2/9/88

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AMLAND PROPERTIES CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ALUMINUM COMPANY OF AMERICA,	)	
	)	
Defendant	)	
and Third Party Plaintiff,	)	
	)	
vs.	)	
	)	Civil Action No. 86-1830
TRI-TERMINAL CORPORATION, et al.,	)	
	)	
Third Party Defendants.	)	

Deposition of THOMAS M. BISTLINE

February 9, 1988

Karpowicz Reporting Company
(314) 621-8883
Registered Professional Reporters

WATER_PCB-00043675

INDEX TO EXHIBITS

No.	DESCRIPTION	PAGE
1	Subpoena & Notice	8
2	Sales Summary Search	11
3, 3-A through 3-O, inclusive	Aroclor Product Labels	54
4, 4-A through 4-II, inclusive	Pydraul Product Labels	64
5, 5-A through 5-G, inclusive	Purchasing & Shipping Documents	77
6-A,6-B,6-C	Call Reports	88
7-A through 7-F, inclusive	Advertisements	97
7-G	Advertisements	100
8-A through 8-LL, inclusive	Pydraul Brochures	104
9-A through 9-S, inclusive	Aroclor Brochures	122

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

WATER_PCB-00043676

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AMLAND PROPERTIES CORPORATION,

Plaintiff,

vs.

ALUMINUM COMPANY OF AMERICA,

Defendant
and Third Party Plaintiff,

vs.

TRI-TERMINAL CORPORATION, et al.,

Third Party Defendants.

Civil Action No. 86-1830

The deposition of a witness, THOMAS M. BISTLINE, produced, sworn and examined on the part of the plaintiff, taken to be used in an action pending in the United States District Court for the District of New Jersey, wherein AMLAND PROPERTIES CORPORATION is Plaintiff; ALUMINUM COMPANY OF AMERICA is Defendant and Third Party Plaintiff, and TRI-TERMINAL CORPORATION, et al., are Third Party Defendants, pursuant to the Federal Rules of Civil Procedure, on the 9th day of February, 1988, at the law offices of Greensfelder, Hemker, Wiese, Gale and Chappelow, 18 South Broadway, in the the City of St. Louis, State of Missouri, before me, Evelyn M. Weir, Registered Professional Reporter and Notary Public

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

within and for the City of St. Louis, State of Missouri.

oOo

A P P E A R A N C E S:

The plaintiff was represented by Mr. Robert A. Wayne of the law firm of Robinson, Wayne, Levin, Riccio and LaSala, Gateway One, Newark, New Jersey 07102.

The defendant and third party plaintiff was represented by Mr. R. L. Holz, Senior Assistant General Counsel, Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, Pennsylvania 15219.

oOo

THOMAS M. BISTLINE,

a witness, of lawful age, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. WAYNE:

Q Good morning, Mr. Bistline. My name is Mr. Wayne. This is a deposition. I'm certain you're familiar with the rules of a deposition. I represent Amland Properties Corporation which is the plaintiff in an action which has been commenced in the United States District Court for the District of New Jersey against the Aluminum Company of America and other third party defendants.

As you know, there will be a series of questions asked to you under oath. If you don't understand

WATER_PCB-00043678

any of my questions or if you wish me to rephrase the question, please let me know.

A I will. Thank you, Mr. Wayne.

Q And, of course, Mr. Holz is here representing Aluminum Company of America. If he has any objections, he'll place them on the record and if he does have an objection, at least we ought to wait until his objection is stated on the record before we respond to any question.

A Fine.

Q Sir, I'm certain that you're familiar with the rules of a deposition. Are you an attorney?

A Yes, I am.

Q And where are you permitted to practice law?

A New York and Missouri.

Q What is your present employment, sir?

A I'm Litigation Counsel at Monsanto Company here in St. Louis.

Q And how long have you been in that position?

A In that particular position, about a year and a half. I've been employed by Monsanto for a total of six years.

Q Prior to the year and a half in the position as Litigation Counsel, what was your role or duties at Monsanto?

A My title was Assistant Litigation Counsel. The duties, my role were approximately the same as they are now.

Q What are the duties and responsibilities of Litigation Counsel at Monsanto?

A My responsibilities include the management, supervision of litigation matters to which I am assigned. I have in addition other administrative responsibilities within Monsanto which don't directly affect litigation but have to do with personnel matters and other things.

Q Generally, what are those other duties?

A They include supervision of legal assistants, assistance with the audit of legal matters of Monsanto on legal matters and related activities.

Q Prior to becoming involved at Monsanto, did you have any other employment either as an attorney or otherwise?

A Yes. I was associated with the law firm of Simson, Thatcher and Bartlett in New York for a period of eight years before I came to Monsanto.

Q Are you presently designated the records custodian of Monsanto Company?

A Yes, well, not -- I'll ask you to be more specific. I can say I am for certain purposes custodian of certain records. I would not hold myself out to be generally the records custodian of Monsanto.

Q Okay. What types of records are you the custodian or designated as custodian at Monsanto?

A Custodian of records pertaining to polychlorinated

biphenyls, PCBs.

Q When were you designated as such?

A At the time that I assumed management responsibility for PCB litigation at Monsanto which was approximately January of 1985.

Q And is that pursuant to some written policy in effect at Monsanto, that you were designated as the custodian for those records?

A No.

Q Was it the result of just some internal decision making?

A I would describe it as part of my responsibility as management person for PCB litigation.

Q And you have held that role since approximately 1985?

A That's correct.

Q In connection with that role and title, if I could call it that, you're familiar with the recordkeeping policies of Monsanto with reference to the PCB matters?

A Yes, sir, I am.

Q And did you become familiar with those recordkeeping policies in or about 1985?

A That's correct, although I probably knew generally what those practices and policies were prior to my assumption of the duties in PCB litigation.

Q As part of your duties and responsibilities in this role relating to the PCB records, did you become also aware of the record keeping and maintenance policies historically with respect to PCBs?

A Yes, that's correct.

Q Now, a subpoena and a notice to take deposition was served upon Monsanto Company in this case. Could we please mark for identification as, Lee, I'd like to do this one a little distinctively as to how we marked the exhibits in the prior deposition by calling this Plaintiff's Monsanto Exhibit 1 and then we'll mark it Plaintiff's Monsanto 1 through whatever number.

MR. HOLZ: Okay.

(A document, handed to the reporter, was marked for identification as Plaintiff's Monsanto Exhibit 1.)

Q I show you what's been marked Plaintiff's Monsanto Exhibit 1, which is a copy of a subpoena issued out of the United States District Court for the Eastern District of Missouri to Monsanto together with an attached notice to take deposition and a schedule for production of documents.

I ask you, sir, if you're familiar with that particular document?

A Yes, Mr. Wayne, I have seen this document.

Q Is that a copy of the subpoena and the notice

SF-SEL-2547 PENCAD/HOY MUNCIE, IN 47302

to take deposition that was served on Monsanto Company?

A Yes, that's correct.

MR. HOLZ: Could I take a look at it?

Q Yes. In the course of your duties as the records custodian for the PCBs records of Monsanto, did a copy of the subpoena come to your attention?

A Yes, it did.

Q And was a search undertaken for the records requested in the subpoena and the notice to take deposition?

A Yes, sir.

Q And was the search conducted by persons that were designated by you or known to you?

A Yes, that's correct. The search was conducted by Monsanto employees working in the Law Department under my supervision.

Q And do you know what files or filing systems were searched in order to respond to this subpoena?

A Yes.

Q And can you just tell me generally without being specific about it what types of files were searched in order to respond to the subpoena?

A Monsanto has over the years made several efforts, several extraordinary efforts to collect all the documents within the company that relate, pertain to PCBs. Those documents have been located in a central location and it is

SF-SEL-2547 REPORTING, MUNCIE, IN 47302

those documents which were searched.

Q Where is that central location?

A It's Monsanto World Headquarters.

Q Is that in St. Louis?

A St. Louis County, yes, sir.

Q That is at the offices where you have your office?

A Yes, that's correct.

Q And this effort that you described to search for PCB related records took place over a period of time?

A That's correct.

Q Do you know approximately what the time frame was for gathering together of all PCB related documents into one central location?

A I believe that time period has extended since approximately 1971 and quite frankly, it continues.

Q And persons under your supervision then conducted the search and documents that were relevant and related to the requests were gathered together for purposes of submission to myself and counsel for Alcoa, is that correct?

A That's correct.

Q And copies of the documents that were referenced were put together in packages and I assume submitted to me and to Mr. Holz?

A That's correct.

SF-SEL-2547 PENGAD/INDY. MUNCIE. IN 47302

Q And did you bring with you today the, what I call the file originals or file copies of the documents which were submitted pursuant to the subpoena?

A Yes, I did.

Q Now, what I'd like to do, Mr. Bistline, is to mark some of the documents in groupings together so that we can discuss them as a group rather than one by one. So if we could, please, I'd like to mark my copy of documents that are entitled, "Sales Summary Search" and bear a number at the bottom right-hand corner ALC 000001 through ALC 000086, could we please mark that as Monsanto Exhibit 2?

(Documents, handed to the reporter, were marked for identification as Plaintiff's Monsanto Exhibit 2.)

MR. HOLZ: May I ask, I see yours are bound together in some fashion. Did you receive yours in that fashion, because I did not.

MR. WAYNE: Okay. Looks to me like I did. It appears to have only one staple in it but I can't swear to that.

MR. HOLZ: Might we ask whether Monsanto's original copy is so bound together?

THE WITNESS: Monsanto's original copy is not so bound, Mr. Holz, and I would say that it's my belief that when the records were transmitted both to Alcoa and the plaintiff in this case, they were not stapled together.

ST SEL 2547

They were loose in the file.

MR. HOLZ: I would submit we do not have a single document.

MR. WAYNE: Okay. I'm not marking them for purposes of classifying them as a single document. We can --

MR. HOLZ: If you want to take them as a group of documents --

MR. WAYNE: Yes, take them as a group of documents and I'll ask the questions --

MR. HOLZ: -- with the Monsanto number, then I understand that ALC 00000, five zeros, 1 --

MR. WAYNE: Yes, five zeros through 86 --

MR. HOLZ: Through four zeros 86, and you would like to designate those as what?

MR. WAYNE: Monsanto Exhibit 2. Off the record.

(Whereupon, a short discussion was had off the record.)

Q It appears, Mr. Bistline, that from the originals which you have brought with you today that the documents ALC 000001 through ALC 000086 were grouped in various groupings?

A That's correct.

Q And it appears that ALC 000001 through ALC 04 were grouped as one group?

A Yes.

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47102

Q And that the sales summaries ALC 000005 through ALC 000072 were individual sheets but were forming another group?

A Right. What those are, Mr. Wayne, these ALC 000005 through 00000 -- 000072, excuse me, or the backups are the work papers from which the memoranda which was grouped as ALC 000001 through 4 was based.

Q Okay.

A This is the data which supports this.

Q Okay, and then the next group of documents that appear to be at least kept together in your file is ALC 000073 through ALC 0000076?

A That's correct.

Q And those documents start with ALC 000073 which says, "Sales Summary Search, All PCB Products, Alcoa (Aluminum Company of America) Massena, New York, 1968-1977"?

A That's correct.

Q The next series of documents which appear to be in a group are ALC 000077 through ALC 000081 and on the first sheet there it states, "Sales Summary Search, All PCB Products, Alcoa (Aluminum Company of America), Lafayette, In.) For Indiana, 1968-1977? "

A That's correct.

Q And the final grouping of documents which bear the number ALC 000082 through ALC 000086 has on the first

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

page thereof, "Sales Summary Search, All PCB Products, Alcoa, (Aluminum Company of America)-Alcoa, Tn.) For Tennessee, 1968 through 1977?"

A That's correct.

Q Now, if we could look at ALC 000001 through AlC 000004 --

A Yes.

Q I gather that this was a document prepared by an employee of Monsanto for purposes of responding to the subpoena?

A That's correct.

Q And was that person designated by you or under your supervision who made this chart?

A Yes, that's correct.

Q And I gather from what you said earlier that the documents ALC 000001 through 000004 were based upon information contained in the sales summaries ALC 000005 through ALC 000072?

A That's correct.

Q Now, looking at the sales summaries, ALC 000005 through 000072 --

A Yes.

Q -- can you describe for me what these forms are? They're entitled, "Sales Summary." What are the forms?

A This is a document, computer generated document

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

prepared by the accounting function at Monsanto which tabulates on a periodic basis sales of Monsanto's products by customer. This particular document, this is a series of those documents that we have here identified as ALC 000005 through 000072.

Q Okay.

A Relating to different time periods.

Q And were these prepared by the accounting department at Monsanto at or about the time referenced on the sales summary sheets, i.e., there are some dates on the various sheets running from December '59 on ALC 000005 up through December '68 on 000072?

A That's my guess.

MR. HOLZ: I'm going to object to the form of the question, Bob, as having no foundation.

Q All right. You may answer.

A That's my best information. Of course, I wasn't present when these documents were prepared. They were obtained from files which were represented to be documents prepared in the ordinary course as described.

Q And what record or records would these sales summaries have been based upon, to your knowledge and understanding?

MR. HOLZ: I object again, same objection.

A According to the normal procedure following

preparing reports of this type, these sales summary sheets would have been prepared from invoices and shipping documents reflecting sales of the products designated in the reports.

Q And the invoices and the shipping documents were records -- strike that.

Were the invoices and the shipping records documents that were kept and maintained in the ordinary course of Monsanto's business at or about the time of the various sales?

MR. HOLZ: Same objection.

A Yes.

Q And are those invoices or the purchase orders which form the basis of the computer generated sales studies still in existence at Monsanto?

A Well, let me say first of all that I didn't reference purchase orders. Purchase orders would not be a document upon which this report is based.

Q Shipping orders?

A An invoice or a shipping document, shipping invoice would be the appropriate document. By and large, those documents no longer exist. There may be some exceptions but in terms of having a complete set of those which would correlate with the numbers that appear on the sales summaries, those we do not any longer have a complete set of those documents.

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

Q And what was the purpose, if you know, of keeping sales summaries?

