

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

*
CECIL SCOTT, et al. *
*
Plaintiffs *
*
VS. * CIVIL ACTION NO.
* B-84-1103-CA
*
MONSANTO COMPANY, *
*
Defendant *

VIDEOTAPE DEPOSITION OF

THOMAS L GOSSAGE

May 14, 1987
Holiday Inn West/Airport
St. Louis, Missouri

Reported by:

Linda S. Towery
Texas CSR No. 2413/Notary Public
Nell McCallum & Associates
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Houston, Texas 77006
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Taxable Cost: \$ _____
Charged to David M. Lacey, Bar No. _____
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13 Videotaped by;

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18 *****

19 Videotape deposition of THOMAS L. GOSSAGE,
20 taken on May 14, 1987, at the Holiday Inn West/Airport,
21 St. Louis, Missouri, commencing at 9:44 a.m., before
22 Linda S. Towery, CSR No. 2413 and Notary Public in and
23 for the State of Texas, pursuant to Notice.
24

25 *****

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P R O C E E D I N G S

MR. LACEY: Why don't you go ahead and mark these.

(A XEROX COPY OF THE NINE-PAGE PLAINTIFFS' NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS AND SUBPOENA DUCES TECUM WAS MARKED FOR IDENTIFICATION AS GOSSAGE EXHIBIT NO. 1)

(A XEROX COPY OF A TWO-PAGE LETTER TO MICHAEL POHL FROM ROBERT A. HALL, DATED APRIL 28, 1987 WAS MARKED FOR IDENTIFICATION AS GOSSAGE EXHIBIT NO. 2)

THE REPORTER: What would you like to do about your agreements?

MR. LACEY: Just by the Rules. And we've agreed that we're going to refer to documents that have Monsanto numbers just by the numbers, not even using the letters, just the numbers, the last numbers on the documents, for reference purposes. And the witness is going to -- if he's going to sign, he's going to sign it and get it to us seven days before the evidence begins.

MR. ANDREWS: That's right.

1 MR. LACEY: If not, a copy can be
2 used.

3 I guess you would get the original,
4 and then he'll sign it.

5

6

7

8

9

10

EXAMINATION BY MR. LACEY:

11 Q. Will you state your name for the record,
12 please, sir.

13 A. Thomas L. Gossage.

14 Q. And where do you live, Mr. Gossage?

15 A. In St. Louis.

16 Q. What's the address?

17 A. 53 Portland Place in the city, St. Louis.

18 Q. All right.

19 How are you employed, Mr. Gossage?

20 A. With Monsanto Company.

21 Q. And what is your position?

22 A. Senior vice-president of Monsanto Chemical
23 Company and group vice-president of Monsanto Company.

24 Q. How long have you been employed with Monsanto?

25 A. Twenty-six years.

1 Q. The two different positions you hold, are those
2 two separate legal entities that you're employed by?

3 A. No. The first -- the first title is the --
4 the -- the functional job; but I'm a corporate
5 vice-president of the -- of the -- of the company,
6 Monsanto Company. The second -- second title is merely
7 the corporate position.

8 Q. I guess I'm trying to find out if there -- is
9 Monsanto -- is it Monsanto Chemical Company that
10 you're --

11 A. No. The company is Monsanto Company.

12 Q. I see.

13 A. A unit of that company is Monsanto Chemical
14 Company, but it's not a -- not a separate corporation.

15 Q. Okay.

16 So, your employment is with Monsanto itself?

17 A. That's correct.

18 Q. We're here to take your deposition today in
19 connection with a case pending in Beaumont, arising out
20 of the production of -- and sale of polychlorinated
21 biphenyls.

22 Are you aware of that?

23 A. Aware of the case?

24 Q. Yes.

25 A. I have heard of the case.

1 Q. Okay.

2 We're here to take your deposition pursuant to
3 a Notice that was issued to Monsanto, under which it was
4 to designate certain witnesses to testify on behalf of
5 the company with regard to specific matters about which
6 we inquired in the notice. Let me hand you what the
7 court reporter's marked as Gossage Deposition Exhibit
8 No. 1 and ask if you have seen that Notice before
9 (tendering).

10 A. No, I haven't.

11 Q. Okay.

12 Let me hand you what has been marked as Gossage
13 Deposition Exhibit No. 2, which is a letter from Robert
14 Hall to Michael Pohl of the firm I'm with, which
15 identifies you as the corporate representative to
16 testify on Topic No. 3 under that Notice.

17 Have you seen that letter before?

18 MR. ANDREWS: May I interrupt just
19 for a moment.

20 Yesterday, I showed him this page of
21 Exhibit No. 1. I don't think he
22 recognized it because I didn't show him
23 the first page, but he has seen Page 3 of
24 Gossage Exhibit No. 1. And if you'd like
25 to examine him over that portion of it, I

1 think it would help us.

2 Q. Do you need to clarify your testimony, sir?

3 A. I only looked at the front page. I have not
4 seen the front page. I have seen this -- this
5 Paragraph 3.

6 Q. Paragraph 3?

7 A. Yes.

8 Q. Okay.

9 And you are aware, then, I take it, that in
10 accordance with Mr. Hall's letter, you have been
11 designated as the corporate representative to testify
12 with regard to the matters in Topic No. 3?

13 A. I have not seen this letter, but I was informed
14 that -- that I was going to cover this area on Page 3.

15 Q. Okay.

16 Have you reviewed both the description of the
17 topic under Item No. 3 and also the Subpoena Duces Tecum
18 associated with that?

19 A. The only thing I read was this Paragraph 3.

20 Q. Well, Paragraph -- I guess what I'm trying to
21 call your attention to: Paragraph 3 starts off with a
22 subhead topic.

23 A. That's the -- that's the section I read, the
24 section called "Topic."

25 Q. Did you read the section called "Subpoena Duces

1 Tecum"?

2 A. No, I did not.

3 Q. Okay.

4 Do you have any documents you're producing
5 today in connection with the Subpoena Duces Tecum
6 attached to this Notice?

7 MR. ANDREWS: No, we do not, for the
8 reason that all the documents that would
9 be responsive to the Subpoena Duces Tecum
10 have already been produced to you.

11 MR. LACEY: So, we have, in the
12 documents that are in our hands currently,
13 every document that Monsanto has that
14 would be responsive to the Subpoena Duces
15 Tecum?

16 MR. ANDREWS: That's my
17 understanding, yes.

18 MR. LACEY: Okay

19 BY MR. LACEY:

20 Q. Did you review any documents at all in
21 preparation for your testimony here today?

22 A. Yes, I did.

23 Q. Okay.

24 What documents did you review?

25 A. The lawyers had a stack of documents -- I

1 assume the ones that have been furnished to you -- and I
2 just scanned them. I looked through them.

3 Q. I see.

4 Do you have with you today the documents that
5 you reviewed?

6 A. No, I don't have them.

7 Q. I see.

8 When did you begin that review?

9 A. Yesterday afternoon.

10 Q. And what lawyers provided you with those
11 documents?

12 A. Steve was -- Steve and Tom were both there and
13 provided me with the documents.

14 Q. When you say "Steve," you're talking about
15 Mr. Andrews?

16 A. Yes.

17 Q. And Tom, you're talking about --

18 THE WITNESS: Tom's last name is --

19 MR. ANDREWS: Bistline.

20 A. Bistline.

21 Q. I see.

22 Let me find out a little bit about your history
23 of work experience following your education.

24 What company did you start to work with after
25 you completed your education?

1 A. Humble Oil Company.

2 Q. And what year was that?

3 A. 1957.

4 Q. And what position did you have with them?

5 A. Process engineer.

6 Q. How long did you stay with Humble?

7 A. I was with them about two months and then had
8 to go into the Air Force. Though I was -- I continued
9 to be affiliated with Humble, I was on my tour of duty
10 in the Air Force for two and a half years.

11 Q. That would carry us up to, what, about 1960?

12 A. 1960, yes.

13 Q. All right.

14 And after you completed your tour of duty with
15 the Air Force --

16 A. Returned to Humble Oil.

17 Q. And how long did you stay --

18 A. Was with them for about a year and, in May --
19 April, April of 1961, joined Monsanto Research
20 Corporation, a subsidiary of Monsanto Company.

21 Q. Okay.

22 If you would, please, give me a very brief
23 description of the types of positions that you've held
24 with Monsanto since joining them in 1961.

25 A. From 1961 to the end of 1968, I held several

1 marketing positions in Monsanto Research Corporation.
2 In December, 1968, I joined a unit of Monsanto, new
3 enterprise division, in a marketing capacity. And in
4 1970, I became marketing director of the specialty
5 products business group of the organic division. I
6 continued in that position until 1975.

7 I, at that time, became director of results
8 management for Monsanto Industrial Chemical Company;
9 1976, became assistant general manager of plasticizer
10 division; 1977, became general manager of plasticizers
11 division; 1978, I believe, became general manager of
12 detergent and phosphate division; then assistant
13 managing director of Industrial Chemical Company;
14 vice-president/managing director of Industrial Chemical
15 Company; in 1983, vice-president Monsanto International;
16 in 1986, my present position.

17 Q. What year was it that you became the assistant
18 managing director of -- and I missed the group there.

19 A. Monsanto Industrial Chemical Company..

20 Q. And what year was that?

21 A. '80. And then '81 would have been managing
22 director.

23 Q. Okay.

24 A. And was named an officer of the company at that
25 time.

1 Q. In 1981, you became an officer --

2 A. Yeah, vice-president in 1981.

3 Vice-president/managing director of the Industrial
4 Chemical Company.

5 Q. And that was a vice-president of Monsanto?

6 A. That is correct.

7 Q. In your first employment with Monsanto, I take
8 it you were in a business or -- position from the outset
9 rather than a technical position. Is that correct?

10 A. Well, it was a subsidiary of the company that
11 was involved in -- in government research. My function
12 was the interface between the government and our
13 research organization. So, it was both a marketing and
14 a technical function.

15 Q. I notice your title, however, was a marketing
16 or marketing-type title.

17 A. It was called director of research and
18 development marketing; so, again, it had kind of a dual
19 indication to it.

20 Q. Was the effort there to try to market new
21 products that Monsanto was attempting to develop?

22 A. No. It was to take research ideas to various
23 government agencies and seek government funding of those
24 research programs.

25 Q. So, you were actually looking for someone to

1 fund further research.

2 A. That's correct.

3 Q. And is that basically the entirety of your work
4 from '61 to '68?

5 A. That's correct.

6 Q. Did any of the work you did from '61 to '68
7 have anything to do with specialty fluids and, in
8 particular, polychlorinated biphenyls?

9 A. It had something to do with -- with specialty
10 fluids, but nothing to do with polychlorinated
11 biphenyls.

12 Q. Okay.

13 When you joined the new enterprise function in
14 1968, you were still in a business or marketing-type
15 capacity?

16 A. That's correct.

17 Q. What did that group do, actually market new
18 products?

19 A. That function was to -- to bring new products
20 to the marketplace.

21 Q. And in this particular function, was there a
22 special type of product you were trying to bring to the
23 marketplace or a particular group within Monsanto whose
24 products you were bringing to the marketplace?

25 A. The -- the division -- new enterprise division

1 was set up by the company in an effort to diversify the
2 company into some new businesses; so, our role was to --
3 to do research outside the general chemical area of
4 Monsanto and bring those new products into the
5 marketplace. It was an attempt to diversify.

6 Q. Can you give me an example or two of what you
7 mean by that.

8 A. Yeah. We worked on steel tire cord, which was
9 a new product for Monsanto. We worked on advance
10 structural composites, which was a business that
11 Monsanto was not in. These would be two examples of the
12 kinds of businesses.

13 Q. I take it that there was nothing in that
14 particular work that you did with the new enterprise
15 division that would have related to polychlorinated
16 biphenyls.

17 A. That's correct.

18 Q. Then, in 1970, you moved to yet another
19 marketing position in the organic division in their
20 specialty products group; is that correct?

21 A. That's correct.

22 Q. Now, at that point, you actually came into the
23 portion of the company that was, in 1970, selling PCBs,
24 did you not?

25 A. That's correct.

1 Q. And they were sold by the specialty products
2 division of the organic -- or specialty products group
3 of the organic division, correct?

4 A. Almost all of the PCBs that were being sold by
5 Monsanto were in that unit. There was one particular
6 part of the family of products that was, at that time,
7 sold by another unit of Monsanto.

8 Q. And which unit was that?

9 A. The plasticizer division. Or it was the
10 plasticizer business group at the time.

11 Q. And with that sole exception, all the rest of
12 the functions were under the group -- sales group that
13 you worked on?

14 A. All the manufacturing was under the group that
15 I was involved in, and all the marketing, with that one
16 exception.

17 Q. So, that would have included dielectric uses,
18 heat transfer uses, hydraulic uses, among others?

19 A. That is correct.

20 Q. Now, as the marketing director, what were your
21 functions?

22 A. I had responsibility for the field sales, which
23 is the interface with the customer, the buying-selling
24 relationship of our products; and I had responsibility
25 for product management, the -- the planning and the

1 implementation of the marketing plans for all the
2 products in that group.

3 Q. Okay.

4 In that particular group -- and we're talking
5 about specialty products -- what chemicals, other than
6 PCBs, did you have responsibility for?

7 A. Aviation hydraulic fluids. Shortly after I
8 joined the unit, another group was integrated into that
9 business group, paper chemicals and some non-PCB
10 hydraulic fluids, industrial hydraulic fluids, some
11 non-PCB heat transfer fluids, and other specialty
12 fluids.

13 Q. Up until you came to that function with the
14 specialty product group, you had never really had
15 occasion to work with PCBs before, correct?

16 A. That's correct.

17 Q. In terms of the people who reported to you in
18 your position as the marketing director, what were the
19 groups or -- or people that reported to you?

20 A. When I joined or when I came into that
21 position, there was a -- a market manager or product
22 manager for dielectric fluids, a product manager or
23 market manager for heat transfer fluids, and a product
24 manager or market manager for industrial fluids, a field
25 sales director.

1 And then, as I said earlier, within a few
2 months, we then took on the paper chemicals group; so,
3 there was a -- a product manager slash market manager
4 for paper chemicals and a product manager for -- for
5 latex, which was a subset of the paper chemicals
6 business.

7 So, there were five product managers and a
8 field sales director.

9 Q. Did the paper chemicals have anything to do
10 with PCBs?

11 A. No.

12 Q. When you first joined, did the heat transfer
13 have anything to do with PCBs?

14 A. Yes.

15 Q. When you first joined, did the industrial
16 fluids have anything to do with PCBs?

17 A. Yes.

18 Q. Now, when you first joined, did the dielectrics
19 have anything to do with PCBs?

20 A. Yes.

21 Q. And did the field sales director deal with PCB
22 materials at all?

23 A. In terms of selling to the customer, yes.

24 Q. Who was the product manager for dielectrics?

25 A. Paul Benignus.

1 Q. And he reported directly to you?

2 A. Yes.

3 Q. Who was the product manager for heat transfer?

4 A. Jack Fallon.

5 Q. And he reported directly to you?

6 A. That's correct.

7 Q. Who was the product manager for industrial
8 fluids?

9 A. Frank Langenfeld.

10 Q. And he reported directly to you?

11 A. That's correct.

12 Q. Who was the field sales director?

13 A. Norm Johnson.

14 Q. Now, in this organization, were there people
15 who worked under Mr. Benignus?

16 A. Yes.

17 Q. Who worked for him?

18 A. Paul Graham and Jim Bryant.

19 Q. And were there people who worked for those
20 individuals, or were they the --

21 A. No.

22 Q. I see.

23 So, the -- and the product manager for
24 dielectrics, you had a manager; and then he supervised
25 two employees?

1 A. That's correct.

2 Q. With regard to the field sales director, did he
3 have people who worked under him?

4 A. Yes. He had regional managers that were
5 located in various parts of the Country.

6 Q. And were those regional managers limited solely
7 to selling products of your group, the specialty fluids
8 group; or did they also sell other products, as well?

9 A. Only -- only my group.

10 Q. Do you recall who the regional managers were
11 and where they were located?

12 A. Ray Ford was the regional manager in Atlanta;
13 Raleigh Garcia in Akron; Doug Hansen in Los Angeles.
14 There was a regional manager in New York, Phil -- Phil
15 Stayton. I think that's it, four regional managers, I
16 believe.

17 Q. Okay.

18 And did these people actually have salesmen
19 reporting to them?

20 A. Yes.

21 Q. About how many salesmen actually reported to
22 each of these managers?

23 A. Generally, between five and seven reporting to
24 each of those regional managers.

25 Q. Were you even aware of who those salesmen were?

1 A. Oh, sure. I -- I won't be able to recall very
2 many of the names, but I knew them at the time.

3 Q. Okay. If you would, tell me the names of the
4 people that you do recall, who were salesmen actually in
5 the field.

6 A. Jim Roder, Jay Pullman.

7 I'm running out. I --

8 Q. Okay.

9 A. I could probably sit for an hour and make up
10 eight or -- eight or nine more of them, but I -- I don't
11 recall their names.

12 Q. Out of a total of approximately 20 or so?

13 A. Yeah, I'd say about 20 to 22.

14 Q. Now, these salesmen sold all the various
15 products that you were responsible for; and there was
16 dielectrics, heat transfer, industrial fluids. They
17 would sell any of those products?

18 A. In 1970, the sales organization was -- was more
19 specialized. We'd have some salesmen that just handled
20 dielectrics and some salesmen that handled heat
21 transfer. And we went through organizational changes
22 from '70, forward to '75. Toward the end of that
23 period, they were more generalist in handling the whole
24 portfolio of products; but in the beginning, they were
25 specialists.

1 Q. Okay.

2 So, for example, out of the Atlanta office
3 initially, there might have been one salesman dedicated
4 to dielectrics and one dedicated to heat transfer; and
5 later, they might each handle both of those?

6 A. That's correct.

7 Q. Okay.

8 Now, in -- in going up the reporting chain, who
9 did you report to?

10 A. In 1970?

11 Q. Yes.

12 A. Howard Bergen.

13 Q. And what was his position?

14 A. Business director of specialty products
15 business group.

16 Q. And was he at some point replaced? Did your
17 reporting chain change?

18 A. Well, we went through a series of -- of
19 organizational changes; but for the period that I was in
20 that job, from 1970 to 1975, he was the business
21 director that entire period.

22 Q. Okay.

23 So, the entire period of time that you were the
24 marketing director, he was the business director?

25 A. That's correct.

1 Q. Did Mr. Bergen have other directors of various
2 things reporting to him?

3 A. Other functional directors.

4 Q. Can you give me an example of the sorts of the
5 things he had reporting to him.

6 A. Research, manufacturing, environmental control,
7 financial analysis, engineering. I think that's it.

8 Q. Do you recall, during this period of time, who
9 your collaterals were in the various positions that
10 reported to Mr. Bergen?

11 A. Some of them or most of them.

12 Q. Research?

13 A. Bill Richard.

14 Q. Manufacturing?

15 A. Jim Savage.

16 Q. Environmental control?

17 A. Bill Pappageorge.

18 Q. Financial analysis?

19 A. Art Koenig. Art --

20 Q. Art?

21 A. -- Koenig.

22 Q. Okay.

23 Is that -- how do you spell that?

24 A. K-o-e-n-i-g, I believe.

25 Q. Okay.

1 Engineering?

2 A. I don't recall the engineers.

3 Q. Okay.

4 And how did the reporting chain above
5 Mr. Bergen go during the period of time you were there?

6 A. At the time I joined the unit, Mr. Bergen
7 reported to John Mason, who was assistant general
8 manager of the organic division.

9 Q. And was Mr. Mason replaced or -- at some point
10 while you were there?

11 A. Yes.

12 Q. Who replaced him?

13 A. Wink Corey.

14 Q. Wink?

15 A. (Nodding head)

16 Q. That's a nickname?

17 A. Yeah. I don't -- I don't -- I don't remember
18 his initials, but Wink Corey.

19 Q. And he also held the title of assistant general
20 manager, if you recall?

21 A. Yeah.

22 I don't think so. I think he had a different
23 kind of title. It was maybe something like -- well, I'm
24 just not sure. It could have been that title or a
25 slightly different title.

1 Q. But it was the same position?

2 A. It was the same position, but there were some
3 organizational structure changes above him that may have
4 changed that -- that specific title.

5 Q. And do you know who they reported to?

6 A. John Mason reported to Howard Minkler, general
7 manager and vice-president of the organic division.

8 Q. Okay.

9 And was he there the entire time?

10 A. No. He was replaced by Pres Cunningham, which
11 was an organizational consolidation; and the title went
12 from general manager of the organic division to
13 vice-president/managing director of the industrial
14 chemical company.

15 Q. Was there anybody replaced Mr. Cunningham
16 during that period of time, that you recall?

17 A. Harold Bible, with the same title.

18 Q. Does that cover that period of time you were
19 there?

20 A. Yes.

21 Q. Okay.

22 And then those people are reporting, I guess,
23 to the president of the company or whatever.

24 A. Minkler was reporting to an executive
25 vice-president. I believe Bible, in that organizational

1 structure, was reporting directly to the president.

2 Q. Okay.

3 Now, let me come back to understand a little
4 bit about the relationship that existed at the level
5 where you functioned. In particular, we're here to
6 understand and learn what we can about the pricing of
7 PCB products vis-a-vis other products and their
8 profitability. You understand that?

9 A. I understand that.

10 Q. Who was responsible primarily within this group
11 for determining the pricing of the products in the
12 specialty fluids portion of the organic division and, I
13 guess, which later became, what, the industrial chemical
14 company?

15 A. That's correct.

16 In general, pricing recommendations would be
17 made by the product manager slash market manager to me;
18 and I would make those recommendations to the business
19 director.

20 Q. In the case of dielectrics, then, Mr. Benignus
21 would recommend pricing to you?

22 A. Well, yes. In fairness, that could go either
23 way. I could suggest to him that he would -- we should
24 have a price increase or a price change, or he could
25 initiate that. But it would be within the marketing

1 organization in that communication chain.

2 Q. Was it basically the two of you would come to
3 an agreement about what would be recommended, and then
4 it would be recommended to --

5 A. To the business director, that's correct.

6 Q. All right.

7 And who actually had the ability to set price
8 changes? Was that at the level of the business
9 director?

10 A. That's correct.

11 Q. So, then, the pricing decisions with regard to
12 PCB products from 1970 to 1975 were ultimately made by
13 Howard Bergen, with input or recommendations from you,
14 correct?

15 A. Yes.

16 Q. And, in turn, you would obtain input from
17 whoever the appropriate product manager might be for any
18 particular PCB product?

19 A. That's correct.

20 Q. Okay.

21 Let me stop and see if we can establish a
22 little bit of a background for what happened to the PCB
23 products that Monsanto made in this period of time.

24 Your first association, again, with PCBs was in
25 1970?

1 A. That's correct.

2 Q. Just as a matter of general awareness, as an
3 employee of Monsanto, had you been even familiar at all
4 with what was going on with regard to PCBs in the last
5 half of the 1960's; or was that -- that a new matter to
6 you when you came on board?

7 A. It was a new matter to me when I came on board.

8 Q. Okay.

9 Did you even know what PCBs were before you
10 arrived as the -- the marketing director for the
11 specialty fluid division?

12 A. No.

13 Q. Okay.

14 Your background is a technical one?

15 A. Yes.

16 Q. What is your degree in?

17 A. Chemical engineering.

18 Q. Okay.

19 So, you understand -- I mean, if somebody sat
20 down and you wanted to understand what PCBs were
21 chemically, you'd have the ability to do that?

22 A. That's correct.

23 Q. Is that one of the things you did when you
24 first got into your job as marketing director, to try to
25 understand anything about the chemical properties of the

1 product you'd be directing?

2 A. Not the chemical properties; but I -- I -- one
3 of my first things was to sit with the person I was
4 replacing and understand the various products, the
5 markets, the chemistry that we were involved in.

6 Q. Okay.

7 And who was it that you did replace?

8 A. Don Olson.

9 Q. Now, at the time that you came into this
10 position as marketing director in 1970 -- do you recall
11 the -- the month in 1970 you came into that?

12 A. I think June or July.

13 Q. Okay.

14 So, it would be mid-'70, then?

15 A. That's right.

16 Q. When you came into this position in mid-1970,
17 PCBs were being used in dielectric fluids sold by
18 Monsanto, correct?

19 A. That's correct.

20 Q. PCBs were being used in heat transfer fluids
21 sold by Monsanto?

22 A. That's correct.

23 Q. PCBs were being used in hydraulic fluids sold
24 by Monsanto?

25 A. At the time I came in, I think we had decided

1 to go out of the industrial hydraulic fluids; and we
2 were in that period of -- of moving out of that
3 particular area.

4 Q. But when you came in, they were still being
5 sold for that purpose; is that correct?

6 A. I -- as I recall, we had announced our
7 intention to get out; but we were still selling at that
8 time.

9 Q. Were PCBs being used still in the carbonless
10 paper applications when you came into that position?

11 A. Yes, it was.

12 Q. And were you responsible for those sales?

13 A. Either when I came into the job or within a few
14 months of that. It -- it -- that was, at one time,
15 being handled by the plasticizer group, along with the
16 plasticizer applications; and there was a transition
17 period within a very short period of time that we took
18 over the responsibility for carbonless paper.

19 Q. Okay.

20 I believe you told me that the plasticizer
21 sales belonged to somebody else and were never under you
22 in this job, correct?

23 A. We had the -- the manufacturing responsibility.
24 And, again, soon after I came into the job, the decision
25 had already been made to go out of the plasticizer

1 applications; and we took over the responsibility for
2 marketing as we went out of those products. The field
3 sales of the plasticizer group continued their role,
4 interfacing with the customer, while we made that
5 transition out of that product.

6 Q. So, by the time you became responsible for the
7 plasticizers, they no longer included PCBs?

8 A. No. I only took over the PCB part of the
9 plasticizers in the transition period, as we were -- as
10 we were removing ourselves from that business.

11 Q. Okay. I understand.

12 So, in the early seventies, then, as -- as
13 Monsanto was getting out of PCBs as plasticizers, that
14 did come into your area?

15 A. I think it would be fair to say that as I moved
16 into the job, we consolidated all of the PCBs under my
17 responsibility.

18 Q. Okay.

19 A. From a marketing standpoint.

20 Q. Approximately what percent of the entirety of
21 the sales that you were marketing director for in 1970
22 included products containing PCBs?

23 A. About a third.

24 Q. Okay.

25 And do you have any idea of how that was broken

1 down between the various product lines?

2 A. I would only say that the dielectrics was --
3 was the bigger of -- of the three applications, not by a
4 lot. And heat transfer and industrials were about the
5 same size.

6 Q. Okay.

7 A. The PCB portion of it.

8 Q. And you include plasticizers under industrial
9 applications, too, or...

10 A. Yeah.

11 Q. I just know you broke it down into three, and I
12 want to make sure what fits where.

13 A. Yeah. And I -- the sales of the -- of the PCBs
14 and the plasticizers was never recorded in my business
15 unit. We merely had the responsibility of -- of -- of
16 getting out of that particular part of the business.
17 So, the sales would not have been included in my
18 numbers. It would have represented a small portion
19 of -- of the total PCB sales.

20 Q. And the carbonless carbon paper would have been
21 in the industrial, as well?

22 A. That's correct.

23 Q. Okay.

24 Now, the actual decision, as I understand your
25 testimony, to cease selling PCBs for plasticizers, for

1 hydraulic fluids, and for carbonless carbon paper had
2 all been made before you became marketing director?

3 A. Certainly the decision to -- to get out of
4 plasticizers and to get out of -- of hydraulic fluids
5 had been made. And the decision had been made to get
6 out of carbonless paper, also.

7 Q. Okay.

8 So, for three of the applications that you
9 served as marketing director, those were supervising the
10 winding down of those sales?

11 A. That's correct.

12 Q. And at the time you came on, the remaining
13 broad functions that were still present for the sale of
14 PCBs were dielectric uses and heat transfer uses,
15 correct?

16 A. That's correct.

17 Q. Did you have any decision-making process at all
18 with regard to decisions by Monsanto to ultimately get
19 out of the sales of PCBs as -- as heat transfer fluids?

20 A. Would you state the front end. Did I have
21 anything to do with that?

22 Q. Yes. Were you involved in any way in the
23 decision-making process by which Monsanto decided to get
24 out of selling PCB materials as heat transfer fluids?

25 A. Well, I certainly set up the organizational

1 structure for getting out of heat transfer fluids and
2 was -- was responsible for getting out of heat transfer
3 fluids. I -- I think I would say I was party to the
4 decision. I was in the decision chain for -- for -- for
5 getting out of heat transfer fluids.

6 Q. Were you a person who made any recommendations
7 about whether to stop selling PCBs for that purpose or
8 was that -- or asked to comment on any recommendations
9 that others may have made?

10 A. I -- I would have commented on -- on -- on
11 decisions that others made.

12 Q. Okay.

13 A. I did not certainly recommend or -- or make the
14 decision myself.

15 Q. Is that a decision that was made at a higher
16 level in the company than you occupied?

17 A. Yes.

18 Q. And do you understand or do you believe that
19 you were asked to comment on the decision before it was
20 finalized, or you just commented on it after it was
21 learned that it had been -- a decision was made?

22 A. Well, the issue with heat transfer fluids was
23 whether the PCBs could be contained in the heat transfer
24 system or whether they would get into the environment.
25 The part that I played in the -- in the decision process

1 was our evolution to a position where, before, we had
2 thought the heat transfer could be contained and kept
3 out of the environment to the point where it was
4 becoming more clear that -- that there were occasional
5 leakages, accidental leakages, that was getting into the
6 environment.

7 So, that's the part of the -- the process I was
8 involved in. I was involved in -- in questions being
9 put to me, "Could we contain the fluid in a heat
10 transfer system?" And we had originally thought so; and
11 we went through a -- the transition of deciding, no, we
12 really couldn't guarantee that.

13 Q. What is a heat transfer system?

14 A. It is a fluid -- well, let me give you a
15 parallel.

16 Steam is used to -- to -- steam or hot water
17 may have been used to heat your home or -- or air heated
18 by natural gas. In an industrial application, those
19 sometimes are used; but frequently you use a hot liquid
20 to transfer heat from -- into some other process, into
21 another fluid that's -- that's in some sort of a
22 chemical reaction. And it is that -- that fluid that --
23 that, in a contained system, is heated up; and then that
24 heat is transferred into a process, to another fluid or
25 to another gas.

1 Q. Would it be fair, if my understanding is
2 correct, that you might have a -- a loop of pipe that's
3 in a circle, so to speak, and there's a pump somewhere
4 that pumps it around and, one side, you heat it up and
5 then you send it someplace else and, there, it gives up
6 its heat? Is that what you're talking about?

7 A. Am I the engineer, or are you the engineer?

8 Q. Well, I don't know.

9 A. No. That's right.

10 Q. Okay. I just want to make sure I understood --

11 A. That's right.

12 Q. -- what you're saying.

13 A. That's right.

14 Q. And is the design of that system that the fluid
15 stays in the loop and doesn't get out?

16 A. That is exactly right.

17 Q. Okay.

18 Well, why was it, then, that it was concluded
19 that that wasn't a closed application?

20 A. Because we saw, through our sales pattern --
21 excuse me -- that we were selling some heat transfer
22 fluids in small quantities to companies that had already
23 bought the material for the system. So, it became
24 obvious to us that there was some leakage or some
25 deterioration that caused what -- what we subsequently

1 called top-up of a heat transfer system.

2 Q. And am I correct in understanding it was
3 Monsanto's decision, sometime in early 1970's, that PCBs
4 should not be sold for any application where they would
5 be getting into the environment?

6 A. That decision was taken either in '68 or '69,
7 before I came into the job. And as I said earlier, when
8 I came into the job, the decision had been made to get
9 out of the plasticizers, industrial hydraulic
10 applications, and carbonless paper; and those were the
11 applications where we had identified that we could not
12 guarantee that they were -- were staying out of the
13 environment.

14 Q. Well, let me ask my question slightly
15 differently.

16 In 1970, when you came to the job, then it was
17 a policy of Monsanto not to sell PCBs for any
18 application where they could get into the environment or
19 whether they -- where they did get into the environment;
20 is that correct?

21 A. That's correct.

22 Q. And what happened with regard to heat transfer
23 fluids was that questions arose about where -- whether
24 PCBs for that application were getting into the
25 environment. Monsanto considered the matter, concluded

1 they were, and, therefore, stopped selling.

2 A. As soon as we recognized that they were, in
3 fact, not contained and were getting into the
4 environment, we took the decision to get out of that
5 business.

6 Q. Okay.

7 Was there any line of business where Monsanto's
8 policy was that it would continue selling PCBs even if
9 they were getting into the environment?

10 A. Not after 1970.

11 Q. Okay.

12 A. Except as we made the transition. I'm -- I'm
13 suggesting that there were some industrial hydraulic
14 applications as we made the transition out of PCBs.
15 There were some continuation of -- of carbonless paper
16 sales after 1970 as we converted those customers away
17 from PCBs. In some cases, that took three months. In
18 some cases, it took six months or so.

19 Q. So, there -- there would a changeover period
20 between the time that the decision was made and it was
21 finally implemented?

22 A. That is correct.

23 Q. But save and except for making the changeover,
24 there was no business where Monsanto's policy was to
25 keep on selling PCBs indefinitely for an application

1 where they could get into the environment?

2 A. That would have been contrary to the policy.

3 Q. Okay.

4 Now, I'm a little bit confused about the
5 manufacturing operations and how that related to your
6 role, if at all, as marketing director.

7 What was the relationship between the
8 manufacturing operations and the marketing operations?

9 A. Well, it was a coordinating role.
10 Manufacturing, as I indicated earlier, was under Jim
11 Savage. He was a peer of mine. We worked together in
12 terms of -- of what the market requirements were and,
13 therefore, what his production requirements would be.
14 He would certainly visit the customers on occasion to --
15 to understand the use of the products; and customers
16 would certainly, with me, visit our plants to see how
17 the products were made.

18 Q. Did you have any responsibility for
19 coordinating the amount that you expected -- of PCBs I'm
20 talking about now -- that you expected to sell with the
21 amount that was going to be produced? Did -- were you
22 involved in that function?

23 A. We had the responsibility of forecasting our
24 forward sales for manufacturing so they could do their
25 production planning.

1 Q. When you say "we," you mean your particular
2 function, the marketing?

3 A. The marketing function.

4 Q. Okay.

5 How many plants were you responsible for
6 advising of the forecasted sales so they could plan
7 appropriately?

8 A. For PCBs?

9 Q. Yes.

10 A. Two.

11 Q. And those plants were the one in Anniston,
12 Alabama, and the one in East St. Louis, Illinois?

13 A. That's correct.

14 Q. How many other plants did Monsanto have that
15 manufactured PCBs?

16 A. One in Europe.

17 Q. Was that located in England?

18 A. Yes, Scotland. Scot -- Wales.

19 Q. Wales?

20 A. Yeah.

21 Q. United Kingdom?

22 A. That's correct.

23 Q. Okay.

24 Were there any other plants?

25 A. We have a joint venture in Japan with a

1 Japanese company, and that joint venture produced PCBs.

2 Q. Who was the -- your joint venture there?

3 A. Mitsubishi Chemical.

4 Q. Who was responsible for handling the marketing
5 of PCB products produced in the United Kingdom or in
6 Japan?

7 A. I had worldwide responsibility for the products
8 that were under my area, including, therefore, the PCBs
9 in Europe; but I did not have direct market
10 responsibility for the -- the products produced out of
11 our Japanese joint venture.

12 Q. Who was responsible for the Japanese products?

13 A. The management of the joint venture.

14 Q. That was a separate entity?

15 A. Yeah, it was -- that's correct.

16 Q. And were they located --

17 A. A 50/50 joint venture with Mitsubishi Chemical.
18 They had management responsibility of the joint venture.

19 Q. Mitsubishi did?

20 A. Yes.

21 Q. They were located in Japan?

22 A. That's correct.

23 Q. Okay.

24 Did you, as the person responsible for the
25 marketing of Monsanto's PCB production in Europe,

1 forecast what the demand would be so that the UK plant
2 could act appropriately?

3 A. Well, I would have responsibility for
4 forecasting requirements in all world areas except
5 within Europe. The management within Europe would
6 forecast their own requirements in Europe. My role,
7 related to the European operation, would be the
8 coordination of shipments out of Europe into some other
9 world area or shipments out of one of our plants into
10 some other world area.

11 Q. Okay.

12 So, to the extent that the UK plant produced
13 for -- PCBs for consumption in Europe, somebody else
14 forecasts the consumption level and, therefore, would
15 have that input to the production functions in the
16 United Kingdom.

17 A. That's correct.

18 Q. To the extent the United Kingdom plant would be
19 producing more than Europe would consume, for sale
20 outside of Europe, then you would be forecasting the
21 sales outside of Europe.

22 A. That's correct.

23 Q. And making sure that some plant, either the
24 plant in Europe or one of the plants in the United
25 States, had enough production to cover both the U.S.

1 uses, the European uses, and whatever else was
2 worldwide.

3 A. That's correct.

4 Q. Was any of the production from the Japanese
5 plant used to meet needs outside of Japan, particular
6 Monsanto sales needs?

7 A. They were never -- at least in the period of
8 time that I was involved, that production was never used
9 to meet any of Monsanto's needs.

10 Q. Okay.

11 In connection with the decision to stop selling
12 PCBs for certain uses, did that have an impact on the
13 need for production of PCBs?

14 A. Yes.

15 Q. And what effect did that have?

16 A. Well, as we -- as we got out of the -- the
17 plasticizer applications and the -- the hydraulic fluid
18 applications and the carbonless paper applications, we
19 had far too much capacity in the two U.S. plants; and
20 thus, at one point in time, we consolidated our
21 production into East St. Louis and shut down our PCB
22 production in Alabama.

23 Q. Do you recall approximately when the Alabama
24 PCB facility was closed?

25 A. I -- I don't know -- I -- I'd say between '70

1 and '72 or '3, but I -- I -- I can't recall that date.

2 Q. Do you know why -- and we're -- or may -- let
3 me put it another way.

4 Were you involved in the decision-making
5 process about which facility to keep open and which
6 facility to close?

7 A. I have no memory of that. I don't think so.

8 Q. Okay.

9 Access to markets and things like that, then,
10 was not something you were asked to give input on, about
11 which facility was closer to markets or anything like
12 that?

