufacture the
13 transformers or capacitors that have entered into an
14 agreement to indemnify and hold harmless Monsanto in the
15 use of these products.

16 Q Is that document a letter that you signed?
17 The first, second, and third page is a form letter, is
18 it not?

19 A Yes.

20 Q And it's one that bears your signature?

21 A That's correct.

22 Q And was this sent to all Monsanto customers?

23 A I believe it was.

24 Q Was it sent to General Electric?

25 A Probably.

1 Q Now, let's look at it a little more. Tell me
2 why Monsanto was now only going to sell Aroclor,
3 Inerteen, and Pyranol to customers for closed uses?

4 A We state that it's maybe harmful to the
5 environment, may be accumulating in the environment.
6 The third paragraph states it pretty well.

7 Q Now, the information in the third paragraph,
8 is that the type of information that had been previously
9 to this letter discussed with General Electric people?

10 A Yes.

11 Q Had it been part of the correspondence to
12 General Electric people, to your knowledge?

13 A I can't verify that.

14 Q Had you yourself had discussions with General
15 Electric employees concerning the contents of the third
16 paragraph?

17 A Yes.

18 Q And who at General Electric did you have
19 discussions with concerning the contents of the third
20 paragraph?

21 A As I stated earlier, I don't recall the
22 names.

23 Q One was, you told us, the general manager of
24 the capacitor division?

25 A Yes; that's correct.

1 Q How about someone at the transformer
2 division?

3 A I can't recall any specific names, but I
4 probably had some meetings with them.

5 Q Was there some concern on G. E.'s part as to
6 Monsanto's unwillingness to sell the Aroclor and
7 Inerteen and Pyranol for all uses?

8 A I don't recall.

9 Q When Monsanto chose to limit its market, was
10 there a discussion with customers as to the limitation
11 and why the limitation was taking place?

12 A Yes.

13 Q And were those discussions had with General
14 Electric people?

15 A I don't recall exactly what we told General
16 Electric.

17 Q You did tell them --

18 A They knew what we were doing.

19 Q Did Monsanto advise General Electric prior to
20 the time this went out that it was considering limiting
21 the sale of Pyranol?

22 MR. BURKE: Let me object to the form of
23 the question. There is nothing in the document that
24 indicates whether it went out. It's undated.

25 THE WITNESS: I don't recall.

1 BY MR. BAUMER:

2 Q You don't recall whether that was done?

3 A I don't recall.

4 Q Would it have been your responsibility to do
5 it or would it have been someone under you?

6 A People under me.

7 Q And who would have had the principal
8 responsibility for that?

9 A Probably Norm Johnson, Paul Benignus. We had
10 several different directors of sales at that time. Tom
11 Gossage.

12 Q Is Paul Benignus still with Monsanto, to your
13 knowledge?

14 A He took early retirement, I believe.

15 Q Do you know where he resides?

16 A He used to live in East St. Louis, Illinois.

17 Q Now, look at the last two pages of Exhibit 1.
18 Do you recognize that special undertaking by purchasers
19 of polychlorinated biphenyls?

20 A Yes.

21 Q Is that the indemnity you had reference to?

22 A Yes.

23 Q It's the one that's referred to in the
24 letter; is that correct?

25 A Yes.

1 Q And this is the document that had to be
2 signed by all customers of Monsanto before they would be
3 permitted to purchase Pyranol or any product containing
4 polychlorinated biphenyls?

5 A That's correct.

6 Q And with respect to General Electric, that
7 was Pyranol that you were selling to General Electric?

8 A Could have been any of the Aroclor products,
9 but Pyranol was one of them.

10 Q And was Pyranol what General Electric put in
11 its transformers and capacitors?

12 A Yes, normally.

13 Q Who, to your knowledge, prepared this
14 indemnity document?

15 A The legal staff prepared it.

16 Q Do you know whether there was any particular
17 individual who was assigned that responsibility?

18 A I don't recall who had the responsibility
19 preparing this letter, no.

20 Q Did you have any input in the preparation of
21 the letter?

22 A I'm sure I read it and had some comment in
23 the construction of it.

24 Q And the previous letter to customers, did you
25 write that or did someone write it for you?

1 A Probably a group effort.

2 Q And would Mr. Benignus be in that group?

3 A Possibly.

4 Q Do you recall who prepared the first draft of
5 that letter that you signed?

6 A No, I don't.

7 Q Do you recall the date that this letter was
8 first prepared and sent out?

9 A No, I don't.

10 Q Was it prior to 1972?

11 A The letter says effective 15 January 1972, so
12 I presume it would have to be before that date.

13 Q So it went out in '71, wouldn't you imagine?

14 MR. BURKE: Objection, leading.

15 THE WITNESS: I don't know.

16 BY MR. BAUMER:

17 Q Well, if it was going to be returned back by
18 15 January, you were going to have received back the
19 indemnity provision, would you not agree with me that it
20 would in all likelihood have to have been mailed out
21 prior to 1972?