A These particular documents, is that what you're referencing?

Q Correct.

MR. HOLZ: Same objection.

A These documents were intended to provide the basis for financial and other reporting on a periodic basis that can be broken down in various ways.

Q And over the years, has Monsanto relied upon the information contained in the sales summaries for making various business decisions along the way?

MR. HOLZ: Same objection.

A My best information is yes.

Q Now, perhaps you can help us to explain some of the coding or the references on the sales summary sheets. If you could look at ALC 000005 over in the left-hand corner, there is a reference to 2A on the top in the left-hand corner?

A Yes.

Q Do you know what that reference is?

A I don't know what that particular number references, Mr. Wayne. No, I don't.

Q Okay. In the next left-hand side there's a number 10 and then it goes 4595 and then 200?

A Yes.

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

Q And then reading across it says Pydraul 200?

A That's correct.

Q Do you know what the number references are in the beginning of that, i.e., 10, 4595, 200?

A I'm advised that's a code number which represents the product Pydraul A200.

Q Next going down, reading down on the left-hand column, there's a designation E, then reading across 15850, 0805 Aluminum Company?

A Yes.

Q Do you know what the designation E stands for?

A I don't know how to break down that series of letters and numbers other than to say that part of that code is, the 15850 series of numbers was the number which indicated Aluminum Company of America as the customer.

The other letters and numbers in that set may indicate a specific location.

I don't have the knowledge to break that code, and I'm not aware of anybody who does at Monsanto, who knows how to break down that code.

Q I see. So have you made inquiry of others within Monsanto to determine how if at all to break down that code?

A Yes.

Q And your inquiry has led you to the conclusion that there is no one who can determine that?

A We have not identified a person who can do that for us.

Q So that each of the numbers reading in that column, there are four numbers, below are the code numbers for Aluminum Company?

A Well --

MR. HOLZ: What four numbers are you referring to?

Q Let me rephrase the question. There's a series of four numbers in the second column --

MR. HOLZ: I see five numbers.

THE WITNESS: Referring to the numbers that follow the number 15850?

Q Yes.

A 0805?

Q Yes. I apologize for not making it clear.

A That's quite all right.

Q Why don't we rephrase the question and make it absolutely clear.

There are three series of numbers reading across in that particular column on four separate lines, the first one being 15850, 08, 05?

A Yes.

Q And then reading down there are a series of additional numbers in each of the next three lines below?

WATER_PCB-00043693

A Yes.

Q I gather that all of those numbers there are code numbers relating to Aluminum Company of America?

A Yes.

MR. HOLZ: I'm sorry, I misunderstood. You're referring to the 15850 repeated 1, 2, 3, 4 times?

Q That's right, as well as the other series of numbers.

MR. HOLZ: I object on the basis that he just testified that they didn't know what the, as I understood his testimony, the 0805 or the 1601 meant.

Is that not what you testified?

THE WITNESS: We cannot specifically break down what the precise designation of that, those four digit sets of numbers are, Mr. Holz.

We believe that they refer in some fashion to Alcoa but we're without specific knowledge as to specific reference.

Q Okay, all right, and Aluminum refers to Aluminum Company of America, as far as you know?

A That's correct.

Q And this sales summary sheet and others where Aluminum Company is referenced would mean that these were sales by Monsanto to Aluminum Company of America, is that correct?

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

A That's correct.

Q Now, in the next column going over to the right, there's a column for pounds and a column for dollars?

A That's correct.

Q And I gather that 3,870 on the first line of the column reflects 3,870 pounds of materials?

A That's correct.

Q That are referenced on that particular sales line?

A That's correct.

Q And going over to the right, 1,021 would reflect dollars of the invoice?

A Dollar amount that was billed to Alcoa as a result of that quantity of product.

Q Okay. From this sales summary document, one would be able to tell what kind of containers and size of containers that were used for a particular shipment or not?

A No one could tell from that.

Q This is a total of pounds referenced on a particular sale?

A It's a summary of sales, year to date as of December, 1959.

Q Okay, and I gather that on each of the next series of pages -- strike that.

Let's take it one at a time. Going to ALC

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

000006 --

A Yes.

Q -- there's a reference to Pydraul 600?

A That's correct.

Q That's a different product and it reflects sales summaries for that particular product, year to date, is that correct?

A That's correct.

Q Looking at the bottom of 000006, there are some additional columns that are filled in on that reference to Pydraul 625, the columns are sales in months, sales in year to date, and total sales last year?

A That's correct.

Q So that the entries in the various columns relate to either monthly, annual and total sales for the prior year, is that correct?

A I would interpret that to be, the first two columns to be referring to December of 1959, the next set of two columns referring to the year of 1959 and the final set of two columns refer to the year 1958.

Q So it's the prior calendar year?

A That's correct.

Q And is that method of interpretation of the sales summaries the same for ALC 000007 and 8?

A Yes, that's correct.

Q Now, skipping over to ALC 000011 --

A Yes.

Q -- this one is entitled, "Sales Summary Pounds by Month (Thousands)"?

A Yes.

Q And can you tell me what the column is that has the number 11 in it? I can't read that on my copy, and I'm looking at it, it's on the left-hand side.

A I believe the heading on that is "Product Group" up at the top.

Q Product Group, okay.

A Yes.

Q And do you know what the code number 11 refers to?

A I don't have any direct knowledge of that, no.

Q Okay, and under the column name of customer or product it has 1040, 260 Aroclor, d-i-s-t, number 1248?

A Yes, that's correct.

Q Do you know what the numbers 1040 and 260 refer to?

A Yes, those are numbers referring to the product Aroclor distilled number 1248.

Q On my copy the numbers in the various columns going across to the right have been somewhat cut off in the copying.

SF-SEL-2547 PENGAD/INDY. MUNCIE. IN 47302

A Yes, it wasn't in the copying. I think it was in the preparation of the document. It's the same in mine.

Q All right. Is your copy readable in terms of the numbers going across?

A I would suspect no more so than yours.

Q Okay.

A I must apologize. It looks like we cut those a little close.

Q Okay. When you say you cut those a little close, in terms of the photocopying from another document?

A No, the way this document was prepared, this sheet contains information relating to a large number of customers other than Aluminum Company of America.

In responding to your subpoena, we redacted from the document we produced to you information that did not relate to Alcoa and it appears as though the person who prepared this particular document covered up a little bit some of the numbers that did relate to Alcoa.

I'd be happy to go back to the original and produce for you gentlemen one that has the numbers in a legible fashion.

Q I would appreciate it if you would do that for us. Okay, and since my copy is a little difficult to read also, perhaps we could just identify the column headings, the second line down of columns where the numbers are

related, it says last year sales, I believe?

A That's correct.

Q And that would reference sales for the prior calendar year of that product?

A That's correct.

Q And in the next column over, what is the number also? I cannot read my copy.

A It says --

Q "Sales" something?

A Sales current year to date, I believe that would be the third heading column on that line.

Q Okay, that would reflect sales during the calendar year in which the document references in this case?

A 1960.

Q 1960?

A I apologize for the poor quality of that copy.

Q The next series of columns are the months during that particular year?

A Yes, that's correct.

Q And the numbers for those columns would reflect sales during each month?

A That's correct.

Q Is this number a dollar number or a pounds number?

SF-SEL-2547 PLNGAD/INDY, MUNCIE, IN 47302

A I would suspect that it's pounds. The document is dated sales summary pounds by month.

Q That's what I thought and --

MR. HOLZ: May I --

Q If you want to clarify something, go right ahead.

EXAMINATION BY MR. HOLZ:

Q Looking at ALC 000011, the line that reads under product reads 11 and reads 1040, 260 Aroclor d-i-s-t, 1248, there are no numbers shown across from that on that line, is that not correct?

MR. WAYNE: I think there are numbers, they're just cut off.

MR. HOLZ: I'm suggesting those numbers cut off belonged to the line above.

THE WITNESS: That's possible. I can't tell from looking at this document. I'd have to examine the original from which it was prepared.

MR. HOLZ: I'm suggesting if you look at the other pages, Bob, I think you will see that the line contains the product designation,has no numbers, and then under that you get the quantity.

MR. WAYNE: I'm not going to argue. If we get a better copy, I think it would be clear, so why don't we

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

wait on that?

THE WITNESS: Anything I would say on that at this point would be speculation.

MR. HOLZ: That's not a problem. We'll wait to look at the better copy.

THE WITNESS: Very good.

Q (By Mr. Wayne) Now, from ALC 000012 through ALC 000025, there are additional sales summaries, pounds by months, thousandths record, is that correct?

A Yes.

Q And is the method of reading them and interpreting them the same as for the document, document 000011 that we just discussed?

A Yes.

Q And on my copy of 000016, I have a number in the third column under, "Sales Current Year to Date" as 2. Is that what yours reflects?

A That's what mine appears to reflect, yes, although the top is cut off.

Q Okay. Looking at ALC 000019--

A Yes.

Q -- the numbers in the column, "Sales Current Year to Date and March" appear on my copy to be 1 for each of the two referenced Aluminum Company sales, is that correct?

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

A That appears to be what my copy also reflects.

Q Okay. Now, skipping over to ALC 000028 --

A Yes.

Q -- this references the product Pydraul F9 for December, 1963, is that correct?

A That's correct.

Q I just want to be clear on the dollar column on the far right. On the first entry on the line Aluminum Company on the far right, I have what appears to be 1,173 or 2, I can't read that.

A Mine appears to be 1,172, if you care to examine that.

Q Yes, okay.

MR. HOLZ: That's what it looks like to me.

Q And the next line down that same far column appears to be 781?

A That's correct.

Q And the last line on mine I can't make out. Could you tell me what that is?

A It appears to be 7,220 and I can't make out the last digit, it may be a 7.

Q Would you be able to just mark down on your list and see if the precise number can be determined?

A Yes.

Q Thank you. Now, in the upper right-hand corner

SF-SEL-2547 PENGAD/INDY. MUNCIE. IN 47302

of this sales summary sheet as well as others, there is a little box?

A Headed "Page Number"?

Q "Page Number"?

A Yes.

Q And that has a number on it?

A Yes.

Q What number is that?

A On the document bearing number 000028, the number on my copy appears to be page 442.

Q Okay, and are these sales summary pages -- strike that.

Do these sales summary documents run seriatim, by numbers seriatim by the numbers on the pages?

A I'm not sure I quite understand. Allow me, let me explain my understanding, each of these pages, for example page ALC 000028, each page is taken from a larger document.

Within that larger document, the pages are numbered consecutively. This appears to be page 442 of the report generated for December, 1963.

Q Okay, and what is the larger document that you're referring to?

A That would be the total compilation of data of this type for all Monsanto products, all companies for the

WATER_PCB-00043703

relevant time period.

Q Okay. And in the left-hand corner in the box, there's a reference on 000028 to the word, "Direct 2"?

A Yes.

Q What does that refer to?

A I'm without knowledge of what that means.

Q All right.

MR. HOLZ: I think it would be good to let the record show that the 2 was an Arabic numeral 2.

Q Okay. Skipping over to ALC 000031 --

A Yes.

Q -- in the far right-hand column under "Dollars" could you tell me what that number is?

A My copy says 809.

Q All right, and on 000032 --

A Yes.

Q -- could you read across the column starting with pounds under sales this year to date and going to sales, total sales last year across?

A The entry under pounds sales this year to date appears on my copy to be either 1130 or 1150. I can't tell which.

Q Could you check that one as well?

A I'll attempt to get all these numbers.

Q And I gather that the ones reading further

WATER_PCB-00043704

across are, also appear to be cut off on my copy in terms of dollars under sales this year to date?

A Right, that appears on my copy to be 283.

Q The next column is 400?

A 400 and the last entry appears to be 117.

Q Okay.

A But I'll confirm those numbers for you.

Q Okay, thank you. Going to ALC 000069 --

MR. HOLZ: Off the record.

(Whereupon, a short discussion was had off the record.)

Q Under the sales this year to date, again I think we have the same situation as the earlier one, there seems to be some cut off numbers. I'm not certain whether those numbers relate to sales to Aluminum Company or to some other entity above the line. Would you check that for us?

A Yes, I will.

Q Thank you. The next series of documents starting with ALC 000073 through 000076 --

A Yes.

Q -- appear to be sales summary search for Massena, New York?

A That's correct.

Q Can you describe what ALC 000073 is and from what document it was prepared?

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

A ALC 000073 is a summary prepared by my staff of sales to Alcoa, Massena, New York. It is based upon the documents attached as ALC 000073, 74 through 76.

Q Now, the documents 000074 through 000076 --

A Yes.

Q -- are entitled, at least on my copy, "Organic Division Functional Fluid Products/Customer Sales Report"?

A That's correct.

Q And were these computer generated reports done by the accounting department of Monsanto?

A That's correct.

Q And were these computer generated reports done in the ordinary course of Monsanto's business over a period of time?

A I'm advised that they were.

Q And what record or records were these computer generated sales reports based upon?

A These would be the same type of record that the previous report that we have already spoken about were based on. They would be sales invoices and shipping invoices.

Q And the shipping documents and the sales invoices were prepared by Monsanto's employees in the course of their employment?

A That's my information, yes.

Q Now, the sales reports reflect a particular Aluminum Company of America plant location, i.e. in this case Massena, New York?

A That's correct.

Q Whereas the sales summaries that we discussed previously do not specifically delineate a specific Alcoa plant?

A That's correct.

Q So I can understand the report, 000074 through 000076 --

A Yes.

Q -- can you explain what the first column is on the left-hand side?

A The printed form, is that what you're talking about?

Q Yes.

A Three letters, MGR, I believe that to be a reference to the sales manager or the manager for product, sales of that particular product.

Q Okay, is the code number in the column next to Aluminum Company?

A Yes.

Q What is that?

A It appears on my copy to be 11.

Q And that would be a code number for the manager

WATER_PCB-00043707

in charge of the sales?

A That's my best information.

Q And is there, to your knowledge, a master list of code numbers that would reflect who those managers were?

A Not to my knowledge.

Q The next column is sales rep?

A That's correct.