13 A. No.

14 Q. Okay.

15 MR. ANDREWS: Mr. Lacey, while you're
16 looking through that, may I suggest a very
17 brief break?

18 MR. LACEY: Surely. You bet.

19 (DISCUSSION OFF THE RECORD)

20 BY MR. LACEY:

21 Q. Mr. Gossage, let me show you a document, 8852,
22 just simply for the purpose of seeing if it refreshes
23 your memory that it was in 1972 that the Anniston,
24 Alabama, facility was shut down (tendering).

25 A. Is there a question?

1 Q. Yes. I asked if that refreshed your
2 recollection it was in 1972 that the Anniston, Alabama,
3 PCB production facility was shut down.

4 A. Well, it doesn't refresh my memory; but I -- I
5 see that it was shut down in 1972.

6 Q. Okay.

7 A. That's generally in the time period that I
8 thought it was.

9 Q. Yeah, I understand. I was just trying to see
10 if we can get a little more specific with regard to the
11 timing of that.

12 Now, let me ask, if I can, to try to understand
13 a little bit about how pricing decisions are made.

14 Clearly, somebody within the company has to
15 decide what price to set on the product, correct?

16 A. That's correct.

17 Q. And I suppose, with rare exceptions, a company
18 doesn't manufacture a product on which it's losing money
19 for very long.

20 A. In general, that's correct.

21 Q. Okay.

22 So, one of the things you've got to do in
23 setting your price is figure out what it costs you to
24 make it.

25 A. That's correct.

1 Q. And after you figure out what it costs you to
2 make it, you can then try to set a price that you think
3 you can sell it for and make some money on it, correct?

4 A. Correct.

5 Q. What sort of factors were taken into account by
6 yourself in determining how to set the price? And I'm
7 in -- particularly interested to hearing what you would
8 take into account in determining the cost factor so
9 you'd know what -- what the real costs were in producing
10 PCBs so you could take that into account in pricing
11 them.

12 A. Well, we had access to our cost of
13 manufacturing and all other cost elements in running the
14 business. Generally, those were furnished by our
15 financial analyst, who I think I referred to later as
16 Art Koenig. And with that data base, either the product
17 manager or myself would make a -- a product
18 recommendation, product price recommendation.

19 Q. Well, I guess what I'm trying to find out is
20 what factors went into these cost things. I'm sure that
21 one of the things that went into account would be the
22 raw materials in it, the salaries of the workmen that
23 you paid to actually produce it, the transportation cost
24 of getting it delivered, if it was sold with
25 transportation involved in getting it where it was going

1 to be sold. There are what I guess we could
2 characterize as the obvious costs or direct cost. I'm
3 not sure how it's worded. Maybe you can help me
4 understand how it would be referred to within Monsanto.

5 A. Well, we would generally break our cost down
6 into what's called fixed cost and variable cost.

7 Q. Okay.

8 A. The variable cost would be primarily the raw
9 material cost; and the fixed cost would be the -- the
10 cost of the capital, the labor cost, the other flowed
11 cost in the plant to a particular production unit.

12 Q. I'm sorry. What cost?

13 A. Other flowed cost, other -- other cost in the
14 plant that would be flowed to a production.

15 Q. Can you explain what you mean by that.

16 A. Well, we had -- in a plant, we'd have a
17 personnel function. We'd have a engineering function.
18 We'd have a -- a maintenance function, utilities
19 function, medical function. All of those are cost
20 centers that are flowed, on some allocation basis, to
21 all the production units in the plant.

22 Q. So, for example, if a unit produces three
23 products, a part of the personnel office overhead is
24 going to be go -- is going to be allocated to each of
25 those three products?

1 A. That's correct.

2 Q. Okay.

3 With regard to all of these things that are
4 called fixed and variable costs, did those go into some
5 larger category? And I've seen in some documents the
6 term "cost of goods sold." Are those --

7 A. Cost of goods sold is the combination of all of
8 the manufacturing costs, fixed and variable.

9 Q. And this plant overhead, et cetera, is
10 considered part of cost of goods sold?

11 A. That's correct.

12 Q. Now, are there other costs that are taken into
13 account? And I guess I'm thinking, at this point, for
14 example, what about your salary and Mr. Benignus'
15 salaries and others. How are those taken into account,
16 if they are?

17 A. Those are in a category in Monsanto called MAT
18 expenses, marketing, administrative, and technical
19 expenses. And those costs are also charged to
20 various -- to all of our product families, either on
21 a -- a direct basis or an allocated basis.

22 Now, for example, Paul Benignus, as product
23 manager for dielectrics, he had no other
24 responsibilities than dielectrics. All of his costs
25 would be assigned to the dielectric group. My cost

1 center, for example, which would be spread across a
2 number of different products, would be allocated, on an
3 accounting basis, to all the products that I'm
4 responsible for; in my case, probably allocated on a
5 sales basis. In other words, whatever percentage the
6 sales represented for -- for dielectrics of the total
7 sales, that portion of my cost center would be allocated
8 to dielectrics.

9 Q. Would you take these MAT expenses into account
10 in setting prices, as well?

11 A. Absolutely.

12 Q. So that in setting a price for any product, you
13 would take into account every possible cost for expense
14 that could be associated with it in order to set a price
15 that would cover all of those things, if possible?

16 A. That's correct.

17 Q. Are -- are there any other types of expenses or
18 costs that are allocated to a particular product, other
19 than what we've talked about as the cost of goods sold
20 and these MAT expenses?

21 A. There are corporate charges that also are
22 distributed to the profit centers. These would be the
23 cost of any corporate staff groups, law, again, medical,
24 environmental, corporate research, corporate
25 administration, any number of corporate staff functions.

1 It would also be allocated out to the profit
2 centers on some basis, sometimes on capital employed,
3 sometimes on -- on an estimated actual use basis,
4 sometimes on a sales basis, various accounting methods
5 for allocating those out.

6 Q. Did you take into account however Monsanto
7 chose to allocate those in setting a price?

8 A. Yes, in that we looked at return on capital,
9 net income return on capital. And all those costs are
10 flowed before you -- you get to your net income levels.
11 So, yes, those were taken into account.

12 Q. Do you recall whether the allocation system
13 used in the 1970's, from '70 up to '75, while you were
14 with the specialty fluids group, in particular for
15 aspects like law, medical, environment, and research,
16 were allocated in such a fashion that products that
17 required more of that type of staff support bore a
18 larger share of those expenses?

19 A. In the 1970's, a -- a business group and a
20 product family did not carry allocations in their
21 standard reports. They only received financial
22 information to what was at that time called, I believe,
23 performance income, which would have been before the
24 flow of corporate charges. So, in the early 1970's,
25 there was no routine reporting or consideration of

1 changing corporate charges in the decision-making
2 process.

3 Now, let me just add that over -- over -- over
4 the trans -- transition period between then and now, all
5 of that is being flowed; but -- but certainly in the
6 early seventies, it was at a performance income level,
7 not a net income level.

8 Q. I'm not sure I understand the -- what you're
9 saying in terms of the impact on your setting prices.

10 Are you saying that each particular product
11 sold by Monsanto in the early seventies simply got a
12 arbitrary share of those expenses without trying to flow
13 them to where they were actually coming from?

14 A. The organic division would have received --
15 would have received a flowed corporate charge; and it
16 would have been dispersed to the various profit centers,
17 on a less frequent basis, for the purpose of -- of
18 looking at long-range plans, for capital plans, and so
19 forth. And in terms of running the day-to-day business
20 and making the pricing decisions, that was not flowed
21 and was not a consideration.

22 Q. Was it a consideration in making a pricing
23 decision that there might be extraordinarily high
24 expenses for legal matters, medical matters,
25 environmental matters, research matters, and the like?

1 A. There was no consideration in the pricing
2 decision during that period of time of any -- any
3 corporate staff changes driven by a product within a
4 unit.

5 Q. Okay.

6 So, you did not take into account whether PCBs
7 might result in more environmental problems than another
8 product in setting the price on PCBs?

9 A. Yes, in terms of the environmental costs within
10 the business group. We had an environmental group, and
11 we had capital projects going on in our plant that were
12 driven by the changing environmental situation on PCBs.
13 Those costs were very clearly taken into account.

14 Q. There, you're talking about making sure that
15 you don't discharge it into the environment out of your
16 producing plant.

17 A. That's correct.

18 Q. Setting those aside and talking more generally
19 about problems that might arise or require environmental
20 assistance of a -- of a dedicated staff or something
21 like that, those costs were not taken into account; is
22 that correct?

23 A. No, that's not correct.

24 Q. Okay.

25 A. Part of Bill Pappageorge's function was dealing

1 with our customers and helping our customers deal with
2 their environmental problems; and, therefore, again,
3 that was a cost that -- that we clearly saw. It was a
4 part of our cost center, and -- and we did take those
5 kind of costs into consideration.

6 Q. Okay.

7 So, to the extent Mr. Pappageorge had a role
8 with regard to PCBs that may have resulted in more
9 salary per dollar of product sold than would be true
10 with other products, vis-a-vis environmental concerns,
11 that salary would show up and those expenses would show
12 up in your pricing decisions?

13 A. Yeah, and I'd put the emphasis on expenses.
14 If -- if, as a result of his efforts, he had to use
15 outside consultants, if there was analysis that had to
16 be done or various products driven by the changing
17 situation on PCBs, those costs would -- would -- would
18 be direct, if you will, in terms of flowing into our MAT
19 numbers and would be taken into account.

20 Q. Okay. Well, I think I understand what you're
21 saying there, then; and let me -- let me get another
22 specific example to make sure I do have it down
23 correctly.

24 I have seen documents which suggest to me that,
25 for example, Mr. Pappageorge traveled extensively,

1 talking with people about PCBs and environmental
2 concerns regarding them. His expense reports and all
3 those things would be part of that MAT cost.

4 A. That's correct.

5 Q. And the consultants he hired to travel with him
6 on that would be part of that MAT cost.

7 A. That's correct.

8 Q. And all of that would be taken into account in
9 setting prices for PCBs.

10 A. That's correct.

11 Q. Okay.

12 Now, I suppose -- and -- and if I'm incorrect,
13 certainly let me know -- but I suppose that, in a
14 chemical company like Monsanto, there are certain
15 chemicals that are produced that are extremely
16 competitive. That is, there are a lot of other people
17 selling those same chemicals and the competition is a
18 price-driven competition, where being the most efficient
19 producer with the lowest cost is important in getting a
20 big share of the market. Is that correct?

21 A. That's correct.

22 Q. When you were over the specialty fluid group,
23 did you have any chemicals that you were responsible for
24 that fell within that type of pricing situation?

25 A. Yes, we certainly had products that had

1 competition and fell generally in that -- in that
2 situation.

3 Q. What products fell within that situation?

4 A. Our aviation hydraulic fluid was not a PCB, but
5 our aviation hydraulic fluid had competitive products.
6 Some of our heat transfer fluids, there were competitive
7 products. Even with our PCBs, be it dielectric,
8 hydraulic fluids, or heat transfer fluids, there were
9 alternative products that the customer could go to,
10 though there was no exact product matching our product
11 in the United States.

12 Q. Let me see if I can sort that out and make sure
13 I understand it.

14 In some product lines -- and I take it they're
15 the non-PCB product lines -- there are some -- there may
16 have been chemical companies selling exactly the same
17 chemical, maybe under a different trade name, but
18 exactly the same chemical. There's no difference
19 between the two if you took them to a laboratory and
20 analyzed them, correct?

21 A. Some of those, yes.

22 Q. Okay.

23 And -- and I take it from your hesitancy, your
24 group didn't include nearly as many of those types of
25 chemicals as other groups might.

1 A. Yeah. But by the -- by the nature of the name
2 of our unit, we were a specialty products group, which
3 would suggest that our products somehow, in most cases,
4 were somewhat differentiated. But there's a continuum
5 as to how much differentiation and how much, on one
6 side, it was exactly like products sold by someone else.

7 Q. And -- and some of your products, if not
8 exactly like, were almost like products sold by others.

9 A. That's correct.

10 Q. And their price competition was very important.

11 A. That's correct.

12 Q. If yours cost a dollar a gallon more, you were
13 going to have trouble selling it.

14 A. That's correct.

15 Q. Now, I take it from what you're saying that
16 there was not that type of direct, almost chemical
17 identity competition with regard to your PCB products;
18 is that correct?

19 A. There was no other PCB producer in the United
20 States.

21 Q. Okay.

22 And the reason for that was because Monsanto
23 had obtained a patent on the production of PCBs; is that
24 correct?

25 A. Very early on, yes.

1 Q. And as such, for a substantial period of time,
2 at least, no one else was legally entitled to make PCBs
3 and sell them, correct?

4 A. That's correct.

5 Q. Do you know whether those patents were still in
6 force when you came to the group in 1970?

7 A. They were not.

8 Q. How had it occurred, then, that Monsanto had
9 been able to maintain its position as the sole
10 manufacturer of PCBs in the United States?

11 A. Because we priced reasonably and -- and
12 contained our level of profitability such that it would
13 have been not financially rewarding for anyone else to
14 make the investment in PCB production, to enter the U.S.
15 market.

16 Q. One of the things that a business must take
17 into account in setting prices is the initial cost of
18 setting up the business, building the plant, so to
19 speak, correct?

20 A. That's correct.

21 Q. Monsanto's plants had been built -- both in
22 Alabama and in East St. Louis, had been built many years
23 before you arrived on the scene, had they not?

24 A. The initial investment, yes.

25 Q. And that was one advantage that Monsanto had

1 against somebody who might want to enter the PCB
2 business from scratch in 1970. You already had existing
3 plants that were at least partially paid for.

4 A. That's correct.

5 Q. And, in fact, that's one of the functions of
6 that period of a patented product like PCBs, is letting
7 you, as the developer, recover your cost of investment
8 to actually produce the -- develop and produce the
9 product, correct?

10 A. That's right.

11 Q. And after you have a patent that expires, you
12 still have an advantage over others because you've been
13 able to get your plant started while you were the sole
14 seller; correct?

15 MR. ANDREWS: Well, let me interject
16 an objection here.

17 This Witness has been profered in
18 response to Paragraph No. 3 of your
19 Notice, and it seems like we're getting
20 awfully far afield here. We're talking
21 about technical aspects of patterns and
22 legal issues that really don't have
23 anything to do with his purpose in being
24 here today.

25 MR. LACEY: I'm trying to find out

1 the underlying reasons for and competitive
2 forces on pricing decisions. That's what
3 this is all about. That's what I want to
4 understand, how the pricing policy went
5 forward.

6 BY MR. LACEY:

7 Q. And I'm trying to understand what the
8 competitive thrust or potential for competitive thrust
9 was, because that's a factor in pricing, is it not,
10 Mr. Gossage?

11 A. Yes.

12 Q. Okay.

13 Now, one of the factors that you can take into
14 account if you've had a patented product, where you have
15 an exclusive opportunity to sell it, is that because
16 you've had an exclusive period in which to sell it, you
17 can get your plant constructed and recover at least a
18 portion of the construction cost while you're the sole
19 person permitted to sell it, correct?

20 A. That's correct.

21 Q. And that gives you an advantage in the pricing
22 over a would-be competitor even after the patent period
23 expires.

24 A. Sometimes.

25 Q. Okay.

1 And did that advantage exist in the PCB field?

2 MR. ANDREWS: I don't know how this
3 Witness can possibly tell you what other
4 companies had on their minds when they
5 made the decision whether or not to enter
6 this field. Furthermore, you're talking
7 about a time period long before this
8 gentleman was in any position to affect
9 price of products. It's -- it can't
10 possibly be -- be within his knowledge.
11 It's just rank speculation.

12 Q. Let me ask it another way.

13 Did you have to, in setting your prices for
14 PCBs in the 1970's, concern yourself with the
15 possibility that another manufacturer might enter
16 production in the United States in the 1970's?

17 A. Not in the 1970's.

18 Q. Okay.

19 So, you did not have to taken into account the
20 possibility of a U. S. based producer as a competitive
21 factor, correct?

22 A. I did not give that any serious consideration.

23 Q. Okay.

24 Because you didn't anticipate that as a serious
25 problem, correct?

1 A. Not in the 1970's.

2 Q. Okay.

3 Now, there were, of course, foreign
4 manufacturing operations, were there not?

5 A. Yes.

6 Q. Not only Monsanto's, but other companies,
7 correct?

8 A. That's correct.

9 Q. Now, did you have to give serious
10 consideration, in pricing PCBs in the 1970's, to the
11 importation of PCB products manufactured overseas?

12 A. Certainly the products produced by others
13 overseas put a limit on how much we could charge for our
14 product in the United States. In other words, we had
15 to -- to operate at a low enough level of profitability
16 that other producers outside the United States could not
17 afford effectively to ship into the United States.

18 Q. And did you take that factor into account in
19 pricing PCBs?

20 A. Sure.

21 Q. Is the cost of transportation of PCBs a
22 significant cost in the pricing of PCBs?

23 A. Yeah, it can be a significant cost.

24 Q. And what I mean by that: Sometimes you'll have
25 something that's a bulky item and expensive to

1 transport; and, so, the further you transport it, the
2 more it costs and the bigger the impact on price. On
3 the other hand, if you had a -- a bag of diamonds,
4 transporting that, the cost of transportation would not
5 be very important to you.

6 You understand what I'm saying?

7 A. I understand that broad range, yes, sir.

8 Q. And what you're saying is that the cost of
9 transporting PCBs was a significant factor in the
10 pricing.

11 A. Sure.

12 Q. And that effectively meant that overseas
13 producers had to have a very low manufacturing cost in
14 order to compete within the U.S., because it would be a
15 significant transportation cost bringing the chemical
16 into the Country from overseas, correct?

17 A. If they had the same manufacturing cost that we
18 had, they'd have a -- a disadvantage in trying to bring
19 the material into the United States.

20 Q. And put another way, that gave you a relatively
21 wide range within which you could set prices and still
22 undersell foreign producers, correct?

23 A. I wouldn't use the term "wide." It -- it gave
24 us some room to price the product, not wide.

25 Q. Now -- well, let me -- let me see if I can

1 understand that and -- and try one other thought
2 process.

3 If a foreign manufacturer had been able to --
4 and I realize it's not possible, but I want to
5 understand the -- what you're saying. If a foreign
6 manufacturer had been able to have his manufacturing
7 plant, with its existing costs, in the United States so
8 that his transportation costs were reduced, Monsanto
9 would have been forced to reduce its price somewhat in
10 order to meet competition because of the removal of the
11 transportation factor for foreign PCBs, correct?

12 A. That's possible.

13 Q. It's probable, isn't it?

14 A. It's possible.

15 Q. You don't think it's probable?

16 A. I -- I'd have to go back and look at the cost
17 numbers and look at the -- the manufacturing costs of
18 our competitors. I -- I just don't know.

19 Q. Okay.

20 A. I can't go beyond "it's -- it's possible."

21 Q. Did you attempt to make some estimate of what
22 the manufacturing costs of your competitors were and
23 what the transportation costs of your competitors were
24 so you would have some idea of where the competitive
25 thrust, if any, might come from?

1 A. Well, we certainly knew or had -- had analysis
2 of what the competitive costs were, because most of
3 those producers were in Europe. And we were also a
4 producer in Europe and, therefore, were -- were
5 constantly looking at -- at the pricing within Europe.

6 Q. And then you would also take into account what
7 the transportation costs would be, to get an idea of
8 what they could afford to sell PCBs for in the United
9 States?

10 A. Yes.

11 Q. And those are reviews that you, in fact, made
12 in making recommendations about the pricing of PCBs,
13 were they not?

14 A. I may have looked at it. I -- I would not have
15 given it serious consideration after 1970.

16 Q. Again, because you didn't anticipate much of a
17 competitive thrust in the United States from foreign
18 produced PCBs, correct?

19 A. Because the PCB business was -- was
20 deteriorating because of the products that we were
21 taking out of the marketplace, it was not a particularly
22 attractive market for anyone in Europe to -- to consider
23 entering in the United States.

24 Q. What percentage of the market -- and I'm
25 talking about the sales -- of PCBs in the United States

1 in the 1970's was to foreign companies who manufactured
2 overseas and shipped their product into the United
3 States?

4 A. What percentage of our production was exported?
5 Is that --

6 Q. No. No, no.

7 A. I'm sorry.

8 Q. What percentage of the PCBs sold in the United
9 States were sold by some company other than Monsanto?
10 Maybe that's the easier way to put it.

11 A. Are you asking whether anyone imported PCBs
12 into the United States?

13 Q. Yeah, I guess that's still another way to ask
14 the question.

15 A. To my knowledge, no one was importing any
16 significant quantities of PCBs.

17 Q. okay.

18 So, for all practical purposes, all of the PCBs
19 sold in the United States in the 1970's were
20 manufactured by Monsanto in U.S. facilities and then
21 sold here?

22 A. For all practical purposes.

23 Q. You were not even importing PCBs from your U.K.
24 operation to the United States?

25 A. There may have been occasions in this period of

1 time, when one of our plants might have been down for
2 some reason, that we would bring some material in; but
3 it would have been rare that we would have done that.

4 Q. So, in terms of, then, setting U.S. pricing for
5 PCBs, one needed to look primarily at the cost of
6 production at your U.S. facilities and the MAT cost
7 associated with the product, make a decision about the
8 pricing without having to give any serious consideration
9 to imported products.

10 A. That's a fair statement.

11 Q. Now, you also mentioned that there were, in the
12 case, even, of specialty products like PCBs, the
13 alternatives that were available out there that had some
14 effect on your pricing; is that correct?

15 A. That's correct.

16 Q. And let me see if I can understand this. Let's
17 see if I've got a fair analogy. I don't know if I've
18 got a fair analogy.

19 But let's say I'm a person who really likes
20 Ford cars and I've always bought a Ford, my father
21 bought Fords, and everybody -- I've always liked Fords
22 and Ford can raise the price of the car an extra 500 or
23 maybe even a thousand dollars and I'm still going to buy
24 a Ford. But if all of a sudden Ford doubles the price
25 and I can get a comparable car from General Motors for

1 half of what I'd have to pay for the Ford, I might be
2 induced to switch off to Chevrolet.

3 Is that the sort of thing we're talking about,
4 philosophically, with these alternative products?

5 A. No, I don't think so. I -- I -- I wouldn't go
6 half -- you said if you can get the price --

7 Q. Yeah. I wasn't trying to get a ratio. I was
8 just trying to get an understanding of what you're
9 talking about with nonidentical products -- that is,
10 non-PCB products -- but that would at some point,
11 nevertheless, be competitive with PCBs.

12 A. PCBs had certain product advantages over
13 alternatives.

14 Q. Right.

15 A. And to the customer, that had some value.

16 Q. Right.

17 A. And he was willing to pay that differential
18 over his alternatives as long as that differential
19 stayed within --

20 Q. A range.

21 A. -- what he perceived to be the right
22 differential.

23 Q. And you perceived, in pricing, that there was
24 some point beyond which you could not go in pricing
25 without having the customer say, "At that price, it's

1 not worth it to me to buy the PCBs."

2 A. That was one of our pricing considerations.

3 Q. Okay.

4 And was it your impression and understanding in
5 your pricing that no matter what the PCB application you
6 had, at some point, customers would switch to
7 alternative products, there was a ceiling on what you
8 could go to in your pricing?

9 A. That was the case in all of the applications
10 with the exception of carbonless paper, which at the
11 time we were selling it, did not have an immediate
12 alternative.

13 Q. So, with the exception of carbonless paper, in
14 your pricing strategy --

15 (DISCUSSION OFF THE RECORD)

16 Q. -- in terms of your pricing strategy, with the
17 exception of carbonless paper, you had to take into
18 account that at some point, if you set the price too
19 high, people would switch off of the PCB products to
20 whatever were, not identical, but at least competitive.

21 A. That was one of our pricing concerns.

22 Q. And you took those factors into account in
23 setting PCB prices in the 1970's.

24 A. Among others.

25 Q. Now, am I correct that the strategy that you

1 followed in terms of setting PCB prices was to try to
2 set the price as high as you could, to get the most
3 profit possible, without having too many people switch
4 off to alternative products?

5 A. I -- I -- I don't think that was the only
6 consideration in our pricing strategy at that time.
7 Being the only supplier of the products in the United
8 States, we felt a responsibility to our customers that
9 we price to yield a reasonable return on our investment.
10 The primary driving force in our pricing strategy was to
11 price to earn a reasonable return. We were dealing
12 with, particularly in the dielectric area, very large,
13 significant Monsanto customers; General Electric and
14 Westinghouse being two examples.

15 So, we were pricing to be reasonable. We were
16 not pricing to gain the maximum -- nor did we price to
17 gain the maximum amount that we could have. Every price
18 increase was taken to the customer, discussed, and
19 justified to him and was not put in place until he
20 accepted the justification.

21 Q. Well, let me see if I understand this.

22 Now, are you telling me that when Monsanto
23 decided it was time for a price increase, you went to
24 the customer and asked them did they think it was
25 reasonable, here's our return on investment, here's our

1 investment, here's our cost, and if you can agree it's
2 reasonable, we'll discharge you this additional money?
3 Or do you go to it and say, "Here's why we've got to
4 have it; so, this is why the price is going up," in an
5 effort to convince them not to switch to alternatives?

6 A. No, it wasn't -- it wasn't driven by
7 alternatives. It was driven by maintaining customer
8 relationships. We went to the customer and said, "We've
9 have these kind of cost impact, from raw materials,
10 environmental, whatever; and they are impacting our cost
11 by half a cent a pound or a cent a pound. And, thus,
12 we're approaching a level of profitability where we're
13 no longer earning a level to reinvest or earning a level
14 to -- to meet the requirements of the corporation. And
15 this is what we need in terms of a price increase, and
16 we're seeking your support on it."

17 Q. What was --

18 A. Let me just add -- and if you ever sat in on
19 one of those meetings with GE or Westinghouse, it wasn't
20 a -- it wasn't a shoo-in that we got those price
21 increases. Sometimes we didn't get them.

22 Q. Well, let me ask about that. I mean, that's
23 the whole point of the deal. You would go with a
24 proposed price increase; and if you didn't think you
25 could sell it, you thought it might have an adverse

1 impact on your ability to sell the product, you might
2 back off of it.

3 A. We have -- we had the experience of backing off
4 part of price increases because it just -- it did not
5 seem that our customer shared our feelings about the
6 cost impact on our business.

7 Q. And the reason you wouldn't go ahead and put
8 the price increase through was the recognition that if
9 you did and the customer thought it was unjustified,
10 then they might look to switch to alternative products.
11 Isn't that correct?

12 A. No, I don't -- I -- yeah, in part. But I think
13 we were also concerned that we're dealing with
14 corporations that have huge relationships with our
15 company.

16 Q. I understand.

17 A. And those -- those relationships are delicate
18 and important to the supplier; in this case, to
19 Monsanto. So, it was, in part, concern that we
20 ultimately could drive the price so far that they could
21 switch to an alternative, but more short term, in terms
22 that we could such -- so destroy our relationship,
23 particularly with our major accounts, that they could
24 impact relationships in -- in -- in broader terms.

25 Q. Again, the pricing strategy was designed so as

1 not to cut off your nose to spite your face, correct?

2 A. The pricing strategy was designed to -- to earn
3 a reasonable return on our investment.

4 Q. Okay.

5 Now, did Monsanto set different rates of return
6 depending upon whether or not -- and I'm talking about
7 what was considered an acceptable rate of return, or
8 reasonable rate of return, I think, is the term you've
9 used -- depending upon whether or not the product was in
10 a highly competitive market, whether there were other
11 companies producing almost identical products, versus
12 whether they were in a specialty market where there was
13 no perfectly identical substitute product available?

14 A. We had a minimum return on investment that was
15 acceptable in the corporation for purposes of
16 reinvesting in that business. And certainly, in all
17 cases, we tried to -- to at least get our return to that
18 level so that the corporation would be willing to
19 reinvest. There was no ranges set on different kinds of
20 businesses. One merely tried to -- to either get up to
21 that number if it was below it or stay above it if it
22 was above it.

23 Q. What was the minimum return on investment in
24 the 1970's, for reinvestment?

25 A. I -- I -- I really don't remember the number.

1 It would have been a function of the cost of capital at
2 that time. And it probably was in the 12 percent area,
3 but I'm not -- I'm not sure of that. It changes from
4 time to time.

5 Q. Were you able to keep the return on investment
6 for PCBs as you priced them above that minimum?

7 A. No.

8 Q. And is that because the customers would not
9 accept price increases?

10 A. It was more because we weren't really taking to
11 the industry all the cost burden that we were taking on
12 as we got out of various PCB markets. In other words,
13 we -- we made judgments as to -- as to how much of the
14 cost burden should be assigned to the remaining products
15 and how much of it should -- should be absorbed within
16 Monsanto. We weren't really, at that time, as concerned
17 about meeting our return on investment hurdle, because
18 there was certainly no opportunity for future investment
19 in this area.

20 Q. It was clear, was it not, by the time that you
21 came on, that you weren't going to be building any new
22 facilities to produce PCBs?

23 A. That's correct.

24 Q. You were supervising over a aspect of the
25 business that was on its way down and out.

1 A. At the time, we thought it was on its way to
2 consolidation to only those applications that would --
3 would survive as closed systems, not allowing the
4 product to get into the environment; and that was a
5 significant consolidation of our manufacturing base.

6 Q. Well, you weren't ever anticipating that that
7 product line would be sufficient that you would need new
8 facilities, were you?

9 A. Not new capacity, but -- but we were, during
10 that period of time, making some investments to be sure
11 that we ourself were not allowing our product in
12 production to get into the environment. And we were
13 making some investments to try to make modifications in
14 the process to minimize the more heavily chlorinated
15 parts of the PCBs to remain in the product.

16 PCBs is a -- is a term that really -- or
17 polychlorinated biphenyls is a -- is a -- is a generic
18 name that covers a whole range of levels of
19 chlorinations of biphenyl and the more serious
20 environmental problems with the higher chlorinated. And
21 during the seventies, we were trying to continually take
22 off the higher chlorinated portion and gain customer
23 acceptance of the -- of the properties of the -- of the
24 ever changing product.

25 Q. And are you telling me you continued to make

1 these investments despite not meeting the minimum return
2 on investment requirements required by Monsanto for
3 making new investment?

4 A. Yes.

5 Q. So, what level of the company had to give
6 authorization for investment despite not meeting the
7 criteria for investment?

8 A. Well, it depends upon the amount of capital
9 involved. There were capital authority levels.
10 Mr. Bergen, as business director, had some capital
11 authority. Beyond that, he would have to go to the
12 general manager for approval of larger projects and
13 ultimately, if the project was big enough, would have to
14 go to the board of directors of Monsanto.

15 Q. Now, let me try to understand a little bit
16 about the simple nomenclature used by Monsanto in terms
17 of establishing the levels of expenses and -- and
18 profitability. I've seen the term "net sales."

19 Are you familiar with the term "net sales"?

20 A. Yes.

21 Q. That's a term that Monsanto uses regularly to
22 report what it's actually shipping out the door and
23 getting dollars in return for, is it not?

24 A. That's correct.

25 Q. And does the term "net" mean that you net out

1 of that any returns that you get, credits and things
2 like that?

3 A. That's correct.

4 Q. Okay.

5 So, net sales is the actual dollars you receive
6 for the product you sell, correct?

7 A. Yes.

8 Q. I've seen the term "gross profit," which
9 appears to be net sales minus the cost of goods sold.

10 A. That's correct.

11 Q. Okay.

12 And that's a standard accounting approach that
13 Monsanto takes?

14 A. That's correct.

15 Q. So, if I subtract cost of goods sold from net
16 sales, I will get a gross profit.

17 A. That's correct.

18 Q. And then as I come down the line, I take my
19 gross profit; and in order to get to net profit, I get
20 rid of the MAT expenses, correct?

21 A. That's correct.

22 Q. And when I have subtracted from my gross
23 profit, my MAT expenses, I come up with the net profit
24 before taxes.

25 A. Well, I think if you wanted the terminology

1 that we were using at that time, I think that we
2 subtracted MAT from our gross profit; and we called that
3 performance income.

4 Q. I see.

5 So, gross profit minus MAT expenses is
6 performance income?

7 A. Uh-huh.

8 Q. Is that the same thing as net profit before
9 taxes?

10 A. No, because you would then take out corporate
11 charges and other costs to get to a net income before
12 tax.

13 Q. And then I subtract whatever the consequences
14 of the income tax are to come to a net income --

15 A. After tax.

16 Q. -- after tax.

17 At what point do I -- what number do I use in
18 this sequence of gross profit, performance income, net
19 income before tax, or net income after tax in order to
20 determine what my return on investment is?

21 A. Well, you could do it either of two places --
22 really, either of three places. You can report -- or at
23 least within Monsanto we report it on occasion --
24 performance income return on capital, net income before
25 tax return on capital, or net income after tax return on

1 capital.

2 Q. Okay.

3 So, Monsanto would use any of those categories
4 from time to time in noting what the return on capital
5 was.

6 A. Depending upon what purpose we were looking at
7 the number, we would calculate any of those three
8 numbers.

9 Q. And is return on capital the same thing as
10 return on investment?

11 A. Yes.

12 Q. And in order to determine my investment or my
13 capital, what do I look to to figure that out?

14 A. Say that again. I didn't...

15 Q. In order to determine my investment or my
16 capital --

17 A. Okay.

18 Q. -- what do I look to to figure that out?

19 A. The capital is a combination of the -- the
20 capital investment and the working capital.

21 Q. Okay.

22 Capital investment means the hard assets
23 I've -- I've bought and built?

24 A. That's the hardware that you put in place to
25 manufacture.

1 Q. Okay.

2 And what's the working capital?

3 A. Working capital is inventories, receivables.

4 Q. What will be converted into income, but is not
5 yet done.

6 A. Will be converted into cash, but is not yet in
7 hand.

8 Q. Right.

9 So, I add together both of those things in
10 order to come up with what my total capital investment
11 is?

12 A. For purposes of calculating returns, that's
13 right.

14 Q. Do I take into account depreciation on
15 facilities?

16 A. Again, it can be calculated any number of ways;
17 but one would typically use his current capital, which
18 would be his depreciated capital, not his -- his
19 original investment.

20 If he were looking at his return on replacement
21 capital, he would -- he would calculate the current
22 capital cost of replacing that. That would be called
23 your return on replacement capital.

24 Q. And what that practically means is if I
25 normally use my depreciated capital, as the plant gets

1 older and more fully depreciated, everything else
2 remaining the same, my return on investment may go up?

3 A. It isn't that simple, because you're constantly
4 putting capital back into your plant. So, yes, you're
5 depreciating on a constant basis; but -- but maintenance
6 and replacement and modifications is constantly adding
7 new capital. So, it's -- it's the net of depreciation
8 plus the new capital you're putting in that -- that
9 results in your return on capital.

10 Q. Is it typically true that as a plant gets
11 older, the hardware or capital -- not the working
12 capital, but -- what did you call the other capital?

13 A. Fixed capital.

14 Q. -- the fixed capital investment tends to go
15 down?

16 A. Well, it depends upon the nature of the -- of
17 the product you're producing. Some products -- it
18 happens that PCB is one of them -- being a highly
19 chlorinated product, chlorine is particularly corrosive
20 in the process; so, you are constantly having to replace
21 old equipment. Some kinds of products, you do not have
22 as much replacement. A product like PCBs, you do have a
23 lot of replacement.

24 Q. Okay.

25 So, then, it's your thought that the capital

1 component in the return on capital or investment that
2 represented the fixed capital or the capital other than
3 the fluctuating working capital would be a number that
4 would not dramatically come down as the plants got older
5 because of replacements and the like?

6 A. It would depend upon the business. Some come
7 down; some stay about the same and --

8 Q. Well, I'm talking about PCBs now. They would --
9 they would be one that would not tend to come down very
10 much.

11 A. It would come down. I'm suggesting it would
12 not come down a line that was the depreciation line,
13 because there was constant capital being put back in to
14 maintain the facility.

15 Q. Okay.

16 So, the -- so, then, the capital that
17 represents the hardware would be coming down, typically,
18 unless you're building a new plant, just not as fast as
19 straight-line depreciation for tax purposes.

20 A. That's correct.

21 Q. Okay.

22 And, then, to the extent that that portion of
23 your capital is -- is a reducing figure each year, your
24 return on investment is going to increase, all other
25 things remaining constant, correct?

1 A. Correct.

2 Q. Okay.

3 You certainly weren't contemplating building
4 new facilities for PCB production from the time you
5 arrived.

6 A. New capacity, that's correct.

7 Q. In fact, within a couple of years, you took
8 part of your capacity out of service.

9 A. That's correct.

10 Q. How did you deal with, if at all, the portion
11 or facility that you took out of service in taking into
12 account what you would attempt to recover in terms of a
13 return on investment or anything like that for your
14 product?

15 A. I -- I believe that at the time we took the
16 Anniston capacity off line that we wrote off the
17 remaining capital investment, wrote it off our books,
18 took the loss in the year that -- that we took that
19 action; and it had no further impact on our cost of our
20 Krummrich facility, except for whatever ongoing cost
21 there would have been at Anniston for environmental
22 reasons or dealing with the -- the cost of dismantling
23 and disposing of the equipment at Anniston.

24 Q. So that in terms of calculating a return on
25 investment, the undepreciated portion of the actual

1 fixed investment would have been written off.

2 A. That's correct.

3 Q. But all the expenses associated with cleanup of
4 the site, to the extent that was required, the expenses
5 associated with actual dismantlement of the equipment,
6 et cetera, would be considered in the capital
7 requirements in calculating return on investment or in
8 the expense component, whichever.

9 A. Well, I have no direct knowledge of -- of
10 exactly how that was done when we wrote off Anniston;
11 but in writing off the capital on the books -- at least
12 it is normal Monsanto practice that -- that a lot of the
13 cost associated with -- with dismantling would have also
14 been written off.

15 The point I was trying to make was: If there
16 were ongoing costs after we had taken whatever write-off
17 that was taken at the time, those ongoing costs would
18 have flowed into Krummrich or into at least the pricing
19 consideration of the remaining business.

20 Q. They would have been treated as a current
21 expense or whatever to be covered by the price?

22 A. Current ongoing expense.

23 Q. Okay.

24 Is there typically any relationship between the
25 various measures of performance? And I mean any

1 relationship between gross profit performance income,
2 net income before tax, and net income after tax. In
3 other words, normally, is there -- if you have a high
4 gross profit, are you going to have a high performance
5 income and a high net income before tax and a high net
6 income after tax; or are those things unrelated to each
7 another?

8 Q. They can be unrelated. There can be a business
9 that has a very high gross profit but also has a very
10 high MAT cost.