22 A It would certainly have to have some lead
23 time over the date.

24 Q But you don't have any independent
25 recollection of when it went out?

1 A No, sir.

2 Q Who, to your knowledge, made the decision to
3 send out this letter and the indemnity agreement?

4 A Again, it was a group decision.

5 Q Was it in your group where the decision was
6 made or was it made in some other group?

7 A Also the legal advice from our staff legal.

8 Q Were all the concerns about PCB's within your
9 group or were any other groups at Monsanto also
10 concerned about PCB's?

11 A It became a corporate concern.

12 Q Was it a corporate decision to send out that
13 letter?

14 A My boss, my general manager, was aware of it
15 and agreed to it.

16 Q He was a vice president of the company?

17 A Yes.

18 Q Were you an officer of the company?

19 A No, I was not.

20 Q Did you have to get his consent to send it
21 out?

22 A I think it had his approval.

23 Q Wasn't this whole process the result of a
24 special management committee that was appointed by
25 Monsanto to study what Monsanto should do about PCB's?

1 MR. BURKE: Objection, leading.

2 THE WITNESS: As the concern developed,
3 it escalated within the corporation. And as I said, it
4 did become a corporate concern as the facts were
5 evolving over this period of years.

6 Q It culminated in the sending of this
7 letter?

8 MR. BURKE: Objection, leading.

9 THE WITNESS: That's correct.

10 BY MR. BAUMER:

11 Q Did it culminate in the sending of this
12 letter?

13 A We sent the letter.

14 Q And you sent the letter after having gathered
15 as much information as you could gather concerning PCB's
16 in the environment at that time?

17 MR. BURKE: Objection, leading.

18 BY MR. BAUMER:

19 Q Is that what you did?

20 MR. BURKE: Objection, leading.

21 THE WITNESS: I believe I've answered the
22 question earlier.

23 BY MR. BAUMER:

24 Q The letter was sent because of your corporate
25 concern about the whole issue? Was there a corporate

1 committee appointed to study PCB's and the removal of
2 the products from the market?

3 A I believe there was.

4 Q And were you a part of that committee?

5 A I imagine I was.

6 Q You were charged with certain responsibilities
7 by that committee, were you not?

8 MR. BURKE: Objection, leading.

9 THE WITNESS: The committee had certain
10 objectives to perform.

11 BY MR. BAUMER:

12 Q Were you charged with certain responsibility
13 for those objectives?

14 A I don't recall. I had specific items that I
15 personally was to do.

16 Q Was the committee aware that Exhibit 1 was
17 going to be sent out to your customers?

18 A I don't recall.

19 Q Was Exhibit 1 discussed or, if not the
20 document itself, the consent discussed with the
21 committee?

22 A I don't recall.

23 Q Was it one of your duties as a member of the
24 committee to see to the preparation and mailing of
25 Exhibit 1?

1 A Probably.

2 Q Would you look at Exhibit 2.

3 A Yes.

4 Q Can you identify it for the record?

5 A This is an undated Special Undertaking By
6 Purchasers Of Polychlorinated Biphenyls whereby General
7 Electric agrees to the undertaking as specified.

8 Q It is dated January 21st, 1972, on the second
9 page, is it not?

10 A It was signed by General Electric on
11 January 21.

12 Q But it says date?

13 A That's correct.

14 Q And do you know who signed it on behalf of
15 Monsanto? Can you tell us who that gentleman is that
16 executed on behalf --

17 A Yes, Mr. Putzell was our legal counsel at the
18 time, Monsanto.

19 Q Who signed it for General Electric?

20 A If you can read his writing, looks like
21 Mr. Walter Schlotterback.

22 Q Do you know Walter Schlotterback?

23 A No, I do not.

24 Q Do you know Mr. Putzell?

25 A Yes.

1 Q He was general counsel of Monsanto?

2 A Yes.

3 Q In 1972?

4 A Yes.

5 Q Have you ever seen that document before
6 today?

7 A Yes.

8 Q When do you recall having seen it?

9 A After we received it. The records were all
10 kept. One of my people kept a record of all these
11 documents that came in.