Q On my copy, I can't read the number if there is one in the column next to Aluminum Company.

A There is a number. I can't read it on my copy, either.

Q Okay. Would you be able to see if that's a readable number?

A I will look at the file and see if we can see what that number is.

Q That would represent the code number or the sales rep who was involved?

A Yes.

Q And do you know whether there's a master list of code numbers in sales reps' names?

A I do not know.

Q Would you be able to check that?

A I will make an inquiry.

Q Thank you. Could you just read the column headings across, I can't read the column after "Name of

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

Products/Customer".

A The next column heading is, "Potential."

Q Potential?

A Potential.

Q Does that mean estimated sales?

A Yes. That was based upon sales marketing projections that were done by the sales people.

Q Okay, and the next column, the last year sales?

A Correct.

Q And then next would be --

A Sales goal for current year.

Q And the next one would be --

A Sales current year to date.

Q And then it would be months across?

A 12 months across.

Q The last column would be what?

A Customer I.D. and then, I don't know how to interpret that last set of letters m-a-j-r, g-r-a-d.

Q Major group number?

A I'm sorry, I don't know at that point.

Q Could you read the columns across in terms of the numbers after Aluminum Company of Massena, New York?

A Just the numbers?

Q Yes. I can't read --

A Under potential, 36.0; last year sales, 7.39;

WATER_PCB-00043709

sales goal for current year, 36.0; sales current year to date, 8.62.

There are no entries for the months of January, February or March.

For April the entry is 6.16. There's no entry for May. The entry for June is 2.46.

Q Okay.

A There are no other entries for any of the months.

Q Okay. Do you know whether these numbers refer to pounds or dollars?

A I would guess pounds in thousand bulk, yes.

Q Okay. Would you look at 000075?

A Yes.

Q There's some blackout on my copy with some handwritten interlineation numbers?

A Yes.

Q Were those on the original records?

A Yes.

MR. HOLZ: The handwritten stuff?

THE WITNESS: The handwritten stuff appearing on the original record, this was not a modification made by my staff.

Q All right. The next document, 000077 through 000081 appear to be another grouping referencing sales summary for all PCB products relating to Lafayette, Indiana?

A The Alcoa plant, Lafayette, Indiana, that's correct.

Q 000077 is a summary based on 000078 through 000081?

A That's correct.

Q So it was done in the same fashion as the Massena, New York summary?

A Yes, that's correct.

Q The underlying documents 000078 through 000081 are forms similar to the ones for Massena?

A Yes.

Q But relating to Lafayette?

A Yes.

Q And the method of reading and interpretation of the documents is the same?

A Yes, that's correct.

Q Looking now at document 000082 through 000086, I gather that these are records relating to the sales to Alcoa's Tennessee plant for the period '68 to '77?

A Right.

Q And the 000082 is a summary prepared by your staff of the documents ALC 000083 through 000086?

A That's correct.

Q And the documents 000083 through 000086 are the same forms and are read and interpreted and treated the same

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

as the forms for Massena and Lafayette, is that correct?

A That's correct.

Q And is it correct, sir, that all of the various sales summaries for all of the PCB products as well as the individual plant by plant records were found in the files that were at Monsanto's offices and were gathered together as part of the PCB files?

A Let me make sure I understand you. The documents prepared by my staff which are based on the computer records that we have produced were recently prepared by my staff in response to your subpoena.

The underlying documents were documents that we collected, the Law Department collected from files maintained in St. Louis.

Q Okay. And, sir, you recognize the underlying documents, not the sales summaries, not the summaries prepared by your staff but the underlying documents as being Monsanto's records, isn't that correct?

A That's correct.

Q And in your capacity as custodian of PCB records, you have been through various computer generated sales summary records on a number of occasions in the past and are familiar with them generally, is that correct?

A Yes.

Q Off the record.

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

WATER_PCB-00043712

(Whereupon, a short discussion was had off the record.)

EXAMINATION BY MR. HOLZ:

Q Mr. Bistline, I'd like to ask you a few questions about the summary pages that you were testifying were prepared by your staff.

I note that looking at the sales summary document from which they were prepared, I believe this was covered, we can look at any one, let's take 000008, for example. I believe this was covered in your prior testimony, that there are figures given for sales in year to date and there are figures given for total sales last year?

A That's correct.

Q Now, in preparing the sales summary as, for example ALC 000001 through 000004, sales are given in summary in pounds by year?

A That's correct.

Q Now, my question is did your staff cross check, in making the totals, did they cross check the columns that said the total sales last year?

A Let me see if I understand you correctly. Are you saying that where there appears numbers in the total sales last year column, was that checked against subsequent

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

WATER_PCB-00043713

reports?

Q That would have been prior.

A Prior reports, to see if those two figures matched?

Q That's right.

A Where they appear, it's their procedure to do so. They're instructed to do this where the figures are available.

Q Were there any discrepancies?

A No, none that I'm aware of. I was not advised of them.

Q Did you ask to be advised of them?

A Mr. Holz, I can't recall in this particular instance whether I gave that particular request or not. It's a standing instruction that when a document of this type is prepared to be produced to someone outside of Monsanto, that I be advised of any discrepancy or difficulty the staff encounters in preparation or justifying the figures.

Q All right. Are you telling me that it was your instruction that they were to total the last year columns as well as the current year columns and to compare them?

A Where the figures are comparable, where you can relate them to the same period, yes.

Q Thank you. Were the summaries prepared from

SF-SEL-2547 PENGAD/INDY. MUNCIE. IN 47302

photocopies that you have brought with you?

A The summaries were prepared from these documents, yes.

Q From these very pieces of paper?

A These very pieces of paper, yes.

Q Thank you. Let me ask you about the sales summary pages as opposed to the documents that were prepared by your staff.

A Yes.

Q Do you have any personal knowledge as to when these documents were created?

A No, sir.

Q Do you have any personal knowledge as to by whom they were created?

A No, sir, I do not.

Q All right. Now, I want to direct your attention to 000019 and you will see in there the last line there in which there's any typed words, that there's a line drawn through that, is there not?

A I'm not sure I understand what you mean, there's a line.

Q This line seems to be drawn through the words "Aluminum Company" and then the numbers?

A I'm not sure that I would say the line has been drawn through there Mr. Holz. These lines appear on the

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

form.

Q Can you explain the line?

A It's a guide, it's a visual guide so your eye travels in a straight line across the form.

Q Do you mean it was preprinted on the form?

A Yes. This is a preprinted form on which the computer types the sales information.

Q Then your testimony is that that is typed over the line?

A That's correct.

Q Okay, thank you. Now, let's turn to 000074.

A Okay.

Q I'll use this as an example.

MR. WAYNE: 0000, what number?

Q 74. Now, under the caption -- is that a, do you know, a printed caption, "Organic Division Function" or is that typed in somehow?

A I don't know whether that is printed or typed. I'd have to examine, if we still have the original document, I'd have to examine that document to determine that.

Q You say if you still have the original document. Is there some doubt about that?

A It may be that the document that we acquired from Monsanto's files was a xerox copy rather than the original ribbon copy. These copies are prepared obviously

WATER_PCB-00043716

and computer generated and multiple copies are made as needed by various groups within the company.

They weren't, all copies were not typed out in original by the computer.

Q Do you know where the original is?

A Of this particular document, sir?

Q Or any of these documents?

A To the extent that we have the ribbon copy in our archives, I have the original document.

Q All right, but you don't have it in all these instances?

A That's correct.

Q Now, immediately below that capition that I asked you about, the organic division functional fluid sales report appears another legend in thousands of pounds and dollars?

A Yes, sir.

Q Do you know how that's preprinted, is that computer generated or do you know?

A Again, I could not tell you from looking at this copy.

Q All right. I believe you discussed this page with Mr. Wayne?

A Yes.

Q And looking at the numbers, I believe you

PENGAD INDY MUNCIE IN 47302
SF-SEL-2547

ventured the opinion that the numbers were pounds rather than dollars. How could you tell that?

A Dollars are normally expressed differently.

Q How?

A The dollars would be expressed not in thousands typically, it would take quite a few thousand pounds to make up thousands of dollars. The dollars are usually expressed in whole dollars and cents.

Q How do you know, in other words, you're saying because, taking for example number 7.39, that would be $7.39?

A That's correct.

Q Okay. Now, looking at, again for example we look at the other pages as well, but there seems to be handwritten on there the word "Pydraul" and the number 625?

A Yes.

Q I believe you testified in answer to Mr. Wayne's question that those were on the original documents, those handwritten --

A That's correct, we don't make substantive marks on these documents.

Q In other words, your testimony is that when you received the documents, they had these notations written on them?

A That's correct.

WATER_PCB-00043718

Q Can you tell me when the notations were written on the documents?

A No, sir.

Q Can you tell me by whom the notations were written on the documents?

A No, sir, I cannot.

MR. HOLZ: That's all the questions I have on that group.

Q (By Mr. Wayne) On this group, just one or two more questions then, sir, as the records custodian for the PCB related documents, do you have any reason to question the accuracy or the authenticity of any of these sales summaries, the underlying documents, not the ones prepared by your staff?

A No, sir, I have no reason to question them.

Q Okay. I don't have anything further on that stack.

It might be a good time to take a break here.

(Whereupon, a short recess was taken.)

Q (By Mr. Wayne) Sir, would you look at ALC 000184?

A Yes, sir.

Q Which has previously been marked as P140 at Mr. Bunting's deposition.

SP-SEL 2547 PENGAD/INDY MUNCIE, IN 47302

A Yes.

Q This appears to represent on the top of the sheet quantities of polychlorinated biphenyls contained in fluid sold to Alcoa.

Can you tell me who prepared this document ALC 0001847

A Yes, it was prepared by a member of my staff at my request.

Q Was it prepared at your direction and supervision?

A Yes.

Q From what document or documents was this quantity sheet developed?

A This was prepared from documents which reflect the composition of the products which are listed here.

Q And what are the types of documents that reflect the composition of the products listed that were used for purposes of making this Exhibit P140?

A I can't remember the precise title of documents, something like product specification sheet or something like that. I don't have the exact title of the document in my head.

Q And that product specification sheet, if I can use that term for a moment, is a document that was prepared by and kept at Monsanto's offices?

A That's correct.

Q And was that a document that was prepared and kept in the ordinary course of Monsanto's business with respect to each of those products?

A Yes, that's correct.

Q Was that developed by Monsanto's employees or personnel?

A Yes.

Q And those product specification sheets are kept in files at Monsanto?

A Yes.

Q Are they kept in the same files that were gathered together for the PCBs or are they kept in separate files?

A Two places, I have my set of those documents within the PCB documents. They are, in addition, I believe kept in our research area.

Q All right, and so for all of the products that contained PCB, the product specification sheets would be with the records of the PCB related files?

A As I said, I have a copy of those records with the PCB files, yes.

Q And on the product specification sheet for each of the products would there be an entry for percentage of PCBs?

SF-SEL 2547 PENGAD/INDY. MUNCIE, IN 47302

A Yes.

Q I gather someone from your staff went to the product specification sheet, took the percentage PCBs and particular product and translated it into a chart which is now marked P140?

A Right. Let me clarify that. The entry on the product specification sheet probably does not say percentage of PCBs in those words. It would reflect whatever particular polychlorinated biphenyl product was used in making the products sold to Alcoa.

In some cases, it's a hundred per cent. In some cases, it's less than that but for example, if it were Aroclor 1242 or 1248 that were used in making the product, that would be reflected here as a polychlorinated biphenyl.

Did you follow me?

Q Not quite. Just so we're clear, on the product specification sheet for the composition of the product, there would be some entries with reference to PCBs content?

A There would be entries with respect to the specific substances blended together to make up this product.

Q All right, and how then would someone go from the composition to a percentage figure for PCBs?

A Monsanto's product polychlorinate or PCBs are identified as Aroclor with a certain number after it. It

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

WATER_PCB-00043722

reflects the kind it is. On the specific sheet, there's an entry for Aroclor that is reflected and means that's the PCB that was used in making the final product.

Q And then how would someone know percentages from that?

A The figure I believe is expressed in per cent.

Q And do you retain the product specification sheets from which P140 was generated?

A Yes.

Q And those are in your --

A In my custody.

Q In your custody, in your files?

A Right.

Q And are those product specification sheets voluminous, or one, or multiple sheets for each product?

A It depends upon the product.

Q And as far as you know, P140 is accurate and reflects the percentage of PCBs in each of the products listed thereon?

A Yes.

Q That's ALC 000184?

A That's correct.

Q Are the underlying product specification sheets available for inspection if someone had a question about how that was determined?

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

A If we could agree upon a protective order so that that information wouldn't be disseminated, we regard the precise composition as proprietary information but, yes, it could be made available upon request.

Q Off the record.

(Whereupon, a short discussion was had off the record.)

MR. WAYNE: Let's just put it on the record in case there's any question about the underlying document from which this came. I, personally, have no objection to a confidentiality and protective order.

MR. HOLZ: Neither does Alcoa.

MR. WAYNE: On the record then, in the event that anyone wishes to have any questions about the underlying documents, I certainly would agree that if they were to be disclosed to me or any client, we would enter into a protective order and confidentiality order with respect to any of the information contained on any of the underlying documents, specification sheets.

MR. HOLZ: And so would Alcoa.

THE WITNESS: I take it you'll advise me whether that's additional information you wish?

MR. HOLZ: Yes, we'll see how things develop.

Do you have some more questions on this document?

MR. WAYNE: I may not. No, I do not.

PENGAD/INDY. MUNCIE, IN 47302
SF-SEL-2547

MR. HOLZ: Then let me ask a few questions.

EXAMINATION BY MR. HOLZ:

Q I take it that the information stated on this document 000184 which has been identified as Plaintiff's Exhibit 140 is a conclusion or inference from the sale summary document, itself, and the product specification --

Let me clarify that.

MR. WAYNE: Because I'm going to object.

Q What I mean by that is that someone on your staff went through and picked out the product designations that are shown in the sales summary documents?

A That's correct.

Q And then compared the product names with specifications?

A That's correct.