11 Q. All right.

12 A. "MAT" meaning marketing, administrative, and
13 technical.

14 Q. Right.

15 A. There can be another business that has a high
16 gross profit and a very low MAT cost. So, there isn't
17 necessarily a -- a correlation between MAT as a --
18 excuse me -- between gross profit as a percent of sale
19 and performance income as a percent of sales.

20 Q. Did PCBs have any unusual characteristics and
21 performance in that regard?

22 A. Well, I would say that -- that our MAT was on
23 the high side, because we had a substantial research
24 budget in trying to -- to -- to develop replacement
25 products where replacement products were appropriate in

1 those businesses that we had gotten out of. We had high
2 administrative costs because of the huge environmental
3 burden and monitoring of the industry that we took on as
4 a responsibility. I would -- I would say that our
5 marketing expenses were normal for the nature of the
6 business that we were in.

7 Q. So, if I understand correctly, PCBs, in the
8 1970's, had one of these relatively high MAT costs as
9 opposed to some other products.

10 A. That's correct.

11 Q. And the two factors that tended to push those
12 MAT costs above what you might typically encounter were,
13 number one, research on replacement products and matters
14 related to environmental concerns.

15 A. Yeah, that -- yes, that's correct. And let
16 me -- let me superimpose on that.

17 There was, again, as we were making the
18 transition out of certain market segments of PCBs, there
19 was, on occasion, unusual marketing expenses.

20 For example -- and the one that specifically
21 comes to my mind -- when we decided to go out of heat
22 transfer, realizing that it was not really a closed
23 system, we created a temporary organization within
24 marketing, under my responsibility, made up of a number
25 of engineers brought out of our central engineering

1 group, to very rapidly work directly with our customers
2 in going through this delicate process of -- of taking
3 the -- the heat transfer or the PCB heat transfer fluid
4 out of their system and helping them with the
5 engineering of converting to some other system. It was,
6 as I recall, a fairly significant portion, but only for
7 that period when we were going through the transition
8 out of heat transfer fluids.

9 Q. Let me go back and ask you a little bit about
10 the research component.

11 Monsanto decided, at various points in time, to
12 no longer sell PCBs for various purposes, correct?

13 A. That's correct.

14 Q. And ultimately, that decision reached the
15 conclusion not to sell PCBs for any purpose.

16 A. That's correct.

17 Q. And in connection with that decision-making
18 process, Monsanto did not decide not to try to sell
19 alternative products for each of the things it had
20 previously sold PCBs for, correct?

21 MR. ANDREWS: Did you understand the
22 question? I think it had one or more
23 negatives in it.

24 Q. Well, let me --

25 MR. ANDREWS: It kind of lost me.

1 BY MR. LACEY:

2 Q. Well, sure. Let me try to make it
3 understandable.

4 Monsanto tried to find alternative products it
5 could sell for each of the PCB products it dropped off
6 line in order to try to maintain its market position,
7 correct?

8 A. No. In some -- some cases, certainly we tried
9 to develop alternatives and bring those to the
10 marketplace.

11 Q. Let me ask about that.

12 Why don't you just tell me the areas where you
13 tried to develop the alternatives to PCB products and
14 bring them to the marketplace?

15 A. In the heat transfer area, we certainly took to
16 the customer alternatives to help him with his
17 transition. And I might add, in some cases, they were
18 not our products. We even recommended alternative
19 products. But in general -- in general, they were our
20 products.

21 Q. Well, my question is: Where did Monsanto --

22 A. Not --

23 Q. -- expend research efforts --

24 A. Oh, I'm sorry.

25 Q. -- to try to replace the PCB products it no

1 longer sold, in an effort to maintain part or all of its
2 market?

3 A. In the industrial hydraulic fluid area, we had
4 research expenses associated with developing alternative
5 formulations to the so-called Pydraul product line of
6 hydraulic fluids. No effort was spent in heat transfer
7 to develop new alternatives. We spent research effort
8 in an effort to help the carbonless paper industry
9 develop an alternative process to the PCB used in
10 carbonless paper. We did not spend any money -- any
11 research money in the plasticizer area.

12 Q. Dielectrics?

13 A. We -- we had a research program looking at
14 alternative fluids for the dielectric industry; and
15 there were some smaller applications, vacuum pumps and
16 so forth, where -- where we didn't expend much effort
17 effort on that.

18 Q. With the big areas we talked about, basically
19 no effort to do research on replacement fluids for
20 plasticizers and heat transfer, correct?

21 A. That's correct.

22 Q. And, in fact, Monsanto, in those areas, had
23 other products it offered, that were existing products,
24 as alternatives, correct?

25 A. In the case of heat transfer, yes. In the case

1 of -- of plasticizers, you -- there were no -- there
2 were no -- there were no alternatives to the proper --
3 properties offered by PCBs.

4 For plasticizers, the key property that the
5 industry was -- was looking for was fire resistance.
6 And when we decided to go out of that application, we
7 had other plasticizers; but they were not fire
8 resistant. And the industry had to, at least for a
9 period of time, switch away from fire-resistant
10 plastics; and they solved the problem later by other
11 additives that had nothing to do with plasticizers.

12 Q. But my point is that, for example, if there
13 were a company that needed a plasticizer in its product
14 could no longer get PCBs, Monsanto would offer a
15 different plasticizer to them to purchase.

16 A. Yes.

17 Q. And Monsanto did that.

18 A. Offered other products, as did other companies.

19 Q. Sure.

20 Now, in the area of hydraulic fluid, carbonless
21 paper, and dielectrics, Monsanto did, in fact, undertake
22 research efforts to develop alternative products to be
23 offered to customers in lieu of PCB products.

24 A. Well, as -- as different from the plasticizer
25 industry.

1 In the case of industrial hydraulic fluids, we
2 actually converted the industry to a new Monsanto
3 product that we had developed, that -- that offered a
4 level of fire resistance.

5 Q. And with carbonless paper, you converted them
6 to a new product?

7 A. That's correct.

8 Q. And with dielectrics, you attempted to convert
9 them to a new product.

10 A. In dielectrics, we were one of many companies,
11 including our customers, who were spending a
12 considerable amount of money looking for alternatives.
13 And, again, it was different. We did not convert that
14 industry.

15 Q. Okay.

16 You -- but there were research costs associated
17 with trying to find a product and convert them.

18 A. That's correct.

19 Q. What turned out was that the Monsanto products
20 didn't win the market, correct?

21 A. That ultimately is correct.

22 Q. Okay.

23 Now, what you've told me is one reason that
24 PCBs had a high MAT component charge was because of the
25 research cost associated with trying to find

1 alternatives to PCBs for hydraulic fluid, carbonless
2 paper, and dielectrics, correct?

3 A. No. I said that PCBs had a high MAT cost
4 because of the high environmental costs that we were
5 carrying --

6 Q. Yes.

7 A. -- to help the industry maintain its position,
8 because of research that we were expending to try to
9 find alternatives for the industry, as you just
10 suggested --

11 Q. Let me --

12 A. -- and in some cases, high costs because we
13 were helping the industry transfer to something else.

14 Q. I didn't phrase my question well. Let me try
15 to ask it again.

16 I thought you told me that one of the reasons
17 that PCBs had high MAT cost was because of the research
18 cost associated with trying to develop replacement
19 products for PCBs as hydraulic fluids, carbonless paper,
20 and dielectrics. Correct?

21 A. That's one of the reasons.

22 Q. Okay.

23 Now, let me stop and -- and just try to
24 understand how Monsanto took care of research and
25 development cost in its research corporation.

1 Were those charged to any particular product
2 line?

3 A. The research costs within our business group
4 would have been flowed to whatever product family they
5 were associated with. Research on heat transfer fluids
6 went to heat transfer.

7 Q. I'm sorry. I'm Sorry. I didn't ask my
8 question well.

9 I'm trying to go back to the time that you
10 worked with Monsanto Research Corporation.

11 A. Oh.

12 Q. Back in 1961 to 1968.

13 A. Uh-huh.

14 Q. There were clearly research costs associated
15 with the work going on there, correct?

16 A. Monsanto Research Corporation was a subsidiary
17 that did government research. It was a net -- it was
18 not a net charge of the corporation. It was a profit
19 center --

20 Q. I see.

21 A. -- and did not have research flowing to other
22 parts of the company.

23 Q. I see.

24 And in the new enterprise area, where you were
25 trying to market new enterprises which had been

1 developed by Monsanto Research, correct?

2 A. New enterprise division had its own research
3 and was developing its own new products.

4 Q. Yes.

5 I -- I guess I'm trying to find out how were
6 those research costs charged or too whom were charged?
7 Were they charged to existing product lines?

8 A. They -- they were a corporate charge and were
9 part of the corporate charge that I defined earlier,
10 that would have been charged below performance income,
11 before net income.

12 Q. So, those charges for those new products were
13 spread across the entirety of the corporation.

14 A. That's correct.

15 Q. But in the case of finding replacement products
16 for PCBs, those charges were spread only on the existing
17 PCB products, correct?

18 A. All the research within the specialty group was
19 charged specifically to the unit that the research was
20 being done for --

21 Q. Okay.

22 A. -- or to the product it was being done for.

23 Q. Somewhat different than the way in which a
24 brand new product might be treated in the new enterprise
25 division, where the cost would be spread across the

1 entire corporation.

2 A. That's correct.

3 Q. For example and just so we can be clear, had
4 Monsanto chosen to spread the charges for trying to
5 develop an alternative to carbonless carbon paper across
6 the entirety of Monsanto's product lines instead of just
7 on the carbonless carbon paper line, the -- that
8 component of the MAT charges for the carbonless carbon
9 paper business would have been lowered dramatically,
10 would it not?

11 A. That's correct.

12 Q. Something on the order of maybe a hundred to
13 one or more, lowering?

14 MR. ANDREWS: Mr. Gossage, I don't
15 want you to engage in rank speculation.
16 Mr. Lacey's entitled to have your best
17 knowledge, your best personal knowledge.
18 But when we start talking in terms of a
19 hundred to one on something that is this
20 complicated an accounting function, it
21 seems to me we've entered the realm of
22 guessing; and I'd rather you not do that.
23 I'm sure Mr. Lacey wouldn't want you to do
24 that, either.

25 Q. I certainly don't want you to guess. Let me

1 see if I can rephrase my question.

2 When you charge those expenses back across the
3 entire corporation, it's charged against all of the
4 profit centers of the corporation, is it not?

5 A. That's correct.

6 Q. The PCB profit center of the corporation was
7 less than 1 percent of the entire corporation, was it
8 not?

9 A. It was very small. I -- I don't know whether
10 it was 1 percent or less or more. It was very small.

11 Q. Okay.

12 Well, if we assume it was 5 percent --

13 A. It wasn't 5 percent.

14 Q. It was smaller than that, wasn't it?

15 A. Very small.

16 Q. But let's just assume it was 5 percent so we
17 don't run into a problem with the question.

18 The difference between charging the entire
19 research and development costs to the one profit center
20 at 5 percent, versus charging it across the entire
21 corporation, is a difference of 20 to 1, is it not?

22 A. Yeah.

23 Q. Okay.

24 So, the -- the impact of the decision to charge
25 the cost of trying to develop replacement fluids for PCB

1 hydraulic fluids, carbonless carbon paper, and
2 dielectrics, entirely the PC product line -- PCB product
3 lines, had a dramatic impact of increasing the MAT
4 expense component versus had the decision been to
5 allocate those to the entire corporation.

6 A. It wasn't a decision taken. That was a -- that
7 was standard accounting practices. All research,
8 everywhere in the company, on a product is charged to
9 that product. It wasn't a unique decision taken for
10 --for PCBs. It was the accounting practice used
11 throughout the company.

12 Q. Well, let me stop for a moment and just make
13 sure we're clear.

14 You weren't developing another line of PCB
15 products. You were developing an entirely new product
16 that had no PCBs, were you not?

17 A. That's not correct. We were also developing
18 products, PCB products with different levels of
19 chlorination, that was also charged to this cost center.

20 Q. Were charges made to PCBs for research and
21 development that involved the development of new
22 products that contained no PCBs whatsoever?

23 A. Yes.

24 Q. Okay.

25 So, it wasn't just reformulating PCBs in some

1 way to meet environmental concerns. It was actually
2 developing alternative products that didn't even contain
3 PCBs, wasn't it?

4 A. Yeah. But, again, that was standard practice.
5 If I was developing a new heat transfer fluid that had
6 nothing to do with PCBs, that would be charged to the
7 heat transfer system. If I were developing a new
8 plasticizer, that would be charged to the plasticizer
9 cost center.

10 Q. My question to you is: Had somebody made the
11 decision to allocate those costs across the entire
12 product line or asked that the new enterprise division
13 develop that?

14 A. No. That, as I say, is not a decision taken.

15 Q. I see.

16 A. It is standard operating practices then and
17 now.

18 Q. Okay.

19 And no request was made for a variance with
20 regard to PCBs because of the special circumstances that
21 were perceived to exist?

22 A. No variance --

23 Q. Yes, no effort to evaluate the performance of
24 PCB products without charging all the research and
25 development costs for these new non-PCB products to

1 PCBs.

2 A. You're going to have to ask that again. I'm
3 still not --

4 Q. Yes.

5 Did you make any request to Mr. Bergen or on up
6 the line that in the pricing strategy for PCBs that
7 those research and development costs associated with
8 developing non-PCB products be spread across the
9 entirety of Monsanto's operations as opposed to
10 allocated solely to PCBs?

11 A. I did not make such a request. It would not
12 have been normal for me to make such a request.

13 Q. Okay. And my question is, though: You didn't
14 do it?

15 A. No.

16 Q. Okay.

17 Now, with regard to the environmental --

18 MR. LACEY: Why don't we stop right
19 there so we can change tape and change
20 paper. And I don't know whether you want
21 to take a lunch break early or what your
22 preference is. It doesn't make any
23 difference to me.

24 (LUNCH BREAK)

25

(AFTERNOON SESSION 12:42 P.M.)

MR. LACEY: Well, this is going to be on the record; but, also, when you scoot that thing across the table, that spiral notebook, that all picks up real well, too, I'm sure.

BY MR. LACEY:

Q. Before the lunch break, we had discussed the high MAT expenses and factor -- or one factor in the high MAT expenses for PCBs; and that was the research regarding replacements.

A secondary that you'd indicated contributed to high MAT expenses for PCBs in the 1970's was the environmental charges; is that correct?

A. That's correct.

Q. Let me try to understand the environmental charges and -- and try to break them out. And I believe one of them you indicated was simply the cost to Monsanto of taking the steps necessary to try and reduce the amount of PCBs that Monsanto was releasing into the environment as a part of its manufacturing operation. Is that correct?

A. That's right. They were capital costs that we were putting into our plants to try to -- to assure ourselves that none of our product was getting into the

1 environment out of our plants.

2 Q. Now, did those capital costs go into the MAT
3 charges or did they wind up back somewhere else in the
4 factor that would account for cost of goods sold or
5 where did they show up?

6 A. Well, they could have -- could have and
7 probably ended up in all categories. Some of it would
8 have been charged to capital if we were putting in new
9 facilities. Some of the engineering costs to design
10 those plants would have gone into cost of goods. Some
11 could have gone and would have gone to capital, and some
12 would have gone to MAT.

13 And, likewise, process research to -- to do
14 the -- to do the design work for the engineer to -- to
15 do his work would have been charged to MAT most likely,
16 not to cost of goods.

17 So, it would have gone into MAT in several
18 categories, against capital, as well as goods -- cost of
19 goods.

20 Q. In addition to the environmental efforts being
21 put forth by Monsanto to clean up the production
22 facilities to reduce environmental discharge of PCBs,
23 there were other environmental charges that elevated the
24 MAT expenses for PCBs in the 1970's, were there not?

25 MR. ANDREWS: Let me interject a

1 objection here.

2 I'm going to object to the form of
3 that question because it mischaracterizes
4 his prior testimony. In connection with
5 that, he has testified that the
6 environmental charges were to assure that
7 the product that was being manufactured
8 was not getting in the environment; and I
9 object to your mischaracterization of it
10 in terms of cleaning up and the other
11 phraseology that you used.

12 BY MR. LACEY:

13 Q. Well, let's just explore that for a second.

14 Monsanto, in the 1960's, had been discharging
15 PCBs into the environment in a way that required
16 modification of facilities in order to avoid that in the
17 seventies; isn't that correct?

18 A. I wasn't involved in the sixties; so, I don't
19 know.

20 Q. Well, don't you know that facilities were, in
21 fact, constructed in the seventies in order to keep the
22 PCBs from going into the environment as they'd
23 previously been doing?

24 A. I don't --

25 MR. ANDREWS: I object to the form of

1 that question. He's already answered that
2 he doesn't know.

3 MR. LACEY: I see.

4 Q. Well, is it possible, then, that new facilities
5 were being built that were totally unnecessary and
6 charged against the PCB expenses?

7 A. No. In the seventies?

8 Q. Yes.

9 A. Not -- not -- no.

10 Q. So, the only facilities that were being built in
11 order to meet environmental concerns were necessary in
12 order to meet whatever standards.

13 A. To assure ourselves that we were complying
14 with -- with what we perceived to be the proper
15 environmental position of the product.

16 Q. And the company, of course, would test to make
17 sure that new facilities were required before it built
18 them, would it not?

19 A. I don't know what you mean by "testing."

20 Q. Well, you wouldn't -- you wouldn't have a
21 capital investment of \$250,000 to put in something that
22 might be needed without first seeing if it were needed,
23 would you?

24 A. Let me give you an example of the nature of the
25 investment that comes to my mind.

1 Q. Sure.

2 A. We built an incinerator on our plant site so as
3 to -- to receive material back from our customers and
4 burn the material. This didn't require any pretesting
5 on our part.

6 Q. Well, you also made efforts to reduce the
7 amount of discharge of PCBs that left the plant in sewer
8 water, plant water, did you not?

9 A. I -- I have no -- I have no memory of any
10 significant investments after 1970 for that purpose.

11 Q. I see.

12 Do you have memory of investments that were
13 made and still being charged against capital prior to
14 1970?

15 A. I would not have see a breakdown on the capital
16 prior to 1970.

17 Q. You just got the number -- the bottom line --

18 A. For capital.

19 Q. Okay.

20 Now, in addition to whatever environmental
21 charges were being made for work done at Monsanto, there
22 were also environmental charges back against PCBs in the
23 MAT component of expenses for things that were unrelated
24 to improvement at Monsanto facilities; isn't that
25 correct?

1 A. There were costs in our MAT, particularly in
2 Bill Pappageorge's cost center, related to expenses
3 incurred by him in helping the industry deal with the
4 industry's problems.

5 Q. Let me see if I can get some examples of that
6 so we can appreciate what you're talking about.

7 To the extent that Mr. Pappageorge would in --
8 attend a conference to present a position on PCBs and
9 how they should be used and what hazards they might or
10 might not present, that would be part of those MAT
11 expenses?

12 A. I would expect that to be the case.

13 Q. All right.

14 To the extent that Mr. Benignus and/or
15 Mr. Pappageorge served on industry committees discussing
16 the problem of PCBs, those factors would be part of
17 those MAT expenses?

18 A. The expenses for such meetings, I would expect
19 to be a part of the MAT costs.

20 Q. To the extent that Mr. Pappageorge or
21 Mr. Benignus or others employed outside consultants to
22 assist in presenting Monsanto positions or give advice
23 about positions on PCBs, those would be included in the
24 MAT expenses, would they not?

25 A. Well, I would express that as -- as -- if we

1 hired consultants to help the industry deal with the PCB
2 issues, those would have been charged.

3 Q. Okay.

4 Then you indicated yet another area where there
5 were some unusual marketing expenses, and this was
6 connected with shutting down sales in a particular area;
7 is that correct?

8 A. That's correct.

9 Q. So that those were more than normal marketing
10 expenses?

11 A. That's correct.

12 Q. Now, one other area of research expense we
13 haven't talked about -- and -- and I don't know whether
14 it was included in this area of MAT expense or not --
15 there were a number of studies of the toxicology of PCBs
16 undertaken by Monsanto in the late sixties and early
17 seventies.

18 Are you aware of that?

19 A. Some of them, yes.

20 Q. How were the expenses of those studies charged?
21 Were they MAT charges, too?

22 A. I -- I really don't know how those were
23 charged. They could have been charged into the
24 corporate cost centers and flowed across all of our
25 businesses, or they could have been charged direct. And

1 maybe some was done one way and some the other. I -- I
2 just not would -- I would not be the person to -- to
3 answer that specific question. I don't know.

4 Q. Who would be the person who could determine
5 which way the charges were handled?

6 A. Well, I don't -- I don't know. Bill
7 Pappageorge might have some knowledge of that.

8 Q. Okay.

9 But however those charges were handled,
10 whatever the numbers were, somehow came to you, whether
11 it was flowed across the corporation in its entirety or
12 flowed to your product line; and you weren't aware of
13 which way it happened.

14 A. Well, what would have come to me would have
15 been a direct MAT charge; and if we're still dealing
16 with the pricing issue, I would have been looking at the
17 MAT cost. If they flowed below the performance income
18 number, I would not have been looking at that for
19 purposes of pricing.

20 Q. I guess my question is: They could have been
21 flowing to the MAT charge, and you would not now
22 remember that?

23 A. That's correct.

24 Q. Okay.

25 And, so, you just didn't --

1 A. And may not have had direct knowledge of it.

2 Q. Okay. That's my point. You may have had a MAT
3 number without knowing what all the individual
4 components of it were.

5 A. That's possible.

6 Q. Okay.

7 Now, are there any other components, in terms
8 of a MAT charge higher than normal or possible
9 components of a MAT charge higher than normal for PCBs,
10 that we've not discussed, during the 1970's?

11 A. Well, none that would clearly come to my mind.

12 Q. At one point, you indicated some monitoring of
13 customer use to ensure that customer use didn't result
14 in PCBs getting into the environment.

15 How was that charge taken care of?

16 A. That would have been a MAT charge. It would
17 have primarily been Mr. Pappageorge's visit to customers
18 and our -- our special technical service people within
19 the marketing group visiting customers.

20 Q. Special technical service --

21 A. I mentioned earlier that -- that Paul Benignus
22 had two people reporting directly to him, Jim Bryant and
23 Paul Graham. These would have been people who spent a
24 lot of time with customers, dealing with them and their
25 special situations in the -- in the handling of PCBs and

1 the assurance that they were being contained.

2 Q. So, those would be a part of the MAT charge?

3 A. That's correct.

4 Q. Was there more -- was there a larger component
5 to that aspect of the MAT charge than would be true with
6 a normal product? In other words, was there more
7 customer interaction than would be true for the average
8 non-PCB product?

9 A. There was more act -- more involvement with
10 customers during this period of time than there would
11 normally have been.

12 Q. So, then, that did push the MAT above normal
13 across the company with regard to customer contact.

14 A. It increased the MAT within that unit. I don't
15 think I could speak to normal across the company,
16 because there isn't a normal across the company.

17 Q. Well, it made it abnormally high versus what it
18 otherwise would be but for the environmental problem; is
19 that --

20 A. It made it somewhat higher.

21 Q. Okay.

22 And these customer contacts, in part at least,
23 related not only to sales, but also to dealing with
24 environmental problems?

25 A. That's correct.

1 Q. And one of the reasons that Monsanto had this
2 additional customer contact was to make sure that PCBs
3 were not getting into the environment; is that correct?

4 A. Well, the responsibility for the PCBs not
5 getting into the environment in a customer's location
6 was the customer's responsibility. We provided
7 consultation and -- and testing services to the extent
8 that we were able to do that.

9 Q. Well, didn't I understand your testimony to be,
10 however, that also you were -- you, Monsanto, were
11 monitoring that and would, as you did in the case of
12 heat transfer fluids, stop sales if you concluded that
13 the customer's use was such it was getting into the
14 environment?

15 A. As -- as the supplier of the product, we had
16 our own surveillance of our customers in an effort to be
17 sure that we were -- we were only selling in those
18 applications that were contained.

19 Q. Okay.

20 And, so, those people were performing a service
21 to their employer in providing a surveillance or eyes and
22 ears, whatever we might call it, so that if there were a
23 problem with a customer's use getting into the
24 environment, they could report it back to Mr. Benignus
25 and, I guess, on up the chain to you?

1 A. Yes, except that responsibility was more than
2 just to the company. I would see it also to the
3 industry and -- and to the customer and to the
4 communities that we operated in.

5 Q. I understand.

6 But it also was a matter of interest to
7 Monsanto itself.

8 A. Yes.

9 Q. And a matter on which Monsanto then would act
10 if a customer were letting it get into the environment
11 by, if necessary, stopping sales to the customer.

12 A. That's correct.

13 Q. And that reporting line came back to you?

14 A. To me and/or Pappageorge.

15 Q. Okay.

16 Who would make the decision or who did -- let's
17 put it -- in the case of the heat transfer fluids, who
18 made the decision to stop selling for heat transfer
19 applications because the product was getting into the
20 environment?

21 A. I don't know.

22 Q. Did you?

23 A. No.

24 Q. Were you involved in the decision-making
25 process?

1 A. As I said earlier, I was involved in it to the
2 extent of -- of the transition that we went through in
3 recognizing that it was not a closed system, that there
4 were opportunities for it to escape into the
5 environment, and -- and was questioned on that and also
6 provided information on it.

7 Q. By whom were you questioned on that matter?

8 A. By Howard Bergen, I would expect.

9 Q. Okay.

10 Did you ever receive any word from these people
11 who were in the field to the effect that, other than in
12 the heat transfer application, PCB products that were
13 being sold while you were in your position in the
14 specialty fluids division were getting into the
15 environment?

16 A. I can recall occasions where it would have been
17 reported to me through the field organization that some
18 customers were not being diligent in their attempts
19 to -- to contain the material.

20 Q. Do you recall what customers those reports were
21 made concerning?

22 A. No.

23 Q. Do you recall who made those reports to you?

24 A. By name, no. Just within the marketing
25 organization.

1 Q. Well, does that mean if we -- marketing
2 organization, we're talking about, even then,
3 Mr. Benignus?

4 A. No. Sales. It could have been Mr. Benignus;
5 but it was with -- within the total marketing
6 organization, including sales.

7 Q. Okay.

8 It could have been these individual salesmen
9 that were out of these various offices, then?

10 A. That's correct.

11 Q. Did you ever take any action in response to
12 those reports?

13 A. I would have reported it to Pappageorge if any
14 action was required on his part to follow up. It would
15 have been a part of his job to -- to talk to the
16 customer about changing their procedures or practices.

17 Q. Did you ever personally take any action?

18 A. With the customer?

19 Q. Yes.

20 A. On PCBs?

21 Q. Yes.

22 A. Well, I have a memory of making a call on a
23 heat transfer customer during the period of conversion
24 of PCBs to alternative fluids, where the customer had
25 been reported to me by the salesman of being reluctant

1 to make that transfer to a non-PCB fluid. And I called
2 on the account to make it clear to them that -- that
3 they would have to -- to convert or we would take
4 whatever appropriate action to -- to inform the
5 government that they were allowing the material to -- to
6 be released.

7 Q. Do you recall any other situations where you
8 took any action with regard to a customer who was
9 allowing PCBs to be released into the environment?

10 A. In the hydraulic fluid area, I made one call
11 that I can recall -- and, I think, several -- one call
12 that I can remember, to a customer, in which he was
13 using a fluid that contained PCBs; and we were, again,
14 arguing for the conversion to an alternative. And he
15 was reluctant to do so, and it was my role to convince
16 him that -- that he was not going to be given a choice.

17 Q. Do you recall who that customer was?

18 A. Johnson Motors.

19 Q. Any others that you recall?

20 A. Not by -- by name or -- or in terms of
21 describing it.

22 Q. Did you ever have any action with customers
23 regarding dielectric fluids?

24 A. No.

25 Q. You would have been prepared, if -- if the

1 products -- and I'm talking about dielectric fluids
2 now -- were getting into the environment, to stop sales
3 to prohibit the release into the environment; is that
4 correct?

5 A. We had a policy within the company that if a
6 customer was not being responsive -- a dielectric
7 customer was not being responsive to the practices
8 required to contain the PCBs from getting into the
9 environment that we would -- we would take action to --
10 to stop selling to them.

11 Q. Did you ever do that?

12 A. No.

13 Q. Let me -- and I -- I want to see how this would
14 relate to the -- the pricing structure.

15 If you had a major customer and you stopped
16 selling PCBs to them as dielectric fluid, that would
17 reduce your net sales.

18 A. That's correct.

19 Q. It would also reduce your cost of goods sold to
20 a certain extent, because you wouldn't need the raw
21 materials to make what you would have otherwise sold to
22 them, correct?

23 A. Well, let me -- yes. In principle, yes. But
24 let me say that -- that -- if a -- if we had stopped
25 selling a customer, it is also possible, maybe probable,

1 that some other dielectric customer would have picked up
2 that piece of business. In other words, if -- if a
3 customer was making transformers using PCBs --

4 Q. Uh-huh.

5 A. -- and we decided not to sell to him, it is
6 possible that he could have switched that volume to
7 mineral oil and he could have maintained his market
8 position; or it is equally possible that he could have
9 lost that part of his business to someone else who
10 was -- who was producing PCB transfers and were
11 protecting the environment. And I -- it could go either
12 way or a mixture of both.

13 Q. I guess what I'm trying to -- and what you're
14 saying is, since you never did that, you don't know
15 whether or not that would have had an inverse -- I'm
16 sorry -- since you didn't do that, you don't know
17 whether that would have had an adverse impact or not on
18 the profitability of your business.

19 A. It would have been a neutral to a negative
20 impact, and we had no experience to know how that would
21 have gone.

22 Q. And the way it would be neutral is, if you cut
23 off a customer, some other customer who you continued to
24 sell PCBs to wound up making exactly the same number of
25 additional capacitors or transformers using PCBs, then

1 your sales would not be affected.

2 A. That's exactly the point.

3 Q. On the other hand, if, because you cut off a
4 customer, he switched over to mineral oil and nobody
5 else picked up the PCB business, then it would have a
6 negative impact on your picture.

7 A. That also is correct.

8 Q. Okay.

9 And since you never did cut off a single
10 dielectric customer, we don't know which way it would
11 have gone.

12 A. I have no memory of us ever cutting off in the
13 time period that I was involved.

14 Q. '70 to '75?

15 A. That's correct.

16 Q. Did you ever do any calculations to estimate
17 what the effect might be of cutting off a customer?

18 A. No, I did not.

19 Q. Do you know of anybody who you asked to do that
20 for you?

21 A. No.

22 Q. Who was the single biggest dielectric customer
23 you had, if you can recall?

24 A. General Electric.

25 Q. Was that -- were they the single biggest PCB

1 dielectric customer?

2 A. Yes.

3 Q. Did you sell General Electric any dielectric
4 fluids, other than fluids containing PCBs?

5 A. During the latter part of the time that I was
6 involved, we certainly were sampling them with some
7 alternative fluids and may have sold them development
8 quantities; but I have no specific memory of that.

9 Q. But not commercial quantities?

10 A. No, absolutely not.

11 Q. Okay.

12 So, in the period you were there, at least for
13 your largest customer, all your commercial sales were of
14 PCB-containing fluids.

15 A. That's correct.

16 Q. How much of the total market -- of your sales
17 market did GE have? Were they 10 percent of it or 20
18 percent or what?

19 A. Of the domestic market, I -- I won't be able to
20 give you an accurate number; but they were substantial.
21 I would guess that they probably represented maybe as
22 much as a third.

23 Q. Okay.

24 Were they a large enough share of the market
25 that, had you ceased sales to them and no one else

1 picked up all of their PCB business, it would have had a
2 substantial impact upon the profit and cost calculations
3 of PCB fluids from Monsanto?

4 A. Well, General Electric was not a single
5 customer. They had several capacitor plants and several
6 transformer plants. So, they were at multiple
7 locations; and we would have -- if we had stopped
8 selling all of their locations, it would have had a
9 significant impact on our -- our production and our
10 cost.

11 Q. Okay.

12 Now, you've told me that PCB products had a
13 higher than normal -- I guess is the right word -- MAT
14 expense component; is that correct?

15 A. During a period of time, it had higher cost
16 than it had previously had.

17 Q. Is that the entire period from 1970 to 1975?

18 A. Well, there's not one MAT cost center for PCBs.
19 There's a MAT cost center or dielectrics, a MAT cost
20 center for heat transfer, and so forth. And as we
21 discontinued each of those or as we were trying to
22 develop alternative products, there would have been an
23 escalation of cost against any one of those at some
24 point in time.

25 Q. Well, let's take the dielectric fluids, since

1 that continued throughout the whole period, correct?

2 A. Yes.

3 Q. With the dielectric fluid, was the MAT cost for
4 PCB dielectrics higher than customary throughout the
5 entire period from 1970 to 1975?

6 A. I -- my recollection would have been that there
7 were no unusual costs in the early part of that time
8 period; but it would certainly, toward the end of that
9 time period, begin to -- to show up as higher costs
10 against that MAT center.

11 Q. In fact, as other PCB products dropped out, the
12 MAT function or component for dielectrics would be
13 pushed up even more, would it not?

14 A. Not the MAT part of it. The research or the
15 marketing expenses against, let's say, heat transfers
16 would have been charged against heat transfers --

17 Q. I understand.

18 A. -- and not against the dielectric part.

19 Q. Let's take Mr. Pappageorge, though.

20 Mr. Pappageorge was on the scene when you
21 arrived in 1970, was he not?

22 A. Uh-huh.

23 Q. Initially, his MAT component would have been
24 charged against all PCB products, would it not?

25 A. It would have been distributed across all of

1 our costs, yeah.

2 Q. As the plasticizer function, the carbonless
3 carbon paper function, the hydraulic fluid function, and
4 then the heat transfer fluid function dropped out, no
5 more could a portion of Mr. Pappageorge's environmental
6 costs be charged to those functions, could it?

7 A. That's not the case. First of all, the sales
8 didn't drop out, because in -- in many cases, if not
9 most cases, those discontinued PCBs were replaced by
10 other products and Mr. Pappageorge was responsible for
11 environmental issues on non-PCBs, just as he was on
12 PCBs.

13 Q. I see.

14 A. So, whether -- whether -- whether there was
15 some amount of his cost that -- that skewed towards the
16 dielectrics, I have no knowledge of that; and it
17 wouldn't have been a substantial amount.

18 Q. I see.

19 A. Because he had heavy responsibilities, at least
20 all the way through 1975, ongoing in industrial
21 application -- industrial fluids and in heat transfer
22 fluids and so forth.

23 Q. Okay.

24 At any point during the period that you were
25 responsible for the pricing of PCB products, during '70

1 such that the performance -- strike that.

2 During any period of time that you were
3 responsible for the pricing of PCBs, 1970 to '75, did
4 you have a period of time where the PCB products did not
5 show a positive gross profit?

6 A. PCBs or -- or -- or dielectrics specifically?

7 Q. PCBs.

8 A. Well, certainly, as we were going out of
9 businesses, PCB businesses, there would have been
10 periods of time where the PCB portion of that
11 business -- industrial fluids, heat transfer as
12 examples -- would have had a negative gross profit at
13 some point in time.

14 Q. I -- I'm not talking about individual products
15 lines. I'm talking about the entirety of the PCB
16 business for Monsanto.

17 A. At the gross profit level?

18 Q. Yed.

19 A. I wouldn't -- I -- I -- I would not think so,
20 but I have no absolute knowledge of it.

21 Q. Okay.

22 Do you recall any period of time from 1970 to
23 1975 when PCBs -- and I'm talking about all the product
24 lines that are in use at any particular time -- had a
25 negative performance income?

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

2 Q. Okay.

3 Do you recall whether, at any time during the
4 period from 1970 to 1975, the PCB lines that were in use
5 at the time had a negative net income before taxes?

6 A. I don't think so.

7 Q. Do you recall any period of time from 1970 to
8 1975 when the PCB lines that were in production had a
9 negative net income after tax?

10 A. No, I don't.

11 Q. And I guess those are actually related to -- if
12 there's a positive income before tax, there's going to
13 be a positive income after tax, correct?

14 A. Correct.

15 Q. Okay.

16 If there's a loss before tax, that may help on
17 some other component; but it will still be a loss after
18 tax for that individual item?

19 A. Yes.

20 Q. And, so, your best recollection is that all
21 those things were positive through that period of time,
22 collectively, correct?

23 MR. ANDREWS: Well, I object to the
24 form of that question. I don't think that
25 was his testimony. It mischaracterizes

1 the Witness' --

2 MR. LACEY: Well, let me just ask.

3 That's what I'm trying to find out.

4 Q. Is your best recollection that all those
5 components of the measurement of results -- gross
6 profit, performance income, net income before tax, and
7 net income after tax -- for PCB lines generally were
8 positive throughout the period from '70 to '75?

9 A. I can't say for sure. Again, as we were going
10 out of businesses, when you looked at an individual
11 business, my memory is that there were periods where we
12 were negative as we made that transition.

13 Q. Yes.

14 And what I'm asking about is, not an individual
15 line, but the entirety of the PCB product line.

16 A. I think that's correct, that it would have been
17 positive throughout that period.

18 Q. For each of those components?

19 A. Correct.

20 Q. Okay.

21 Now, let me ask about a situation which then --
22 assuming that what you've just told me is correct as a
23 hypothetical -- but had you turned to a situation where
24 the PCB lines collectively were in a loss position for,
25 say, a whole year or two years in a row, would that have

1 counseled some action on Monsanto's part to correct that
2 problem?

3 A. I don't know.

4 Q. And you have no idea what would have been done?

5 A. It wouldn't have been my decision, and I have
6 no idea what position they would have taken.

7 Q. I see, because you didn't have a situation like
8 that.

9 A. That's correct.

10 Q. Okay.

11 And you do not know whether Monsanto would have
12 continued to manufacture and sell PCBs even though there
13 was a continuing year-after-year loss?

14 A. It would not have been my decision.

15 Q. I understand.

16 A. My -- if you're asking me what position I would
17 have taken, I would have continued to sell the product,
18 because it was our impression at the time that the
19 dielectric industry had no alternatives. And both the
20 government and our customers were saying that we could
21 not withdraw the product because the whole eastern part
22 of the United States would be -- would be shut down
23 electrically.

24 Q. What was it that was being told to Monsanto
25 about the eastern part of the United States?

1 A. Well, this was the period when we had blackouts
2 in New York and so forth. It was that terminology that
3 we were -- we were being given by our customers and by
4 the government, that the use of PCBs in transformers and
5 capacitors were necessary in order to prevent further
6 occurrences of those kinds of episodes.