12 Q All the indemnity agreements?

13 A Yes, Mr. Papageorge, William Papageorge.

14 Q Mr. Papageorge worked under you?

15 A That's correct.

16 Q What was his title in, say, '72?

17 A I don't recall his specific title.

18 Q Was he charged with responsibility for
19 Monsanto's decisions and implementations of his
20 decisions with respect to PCB's?

21 A He was more the coordinator of the effort and
22 the follow-up to be sure if things were falling in line.

23 Q Such as what?

24 A Just due dates on various reports, certain
25 work efforts or whatever.

1 Q Notices to customers?

2 A If that happened to be one of the projects.

3 Q Have you seen this document at any time in
4 the last year?

5 A No.

6 Q Have you seen it since you left Monsanto?

7 A No.

8 Q Would you now look, please, at Exhibit 3?

9 A Okay.

10 Q Would you tell us for the record what No. 3
11 is?

12 A This is a letter from General Electric,
13 Mr. Schlotterback, dated January 21 to Mr. Papageorge of
14 Monsanto saying he's executed the special undertaking
15 and refers to following certain understandings which
16 one of their people, Mr. Stapleton informed that
17 Monsanto will accept.

18 There are three essential undertakings or
19 understandings, and he asked Monsanto's acceptance of
20 the conditions. And Mr. Putzell has countersigned it.

21 Q Exhibit 3 is dated January 21, 1972?

22 A That's correct.

23 Q And is that the same date that appears on
24 Exhibit 2?

25 A That's correct.

1 Q And Exhibit 2 is described or entitled
2 Special Undertakings?

3 A That's correct.

4 Q Have you ever seen Exhibit 3 before today?

5 A I don't recall it.

6 Q You didn't receive a copy of it or a copy of
7 it wasn't put with the --

8 A Probably was, but I don't recall it.

9 Q That was Mr. Papageorge's responsibility?

10 A Yes.

11 (Thereupon, the court reporter
12 marked Plaintiff's Exhibits 4,
13 5, 6, 7, and 8 for
14 identification.)

15 BY MR. BAUMER:

16 Q Let me show you now, Mr. Bergen, a document
17 that has been marked as Exhibit 4. It consists of three
18 pages, and I'll ask you to look at that, please, sir,
19 and tell me if you can identify it for us?

20 A Okay.

21 Q Can you identify that document, Exhibit 4?

22 A It looks like a somewhat incomplete draft of
23 a corporate management committee, CMC, minutes of the
24 November 17, 1969 meeting.

25 Q What does CMC stand for?

1 A At that time it was called the Corporate
2 Management Committee. It was made up of the senior
3 officers, inside officers, at Monsanto.

4 Q And this was a meeting on November the 17th,
5 1969; right?

6 A Yes.

7 Q And the document indicates that you were
8 present; is that correct?

9 A Yes.

10 Q Were you present at the meeting?

11 A I assume I was.

12 Q You've read the document? Do you recall a
13 discussion of the items that are contained in the
14 document?

15 A No, not specifically all the items, no.

16 Q Was this committee formed specifically to
17 study the PCB problem?

18 A No, it was not.

19 Q It was a standing committee of the company;
20 is that right?

21 A That's correct.

22 Q And one of its tasks was to study the matters
23 that are contained in this three-page document; is that
24 correct?

25 MR. BURKE: Objection, leading.

1 BY MR. BAUMER:

2 Q Was it one of their jobs to study the matters
3 contained --

4 A The purpose of the CMC was broadly to examine
5 any policies or procedures or major capital projects of
6 the company and anything else they deemed worthwhile.

7 Q Was it to study a report on polychlorinated
8 biphenyls prepared by the organic division, law and
9 medicine departments?

10 A I think the fact that they wanted the meeting
11 was that they wanted to have the report of it and the
12 studies of it.

13 Q Let's look at the people. Who is Mr. Smith?

14 A C. J. Smith was I think at that time an
15 assistant general manager of the organic division. John
16 Mason was my boss, and he was assistant general manager.

17 Q Was he a vice president?

18 A No. Tom Smith was -- I think at that time he
19 was the vice president and general manager, although --

20 Q Of what division?

21 A Of the organic division. Myself; Jim
22 Springgate was a business director or product manager, I
23 don't recall what he was doing at that time.

24 Kelly was a medical director. Elmer Wheeler
25 was kind of an assistant or social medical director.

1 Q Was he a doctor?

2 A He was an industrial toxicologist. Rod
3 Harris was, again, on the legal staff. D. W. Miller, I
4 don't recall. W. C. Robinson, I don't recall.

5 Q Was Mr. Wheeler on the committee generally or
6 was he present for a particular study on polychlorinated
7 biphenyls?