Q Okay, and then drew the conclusion or inference --

A Reported the result of that inspection.

Q Of that comparison?

MR. WAYNE: Let me just object to the form, as drew the conclusion. It reported on what the facts were in the product specification sheet.

Q All I'm putting on the record is what they're doing was taking one thing, comparing it to another and drawing a conclusion. I'm going to ask some more questions.

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

MR. WAYNE: Fine.

Q Are the specifications that were used in making this, are they dated?

A Yes.

Q Do they carry dates?

A Yes, they do carry dates.

Q Were the dates compared to the dates of sale, the dates of the specifications compared to the dates, in other words, was a 1968 specification compared to a 1968 product specification on the product sales summary sheet?

A Let me answer it this way, Mr. Holz. The products compositions are not changed from year to year so that the product composition, for example for Pydraul A200 didn't change.

Q That's never changed?

A No. We don't sell the product any more. If we change the formulation, we change the product designation.

Q All right. Now, referring to those specifications, I believe you testified that the particular components, in other words, the chemical composition by quantity is given in those specifications?

A That's correct.

Q Is it also true, is it not, that there are many different isomers of polychlorinated biphenyls?

A That's correct.

SP-SEL 2547 PENGAD/INDY. MUNCIE IN 47302

Q Some hundreds?

A I believe the number is 209.

Q And that they have in terms of stability persistence toxicity quite different characteristics?

A They can have, yes, that's correct.

Q So then that totaling them together in a percentage as has been done here is a pigeonhole process, is that correct?

MR . WAYNE: I object to the form. I don't know what you mean by pigeonhole.

Q A categorization process?

A It groups them together.

Q It groups them?

A Yes.

Q Fine, just as if we wanted to group all classes together, we could do that?

A I assume if one wanted to do that, one could.

Q I mean, it's a grouping, is it not?

A All that this document designates is the total PCBs content of the specified group so I would agree in that sense, it is a grouping.

Q A grouping in the sense they all belong to the same family?

A Polychlorinated biphenyls, that's correct.

MR. HOLZ: I don't have any other questions on

WATER_PCB-00043727

that document.

MR. WAYNE: Neither do I.

Okay, the next grouping of documents is what I have as Aroclor product labels, it's product folder 8, which bears the number ALC 001224 through 001243.

Can we mark all of these?

(Documents, handed to the reporter, were marked for identification as Plaintiff Monsanto Exhibits 3, 3A through 3O, inclusive.)

Q (By Mr. Wayne) Mr. Bistline, the documents which have been marked Plaintiff's Exhibit 3 through 3-O were contained in a folder marked Aroclor Product Labels?

A Yes.

Q Folder 8 according to my designation?

A Yes.

MR. HOLZ: We did not receive folders, I don't believe.

THE WITNESS: You should have. They should have been sent precisely the same fashion as what Mr. Wayne received.

MR. HOLZ: Okay, I'll double check it.

MR. WAYNE: I can tell you I received them with a folder as shown here.

MR. HOLZ: Okay.

THE WITNESS: If you didn't get them that way, let me know. We can certainly remedy that, Mr. Holz.

MR. HOLZ: Aroclor Product Labels?

MR. WAYNE: That's what it says on mine.

Q (By Mr. Wayne) Now, the documents ALC 001224 through 1243, Mr. Bistline, appear to be, represent Aroclor labels, is that correct?

A That's correct.

Q And can you tell me from what file or files these documents 1224 through 1243 came at Monsanto?

A Well, once again, these came from files in my custody relating to PCBs.

Q Do these documents, 001224 through 001243 represent copies of labels that were prepared by Alcoa employees over the years?

MR. HOLZ: I beg your pardon?

Q Prepared by Alcoa -- by Monsanto employees over the years?

A By Monsanto employees.

MR. HOLZ: I'm going to object to the form of the question.

THE WITNESS: The answer is yes.

Q Do you know what the procedures, if any, were for the creation of these various labels over the years?

A Mr. Wayne, I don't know that from firsthand

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

knowledge. I doubt that I would be the appropriate person to impart that information to you.

Q Is it Monsanto policy to keep copies of labels prepared by and used by it in the ordinary course of its business?

A Yes.

Q Now, each of these labels bear in the lower left-hand corner or on some location of the document a reference to some code numbers. If you look at the first document, Aroclor 1242, 001224 --

A Yes.

Q -- the lower left-hand corner, this is Exhibit 3, in the lower left-hand corner, there appears to be code numbers, or numbers. Do you know what those numbers represent?

A I don't know in detail, Mr. Wayne. I'm advised that they are the number which refers to this particular label, but whether the individual numbers have a significance, I don't know.

Q Okay. Is there any way which you could tell the date of these labels from the labels, themselves, the date prepared or date used or anything of that nature?

A One would have to refer to the code number to which you referred a moment ago, and I know the date for the label can be determined. I'm not certain where internal

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

to this code number is the key on that or whether you have to refer to another document but I know we can for the most part determine the time period during which that label was used.

Q Off the record.

(Whereupon, a short discussion was had off the record.)

Q Back on the record. Mr. Bistline, would you be able to check to determine the dates when the labels were actually in use?

A Yes.

Q From the code references on other labels or from some other source?

A I'm not sure our staff can do it from code reference. I believe we can determine when the labels were in use.

Q All right, I'll appreciate it if you can do that.

MR. HOLZ: And tell us how you did it.

THE WITNESS: Yes.

MR. WAYNE: Off the record.

(Whereupon, a short discussion was had off the record.)

Q (By Mr. Wayne) Do you know if it was the policy and procedure of Monsanto to keep a product label file with labels that were used during various time frames or was it a

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

policy to keep a file on type of products, how were the files kept, by product, by time of use, by dates, or don't you know?

A The label file was kept by products.

Q By products?

A Yes.

Q Okay, and those files over the years were in the custody of Monsanto personnel?

A That's correct.

Q And the labels that are part of the Plaintiff's Exhibit 3 groupings are copies of actual labels in use during various periods of time for these various products referenced thereon?

A That's correct.

Q Now, were the labels to your understanding put onto product containers?

A Yes.

Q So that when products were shipped, they would have labels like the ones marked here?

A That's correct. Let me just clarify that to this extent. I believe the last four pages of this group, Exhibit 3-O, 1240 through 1243 were not labels that were designed to be put on the container by Monsanto Company.

Q These were for purposes of returning for reclamation or disposal?

SF-SEL-2547 PLEASANTON MUNCIE, IN 47302

WATER_PCB-00043732

A That's correct. They were designed and intended to be applied to the container by the person returning the product to Monsanto.

Q Okay, and to your understanding, would these labels be put on containers of various sizes so that whether it be a drum of certain gallonage or certain pounds of product, the labels would be on all types of containers?

A That's my understanding, yes.

Q And you recognize the Exhibit P3 documents as being labels of Monsanto?

A I recognize these as copies of documents which we obtained from our files, from the labeling files maintained by Monsanto.

Q Okay. I don't have any further questions on these documents.

MR. HOLZ: All right. Let me ask just a few.

EXAMINATION BY MR. HOLZ:

Q How do you know what Monsanto's policy, as I think you testified earlier, was to the preparation or use of labels?

A I'm not sure I testified with any breadth of knowledge about what our policy was with respect to preparing labels, Mr. Holz.

My information on the use of Monsanto labels,

SF-SEL-2547 PENGAD/INDY. MUNCIE. IN 47302

WATER_PCB-00043733

manner in which label files were organized comes from conversation with the person who actually performed that function at Monsanto for a number of years.

Q What function?

A Function of preparing the labels for the various Monsanto products, making sure that the labels were appropriate and appropriately used in the shipping of products, that they comply with regulation requirements.

Q Do you know, first of all from your personal knowledge, whether or not the documents we have here are all the labels used by Monsanto with respect to the sale of PCBs from, say, 1950 to date?

A No, sir, they're not. These are documents which would be the labels used on the specific Aroclor products identified here which were sold to Alcoa during the time period during which those products were sold.

Q Are you saying that there is a label here for every product sold to Alcoa?

A There's a label here as best we can determine it by looking at the sales summary for the PCB containing product sold to Alcoa.

Q I'm not sure I understand your answer. Could we relate these labels to the specific product if we go through the list of a product?

A That attempt was made by my staff.

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

WATER_PCB-00043734

Q And --

A And this was the result of their attempt to do exactly that.

Q What I'm asking you is can you take us through and show us which label goes with which product?

A I'm not sure I can do that right now.

Q What I'm trying to get at is whether or not there are any labels that did or may pertain to those products that is not in this file or may not be in this file, I'm asking you about the completeness of the file.

A If I understand your question, let me just be sure I understand what you're asking. You're asking me if contained within this particular folder here are all labels for products containing PCBs which Monsanto sold to Alcoa?

Q That's right.

A The answer to that is no because there's another file of labels we also produced that are Pydraul, specific labels we have to consider.

Q If we take the two together, would there be a label that corresponds to every product?

A Yes, that's my belief. I say that because I didn't physically, personally check that but that was the instruction that I gave my staff.

Q And is your belief based on your knowledge of these files that there are no missing labels or gaps or

SF-SEL 2547 PENGADINIA MUNCIE IN 47302

whatever?

A I have to go back and repeat what I just said. The instructions I gave my staff was if the labels for all the products that we sold to Alcoa --

Q My question was a little different. You are familiar with these files?

A Yes.

Q Is that correct, okay. What I'm asking you is based on that familiarity and knowledge, are they complete?

A To my knowledge, yes.

Q So there are not missing labels or --

A I have looked through here. I don't see, there was nothing which appeared to me that should have been in here that was not.

Q Okay.

A Or was in here that shouldn't be.

Q Fine.

A Both ways.

Q Then in your knowledge of these files, you're speaking more broadly than just these particular labels?

A Yes.

Q Which you have assembled as being applicable to the products sold to Alcoa, but now referring to all Monsanto PCBs containing products, are you telling us that it's your belief that those files are complete?

SF-SEL-2947

MR. WAYNE: I lost you myself on that question.

Q Let me try again then. What I'm trying to get at is whether or not the label files to the best of your knowledge, the label files generally for PCBs are complete?

A They are complete back to the time at which the files began to be maintained.

Q Which was when?

A 1947, I believe, or thereabouts, the post-World War II period at some point, I'm not sure, '46 or '48 but approximately that time period, the very late 1940s.

Q From then until --

A Until now.

Q -- until now, until Monsanto quit selling --

A Correct. What I'm saying more broadly is we have, we didn't keep label files just on PCBs products. We have label files on all of our products and those files are complete back to 1947.

Q So you have not had the experience of, on PCBs labels or any other kind of labels of wanting to find what label applied to what product and not being able to, is that correct?

A That's correct.

Q Fair enough. I don't have any more questions.

MR. WAYNE: Okay, next I'd like to mark the next grouping which would be the Pydraul labels, which is

ALC 001244 through ALC 001279 which came in a folder product numbered 9 regarding Pydraul product labels.

THE WITNESS: Which is somewhat misleading. There's other things.

MR. WAYNE: I'll mark them as a group if I can, then we'll deal with them individually. We'll do the same thing with these except we'll mark them Plaintiff's Exhibit 4.

(Documents, handed to the reporter, were marked for identification as Plaintiff Monsanto Exhibits 4, 4-A through 4-II, inclusive.)

MR. HOLZ: I have just a couple more questions for clarification on Plaintiff Monsanto 3 set of documents.

EXAMINATION BY MR. HOLZ:

Q If you look at 001226, which is Plaintiff's Monsanto Number 3-C?

A Yes.

Q Now, I see there it reads net legal 600 pounds, then it's 272.16 kilos?

A Yes.

Q Do I correctly infer this is a label for a particular product container, a drum with a specific quantity?

A That's correct.

Q Now, if we look at Plaintiff Monsanto Number 3, which is 001224 and 001225, we are not given any such designation?

A That's correct.

Q Indeed, this looks to be a photocopy of three pieces of paper, one of which is 001224 and then from the outline, it looks like there's two different pieces of paper that have been photocopied on 001225?

A That appears to be correct.

Q Can you tell me, I'm a little at a loss, you have described these as labels but how do we come to have sort of a three labels, or three pieces placed on a container?

A My understanding of the label that's reflected on 1224 and 1225 is that part of it went on the front and part of it went on the back of the container.

Q But they are all sticker labels?

A Sticker labels, yes.

Q In this case, all three pieces would be on the container?

A That is my understanding.

Q Okay. If you look at 001227 which has been marked Plaintiff's Monsanto Number 3-D, does that go with 001226?

A I believe it does.

SF-SEL-2547 PENGAD/INDY, MUNCIE, IN 47302

Q So in other words, that's again a three-piece set?

A Yes, that's correct.

Q Okay. Can you explain why some have quantities, seem to be specific to a specific container and others do not?

A I can't explain that to you.

Q Would you look at 0012335 which has been marked Plaintiff's Monsanto 3-H?

A Yes.

Q Is that also a sticker label?

A All of these labels, Mr. Holz, I believe are sticker labels. In other words, they're placed on the product.

Q None of them are packing slips?

A No. These all are true labels which are affixed to the outside of the product container.

MR. HOLZ: Okay. That's all I wanted to clarify. Would that be true of the new set we're about to talk about?

THE WITNESS: Yes.

Q (By Mr. Wayne) Okay. The next set of documents are Pydraul type labels that have been marked Plaintiff's Monsanto Exhibit 4 through Plaintiff Monsanto Exhibit

WATER_PCB-00043740

4-II, and include the documents marked ALC 001244 through ALC 001279?

A That's correct.

Q And I gather that these documents in Plaintiff's Exhibit 4 were also copies of documents contained in the labeling files in your possession relating to the Pydraul family of products together with at least one at the end marked 001279 referring to Transformer Pyranol?

A Yes, that's correct.

Q Are these copies of labels that were kept and maintained in the ordinary course of business of Monsanto?

A Yes.

Q And are these labels, do these reflect the labels that were in use by Monsanto for the various products over a period of time?

A Yes, that's correct.

Q And would you be able to attempt to do the same thing for us with regard to this set of labels, namely determine for what period of time each of these labels for the various products were in use?