7 Q. Okay.

8 And from whom did you get this information?

9 A. It was published in the press -- and I can't
10 recall what journals it was in or what newspapers it was
11 in -- and was told to us directly by our customers.

12 Q. What customers advised you of that?

13 A. General Electric, Westinghouse would have been
14 examples.

15 Q. Now, what efforts, if any, did Monsanto take to
16 determine whether it was, in fact, necessary to continue
17 to produce PCB in order to avoid electrical problems?

18 A. I don't know.

19 Q. Okay. That wasn't an area you were responsible
20 for?

21 A. No. I would have merely communicated what the
22 customers were saying; and if -- if there was any
23 confirmation of that, it would have been by the
24 technical community or some other part of Monsanto.

25 Q. Okay.

1 And just looking at the organizations you've
2 given me that was in your area, there was research,
3 Dr. Richard.

4 Would that be the area that would deal with
5 that?

6 A. That would be one -- one possibility.

7 Q. What about manufacturing, would they be
8 involved in that?

9 A. No.

10 Q. Environmental control?

11 A. I don't think so.

12 Q. Financial analysis?

13 A. No.

14 Q. Engineering?

15 A. No. No.

16 Q. Then there's marketing. That seems to pretty
17 well cover the areas you've told me about.

18 A. Yes.

19 Q. So, it would be Dr. Richard, then --

20 A. It would be primarily the technical community.

21 Q. Okay.

22 What was the history of pricing of PCBs during
23 the period of time that you were responsible for that,
24 from 1970 to 1975?

25 A. Well, there were, from time to time, at least

1 in the early seventies -- are we -- excuse me. Are we
2 talking dielectric or --

3 Q. I'm talking about PCB pricing generally. We --
4 and feel free to break these things down. I'm
5 interested, as the deposition Notice indicates, in
6 getting information on the cost of production of PCBs,
7 the overhead allocated to the production, the revenues
8 associated with the products, the profits generated by
9 the PCBs. And however you choose to break them down is
10 fine with me. I just need to get the information.

11 A. Well, let me focus on -- on dielectrics; and --
12 and we can try and deal with the other areas if you so
13 desire. But in dielectrics during the period from 1970
14 to 1975, there were, from time to time -- once a year,
15 maybe sometimes twice a year -- moderate price
16 increases. Initially, my memory would suggest a half a
17 cent a pound price increase was a typical price increase
18 driven by higher cost from some prior period.

19 In the latter part of the '70 to '75 period, I
20 can recall price increases as high as 2 or 3 cents at a
21 given point in time, driven principally by the -- the
22 environmental costs and the cost of aiding the
23 dielectric industry in trying to find alternative
24 fluids. I -- I have -- I can't give you any estimate
25 over the entire five-year period as to what the price

1 increase was on dielectrics. But it certainly would
2 have been more than the prior five years.

3 Q. Well, I'm interested in knowing what the prices
4 charged by Monsanto for PCBs were in 1970.

5 A. In 1970?

6 Q. Sure.

7 A. I have no memory of that.

8 Q. Well, do you know what was charged by
9 Monsanto -- I'm talking just in dollars and cents or
10 cents or however you calculate it -- for any period of
11 time?

12 A. In absolute terms?

13 Q. Yes.

14 A. No.

15 You want me to guess with some reasonable
16 amount of accuracy, or do you want me to tell you that I
17 absolutely know what the price was 16 years ago?

18 Q. Well, I --

19 A. I don't know what the price was 16 years ago.

20 Q. What information do you have on that, I guess,
21 at this point, then, is the question.

22 A. I have no records.

23 Q. Well, do you understand you're here today to
24 testify on behalf of the company about the information
25 that the company has concerning the pricing of PCBs?

1 A. Yeah.

2 Q. And you haven't -- you're not able to give us
3 any information on that?

4 A. I wasn't able to answer that question.

5 Q. Well, can you tell me the price that Monsanto
6 charged for PCBs in any application at any point in
7 time?

8 A. Nineteen cents.

9 Q. When?

10 A. I don't remember exactly.

11 Q. For what quantity?

12 A. For bulk quantities.

13 Q. I mean, but -- how do you measure it, per
14 gallon, per pound, per what?

15 A. Per pound. I'm sorry.

16 Q. Nineteen cents per pound.

17 Do you know what application?

18 A. Dielectrics.

19 Q. And you don't have any idea when that was?

20 A. Not exactly.

21 Q. Well, approximately.

22 A. Somewhere -- that -- that seems to me to have
23 been the price around 1970 for some of our dielectrics.

24 Q. I see.

25 A. There is not a product. There was about 45

1 dielectric products, each with a different price, each
2 with a different formulation; and I had no memory even
3 then of what all the prices were.

4 Q. Well, how would -- how would you have gone
5 about looking at what the existing prices were and
6 coming up with new prices, then?

7 A. By doing an analysis, by sitting down at that
8 time with the data and looking at the prices and looking
9 at the costs and make recommendations. That was 16
10 years ago.

11 Q. Did you have any sort of pricing sheets or
12 information sheets you could look to?

13 A. Absolutely.

14 Q. Did Monsanto publish price sheets on its
15 products?

16 A. Absolutely.

17 Q. Did you look at any of those before you came
18 here today to testify about what prices were?

19 A. Those price sheets don't exist. That was 16
20 years ago. If they're somewhere in the records, I
21 didn't look for them. They're not in my records.

22 Q. Well, again, just so we're clear, you're here
23 today to testify on behalf of Monsanto Company about
24 what Monsanto Company knows -- and obviously the company
25 has to testify through an individual. You understand

1 that, don't you?

2 A. Yes.

3 Q. -- what Monsanto Company knows about the prices
4 charged for its PCB products and the cost and profit
5 components in that.

6 A. Right.

7 Q. And I guess one way that Monsanto Company could
8 know about that would be to determine whether any such
9 pricing sheets exist or not. And if you had those, you
10 could review them and then testify about that, correct?

11 A. I wasn't asked to review anything before I came
12 here.

13 Q. Well, no. I understand that. But what I'm
14 saying is that my question is different. If those
15 pricing sheets existed and you reviewed them, then you
16 could give us better information on behalf of Monsanto
17 Company about what was charged for PCB products,
18 correct?

19 MR. ANDREWS: Well, let me interject
20 something right here.

21 This man has been profered to give
22 testimony in accordance with your
23 deposition Notice.

24 MR. LACEY: Uh-huh.

25 MR. ANDREWS: Which is about the

1 relative profitability of Monsanto's PCB
2 products as compared to other products.
3 He's prepared to do that.

4 I don't think it's a fair question --
5 nor is it correct -- to try to impugn this
6 gentleman by saying -- questioning him
7 whether he could remember how much PCBs,
8 generic PCBs, were sold for 16 years ago.
9 That doesn't have anything to do with your
10 deposition Notice, and I object to you
11 taking him on about that particular
12 aspect. He can testify in accordance with
13 what you've asked him to testify about.

14 MR. LACEY: Well, I think we have a
15 difference of opinion about what's called
16 for in the Notice; but I'm trying to
17 establish now what he would be able to
18 testify to if he reviewed the records.
19 That's what I want to get clearly
20 established here for the record.

21 MR. ANDREWS: Well, I object to that
22 characterization, because he has told you
23 that pricing sheets from 16 years ago do
24 not exist.

25 MR. LACEY: Okay. Okay. Well,

1 just -- just let me establish that, Steve.
2 And we'll get that established; we'll move
3 on. I mean --

4 MR. ANDREWS: Well --

5 MR. LACEY: -- what you and I say to
6 each other is really immaterial in this
7 deal.

8 MR. ANDREWS: No, it's not immaterial
9 because he's --

10 MR. LACEY: It's very immaterial.

11 MR. ANDREWS: -- already stated that
12 they don't exist. Now, for you to ask him
13 a hypothetical question, number one, if
14 they did exist, number two, if he did look
15 at them --

16 MR. LACEY: Let me ask it
17 differently. Fine.

18 BY MR. LACEY:

19 Q. Did you ask someone to collect and provide you
20 with the pricing sheets for PCBs, that you know existed
21 back at the time you were working with them?

22 A. For this meeting?

23 Q. Yes.

24 A. I've made no such request.

25 Q. So, you don't know whether they exist or not

1 because you haven't even asked to see them, correct?

2 A. That's correct.

3 Q. Okay.

4 Do you know whether or not such sheets do
5 exist, whether --

6 A. I do -- I do not know.

7 Q. They may or may not; you have no knowledge?

8 A. I have no knowledge of what exists today.

9 Q. And the way to find out would be to ask whoever
10 in the company keeps records of that sort today and have
11 them look and say either they exist or they don't exist,
12 correct?

13 A. I don't know. That would be one way, maybe.

14 Q. Well, I mean, if you were sitting in your
15 office and -- and wanted to know that information
16 historically, as a vice-president -- what's the title,
17 senior vice-president?

18 A. Senior vice-president.

19 Q. -- senior vice-president of the company, you
20 could ask someone in the company to look for whatever
21 records you were looking for and search and see if you
22 found them or didn't find them, right?

23 A. That's correct.

24 Q. I mean, that's how you'd ordinarily go about
25 doing it; and that's something that the company can do

1 doing it; and that's something that the company can do
2 from time to time, look for records?

3 A. That's correct.

4 Q. Okay.

5 To your knowledge, that hasn't happened on
6 things like price sheets.

7 A. I have made no request for price sheets.

8 Q. Okay.

9 So, you don't know whether or not they exist?

10 A. I do not know.

11 Q. Now, let me ask you about price sheets.

12 Would price sheets tell us how much was charged
13 by the company at any point in time that the price sheet
14 was issued for all these different PCB products that the
15 company sold?

16 A. Yes.

17 Q. Okay.

18 And from that, you could then tell us about the
19 sales prices and also the changes that were made in
20 pricing, correct?

21 A. If I had all of the price sheets over a period
22 of time, I could tell you the prices that we charged and
23 the change in prices as they occurred.

24 Q. Were there also records that were prepared by
25 the company, establishing -- or "establishing" is the

1 wrong word -- recorded information about cost of of
2 goods sold, the MAT charges, and the like?

3 A. Yes, there were reports that contained that
4 information.

5 Q. How frequently were reports like that
6 generated?

7 A. MAT costs were available on a monthly basis, as
8 were cost of goods on a monthly basis.

9 Q. Have you asked anybody to look for those
10 reports?

11 A. No.

12 Q. You don't know whether or not they exist today?

13 A. That's correct; I do not know.

14 Q. If they existed and we had them, you could help
15 us understand the -- the actual cost or charges against
16 PCBs, correct?

17 A. I could tell you what our MAT costs were, and I
18 could tell you what our cost of goods was.

19 Q. Did those reports also contain the sales
20 figures?

21 A. There was a report that contained the sales
22 figures.

23 Q. And if we had the sales figures -- were those
24 monthly reports?

25 A. Yes.

1 Q. If we had the sales figures, we had the cost of
2 goods sold, and we had the MAT charges on a monthly
3 basis, we could figure out gross profit on a monthly
4 basis, correct?

5 A. That's correct.

6 Q. We could figure out performance income on a
7 monthly basis?

8 A. That's correct.

9 Q. Were there reports that were issued from time
10 to time that gave information on the other components of
11 calculation of return on a product; in particular, the
12 net income before tax?

13 A. That's correct.

14 Q. How frequently were those generated?

15 A. I don't remember, but I -- my guess would be
16 either quarterly or annually.

17 Q. And, again, you didn't ask for those reports?

18 A. No, I didn't ask for them.

19 Q. Were there also quarterly or annual reports on
20 net income after tax?

21 A. I would guess on a quarterly or annual basis.

22 Q. Didn't ask for those?

23 A. No, I didn't ask for them.

24 Q. Don't know if they exist or not?

25 A. Do not know.

1 Q. Now, these reports would have included PCB
2 product lines, would they not?

3 A. That's correct.

4 Q. Did these reports also exist for other products
5 in the company, other than PCB products?

6 A. Yes.

7 Q. For all products in the company?

8 A. Yes.

9 Q. So, if we had these reports for all products in
10 the company, we could compare PCB products with the
11 other products in the company.

12 A. That's correct.

13 Q. Again, you didn't ask about or ask for someone
14 to look for these reports for other products in the
15 company; is that correct?

16 A. That's correct.

17 Q. You don't know whether or not they exist?

18 A. That's correct.

19 Q. Without all those reports, it's really
20 impossible for you to testify about the cost of
21 production for PCB products over time, correct?

22 MR. ANDREWS: He's asking you now:
23 Do you have any knowledge from which you
24 can testify about the relative
25 profitability of PCBs?

1 A. Sure, I've got -- I've got lots of knowledge of
2 what the relative profitability of our products versus
3 our other products.

4 Q. I'm sorry. I didn't ask for that. I asked
5 about testifying concerning the cost of production for
6 PCB products.

7 A. I know the relative cost of production.

8 Q. Okay. Tell me what the cost of production for
9 PCB products was.

10 A. Relative to what?

11 Q. Not relative to anything, what it was in
12 dollars and cents.

13 A. An absolute number?

14 Q. Sure.

15 A. At what period of time?

16 Q. Let's take 1970 first.

17 A. What month?

18 Q. January, 1970.

19 A. I don't remember.

20 Q. Any month in 1970.

21 A. I don't remember exactly.

22 Q. The average for 1970 as a whole.

23 A. I don't remember.

24 Q. Any year in the 1970's.

25 A. I don't remember.

1 Q. With the documents that were generated on a
2 monthly basis, would you be able to answer those
3 questions?

4 A. Yes.

5 Q. What can you tell us about the allocation of
6 overhead or MAT to the PCB products, in absolute
7 numbers?

8 MR. ANDREWS: You mean other than
9 what he's testified over the last three
10 and a half hours?

11 MR. LACEY: The real numbers, what it
12 was, what the real numbers were.

13 A. I have no memory of the real numbers specific
14 against any product.

15 Q. I see.

16 The real numbers for revenues associated with
17 PCB products.

18 A. When?

19 Q. Any period of time.

20 A. In 1970, I think I testified earlier they
21 represented about a third of our business. Our business
22 was \$70 million, thereabouts, in that time period.

23 Q. Okay.

24 You had \$70 million worth of business in what
25 group?

1 A. In the entire specialty products group.

2 Q. Okay.

3 A. In 1970.

4 Q. And of that --

5 A. About 30 percent was PCBs.

6 Q. One-third, which would be roughly about 23 --

7 A. Twenty to \$25 million.

8 Q. In 1970?

9 A. Correct.

10 Q. And how was that broken down between
11 dielectrics and others?

12 A. Dielectrics would have represented about half
13 of the total.

14 Q. And the rest would have been made up of all
15 these other uses?

16 A. Correct.

17 Q. What were the cost of goods sold for that 20 to
18 \$25 million in revenue?

19 A. The gross profit margin was about 30 to 35 --
20 30 to 40 percent. If I picked a number, I'd say
21 probably about 35 percent. Therefore, the cost of goods
22 would be 65 percent of that sales number. If you
23 picked \$23 million, it would be 65 percent of -- of
24 \$23 million.

25 Q. Plus or minus how much?

1 A. I would guess 10 percent.

2 Q. Which would mean more than a million dollars
3 difference, conceivably, correct?

4 A. You mean my accuracy may be --

5 Q. Yes.

6 A. I haven't made that calculation, but that
7 sounds about right.

8 Q. And what were the performance income figures?

9 A. My guess would be that performance income, as a
10 percentage of sales, was about, oh, 20 to 25 percent.

11 Q. So that performance income would be -- with
12 this 20 to 25-million-dollar estimate of revenues,
13 performance income would be somewhere between 4 and
14 \$6 million dollars?

15 A. If I can have a piece of paper, I'll --

16 Q. Surely.

17 A. -- I'll try to run through this with you as we
18 go.

19 Q. Be happy for you to (tendering).

20 A. What was your last question?

21 Q. What the range of dollars of performance income
22 would be based on your estimate of the revenues being 20
23 to \$25 million and the performance income figure being
24 20 to 25 percent of sales.

25 A. Well, I would -- I would estimate that between

1 4 and \$5 million.

2 Q. And what would you estimate -- all of these
3 estimates are for the year 1970, correct?

4 A. That's correct.

5 Q. What would you estimate the net income before
6 taxes to be?

7 A. Maybe about \$4 million.

8 Q. And as a percent of the revenues?

9 A. That's about -- a little less than 20 percent.

10 Q. And the net income after taxes? Or is that a
11 number you can even figure?

12 A. Yeah, I'd say it's -- it's 2 to \$2 and a half
13 million or about 10 percent of sales.

14 Q. Can you make a similar estimate for each
15 succeeding year, 1971, '72, '73, '74, and '75?

16 A. For total PCBs?

17 Q. Yes.

18 A. I could go through a pro forma, but my -- my --
19 my feeling would be that sales and income were drifting
20 downward. But -- but...

21 Q. Well, can you do the pro forma for me? I mean,
22 that's apparently the best we're going to be able to get
23 on this thing; so, I -- that will be worth doing, I
24 think.

25 A. How many years you want?

1 Q. Well, I thought we might --

2 A. Could we skip a few and --

3 Q. Well, yeah, if you feel --

4 A. I don't feel more comfortable with one or the
5 other. I just don't feel like going through five
6 columns of this.

7 Q. Well, I'll tell you what let's do --

8 MR. ANDREWS: Yeah, let me ask a
9 question.

10 MR. LACEY: Sure.

11 MR. ANDREWS: I know that the company
12 has provided you, Mr. Lacey, with several
13 hundred pages of documents in this area.
14 Perhaps it would be useful for you to
15 examine the Witness about that rather than
16 persist in trying to embarrass him about
17 the fact that he can't remember the
18 specific number 16 years ago.

19 MR. LACEY: Well, the fact of the
20 matter is I don't have a lot of the
21 detailed documents. I've got a couple of
22 snapshot pictures, but I want to find out
23 what we can estimate about this stuff over
24 these years.

25 MR. ANDREWS: Okay. I don't have any

1 problem with that. But what I do have a
2 problem with you doing is badgering the
3 Witness --

4 MR. LACEY: I'm not badgering him.

5 MR. ANDREWS: -- because he can't
6 remember what something sold for by the
7 pound 16 years ago.

8 Now, if you've got documents that
9 will assist in that examination, then
10 let's get them out; and let's be fair to
11 this Witness. If you want an estimate,
12 then let's ask him for an estimate. But
13 please don't badger him about it.

14 MR. LACEY: I don't think I'm
15 badgering him.

16 THE WITNESS: I'm sorry. I didn't
17 know who that was staning behind you.

18 MR. ANDREWS: Let's take a short
19 break if you don't mind.

20 MR. LACEY: Sure.

21 (RECESS)

22 BY MR. LACEY:

23 Q. You've got a sheet of paper there. Can I get
24 you to note the pro forma you did for 1970, what the
25 entries would be on that for me, please.

1 A. I can't do that any more than -- than give you
2 relative direction, as I indicated.

3 Q. Sure. I mean, if I can just -- you went
4 through some numbers and ranges with me verbally; and if
5 we could get those in a written form, I think that would
6 be helpful for us. Can you do that for me?

7 A. For what periods did you want?

8 Q. 1970 is the year you've talked about. Let's
9 just do 1970.

10 MR. ANDREWS: Well, let me suggest
11 this: He's got a yellow piece of paper
12 there that he's made some numbers on. Why
13 don't you just mark that, and he can label
14 those numbers.

15 MR. LACEY: All right.

16 MR. ANDREWS: That way, we don't have
17 to start over --

18 MR. LACEY: Uh-huh.

19 MR. ANDREWS: -- if that's all right
20 with you.

21 A. You want me to read this to you, or do you want
22 to look at it (tendering)?

23 Q. Let me get the reporter to mark it.

24 (A ONE-PAGE HANDWRITTEN ESTIMATED PCB
25 PRO FORMA FOR 1970 WAS MARKED FOR

1 IDENTIFICATION AS GOSSAGE EXHIBIT NO. 3)

2 (A ONE-PAGE HANDWRITTEN LIST OF

3 DIELECTRIC PRICES PER POUND WAS MARKED FOR

4 IDENTIFICATION AS GOSSAGE EXHIBIT NO. 4)

5 BY MR. LACEY:

6 Q. I've had marked as Gossage Deposition Exhibit
7 No. 3 a yellow sheet of paper that's got, in pencil on
8 the left, some numbers and then, on the right, in pen,
9 has got some identifying information written out beside
10 it. Is that accurate?

11 A. That's correct.

12 Q. Could I get you to go over the numbers that are
13 in pencil in pen so they won't get erased or changed in
14 any way. Just write over them with a pen.

15 A. Sure (complying).

16 Q. Now, if I understand correctly, Exhibit No. 3
17 to your deposition is your best estimate of what the
18 revenues for PCB products were in 1970; is that correct?

19 A. It's my memory of the -- of the revenues for
20 1970.

21 Q. Okay.

22 Does that have 1970 written on it somewhere?

23 A. No, it doesn't.

24 Q. Why don't you put "1970 PCB figures" or
25 whatever would be appropriate up there at the top.

1 A. (Complying)

2 Q. And your estimate -- when you say a pro forma,
3 you say it's called estimated PCB pro forma for 1970.
4 What's a pro forma?

5 A. Just a pro forma financial statement.

6 Q. What a does "pro forma" mean, just so we'll all
7 understand what you're talking about? Does "pro forma"
8 mean financial statement?

9 A. It just means that -- that -- an estimate of
10 what it was.

11 Q. Okay.

12 So, this is an estimate of what the PCB --

13 A. What it would have looked like at that time.

14 Q. Okay.

15 And you've estimated sales at 23 million,
16 gross profit at 9.2 million, performance income at
17 4.6 million, net income before taxes at 4 million, and
18 net income after tax at 2.3 million.

19 A. That's correct.

20 Q. And that gives us -- could I get you, out at
21 the side, to give me the percentages: what -- what
22 percent gross profit was of sales, what percent the --

23 A. That's the gross profit percent right there
24 (indicating).

25 Q. Oh, okay. Forty percent on gross profit. And

1 what was the percentage of performance income of sales?
2 I've got a little calculator, if that's of any help in
3 calculating it.

4 A. If you want it accurate, I'll take it.

5 Q. Okay.

6 A. Looks like about 20 percent, though.

7 Q. There you go. It works on light. I think
8 there's enough light in here to do that.

9 A. What else do you want?

10 Q. The percentage of performance income, the
11 percentage of net income before taxes, and net income
12 after taxes, what those are as percentage of sales.

13 A. (Complying)

14 Q. You have estimated the gross profit at 40
15 percent, the performance income at 20 percent, the net
16 income before taxes at 17 percent, and the net income
17 after taxes at 10 percent, correct?

18 A. That's my best estimate.

19 Q. Okay.

20 Now, are you familiar with what a 10K is?

21 A. Yes.

22 Q. What is a 10K?

23 A. It's a corporation's financial report filed
24 with the SEC.

25 Q. That's the Securities and Exchange Commission?

1 A. That's correct.

2 Q. Let me hand you the -- a copy of the Monsanto
3 10K for the year ending December 31, 1970, Document
4 23703 through 23784 (tendering). And what I'd like to
5 do is to be able to compare how the PCB numbers for 1970
6 would compare to Monsanto's overall performance for 1970
7 so we can find out what the overall gross profit percent
8 was for Monsanto products, what the overall performance
9 income percent for Monsanto products was, what the
10 overall net income before taxes was, and what the
11 overall net income after taxes was.

12 You understand what I want to do?

13 A. I understand the question.

14 Q. Okay.

15 That information is contained in the 10K, is it
16 not?

17 A. I don't know.

18 Q. You never looked at a 10K?

19 A. I haven't looked at this one.

20 Q. Well, do you think you can find that
21 information there?

22 A. I don't know. I'll try. Is that what you want
23 me to do?

24 Q. Yes, I certainly do.

25 A. Let me -- before I try, let me say that our

1 reporting externally is not the same as reporting
2 internally; and, so, there will not be a direct
3 comparison. I can't draw a direct comparison as to our
4 reporting externally with our reporting internally; but
5 I'll look to see what's in here, if you'd like.

6 Q. I definitely would like, yeah.

7 MR. ANDREWS: Let me make this
8 suggestion, Mr. Lacey. You obviously
9 wouldn't have pulled this rather thick
10 document out of your pile over there if
11 you didn't have some idea that you wanted
12 to ask him some questions about it. If
13 there's something you could direct him to,
14 perhaps it would save us some time.

15 MR. LACEY: I'll be happy to flip
16 through there, too, and try to find the
17 financial reporting. There's a section, I
18 think, in the 10K that shows sales and
19 cost of goods sold and all those sorts of
20 things.

21 BY MR. LACEY:

22 Q. Have you been able to find that, Mr. Gossage?

23 A. I found something that has sales, so far.

24 Okay.

25 Q. What were the overall Monsanto sales in 1970?

1 A. As reported in this document?

2 Q. Yes.

3 A. \$1.971632 billion.

4 Q. And that document's accurate, is it not?

5 A. Like I say, it's different -- it's different
6 accounting practices external than internal.

7 Q. What are the differences between --

8 A. I can't tell you that.

9 Q. Well, you mean the sales are different whether
10 you report them to the government or whether you don't
11 report them to the government?

12 A. I didn't say that. I said there are different
13 accounting practices. Depreciation is different. You
14 keep your books internally one way and externally
15 another way. I -- I have no -- I have no specific
16 knowledge of the differences, but I can tell you there
17 are differences. It is not a direct comparison.

18 Q. Well, is the sales number different?

19 A. I don't know.

20 Q. Is the cost of goods number different?

21 A. I don't know.

22 Q. I see.

23 Well, let me ask you, using the figures that
24 Monsanto reported to the SEC in 1970, to tell me what
25 the gross profit was for Monsanto on its sales.

1 A. Looks like a little more than 20 percent.

2 Q. Can you come up with the exact number there
3 with the calculator?

4 A. It's not a calculator I'm familiar with.

5 Q. I apologize. It's not very fancy.

6 MR. ANDREWS: It's a plaintiff's
7 lawyer's calculator. It probably only
8 figures 33 percent or 40 percent.

9 MR. LACEY: For a guy that represents
10 HL&P a lot, it figures lots of other ways,
11 too.

12 A. Twenty-three percent.

13 Q. All right.

14 Is there information there from which you can
15 determine the performance income as reported to the SEC?

16 A. I don't think performance income is reported
17 externally.

18 Q. Is --

19 A. It's an internal number.

20 Q. I see.

21 Is there a way you can determine what the net
22 income before taxes was as reported to the SEC?

23 A. There is a number here called income before
24 provision for taxes.

25 Q. Can you tell me what percentage that

1 represents.

2 A. About 6 percent.

3 Q. And net income after taxes, is there a number
4 there for that?

5 A. Well, there's a so-called number, income before
6 extraordinary items and income after extraordinary
7 items; and I really...

8 Q. Can you tell the difference between the item
9 where it says "income before tax" and then where the
10 taxes come out and you come to the income after tax?

11 A. It's called income before extraordinary items
12 in this report.

13 Q. Okay.

14 A. Is that the one you'd like me to use?

15 Q. Well, is that the one that represents the
16 change between income before taxes and what income is
17 after taxes have been taken out?

18 A. On this document, it does.

19 Q. Fine.

20 A. Four percent.

21 Q. In the 10K, we have a compilation of all the
22 sales for all of Monsanto, as reported to the SEC,
23 correct?

24 A. That's what the report is, yeah.

25 Q. We have a compilation of the gross profit for

1 all of Monsanto, as reported to the SEC, correct?

2 A. Correct.

3 Q. We have a compilation for the net income before
4 taxes, as reported to the SEC, correct?

5 A. That's correct.

6 Q. And we have a compilation of the net income
7 after taxes, as reported to the SEC, before
8 extraordinary items, correct?

9 A. That's correct.

10 Q. We don't have anything called performance
11 income.

12 A. That's correct.

13 Q. Now, comparing what you recall the 1970
14 performance for PCBs to be, with the report by Monsanto
15 of its overall performance to the SEC, it would show
16 that the gross profit margins on PCBs were considerably
17 higher than the overall performance of Monsanto's
18 product lines; is that correct?

19 A. That's what that comparison would show.

20 Q. Is that your recollection of the facts?

21 A. I have no recollection of total Monsanto's
22 performance. I can only tell you that, relative to
23 other businesses I was responsible for, PCBs were not
24 unusually high; in fact, considerably lower than many of
25 our products.

1 Q. Those were in the specialty products area?

2 A. Specialty products and some of the other parts
3 of Monsanto.

4 Q. Well, if all of the Monsanto products were like
5 PCBs, the numbers in the 10K would be higher, would they
6 not?

7 MR. ANDREWS: Well, I object to that
8 question. The Witness has already
9 testified that there are different
10 accountancy principles at work between
11 internally and externally audited
12 statements. And I think, in all fairness,
13 you're simply asking him to compare apples
14 and oranges; and it's not a fair question.

15 Q. Can you answer the question?

16 A. What was the question?

17 Q. The question is: If all of Monsanto's product
18 lines --

19 A. Were exactly as --

20 Q. -- performed as well as PCBs did in 1970, then
21 the numbers in the SEC report would be higher as far as
22 the gross profit percentages, the net income before
23 taxes, and the net income after taxes.

24 A. I don't think that that is necessarily the
25 case. As I say --

1 Q. I see.

2 A. -- there are substantial accounting differences
3 between internal reporting and external reporting; and
4 there is, just in looking at the data that you've
5 presented to me from the 10K report, some substantial
6 happening in 1970 that reduced our income as compared to
7 the other years shown here. So, there was probably some
8 occurrence somewhere in these overall corporate numbers
9 that lowered our income as reported here, for example,
10 50 percent over the prior year.

11 Q. I see.

12 Well, what about the succeeding year?

13 A. It doesn't have --

14 Q. I see.

15 A. '70's the last year.

16 Q. Well, let me give you the 10K for 1971,
17 Document 23785 through 23872 (tendering).

18 A. What do you want me to do with it?

19 Q. Well, you may want to look at the subsequent
20 year and see how things worked out that year.

21 A. All right. In this particular document, it
22 would show that 1971 was better than 1970 --

23 Q. What --

24 A. -- by 30 or 40 percent, again demonstrating
25 that 1970, the numbers that you compared with mine, was

1 a unusual year for Monsanto for some reason, which I
2 can't speak to.

3 Q. I see.

4 I don't know if you've seen the document I'm
5 getting ready to hand you or the section of pages,
6 actually -- I believe it's all part of one document --
7 I've been able to find in some of the things that
8 Monsanto's has provided to me, 25402 through 25406. You
9 might take a look at that for a moment (tendering).

10 A. Okay.

11 Q. From that document --

12 MR. LACEY: Steve, you want to give
13 it back to him so I can ask him some
14 questions about it.

15 Q. Does that document have information on the
16 relative aspects of Aroclor cost, sales, gross profit,
17 performance income, and the like?

18 A. For what time period?

19 Q. For any periods of time.

20 A. Yes. It -- it has sales in pounds. It has
21 sales in millions of dollars, gross profit, MAT,
22 performance income. That's it in terms of the questions
23 I think you asked.

24 Q. And what periods of time does that document
25 cover?

1 A. Looks like it covers '72 through '75.

2 Q. All right.

3 Does that document appear to be accurate in
4 reporting those numbers?

5 A. I would assume so.

6 Q. What does it show -- maybe what we can do is
7 try to figure out what -- does it have all the
8 percentages there shown, or would we have to calculate
9 that?

10 A. It has none of the percentages that you're --
11 have earlier expressed interest in.

12 Q. Okay.

13 This is for '72, '73, '74, and 1975; is that
14 correct?

15 A. That's correct.

16 Q. And it covers all PCBs?

17 A. No. Just PCB dielectrics.

18 Q. Okay.

19 And were any PCBs being produced for anything
20 other than dielectrics after 1972?

21 A. I don't remember exactly the time we got out of
22 heat transfers, when we were completely out of that.
23 There could have been some in '72. I just don't know.

24 Q. I'm sorry. I said after 1972.

25 A. I don't know. '72, '73, I don't know whether

1 there were any heat transfer fluid sales at that time or
2 not. Could have been some. I just don't remember the
3 exact date.

4 Q. Let me show you another document; and, again, I
5 don't know whether this is helpful to you or not. But
6 it's Document 6034 to 6036, and I direct your attention
7 to Page 6036. And see if that refreshes your
8 recollection that there were no PCBs for other than
9 dielectric uses after 1972.

10 A. It does say early 1972 that Thermonols were
11 discontinued.

12 Q. And Thermonols were the heat transfer fluids?

13 A. That's correct.

14 Q. And they dropped -- they were the last
15 nondielectric use to drop out, correct?

16 A. Along with some miscellaneous products also
17 listed here; but, yes, that's correct.

18 Q. And they dropped out in early 1972?

19 A. Looks like they were all gone by '72.

20 Q. Okay.

21 Now, then, that chart, since it deals with
22 dielectrics, would deal with, except for a little bit
23 maybe in 1972, the entirety of PCB products, correct?

24 A. At that time, yes.

25 Q. Okay.

1 Can you calculate for us the percentages of
2 gross profit for PCBs in '72 through '75, performance
3 income, net income before taxes, and net income after
4 taxes.

5 A. I'll give you what I can give you from it.

6 Q. Okay.

7 A. The gross profit for dielectrics in 1973 was
8 37.9 percent as compared to the 40 percent I estimated
9 in 1970.

10 Q. Okay.

11 This is '73 or '72?

12 A. '73, because that was dielectrics that were...

13 Q. Okay.

14 So, we won't do '72, then?

15 A. I think it would be misleading, just by looking
16 at the numbers; but --

17 Q. Okay. Fine.

18 A. You want '74?

19 Q. Yes.

20 A. Thirty-seven percent -- 36.8 percent gross
21 profit in 1974.

22 Q. Okay.

23 1975?

24 A. 35.8 percent in 1975.

25 Q. Okay.

1 Now, coming down to the performance income line
2 for '73, '74, and '75.

3 A. '73. Thirty-two percent in 1973.

4 Q. Thirty-two even?

5 A. Well, it was 32.2, as I recall. You want me to
6 calculate it again?

7 Q. If that's what you recall. I just know, the
8 others, you've always given me a percent in tenths.

9 A. I'll give it to you again.

10 32.2.

11 Q. Okay.

12 1974?

13 A. 31.3.

14 Q. 1975?

15 A. 28.8.

16 Q. Okay.

17 And the net income before taxes, is that shown
18 there?

19 A. No, it isn't.

20 Q. Net income after taxes?

21 A. No, it isn't.

22 Q. I see.

23 What other information is contained on that
24 sheet, of a financial nature?

25 A. It has gross investment, net investment,

1 performance income return on gross investment,
2 performance income return on net investment.

3 Q. Performance income return on gross investment?

4 A. Uh-huh.

5 Q. What is that calculation?

6 A. That would be performance income divided by
7 gross investment.

8 Q. And then it has performance income return on
9 net --

10 A. Net investment.

11 Q. -- investment.

12 And that's just -- what's the difference
13 between gross investment and net investment again?

14 A. I don't think it's again. I don't know if
15 we've discussed it.

16 Q. Oh, I'm sorry. I thought maybe --

17 A. My -- my assumption, in the way they presented
18 this, the gross investment must be the original invested
19 capital plus working capital; and net investment must
20 be, I assume, the depreciated net investment plus
21 working capital.

22 Q. What does that show the performance income
23 return on gross investment to be for '73?

24 A. Twenty-seven percent.

25 Q. And the performance income return in '74 on

1 gross investment?

2 A. Thirty-six.

3 Q. And in '75?

4 A. Thirty-one.

5 Q. And the performance income return on net
6 investment in '73?

7 A. Fifty-three.

8 Q. The performance income return on net investment
9 in '74?

10 A. 66.9.

11 Q. And the performance income return on net
12 investment 1975?

13 A. Sixty-five.

14 Q. Flat?

15 A. I'm sorry. 65.4.

16 Q. Okay.

17 How do those performance income return on net
18 investment figures compare to other products that you
19 were working with in the '70 through '75 period?

20 A. The performance on gross investment or net
21 investment or both?

22 Q. Well, let's -- let's start with gross
23 investment, performance income return on gross
24 investment. How do those percentages compare with other
25 products you were working with in 1970 through 1975,

1 focusing your attention particularly on the years '73,
2 '74, and '75?

3 A. They would have been generally in the range
4 that our entire profit center was running. Not
5 substantially higher, not substantially lower.

6 Q. Okay.

7 And when you're talking about your profit
8 center, you're talking about specialty fluids.

9 A. No. I'm talking about specialty products.
10 That would have been -- been more than just fluids.

11 Q. Okay.

12 All the specialty products group of the organic
13 division?

14 A. Yeah.

15 Q. What about the performance income return on net
16 investment? Directing your attention to '73 through '75,
17 how did those returns compare to the other products you
18 were working with in '73 through '75?

19 A. My memory would be likewise, that they would be
20 generally the way the entire unit was run. We had some
21 businesses that were worse and some businesses that were
22 better.

23 Q. All of those returns on net investment -- net
24 investment's when you take out the depreciation,
25 correct?

1 A. I -- in -- in looking at -- I'm not familiar or
2 have no memory of how we were doing performance income,
3 because I'm more familiar with net income; but I think
4 that's probably right.

5 Q. Yeah.

6 And what that means is you're actually taking
7 into account the amount of the capital investment that's
8 not already been depreciated in -- in your tax return,
9 correct?

10 A. I think that's right.

11 Q. And all of those numbers for each of those
12 years show a return in excess of 50 percent on the net
13 investment, correct?

14 A. Performance income, yes.

15 Q. And it's your recollection that that was
16 generally how Monsanto products in the specialty fluids
17 division or specialty division -- special products
18 division were running, over 50 percent?

19 A. On a performance income basis?

20 Q. Yes.

21 A. Yeah, because I'm having -- what I'm having to
22 do is, in my head, try to correlate that to net income
23 after tax return. And I think that's right.

24 Q. Well, if we look at this exhibit that you've
25 already done for us, Gossage Exhibit 3, there, you

1 correlated the relationship between performance income
2 and the net income after taxes at roughly one half --
3 the net income after taxes being rough one half of the
4 performance income.

5 A. That's correct.

6 Q. So, that would put -- and we don't have the
7 figure here; but if that relationship that you recall is
8 roughly correct, in 1973, you'd have a net income after
9 taxes of roughly 16 percent, correct?