8 A He was involved in many of the aspects of the
9 medical department. I don't recall specifically why he
10 was --

11 Q He wasn't a standing member of the management
12 committee?

13 A I don't recall. I'm not sure who the members
14 were.

15 Q Were you a member?

16 A I don't really recall. I believe I was.

17 Q Well, if you weren't, why were you present at
18 this particular meeting?

19 A Because I was the business director of this
20 whole business.

21 Q Now, look at the second page where it says
22 plan of action. It has your name next to it. Do you
23 know why that is the case?

24 A Well, because I had the Aroclors for
25 dielectrics and the functional fluids products; and I

1 do recall Jim Springgate was business director for
2 plasticizers. And the Aroclors were also sold as
3 plasticizers.

4 Q Were Aroclor 1254 and 1260 used in
5 plasticizers?

6 A That's correct.

7 Q And in 1979, the date of this meeting, excuse
8 me, '69, were those plasticers with Aroclors 1254 and
9 1260 still being sold?

10 A I believe they were.

11 Q When were they discontinued, if they were?

12 A They were. I don't recall exactly what date.

13 Q Was it as a result of the decisions that were
14 made at this meeting on November 17th, 1969?

15 A I don't recall.

16 Q Look on the third page under conclusions and
17 see whether that helps you refresh your recollection.

18 A All it says is introduce to market
19 replacement products.

20 Q The conclusion section.

21 A The conclusion? It says we should plan to
22 discontinue the manufacturing of 1254 and 1260.

23 Q It says the division is instructed to develop
24 a program to discontinue these products and report to
25 the committee then or the division, which is your

1 division; is that right?

2 A It's the organic division.

3 Q It was to commence to develop a program to
4 discontinue the use of those?

5 A Right.

6 Q And did you so do that?

7 A Yes.

8 Q At that time did you give any instructions to
9 your people that worked for you to communicate this
10 information relative to the evidence of the possible
11 threat to certain species of bird and aquatic life to
12 your customers?

13 A Yes. We were going to notify all the
14 customers of the problem.

15 Q Did you do that?

16 A I believe we did.

17 Q Did you do it with respect to General
18 Electric?

19 A Yes.

20 Q At this time frame that we're dealing
21 with now, 1969, November,?

22 A Or shortly thereafter.

23 Q Now, look at the third page, again, please,
24 up at the top. There commenced to be listed 12
25 different types of conduct or activity that was to be

1 carried out; is that correct?

2 A Yes, a recommended plan of action.

3 Q Did you make that recommended plan of action?

4 A I believe this was the outcome of the
5 meeting.

6 Q Now, was there someone appointed as project
7 manager?

8 A Yes.

9 Q Who was that?

10 A Bill Papageorge.

11 Q Was that when Mr. Papageorge first got his
12 official responsibilities with respect to PCB's?

13 A No. He had earlier responsibilities prior to
14 this meeting.

15 Q What were his earlier responsibilities?

16 A He was acting as a coordinator in
17 accumulating some of this information on the environment
18 and the testing programs, et cetera.

19 Q Did Mr. Papageorge, to your knowledge, have
20 any contact at this time frame with General Electric
21 people?

22 A In the broad time frame, yes.

23 Q In the 1969 time frame?

24 A Yes.

25 Q Who at General Electric do you recall he may

1 have had contact with?

2 A I'd say most of the key people there.

3 Q Can you give us any names?

4 A No, sir, I can't.

5 Q Do you know a Mr. Rabb?

6 A I recall the name.

7 Q Did you ever meet him?

8 A I might have.

9 Q Now, the second item is to notify all Aroclor
10 customers of the PCB problem. That was done?

11 A I imagine it was.

12 Q Would it have been done for General Electric?

13 A Yes.

14 Q Now, does Aroclor, would that include
15 Pyranol?

16 A Uh-huh.

17 Q Yes?

18 A Yes.

19 Q Look at No. 4. "Educate customers on need
20 to reduce and effectively control PCB's effluents at
21 their plants." What was done in order to carry out that
22 directive?

23 A We would have meetings with them and point
24 out what we knew about the problem and some of the
25 potential risks that could be involved and offer

1 suggestions as to some of the things that might be done
2 to minimize the emission into the environment.

3 Q What risks were discussed?

4 A Primarily, just the emissions into the
5 environment and the potential effects on wildlife.

6 Q Was there any discussion of a potential
7 harmful effect on humans?

8 A The question was raised, but we never had any
9 reason to believe that properly used, that it was a
10 serious human hazard.