A Yes, I will undertake to do that.

Q And were these documents kept in the label files under product name?

A Yes.

Q And your staff searched the records to pull out

WATER_PCB-00043741

the labels for each of the Pydraul products that were sold to Alcoa?

A That's correct.

Q And the documents contained in this Exhibit 4 are the result of that search from the files in your possession?

A That's correct.

Q And it was the policy of Monsanto to maintain copies of labels which had been prepared and used in the regular course of its business, is that correct?

A That's correct.

Q You recognize these as copies of Monsanto labels for the Pydraul products?

A I recognize these as documents that came from the label file for those products, yes.

Q And as far as you know, these files were maintained in the custody of Monsanto over the period of years from at least 1947 to the present?

A Approximately 1947, yes.

MR. WAYNE: I don't have any further questions on these.

EXAMINATION BY MR. HOLZ:

Q To save time, are there any, do you recall our prior dialogue concerning folder number 8 on the Aroclor,

except it's a different product, are there any significant differences in the way the label files were kept, in your knowledge of them?

A With respect to -- transposed to the Pydraul?

Q No, I'm contrasting this group of documents with folder number 8, the Aroclor we were discussing previously. I asked you a series of questions about your knowledge and about how the files were kept and so forth.

Are there any differences, I'm trying to short cut it.

A To my knowledge, there are no differences between the manner in which the label files for the Pydraul products were kept as opposed to the Aroclor products that we discussed previously.

Q Or concerning your knowledge of those files?

A That's correct.

Q Referring specifically to 001279, which is the Transformer Pyranol, and it says made for General Electric Company?

A That is correct.

Q What did that mean?

A General Electric manufactures electrical equipment including transformers. Transformers contain a fluid called a dielectric, the purpose of which is to insulate and cool the equipment. G.E. had specifications

for its dielectric fluid called Pyranol A-13B3B, which label is reflected in 001279.

Monsanto in certain cases manufactured the product Transformer Pyranol A-13B3B for G.E. at its request, pursuant to G.E.'s specifications. That is what is meant, it was made for General Electric Company.

Q It does not imply then that the product was sold only to General Electric?

A No.

Q It was sold to whomever, the general public?

A I would not say we sold it to the general public. This is a special kind of fluid for a particular application, that is, it's used in electrical equipment.

Q I understand.

A We would not sell it to a 12-year-old kid who called up on the phone.

Q You misunderstood. If anybody called up and said, hey, I've got a transformer --

A Up to 1972, that was the case. In 1972, Monsanto instituted a policy as part of an overall program to restrict the sales and hopefully thereby the environmental dissemination of PCBs.

That program restricted as a matter of company policy only, not of any compulsion but we restricted our sales of product containing PCBs to electrical equipment

WATER_PCB-00043744

manufacturers so after January 15, 1972, Transformer Pyranol or any other transformer fluid containing PCBs would have been sold only to certain specified electrical equipment manufacturers.

We would not have sold it even to Alcoa if they called up and said I need some of this transformer fluid.

Q Okay. Many of these labels if not every one, and, you know, you can speak to whether it's every one or not, contain, if not identical, a similar legend that says caution, contains chlorinated hydrocarbons, then it goes on and sort of just cautions prolonged breathing of vapors and mist and avoid contact with eyes and prolonged contact with skin, if skin contact occurs, remove by washing with soap and water, following eye contact, flush with water; if clothing becomes soaked with fluid, laundry before wearing again?

A Yes.

Q Those legends were all, is it not correct to say, directed at worker protection?

A Those legends were directed toward anyone who would come in contact with product. I don't know that that's necessarily restricted to workers, although they would be obviously a primary audience.

Q The labels on the product barrel, was it not the idea that the product barrel would then be in a customer's

WATER_PCB-00043745

facility?

A That's correct.

Q This would warn the workers in the facility?

A That's correct, warn anyone who saw the label.

Q Yes, who came in contact with the drum?

A Right.

Q In the prior set of documents that were marked Plaintiff's Monsanto Exhibit 3, we saw a few documents that related to, did we not, to the return of the product to Monsanto?

A That's correct.

Q For reclamation or disposal?

A That's correct.

Q I don't see any in this set.

A Yes, there are none.

Q There are none?

A There are no return labels included in production folder number 9.

Q All right. Now, if we look back at the prior set, if we look at those return labels, I think I can identify one of those for you for reference, for example, ALC 001239.

MR. WAYNE: What is it?

Q 1239, which has been marked Plaintiff's Monsanto 3-K, and if we look at the first legend on there, "This

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

product contains polychlorinated biphenyls (PCBs) which some studies have shown may be persistent and environmental contaminant and possibly injurious to certain forms of birds, aquatic animal life."

Is it not correct to say this is speaking to a different concern than is expressed on the product labels discussed previously?

A I can tell you what my understanding of this is, Mr. Holz, but I'd have to say that probably I'm not the appropriate person to speak to the substance of the cautionary language.

Q Could you give me the name of the person who would be the proper person to speak to?

A Well, for some purposes it would be Dr. R. Emmett Kelly.

MR. WAYNE: What is his designation?

THE WITNESS: He's retired from Monsanto. He was, from approximately 1937 until 1974, Monsanto's Medical Director.

Q Who else?

A Mr. William B. Papageorge, P-a-p-a-g-e-o-r-g-e. Mr. Papageorge is also retired from Monsanto. At the time period approximately 1970 through 1976, he held the title of Manager of Environmental Protection, or Environmental Control, some such formulation, and he had as his main

WATER_PCB-00043747

responsibility those concerns related, environmentally related to PCBs and polychlorinated biphenyls.

Those are the two people whom I would say are most knowledgeable about the substance and content of the warnings you referred to.

Q But you earlier testified, I believe, correct me if I'm wrong, that you were, that the reason that you have custody of these files is that you are concerned with litigation relating to PCBs, is that not correct?

A That's correct.

Q And in the course of those duties of managing litigation against Monsanto relating to PCBs, have you not come to understand what these, the significance of these labels are?

A I believe so, yes.

Q And based on that, can you not tell us that the return, that the legend on return labels that refers to the environment has a different, is addressed to a different concern than the labels that are on the products, themselves?

MR. WAYNE: Let me put in an objection to the form of your question, to the foundation. I think you ought to first find out whether this P 3-K is a document that is related to another label or is an independent label of itself.

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

Q We'll clarify it but I think we had established it was a return label.

MR. WAYNE: I don't recall specifically, I just want to know if it falls within the category of return labels or attached to another label.

Q I notice it says waste disposal. Go ahead.

A As I sit here, gentlemen, I can't tell you whether this document which you have identified as 3-K is a return label or whether it's a label which was also put on the product that is identified here as Inerteen PPO, ALC 001238.

Q Is there a way you could determine that and advise us?

A Yes, I can. What I will say though, Mr. Holz, is that the documents numbered ALC 001240 through 1243 are certainly return labels.

Q Okay, and referring then to 1240, which has been marked Plaintiff's Monsanto 3-L, there are two legends there, if you will, bodies of texts. The one on the right begins, "Caution." Is it not correct to refer to the same sort of personnel concerns that we discussed earlier with respect to legends on the labels?

A That's correct.

Q And the legend to the left that begins, "Product contains polychlorinated biphenyls" is addressed

WATER_PCB-00043749

to environmental concerns, is it not?

A That's correct.

MR. HOLZ: I don't have any more questions.

Q (By Mr. Wayne) Mr. Bistline, the warning on the left of those return labels specifically relates to environmental concerns through spills, leakages, disposal, vaporization and otherwise of the product, is that correct?

A That's what it says there on the language, that's correct.

Q Okay, and you will advise us as to whether 001239 is an independent label or related to another label produced in this package?

A Yes.

Q Okay.

MR. HOLZ: Specifically whether it was a return label or a product label?

THE WITNESS: Yes.

MR. HOLZ: I'm going to want to catch up on the labeling but let's not take Mr. Bistline's time.

MR. WAYNE: I'll give it to you after we finish here. Do you have any other questions on the Pydraul?

MR. HOLZ: No, I do not.

Q (By Mr. Wayne) Okay. The next grouping of documents I'm going to refer to are product folder number 3

correlating to purchasing and shipping?

A Yes.

Q Can we please mark as Plaintiff's Monsanto Exhibit 5A through whatever, the documents contained in that folder which are ALC 000185 through 000188.10.

The first groupings which you can mark as Plaintiff's Monsanto Exhibit 5 would be a grouping of documents 00185 through 00188.02.

The next will be 5-A which will be a letter of March 5, 1969 which bears ALC 00188.03 through 00188.04. Make that 5-A.

The next one why don't you mark each of these separate sheets?

(Documents, handed to the reporter, were marked for identification as Plaintiff's Monsanto Exhibits 5, 5-A through 5-G, inclusive.)

MR. WAYNE: 188.05 is 5-B; 188.06 is C; 188.07 is D; .08 is E; .09 is F and .10 is G.

Q (By Mr. Wayne) Plaintiff's Monsanto Exhibit 5, Mr. Bistline, which is 185 through 188.02 --

A Yes.

Q -- appears to be a letter of April 22, 1969 from a Mr. Garcia, a regional sales manager of Monsanto to J. Rutherford, senior buyer industrial, Aluminum Company of America?

WATER_PCB-00043751

A Yes.

Q Attached to which are several requests for quotations?

A Yes.

Q With respect to various Pydraul products?

A Yes.

Q 150, Pydraul 625, Pydraul F9 and Pydraul A200?

A Yes.

Q Can you tell me what file or files Plaintiff's Monsanto Exhibit 5 came from?

A These are files relating to PCBs that are in my custody.

Q And were these from correspondence files within those PCBs related files, or do you know what the name of the file or files were from which this came?

A No, I don't, Mr. Wayne. Many of, if not most of the files for this type of documents were retrieved from dead storage in the warehouse when we got them, and they frequently did not bear notations or names.

One can only infer where they might have come from and in this case, it would appear to be an individual correspondence file.

Q Okay, and when you say an individual, would that be Mr. Garcia's file or --

A Probably not.

WATER_PCB-00043752

Q Okay.

A If you will look on page 185 at the top, there's a notation BCC and a list of names. Unfortunately, one which was highlighted on the original document but the highlight xeroxed as a blackout here, contains the name of the person whose file that came from.

Q All right. Would the copy from which this was xeroxed and which was highlighted be able to delineate the name of that person, would you be able to see through the highlighting?

A Your copy was made through mine. I can't see it on my copy. I will undertake that, if you wish, to determine whose name has been highlighted and blacked out.

Q I'd appreciate that.

MR. HOLZ: And when you do that, would you indicate how you did that; in other words, whether you saw the original document or whether there was some other method of determining that, and if so, what that method was?

THE WITNESS: Yes, sir, I will.

Q (By Mr. Wayne) The files which came from dead storage which now form the basis of your, in part your PCBs files --

A Yes.

Q -- were those files that were kept in the ordinary course of Monsanto's business?

WATER_PCB-00043753

MR. HOLZ: I'm going to object to that question.

A As far as I know, yes.

Q Do you know when the files were obtained from dead storage, from which files this Plaintiff's Exhibit 5 was obtained?

A That particular document?

Q Yes.

A I don't know, Mr. Wayne. I just don't know.

Q Okay, and in any event, the files from which Plaintiff's Monsanto Exhibit 5 came have been in your possession for a period of time?

A Yes.

Q And do you recognize 00185 through 188.02 as being copies of Monsanto generated documents?

A This is the document that you referred to, is one which was pulled from my PCBs files and reviewed by me and determined to be appropriate for production here.

Those files as we have said before are obtained by us and were Monsanto generated documents.

Q And searching the files to produce the documents for the response to the subpoena, did you have to go through files by customer or the correspondence for determining this production of Exhibit 5, files by customers or files by persons at Monsanto who might have generated the correspondence?

SF-SEL-2547 PENGAD/INDI. MUNCIE, IN 47302

WATER_PCB-00043754

A Well, I didn't personally go through the files to make a first cut. I had my legal assistants do that. They went through files which through our methods we determined may contain documents related to Alcoa at the various locations set forth in your schedule to the subpoena. That's how these documents were selected.

Q Okay. Are you familiar with a Mr. Garcia or know that he was the regional sales manager for functional fluid in or about 1969?

A I don't know. I don't know Mr. Garcia personally and I have no way, I don't know personally whether he held that position at that time other than by looking at this letter.

Q Do you have in your possession any organizational charts that would reflect the names of persons like Mr. Garcia and their titles in or about 1969?

A I have organizational charts. I don't know whether they would reflect that particular information. I haven't looked at them.

Q Would you be able to check and see if there's an organizational chart that reflects that Mr. Garcia was the regional sales manager at or about the time of April 22, 1969, the date of this letter?

A Just so I'm clear as to what I'm being asked to do here, you wish me to confirm that Mr. Garcia in fact held

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

WATER_PCB-00043755

the position of regional sales manager, functional fluid on or about April 22, 1969?

Q That's right.

A You want to know how I found that out?

MR. HOLZ: Yes.

Q Yes, sure, that's right. Now, do you have any reason to doubt the authenticity of this document marked Plaintiff Monsanto Exhibit 5?

A No, sir, I don't.

Q As far as you know, it's a copy of a document in the files of Monsanto?

A Yes, that's correct.

Q And was it the policy of Monsanto to keep copies of, or of its personnel to keep copies of correspondence relating to purchasing in the files as part of an ongoing file maintenance and record keeping program?

A Yes.

Q Was that policy in effect at or about the time of April 22, 1969?

A As far as I know, it was, yes.

Q And as far as you know, it was the regular course of business that persons who generated correspondence would keep copies and put them in the file at or about the time that they made it or generated the correspondence, is that correct?

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

WATER_PCB-00043756

A That would be the usual practice, yes.

Q Looking at Plaintiff's Monsanto Exhibit 5-A, this is a letter dated March 5, 1969. Do you know from what file or files in the PCBs related files this document came?

A No, sir, I don't.

Q Your staff searched those files and produced this as being --

A Potentially responsive, different document.