10 MR. ANDREWS: Well, I don't think
11 that is a correct statement of his
12 testimony. These numbers that you're
13 showing him on Document 25403 have a -- a
14 heading of something called performance
15 income return on net investment. And I
16 don't think that is comparable to the
17 number on Exhibit 3 that you asked him to
18 do -- to speak about earlier.

19 Q. Maybe I wasn't clear.

20 There is a listing -- or you have calculated --
21 I'm sorry -- you have calculated for us the performance
22 income numbers from that exhibit, have you not?

23 A. On this exhibit?

24 Q. Yes.

25 A. Yes. I don't calculate them. They're sitting

1 here. They're right here in front of me. They read
2 3.0, 4.1, 3.9, compared to my estimate of 4.6, I guess,
3 for 1970.

4 Q. Well, the -- and let me make sure I'm -- I'm
5 clear. The percentage of performance income, as related
6 to sales for 1973, was 32.2 percent, correct?

7 A. I don't -- I don't know. I did not write them
8 down. Whatever I said, I guess, is what it was.

9 Q. Do you need to calculate -- I -- I wrote down
10 what you told me, and I believe you told me 32.2
11 percent.

12 A. Okay.

13 Q. And the relationship that you've indicated that
14 you think -- looking at Gossage Exhibit 3 -- that you
15 recall generally existing between performance income and
16 net income after taxes is 2 to 1?

17 A. That's what that shows, yes.

18 Q. So, that would indicate your estimate of the
19 general range, then, for the net income after taxes, as
20 a percentage of sales for 1973 for PCB products, would
21 be roughly 16 percent, correct?

22 MR. ANDREWS: Well, let me interject
23 the same objection. I -- I think you're
24 asking him to compare apples and oranges
25 again.

1 MR. LACEY: No, I'm not.

2 A. That's right.

3 Q. Okay. Fine. If you'll listen to the question,
4 they're -- they're very simple. They're not asking that
5 at all.

6 Now, you told me that the percentage of
7 performance income versus sales for 1974 was roughly
8 31.3 percent.

9 A. That's the number I gave you?

10 Q. That's what I've written down.

11 A. Okay.

12 Q. If you need to calculate it again, you --

13 A. No, no, no.

14 Q. -- can do it. I hope I wrote it down
15 correctly.

16 And based on that, then you would estimate the
17 net income after taxes to be approximately 15 and a half
18 percent, correct?

19 A. That sounds right.

20 Q. Okay.

21 And for 1975, I've written down that you
22 calculated performance income, as a percentage of sales,
23 at 28.8 percent.

24 Does that look about right?

25 A. Uh-huh.

1 Q. And that would put the net income after taxes
2 at roughly 14 percent, correct?

3 A. That's correct.

4 Q. Okay.

5 And are those numbers generally in line with
6 what you recall in the specialty products division of
7 Monsanto?

8 A. Yeah, I think so.

9 Q. Those numbers are such that they would justify
10 additional capital investment, are they not?

11 A. Well, I can't get to net income return on
12 capital from performance income return on capital; so,
13 I -- I -- I'm not sure. Maybe. I'm not sure.

14 What number are you referring to there?

15 Q. Well, what I was looking at here, if you're
16 getting a performance income return on gross investment
17 of between 27 and 31 -- or 27 and 36 percent during this
18 period of time, that certainly would suggest the real
19 possibility that you may be able to expend additional
20 capital and still have an acceptable return on
21 investment, doesn't it?

22 A. As I say, capital decisions are based upon net
23 income return on capital. And I -- I can't get from the
24 number that you've got there to net income return on
25 capital.

1 Q. I see.

2 Well, if the number -- if performance income
3 return on gross investment was 2 percent, we'd know we'd
4 be out, wouldn't we?

5 A. Yes.

6 Q. I mean, there's some numbers that just are
7 clearly not in the ballpark; and you might as well not
8 bother to make the calculation.

9 A. That's correct.

10 Q. These numbers are clearly ones that may well be
11 in the ballpark if you do the additional calculations --

12 A. Probably.

13 Q. -- correct?

14 A. Yeah, in the ballpark.

15 Q. And, unfortunately, that document doesn't give
16 us enough information to do the other calculations.
17 There are some documents behind it. I don't know
18 that -- are those of any help in helping you figure that
19 out?

20 A. I don't think so.

21 No.

22 Q. Okay.

23 I found another piece of paper here --

24 FREEMAN: Can you -- can we take a
25 short break?

1 MR. LACEY: Sure.

2 (RECESS)

3 BY MR. LACEY:

4 Q. I've got another piece of paper here, 25501 to
5 502. Is this of any help?

6 A. Yeah.

7 Q. And I just really can't make out for sure what
8 this is. Is that of any help to us in figuring out
9 anything about PCB sales and profits and the like
10 (tendering)?

11 A. Can I see that last one that you...

12 Q. Yes. I'm handing you back 25402 through 406
13 (tendering).

14 A. Well, the earlier data was the domestic and
15 U.S. export sales for the time period we have just
16 discussed. This new document --

17 Q. Let me stop and ask you: When you say "earlier
18 data," you talking about the ones that had '73, '74, and
19 '75?

20 A. That's correct.

21 Q. Was for United States production?

22 A. Yes.

23 Q. Okay. And --

24 A. This latest document appears to be the Newport,
25 United Kingdom, production site --

1 Q. Okay.

2 A. -- and the sales and so forth out of that. And
3 this, by the way, is a worldwide number; so, we've got
4 worldwide that you're comparing to domestic. And now
5 you're giving me actual U.S. So --

6 Q. Well, I'm just trying --

7 A. -- these numbers aren't comparable.

8 Q. Okay.

9 I'm just trying to find out what I can come up
10 with from --

11 A. I understand.

12 Q. -- these documents and see what we got.

13 A. I understand.

14 Q. They're kind of scattered all over the lot
15 here.

16 Let me stop for a minute and ask you to look
17 at -- before we get away from the '73, '74, '75 numbers,
18 ask you to take a look at the 10K's for '73, '74, '75
19 and see what we can determine about the overall
20 Monsanto -- I guess we can't figure out performance
21 income, but at least the gross profit numbers and the
22 net income after taxes.

23 In 1973, you had indicated you calculated from
24 the earlier document, which was the U.S. production, a
25 gross profit for PCBs of 37.9 percent. Can you

1 determine what the gross profit for Monsanto overall in
2 1973 was?

3 A. I can calculate what the gross profit as
4 reported on this document is. It is not comparable.

5 Q. I see.

6 A. You want me to make that calculation?

7 Q. Yes, I do.

8 A. Twenty-eight percent.

9 Q. And what was the net income after taxes in 1973
10 for Monsanto overall?

11 A. The percentage?

12 Q. Yes.

13 A. Eight point -- well, 9 percent, 8.99,
14 9 percent.

15 Q. Okay.

16 Now, the reason you say that there -- there's
17 not a perfect relationship at all between what was
18 reported to the SEC and what was in this internal
19 document is because there's some difference in the
20 accounting systems?

21 A. You use different accounting systems for
22 external reporting than internal reporting.

23 Q. Why does Monsanto keep two different types of
24 accounting systems?

25 A. All companies do.

1 Q. Well, why does Monsanto?

2 A. I don't know. You'd have to ask our accounting
3 people that question.

4 Q. I see.

5 Which books do you use when you make decisions
6 about setting prices and the like?

7 A. The ones that I just calculated for you.

8 Q. I see.

9 Do you know whether or not there's any
10 difference between the way in which sales are calculated
11 on the two sets of books?

12 A. I do not know whether there are -- there is or
13 isn't.

14 Q. Okay.

15 Do you know whether or not there's any
16 difference in the way in which cost of goods sold are
17 calculated for the two systems?

18 A. I think so, because I think depreciation is
19 handled differently in the two; but I'm not sure.

20 Q. Is depreciation a factor in cost of goods sold?

21 A. Yes, it is.

22 Q. Do you know whether or not there is some
23 difference in the way in which the amount of money or
24 profit made after taxes is calculated for the two books?

25 A. I -- again, I do not know; but I think so.

1 Q. Well, in fact, net profit after taxes is how
2 much profit you've got left over after you pay Uncle Sam
3 his share, isn't it?

4 A. It's how much you report; that's correct.

5 Q. And -- and that's the bottom line of what
6 you -- what you have to pay Uncle Sam and what you have
7 left, right?

8 A. That's correct.

9 Q. How do you wind up with two different sets of
10 books on that?

11 A. Because this is a very small part of Monsanto
12 total and we use certain accounting principles and
13 practices to make these calculations to run our
14 day-to-day business and we do not use the formal
15 accounting systems that are necessary to report our
16 year-end earnings. There's no correlation between the
17 two.

18 Q. Well, which way do you report things to
19 shareholders?

20 A. The shareholders, I believe, receive the 10K
21 report.

22 Q. I see. Okay.

23 Now, would you make the calculations for me on
24 1974, the gross profit as reported to the Securities and
25 Exchange Commission.

1 MR. ANDREWS: Just for purposes of
2 the record, I'd like to lodge an objection
3 to the continued calculations of this
4 based on relevancy, especially in view of
5 the Witness' most recent testimony.

6 A. What number do you want?

7 Q. The gross profit for all Monsanto products in
8 1974.

9 A. Twenty-seven percent, 27.1 -- 27.2.

10 Q. Okay.

11 And the net income after taxes?

12 A. 9.2.

13 Q. And this is for 1974, correct?

14 A. That's correct.

15 Q. Okay.

16 So, that's the overall net profit or net income
17 after taxes as reported, was 9.2 percent of sales for
18 the 10K?

19 A. By this methodology as compared to the 10
20 percent for our business by our methodology.

21 Q. Well, actually, the 1974 number you calculated,
22 if I wrote it down correctly, was 15.5 percent. You've
23 used a '70 number here.

24 A. Oh, that's right.

25 Q. But --

1 A. I was just comparing it to my pro forma
2 statement.

3 Q. Right.

4 Now, going to 1970 --

5 A. I don't -- do they have net income over there?

6 Q. No. You told me that net income was
7 approximately one half of performance income.

8 A. No. I told you -- you drew that comparison
9 from this data. I don't know whether it's true for
10 every year every year.

11 Q. Well, let me just ask about that.

12 I thought you told me that, generally, net
13 income after taxes was approximately one half --

14 A. I said by these calculations --

15 Q. -- of performance income.

16 A. -- that's what it would be.

17 Q. Well, is that the general relationship?

18 MR. ANDREWS: Remember my --

19 A. That's the relationship here.

20 MR. ANDREWS: Remember my objection
21 based on apples and oranges and everybody
22 shouted me down? Turns out I was right.

23 A. I can't tell you every year, for example, that
24 the corporate charges were the same percentage. They go
25 up; they go down. Taxes go up; taxes go down.

1 Q. I see.

2 You have no idea of the relationship between
3 the two?

4 A. I can't give you a -- a -- a formula by which
5 to get from one to the other in any given year.

6 Q. I see.

7 Let me ask you to do the calculation for 1975
8 now. Can you calculate what the gross profit overall
9 for Monsanto was in 1975, according to the 10K?

10 A. So far, I haven't been able to find it on a
11 corresponding table. Looks like they went to a
12 different kind of format. I'll try again.

13 Q. Okay.

14 A. And I don't see it reported in that format on
15 this report.

16 Q. I see.

17 I direct your attention to Page 24092, and see
18 if that provides you with the information that you need.

19 Does that provide you with what you need to
20 give me the information?

21 A. 1975, I think I can do it, that...

22 27.8 percent.

23 Q. Okay.

24 And can you calculate for me the percentage
25 that represents net income after taxes as a percentage

1 of sales.

2 A. 8.4 percent.

3 Q. Okay. Let me get those documents back, the
4 10K's from '70 through '75. I'll put them over here.

5 Within Monsanto, what does the term "franchise"
6 mean?

7 A. It means a market leadership position.

8 Q. Is every product a franchise or...

9 A. No.

10 Q. Okay.

11 Well, what's the difference between that
12 product which is a franchise and that which is not?

13 A. A franchise is a product that we would identify
14 as one in which we had a market leadership position; and
15 a business which is not a franchise, therefore, is a
16 business where we do not have a market leadership
17 position.

18 Q. How do you tell if you have a market
19 leadership position?

20 A. By calculating your relative market share to
21 your competition.

22 Q. Okay.

23 And what does it take to qualify as a
24 franchise? If you've got 10 percent of the market, is
25 that a franchise?

1 A. It would depend upon who the other competitors
2 are and how big they are. Generally, if you're the
3 largest in the industry, that could be a hundred percent
4 market position; or it could be, in some cases, a 10
5 percent market position.

6 If you're clearly the leader, as compared to
7 your competition, then you have a franchise --

8 Q. Okay.

9 A. -- by our definition of the term.

10 Q. Okay. That -- that's fine. I think I
11 understand.

12 Did Monsanto have a franchise in most of its
13 specialty products, as Monsanto used that term?

14 A. Not in all. In some. Most -- I wouldn't say
15 in most. In many of them, not most.

16 Q. Franchises wouldn't be limited to products in
17 which Monsanto was the sole U.S. manufacturer, would it?

18 A. That's correct; it would not.

19 Q. How many different franchises did Monsanto have
20 among the specialty products group that you were over?

21 A. Well, in looking back on it, if we used those
22 terms at that time, I would have called our heat
23 transfer business a franchise.

24 Q. Was that --

25 A. But I --

1 Q. Was that PCB or any heat transfer?

2 A. In total.

3 Q. Okay.

4 A. Our dielectric business was a franchise. Our
5 carbonless paper business was a franchise. I would not
6 call our industrial fluids a franchise. I would not
7 have called our paper chemicals a franchise, and I would
8 not have called a number of the lesser products a
9 franchise.

10 Q. The term "franchise" could also be applied to
11 the entirety of Monsanto's PCB business, could it not?

12 A. Yes, if it were -- if you were to choose to use
13 that term for that purpose, yes.

14 Q. Okay.

15 Another name for PCBs were Aroclor, was it not?

16 A. For certain applications in the dielectric
17 field, Aroclor was the generic term used.

18 Q. Would you agree that Monsanto's position in the
19 Aroclor market was a franchise?

20 A. Yes, in the United States.

21 Q. What about the world?

22 A. Well, there were certainly certain markets
23 around the world that we did not have the leadership
24 position in. We did have the leadership position,
25 obviously, in the United States, as we were the only

1 producer.

2 Q. Worldwide, did you have the leadership position
3 versus all others?

4 A. Probably.

5 Q. In fact, didn't Monsanto produce more than 50
6 percent of all the PCBs produced in the entire world?

7 A. I don't remember.

8 Q. Let me show you a document, Page 27677, which
9 has some general information on Monsanto's worldwide
10 Aroclor business (tendering).

11 Have you found the page I was referring to?

12 A. Uh-huh.

13 Q. You see on that page the designation M slash I?

14 A. Yes.

15 Q. M slash I indicates the percentage of the
16 entire world market that Monsanto has, does it not?

17 A. That's correct.

18 Q. Monsanto had 62 percent of the entire PCB
19 market worldwide, did it not?

20 A. That's what this says here. I don't know what
21 year this is or -- I -- there's no date on it that I see
22 so far. But that's what this would indicate at this
23 particular point in time.

24 Q. I believe that's a 1969 document.

25 A. I see a '70 budget shown here; so, it could

1 have been in '69 or '70.

2 Q. Does that seem about right to you?

3 A. What, the --

4 Q. That Monsanto had 62 percent of the entire
5 world market for PCBs in the late sixties.

6 A. That's what this reports.

7 Q. Well, is that consistent with your --

8 A. I have no reason to doubt it. I think that's
9 probably right.

10 Q. Would that make Monsanto a franchise person
11 vis-a-vis worldwide production?

12 A. Yes.

13 Q. Okay.

14 Is it generally true that those products in
15 which Monsanto has a franchise tend to be more
16 profitable than those in which it does not?

17 A. Generally, the market leader -- well,
18 generally, the market leader should be more profitable
19 than -- than others in that field.

20 Q. Okay.

21 And is it also generally true that fields in
22 which one is a market leader tend to have a higher
23 profitability than fields in which one is just a member
24 of the pack?

25 A. Generally, that's true.

1 Q. Okay.

2 So that fields in which Monsanto had franchises
3 generally would be expected to be more profitable parts
4 of its business than those portions of the business in
5 which it was one of the pack, correct?

6 A. Well, not -- not always, because --

7 Q. I didn't ask always. I asked generally.

8 A. Well, but I -- we have to talk about the
9 breadth of Monsanto's products, from commodities to
10 specialties. I can be a -- a market leader and have a
11 franchise in a commodity and be far less profitable than
12 I am in a specialty business where I am second, third,
13 or tenth.

14 Q. Well, let me -- let me get that nailed down,
15 then.

16 When we talk about a commodity in the chemical
17 business, we're talking about something that is -- tends
18 to be like a generic product, correct?

19 A. Correct.

20 Q. And, for example, methanol is a commodity-type
21 chemical.

22 A. That could be classified as such.

23 Q. And -- and I know gasoline is not something
24 Monsanto made and might not even characterized it as a
25 chemical, but gasoline would be a commodity-type

1 product?

2 A. That's correct.

3 Q. On the other hand, at the other end of that
4 spectrum, something like PCBs would not be considered a
5 commodity-type product, correct?

6 A. Well, it would not be a commodity like
7 methanol; but it is still a generic product. Our -- our
8 Aroclor was -- or our PCBs was just like our
9 competitors' PCBs.

10 Q. I understand.

11 But it's not a commodity product in the sense
12 that there are 10 or 12 people manufacturing it in the
13 United States, for example.

14 A. That's right. There are far fewer producers in
15 that -- in that use of -- of commodities. It would not
16 be a commodity. It would be something different than
17 that.

18 Q. And, in fact, that's why the PCB production and
19 sales were generally in the specialty products division
20 of the organic chemical company, correct?

21 A. Well, the -- the product existed before they
22 put a name on the organization. But they looked around
23 at the products that were in this group; and they said,
24 "We'll call it specialties," because there are a bunch
25 of different kinds of products with different kind of

1 applications.

2 Q. And PCBs properly fit in that specialty group.

3 A. Yes.

4 Q. Okay.

5 Now, one could have 30 percent of the methanol
6 market and be the -- or have a franchise in that market.
7 And if I understand what you're telling me, even if you
8 had a franchise in a commodity market like methanol,
9 that might not necessarily indicate that would be a area
10 where the per sale profit is particularly higher than
11 general run-of-the-mill profit, correct?

12 A. It could be. Could be -- may or may not be.

13 Q. Okay.

14 A. But if I had 30 percent of the methanol market
15 and the next largest producer had 1 percent, I would
16 expect to have higher profits than if the next higher
17 producer had 29 percent.

18 Q. Certainly.

19 If I understand your testimony correctly,
20 though, in the commodity markets, having a franchise --
21 that is, being the largest producer -- is not as likely
22 to result in higher than run-of-the-mill profits than if
23 you have a franchise in a specialty product.

24 A. That's fair.

25 Q. Okay.

1 Now, Monsanto had a franchise in PCBs, did it
2 not?

3 A. Yes.

4 Q. And one would expect generally, as the holder
5 of a franchise, as Monsanto uses that term, in PCBs,
6 that that particular product would tend to be more
7 profitable than Monsanto's products generally, correct?

8 A. That's correct.

9 Q. And that was true, was it not?

10 A. I don't have a direct comparison of that; but,
11 I -- yeah, I would -- I would think it probably was
12 higher than our total portfolio of products.

13 Q. Okay.

14 A. But it was better than some, worse than some
15 others.

16 Q. Surely.

17 And one would also expect that, generally, all
18 the products or most of the products in which Monsanto
19 had a franchise, especially specialty products, would
20 tend to be better performers profitwise than the general
21 products that Monsanto didn't have a franchise in,
22 correct?

23 A. That's correct.

24 Q. And, so, if we then look at the group of
25 products in which Monsanto had a franchise, especially

1 specialty products and, in particular, if a product were
2 a very high performer in that group, we would likely be
3 looking at one of the best performing chemicals in all
4 of Monsanto, wouldn't we?

5 A. Yes.

6 Q. Okay.

7 Would you agree with me that Monsanto's market
8 for Aroclors, by 1969, had grown to one of its, quote,
9 most profitable franchises, close quote?

10 A. I was not involved in the business in '69, and
11 I have no memory of what its profit was. But that -- if
12 that statement is made and if it's true, it would
13 surprise me.

14 Q. It would surprise you?

15 A. Yeah.

16 Q. Okay.

17 So, your general recollection is that PCBs were
18 not one of Monsanto's more profitable franchises; is
19 that correct?

20 A. My -- during the period of time that I had
21 responsibility for it, I did not perceive it to be one
22 of the most profitable products in Monsanto.

23 Q. Okay.

24 Let me show you a Document 25 -- in fact --

25 MR. LACEY: Do you need to take a

1 tape change here? Let's take a tape
2 change right now.

3 (RECESS)

4 BY MR. LACEY:

5 Q. I want to show you a document, 25419 through
6 25424. This is a document of which you got a copy
7 during your tenure as a person responsible for the
8 specialty fluids, as marketing director from '70 to '75,
9 correct?

10 A. That's right.

11 Q. And that document has attached to it
12 information on the profitability of PCB or the financial
13 results with regard to PCBs in 1969 and 1973, does it
14 not?

15 A. Sales, gross profit, and net income.

16 Q. Now, can you determine what the gross profit
17 percentage for Monsanto's PCB production in 1969 was for
18 me?

19 A. Well, it looks like, from this table, 1969
20 shows the sales and gross profit of PCBs.

21 Q. Yes.

22 A. The 1973 column appears to be the PCBs and
23 replacement products --

24 Q. Yes. I asked about --

25 A. -- some of which -- some of which are PCBs and

1 some of which are not.

2 Q. Yeah. I only asked about '69. I'm
3 interested --

4 A. Okay.

5 Q. -- in the gross profit --

6 A. Okay.

7 Q. -- in 1969 on PCBs.

8 A. On all PCBs?

9 Q. Yes.

10 A. Okay. Yeah, that's okay.

11 43.7 percent.

12 Q. Okay.

13 And you can also determine from that, can you
14 not, the net income as a percentage of sales for 1969
15 for PCBs?

16 A. Yes.

17 11.5 percent.

18 Q. Okay.

19 And that is the net income versus the sales?

20 A. That's correct.

21 Q. Okay.

22 Now, assuming that PCBs or Aroclors were one of
23 Monsanto's most profitable franchises in 1969 --

24 A. I can't assume that.

25 Q. No. But I'm going to ask you to assume that.

1 A. Okay.

2 Q. Can you -- can you do that for me?

3 A. I'll try.

4 Q. Okay. I'm going to ask you to assume that.

5 A. Okay.

6 Q. Assuming that, in 1969, Aroclors or PCBs were
7 one of Monsanto's most profitable franchises, then this
8 43.7 percent gross profit figure would give us some idea
9 of what a very profitable franchise would produce by way
10 of gross profit, would it not?

11 A. Not necessarily.

12 Q. I see.

13 Well, if -- if PCBs were one of Monsanto's most
14 profitable franchises in 1969, what would be an
15 appropriate gross profit percentage that would indicate
16 to you a profitable franchise?

17 A. Well, I'm not sure that we can deal with it on
18 a gross profit basis, because MAT and other costs that
19 come below gross profit can be entirely different from
20 one group to another. But if you just want me to tell
21 you what's the range of gross profits in that time
22 period that -- that -- that I would have memory of,
23 there were gross profits that could be 70, 80, 90
24 percent that were obviously very attractive businesses.
25 And there were gross profits that were 25, 30 percent

1 that were attractive franchises.

2 Q. I see.

3 Well, let's go to net income. Is net income a
4 better determinate of a profitable franchise?

5 A. I think it would be more representative of the
6 total performance of the business.

7 Q. All right.

8 And assuming that Monsanto's production of PCBs
9 or Aroclors were one of Monsanto's most profitable
10 franchises in 1969, then the 11.5 percent net income on
11 PCBs in 1969 would give us some indication of what a
12 very profitable franchise would produce, would it not?

13 A. No.

14 Q. Why not?

15 A. Well, in my opinion, that's very low for -- for
16 a franchise for a Monsanto business.

17 Q. So, if someone was stating that Monsanto's
18 Aroclor or PCB production was one of its most profitable
19 franchises in 1969, you wouldn't feel that was borne out
20 by the numbers that you have for 1969 performance; is
21 that correct?

22 A. I would not see those as being terribly
23 attractive numbers for a -- for an outstanding
24 profitable product at that time.

25 Q. How would they be representative of Monsanto

1 products generally? Are they pretty attractive numbers?

2 A. I would say they're -- they are acceptable
3 numbers. They're attractive. They're in the middle of
4 the range, maybe slightly on the high side of the middle
5 of the range, my perception of what the distribution of
6 profitability was -- not in 1969, because I didn't have
7 the data --

8 Q. Uh-huh.

9 A. -- but in '70, '71, the time period where I had
10 more access to profit numbers.

11 Q. I see.

12 So, you really aren't in a position to say
13 whether the results in 1969 are or not consistent with
14 PCBs being one of Monsanto's most profitable franchises?

15 A. I have no access to the profitability of
16 Monsanto's businesses in 1969.

17 Q. Okay. Or in years preceding?

18 A. Correct.

19 Q. Just by way of observation, did you understand
20 that I was interested in the profitability of PCBs at
21 Monsanto, vis-a-vis other products, not just for the
22 years that you were the manager of the specialty fluids
23 group, but generally?

24 A. I have -- I have no clear perception, other
25 than what that paragraph reads.

1 Q. Well, I guess my question to you is whether you
2 understood the Notice to be limited to the years 1970
3 through '75.

4 A. It really doesn't say.

5 Q. Doesn't say that at all, does it?

6 A. No.

7 Q. But that's the only period you can offer any
8 information about at all, is '70 through '75; is that
9 correct?

10 A. That's the only direct involvement I had, as I
11 have testified, which was 1970 to 1975.

12 Q. Well --

13 A. That's when I was in charge and would have been
14 involved in pricing.

15 Q. Yeah.

16 My question to you is whether or not you can
17 provide us with any assistance about pricing or
18 profitability in periods other than when you were
19 directly involved.

20 MR. ANDREWS: Mr. Lacey, if you were
21 really serious about that question, I
22 don't think you would have wasted two
23 hours asking him about 1969.

24 Q. Can you answer my question?

25 A. What was your question?

1 Q. My question was: You really can't provide us
2 any assistance at all, then, from what you know, about
3 pricing for PCBs in the 1950's or profitability in the
4 1950's, pricing and profitability in the 1960's; is that
5 correct?

6 A. I can provided you no specific information on
7 the pricing policies or the profitability of products at
8 a given point in time, '69 or other.

9 Q. Okay.

10 Now, let me ask you to look on through that
11 document. There are some graphs or charts that
12 demonstrate the relative gross profit and profitability
13 between 1969 and 1973 for certain aspects of Monsanto's
14 business, are there not?

15 A. What was your question again?

16 Q. There are charts, or graphs -- actually, I
17 guess they would probably be called bar graphs, aren't
18 there?

19 A. These are bar graphs

20 Q. -- that demonstrate the relative profitability
21 of certain aspects of Monsanto's business in 1969 versus
22 1973; is that correct?

23 A. No. They specifically merely are graph charts
24 of the table that we've previously discussed, that show
25 the sales --

1 Q. Yes.

2 A. -- the gross profit --

3 Q. Yes.

4 A. -- and the net income of the PCB products in
5 1969 as compared to the PCB and replacement products for
6 those same family of products in 1973.

7 Q. Okay. Now, let me see if I can make my
8 question clear.

9 Looking at those bar graphs, one can compare
10 the percentage of gross profit. Do they have
11 percentages on them?

12 A. No.

13 Q. Just absolute dollars?

14 A. Correct.

15 Q. One can compare the absolute dollars of gross
16 profit for PCBs sold as dielectric fluids in 1969 versus
17 PCBs sold as dielectric fluid in 1973, correct?

18 A. No. They show PCBs and other replacement
19 products in 1973; so, it isn't a direct comparison.

20 Q. Monsanto hadn't sold any replacement
21 dielectrics fluids that didn't contain PCBs --

22 A. Are you speaking --

23 Q. -- in 1973, had they?

24 A. -- specifically dielectric fluid --

25 Q. Yes. I'm sorry.

1 A. Oh. I'm sorry.

2 Q. I asked about dielectrics.

3 A. All right. Would you --

4 Q. Let me rephrase the question for you.

5 A. Okay.

6 Q. Looking at that chart, one can compare the
7 gross profit that Monsanto made on its PCB dielectric
8 fluids in 1969 with the gross profit it made on its PCB
9 dielectric fluids in 1973, can't they?

10 A. On a worldwide basis, that's what the chart
11 represents.

12 Q. And Monsanto made more gross profit on its PCB
13 dielectric fluids in 1973 than it did in 1969; isn't
14 that correct?

15 A. In absolute terms, that's correct, on a
16 worldwide basis.

17 Q. Okay.

18 One can also look at that group of charts and
19 compare the net income for PCB dielectric fluids between
20 1969 and 1963, can they not?

21 A. Yes.

22 Q. And that chart and the tables demonstrate that
23 Monsanto made more dollars of net income on its PCB
24 dielectric fluids in 1973 than it did in 1969; isn't
25 that correct?

1 A. Yes, as it does also show that its sales in
2 1973 for those products were substantially more than
3 they were in 1969.

4 Q. Okay.

5 A. Just by looking at the charts, I would conclude
6 that the gross profit margin was -- was not higher and
7 maybe not as high in 1973.

8 Q. Well, can you calculate the gross profit margin
9 on Monsanto's PCB dielectric fluids in 1969?

10 A. On a worldwide basis, this would represent it
11 to be 41.8 percent in 1969.

12 Q. For dielectrics, correct?

13 A. For dielectrics alone.

14 Q. Right.

15 A. And in 1973, 37.9 percent.

16 Q. Okay.

17 And what about the net income for PCB
18 dielectrics computed between 1969 and 1973?

19 A. It was 11.2 percent in 1969.

20 Q. And in 1973?

21 A. And 10.1 percent --

22 Q. Okay.

23 A. -- in 1973.

24 Q. So, in the four years, or three -- which would
25 you count between '69 and '73, three or four years by

1 your count?

2 A. Four years.

3 Q. Okay.

4 In the four years between 1969 and 1973, with
5 regard to Monsanto's PCB dielectric products, the actual
6 dollars of gross income had gone up, correct?

7 A. In absolute terms.

8 Q. The actual dollars of net income had gone up,
9 correct?

10 A. Correct.

11 Q. And the percentage of gross profit had fallen
12 by 3.1 percent; is that correct?

13 A. That's correct. Well, I -- I'm sure that you
14 subtracted those two numbers. I think they're accurate.

15 Q. Actually, it's 41.8 to 37.9. We shouldn't be
16 so sure about my subtraction.

17 A. Well, do I have to do that for you?

18 Q. Well, in my head, I wouldn't want to count on
19 it.

20 A. Forty-one point --

21 Q. Eight minus 37.9.

22 A. Minus 37.9. The calculator would determine
23 that to be 3.9 points.

24 Q. 3.9. Okay. Good what you did.

25 Okay. The gross profit had fallen by 3.9

1 percent or less than 10 percent, correct?

2 A. Yes.

3 Q. And the net income had fallen by 1.1 percent.

4 I'm pretty sure about that, 11.2 minus 10.1.

5 A. Very good.

6 Q. And that's also less than 10 percent.

7 A. Correct.

8 Q. And to the extent that -- and I know you don't
9 necessarily agree with this -- but to the extent that,
10 in 1969, PCBs represented one of Monsanto's most
11 profitable franchises, they still had a very nice profit
12 position in 1973, did they not, as used in dielectrics?

13 A. Well, I -- I can't confirm that whole chain of
14 thought, because I do not consider it to be an
15 outstanding product in 1969; nor do I consider it in
16 '73.

17 Q. I understand, but let me ask you again.

18 If Monsanto's PCB production was one of its
19 most profitable franchises in 1969 -- and I know you
20 don't accept that -- but if that were true, then its
21 performance in 1973 is still very good, isn't it?

22 A. Its PCBs in 1969 and its dielectrics in 1973?

23 Q. Which are the only PCBs it has, aren't they?

24 A. Well, in 1969, it would appear that of all the
25 PCBs, we were making \$2.4 million of net income in '69.

1 And in 1973, it had deteriorated to \$1.1 million; or
2 more than half of that had disappeared in that time
3 period.

4 Q. Because you quit selling PCBs for certain
5 purposes?

6 A. That's right. But I thought that was the
7 comparison you were drawing.

8 Q. No. I was trying to -- well, let me make it
9 clear. I mean, however you want to do it is fine with
10 me.

11 What I'm trying to establish: If I understand
12 correctly from what you've given me, Monsanto's gross
13 profit percentage on all of its PCB products in 1969 was
14 43.7 percent.

15 A. (Nodding head)

16 Q. It's gross profit percentage on PCBs as
17 dielectrics specifically was 41.8 percent in 1969.

18 A. Uh-huh.

19 Q. And its net income on PCBs for dielectrics was
20 11.2 percent versus a net income on all PCBs of 11.5
21 percent in 1969.

22 In 1973, the profit margin on dielectrics,
23 which were the only PCBs being manufactured, was 37.9
24 percent gross profit and a net income of 10.1 percent.
25 Those are the numbers that -- that we've established

1 from the chart, correct?

2 A. That's the numbers.

3 Q. Now, if the 1969 numbers represent one of
4 Monsanto's most profitable franchises, then PCBs are
5 still a very good performer in 1973, are they not?

6 A. I can't handle that question, because I can't
7 accept the premise you're starting from.

8 Q. Okay.

9 But if that's --

10 A. No. No. No. No.

11 Q. Well, let me ask you this: Do you have any
12 idea -- let's try it another way.

13 Do you know what the Corporate Development
14 Committee of Monsanto is?

15 A. Uh-huh.

16 Q. What is that group?

17 A. What was that group at that time?

18 Q. Yes.

19 A. It was a group of the corporate officers, some
20 of the corporate officers, that met on a regular basis
21 and reviewed some projects, some capital programs,
22 and -- and took certain decisions.

23 Q. That group has changed its name over the years,
24 hasn't it?

25 A. It's had different names, yes.

1 Q. It was known in the 19 -- late sixties and
2 early seventies as the Corporate Development Committee,
3 correct?

4 A. That's correct.

5 Q. And then changed its name to, what, the
6 Corporate Administrative Committee?

7 A. Yes.

8 Q. And what's the current name today?

9 A. Well, the Corporate Administrative Committee
10 was disbanded in 1986.

11 Q. I see.

12 A. And there hasn't really been any replacement
13 for that.

14 Q. I see.

15 A. There are different committees performing some
16 of the functions that was previously performed, because
17 they were committees that were in existence at the time
18 the CAC was in...

19 Q. Okay.

20 The Corporate Development Committee consisted
21 of very high level employees of Monsanto, did it not?

22 A. That's correct.

23 Q. And people who made presentations to that
24 committee had a habit of getting their facts and figures
25 right before they went in there, didn't they?

1 A. I don't know. I wasn't participating on that
2 committee.

3 Q. You never made a presentation to the committee?

4 A. To which committee?

5 Q. The Corporate Development Committee or the
6 Corporate Administrative Committee, its successor.

7 A. Well, I was at one time on the Corporate
8 Administrative Committee, until it was disbanded.

9 Q. Yes.

10 A. Did I make a presentation to the Corporate
11 Development Committee? I don't think so.

12 Q. All right. Let me just -- I want to be real
13 clear.

14 You are one of the top ten officers of
15 Monsanto, are you not?

16 A. Today?

17 Q. Yes.

18 A. I -- I haven't calculated the number. I don't
19 know whether I'd put myself in that category or not.
20 I'm an officer of the company.

21 Q. Well, I looked on the 1986; and I know of -- we
22 don't -- we haven't got the '87 annual report, yet. Or,
23 actually, I guess I was looking at the 10K. And, in
24 fact, I believe it has appended to it a copy of the 1986
25 annual report, which has attached to it a list of the

1 officers of the company, at Page 40 of the annual
2 report, Document 24804. And I sort of assumed that list
3 started at the top of the heap and worked its way
4 down --

5 A. Well, that's --

6 Q. -- starting with the chairman of the board.

7 A. That's a misconception on your part.

8 Q. I see.

9 A. There is -- certainly it lists the chairman of
10 the board first.

11 Q. This -- then lists the president?

12 A. Then lists -- it lists the president next.

13 Q. Uh-huh.

14 A. Then the executive vice-presidents and then
15 some corporate senior vice-presidents and so on down the
16 list. But I have no information that would place me in
17 the top ten of those officers. I don't think that, when
18 you get down to where I am on the list, if I am
19 No. 10 -- and I've never counted down the list -- it
20 doesn't --

21 Q. I see. I think --

22 A. That doesn't mean I'm the tenth.

23 In fact, the person directly below me is my
24 boss; so, I would not suggest that this is in any order,
25 other than alphabetical, within the different

1 categories.

2 Q. Well, but actually, if we go down the
3 categories to the category that you're listed in, there
4 are ten people, are there not?

5 A. No. There are two.

6 Q. No. I'm talking -- coming from the top,
7 starting with the -- the chairman of the board and going
8 down to the category level that you're in...

9 A. Looks like eight.

10 Q. Including your category?

11 A. Ten including my category.

12 Q. Okay. There are ten people.

13 The category below you are people who report to
14 your category or above, correct?

15 A. No. Or above?

16 Q. Or above?

17 A. Yes. There are some of the vice-presidents
18 that I see in the next category below me that reports to
19 the chief executive officer.

20 Q. I see.

21 But you don't report to any people in the
22 category below you, do you?

23 A. No. I report -- I report to someone in the
24 same -- in the same category as me.

25 Q. Somebody in that first ten?

1 A. I report to somebody in that first ten.

2 Q. And would you agree with me, everybody listed
3 after that first ten holds a lower position in Monsanto
4 than your position?

5 A. No, I could not make that statement.

6 Q. I see. Okay.

7 Well, do you think you're in the top hundred
8 folks there at Monsanto?

9 A. I'd hope so, yes.

10 Q. Okay.

11 Now, as a member of the Corporate
12 Administrative Committee, did you ever observe that
13 people who came to make presentations to a committee of
14 a body of that -- filled with that many important people
15 worked real hard to get a real polished presentation,
16 got their facts correct before they came in there?