11 Q How about if it was improperly used?

12 A Like many chemicals, if it's improperly used,
13 you can have some bad results.

14 Q Did you discuss at this time frame
15 vaporization of Pyranol?

16 A I don't recall.

17 Q But you went about having meetings. Would
18 that include General Electric?

19 A Yes.

20 Q Were they a large purchaser of Aroclors?

21 A Yes.

22 Q Were they the largest purchaser of Aroclors
23 at Monsanto?

24 A They were certainly among the top four or
25 five.

1 Q Well, who were the largest?

2 A I don't recall the specific order.

3 Q They were within the top four or five?

4 A Yes.

5 Q And within that same top four or five, would
6 we find Westinghouse?

7 A Yes, correct.

8 Q Who else?

9 A I don't recall.

10 Q Now, it says, "Develop and implement new
11 packaging systems for Aroclor 1254/1260." What does that
12 mean?

13 A I don't recall.

14 Q Was there a warning label of any nature
15 prepared at that time to be put on the packaging of
16 Aroclor 1254 and 1260?

17 A I don't recall.

18 Q Do you recall at some point in time the
19 preparation of a warning label to be put on the
20 packaging for 1254 and 1260?

21 Q I don't recall?

22 Q Do you ever recall seeing any warning labels,
23 Mr. Bergen?

24 A I can't specifically recall, no.

25 Q Do you know the colors, that yellow and

1 black? Have you ever seen yello and black labels placed
2 on drums or packaging of Aroclor 1254 or 1260?

3 A I may have.

4 Q You don't recall that?

5 A Not specifically.

6 Q Who would have been charged with the
7 responsibility for doing No. 5?

8 A Bill Papageorge would be coordinating that
9 with the plants and with the law department and sales
10 department.

11 Q How many of these items 1 through 12 would
12 have been Mr. Papageorge's responsibility?

13 A He would be involved in all of them from the
14 standpoint of coordinating and watching the plans and
15 the time tables and this sort of thing.

16 Q And seeing that the tasks were carried out?

17 A Yes; but then it was up to each department or
18 each function to do their thing.

19 Q And to your knowledge, he could check and
20 make sure that they were carried out?

21 A Yes.

22 Q Would he report to you if it was not?

23 A Yes.

24 Q Did he ever report to you that these programs
25 were not being carried out?

1 A Not to my knowledge.

2 Q Now, No. 8, "Continue toxilological test
3 program." Who would have the primary responsibility for
4 these tests in 1969?

5 A That would have been the medical department.

6 Q Dr. Kelly?

7 A Kelly and Wheeler.

8 Q Wheeler was a toxicologist? Is that what you
9 said?

10 A Yes.

11 I don't know what time George Rausch
12 got involved, but Dr. Rausch came aboard somewhere
13 around that time. He was partially involved.

14 Q Were you involved in the development of a
15 business plan for reclamation for the Pyranol?

16 A Again, that was people that reported to me,
17 yes.

18 Q Did Monsanto develop a reclamation program?

19 A It was never adapted.

20 Q Did Monsanto have an incinerator at the time
21 you left for Pyranol?

22 A Yes.

23 Q Did it burn Pyranol?

24 A It burden various Aroclors. It might have
25 burned Pyranol.

1 Q Did it burn the Aroclor 1254 and 1260?

2 A I don't recall.

3 Q Down at the bottom of page three, there are
4 some more names. Minckler, who is Mr. Minckler?

5 A He became general manager, and he succeeded
6 Tom Smith. And he was general manager of the organic
7 division.

8 Q Now, were there minutes maintained of every
9 management committee meeting such as this?

10 A I believe so.

11 Q Who had the responsibility for preparation of
12 those minutes?

13 A I don't recall.

14 Q Were they circulated to all participants at
15 the meeting after they were prepared?

16 A I don't recall.

17 Q Do you recall seeing these minutes at an
18 earlier time?

19 A Yes.

20 Q When was the last time you saw these?

21 A Ten years or 12 years.

22 Q How about in March of 1981? Do you recall
23 seeing them then?

24 A No, sir.

25 Q Do you recall your deposition being taken in

1 March of 1981?

2 A It was taken.

3 Q In the --

4 A In the Outboard Marine Case, yes.

5 Q Do you recall seeing that?

6 A I don't recall; it might have been.

7 Q You haven't seen them since then, though?

8 A No.

9 Q Do you recall whether Mr. Papageorge was at
10 this meeting that's memorialized by Exhibit 4?

11 A I don't think he was. They usually were
12 pretty accurate as to who was present.

13 Q Did the lawyer prepare these? Was that his
14 responsibility, Mr. Harris?

15 A I don't know who prepared it.

16 Q Would you be kind enough, please, to look at
17 Exhibit 5?

18 A Okay.

19 Q Can you tell us what Exhibit 5 is?

20 A It a rough draft of a plan for managing the
21 PCB's problem dated March 30, 1970. It was put out for
22 comment of the various people that would participate in
23 putting the plan together.