Q Responsive to --

A Yes, that's correct.

Q And looking at Plaintiff Monsanto Exhibit 5-B, this appears to be 188.05, appears to be a memorandum of some sort relating to Alcoa National Contracts?

A That's what it states, yes.

Q Do you know from what file or files this document which bears the name David A. Hall at the bottom came?

A This document I would say from examining it, appears to come from the correspondence file of one N. T. Johnson.

Q And that is because of the highlight over the name, N. T. Johnson on the right-hand column of the lighting at the top of the page?

A That's correct.

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

Q Where was Mr. Johnson's office, was that a St. Louis office, or can't you tell from the highlight?

A To the best of my knowledge, Mr. Johnson was employed by Monsanto in St. Louis.

Q Do you know what Mr. Johnson's position was at the time, in 1969?

A No, I don't know what his position was in '69.

Q Is Mr. Johnson still with the company, to your knowledge, or don't you know?

A I don't believe he is.

Q Would you be able to check again, either through an organizational chart or otherwise to let us know the position of David A. Hall, the purported author of 188.05 and N. T. Johnson at or about the time of May, 1969?

A Yes.

Q Can you tell us what files Plaintiff Monsanto Exhibit 5-C through G came from in your PCBs files?

A No, sir, I can't.

Q Are P 5-C through P 5-G copies of records kept in the ordinary course of business by Monsanto?

MR. HOLZ: I'll object but go ahead.

A I assume that to be the case although I would note that it does not appear to be a document generated or prepared by Monsanto.

Q I understand that but copies of purchase orders

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

which appear to be 5-C through 5-G would be kept by Monsanto in some file or files, is that correct?

A Yes.

Q Okay. Do you know if there were separate files kept for purchase orders relating to Alcoa under the name Alcoa as distinct purchase orders generally on a product by product basis?

A I don't know the answer to that question.

Q Would you be able to check with your staff as to what file or files these came from in your PCBs file?

A Right. I'll see if we have any information on what files these came from.

Q Okay. I don't have any questions on this.

MR. HOLZ: Okay.

THE WITNESS: I assume you want me to tell you how I determined that?

MR. HOLZ: Yes, we're sorry about that, but we need to know.

EXAMINATION BY MR. HOLZ:

Q Now, referring to all the documents in the 5 series, all this correspondence, is it not true that you didn't write any of these letters?

A That's true.

Q You didn't send any of these letters?

SF-SEL 2547 PENCAD/INDY MUNCIE, IN 47302

A That's true.

Q To the addresses, you didn't receive any of these letters?

A That's correct.

Q Either as addressee or as a copy?

A That's correct.

Q Now, you testified, it wasn't very clear but you testified something about Monsanto's policy with respect to correspondence. Was it Monsanto's policy that sales personnel were required to generate correspondence?

A I'm not quite sure I understand the question. Did the company make people write letters?

Q Yes.

A In the appropriate circumstance, it was the company's expectation that all of its personnel, not just sales people, all the personnel appropriate the appropriate correspondence.

Q Was it the company's policy that they must keep that correspondence?

A For a specified period of time, yes, depending on the type of document or correspondence.

Q With respect to the documents we're speaking of here, would you tell us what that period of time was?

A I don't have that knowledge in my head right now, Mr. Holz. There is a guideline which would speak to that

WATER_PCB-00043760

issue.

Q Is it --

A Record retention guideline.

Q Is it not true, do you not have sufficient knowledge to tell us the time would have been long expired for these documents?

A Were I looking for the documents today, I would not expect to find a document dated 1969 in company files, a document of this type, referring to, generally to Plaintiff's Exhibit 5.

Q Sales correspondence?

A Sales correspondence, that's true. If I were looking in 1988, I wouldn't expect to find it there, 1969 documents.

Q Isn't it fair to say that you would not expect this correspondence to be anything like complete today?

MR. WAYNE: Let me object to the form. When you say "anything" is that with respect to specific documents or generally?

Q Let me clarify that, referring to correspondence between Monsanto as a seller and Alcoa as a purchaser of products containing PCBs in the period 1969, 1970 to which this correspondence obtains, given your knowledge of the record retention program, do you believe that this is all the correspondence that was generated during that period?

SF-SEL-2547 PENGAD/INDY MUNCIE, IN 47302

A Certainly not.

Q Okay, and then do you have a belief as to what's happened to the rest of it?

A I have a belief, I have a, I guess I'd call it an educated guess as to what happened.

Q Would you give us that, please?

A That would be it was discarded in the normal course of business pursuant to the record retention policy of the company.

MR. HOLZ: Fine. No more questions.

MR. WAYNE: I don't have any more on that, okay. Let's take a break here.

(Whereupon, a short recess was taken pursuant to which the following proceedings were had:)

Q (By Mr. Wayne) The next grouping of documents are PCBs clean up by Alcoa, documents 000189 through 000192. Please mark these as Plaintiff Monsanto Exhibits 6-A, B and C.

(Documents, handed to the reporter, were marked for identification as Plaintiff Monsanto Exhibits 6-A, 6-B and 6-C.)

Q Looking at Plaintiff Monsanto Exhibit 6-A, did this document come from the PCBs file maintained in your possession?

A Yes.

WATER_PCB-00043762

Q Or custody?

A Yes, it did.

Q 6-A appears to be a form called a "Call Report"?

A That's correct.

Q What is that form generally?

A My understanding of the call report is that it is a document prepared by a Monsanto salesman reporting upon a visit that the salesman made to a customer.

Q Okay, and is this a form that was in general use at Monsanto over a period of time?

A That's correct.

Q And when a salesman visited a site, he or she would complete the report based on their inspection or visit to the site, is that correct?

A That's correct.

Q And were these call reports regularly filed and maintained and kept in the ordinary course of business at Monsanto?

A Yes.

Q And were they kept in separate files known as call report files or were they kept by customer or product or how?

A That would depend, Mr. Wayne, upon the person who is keeping the file.

Q So each person may have had a different system

WATER_PCB-00043763

for organizing his or her files?

A That's correct.

Q Do you recall or know or have any understanding of what file or files P 6-A came from which is 189?

A Looking at this document, it appears to me that this came from the files maintained by Dr. Cumming Paton.

Q Who was Dr. Cumming Paton?

A I'm not certain what his title was at the time, and we're looking at a memo which was prepared on or about October of 1973. I'm aware that he was generally in the marketing and sales function for the business group of which PCBs were a part.

Q What was that business group called, if you know, generally?

A Functional fluids.

Q And is Mr. Paton still with Monsanto?

A Dr. Paton is currently employed by the company as head of a joint venture that operates in Korea. He's stationed in Korea at the present time.

Q And Mr. E. L. Shemley appears to be the salesman who prepared this P 6-A?

A That's correct.

Q And this document was found in the PCBs related files in your custody?

A That's correct.

Q P 6-B, which is 190 and 191 is also a call report form, is that correct?

A That's correct.

Q And it appears also to come from the files of Dr. Cumming Paton?

A That's correct.

Q And is a report by Mr. Shemley?

A Yes, sir. He's listed as the salesman.

Q And apparently this is also a report of a visit to the Alcoa, Tennessee facility?

A That's correct.

Q And this document also came from the PCBs files in your custody?

A That's correct.

Q And this appears to be a copy of a form that was prepared by Mr. Shemley in the ordinary course of business, does it not?

A That's correct.

Q It appears that on the top right-hand corner as a date of call, which apparently may reflect the date of the visit?

A Yes.

Q And the date received reflects what? To your knowledge, is that the date of the report being received for typing, because the next box is the date typed.

A That's my understanding of what those dates reflect.

Q Okay, so it shows that on its face it was made at or about the time of the visit or call?

A That would be my interpretation of the dates listed on the top right corner.

Q The same with regard to the call report 189?

A That's correct.

Q All right, and 6-C is also a call report form?

A Yes.

Q It appears to come from the file of Dr. Cumming Paton as well?

A That's correct.

Q Also has the date of the call and the date it was typed?

A Yes.

Q And appears to be a call report form but it does not say, at least I can't see who prepared it. Can you tell?

A C. F. Seeger is the salesman.

Q Where do you see --

A Look in the heading of the box on the right-hand side approximately a quarter of the way down.

Q I see.

MR. HOLZ: What document are we looking at now?

WATER_PCB-00043766

Q 192.

MR. HOLZ: Is 192 part of this as well?

MR. WAYNE: Yes.

MR. HOLZ: I see it.

Q (By Mr. Wayne) And this also came from the files of the PCBs files in your custody?

A That's correct.

- MR. WAYNE: I don't have any further questions on this.

EXAMINATION BY MR. HOLZ:

Q Mr. Bistline, is it not fair to say that you have no personal knowledge of the generation of these documents?

A That's correct.

Q The creation of the documents?

A That's correct.

Q Would you tell us how it came to be that you have a file folder entitled, "PCBs Clean Up By Alcoa"?

A I believe the file folder heading corresponds with the request that Mr. Wayne made in his subpoena and schedule.

Q So the file folder headings are not the headings of how these files were kept?

A No, sir. The file folders and the documents

SF-SEL-2547 PENGAD/INDY MUNCIE IN 47302

produced by Monsanto in this proceeding relate to the request made by Mr. Wayne.

Q I'm confused about these. Are 6-A, B and C, is that right, one of them is a two page --

MR. WAYNE: Yes, 190 and 191 appear to be a group.

Q Were they stapled together in your copy?

A Yes.

Q All right, fine. Can you refer to 192?

A Yes.

Q Plaintiff's Monsanto 6-C, can you tell me what in this document would have led your people to put that in a folder entitled, "Clean Up By Alcoa"?

A There's a heading in there entitled, "Reclaiming." That's the second heading from the bottom.

Q Reclaiming?

A Reclaiming refers to "Finette", which we recognize as being a reclamation venture.

Q Did the heading "Clean Up" that you created also include reclamation?

A Yes. Quite frankly, we had so few documents in this category, if it was close, we put it in.

Q These were all the documents?

A These were all the documents we could discover corresponding to Mr. Wayne's request.

Q I believe you testified it was Monsanto's practice to make these call reports?

A That's correct.

Q These are the only call reports that you produced in response to the subpoena?

A That's correct.

Q Is it your belief that these are the only call reports that would have been generated with respect to the sale of PCBs to Alcoa?

A No, I'm certain that the call reports had been reflecting other personnel visits by Monsanto to Alcoa.

Q Those are the documents that have somehow survived the process of time?

A That's correct.

Q Can you tell me for what purposes Monsanto uses these documents?

A Certainly. This particular type of document was used for two general purposes. The first was a means of communicating by the sales representative back to Monsanto on items of interest and the need to follow up for the particular customer.

The second objective would be for the salesman's supervisor to be able to evaluate the saleman's performance and his attention to the sales strategy and to the customer's needs so it served both purposes.

SF-SEL 2547 PENGAD MUNCIE IN 47302

Q There's a number of statements in these documents that, for example in 189, which is Plaintiff's Monsanto Exhibit 6A to "Fred said" in that one, or somebody said --

A Yes.

Q In this case I note that the contact is said to be a Fred Vaughn?

A Yes.

Q This is the reporting, if you will, of hearsay, is it not?

MR. WAYNE: I object to the form of the question but you may --

Q Well, I'll put it another way. Would Monsanto rely upon the statements purported to be made by personnel of other companies as reported in these call reports?

A I'm not sure what you mean, rely. We would take the document to be an accurate report by our salesman of something that was said to him.

Now, whether we could rely upon the truth of what was said to our salesman is something that I couldn't speak to.

Q Fair enough. As for example on 190, which is Plaintiff's Monsanto 6-B, toward the bottom is an underlined portion there Alcoa had acquired a majority of the stock within "Nowco"?

WATER_PCB-00043770

A Yes.

Q You can't say, is it correct, what reliance Monsanto would place on that sort of information?

A No, sir, I couldn't tell you that.

MR. HOLZ: That's all the questions I have.

Q (By Mr. Wayne) Okay, the next grouping of documents is Alcoa product folder 7 called advertisements. Will you please mark these as Plaintiff Monsanto Exhibits and mark them A through whatever, and the ALC numbers are 001209 through 001223.

(Documents, handed to the reporter, were marked for identification as Plaintiff Monsanto Exhibits 7-A through 7-F, inclusive.)

Q Mr. Bistline, would you look at the grouping of documents just marked which came from the advertisement folder?

A Yes.

Q Could you just identify what file or files these advertisements came from?

A These again came from files in my custody relating to PCBs and PCB litigation.

Q Were there separate files for advertisements or materials that were offered to magazines or brochures for submission to the public?

WATER_PCB-00043771

A I'm not certain whether there's a separate file denominated that.

Q Do you have any understanding of what file or files each of these came from within the total category of PCBs files?

A No, sir.

Q And each of these represent Monsanto prepared advertisement copy that was submitted and published in a journal or a magazine, is that correct?

A What this is in fact is a copy of that advertisement placed by Monsanto in whatever magazine is referred to.

Q And the copy, that is, is it not --

A Let me rephrase that. You're right, this may be copy in certain instances, anyhow that was placed in a number of magazines.

Q I notice at the bottom of some of them it talks about different magazines with different dates?

A Yes.

Q So what I was just trying to understand, this is a Monsanto generated copy that was published in some journal or journals?

A Yes, at least with respect to the 1209 and 1210.

Q Okay, fine.

A 1211 and 1212.

Q Fine, and as far as you know, 1209 through 1212 were subsequently published in the magazines referred to on the bottom of 1210 and 1212?

A That's my understanding, yes.

Q Now, looking at 1213 through 1216, these appear to be actual copies of portions of magazines or journal articles or advertisements, is that correct?

A That's what they appear to be.

Q And Monsanto kept in its files copies of such advertisements which it had placed in these journals, is that correct?

A That's my understanding, yes.

Q And to your understanding, was the wording and the language or the copy of the information, the copywork and the information prepared by Monsanto's personnel?

A I'm not certain, Mr. Wayne, whether this was prepared internally by Monsanto personnel or prepared by an agency which we hire for that purpose.