17 A. Well, I experienced a number of presentations
18 where, at least in my opinion, their facts were not
19 correct.

20 Q. I see.

21 People just sort of shoot from the hip type
22 thing?

23 A. I would hope not very often, but I have seen
24 such presentations.

25 Q. I see.

1 So, your opinion is that the fact that people
2 make presentations to the Corporate Administrative
3 Committee doesn't suggest to you that somebody's worked
4 pretty hard to get it right and had the correct facts
5 before the company before decisions being made?

6 A. Well, there were a mixture of statements in
7 there, all of which I wouldn't agree with. But if the
8 intent is that -- and I'm sure that most people try to
9 come before the CAC to make a -- a presentation to that
10 group to either inform them of something or to ask
11 approval for something. And certainly, when they're
12 asking approval for something, it is not uncommon that
13 they will -- will have a slightly slanted view of the --
14 of the information they're presenting. That's -- that's
15 normal salesmanship.

16 Q. Oh. Okay. Well, let me ask you about that.
17 I'm interested in that.

18 You mean that people may have a way they want
19 the corporation to go and they will slant their
20 presentation to get those corporate officers to make the
21 decision that they want made? Is that what you're
22 saying?

23 A. I'm saying that I have -- it has been my
24 opinion that that has taken place.

25 Q. I see.

1 How can you sort out the situations where that
2 has happened from the ones where it's been a different
3 type of evenhanded presentation?

4 A. I don't think you always can. It depends upon
5 your -- your knowledge base in listening the
6 presentation.

7 Q. I see.

8 Would you consider the profit margins that we
9 have found on Monsanto's PCB production, which was only
10 being used for dielectric fluids in 1973, to be a good
11 return?

12 A. No.

13 Q. Well, what --

14 A. Well, wait a minute. Good --

15 Q. Yeah, a good return.

16 A. An adequate return. I don't -- how -- how
17 superlative is good to you? Not an excellent return.

18 Q. I didn't say "excellent." I said "good."

19 A. I -- I felt that we were performing pretty
20 well.

21 Q. Well, in fact, the return that was received by
22 Monsanto on its PCB sales for dielectrics in 1973 was
23 dependent upon what you and Mr. Bergen and Mr. Benignus
24 decided to price the products at, wasn't it?

25 A. Certainly 1973 reflects the year that I was

1 responsible for the pricing.

2 Q. And, so, whatever rate of return we see there,
3 at least as far as the pricing component goes, reflects
4 what you were responsible for.

5 A. Well, there isn't a rate of return expressed
6 here; but in terms of -- of its percentage of
7 profitability, yes, that's right.

8 Q. Well, that's one way to evaluate what you're
9 doing, isn't it?

10 A. That's correct.

11 Q. And if you wanted to establish a higher
12 percentage of income versus sales, one thing you might
13 consider doing is raising the price?

14 A. Absolutely.

15 Q. You were responsible for whatever price was
16 pegged in 1973 that resulted in this percentage of
17 profitability, correct?

18 A. Jointly with Mr. Bergen, yes.

19 Q. And did you think the profitability that you
20 had established through the price that you established
21 was a good one?

22 A. It met the conditions we were operating under
23 at the time.

24 Q. Okay.

25 A. It was far less than what we could have gotten

1 if we had chosen to.

2 Q. What could you have gotten if you had chosen
3 to?

4 A. Considerably higher. We -- we had the market;
5 and if we had wanted to price the product higher, we
6 could have. We priced the -- the product according to
7 what we thought was proper for the industry --

8 Q. I see.

9 A. -- and what we thought the proper position for
10 the product under the circumstances.

11 Q. I know --

12 A. Far less, I might add, than many of the other
13 products I had responsibility for, far less.

14 Q. Well, why did you choose to price PCBs far less
15 than other products for which you also set prices?

16 A. Because the -- because we were the sole
17 supplier; we had a responsibility to the industry to be
18 responsible; and we were going through a very difficult
19 period of time both in dielectrics as well as in our
20 other fluids; and we felt we had a responsibility to the
21 industry and, in part, to the government, since they
22 also were involved, to be a responsible supplier.

23 And that was the ground rules we were operating
24 under, to get a reasonable return, but not to try to
25 price this thing to a significant high return.

1 Q. I see.

2 Were those same constraints in place before
3 your arrival in 1970?

4 A. Well, I -- I don't have that data; but -- but
5 I -- when I came on the job, my impression was that we
6 had -- we had behaved in this industry very responsible,
7 given that we had essentially a hundred percent of the
8 domestic market, that we had never priced the product to
9 the level that it could have been priced at.

10 Q. Okay.

11 And what you're really saying is that because
12 you were the sole supplier, you essentially had the
13 power to set the price; is that correct?

14 A. Within certain limits, before our customers
15 shifted to -- to alternatives or took some other action.
16 Certainly General Electric had the technology to produce
17 these products themselves if they had chosen to. And if
18 we'd have priced high enough, I assume that they would
19 have, could have. I know they could have and would have
20 and, in pricing discussions I had with them,
21 occasionally made reference to the fact that they could
22 do that.

23 Q. Well, my question to you is whether or not you
24 priced the product significantly less than you thought
25 you could have priced the product without losing part of

1 your market share.

2 A. I priced it considerably less than what I could
3 have priced it at and still kept my market share.

4 Q. Okay.

5 A. In my opinion.

6 Q. Okay.

7 And is it your understanding that that had
8 always been Monsanto's practice?

9 A. Yeah, I think so. You know, I've got to --
10 I've got to add the dimension of the environmental issue
11 that -- that began -- started moving over the -- the
12 horizon. And I think, as the PCB issue became more and
13 more in front of us, we became more and more conscious
14 of -- of our responsibilities and more and more careful
15 in our -- in our keeping the price at a reasonable level
16 rather than -- than taking this opportunity of -- of --
17 of -- the term we'd use -- milking the industry.

18 Q. Well, I guess what I'm trying to find out is if
19 it's your understanding that anybody had ever milked the
20 industry at Monsanto on PCBs.

21 A. Not -- not that I remember reading in the
22 files.

23 Q. Okay.

24 And when was it that you started to get more
25 and more careful in setting your pricing on PCBs? Was

1 that -- did that start immediately in 1970, or did that
2 progress over time?

3 A. Well, I think it was the -- the policy that we
4 were operating with in the business group over the
5 entire period I was there. Generally, when we took
6 forward a price, we were only trying to cover those
7 costs that we were having imposed upon us either by our
8 own actions in handling the issue or -- or actions
9 imposed by some other body outside our business.

10 And as I say, we -- we really were just trying
11 to maintain the level of profitability and not move it
12 up or down.

13 Q. So, it was your attempt, during the period of
14 time you were responsible for pricing PCBs, to attempt
15 to maintain essentially the same level of profitability
16 that already existed on that product when you arrived on
17 the scene; is that correct?

18 A. As one would express in terms of profit margin,
19 generally staying within the same profit margin that we
20 were operating under.

21 Q. Okay.

22 And were you generally able to do that?

23 A. Yeah, I think within reason, at least during
24 that period of time, we did that.

25 Q. Up through 1975?

1 A. Yeah.

2 Q. Now, it would have been possible, would it not,
3 for Monsanto to have reduced its profit margin
4 substantially and still afforded to have produced the
5 product during your tenure, would it not?

6 A. We certainly could have reduced the price
7 somewhat or reduced the profit margin that we were
8 operating under and stayed in the business. In other
9 words, we would have not had a lot of corporate pressure
10 to -- to do something differently.

11 I think you used the term "substantially."
12 I -- I don't know at what point in time I would have
13 started getting some signals that, "Is this a business
14 we need to say in?" But I...

15 Q. Well, for example, in 1973, we've calculated
16 the net income at 10.1 percent on the PCB dielectrics,
17 correct?

18 A. And I have stated I don't -- I did not see that
19 then, nor do I see it now as being particularly
20 attractive. I think it was -- it was a number that the
21 corporation would -- would be comfortable with --

22 Q. Yeah.

23 A. -- and not start questioning our reason for
24 staying in the business.

25 Q. Yeah. That -- that wasn't really my question.

1 I just want to establish that we -- we've got the net
2 income figure at 10.1 percent of sales in 1973.

3 A. That's the number we've calculated.

4 Q. Okay.

5 You could have reduced that net income figure
6 down to 5.5 percent and still stayed in the business,
7 couldn't you?

8 A. If we had -- if we had chosen to stay in the
9 business, yes, we could have, if -- if the corporation
10 would have allowed us.

11 Q. And that would have covered your expenses?

12 A. It would have -- it would have given us a
13 return. Not a reasonable return, but it would have
14 given us a return.

15 Q. Well, for example, if you were just in the --
16 you were going to just produce PCBs for the public
17 service of doing so and all you set out to do was to
18 cover your expenses, you could have reduced your price
19 and done that.

20 A. If I had applied such an approach to my
21 business, I would not stay in business.

22 Q. Well --

23 A. That -- that level of profitability would not
24 generally be enough to stay in business.

25 Q. Well, that's not my question.

1 A. Oh.

2 Q. My question is: It would have been possible to
3 reduce your price by about 10 percent and still cover
4 all of the costs of the product, would it not?

5 MR. ANDREWS: Let me interject an
6 objection here on the basis that this is
7 at least the third time that very same
8 question has been answered.

9 MR. LACEY: And I haven't gotten a
10 straight answer to it, yet.

11 MR. ANDREWS: Well, you've gotten the
12 answer that this Witness has given you;
13 and I submit to you it is a straight
14 answer. And just because you don't like
15 it doesn't mean you have the unbridled
16 ability to rephrase and restate the
17 question.

18 BY MR. LACEY:

19 Q. Well, let me try it another way, get down to
20 specific numbers.

21 In reading this chart that's on page -- or on
22 Document No. 25420, what were the total sales of
23 dielectrics in 1973 in actual dollars? Is that millions
24 or hundreds of thousands? I'm not sure how to read the
25 "M."

1 A. That would be \$23 million in -- 1973 are you
2 asking?

3 Q. For dielectrics only.

4 A. Oh, I'm sorry.

5 Eleven million dollars.

6 Q. For dielectrics?

7 A. That's correct.

8 Q. And the -- can you tell how much -- what that
9 price per pound was that you sold? Is that there?

10 A. Well, there's -- there's no data in here on
11 what the total pounds in that given year was. No, I
12 can't.

13 Q. We just know that the sales total was
14 11 million?

15 A. Eleven million dollars.

16 Q. And the net profit in that year from that was
17 what in dollars and cents?

18 A. \$1.1 million.

19 Q. So, you could have reduced the total price you
20 sold it for to \$10 million and still covered all of your
21 expenses, couldn't you?

22 A. According to this data, that's correct.

23 Q. Okay.

24 You didn't choose to make such a pricing
25 decision, obviously, correct?

1 A. I made the pricing decisions on that.

2 Q. And your pricing decisions included a net
3 income percentage in excess of 10 percent?

4 A. That was correct.

5 Q. Okay.

6 Let me show you a document, 25560 through 25563
7 (tendering).

8 A. Okay.

9 Q. That has information on the sales, both in
10 pounds and in dollars, for PCB dielectric fluids that
11 were manufactured in the United States from 1960 to
12 1976, does it not?

13 A. 1976 being an estimate instead of actual, yes.

14 Q. Through 1975, we have actual numbers?

15 A. That's what this appears to be, yes.

16 Q. We also have a calculation, both in dollars and
17 cents and percentages, for each one of those years of
18 the gross profit, correct?

19 A. Correct.

20 Q. And we have then the -- what's referred to as
21 MAT.

22 What is that?

23 A. MAT, we've talked about that earlier.

24 Q. Okay.

25 A. Marketing, administrative, technical expenses.

1 Q. And then we have the -- the last column over
2 there --

3 A. Performance income.

4 Q. -- performance income. Okay.

5 Do these numbers appear to be generally
6 accurate to you?

7 A. They look like they're accurate numbers.

8 Q. Okay.

9 And what this sheet shows is what Monsanto
10 manufactured in the United States by way of PCBs and
11 sold as dielectric fluids both in the U.S. and what it
12 exported from its U.S. plants, correct?

13 A. That's correct.

14 Q. It doesn't have in it production in Japan or
15 England?

16 A. That's correct.

17 Q. From this sheet, we can calculate the dollars
18 and cents per pound at which dielectric fluid -- PCB
19 dielectric fluids were sold, can we not?

20 A. Yes.

21 Q. Okay.

22 I take it you're not aware of any other
23 documents that would help us figure out what the sales
24 prices were, except for making the calculations from
25 this document; is that correct?

1 A. None that I have access to or have seen.

2 Q. Okay.

3 How do you spell dielectric,

4 d-i-e-l-e-c-t-r-i-c?

5 A. That's correct.

6 Q. Prices per pound, 1960, 1961, 1962. I'm going
7 to make us a -- a sheet here so we can get that
8 information down. I -- I...

9 MR. ANDREWS: Mr. Lacey, in view of
10 the fact that these are mathematical
11 calculations off this sheet that really
12 anybody could make, just humor me by
13 assuring me that these are essential for
14 your deposition.

15 MR. LACEY: I -- I think they are
16 essential. Otherwise, we'll have to be
17 having somebody in court do it; and
18 somebody may be saying I didn't do the
19 calculations right and everything else.
20 That way, we can do it pretty simply.

21 A. Is that why I have to make them instead of you
22 making them? You seem to be much faster at it than I
23 was.

24 Q. Well, if you want me to try to punch the
25 numbers in, I'll be happy to do it and see if they seem

1 about right. Do you want me to do that?

2 A. If you'd like.

3 Q. I'll be happy to. I -- we're just trying to
4 get this done.

5 A. You want me to read them out to you?

6 Q. Well, I've got a -- I've got a copy of this
7 thing right here; and I need to divide the --

8 A. 4.6 by 32.6.

9 Q. 4.6 by 32.6. And I come up with .1411. Is
10 that 14 --

11 A. Fourteen cents.

12 Q. 14.1 cents per pound.

13 Each one of these numbers will be cents per
14 pound?

15 A. That's correct.

16 Q. Okay.

17 We'll just -- 1961, I divide 4.3 by 30.3; is
18 that correct?

19 A. That's right.

20 Q. And I come up with 14.19. I'd say that's
21 14.2 -- is that --

22 A. Okay.

23 Q. -- fair enough -- cents per pound?

24 A. Can I write on this sheet?

25 Q. No, you probably shouldn't write on that sheet.

1 A. You don't want me to write on this big piece of
2 paper here?

3 Q. You can write right on that big piece of paper.

4 A. What was the first number you said?

5 Q. 14.1 for 1960.

6 A. Okay.

7 Q. 14.2 for 1961. And then 1962 is 4.1 divided by
8 28.9. Comes up with 14.18, and I'll call that 14.2
9 again. Is that okay?

10 A. Uh-huh.

11 Q. And 1963, we divide, if I'm correct, 4.2 by
12 29.7; and we come up with 14.1 again, correct?

13 A. Yes.

14 Q. It's actually 14.14, but I'm going to round it
15 down to 14.1.

16 A. That's perfectly all right.

17 Q. 1964, I divide 4.4 by 34.9; and I come up with
18 12.6.

19 Does that sound about right?

20 A. Uh-huh.

21 Q. 1965, I divide 5.6 by 40.8; and I come up with
22 13.7.

23 Sound about right?

24 A. Uh-huh.

25 Q. 1966, divide 6.6 by 47.3; and I come up with

1 13.95. I'll call that -- want to call that 14 or 13.9?

2 A. Whichever you like. Either one I'll accept.

3 Q. I'll just call it 14 for ease. We'll break the
4 point at 5.

5 1967, divide 7.3 by 52.2; and I come up with

6 13.98. And I'll call that 14 again.

7 1968, divide 7.5 by 52.7; and I come up with

8 14.23. I'll call that 14.2.

9 Is that okay?

10 A. (Nodding head)

11 Q. Is that okay?

12 A. Yes. I'm sorry.

13 Q. 1969, I divide 6.9 by 47.5; and I come up with

14 14.52. I'll call that 14.5.

15 That seem right?

16 A. That's fine.

17 Q. 1970, I divide 7.9 by 53.7; and I come up with

18 14.7.

19 Does that sound right?

20 A. Yes.

21 Q. 1971, I divide 6.7 by 40; and I come up with

22 16.75.

23 You want to call that 16.8?

24 A. Sure.

25 Q. 1972, I divide 7.9 by 40.8; and I come up with

1 19.36. Call that 19.4.

2 Is that okay?

3 A. Yes.

4 Q. 1973, I divide 9.4 by 46.1; is that correct?

5 A. Yes.

6 Q. And I come up with 20.39. I'll call that 20.4.

7 Is that okay?

8 A. Yes, it is.

9 Q. 1974, divide 13.3 by 42.5; and we come up with
10 31.29. I'll call that 31.3.

11 Is that okay?

12 A. That's what the number says.

13 Q. Well, does that -- well, let -- I'll do that --

14 A. No. No. I think that's right.

15 Q. Okay.

16 And then 1975, I divide 13.7 by 34.4; and I
17 come up with 39.8.

18 A. Correct.

19 Q. Is that about right?

20 A. That looks right.

21 Q. And then 1975, this was prepared on October
22 26th of 1976; and we've got an estimate. Is it okay if
23 I put down "estimated '76," or do you feel like we
24 probably shouldn't use that number?

25 A. That -- that -- that's all right. I have no

1 problem with that.

2 Q. I'll just put "estimated 1976."

3 A. This was late in '76. This was dated the 26th
4 of October.

5 Q. And to come up with the estimated '76 would be
6 14.7 divided by 28.6. Would be 51.39, 51.4.

7 Do you agree with that?

8 A. Yes.

9 Q. Okay.

10 MR. LACEY: Let me ask the reporter
11 to mark that as the next exhibit.

12 (A ONE-PAGE HANDWRITTEN LIST OF
13 DIELECTRIC PRICES PER POUND WAS MARKED FOR
14 IDENTIFICATION AS GOSSAGE EXHIBIT NO. 4)

15 BY MR. LACEY:

16 Q. Let me show you what's been marked as Gossage
17 Exhibit No. 4. And I've actually made that calculation
18 for us, using the calculator; and you've reviewed it.

19 Does that appear to be a correct calculation of
20 the price and cents per pound from the document you're
21 reviewing, Document 25560? It's in the lower right-hand
22 corner.

23 A. 25560.

24 Q. For the PCB dielectrics sold by Monsanto from
25 1960 through 1975, with an estimate for '76.

1 A. That's correct.

2 Q. Okay.

3 And you would agree these numbers are, with
4 slight rounding --

5 A. Looks right.

6 Q. Okay.

7 Now, the actual document you have, 25560, also
8 actually has the gross profit calculated in terms of
9 absolute dollars and calculated in terms of a percentage
10 of profit; is that correct?

11 A. Yes.

12 Q. And then there is also the MAT expense and then
13 a calculation of the -- and I always forget what the
14 "PI" stands for. I'm going --

15 A. Performance income.

16 Q. Performance income.

17 Now, is that performance income an absolute
18 number?

19 A. Well, there's also a column that you haven't
20 indicated, called --

21 Q. Which one's that?

22 A. The one called "Includes PCB phase-out." And
23 if you see under the gross profit percent -- you see the
24 superscript "1" up at the top the page?

25 Q. Yes.

1 A. It says, "The gross profit calculation in
2 dollars for more representative ratio." It appears to
3 me that somehow they pulled -- I'm not sure what they've
4 done. But in the period of 1971 through 1975, they've
5 made some kind of adjustment, either taking cost out
6 or -- or -- or taking profit out -- I'm -- I'll have to
7 study this more closely -- to adjust the gross profit so
8 that it will be comparative with earlier years on some
9 sort of a PCB phase-out. I'm not sure what that means.

10 Q. Well, could you study that for a second and see
11 if you can make any sense out of that. Feel free to
12 look at the attachments, if that's of any value to you.

13 A. Well, it's on all the pages; and I -- I can't
14 tell you what it means.

15 Q. I see.

16 A. If you notice that the gross profit, according
17 to this calculation, in 1970 shows at 40 percent and
18 then drops to 12.2 percent in the following year. I
19 don't know whether the 1.4 million, if added back to the
20 800,000, is some better reflection or not. I just -- I
21 can't tell from here what they -- what they've done.

22 Q. I see.

23 It is significant, as we look at this, that the
24 years 1971 -- well, let's actually look at the year
25 1970. In 1970, in terms of pounds sold for dielectric

1 fluids from the U.S. plants, Monsanto reaches it peak
2 sales of 53.7 -- is that million? I -- again --

3 A. Million -- million pounds.

4 Q. -- million pounds.

5 And that's the largest amount of PCBs ever sold
6 for dielectric use, at least from 1963 to 1976, correct?

7 A. As presumed on this table, that -- that looks
8 to be the case.

9 Q. And the table appears to be relatively
10 accurate, does it not?

11 A. I think so, yeah.

12 Q. And in terms of the actual dollars received for
13 those sales, we have -- is that 7.9 --

14 A. Million dollars.

15 Q. -- million dollars, which is the highest amount
16 received by Monsanto as the price received for any PCBs
17 sold as dielectrics up to that time, correct?

18 A. Up to that time.

19 Q. Okay.

20 And it's only when -- and we know that, in the
21 year 1970, the price per pound that was being charged
22 was roughly 14.7 cents per pound, correct?

23 A. That's correct.

24 Q. It's not until the year 1972, when the price
25 has risen -- risen by more than 5 cents a pound, that we

1 reach the same comparable absolute dollars of profit
2 again, correct?

3 A. If -- if -- if these are -- again, I'm not sure
4 what this data is out here.

5 Q. Okay. I'm sorry. I didn't ask my question
6 correctly, either.

7 I should have asked you: It's not until 1972,
8 when the price has risen by more than 5 cents a pound,
9 that we receive the same absolute number of sales,
10 revenues from sales, correct?

11 A. Well, in 1972, our revenue from sales was 40.8
12 million as compared to the 53.7 million. Is that what
13 you're referring to?

14 Q. Well, I thought that was pounds --

15 A. I'm sorry.

16 Q. -- 40 million pounds.

17 A. I'm sorry. You're right.

18 Q. It's 7.9 --

19 A. 7.9 -- 7.9 in '72, yes, that's correct.

20 Q. But in order to reach that \$7.9 million worth
21 of sales in 1972, you have to take into account that the
22 price has risen by 5 cents a pound.

23 A. That the pounds have dropped and the price has
24 gone up, that's correct.

25 Q. Exactly.

1 And the price has risen by more than 33 percent
2 between those two years.

3 A. Yes. And if -- if the gross profit numbers
4 are, in fact, accurate, it says that our profit is one
5 third of what it was three years ago.

6 Q. Right.

7 A. So, we passed through prices that did not cover
8 our cost.

9 Q. Yes.

10 The gross profit is very low in the years 1971
11 and 1972, correct?

12 A. Yes.

13 Q. It makes a substantial rebound in 1973, '74,
14 and '75.

15 A. Yes.

16 Q. And the years that the gross profit is very
17 low, 1971 and 1972, is when we have a very large
18 indication of the P -- PCB phase-out cost.

19 A. I -- I -- it doesn't say cost, and I -- you
20 know, that's your interpretation; and -- and it may be
21 the accurate one. One could -- could look at this and
22 say that must be some part of our phase-out cost and our
23 profit margin dropped during that period of time,
24 indicating we didn't pass all that through to the
25 customer, but absorbed it ourselves and then gradually

1 came back as some of those costs disappeared.

2 That's one interpretation. I really can't tell
3 you whether that's the right one.

4 Q. Okay.

5 Well, in any event, the years that we had these
6 very low gross profit figures, both in absolute numbers
7 and margins, are when we find the largest numbers in
8 those years in the column labeled "Includes PCB
9 phase-out," whatever those numbers represent?

10 A. Yeah. And they may be cost.

11 Q. Right.

12 And when those numbers go back down in size,
13 the gross profit, both in absolute dollars and
14 percentage, goes back up.

15 A. That's correct.

16 Q. Okay.

17 Now, Monsanto was not phasing out PCBs as
18 dielectric fluids in 1971 or '72, was it?

19 A. No. That's correct.

20 Q. So, if these charges in this column labeled
21 "Includes PCB phase-out" relate in some way to the
22 phase-out of PCBs and reduce the profit figures on the
23 PCBs as dielectric fluids, that would reflect the
24 dielectric profits of Monsanto's PCBs being charged with
25 cost for phasing out other aspects of the business.

1 A. Well, my interpretation would not be that. It
2 would be that the -- we've got a large plant in that
3 time period that was producing PCBs for a number of
4 applications, and some of the applications disappeared.
5 So, we've still got the large plant that's operating at
6 a lower level; but the -- the fixed costs, if you will,
7 are the same. So, the fixed costs have to be now spread
8 against PCBs as compared to having spread them
9 previously over the other products. Now, that may be
10 what those numbers are.

11 Q. Well, actually, we know that, in 1972, that's
12 the year the Anniston, Alabama, plant was shut down,
13 don't we?

14 A. Yes.

15 Q. And the reason that was shut down is because,
16 since Monsanto's no longer producing PCBs for
17 nondielectric purposes, that's excess capacity.

18 A. As was some of the capacity remaining in
19 Krummrich.

20 Q. I see.

21 Krummrich -- what was the relative capacities
22 of the two plants?

23 A. I don't remember, but -- but Krummrich was by
24 far the larger of the two.

25 Q. It was far larger?

1 A. Yes.

2 Q. Okay.

3 Whatever happens, the gross profits and the
4 gross profit margin for PCBs goes back up dramatically
5 in '73, '74, and '75, does it not?

6 A. Well, it goes back up. It never get backs up
7 to the level that it -- is indicated here for the period
8 19 -- 1961 through 1970.

9 Q. Okay.

10 A. It never again reaches that level.

11 Q. But there's a dramatic rebound in the gross
12 profit and the gross profit margin in 1973, '74, '75,
13 from what it was in '71 and '72.

14 A. That's correct.

15 Q. In '71 and '72, taken together, those two
16 years, the gross profit is shown as less than
17 \$2 million.

18 A. That's correct.

19 Q. In each of the three succeeding years, each
20 single year has a gross profit more than a million
21 dollars greater than the combined gross profit of those
22 two years; isn't that correct?

23 A. That's what this data indicates.

24 Q. And the gross profit margin in each of those
25 three years is almost three times what it was in those

1 two preceding years.

2 A. But still substantially below what it was in
3 the earlier years.

4 Q. Am I correct that it's almost three times what
5 it was in the years '71, '72?

6 A. We're both correct.

7 Q. Okay.

8 Well, I really wanted to get the answer to my
9 question.

10 Now, what happens is --

11 MR. ANDREWS: Well, let me just say
12 that the Witness is entitled to answer the
13 question to the best of his ability; and
14 that's what he's doing.

15 MR. LACEY: I see.

16 MR. ANDREWS: I think, Mr. Lacey, in
17 all fairness, you have a tendency, if you
18 don't like his answer, to simply repeat
19 the question or in some way try to coach
20 him to change his answer.

21 MR. LACEY: Well, when I ask the
22 question, isn't it true that the gross
23 profit margin in '73, '74, and '75 was
24 almost three times what it was in '71 and
25 '72 and the Witness' answer is, "But it's

1 less than what it was in the years of the
2 1960's," that's not an answer to the
3 question. That's an entirely different
4 matter.

5 A. That's not the way I answered the question. I
6 said, "Yes, but it is less than."

7 Q. I see.

8 Now, what happened is that in 1970, PCBs were
9 selling for approximately 14.7 cents a pound, correct?

10 A. That's correct.

11 Q. In 1973, they're selling for 20.4 cents a
12 pound, correct?

13 A. That's correct.

14 Q. In '74, the price increases by more than
15 10 cents a pound, correct?

16 A. Correct.

17 Q. And then in 1975, they increase again by more
18 than 8 cents a pound.

19 A. That's correct.

20 Q. And then in 1976, we have another increase of
21 more than 10 cents a pound.

22 A. That's correct.

23 Q. And the reason, at least in part, for the
24 dramatic rebound in the gross profits in '73, '74, '75
25 is the dramatic increase in prices, correct?

1 A. Say that again.

2 Q. The reason, at least in part, for the dramatic
3 rebound in gross profit, both in terms of absolute
4 numbers and in terms of percentages, in '73, '74, and
5 '75 is in part the increase in prices in those years.

6 A. In part, that's correct.

7 Q. And the increases in '74 and '75, you would
8 have to agree, are very substantial, are they not?

9 A. They're -- they're substantial compared to what
10 they were in some of the prior years.

11 Q. Well, for example, the price in 1973 was 24 --
12 20.4 cents per pound. It increased by more than 50
13 percent between '73 and '74, did it not?

14 A. That's -- that's correct.

15 Q. And it increased again between '74 and '75 by
16 more than 25 percent.

17 A. That's correct.

18 Q. So that the increase between 1972 and 1974
19 was -- or I'm sorry -- between 1972 and 1975 was a
20 100 percent increase in price, correct?

21 A. Between '72 and '75?

22 Q. Yes.

23 A. That's correct.

24 Q. And all those pricing decisions that were made
25 in the 1970's were your responsibility, correct?

1 A. That's correct.

2 May I add something for clarification?

3 Q. What would you wish to add?

4 A. It looks like, from '73 -- most of the price
5 increase took place from '73 through '76.

6 Q. We didn't talk about '76, but the price jumped
7 again --

8 A. Well, in 1975.

9 Q. Well, actually it did jump very dramatically
10 again in '76, didn't it?

11 A. Okay. But -- but -- yes.

12 Q. And it jumped again by another 25 -- more than
13 25 percent between 1975 and 1976.

14 A. Yeah. But the point that I would make is that,
15 between '73 and '76, the gross profit did not go up very
16 much; so, it would appear that those price increases
17 were doing nothing more than covering our cost. Neither
18 the margin percentage nor, really, in absolute terms,
19 did the profitability go up very much. So, all we were
20 doing, it appears from the data, is passing through the
21 cost increases that were coming about.

22 Q. Well, actually, if we go over to that last
23 column, we find the number that really relates to what's
24 happening on the income side, don't we, for the company?

25 A. On the performance income side.

1 Q. Yes.

2 Now, between 1973 -- or between 1972 and 1973,
3 the performance income goes from .6 to 2.7, correct?

4 A. Yeah. But again, there's a column there that
5 we don't know what it is, that obviously is driving that
6 number.

7 Q. Well, again, we go to 1973, the performance
8 income is 2.7. In 1974, it goes to 3.9, correct?

9 A. That's correct.

10 Q. And the difference in that column, between '73
11 and '74, that we have a hard time interpreting, is only
12 .1; but the performance income goes up by 1.2, correct?

13 A. That's what -- I'm not sure what column you're
14 on now.

15 Q. Well, okay. Let's -- let's just look. If
16 you'll put your finger there on the PCB phase-out column
17 and the other finger on the -- I still -- performance
18 income column, in 1973, the phase-out column is .3; and
19 the performance income column is 2.7, correct?

20 A. That's correct.

21 Q. In 1974, the phase-out column drops by .1, from
22 .3 to .2, correct?

23 A. That's correct.

24 Q. While the performance income column goes up
25 from 2.7 to 3.9 or an increase of 1.2.

1 A. Uh-huh.

2 Q. Certainly that doesn't appear to be just the
3 changing of the numbers between the phase-out column and
4 the performance income column, does it?

5 A. No. That -- that's the one year where there
6 was an increase in gross profit from 3.3 to 4.7.

7 Q. Well, in 1975, the gross profit remains, if
8 performance income is a percentage -- and I'm not quite
9 sure whether there's an absolute number or a
10 percentage -- but it remains at 3.9, does it not?

11 A. Well, I'm not sure what point you're going to;
12 but let's -- let's take '74 and '75. The gross profit
13 was 4.7 and 4.9. The performance income was 3.9 to 3.9,
14 and yet the price increase went up by 25 percent. So,
15 with this huge price increase that you bridged over
16 three or four years, the biggest parts of those price
17 increases came in years where there was no significant
18 increase in profit, again indicating, at least to me,
19 the data that we were passing through costs.

20 Q. Well -- and a big part of those costs that you
21 were passing through appear in the MAT column that
22 carries charges like developing replacement fluids --

23 A. No. The --

24 Q. -- and Mr. Pappageorge's salary; isn't that
25 correct?

1 A. No. The MAT is .4, .4, .5, .5, .5, .4, .4, .5,
2 .6, .8.

3 Q. Yeah. We come down here to the point -- 3.9,
4 we go through -- the highest it's ever been up to 1973
5 is .5, correct?

6 A. I -- yeah, that's right.

7 Q. 1973, it's .6?

8 A. That's a hundred-thousand-dollar increase.

9 Q. 1974, it's .8?

10 A. That's another 200,000.

11 Q. 1975, it's 1.0?

12 A. Another 200,000.

13 Q. 1976, 1.2.

14 A. (Nodding head)

15 Q. Correct?

16 A. That's right.

17 Q. So, the charges on the MAT column that reduce
18 the performance income between 1972 and 1976 more than
19 double, correct?

20 A. Yes.

21 Q. And the MAT expenses include charges that
22 Monsanto is making against its performance income for
23 attempting to develop replacement fluids, correct?

24 A. Uh-huh. Yes.

25 Q. And charges against that for carrying the

1 salaries of Mr. Pappageorge and whoever he may have
2 consulting with him, that are making trips and making
3 speeches, talking about PCBs, correct?

4 A. Correct. It also includes inflation that was
5 going on at that period of time, which may have been
6 substantially different than earlier years.

7 Q. Well, we didn't have a hundred percent
8 inflation between 1972 and 1976, did we?

9 A. No. But in a lot of years where it was
10 constant, we didn't have zero percent, either.

11 Q. Well, I think we can all agree those years were
12 years of inflation, certainly, correct?

13 A. Correct.

14 Q. And, in part, the price increases would reflect
15 inflationary pressures, would they not?

16 A. Correct.

17 Q. And, in part, they reflect other things like
18 increasing the price to raise the gross profit margin.

19 A. No, I don't agree with that.

20 Q. I see.

21 A. To hold the profit margin was the intent.

22 Q. I see.

23 And increase --

24 A. And as I -- as I -- as I indicated, we weren't
25 very successful. At least according this data, we never

1 got back to the levels we operated at from the period
2 1961 through 1970.

3 Q. Okay.

4 A. Never again returned to that level of
5 profitability.

6 Q. And also increasing the price to bear the added
7 expenses with replace -- developing replacement products
8 and the various functions of Mr. Pappageorge, correct?

9 A. To the extent that those were going up, those
10 were included in the MAT numbers.

11 Q. Okay.

12 You were involved in the business planning
13 efforts of Monsanto with regard to these replacement
14 product developments, were you not?

15 A. Yes.

16 Q. And you monitored or at least took into account
17 in making price decisions at least, and actually monitor
18 or had comment on the way to go about looking at
19 replacement products and the money to be spent in that
20 regard, did you not?

21 A. Yes.

22 Q. And, in fact, it was your obligation in making
23 pricing decisions to take those things into account as a
24 part of the pricing policies of the company, was it not?

25 A. That's correct.

1 MR. LACEY: Let's go off the record
2 for a second. I've lost the piece of
3 paper I'm looking for. Let me try to find
4 it.

5 (RECESS)

6 BY MR. LACEY:

7 Q. Mr. Gossage, let me show you a group of
8 documents marked or numbered 8935 through 8940, which I
9 believe are a couple of memos and attachments to you
10 from Dr. Ralph Munch.

11 A. I think these are -- I want to compare them.
12 They appear to be different.

13 Q. I -- I think, Mr. Gossage, what you have there
14 is a draft document that was sent to you for your review
15 and comments and then the revision that was prepared by
16 Dr. Munch after he incorporated your comments.

17 A. That's what it appears to me to be.

18 Q. Okay.

19 Whenever you're ready, I've got some questions
20 for you about that.

21 A. Well, okay. I -- I have not compared the two
22 to see if I can figure out what I said. If that's not
23 the direction you're going in, I won't --

24 Q. That's really not what I'm -- what I'm
25 interested in talking about.

1 A. Okay.

2 Q. Now, what these -- in fact, maybe what we could
3 do is simply set aside the draft and get --

4 A. Uh-huh.

5 MR. LACEY: We may need to get them
6 altogether, Steve, so we can see which
7 one's draft and which one's final. I
8 think, if you put them back in document
9 number on the bottom, you will get them in
10 the right order. There's a sheet --
11 there's a sheet right there that goes with
12 one of them.

13 A. Okay.

14 Q. Okay.

15 If you want to pull out the part that was the
16 draft, you can do that; and then we can talk about the
17 other.

18 A. You want to talk from the -- the final
19 document?

20 Q. The final document, yes.

21 A. Okay.

22 Q. Dr. Munch was working as a part of this
23 research group that was looking for replacement
24 dielectric fluids for PCBs, correct?

25 A. He had broader responsibility than that. He

1 was -- he was responsible for all research on dielectric
2 fluids.

3 Q. I understand, but --

4 A. Including new products.

5 Q. Yes.

6 And one of the things that Dr. Munch was
7 working on was replacement fluids for PCB dielectric
8 fluids; is that correct?

9 A. What's referred to here as a replacement
10 product for capacitors, not -- not for all PCB
11 dielectrics, but specifically for capacitors.

12 Q. Okay.

13 And that work was going on back in 1972, was it
14 not?

15 A. Yes.

16 Q. And that work would have been charged against
17 the profitability on PCBs as a part of the MAT expenses?

18 A. That's correct.

19 Q. Now, your background is as a chemical engineer.

20 A. Correct.

21 Q. Did you have enough interest in the dielectric
22 area to follow what happened to dielectric fluids after
23 you no longer had personal responsibility for dielectric
24 fluids as a part of Monsanto's specialty products group?

25 A. I did not follow the research in any -- in any

1 detail after I left the -- the position.

2 Q. Well, are you aware, for example, of what
3 fluids ultimately wound up replacing PCBs in capacitors
4 and transformers?

5 A. I have some recollection of -- of some of the
6 products that -- that ended up in commercial production.

7 Q. What -- what is that recollection?

8 A. Some of the capacitors moved away from a liquid
9 fluid to so-called solid metalized capacitors. I can't
10 tell you what percentage of the market went in that
11 direction. And I believe that some that stayed on
12 liquids that dioctyl phthalate was -- was a capacitor
13 fluid that was used, as I recall.

14 Q. Dioctyl phthalate is a chemical that's been
15 known for a number of years, is it not?

16 A. Called DOP by its generic name. Yes.

17 Q. And dioctyl phthalate, in fact, is one of those
18 things that we refer to as a commodity chemical, is it
19 not?

20 A. Yes, I would classify it is as a commodity
21 chemical.

22 Q. And by that we mean there are a number of
23 people that make it and it's -- while it may be slightly
24 different, they're really sort of a generic chemical
25 that a lot of people make the same product for.