24 Q Are those the people who were appointed to
25 the task force that was organized as a result of the

1 meeting in November 1969?

2 A I don't recall the members of the task force.

3 Q There was a task force appointed, was there
4 not, as a result of the November 1969 meeting?

5 MR. BURKE: Objection, leading.

6 BY MR. BAUMER:

7 Q Was there a task force appointed?

8 A I don't recall the specific nomenclature.
9 There were various teams assigned different jobs because
10 there were two different business groups involved.
11 There were various staff groups involved, and that's why
12 Papageorge was appointed the project manager, to
13 coordinate all those things.

14 Q Look at Exhibit 4 again on the third page,
15 item one. It indicates there that he would be assisted
16 by a task force from members of each business group plus
17 medical, legal, engineering, and manufacturing. Was
18 such a task force appointed?

19 A I don't recall.

20 Q Now, the people who received Exhibit 5, you
21 had the list, did they all report to you that are listed
22 below you?

23 A No, they did not all report to me.

24 Q Is that group of people the task force?

25 A Whatever you want to call it.

1 Q I'm just trying to follow the nomenclature
2 that's in the documents that --

3 A It's a bunch of people that had varying
4 degrees of responsibility to carry out the plan.

5 Q Tell us, do all those people, did all those
6 people work for Monsanto?

7 A Yes.

8 Q Mr. Farrar, what was his job?

9 A Dr. Farrar, he was in research. I believe he
10 was in charge of plasticizer research at that time.
11 John, I believe, was in public relations. Keller, I'm
12 not certain what he was in.

13 Don Olson was director of marketing of my
14 group, he was my director of marketing at that time.
15 Park was the legal counsel. Cumming Paton, he was a
16 plasticizer product manager. Bill Richard was my
17 director of research and development for the experiment
18 group.

19 Jim Springgate was the business director of
20 the plasticizer group, and Elmer Wheeler was industrial
21 toxicologist.

22 Q And who was Mr. Olson?

23 A He was the director of marketing for my
24 business group, the specialty products area.

25 Q Have you seen this document before?

1 A I don't recall it, specifically.

2 Q Do you have any recollection of receiving it?

3 A I imagine I did.

4 Q It is a document that you recognize as
5 being a Monsanto prepared document, is it not?

6 A Yes.

7 Q Did you attend the meeting that's referred to
8 in the second paragraph of the first page, April 2nd?

9 A I don't recall.

10 Q Did you review the management plan, the draft
11 that's attached and is a part of Exhibit 5?

12 A I imagine I did at the time.

13 Q Look at page four, if you would. One of the
14 items, page four, number four, "Develop reliable
15 analytical procedures for determining PCB content of
16 liquids, gases, or solids." Was that done?

17 A We spent a lot of time on analytical
18 procedures, and I don't know whether we addressed all
19 those areas in complete detail.

20 Q Was there a concern about PCB content in
21 gases?

22 A I don't recall.

23 Q Well, can you tell me why gases appears
24 there?

25 A I can't tell you that.

1 Q Did Mr. Papageorge prepare this draft?

2 A I assume so.

3 Q Look at page 10, Objectives, "Determine
4 effect of PCB's on birds, aquatic life, and humans." Do
5 you see that?

6 A Yes.

7 Q The information that's contained in that
8 numbered paragraph, is that information that was
9 disseminated to customers of Monsanto?

10 A I don't recall when the tests were completed.
11 Do you want to repeat the question?

12 Q The information that's contained under the
13 objective that I just read, No. 7, it's contained on
14 that page and then on the succeeding page. Is that
15 information that was known as of the time this document
16 was written?

17 A Yes.

18 Q And is that the type of information that was
19 communicated to customers of Monsanto who were
20 purchasing Pyranol or Aroclors?

21 A Well, it's a report, says it's a status
22 report; and just when the information was made available
23 to customers, I don't know.

24 Q Is that the type of information that was
25 known generally and circulated generally to the public

1 and the news media?

2 A No. This is a very technical type of data and
3 tended to be shared only with those that understood what
4 you're talking about.

5 Q That would be your customers, would it not?

6 A Major customers.

7 Q Was General Electric a major customer?

8 A Yes.

9 Q So this is the type of information that would
10 be shared with General Electric?

11 A Quite possibly.

12 Q Would that come under your responsibility or
13 someone else's?

14 A Only broadly. It would be more a function of
15 the medical and marketing, et cetera, departments to do
16 that.

17 Q You didn't conceal this type of information
18 from your customers, did you?

19 A No; but it's a question of how do you handle
20 and distribute it? When you discuss any medical things,
21 it's hard to do it through a layman; and you just don't
22 disseminate a lot of medical data, period.