Q In any event, Monsanto approved and adopted the language before it was published, is that correct?

A That's my understanding, yes.

Q And are these documents kept in this file that we have, the Monsanto Exhibit 7 documents, all documents which Monsanto has kept in the ordinary course of its business?

WATER_PCB-00043773

A They were contained in files which were maintained by Monsanto personnel in the course of their business, yes.

Q Do you recognize these documents as having come from Monsanto's files?

A That's correct, yes, I do.

Q Mark this.

(A document, handed to the reporter, was marked for identification as Plaintiff Monsanto Exhibit 7-G.)

Q (By Mr. Wayne) On my 7-D, which is ALC 001217, I cannot read the name of the journal at the bottom which does appear to have been published in. Does your copy reflect the name?

A My copy reflects Chemical and Engineering News January 26 and March 16th, 1953, I believe is the date.

MR. HOLZ: Is that 7-D?

Q Yes, 7-D.

MR. HOLZ: You want to give me the rest of those quickly?

Q Yes. 1209 and 1210 are 7-A.

MR. HOLZ: Okay.

MR. WAYNE: 11 and 12 are 7-B; 13 and 14 are 7-C; 17 is D; 18 through 120 is E and -- excuse me, 21 and 22 and 23 are 7-F; and 15 and 16 are G.

MR. HOLZ: Okay. Good. Thank you very much.

Q (By Mr. Wayne) And was it the policy of Monsanto to your understanding to keep copies of advertisements that were published in Monsanto's files?

A I'm not sure I can say yes or no to that one. All I can tell you about that, Mr. Wayne, is that we found these documents in Monsanto's files reflecting advertising done.

Q Okay.

A These weren't products heavily promoted or advertised through publications.

Q In any event, these appear to be copies of those advertisements that have been retained in the files?

A Yes.

Q Okay. I don't have anything further.

EXAMINATION BY MR. HOLZ:

Q Mr. Bistline, do you have any personal knowledge about these documents other than that they came from the files in your custody?

A No, sir, I don't -- well, except that they were found within files, business files of Monsanto when they were retrieved by the Law Department.

Q Were they retrieved by the Law Department under your direction?

A No, sir. These most likely were retrieved under

WATER_PCB-00043775

my predecessor's direction.

Q So you have no personal knowledge of the retrieval?

A That's not accurate, either. I was with the company at the time. I was aware that this was going on, was aware that they were pulling these documents together, if you will.

Q How were you aware?

A Just in the course of my being at the company and seeing what Mr. Nassif, N-a-s-s-i-f, understanding what he was doing, how it would relate to my job and what I needed to do.

Q In other words, he told you he was doing it?

A That's correct. That's not the only way I understood that. I also spoke with his legal assistant. She advised me what the project was, what they were doing.

Q Do you have any knowledge or belief as to whether or not these are all the advertisements for these types of products?

A No, sir, I don't.

Q Okay.

A I will say these are all we could find.

Q Okay.

Bob, if I might, could I borrow a copy of the subpoena?

MR. WAYNE: Sure.

Q Now, referring to the subpoena which has been marked Plaintiff's Monsanto Exhibit 1, can you tell me what portion of the subpoena you produced these documents in response to?

A It's paragraph D in the schedule denominated IV, documents to be produced, copies of all brochures, advertisements. That's what that would be responsive to, literature, et cetera.

Q Okay. In other words, these relate to Alcoa in particular?

A These related to product which Monsanto sold to Alcoa.

Q Okay, so in other words, you do not, if there was an advertisement for a PCB containing fluid that you did not sell to Alcoa, as indicated by the documents we have discussed earlier, it is not included here?

A That's correct.

MR. HOLZ: Thank you. That's all the questions I have.

Q (By Mr. Wayne) Who is Mr. Nassif?

A I'm sorry?

Q Who is Mr. Nassif?

A Mr. Nassif was a lawyer here in St. Louis.

SF-SEL-2547 PENGAD|INDY. MUNCIE. IN 47302

WATER_PCB-00043777

Q Was he your predecessor?

A He worked with me for a time at Monsanto and he was my predecessor in responsibility for these cases.

Q And Mr. Nassif is now in private practice?

A That's correct.

Q Here in St. Louis?

A Yes.

Q Is that N-a-s-s-i-f?

A That's correct.

Q Now, the next group of documents that I have is product folder 5, entitled, "Pydraul Brochures" and I show these as ALC 000193 through ALC 000628.

MR. HOLZ: Folder 5, you say?

Q Yes.

MR. HOLZ: The title is --

Q "Pydraul Brochures."

A Yes, sir, those are the relevant numbers.

Q Now, these are put together in groups as well?

A Yes.

Q And could you please mark each group as A through whatever, I guess it would be number 8.

(Documents, handed to the reporter, were marked for identification as Plaintiff's Monsanto Exhibits 8-A through 8-LL, inclusive.)

Q Mr. Bistline, the documents that were contained

SF-SEL-2547 PENGAD/INDY. MUNCIE, IN 47302

in the product folder 5 which was called "Pydraul Brochures" appears to be just as they're called, brochures relating to Pydraul, is that correct?

A That's correct.

Q And can you tell me what file or files these Pydraul brochures were found in at Monsanto?

A Again, these are contained in the PCBs files which are under my custody.

Q Were there separate folders or files denominated brochures or some separate labeling for these Pydraul brochures?

A These brochures are kept at Monsanto in the regular course in our research library, and others keep them, too, but it's one of the things that the research library is supposed to do, is to keep a set of these, not just Pydraul but all brochures the company publishes with respect to its products.

Q And is it correct that at or about the time that a brochure was developed and prepared for distribution to customers or others, that a copy of that brochure was kept and maintained in the research library?

A That's my understanding, yes.

Q And that was a procedure going back to what time frame, if you know?

A I don't know for certain but it's back since

WATER_PCB-00043779

World War II as far as I have been able to determine. Whether the practice existed before that, I don't know.

Q And in addition to having copies in the regular research library, copies may have been maintained in other files throughout Monsanto as well?

A That's correct.

Q And the files that you maintained, namely the PCBs files in your custody also had copies of these Pydraul brochures, is that correct?

A As I said before, the files that we collected, the PCBs files had many of these brochures in multiple copies, as you might imagine.

In order to make certain that we had all of those brochures, we checked with the research library and constituted a set.

Q The documents that we have here are the result of a search and a production of copies from both the regular research library and/or your PCBs files so that you were certain that you had a set of every Pydraul brochure in response to the subpoena?

A Well, we had done our checking and assuring before we got your subpoena, Mr. Wayne. We didn't have to go back to research in order to do that inquiry.

Q I see. In other words, prior to your subpoena, for purposes of your gathering together the PCBs files that

WATER_PCB-00043780

have a discrete unit, you had already searched the research library as well as other files to put together a complete set?

A That's correct.

Q All right. Now, what was the purpose of a brochure like the one that has been marked 8-A, which is 193 through 208?

A Well, again my understanding of what they were used for was as a source of technical information for Monsanto's customers or prospective customers to acquaint them with the physical properties and usages of, in this case, Pydraul.

MR. HOLZ: Is that 8-A?

Q Yes, it's 193 through 208, yes. And were the brochures prepared by Monsanto employees?

A Yes, sir.

Q And the information contained in there developed from internal Monsanto information?

A That's correct.

Q And do you know whether brochures like the ones produced here as Exhibit 8 were sent with each shipment of a particular product or whether they were sent under separate cover to a customer, or how they were delivered to customers?

A These brochures could be acquired by or

delivered to a customer by a variety of means. My understanding is they were not sent with the product shipments. Typically they were given to customers by Monsanto sales people when sales people made calls, or would be supplied upon request to Monsanto from the customer.

Q What else besides the labels on the actual container that was shipped to a customer would go with the container or the shipment, if anything?

A The normal --

Q To your understanding?

A The normal document one would expect for a shipment, bill of lading, that sort of thing.

Q All right, and do you recognize the documents marked as Exhibits 8-A through LL as being true and accurate copies of brochures in the files of Monsanto?

A Yes.

Q Can you determine either from the document or from some other source the date or dates on which each brochure would have been printed and used by Monsanto?

A Not in all cases, Mr. Wayne. Some of the brochures are dated. They bear a date either on their face or at the end.

Q Could you give me one example of one that you can clearly from its face determine the date, either a printing or a use?

A I just had one that slipped back in.

Q Sure.

A I refer you to the document that bears page 000321.

Q Okay, 321.

A It's called, "Fire Resistant Hydraulic Fluid Physical Property Comparison Chart." It should be the document I had of 325.

Q Off the record.

(Whereupon, a short discussion was had off the record.)

THE WITNESS: You will note, Mr. Wayne, that on page 00321 there's the date October, 1961 over the Monsanto logo.

Q Okay. Does that date reflect the printing date?

A Yes.

Q And would there be some way to determine when that was used, i.e., how long that was out in the marketplace for use?

A The best way would be to determine whether it had a successor.

Q Okay. Would you be able to, in the course of your review back at your office, to make that kind of determination?

A I will to the extent that we can do it, yes.

WATER_PCB-00043783

Q Okay.

A Sometimes we can; sometimes we can't.

Q Fine.

A There are other documents in here which also bear dates.

Q I note on some, for instance there are code numbers at the bottom. I'll just give you one example. On 000359 at the bottom right-hand corner, there's some code numbers --

MR. HOLZ: 00 -- which is part of --

Q Part of another document.

MR. HOLZ: What's your letter?

Q Part of 8 and starting at 000351 and the bottom on the right-hand corner, there's some numbers, I don't know whether they have any significance or what they mean.

A No, I don't know, either. What I would suggest is more significant for that particular document, Mr. Wayne, if you look at the front page, which is page 000351, there's a designation there O-FF/3.

That's the designation for this particular technical bulletin.

Q In any event, you will try to check that out for us?

Mr. Bistline, my copies of the document which you produced do not have 000629 through 000649. I just

WATER_PCB-00043784

wanted to check with you as to whether or not such numbering or documents were produced or whether that's a gap in the numbering system.

A That's a gap in the numbering, Mr. Wayne.

Q Fine, okay.

A No documents were produced with those numbers on them.

Q Okay, fine.

MR. HOLZ: Give me the numbers again, 629 through 649?

Q That's right. Okay. I don't have any further questions on these brochures.

EXAMINATION BY MR. HOLZ:

Q Okay. Mr. Bistline, is it fair to say that these brochures that you have been discussing with Mr. Wayne or sales related documents, sales aids?

A Yes.

Q As opposed to say, use documents?

A Well, I think they could have both functions, depending on the customer situation. There is significant information in here to enable the customer to determine whether this product is suitable for a particular use.

Q I had in mind how to use it as opposed to for what to use it for.

A That's fair.

Q These are not use instructions but rather they're what the product --

A For the most part, that's correct, although there may be in here information which some would consider use instructions.

For example, in the first brochure here, 000193, look at page 202, there are instructions for converting, changeover from another fluid to Pydraul.

Q Okay.

A I believe in some there's also information -- oh, yes, here at page 206 in the same bulletin, there are some instructions on filtering and reclaiming of used or contaminated fluids.

Q Isn't it fair to say the purpose of this information is to show the customer it's easy to do this? Would you expect these to be the detailed instructions as to how to carry out these --

A For that particular item, I would think so. The audience to which these bulletins were addressed would be composed of individuals technically sophisticated, expected to look at something like that and understand how to perform the function.

Q Are you saying there were no further instructions given?

WATER_PCB-00043786

A I'm not certain of that. I'm unaware of additional printed materials from Monsanto which would give more detailed instructions on precisely how to use the Pydraul parts.

I don't believe there were any more use instructions in that sense.

Q If there had been such use instructions, you would have produced them pursuant to the subpoena, would you have not?

A Yes, sir.

Q So it is then fair to say in the PCBs files which you have custody of, there are no such use documents?

MR. WAYNE: Other than transientially as referred to here.

Q I'm not trying to characterize it.

A That's correct.

Q As far as use documents, we have got them?

A Yes.

Q Is it not fair to say from your knowledge of the uses of PCBs both as, excuse me, PCBs containing fluid, as contained in these documents as well as other knowledge you may have gained in your work, that individual product formulations are quite specific as to their use?

A Within certain parameters, I think that's accurate. Again, I'm certainly not the appropriate person

to get into any depth or detail with on that topic.

Q Well, let me put it another way. I'm not, I'm just trying to get a general knowledge, not a great technical depth, but if we took a given product, Pydraul 200A for example, I picked that out of the air, you would not expect the exact particular product to have a broad range of uses, would you?

MR. WAYNE: I'm going to object to the form of the question. You may answer.

A I would say it probably had several uses but that one of the purposes of this material, if you look at it, I'm referring to Exhibit 8, the material produced in Exhibit 8, that there were a number of products which were recommended or said to be suitable for specific uses, and that was the basis for selecting one product rather than the other.

Q Okay, so it's a product selection, a process of picking the one best suited for the particular use and there's quite a range of products, isn't that fair to say?

A That's correct.

Q Is it not also true that the documents you have produced here cover a broad range of products and not just those that you're, the documents we discussed earlier, indicate were supplied to Alcoa?

A That's correct, yes, sir.

WATER_PCB-00043788

Q So not all the products that are covered by these brochures were supplied to Alcoa?

A That's correct.

Q Now, is it also not fair to say that you are unable to say which if any of these brochures were furnished to Alcoa?

A That's correct.

Q Now, as to the dates of these brochures, you indicated, I believe, that you could determine if a brochure was succeeded by another brochure in certain instances?

A Most instances, I believe that's correct.

Q Are you able to tell us how many brochures were printed or distributed?

A That information is available, I believe, in some cases.

Q The total number printed?

A The total run, yes, I could find out. That information is reflected, in fact, in certain instances within the documents that we've got here in front of us.

As an example, on document, page 000241, if you will note at the top left-hand corner, there's an indication in handwritten, total quantity, q-u-a-n, I assume quantity, 5,000.

Q What is that above that?

A I can't -- something "run".

Q Can you tell what the number is? I can't read it.

A No, I can't read it on my copy, either. I'll have to see if the original backup on this is any better.