1 A. Well, even though I would classify it as a
2 commodity, I -- there are not a large number of
3 producers; nor were there a large number of producers
4 then. More than one, but less than five or six, as I
5 recall.

6 Q. Okay.

7 What do you recall about replacement dielectric
8 fluids in the transformer business?

9 A. I believe that almost the entire market
10 switched to mineral oil, a nonflame-retardant or
11 fire-resistant fluid.

12 Q. And, of course, mineral oil had been used in
13 transformers for years and years and years.

14 A. Even before -- even before the PCBs, that's
15 correct.

16 Q. Right.

17 And, in fact, continued to be used in
18 competition with PCBs while PCBs were being used in
19 transformers.

20 A. Where fire-resistant wasn't the critical
21 property, that's correct.

22 Q. Or where an engineer decided to deal with the
23 problem of fire with some solution other than using
24 PCBs.

25 A. Like building a container around the

1 transformer to -- to contain the fluid if there was a
2 fire, that's right.

3 Q. Putting it in a vault and that sort of the
4 thing.

5 A. That's correct.

6 Q. Now, the ability to use mineral oil in
7 transformers existed in 1970, when you came into the
8 specialty fluids division, did it not?

9 A. That's correct.

10 Q. And from a technological standpoint, had
11 Monsanto ceased to sell PCBs in 1970 for dielectric use,
12 mineral oil would have been available for use in
13 transformers, would it not?

14 A. That's correct.

15 Q. Monsanto -- was Monsanto a seller of mineral
16 oil?

17 A. No.

18 Q. Okay.

19 And DOP or dioctyl phthalate was also an
20 available product in 1970, was it not?

21 A. It was available, but I do not think it was
22 available in the form or in the purity that ultimately
23 was required for -- for capacitors.

24 Q. Okay.

25 Did Monsanto -- or was Monsanto a producer of

1 dioctyl phthalate?

2 A. We had produced dioctyl phthalate. I can't
3 recall when we stopped producing it. But we had other
4 similar products that we produced and sold by different
5 names, not exactly the same chemistry, but similar
6 chemistry.

7 Q. Was Monsanto producing dioctyl phthalate in
8 1970?

9 A. That's -- that's a close call. Some --
10 somewhere along in there, we stopped producing it; and I
11 can't tell you whether it was a little before or a
12 little after. But it was not -- certainly by 1975, I'm
13 sure that we were not producing it at that time.

14 Q. Okay.

15 If Monsanto had stopped producing PCBs as a
16 dielectric fluid in 1970, that would have hastened the
17 changeover to other fluids, wouldn't it?

18 A. It would appear so at this time. I can -- can
19 only say that, at that time, we were being told by the
20 customers, both transformer and capacitor, and by our
21 government that we had to continue to produce for these
22 applications because there were no alternatives, either
23 because of -- of legislation, fire-resistant legislation
24 on transformers, or because the capacitor manufacturers
25 at that time had not done enough work either on

1 metalized film, as I think the capacitors were called,
2 or on alternatives to have an alternative. We were
3 operating under the impression that we could not stop
4 producing.

5 Q. Well, let me try to sort that out.

6 You didn't understand that you were under any
7 legal obligation to continue producing PCBs for
8 capacitors, did you?

9 A. I was operating under the strong impression
10 that our government was asking that we continue to
11 produce.

12 Q. Okay.

13 But you understood that you had the freedom to
14 choose to stop doing that?

15 A. I -- I think that's correct.

16 Q. And, in fact, during the period of time that
17 you were responsible for the marketing of PCBs as
18 dielectric fluids in the seventies, Monsanto changed its
19 contracts with its dielectric customers to whatever
20 extent was necessary, if it were necessary, to give
21 Monsanto the specific right to stop selling to people,
22 correct?

23 A. If they were not being responsible in terms of
24 containing the use of the material.

25 Q. My question, though, is: You modified the

1 contract, to the extent it was necessary, if at all, to
2 specifically say that you could stop selling if you
3 weren't satisfied with their environmental handling?

4 A. That was written into the contract.

5 Q. And you also stopped selling PCBs to customers
6 who refused to sign letters of indemnity, indemnifying
7 Monsanto for any problems that might arise from the use
8 of PCBs?

9 A. Those were the conditions that we had to
10 operate under, yes.

11 Q. And had a person not signed an indemnity
12 letter, you would have stopped selling them PCBs,
13 wouldn't you?

14 A. That's what we informed them, yes.

15 Q. No matter how important PCBs were from the
16 standpoint of the United States electrical system or
17 anything else, correct?

18 A. For an individual customer, that's -- that was
19 our intent.

20 Q. Okay.

21 Now, going back to the document you have in
22 front of you, this is called a dielectric fluid
23 strategy, correct?

24 A. That's correct.

25 Q. Was this a document that was prepared at your

1 request by Dr. Munch?

2 A. I have no memory of that, and the letter
3 doesn't indicate that it was at my request.

4 Q. Well, let me show you the -- the initial
5 letter, then, for a moment. Ninety-eight -- I'm sorry.
6 I think it's 8938, isn't it?

7 A. 8938.

8 Q. That indicates that there was a meeting at
9 which you requested such a document, does it not?

10 A. It says that I -- in several meetings, I
11 requested that they put together a plan of action.

12 Q. Now, was that request one so that you could
13 make some estimate of what the future budget costs were
14 going to be and take that into account in establishing a
15 pricing strategy?

16 A. I don't remember.

17 Q. You did need to know what the plan was going to
18 be in order to establish a pricing strategy to try to
19 maintain the profitability of the PCBs as dielectrics as
20 near as possible as it had been previously, correct?

21 A. Well, a plan. And certainly this plan would
22 give me no indication of what -- what the cost would be.
23 It would be the cost, the MAT cost, that I would have to
24 have if I were looking at forward pricing of the
25 product.

1 Q. But without knowing what you planned to do, you
2 wouldn't even be able to begin to estimate the cost of
3 doing it, would you?

4 A. I wouldn't estimate the cost. It would be
5 someone else who would estimated the cost.

6 Q. Well, let me see if I can make this clear.
7 The first thing -- strike that.

8 Did you have any responsibility for making
9 decisions about what the plan or the strategy with
10 regard to dielectric fluids would be?

11 A. I had input to it. It was Mr. Bergen's
12 responsibility to set the strategy.

13 Q. And apparently he had delegated at least some
14 of the responsibility to get a plan to you.

15 A. I would have had some of the responsibility,
16 along with technology, to bring forward a plan for him
17 to review.

18 Q. Okay.

19 And one of the reasons you would need to have a
20 plan or a strategy is so you could then make budgetary
21 decisions about how to go forward with regard to the
22 manufacture and sale of PCBs.

23 A. Certainly a plan would be a starting point so
24 that we could get some cost estimates of what it was
25 going to cost to implement it.

1 Q. Okay.

2 And this plan that was ultimately developed is
3 what you have in front of you, is it not?

4 A. Well, at this date, it would appear that this
5 was the plan that was being proposed.

6 Q. Well, is that a plan that you actually operated
7 under?

8 A. There are certainly parts of this that -- that
9 were carried forward, yes.

10 Q. Okay.

11 Under the dielectric fluid strategy for
12 capacitor fluids, there are two broad categories of the
13 plan, correct?

14 A. That's correct.

15 Q. One is with regard to PCB fluids.

16 A. That's correct.

17 Q. And that plan involved trying to minimize
18 environmental escape of PCBs, correct?

19 A. That's part of it.

20 Q. And part of that involved working with customer
21 plants to educate them about the problem of PCBs in the
22 environment.

23 A. Yes.

24 Q. And methods to recover and dispose of PCBs.

25 A. Yes.

1 Q. There's also a reference in here to the plan to
2 minimize escape into the environment from the ultimate
3 user.

4 Now, who is the ultimate user of dielectric
5 fluids?

6 A. The ultimate user would be the -- the -- the
7 organization that had the transformer or the entity that
8 had the capacitors in their facilities; like this hotel,
9 for example.

10 Q. Okay.

11 What did you -- and I'm talking about Monsanto
12 now -- do to work with ultimate users to minimize the
13 escape of PCBs into the environment?

14 A. I don't remember.

15 Q. Was that a matter of budgetary concern to you,
16 how much it was going to cost?

17 A. Not that I remember.

18 Q. Well, if you were going to go deal with
19 ultimate users, you'd have to have something in your
20 budget to take care of the cost of doing that, wouldn't
21 you?

22 A. If we were -- if we were doing that or if we
23 did that, it would be a very nominal cost in terms of
24 publicity, articles in journals, and so forth, not a
25 considerable cost.

1 Q. It wouldn't involve, then, going to each
2 purchaser of transformers that contained PCBs in a
3 face-to-face meeting or anything?

4 A. We had no way of knowing who all those people
5 were.

6 Q. I see.

7 So, it's -- it's just general publications in
8 literature?

9 A. Anything that we could do at our level, of
10 trying to make the industry aware of -- of the
11 importance of containing this material, would have been
12 done mostly through presentations and publications, not
13 through door-to-door contacts.

14 Q. Okay.

15 Another aspect of the plan was really -- and
16 I -- I'll put 2 and 3 together for convenience's sake --
17 that had to do with emphasizing the benefits of Aroclor
18 1016 and what you had done by bringing that to the
19 market; is that correct?

20 A. Are you down -- where --

21 Q. I'm looking at Items 2 and 3 under the PCB
22 section of the capacitor fluid plan.

23 A. Neither 2 nor 3 have anything to do with 1016.
24 What's being referred to there is -- is to deal with --
25 with data on homologue ratios, which are the higher

1 chlorinated materials to the lower chlorinated
2 materials. Talking about, for example, 1254, 1268,
3 terms for -- for different levels of chlorination as
4 compared to 1242, which was a lower level of
5 chlorination.

6 Q. Oh, I see.

7 So, this was simply to emphasize that the PCB
8 used in capacitors, which has been 1242, had --

9 A. Primarily.

10 Q. Okay.

11 -- had less of the --

12 A. Exactly.

13 Q. Okay.

14 And then under No. 4, it says, "published
15 toxicity data." What did that have to do with the
16 strategy for PCBs as capacitor fluids?

17 A. I -- I don't recall. I assume, in reading
18 this, there was toxicity data available that needed to
19 be transferred to the customers and this was the
20 publication that they...

21 Q. Okay.

22 And then there's data on soil migration. Is
23 that similar to the toxicity data?

24 A. Well, I can be more specific on that. The
25 PCBs, once in -- in the soil, did not spread. They

1 stayed generally in the vicinity that they were in the
2 environment. And we had data demonstrating that it did
3 not migrate through the soil, and that was what is being
4 referred to there.

5 Q. The next item is -- refers to a part of the
6 strategy for PCBs in capacitors, was to have a summary
7 of the P -- PCB situation available for distribution to
8 the public.

9 Now, what did that have to do with your
10 capacitor strategy?

11 A. Well, again, PCBs were, at that time, under
12 severe criticism from environmentalists and other public
13 groups. And this would indicate to me that -- that we
14 were going to implement a plan of putting together our
15 information on PCBs and having it available for
16 distribution through publications again so that the
17 public at large could get a balanced story of the value
18 versus any risk that might evolve in using PCBs.

19 Q. It was Monsanto's view that the position being
20 put forth by environmentalists and others was not a
21 balanced view?

22 A. Some of what was being presented was far from
23 balanced.

24 Q. Then Item No. 7 dealt with 1016; is that
25 correct?

1 A. That's correct.

2 Q. And what was that?

3 A. 1016 was a very low level of chlorination.

4 Sixteen -- the number 16 implies the percent chlorine as
5 compared to 42 percent in the more typical capacitor.
6 So, that product had substantial lowering of the
7 chlorine content of the chlorinated biphenyl.

8 And we were -- No. 7 indicates that we were
9 presenting data to Mr. Throdahl on the possible use of
10 that product as a partial replacement for capacitor
11 fluids.

12 Q. And what did Mr. Throdahl have to do with all
13 of this?

14 A. As I recall, at that time, Mr. Throdahl was
15 corporate vice-president in charge of research and
16 development for the corporation. So, he was the senior
17 chief scientist, if you will, and looked over all of our
18 research.

19 Q. And the difference between Aroclor 1242 and
20 Aroclor 1061 was what?

21 A. A lower level of chlorination, 16 percent
22 chlorination versus 42 percent chlorination --

23 Q. Would that --

24 A. -- would result in a lower level of -- of fire
25 resistance and other changes in dielectric

1 characteristics. But it would have been quicker to --
2 to disassociate itself in the environment. The higher
3 the level of chlorination, the longer it stayed in
4 the -- in the environment.

5 Q. So, Aroclor 1242 was roughly 42 percent
6 chlorine?

7 A. That's correct.

8 Q. And Aroclor 1016 was roughly 16 percent
9 chlorine?

10 A. That's correct.

11 Q. Then -- so, that basically, if I'm not -- well,
12 actually, the last item is to just maintain your
13 production, re shows at roughly 80 percent Aroclor 1016
14 and 20 percent Aroclor 1254.

15 A. It doesn't speak to production. It just says,
16 "Maintain Aroclor 1016 to 1254 ratio at -- at greater
17 than 80/20." I don't know whether that has something to
18 do with the properties that Mr. Munch was trying to --
19 to get in the -- get the customers to accept or, in
20 fact, whether it had something to do with the cost in
21 our plants. I -- I can't tell from this what that
22 refers to.

23 Q. Okay.

24 And you don't recall?

25 A. No.

1 Q. Now, the second aspect of this strategy --
2 before I get there, what sort of cost features would be
3 associated with the PCB portion of the dielectric fluid
4 strategy for capacitors?

5 A. Well, I -- I will try to interpret my
6 understanding of your question; but this -- at budget
7 time --

8 Q. Uh-huh.

9 A. -- this --

10 MR. ANDREWS: Before you respond,
11 Mr. Gossage, Mr. Lacey is a skillful
12 cross-examiner; and you don't need to try
13 to interpret his questions. He's entitled
14 to a straight answer to a straight
15 question. If you don't understand his
16 question, I'm sure he'll be happy to
17 repeat it for you.

18 A. Would you restate or rephrase the question.

19 Q. Surely.

20 In dollars and cents, what would you estimate
21 carrying out all these steps of the dielectric fluid
22 strategy as related to capacitors, PCB fluids, was going
23 to cost per year?

24 A. I -- I have no memory from looking at this,
25 other than to say that the predominant effort was on

1 Item A rather than Item B. Item B, at least in 1972,
2 was a very minor program.

3 Q. Item B?

4 A. Item B, shown -- which indicates new capacitor
5 impregnants.

6 Q. Well, let's talk about Item B, then.

7 A. Okay.

8 Q. Item B talks about new capacitor fluids,
9 correct?

10 A. That's correct.

11 Q. And those would be non-PCB fluids, correct?

12 A. That's -- that's correct.

13 Q. Okay.

14 And there's a reference here to on TXS MIPB.
15 What is TXS MIPB?

16 A. MIPB is monoisopropyl biphenyl. TXS, I don't
17 remember. It's a -- it was another compound that we
18 were looking at in conjunction with monoisopropyl
19 biphenyl. As I recall, it was a -- a sulphur-containing
20 compound; but I don't remember the -- the chemical name
21 of that.

22 Q. Rather than a chlorine-containing compound?

23 A. That's correct. There was no chlorine in
24 either of those two.

25 Q. Now, that was a product that had been developed

1 by Dr. Munch, was it not?

2 A. Well, I think "developed" is too strong a word.
3 This was a -- this was a candidate material that was
4 being looked at at this point in time.

5 Q. Well, it was a material that was somewhat
6 unique to Monsanto, was it not?

7 A. MIPB is a -- is/was a generally known chemical.
8 I'm not sure anyone was making it commercially, nor did
9 anyone have any patents -- composition matter patents.
10 So, it was not a unique product.

11 The other product, I can't recall whether it
12 was unique chemistry or not. So, there -- this was not
13 an invention of new chemicals.

14 Q. Well, the reason I'm asking, Item No. 1 under
15 "New capacitor impregnants" says, "Assume our TXS MIPB
16 patent will be granted."

17 A. I think the patent that he's refering to there
18 is an application patent, the use of -- of this
19 combination of materials in capacitors.

20 Q. And what that means is that you already had an
21 application for a patent on that product, did you not?

22 A. That's what this would imply.

23 Q. Now, was the cost of making that patent
24 application something that would be charged back against
25 PCB profits?

1 A. The cost, the patent cost?

2 Q. Uh-huh.

3 A. Some patent costs in Monsanto are corporate
4 charges. We have two patent organizations: The
5 corporate group and there are some patent lawyers
6 assigned to our unit. And over the time, we have used
7 different techniques of charging that back. Sometimes
8 it flowed as a corporate charge spread across all
9 businesses. Sometimes it was identified specific to a
10 product and charged to that product. I -- I can't -- I
11 don't remember how it was charged at this point in time.

12 Q. I see.

13 A. It could have been either way or -- or even a
14 combination of those two ways.

15 Q. Now, Dr. Munch had already done sufficient
16 testing on this TXS MIPB that he thought it was a
17 sufficiently good replacement that the company had gone
18 to the effort, whoever had to bear the cost, of seeking
19 a patent, correct?

20 A. Yes.

21 Q. And it was also a part of the plan to actually
22 present this material to General Electric for capacitor
23 testing, correct?

24 A. That's what this says.

25 Q. And with regard to that, it was not the plan to

1 actually tell General Electric what the material was,
2 just to give it to them to test; isn't that correct?

3 You might look at the next page.

4 A. This would indicate that, at least in the early
5 meeting with -- with General Electric, we were not going
6 to disclose the composition --

7 Q. Okay.

8 A. -- that we would do it afterward, as required.

9 Q. Obviously you would actually have to
10 manufacture enough of this stuff to provide it to
11 General Electric to do testing; is that correct?

12 A. No. That would be an overstatement. It would
13 have been a quantity that we produced probably in the
14 laboratory, that was in a very small container and taken
15 to GE for test purposes. The early testing would be in
16 minute quantities, not a -- not production certainly,
17 and probably produced in beakers in a laboratory.

18 Q. Okay.

19 The third point here under this dielectric
20 fluids strategy for capacitors is one called "reassure
21 smaller users."

22 Is that accurate?

23 A. Well, can you point that out to me?

24 Q. Yes. Item No. 3.

25 A. I'm sorry. "Reassure small users." Okay.

1 Q. Actually, on yours it says, "Reassure other
2 users," doesn't it?

3 A. Uh-huh.

4 Q. I'm looking at the draft here and the draft
5 said "smaller" and it's been change to "other."

6 The first thing you're going to do is let
7 people know that you had a solution to the problem,
8 correct?

9 A. That's what this says.

10 Q. What was the problem you had a solution to?

11 A. To the concern that was being expressed at the
12 time, that -- that PCBs should be removed from
13 capacitors and transformers.

14 Q. The problem was how to get PCBs out of
15 capacitors, wasn't it?

16 A. The problem was the public's pressure to remove
17 PCBs from capacitors and transformers.

18 Q. And the solution was to find something else to
19 put in other than PCBs, right?

20 A. That was the solution.

21 Q. And you were going to tell other users that you
22 had a solution to the problem, correct?

23 A. It says that -- that we are to tell them that
24 we have a technical solution, not a solution, a
25 technical solution, but that there are other factors

1 that have not yet been resolved.

2 So, no, it doesn't say that we have a solution
3 to the problem. It says that we have technically found
4 a product that will -- will be a candidate replacement,
5 but there are many factors in front of us to be
6 resolved.

7 Q. It references a decision diagram, doesn't it?

8 A. That's what it says.

9 Q. What's a decision diagram?

10 A. Well, that's a -- a management technique used
11 to -- to identify different problems and -- and sequence
12 those problems over a time period, that gives you some
13 indication of a map, if you will, of how -- how to get
14 from where you are in a situation to some final solution
15 you're looking for.

16 Q. And -- and part of this reassurance of
17 smaller -- or other users was to tell them that you
18 didn't want to make samples of this replacement product
19 available, correct?

20 A. That's what this says, is that we do not want
21 to make samples available until other factors are
22 explored.

23 Q. Or...

24 A. Or unless urgent needs arise.

25 Q. What would be an urgent need that would cause

1 you to want to let other capacitor manufacturers have
2 some of this product you'd developed?

3 A. I -- I can't interpret what he meant by that.
4 One interpretation could be that if the product was --
5 was banned by the government, that would be an urgent
6 need to -- to move forward with alternatives.

7 Q. Well, would there ever be an urgent need that
8 was contemplated by Monsanto deciding simply not to
9 produce the stuff anymore, PCBs I mean?

10 A. The corporation Monsanto, the management, the
11 senior management of Monsanto, could have taken that
12 decision at any point in time.

13 Q. Okay.

14 And had they done that, then that would meet
15 the urgent need requirement?

16 A. I think that would have fallen under that
17 category, yes.

18 Q. Were you aware, in your position as the market
19 director, of the efforts by Congressman Ryan to have
20 PCBs banned?

21 A. I remember Congressman Ryan's name; and -- and
22 generally, I remember that he -- he was pushing for
23 that.

24 Q. Okay.

25 And, of course, that ultimately came to pass,

1 did it not, in the Toxic Substances Control Act?

2 A. I -- I believe we withdrew the product before
3 that happened.

4 Q. Well, my question to you is: Ultimately
5 legislation was passed that did ban the use of PCBs as
6 dielectrics, did it not?

7 A. I think today PCBs are banned in the United
8 States. But that was after we had withdrawn the
9 product.

10 Q. Well, actually, the sequence of events, was it
11 not, the legislation passed with an effective date
12 sometime thereafter; and between the passage of the
13 legislation and the effective date, Monsanto chose to
14 withdraw the product?

15 A. Could be. I don't know.

16 Q. I see.

17 You'd even gotten down to the point of telling
18 or being prepared to tell these customers how much this
19 replacement product would sell for if you ever decided
20 to make it available; is that correct?

21 A. That's what this indicates.

22 Q. Were you the person responsible for pricing
23 this replacement product?

24 A. I would have had some substantial input into
25 it.

1 Q. And in order to price the replacement product,
2 you would have had to figure out what the cost of
3 production would be, what the administrative charges
4 would be, what the profit margin would be, and so on and
5 so forth?

6 A. I would not have done that. That would have
7 been done by our manufacturing people in conjunction
8 with our financial analyst. They would have given me
9 the cost information on producing that material in
10 whatever quantities were appropriate.

11 Q. And then you would have figured out how much
12 markup to apply to it to come up with a price?

13 A. That's correct.

14 Q. Okay.

15 And you also took into account, if you didn't
16 actually get the patent on this product, you could hope
17 that your skill in manufacturing it would carry you
18 through with a franchise-type position; is that correct?

19 A. It says that if the patent is not granted that
20 we should consider it. I'm paraphrasing here. It says,
21 "Depend on our skill in manufacturing and purifying."
22 It says nothing about a franchise, but that we would be
23 in the marketplace.

24 Q. Well, part of the dielectric fluid strategy was
25 an effort to try to develop a product that you could

1 either have patented or that, because of your skill in
2 manufacturing it and selling it and purifying it for
3 sale, would give you the same dominant position in the
4 capacitor market that you had with PCBs; isn't that
5 correct?

6 A. There is absolutely nothing in this document
7 that even comes close to suggesting that.

8 Q. I'm not asking about the document.

9 That was what was the plan and intention of
10 Monsanto, wasn't it?

11 A. No. Our plan and intention was to try to
12 respond to our customers, to help them develop
13 alternative fluids. It was driven by their request that
14 we do this kind of work, not by our intention to -- to
15 maintain our franchise, as you've phrased it.

16 Q. I see.

17 Now, you also had a strategy with regard to
18 transformer fluids, did you not?

19 A. There is one indicated here.

20 Q. And the first item under that is promote
21 issuance of ANSI, A-N-S-I, guidelines or use of Askarel
22 fluids.

23 A. Yes.

24 Q. Do you know what ANSI guidelines are?

25 A. ANSI is a society -- I'm not sure I remember

1 what each of those letters stand for -- but it was a
2 society that -- that set guidelines on the use of
3 certain materials. And it appears, and as I recall, we
4 were trying to work through the so-called ANSI committee
5 to try to get them to issue for the industry the proper
6 use and disposal of -- of Askarel fluids, which is
7 another term for polychlorinated biphenyls.

8 Q. To the extent that Monsanto employees were
9 involved in that ANSI effort, would their expenses be
10 part of the expenses charged against PCB dielectric
11 fluids under the MAT expense category?

12 A. Yes.

13 Q. Do you recall --

14 A. Let me modify that. If they were a MAT person.
15 In other words, if they were a person that were
16 typically a part of MAT, they were charged to MAT. If
17 they were a manufacturing person, they were charged to
18 cost of goods.

19 Q. Was Mr. Pappageorge a MAT person?

20 A. Mr. Pappageorge was a MAT person.

21 Q. And was Mr. Benignus a MAT person?

22 A. He was also a MAT person.

23 Q. And did -- did you recall that Mr. Pappageorge
24 was the chairman of the ANSI committee that worked on
25 that effort?

1 A. Yes, I do.

2 Q. And what Mr. Pappageorge did was to come up
3 with some ANSI guidelines that would permit the
4 continued use of PCBs in transformers, was it not?

5 A. I can't specifically answer that question. I
6 think he was involved and took a leadership position
7 in -- in trying to come up with some guidelines that
8 would help the industry to -- to make more effective use
9 of that material and assure that it would be contained.
10 But I -- your words were a little different than that.

11 Q. Well, was there any interest on the part of
12 Monsanto in having those guidelines come up to provide
13 for continued use of PCBs in transformers as opposed to
14 suggest a complete changeover to mineral oil
15 transformers?

16 A. There was interest on the part of the industry
17 for that to happen.

18 Q. Was there interest on the part of Monsanto for
19 that to happen?

20 A. There was interest on the part of all of
21 industry, including Monsanto.

22 Q. Well, Monsanto sold PCBs for a profit for
23 transformer use, did it not?

24 A. And our customers used them for a profit.

25 Q. And there was an interest on the part of

1 Monsanto in maintaining the use of PCBs in transformers
2 as opposed to having those all switched over to mineral
3 oil, wasn't there?

4 A. Along with the industry, yes.

5 Q. In fact, I remember --

6 MR. ANDREWS: Let's take about a
7 ten-minute break right here.

8 MR. LACEY: Okay. We're getting
9 close, but...

10 (RECESS)

11 BY MR. LACEY:

12 Q. The capacitor fluid that was being used was
13 Aroclor 1016, correct?

14 A. No. It was, at this time, primarily 1242.
15 We -- we were making 1016 available as an alternative
16 fluid, but I -- I -- I can't tell you what the split
17 between the two of them. But one was the product that
18 we'd historically used. 1016 was the lower chlorinated
19 material that was finding some application in -- in --
20 with some capacitor companies.

21 Q. Well, in fact, didn't Monsanto basically push
22 all capacitor manufacturers to the use of 1016?

23 A. At -- at some point in time, we tried to move
24 the industry that -- that way. I don't remember how --
25 I don't remember whether we were totally successful or

1 not.

2 Q. And the fluid being used primarily in
3 transformers was Aroclor 1254, correct?

4 A. There were a lot of different fluids used in
5 transformers. That's one. I think 1242 was also used.
6 1248 was used. There were a number. Whether 1254
7 was -- was the dominant one, I can't recall.

8 Q. One of the things that appears in this
9 dielectric fluid strategy for both capacitors and
10 transformers is trying to keep a ratio between Aroclor
11 1216 and Aroclor 1254, correct?

12 A. Well, there's a statement here that -- that you
13 referred to earlier. I don't know what that means. I
14 don't know whether that was to maintain a manufacturing
15 balance or whether it had some other purpose. But --
16 but that's possible.

17 Q. Well, there definitely was an effort to
18 maintain the ratio for whatever reason.

19 A. Well, I don't know whether it was in the narrow
20 sense of maintaining the ratio in a particular
21 application for property reasons or whether it was
22 maintaining the ratio for manufacturing. I don't -- I
23 don't remember what this refers to.

24 Q. Well, looking at the transformer strategy,
25 Aroclor 1016 was not used in transformers, was it?

1 A. I don't remember whether it had any use in that
2 or not.

3 Q. Okay.

4 In the pricing of PCB products, did the pricing
5 depend upon the size of the container in which the
6 product was sold?

7 A. There were price differences for -- for drum
8 quantities, for truckloads of drums, and for bulk
9 shipments in -- in trucks, for example.

10 Q. Did you also have pricing for rail car
11 shipments?

12 A. Yes.

13 Q. The large electrical manufacturers that bought
14 dielectric fluids, did they generally buy in large
15 quantities?

16 A. Yes.

17 Q. Typically, your shipments to people like
18 General Electric and Westinghouse were done by rail car,
19 were they not?

20 A. That's correct.

21 Q. What sort of customers would buy dielectric
22 fluids in quantities smaller than truckloads?

23 A. If there were any, they would be the very small
24 customers. I -- I -- I don't remember whether there
25 were any so-called LTL or below truckload quantities.

1 LTL is just a term. It means below truckload quantity.

2 Q. Does it stand -- LTL, does it stand for
3 anything?

4 A. Probably, but I don't know what it is.

5 Q. LTL. But LTL means below truckload?

6 A. That's correct.

7 MR. ANDREWS: Probably stands for
8 lower than truckload.

9 Q. Is that correct?

10 A. Could be. I don't know.

11 Q. Sounds like a good one, anyway.

12 A. Less than truckload, that -- less --

13 Q. Ah, there we go, less than truckload.

14 Now, at some point -- well, strike that.

15 At one period of time, Monsanto had sold
16 dielectric fluids to some small customers, repair shops,
17 and people like that, who made repairs to capacitors or
18 transformers that contained PCBs, correct?

19 A. I think the transformers, not the capacitors.
20 They were transformer repair shops.

21 Q. Okay.

22 And those small customers might buy in less
23 than truckload quantities.

24 A. That's correct.

25 Q. When Monsanto instituted the practice of

1 requiring written indemnity and attempting to police the
2 environmental safe handling of PCBs, Monsanto stopped
3 selling to those customers, did it not?

4 A. That's correct.

5 Q. Why?

6 A. Because we could not control those customers.
7 They were really our customers' customers, and we had
8 been providing a service in the past by making fluid
9 available for them for repair purposes. And we felt
10 that it was our customers' responsibility to monitor
11 and -- and coordinate changing policies with those
12 customers.

13 Q. Well, to the extent that Monsanto was
14 attempting to ensure that PCBs used as dielectric fluids
15 didn't get into the environment, having sales made by
16 your customers to third parties of your dielectric
17 fluids would make it more difficult to make sure that it
18 wasn't getting into the environment, wouldn't it?

19 A. It was a self-imposed role that we were
20 playing, to be sure that our plants did not -- did not
21 leak and that our customers' plants did not leak. But
22 there was no way that we could -- we could have enough
23 people or -- or resources available to us to track a
24 huge list of -- of repair shops. And we felt that that
25 was a responsibility that could be better carried by our

1 customers.

2 Q. Well, certainly PCBs could get into the
3 environment from repair shops, couldn't they?

4 A. Yes.

5 Q. In fact, wouldn't you and weren't you more
6 concerned about PCBs getting into the environment from
7 small repair shops than large manufacturers?

8 A. I -- I have no recollection of being more
9 concerned about that.

10 Q. So, your impression was that a small
11 transformer repair shop with a few employees would be as
12 likely to handle PCBs in an environmentally safe way as
13 would be somebody like a General Electric.

14 A. No, that wouldn't be my impression; but my --
15 my impression would likewise be that he would be dealing
16 with a much smaller quantity of material than -- than
17 someone like General Electric, producing large
18 quantities of transformers or capacitors at any point in
19 time. The amount of -- of the PCBs in a -- in a General
20 Electric plant that he had to deal with was order of
21 magnitudes more than what a small shop would be dealing
22 with in repairing and topping off a transformer.

23 Q. Let me show you a document, 153 --

24 A. Let me just also interject, because you may not
25 be aware of this: But many of the repair shops were

1 also GE and Westinghouse affiliated companies. They
2 were, in fact, in many cases, the transformer producer
3 itself, spread across the Country in small little --
4 there were also some independent repair shops; but there
5 were repair shops, as I recall, that were GE and -- and
6 Westinghouse organizations.

7 Q. Let me show you a letter, Document 15378
8 through 15380, and ask if that isn't a copy of a letter
9 that you sent to various manufacturers of electrical
10 equipment about supplying PCBs to repair shops
11 (tendering).

12 A. Okay.

13 Q. Is that a letter that you recall writing to
14 various major customers?

15 A. It would be a letter that was written for me,
16 but I'm familiar with the letter. I remember the
17 letter.

18 Q. And it is consistent with what you intended
19 that would be sent out?

20 A. That was the policy that was being communicated
21 at the time.

22 Q. And that policy was that, while you wouldn't
23 sell to repair shops, it was perfectly permissible for
24 customers to whom you sold PCBs to turn around and sell
25 it to their customers or repair shops.

1 A. We weren't in the position to -- to -- to
2 give -- to grant permission on anything. But we're
3 indicating if -- if -- that we're no longer going to
4 sell to them and it will be their decision whether they
5 sell to them or not.

6 Q. And the letter makes it clear that the people
7 you will sell to are people who have executed indemnity
8 agreements.

9 A. That's correct.

10 Q. Was the -- was one of the reasons for this
11 policy your concern that small repair shops might not be
12 suitable indemnitors because they wouldn't have adequate
13 insurance or adequate financial ability to indemnify you
14 from any problem?

15 A. Would you state that again.

16 Q. Yes.

17 Was one of the reasons for the policy not to
18 sell --

19 A. Which policy are you referring to? The policy
20 not to sell to --

21 Q. Yes. Let me rephrase the question or reask it.

22 Was one of the reasons for the Monsanto policy
23 not to sell to small repair shops or directly to
24 customers of companies like GE the concern on Monsanto's
25 part that those small repair shops or individual

1 customers might not have adequate insurance or financial
2 resources to be able to fulfill indemnity obligations to
3 Monsanto that it required of everyone to whom it sold
4 PCBs?

5 A. I don't -- I don't know.

6 Q. You just don't recall?

7 MR. ANDREWS: No. He said he doesn't
8 know.

9 A. I don't -- I don't know what -- what drove that
10 decision.

11 Q. Who made that decision?

12 A. I don't know.

13 Q. Was it upstream from you in your organization?

14 A. Absolutely.

15 Q. Okay.

16 And you were just a person carrying it out?

17 A. That's correct.

18 Q. Okay.

19 Let me show you another letter, Document 16632
20 through 16637 (tendering).

21 A. Okay.

22 Q. Do you recall the process by which you advised
23 customers of the cessation of sale of PCBs as hydraulic
24 fluids?

25 A. Repeat that one more time.

1 Q. Do you recall the process by which your group
2 advised customers of the cessation of sale of
3 PCB-containing products as hydraulic fluid?

4 A. Yes.

5 Q. And was that letter a part of that process?

6 A. No. This -- this, I believe, is a subsequent
7 process of converting the customers from polychlorinated
8 terphenyls to phosphate esters. We made two transitions
9 in the hydraulic fluid area, from --

10 Q. I see.

11 A. -- PCBs -- this was in 1970, when I came in --
12 from PCBs to a different set of products called PCTs,
13 polychlorinated terphenyls. And then about this time --
14 and this looks to be a part of the correspondence -- we
15 shifted them from this product to phosphate esters.

16 Q. I see.

17 The products that are listed, then, on the
18 attachment to that letter -- you just flipped past it.
19 It's the very last page.

20 A. Uh-huh.

21 Q. -- are products that you believe contained
22 polychlorinated terphenyls?

23 A. The products on the left, I believe, were the
24 polychlorinated terphenyls; and the products on the
25 right are the trade names for the phosphate esters.

1 Q. Now, there -- let me see if I have this
2 correct. Let's take -- oh, Pydraul 135. Well, let's
3 take Pydraul 312. Maybe that's an easier one to do.

4 There had been a Pydraul 312 that contained
5 PCBs?

6 A. I think the original product was Pydraul 312;
7 and as I remember that product, that was a blend of PCBs
8 with something else.

9 Q. Right.

10 A. And then P -- 312A was when we made the
11 transition to the polychlorinated terphenyls that
12 blend -- blended with something else. And then 312C was
13 the change to phosphate esters.

14 Q. Okay.

15 A. That's my memory of -- of -- of the transition
16 that we went through.

17 Q. Okay.

18 The form of that letter with the attached cover
19 sheet with a listing of names, is that the way that you
20 maintained your files when you had a form-type letter?

21 A. This looks like part of our aggress --
22 Addressograph system, where we could go into -- I never
23 saw it, but we could go into some system that had a list
24 of all of our customers and some sort of a -- where you
25 could automatically addressed correspondence to them.

1 Q. So, you have a form letter that was signed; and
2 then somebody would put the -- the letters through a
3 machine that would put each individual name on it.

4 A. That's right. And the markings on here, looks
5 like somebody went through and crossed certain customers
6 out that were no longer applicable and have checks by
7 the ones that --

8 Q. It was sent to.

9 A. -- it was sent to. That's what it looks like
10 to me.

11 Q. Okay.

12 Was there a similar changeover letter that went
13 out when customers were changed over from PCB-containing
14 products to polychlorinated terphenyl products?

15 A. In the hydraulic fluid area?

16 Q. Yes.

17 A. Yes. Yes, there were.

18 Q. Okay.

19 And did Monsanto follow the same practice when
20 it changed people over from PCBs to PCTs that it did
21 when they change them from PCTs to nonpolychlorinated
22 products? And by that I mean selling out its existing
23 inventory before making the change.

24 A. I don't remember whether that happened in the
25 transition from PCBs to PCTs or not. It would be -- it

1 would not be as required as it was in this case, since
2 the -- the PCBs that we had in inventory were still
3 being used in other applications at that time. We could
4 have used those inventories up in those other
5 applications. Whether there were specific products in
6 inventory under the Pydraul label, if those were in
7 inventory, it's conceivable that we could have used the
8 inventories up before we made the transition. I don't
9 remember.

10 Q. Was Pydraul generally a pure PCB product?

11 A. Some -- some were, and some weren't. I -- my
12 recollection is what's called Selector I, I believe
13 those were all, in the original form, PCBs a hundred
14 percent. And Selector II, I think, were blends with
15 other products.