23 Q Are you saying that Monsanto's medical people
24 would talk to, say, G. E.'s medical people?

25 A They might.

1 Q Is that the way it would be disseminated, to
2 your knowledge?

3 A Only if it was agreed upon that that was the
4 way to do it.

5 Q Do you recall how it was agreed upon in this
6 case?

7 A No, I don't.

8 Q Let me ask you, sir, to look at Exhibit 6;
9 okay?

10 A Okay.

11 Q Tell us for the record what Exhibit 6 is.

12 A It's a memo dated April 7th, and it's a copy,
13 another draft copy, of a plan for managing the PCB
14 problem.

15 MR. BURKE: Could you give us the year,
16 Mr. Bergen, please?

17 THE WITNESS: April 7th, 1970. This is a
18 draft plan, and they're asking for further review at the
19 management level of the organic division. They wanted
20 their comment at this review meeting on April 10th.

21 BY MR. BAUMER:

22 Q And circulation was to a different group of
23 people other than yourself than Exhibit 5; is that
24 correct?

25 A That's correct.

1 Q This went to top management people?

2 A Of the organic division.

3 Q These are the same gentlemen who were at the
4 management meeting that we looked at in Exhibit 1, were
5 they not?

6 A Some of them, but not all of them.

7 Q Excuse me, it wasn't Exhibit 1. It was
8 Exhibit 4.

9 A Yes. Some were there, but not all of them.

10 Q Some of the people who received Exhibit 6
11 were present or there were more present at the meeting
12 memorialized by Exhibit 4 than received copies of
13 Exhibit 6?

14 MR. BURKE: Objection, leading. The
15 document speaks for itself.

16 THE WITNESS: I agree, the document
17 speaks for itself.

18 BY MR. BAUMER:

19 Q Unfortunately, Mr. Burke can only object, and
20 I get to ask the questions.

21 A What is your question?

22 Q I'm trying to find out, to clarify your
23 answer -- I'll just rephrase it. Maybe that will help.

24 The people mentioned on Exhibit 6, are these
25 members of the management committee?

1 A Again, I'm not aware of who the members of
2 the management committee are. These are the names of the
3 people that attended the CMC meeting that are within the
4 organic division.

5 Q Where there management committee members
6 outside the organic division?

7 A No.

8 Q Let's go back to Exhibit 6, now. This is, as
9 you say, another draft?

10 A That's correct.

11 Q Was there a final plan developed?

12 A I assume there was.

13 Q Do you recall ever seeing the final plan?

14 A I did.

15 Q You did at the time?

16 A Uh-huh. I don't know when it was dated.

17 Q Was it dated much after Exhibit 6?

18 A I imagine we developed a final plan for
19 presentation to CMC on April 20th, but it may have been
20 revised after that meeting.

21 Q Do you recall a meeting of the CMC after
22 April 20th where the plan was adopted?

23 A The final plan was eventually adopted, and I
24 don't know the date.

25 Q Was it in 1970?

1 A I don't recall.

2 Q Is your best estimate that it would have been
3 in 1970 based upon the current documents that you've
4 seen?

5 A I don't recall.

6 Q Look, please, if you would, at the objectives
7 on numbered page 2, the third page, I think, page
8 numbered 2 at the top. Do you see Objectives on that
9 page?

10 A Yes.

11 Q One of them has been deleted, and I don't
12 know for what reason. Do you know what objective that
13 might have been? Do you have any recollection of what
14 the number one objective was?

15 A I don't recall.

16 Q The objectives that are listed in paragraph
17 Roman Numeral III, Objectives, were those objectives
18 contained in the final report?

19 A I don't recall.

20 Q Do you recall whether the final report
21 contained an objective to inform the customers of the
22 PCB problem?

23 A I don't recall what the final report said.

24 Q Well, do you have any recollection that it
25 would not have contained a provision that the customer

1 be informed?

2 A I feel certain that we had to inform our
3 customers eventually of our actions.

4 Q Well, we know you informed your customers,
5 don't we, back in late '71 or at least no later than the
6 first part of January '72 when you sent the letter out
7 that contained the indemnity, don't we?

8 MR. BURKE: Objection, leading.

9 THE WITNESS: That's correct.

10 BY MR. BAUMER:

11 Q Would you look at what has been marked
12 Exhibit 7?

13 A I have to leave right after this one.

14 Q What is Exhibit 7?

15 A It's a memo that I apparently wrote to
16 Mr. Tom Gossage dated February 14th, 1972. The subject
17 is Marketing Price For PCB Incineration And Pydraul
18 Incineration Rebate Allowances On New Pydraul Series
19 Purchases.