MR. WAYNE: Would you be able to determine for us from your records then how many were printed and distributed on various brochures?

THE WITNESS: I'm unable to answer that question. I could in maybe some instances which I could determine how many were printed. I'm not certain I could ever tell you how many were distributed.

MR. WAYNE: Would you be able to at least check the number printed in your office?

THE WITNESS: To the extent we have that information, yes.

Q (By Mr. Holz) Can you give me the letter designation of the document which begins 241?

MR. WAYNE: Yes, hold on, 8-D.

Q Now, Mr. Bistline, if a document was not succeeded by another document, is it not fair to say we would still not be able to determine the latest date at which copies of that unsucceeded document were sent out?

A It may be possible to determine that, Mr. Holz. For example, if the product were discontinued --

Q All right.

WATER_PCB-00043790

A -- one could assume that the date of discontinuation of that product would approximate the date at which literature relative to the product was no longer distributed.

Q But that would be an assumption?

A Yes.

Q And likewise, it would be an assumption because a product wasn't discontinued, that a particular brochure was still being distributed?

A I think, yes, that would be an assumption. We don't have, to my knowledge, any records to indicate except in very few circumstances that brochures were in fact sent to specific customers.

Q In other words, no records were kept of how many were sent out?

A No.

Q Or whether something needed to be reprinted?

A Occasionally there is a, in the file, I'm thinking more of labels, not the brochures, occasionally we would see an indication that a new run was ordered.

Q That's sort of after the fact, you don't see anything to indicate, or do you, that something needs to be reprinted?

A I'm not aware of anything of that nature.

Q There's no, you have not found any records that

relate to how the things are printed or kept track of, inventoried or catalogued inventory, let's stick with inventory?

A That's correct, I'm not familiar with the existence of any such records.

MR. HOLZ: That's all the questions I have.

Q (By Mr. Wayne) You indicated before that these brochures might be sent to a customer or a potential customer or delivered by a salesman to a customer or a potential customer?

A That's correct.

Q And was it the standard practice for salesmen to have a number of copies of various brochures for delivery to customers?

A Yes. The practice was that the salesmen would have literature relevant to the products he's selling, current and relevant for distribution as needed.

Q If a salesman was to call upon a customer and needed to get a supply of the brochures for the product which he or she were selling or discussing, would there be some central repository where that salesman could get copies of brochures, how would that person get the brochures, or don't you know?

A I don't know.

WATER_PCB-00043792

Q In any event, the practice was for salespersons to have access to and supplies of the brochures for delivery to customers?

A That's correct, for the products that the salesman was selling.

Q Okay, and it would be normal practice to your understanding for salesmen to make use of those brochures in their travels to various customers?

A Yes.

Q And as far as you know, that would have been the normal practice for any salesman involved with Alcoa, isn't that right?

A Not just Alcoa, with any customer.

Q Now, as far as reprints or reruns of the brochures is concerned, you said you didn't see in the files any specific reference to reruns?

A Let me say, Mr. Wayne, I have never been asked to look for it. It's conceivable that the record might be there, although I doubt it.

Q Okay.

A I have never personally looked for any. I'm not aware that it exists.

Q Would you be able to, in this growing check list, determine whether or not there's any record of any reprint or reruns of any of these brochures?

PENGAD/INDY. MUNCIE, IN 47302
SF-SEL-2547

A I'll look. I'm not certain what kind of a job we're talking about.

Q Without putting you through an inordinate burden, if you could at least check and see if there is some easy way to find that information.

A I'll make the inquiry, yes.

MR. WAYNE: I don't have anything further on the Pydraul brochures.

EXAMINATION BY MR. HOLZ:

Q Mr. Bistline, how do you know what the practice of salesmen have been as regards any given period, as regards the use of brochures?

A Several ways, Mr. Holz. First of all, from conversations with a small number of Monsanto salesmen; second of all, conversations with a somewhat larger number of present and former Monsanto employees who dealt with sales people, in my questioning responded with the information relevant to what the salesmens' practices were with respect to these bulletins and brochures.

Q Now, is it not fair to say that a given salesman would have a fairly broad range of brochures available to him?

A Yes.

Q And how would he determine what brochures to

give to what customers?

A It would depend upon what product the customer either was using or the salesman was trying to interest the prospective customer in using.

Q Is it fair to say it's a judgment call on the part of the salesman?

A To an extent, I would also say it's a question of whether the salesman had an insight into the type of business he was calling on.

The salesman knows what the companies products are and one of his functions is to try to match those products with what the business is doing.

Q It is not your testimony, am I correct, that the practice was for salesmen to simply paper all the customers with all the possible brochures?

A Certainly not.

MR. HOLZ: That's all the questions I have.

Q (By Mr. Wayne) All right. The last grouping of documents, what is called product folder number 6 are Aroclor brochures and my indications are that those run from ALC 000650 to ALC 001208.

A Yes.

MR. HOLZ: What's the beginning number?

Q 650. Would you as Exhibit 9 do the same

WATER_PCB-00043795

numbering here with these brochures?

(Documents, handed to the reporter, were marked for identification as Plaintiff Monsanto Exhibits 9-A through 9-S, inclusive.)

Q For the record, we have marked the Aroclor brochures as Plaintiff's Exhibits 9-A through 9-S.

I will give you the numbers of the things later.

MR. HOLZ: Yes.

Q And I believe we have agreed upon a stipulation that the same questions that I asked you, sir, with regard to the Pydraul brochures are considered to have been asked of you with regard to the Aroclor brochures, and your answers to those questions except as it relates to the name Aroclor versus Pydraul would apply to the Aroclor brochures, is that correct?

A Yes.

MR. HOLZ: Yes, and that the questions I asked --

Q Similarly, Mr. Holz's questions similarly would be treated the same and the answers the same?

A Yes.

MR. HOLZ: And also the request you made concerning certain additional information?

Q Would be the same?

A Yes.

Q For purposes of later use of this testimony,

we will consider that as if the question had been asked and answered in the same manner.

MR. HOLZ: Exactly.

Q Now, Mr. Bistline, in connection with the search of the files of Monsanto to respond to the subpoena, was a search made of any other files other than the PCBs files in your custody?

A No, sir.

Q Now, how do you know then that there are not other documents that might be responsive to the subpoena located in other places, locations, offices of Monsanto in St. Louis other than in the PCBs files in your custody?

A The Law Department has, Mr. Wayne, over a number of years, conducted an extensive search for all documents relating to PCBs in St. Louis and other locations where those documents might be used and/or would be found.

We have made a good faith effort to gather in one place all of the PCBs related documents in Monsanto's possession and we monitor those locations where PCBs related documents are currently being generated so that my file contains copies of all of those documents as well, so what I would state to you is that we have a reasonable basis for believing that there is in my custody all of the documents that exist at Monsanto with respect to PCBs.

Q So of the category of the documents requested

in the subpoena related to correspondence between Alcoa and Monsanto and between the Edgewater facility of Alcoa and Monsanto --

A Yes.

Q -- most if not all of the documents you have produced do not have site specific information concerning Edgewater?

A That's correct. In fact, I don't believe any documents that I have produced to you contain site specific information with respect to Edgewater.

Q What makes you believe that the PCBs files which you have would have been collected and gathered together to include -- strike that.

Do you have any understanding as to the gathering together process for the PCBs files in terms of what files were searched?

A Yes.

Q Can you tell me what that is, what was done?

A We engaged in a search from several directions. That search included a listing of all individuals whom we could identify as ever having been involved in Monsanto in the sale of PCBs products.

A search was then made of all document storage facilities as well as personal files of the individuals identified who may have had PCBs related documents in their

possession.

We reviewed and acquired those documents --

Q Okay.

A --that we found.

Q And would those persons include salesmen who may have sold PCBs containing fluid?

A To the extent that we could identify those files, yes.

Q And would those persons also be persons in the Organic Division?

A Yes.

Q And would you be searching individual files or customer files or both?

A To the extent that they were different, both would be searched.

However, what we did was focus on the business group that handled the products. A file maintained on Alcoa in a different business group, although I'm not aware of any offhand that didn't relate to PCBs or relate to sales of PCBs would not be likely to contain information that would be relevant to PCBs.

Q If a plant of Alcoa that dealt with another division other than the organic fluid division, for whatever reason would those records have been searched to form the basis of any of the records in the PCBs files?

WATER_PCB-00043799

A Probably not unless there was an indication from the files that we were reviewing that other files outside the orbit of the search defined would contain relevant information.

Q Is there some way from the filing system generally at Monsanto regardless of which division is involved, that there would be a search to determine whether or not any kind of correspondence came from the Edgewater facility to Monsanto regardless of whether it related to PCBs or not?

A I don't know the answer to that question as I sit here.

Q Okay.

A That would depend upon whether the Ag. or Agricultural Company, for example, dealt with Alcoa, Edgewater, which seems highly unlikely.

Q Would each division have files related to customer and/or sites, specific plants of customers?

A Possibly. I would think it most unlikely, however, that another division of Monsanto would have in its files documents relating to PCBs that were not also contained in the files that we looked at.

Q Now, what offices of Monsanto were searched for PCBs containing information besides the St. Louis complex? Do you know whether there were other locations of Monsanto's

offices where records were searched?

A Yes, yes. There were the locations which the products were physically produced in. Monsanto had two production facilities for PCBs products, one at the Krummrich plant which is in Sauget, Illinois, across the Mississippi River here; the other one is at Anniston, Alabama.

Q The production places would be searched?

A Those offices were searched as well as the various sales offices.

Q Okay. Do you know whether there were any sales offices in Ohio or in Pennsylvania that may have been searched for PCBs documents?

A Mr. Wayne, I don't have in mind right now the locations of various sales offices. If there was an office in that state that did deal with functional fluid group, a request would have been made and a search made of files in that office.

Q Would there have been a search at any warehouses at that time that Monsanto may have had with respect to PCBs documents?

A Certainly.

Q Do you know offhand or have any understanding as to whether there were any warehouses in the State of New Jersey that Monsanto owned or operated since World War II

for the warehousing of PCBs containing fluid?

A I don't know the answer to that question.

Q Okay. Would you be able to check to see if there were any warehouses in New Jersey for which documents were searched?

A I'm not sure I understand your question.

Q Okay.

A Did Monsanto have a warehouse in New Jersey at which documents relating to PCBs were stored?

Q That's right.

A And if so --

Q Was it searched?

A Was it searched?

Q Yes.

A I can check into it.

Q I believe you testified earlier that shipping records which form part of the basis of the sales summaries may no longer be kept or maintained, you know, in the files?

A That's correct.

Q Is there any way to determine from existing records from where and to where particular documents are listed in the sales summary were shipped?

A Only to the extent the underlying documents still exist.

Q And in the course of searching to be responsive

SF-SEL-2547 PENGAD/INDI. MUNCIE, IN 47302

to the subpoena, do you know or have any understanding as to whether or not any records were searched to determine shipments from Monsanto to Edgewater?

A Yes, that search was made.

Q And no --

A No records were found.

Q Were able to be found?

A That's correct.

Q The search was made of the PCBs files in your custody?

A That's correct.

Q Does Monsanto retain records dating back to the fifties or sixties of warehouses that were in operation at that time?

A I don't know the answer to that question. I would assume that the information could be obtained.

Q Would you just check to see yes or no, if such documents --

A Let me make sure I understand what you're looking for. You're looking for any warehouse for any purpose anywhere in the country?

Q Well, in fairness to you, I don't want you to go searching --

A That's what I'm trying to --

Q -- wildly, I'm looking, so we're all clear, to

SF-SEL-2547 PENGAD INDY MUNCIE IN 47302

see if there are any records that exist that might show shipments from warehouse X to Edgewater, and I do not know yet, you know, what warehouse or warehouses might have been the primary or substantial source of such deliveries, which Monsanto --

A Let me just say this, with respect to the products that were sold to Alcoa, those products were not warehouses as an intermediate stopping point.

Q Okay.

A Before they were distributed to customers, those products were shipped directly from Monsanto's production facility to the customer.

Q Would it be shipped either then from the Illinois or the Indiana --

A Alabama.

Q Excuse me, Alabama facility?

A That's correct.

Q Do you know whether or not records of the Illinois or the Alabama facility relating to shipments of PCBs fluids are still in existence?

A Not unless I have them in my custody. All existing documents of that type were looked for and to the extent they could be found, they were acquired for the PCBs document files that I have in my custody.

Q Would you be able to then tell us to a certainty --

A Reasonable certainty?

Q -- reasonable --

A Never as a hundred per cent.

Q -- reasonable certainty whether or not your staff did have access in connection with their search for being responsive to this subpoena, to any of the Illinois or Alabama shipping records that might reflect PCBs shipments to any Alcoa plant?

A That's my belief, yes, based on what I consider to be the very rigorous efforts that we have made over the past years to do precisely what you're concerned about, that is make sure that we have in our possession all PCBs related documents. I would say yes.

MR. WAYNE: Okay. I don't have anything further.

MR. HOLZ: I have no further questions.

MR. WAYNE: Thank you very much. We appreciate it. When you develop this information, you can send a letter to me and Lee and we'll take it from there.

_____
Thomas M. Bistline

Subscribed and sworn to before me this _____ day of _____, 1988.

My commission expires: _____

_____
Notary Public

SF-SEL-2547 PENGAD/IDY MUNCIE, IN 47302

NOTARIAL CERTIFICATE

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

I, Evelyn M. Weir, Registered Professional Reporter and Notary Public duly commissioned and qualified in and for the City of St. Louis, State of Missouri, do hereby certify that pursuant to the Federal Rules of Civil Procedure, there came before me on the 9th day of February, 1988, at the law offices of Greensfelder, Hemker, Wiese, Gale and Chappelow, 18 South Broadway, St. Louis, Missouri, the following named person, to-wit, Thomas M. Bistline, who was me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness; and that the said witness read the same and subscribed his name thereto.

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

In witness whereof I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 1988.

My commission expires May 28, 1991.

_____
Notary Public within and for the
City of St. Louis, State of Missouri.

WATER_PCB-00043806