20 Q This is a document that you prepared
21 yourself?

22 A Yes.

23 Q Who is Mr. Gossage?

24 A He succeeded Mr. Olson, and at this time
25 Mr. Gossage was the director of marketing for this

1 business group, specialty chemicals.

2 Q And who are the gentlemen that received
3 copies?

4 A Bradford was the industrial fluids product
5 manager handling the fluid that went to, the Pydraul
6 that went to the dye casting fluids, et cetera.

7 Norm Johnson was the national sales manager.
8 Jim Savage was the manufacturing manager for our group.
9 Art Koenig was the comptroller for our group.

10 Q Back in '72, was Monsanto incinerating
11 Pyranols?

12 A We were doing it experimentally.

13 Q Okay.

14 MR. ROBERTO: I'm afraid Mr. Bergen does
15 have to go. We will be more than happy to cooperate
16 with you to reschedule, to do it by telephone.

17 MR. BAUMER: Let me put this on the
18 record. I first learned that Mr. Bergen was not going
19 to be able to continue here today when the deposition
20 commenced at 10:30. I was unaware of that until that
21 time when it was announced by Mr. Bergen that he had to
22 leave for an emergency; is that correct?

23 THE WITNESS: That's correct.

24 MR. BAUMER: And so if you have to leave,
25 you have to leave. I can't keep you here. We will

1 arrange another time and send you another subpoena. But
2 let me suggest to you that next time -- we both have come
3 a long way; I've come from Jacksonville, and Mr. Burke
4 has come from Orlando.

5 As you can see, there are a substantial
6 number of documents that you have to look at; and it's
7 going to take at least a day to conclude your
8 deposition. We thought we would do it today, but it
9 will take at least a day. So the next time we set it,
10 if there are going to be any emergencies come up, you
11 need to let us know so that we can reschedule it at a
12 convenient time.

13 We don't want to send you a subpoena and
14 require you to be here. We're trying to work with you
15 to schedule this, and we appreciate your coming. But
16 you, otherwise, have to understand we have schedules,
17 also; and it's expensive for us to come around and move
18 about.

19 So the next time we set this, we would expect
20 to be able to conclude it at that time; and perhaps next
21 time we'll start early in the morning so we can finish
22 it in one day. But as you can see, there are a lot of
23 documents that you're going to be asked about.

24 THE WITNESS: I'm usually at work at 7:00
25 o'clock, so we can start at 7:00.

1 MR. BAUMER: We will start early next
2 time; and with that, we will discontinue the deposition
3 and continue it to be noticed at a later date. But it
4 will be soon.

5 THE WITNESS: That's fine.

6 MR. ROBERTO: We apologize for the
7 inconvenience. Mr. Posner represented to
8 Mr. Bergen that this would be a short deposition, and we
9 would have called you last night when the emergency came
10 up. We are more than willing to cooperate. You don't
11 need to notice him. We'll even make a conference room
12 at Georgia-Pacific available so that everybody can be
13 accommodated.

14 MR. BAUMER: We will renotice it, but we
15 will call you first; and we will go through all the
16 formalities for the record anyway at that time. And
17 we'll probably will take it right back over here next
18 time.

19 MR. BURKE: I would like to state on the
20 record, please give the reporter a copy of Mr. Bergen's
21 response to Mr. Baumer's Notice of Deposition. Would
22 you attach that to the deposition as Defendant's
23 Exhibit 1, and attach a copy of this Notice as Defendant's
24 Exhibit 2 for me, please. Thank you.

25

(Thereupon, the court reporter
marked Defendant's Exhibits 1
and 2 for identification.)

MR. BAUMER: One more question for the
record.

BY MR. BAUMER:

Q Have you discussed this matter or this
lawsuit with Mr. Burke prior to today?

A He called me just like Mr. Posner called
me and just told me that he would be here, and that's
all.

MR. BAUMER: Thank you. The deposition
is adjourned.

(Deposition adjourned.)

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HOWARD S. BERGEN
I hereby certify that I have
read or have had read to me
the foregoing.

Sworn to and subscribed before me
this ____ day of _____, 1985.

Notary Public.

My Commission expires -----

- - -

C E R T I F I C A T E

G E O R G I A:

FULTON COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 75 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 1st day of February, 1986.

Sharon D. Upchurch
SHARON D. UPCHURCH, CCR-B-938
My Commission Expires the
22nd day of September, 1989