16 Q. All right.

17 You're --

18 A. Many of these products were blends. These
19 products that were pure in their earlier form were PCBs.

20 Q. So, you're looking at the Document 16637?

21 A. That's correct.

22 Q. And it's your recollection that the original
23 products, the one that didn't have the "A" after them,
24 in most cases, were, on the top, Selector I, all PCBs,
25 and on the bottom, Selector II, a blend of PCBs and

1 something else?

2 A. That's my memory, yes.

3 Q. Okay.

4 Would there have been a use for a blended
5 product after it had been blended, other than as
6 hydraulic fluid?

7 A. That's correct.

8 Q. So, you would either have to destroy that or
9 sell out the inventory?

10 A. That's correct.

11 Q. When did Monsanto --

12 A. Or -- or some of the inventory could have been
13 shipped to -- to Europe in certain applications that
14 were continuing for some period of time after we
15 discontinued in the United States.

16 Q. Oh, did Monsanto have a different policy of
17 handling PCBs --

18 A. No.

19 Q. -- in Europe than in the U.S.?

20 A. No. There was one application for Pydraul in
21 Europe, in underground mines in Germany, where we were
22 asked to continue -- continue that application for some
23 period of time for the safety of miners; and we made
24 that concession to the German government for some period
25 of time. And -- and that's why I pointed out -- we

1 could have moved some of that inventory into those
2 applications for a period of time.

3 Q. Were there other governments that banned the
4 use of PCBs earlier than the United States?

5 A. I don't think so. I don't think so.

6 Q. Let me show you a document marked 15115-15116
7 and ask if that is the form of contract that was used by
8 your group in selling PCB dielectric fluids from about
9 1970 on (tendering).

10 A. This is -- this is certainly one of our
11 contracts. They were different between different
12 customers. They were -- ended up in different forms
13 depending upon who we were selling to. And there were
14 many customers we didn't sell under contract. We just
15 sold on a -- on a routine basis. This is -- this
16 happens to be a Westinghouse contract.

17 Q. The clause at the end of the first page there,
18 that large block paragraph, was that the customary form
19 of language you started insert -- started inserting by
20 at least 1970 on your right to terminate sales?

21 A. This was -- this was the -- the wording being
22 used in 1970.

23 Q. And was that particular wording included in all
24 the contracts that you had for dielectric use sale from
25 1970 forward?

1 A. That's my memory, yes.

2 Q. Okay.

3 A. From 1970 forward?

4 Q. Yes.

5 A. I believe that -- I believe the terminology
6 changed from time to time. I think this was the
7 terminology being used in 1970. I think there was
8 different terminology later.

9 Q. Okay.

10 Let me show you another document, 15117-119 --
11 through 119 and ask if that's the form of indemnity that
12 Monsanto required its PCB dielectric customers to
13 execute (tendering).

14 A. Well, this is on Westinghouse stationery; but
15 it appears to be the kind of -- of -- of so-called
16 home -- hold harmless agreement we were using.

17 Q. Well, in fact, the way that worked, wasn't it,
18 was that Monsanto sent them the form of the document
19 and -- and requested or required that they put it on
20 their own letterhead and sign it and a spot for Monsanto
21 then to accept it?

22 A. In the case of Westinghouse, I do not know how
23 it was done.

24 Q. Well, how was it done in the case of the other
25 customers with which you are familiar?

1 MR. ANDREWS: First of all, are you
2 familiar with how it was done with any
3 customer?

4 A. Well, I -- Westinghouse nor GE were handled by
5 my organization. The rest was handled by my marketing
6 organization and was -- was dispersed through the
7 marketing organization to the customer. I -- I don't
8 recall that it was done -- that we sent something out
9 and ask that it be put on their stationery. It could
10 have been been. I just don't recall that.

11 Q. Well, who handled Westinghouse and GE?

12 A. It was done at a higher level in the company.

13 Q. At the time that you were marketing director,
14 you were bypassed in going to Westinghouse and GE by
15 somebody up the chain?

16 A. That's correct.

17 Q. Did you have any input in the decision to
18 require such an indemnity?

19 A. No.

20 Q. Did you have any input in the language of the
21 indemnity?

22 A. No.

23 Q. Did you ever comment -- an opportunity to even
24 comment on the policy?

25 A. I had opportunities to discuss it within my

1 business unit, yes.

2 Q. Before or after it was done?

3 A. I don't recall.

4 Q. Did anyone ever advise you what the purpose of
5 requiring this hold harmless and indemnity agreement
6 was?

7 A. We told the corporation that we were continuing
8 to sell the product in this single application of
9 dielectrics because our customers and because our
10 government had informed us that there was no other
11 alternative, that we were encouraged or required -- I
12 can't recall -- to continue the sales.

13 When that message came back down from the
14 company, they said -- the result was this document --
15 that if -- if we are going to continue, if the industry
16 is saying that we must supply the product, these are the
17 circumstances under which we will supply. And we were
18 asked to -- to implement this policy that the
19 corporation sent -- sent down to us, with the exception
20 of Westinghouse and General Electric, which, because of
21 their size and because of their importance, they were
22 handled at the corporate level rather than at my level.

23 They were also handled at the corporate level
24 because there were multiple locations. And they --
25 those two companies were dealt with on a

1 corporate-officer-to-corporate-officer basis rather
2 than -- than dispersed to every capacitor and -- and
3 transformer plant of GE and Westinghouse.

4 Q. Were there other customers that had more than
5 one plant?

6 A. Not that I can recall.

7 Q. Do you know what the substance of the policy
8 was?

9 A. The substance of the policy, as I recall it,
10 was that -- that -- that if you are to continue -- if we
11 are to continue to sell the product to you -- whomever
12 we were addressing this to -- that Monsanto would be
13 held harmless for any future actions resulting from the
14 use of this material by that customer.

15 Q. You're talking about legal actions?

16 MR. ANDREWS: Well, now, Mr. Lacey,
17 he's already testified that he got this
18 from higher up in the country -- company,
19 that he didn't have any input into it, he
20 didn't participate in the drafting of the
21 language, he just didn't have anything to
22 do with it. Apparently being unsatisfied
23 with that answer, you're now asking him to
24 interpret some piece of paper -- some
25 language that's on Westinghouse paper

1 here.

2 Q. Let me have it -- let me ask it another way.

3 With the exception of Westinghouse and General
4 Electric, the people working for you had to go out and
5 get these customers to sign these documents, didn't
6 they?

7 A. That's correct.

8 Q. Did you talk to the people or did people in
9 your organization have any information on what they were
10 supposed to tell the customer and how they were supposed
11 to explain what this document was all about?

12 A. I have no memory of that.

13 Q. You don't have any recollection of that?

14 A. I -- I was not -- I made no calls on customers
15 myself; nor do I know what was presented to the
16 customers, other than what's written here.

17 Q. You don't recall ever having a meeting where
18 you got together with the people who were going to go
19 out and get these things signed and gave them any
20 information about what they were about and why they had
21 to sign them and what would happen if they didn't?

22 A. I have no memory of such a meeting.

23 Q. Do you have any memory of how the people who
24 were supposed to go out and get them signed were
25 informed of what they were supposed to do?

1 A. No. I'm sure they were informed, but I don't
2 know how that took place.

3 Q. I see.

4 It didn't happen through you as the market
5 being director?

6 A. I have no memory of being involved in -- in the
7 discussions as to how it should be implemented.

8 Q. Do you have any memory of ever invoking the
9 contract to cease selling dielectric fluids to anybody
10 because of the environmental handling of PCBs?

11 MR. ANDREWS: He's answered that
12 exact question already today.

13 MR. LACEY: If he has, it will take a
14 second to say "no." I don't recall having
15 asked that specific question.

16 A. Say it again.

17 Q. Do you recall ever being involved in invoking
18 the clause that would permit Monsanto to terminate sales
19 to a dielectric PCB customer because of their handling
20 of PCBs?

21 A. No, I have no memory of ever being involved in
22 that.

23 MR. ANDREWS: Mr. Gossage, it's about
24 20 minutes of 6:00. We've been here since
25 about 9:30. If you are tired or, for any

1 reason, want to break this off and start
2 in the morning, that is fine with me; and
3 I'll see that that is done. If you would
4 like to try to finish this off today and
5 you feel up to it, that's fine, as well.
6 But we've been here a long time; and if
7 for any reason you feel that it would be
8 better to continue tomorrow, we can do
9 that.

10 THE WITNESS: Well, how much more
11 have you got?

12 MR. LACEY: Probably five minutes.

13 THE WITNESS: I think I can make it
14 for five more minutes.

15 BY MR. LACEY:

16 Q. Let me show you a document, 15159 through --

17 THE WITNESS: You can repeat that
18 question every five minutes.

19 Q. -- 15162 and ask you to take a look at that
20 (tendering).

21 A. Okay.

22 Q. You received a copy of that proposed document
23 for your review and comments, did you not?

24 A. Well, I have no memory of it. It -- it would
25 indicate that it was routed from -- it was directed to

1 Dr. Paton from Mr. Mellon, a note from Dr. Paton,
2 routing it through Paul Benignus and to me. There's no
3 indication on here that I received it, and I have no
4 memory of it.

5 Q. Well, the routing was for the purpose of
6 getting any proposed changes ASAP.

7 A. That's what it says.

8 Q. I notice on the proposed form, on the -- what's
9 called the codicil, at 15162, there are proposed
10 changes.

11 Are those your proposed changes?

12 A. No. That's Dr. Paton's writing.

13 Q. And who is Dr. Paton?

14 A. Dr. Paton was a product manager. And at the
15 time -- at this particular time, Mr. Benignus reported
16 to Dr. Paton; and Dr. Paton reported to me.

17 Q. And his particular responsibility was what?

18 A. He had responsibility for all of our fluids at
19 that point in time, including PCBs, heat transfer
20 fluids, and hydraulic fluids.

21 Q. Dr. Paton's addition to that codicil included
22 adding language that permitted Monsanto to stop selling
23 PCBs if it determined that they presented an
24 unreasonable threat to health, correct?

25 A. That's what the handwritten notes have on it,

1 yes.

2 Q. And let me show you a document, 15193, and ask
3 you: Doesn't that confirm that, in fact, Dr. Paton's
4 comments were incorporated into the form of codicil that
5 was then used?

6 A. Yes.

7 Q. So that beginning about 1973, at least, the
8 codicil had in there the right to stop selling if there
9 were concerns about health?

10 A. That's what it says.

11 Q. Okay.

12 Did Monsanto ever stop selling PCBs to any
13 dielectric customer because of concerns about health?

14 A. In the time period that I was involved?

15 Q. Yes.

16 A. No.

17 Q. With regard to the salesmen -- and I'm talking
18 about this organization that you described which had
19 these regional offices, where men went out and sold PCB
20 products; and I'm thinking in particular now about
21 dielectrics, which was the bulk of the period that you
22 were involved after other sales had stopped -- did these
23 salesmen have any handbooks or information, reference
24 guide that you placed in their hands for them to use in
25 talking with customers?

1 A. Certainly not that I placed in their hands.
2 There were frequent meetings between the sales
3 organization and our product people in St. Louis to keep
4 them informed and keep them up to date on -- on the
5 changing situation. There was some written information
6 that gave them guidance and direction in how to deal
7 with the customer on environmental issues.

8 Q. So, they had a handout of sorts with what the
9 company policy was and what to say in answering
10 questions?

11 A. What I was describing was a -- was a written
12 document that helped them with what they should say to
13 customers in terms of his practices, how they could help
14 the customer with problems that he was faced with in --
15 in dealing with -- with PCBs.

16 Q. Was this --

17 A. It was not a policy document. It was helpful
18 hints on how to -- to deal with the issues.

19 Q. Was this different from the technical bulletins
20 that gave details of PCB products and their properties
21 and handling instructions and things like that?

22 A. Technical bulletins were yet something else
23 that was in their hands.

24 Q. Okay.

25 What sort of form did these salesmen's

1 bulletins or instructions take? I guess -- I don't
2 think I've seen one. I'm trying to find out what one
3 would look like.

4 A. It was just typed documents. I don't remember
5 whether it was on white paper or colored paper, but --
6 but there were -- they were documents that were sent
7 out. How formal they were and whether they were printed
8 or typed, I don't remember.

9 Q. Okay.

10 They may have been just typewritten documents?

11 A. Could have been, or they could have been
12 printed documents. I don't remember.

13 Q. Okay.

14 Do you know whether such documents existed when
15 you became the marketing director in 1970 or whether
16 they came into use after you became the marketing
17 director?

18 A. They would have been involving documents.
19 Certainly some of them were developed during the period
20 that I was there. Whether there were any prior to that
21 time, I don't remember.

22 Q. Okay.

23 And the topic that you remember them discussing
24 was how to handle environmental problems with PCBs?

25 A. How to go through a customer plant, how to look

1 for -- for possible leakage problems, how to -- how to
2 coach and counsel them on how to handle kitty litter.
3 Kitty litter was -- was, at least at one point, what a
4 customer would use if he had a spill of PCBs. He would
5 literally throw down some kitty litter to absorb up the
6 PCBs. And the proper way of disposing of that solid
7 material was the kinds of things that would be in that
8 document.

9 Q. Okay.

10 So, how to keep PCBs from getting into the
11 environment.

12 A. Exactly.

13 Q. Did they cover other aspects of the salesman's
14 job besides the environmental aspect?

15 A. Not that I recall.

16 Q. Was there a specific author of those manuals or
17 books or whatever they were called?

18 A. It could have been, in part, developed by
19 Pappageorge, in part by our technical people, and in
20 part by -- by Paul Benignus and his organization. It
21 would depend upon -- and probably by a combination of
22 all of those, depending upon the nature of the -- the
23 subject being discussed.

24 Q. Do you recall if those documents went through
25 different revision stages and, say, a 1970 version, a

1 1972 version, or 1974 version?

2 A. I don't recall, but there may have been more
3 than one version.

4 MR. LACEY: Pass the witness.

5

6 EXAMINATION BY MR. ANDREWS:

7 Q. Mr. Gossage, Monsanto was to produce a witness
8 today who would be called upon to give testimony about
9 the relative profitability of Monsanto's PCB products as
10 compared to other products.

11 Are you a witness that is qualified to testify
12 on those facts?

13 A. I think I am.

14 Q. If you were to compare Monsanto's PCB products
15 with other products manufactured by Monsanto, what types
16 of products would you compare it to?

17 A. Well, in looking back at the time I was
18 involved, I would compare it to -- to some of the other
19 specialty fluids within my specialty group, such as our
20 heat transfer fluids, our non-PCB heat transfer fluids,
21 certainly our Skydrol hydraulic fluid, which was also
22 non-PCB. Or I would compare it with -- with other
23 similar-type market situations in Monsanto.

24 For example, some of our proprietary herbicides
25 or our -- our Skydrol -- our Skybond -- our Saflex inner

1 layer*for automobile windshield material, those would be
2 products that I would categorize as being generally, in
3 terms of market share, in terms of the terminology used
4 earlier, franchise, of similar-type products.

5 Q. If you compare the profitability of PCB
6 products with the similar products that you've just
7 mentioned, how would that comparison be made; and what
8 would be the result?

9 A. Well, I would -- I would -- I would say again,
10 dealing first with the -- with the products that I was
11 most familiar with within my business unit, that I knew
12 in -- in -- in considerable detail, some of our heat
13 transfer fluids, some of our non-PCB heat transfer
14 fluids, for example, would carry gross profit margins of
15 65 or 68 or 70 percent. That would be, for example,
16 specifically the kind of profit margin I can recall on
17 Thermonol 66.

18 Skydrol, the fire-resistant hydraulic fluid,
19 non-PCB, for commercial aircraft, carried a profit
20 margin that varied during that time period from, oh, 35
21 to -- to 50 percent. The herbicides -- Lasso being an
22 example of a product where we had a -- a strong position
23 in the marketplace -- carried profit margins of 70 or 80
24 percent.

25 So, overall, in a broad spectrum, Saflex, which

1 was another product I had mentioned, would have had a
2 gross profit margin of maybe 35 percent. So, I would
3 put PCBs somewhere in the middle of the road. There
4 were certainly some products of similar -- of similar
5 nature that were lower in profitability and a
6 substantial number that were also higher in
7 profitability.

8 Q. Earlier there was some discussion about the
9 price of PCBs per pound.

10 Were you and Mr. Lacey able to calculate the
11 price of PCBs for dielectric use per pound as
12 represented on Gossage No. 4?

13 A. This document (indicating)?

14 Q. Yes.

15 A. These -- this certainly is a -- a calculation
16 of prices off of some data that was -- that seemed to be
17 accurate and appropriate.

18 Q. Okay.

19 The -- the question, I guess, is: Were you and
20 Mr. Lacey able to do the mathematical calculation based
21 on documents that he had within his possession?

22 A. Of these unit prices, yes.

23 Q. Do you recall the testimony earlier about the
24 price of the PCB products going up in the middle to late
25 seventies?

1 A. Yes.

2 Q. And that was as a derivative of the information
3 that you see on Gossage No. 4; is that correct?

4 A. That's correct.

5 Q. What factors were coming to play, as exhibited
6 on Gossage No. 4, that caused the price of those PCB
7 products to go up in that time period?

8 A. Well, as you -- as you look at the data in that
9 exhibit, the prices started moving up in 1971. That
10 would have been the year after we started getting out of
11 our -- our PCB hydraulic fluids and then subsequently
12 out of heat transfer and other applications of PCBs..

13 As we went out of those uses of PCBs, our plant
14 utilization went down; and our costs were driven up by a
15 lower occupancy in our plant. Our costs were also
16 driven up by environmental costs in terms of maintaining
17 our plants in a condition where there would be no
18 leakage of PCBs into the environment as well as
19 environmental costs associated with helping our
20 customers perform in a similar manner.

21 Q. During that period of time, when the price per
22 pound of PCBs was going up, what was happening to the
23 gross profit?

24 A. Well, the gross profit margin, certainly from
25 1960 through 1968 or '69, was generally at a higher

1 level; and then the gross profit margin deteriorated for
2 a few years as we went through a period of -- of our
3 highest level of -- of expenditures. And then in the
4 latter part of -- of the mid-seventies, '73, '74, and
5 '75, the profit margin moved back up somewhat, but never
6 to the levels that -- that it was at when we were
7 selling PCBs broadly in a number of different
8 applications.

9 Q. Would it be fair to say that, even though the
10 price that you were charging the customers was going up,
11 the profit to Monsanto never was in the -- at the level
12 that it was in the early sixties?

13 MR. LACEY: Object. Leading.

14 A. Our philosophy -- can I speak?

15 Q. Sure.

16 A. Our philosophy at the time was to share the
17 burden of -- of the higher costs as they moved up. We
18 passed some of them on to the industry, and we kept some
19 of them ourselves. We -- we -- we were not trying to move
20 the gross profit levels up to the level that we'd
21 experienced in the earlier days.

22 Q. Let me show you this document that bears the
23 number 8935 and about which you were asked some
24 questions earlier by Mr. Lacey.

25 Was the product that was identified as TXS MIPB

1 the equivalent of the PCB product that it was to
2 replace?

3 A. No. It -- it was not equivalent; and, in fact,
4 it was work that Dr. Munch had done many, many years
5 ago. Dr. Munch was -- was really a world reknown leader
6 in -- in capacitor technology and had, over the years,
7 developed a whole portfolio of alternative fluids; but
8 never did he come up with a fluid that could match
9 the -- the properties of PCBs. This -- this product,
10 which was invented a number of years ago -- not
11 invented, but was at least tested by him a number of
12 years ago -- was at least one of the products, one of
13 the better products, that -- that he selected for -- for
14 possible use by the industry.

15 Q. Is there an indication on that document that
16 Mr. Lacey was asking you questions about earlier about
17 some of the differences between the TXS product and the
18 PCB-based product? And specifically I draw your
19 attention to the enumerated paragraphs at the bottom of
20 that page.

21 MR. LACEY: I'm going to object.

22 Leading.

23 A. We -- we had no discussion about the
24 performance down here.

25 Q. Okay.

1 You're talking about questions by Mr. Lacey?

2 A. We did not discuss this area at all.

3 Q. Okay.

4 Do you know of any differences between the TXS
5 product and the PCB-based product?

6 A. Well, the product did not perform at the same
7 level of the PCBs because it was -- was not
8 fire-resistant. It was a much lower level of -- of fire
9 resistance than the PCBs. It had some incompatibility
10 problems with some of the films used in capacitors, as I
11 recall. And those would be the two things that would
12 come to my mind.

13 Q. Was fire resistance an important element of the
14 PCB-based product?

15 A. It was the critical property that -- that we
16 brought to the marketplace, and it was the -- the
17 property that both the capacitor industry and the
18 transformer industry insisted they must have to produce
19 both of those products.

20 Q. What was the relationship of the MAT costs, the
21 MAT costs versus other costs of production in the PCB
22 products?

23 A. Well, in terms of absolute terms, MAT was a --
24 was a relatively small number as compared to the -- the
25 cost of goods. As a percentage of sales, for example,

1 cost of goods would have been about 60 to 65 percent of
2 the sales price; and MAT would have been in the order of
3 15 percent of the sales price. So, costs were --
4 were -- in that comparison, four times as much as the --
5 the MAT expenses.

6 MR. ANDREWS: I pass the Witness.

7 MR. LACEY: A few more questions.

8
9 RE-EXAMINATION BY MR. LACEY:

10 Q. I understand your testimony to be that fire
11 resistance was the essential criteria required by
12 transformer and capacitor manufacturers.

13 A. In those applications where they were being
14 used, that's correct.

15 Q. The replacement products didn't have the fire
16 resistance of PCBs, did they?

17 A. That's correct. They had to change their
18 codes; and they had to change a lot of the rules and
19 regulations as well as insurance, as I recall, in the
20 coverage, when they moved away from the fire -- from
21 the -- with the fire-resistant products.

22 Q. And we moved away from the fire-resistance
23 products -- fire-resistant products as a -- as a Country
24 at least by 1977, when Monsanto quit selling PCBs for
25 that purpose, didn't we?

1 A. I wasn't involved in 1977; but -- but whenever
2 we stopped selling them, then at least a lot of
3 applications of -- of transformers and capacitors no
4 longer held that property. Some capacitors -- I think
5 the metal film -- still had a level of -- of fire
6 resistance.

7 Q. And, in fact, Monsanto quit selling
8 fire-resistant materials, PCBs, for capacitors and
9 transformers before they were banned; isn't that
10 correct?

11 A. That's my understanding. I wasn't involved.

12 Q. And when you stopped selling -- I'm talking.
13 about Monsanto stopped selling -- it was not because
14 people would not buy it, was it?

15 A. I -- I really wasn't involved.

16 Q. I see.

17 When you stopped selling, the transformer and
18 capacitor manufacturers were able to switch to other
19 products, were they not?

20 A. Again, I wasn't involved. I would assume so.

21 Q. Are you aware of the fact that people are still
22 making capacitors and transformers?

23 A. There are still capacitors and transformers in
24 use today.

25 Q. We haven't had any major blackouts as a result

1 of not using PCBs?

2 A. I -- I don't know whether any of the blackouts
3 were associated with that or not. I don't know.

4 Q. I see.

5 So, your testimony that the TXS MIPB capacitor
6 replacement material was developed by Dr. Munch several
7 years prior to --

8 A. I test --

9 Q. -- the memo on dielectric fluid capacitor -- I
10 mean, dielectric fluid strategy?

11 A. I -- I testified that Dr. Munch worked on a
12 number of alternative fluids for capacitors over the
13 years. Exactly when this product came out of his
14 research, I don't know; but it -- it came from a -- a
15 long history of looking at -- at alternative products.

16 Q. Well, you're certainly not intending to testify
17 that that fluid wasn't developed after the environmental
18 problems with PCBs came to light and in a response to
19 try to find a specific replacement for PCBs, are you?

20 MR. ANDREWS: Did you understand that
21 question?

22 THE WITNESS: Oh, yeah.

23 MR. ANDREWS: I couldn't follow it.

24 THE WITNESS: Yeah, I understand the
25 question.

1 A. I -- I testified to the possibility that --
2 that some of that work was done before the environmental
3 issue.

4 Q. Well, I'm trying to find out whether you intend
5 to leave the jury with the impression that the work was
6 or was not done in response to the environmental problem
7 or whether you know one way or the other.

8 A. I -- I testified that -- that Dr. Munch did a
9 lot of research on alternative materials a number of
10 years before this strategy document, which is dated
11 1972, as I recall.

12 Q. My question is about that specific product.

13 A. I do not know when that specific product was
14 first tested by Dr. Munch.

15 Q. Or even developed?

16 A. Correct.

17 Q. You don't know when the patent application was
18 sought?

19 A. Well, the patent application -- no, I don't
20 know when it was applied for. But it was not a
21 composition of matter, as I testified earlier. It was
22 an -- was an application patent.

23 Q. I understand.

24 But you don't know when that application was
25 sought?

1 A. Was --

2 Q. Was sought.

3 A. -- filed. I didn't hear it. Sought?

4 Q. Sought. That's the same thing as filing it,
5 isn't it?

6 A. I don't know when it was filed.

7 Q. Okay.

8 MR. ANDREWS: I think -- I think
9 there's a general confusion here. You
10 keep talking in terms of an application
11 for a patent --

12 MR. LACEY: Yes.

13 MR. ANDREWS: -- and I think the
14 Witness is talking in terms of a patent --
15 of an application rather than an invention
16 of a product.

17 Is that correct?

18 THE WITNESS: Well, what I testified
19 to earlier was that Dr. Munch, as a -- as
20 a reknowned expert in -- in -- in
21 capacitor materials, did years and years
22 of research; and he was one of the senior
23 scientists at Monsanto, dedicated his
24 whole -- whole life to capacitors and --
25 and did much work and -- and looked at

1 many materials before this time period.

2 BY MR. LACEY:

3 Q. Yes.

4 A. And it is -- it is possible that this was done
5 well in advance of the time period that you're referring
6 to here. That's what I testified to.

7 Q. And it's also equally possible, as far as your
8 knowledge is concerned, it was first done after the
9 environmental problems became of significant concern to
10 Monsanto, isn't that --

11 A. It's also possible. I wouldn't use the term
12 "equal." I -- that -- that's a judgment. That's a
13 judgment. I...

14 Q. Is it your judgment that it's more possible or
15 probable that Dr. Munch did this before environmental
16 concerns became of importance?

17 A. I don't really know.

18 Q. Okay.

19 Comparing the gross profit margins for PCB
20 dielectric fluids and the price increases that have been
21 calculated on Gossage Exhibit No. 4, there was more than
22 a twofold increase in the profit margin between 1972 and
23 1973, was there not?

24 A. Well, we have had much discussion about a
25 column that is called "Includes PCB phase-out"; and I do

1 not know the meaning of that. I don't know how that
2 was -- was -- in what context that's put in this table.
3 The data that you have presented to me shows the numbers
4 to reflect what you've said, but I do not know what the
5 meaning of this large number called "phase-out" means
6 and how it impacts the gross profit.

7 Q. And with regard to gross profit margins in the
8 period of 1973, '74, and '75, the gross profit margin in
9 each one of those years exceeded 35 percent, did it not?

10 A. That's correct.

11 Q. Now, you were, in response to some of your
12 lawyer's questions, talking about what you consider to
13 be similar products to PCB products.

14 A. That's correct.

15 Q. And you mentioned some profit margins.
16 Were you talking about gross profit margins
17 there?

18 A. Yes, I was.

19 Q. Okay.

20 So, you stated, I believe, that the Safety
21 Flex, that's the --

22 A. Saflex.

23 Q. Saflex.

24 A. Yeah.

25 Q. -- had a gross profit margin of approximately

1 35 percent?

2 A. That's my memory.

3 Q. And that would be the same as the gross profit
4 margin in PCBs in the period '73, '74, '75?

5 A. That's correct.

6 Q. The Skydrol had a profit margin somewhere
7 between 30 and -- 35 and 50 percent?

8 A. That's my memory.

9 Q. And that's the range you see the profit margins
10 on PCBs at on the schedule for 1960 through 1976, is it
11 not?

12 A. Well, there's nothing on there as high as 50;
13 but, yes, from 40 something down to --

14 Q. Well, in 1964, the profit margin on PCBs was --

15 A. I'm sorry.

16 Q. -- 53.4 percent --

17 A. You're right.

18 Q. Was it not?

19 A. That's correct.

20 Q. You mentioned there were some specific
21 hydraulic or heat transfer fluids. You mentioned
22 Thermonol 66 that had a profit margin of 65 to 70
23 percent, correct?

24 A. That's correct.

25 Q. Thermonol 66 was developed as a replacement for

1 Thermonol FR, was it not?

2 A. No, that's not correct.

3 Q. I see.

4 A. It was a parallel product sold at the same
5 time.

6 Q. I see.

7 A. And is made from the same family of products
8 that these products are made from. It's not just
9 chlorinated.

10 Q. It is a biphenyl, heat transfer fluid?

11 A. Terphenyl, yes.

12 Q. Terphenyl.

13 A. Made out of the same raw material production
14 that these products are made of.

15 Q. And the -- the profit margin on Thermonol 66,
16 when did that reach the 65 to 70 percent profit margin?

17 A. For the entire period that I was involved,
18 it -- it ran in the range of 65 to 70 percent.

19 Q. But that's also the period that the
20 PCB-containing Thermonols are being phased out and no
21 longer available, correct?

22 A. Well, even prior to that. My memory is it
23 always, and even today, carries a very high profit
24 margin.

25 Q. Okay.

1 And then the other product you mentioned was a
2 herbicide that had the 70 to 80 percent --

3 A. Lasso.

4 Q. -- profit margin?

5 A. Yes.

6 Q. And that would mean, for every dollar of sales,
7 80 cents of it was gross profit?

8 A. That's correct.

9 Q. Okay.

10 There are not very many products in Monsanto's
11 entire repertoire of products that have those sorts of
12 margins, are there?

13 A. There are a number of products that have that
14 kind of margin.

15 Q. Then there must be an awful lot of very low
16 margin products in order to have average or gross profit
17 margins, as we found in looking at the annual reports,
18 in the 20 to 30 percent range?

19 A. Well, certainly in the -- in the -- in the
20 large volume commodity area, there are some that have
21 considerably lower margins; and occasionally, from time
22 to time, one loses money at the gross profit level.

23 Q. Sure.

24 And within -- even within the specialty
25 products area, like the Lasso and the Saflex and the

1 PCBs and the Thermonols, PCBs had a very good profit
2 margin, even within the specialty products, did they
3 not?

4 A. No. I -- I would -- I would have categorized
5 it as in the middle of the road. It was not -- it was
6 not good. It was not bad. It was acceptable.

7 Q. I see.

8 The price calculations that are shown on
9 Gossage Exhibit No. 4, do you accept those as completely
10 accurate for what the prices were for the PCB products
11 in the years that are shown there?

12 A. I can't accept them as -- as -- as -- what term
13 did you use?

14 Q. Completely accurate?

15 A. -- completely accurate. I saw the data base
16 that you used. It -- based upon that data base, these
17 are the numbers that you come out with. They are in the
18 general ballpark of what I remember.

19 Q. Would you feel somewhat more comfortable with
20 those numbers if you had all the actual pricing sheets
21 that were generated from time to time by Monsanto?

22 A. Then I would be absolutely sure.

23 Q. And we don't have those here?

24 A. That's my understanding. I haven't seen them.

25 Q. Well, I haven't seen them, either.

1 They were documents that did exist in Monsanto.
2 They had published priced sheets, did you not?

3 A. Well, yes. And anytime a price sheet was
4 reissued, the other one would typically be thrown away.
5 We didn't retain price sheets over long periods of time.

6 Q. So, one would not expect to be able to find any
7 price sheets in Monsanto relating to PCB products, then?

8 A. I would be surprised if you'd find price lists
9 on any products that go back to this time period.

10 Q. And the time period you're referring to is from
11 1960 to 1975?

12 A. That would be my guess. It's just not
13 something one keeps in their -- in their records.

14 Q. I see.

15 The price increases that we find on Gossage
16 Exhibit No. 4, which you consider to be generally
17 accurate -- maybe not completely accurate, because we
18 don't have the price sheets. Is that the correct
19 characterization?

20 A. Well, I'd -- I would -- I would comment that --
21 that there was a long period of time, before I came into
22 the position, where the pricing was -- was very flat,
23 because there was no cost pressures. We were not
24 incurring any new kinds of costs, and our volume
25 increases were keeping up with the escalation from

1 inflation.

2 When we started losing volume, there was a
3 rapid escalation in cost, as I've testified to earlier;
4 and we passed on price increases that were different
5 than what the industry had expected over history. So,
6 this follows that pattern; and, therefore, it looks
7 directionally like -- like this is -- this is what was
8 happening.

9 Q. Okay.

10 And --

11 A. I can't speak to the absolute increases from
12 year to year.

13 Q. In other words, it might be off by a half cent?

14 A. It might be off by more than that. I -- I
15 don't -- I can't speak half a cent or 2 cents.

16 But we're also dealing with product mix in
17 here. Over time, there was product mix changes; and
18 different products had different prices. These are
19 calculated as the average prices of the products being
20 sold in a particular year, and that in itself could be
21 more than a half a cent off from year to year.

22 Q. For a particular product?

23 A. Yes.

24 Q. As far as the average price for all the
25 product, does it appear to be within a half cent one way

1 or the other?

2 A. As I say, I -- I -- I -- I can't speak to
3 the -- to the increases between '70 and '75 as being
4 within a half a cent or a cent. They're -- they're
5 directionally what we were doing. In terms of absolute
6 terms or percentage that they might be off, I -- I just
7 don't know.

8 Q. And you're not aware of any way -- anyone who
9 could get any more accurate than that; is that correct?

10 A. That's my opinion, that -- that you could not
11 get more accurate.

12 Q. Okay.

13 So, it's the best that we can do today?

14 A. I think so.

15 Q. All right.

16 Now, those price increases reflected, in part,
17 charging, as expenses which went into the price
18 calculation, costs related to Monsanto ceasing the sale
19 of PCBs for hydraulic purposes, heat transfer purposes,
20 and the like, did they not?

21 A. To the extent that -- that our large plant was
22 producing at a lower level and we were having to spread
23 the fixed cost of that over a smaller volume, yes,
24 that's correct.

25 Q. And the net effect of that was that, by the

1 price increases that you put into place for PCBs as
2 dielectric fluids in the period from 1970 to 1975, it
3 made it possible for Monsanto to leave the PCB business
4 profitably instead of having any loss connected with
5 going out of that business; isn't that correct?

6 A. Can state that again?

7 Q. Yes.

8 Because of the size of the price increases as
9 reflected on Gossage Exhibit No. 4 and the gross profit
10 margins and the actual performance income related to
11 those price increases, it was possible for Monsanto to
12 go out of the PCB business profitably rather than
13 suffering a loss because of that; isn't that correct?

14 A. I can't -- I can't respond to that. I can only
15 speak to the period that I was involved, from 1970 to
16 '75. And during that period of time, we did not -- we
17 did not incur substantial losses as we went out of
18 certain of our businesses.

19 We did take certain write-offs that are outside
20 the data base that you're dealing with here; and whether
21 those losses for those write-offs -- for example, the
22 write-off we discussed earlier, on Anniston -- offset
23 the profits that are shown here for dielectrics, I -- I
24 don't know how the -- how all that would net out. There
25 were losses that aren't included in these costs that

1 you've been discussing.

2 Q. But part of the reason for the very substantial
3 increases in prices in the period from '72 through '76
4 was to help offset the losses related to going out of
5 the PCB business; isn't that correct?

6 A. Yeah, they were the costs that were -- that we
7 were incurring to continue in the businesses that we
8 stayed in; and we were passing some of those on to the
9 industry in an effort for them to share with us the cost
10 burden we were carrying to continue to supply, at their
11 request, these products.

12 Q. And that included the cost burden for the
13 businesses that you'd gone out of.

14 A. With the exception of write-offs of businesses
15 resulting from that, which were not passed on to the
16 industry, as well as future write-offs that took place
17 when we went out of this business.

18 Q. And you do not know whether, when the entire
19 process was concluded, the price increases that you
20 provided for were sufficient to allow Monsanto to go out
21 of the entire PCB business profitably?

22 A. I cannot -- I cannot tell you that, from the
23 period 1970 to the period in '77, when we went out of
24 the business, when you balance off all of the write-offs
25 and all of the corporate costs for continuing the

1 business during this period of time, whether that would
2 net out a positive or a negative for the corporation.

3 Q. Okay.

4 A. I don't know.

5 Q. Had Monsanto gone out of the PCB business cold
6 turkey in 1970 or 1971, there's no doubt but what there
7 would have been a substantial loss; isn't that correct?

8 A. I cannot make that comparison in terms of
9 whether that would have been a bigger loss or a lesser
10 loss. I don't know.

11 Q. That wasn't my question.

12 My question was: Had Monsanto gone out of the
13 PCB business entirely in 1971 or 1972, that would have
14 resulted in a loss in getting out of the business, would
15 it not?

16 MR. ANDREWS: He's just answered that
17 question.

18 MR. LACEY: No, he didn't answer that
19 question.

20 A. You asked -- you asked two different questions.
21 The first time, you asked whether there was a
22 substantial loss; and the second time, you asked whether
23 there was a loss.

24 If we had gone out of the business -- though
25 I've never seen such a calculation -- I assume that

1 there would have been a loss. A substantial loss for --
2 for the company? I -- I would suggest to you that the
3 PC business was a very small part of the corporation.
4 It would not have been substantial.

5 Q. Well, what is a substantial loss in terms of
6 Monsanto, then, just so we can get that number pinned
7 down?

8 A. Well, you have the 10K reports. We were a one
9 to three-billion-dollar company, I think, over the time
10 period that you referred to those; and we had incomes
11 of, as I recall your numbers, 300 to \$500 million.

12 Q. Okay.

13 A. A few million dollars is not substantial in --
14 in that context.

15 Q. How much isn't?

16 A. A few million.

17 Q. Okay.

18 Setting aside, then, since we say a few million
19 dollars is not substantial, my question very
20 specifically is: There's no question but what, if
21 Monsanto had gone out of the PCB business entirely in
22 1971 or 1972, just said, "We're stopping," there would
23 have been a loss, correct?

24 A. I don't know.

25 Q. You don't know.

1 And you do not know whether or not, when
2 Monsanto went out of the business in 1977, there was a
3 loss?

4 A. I do not know how they handled the capital and
5 how it was written off. Likewise, I don't know how
6 Anniston was written off.

7 Q. Did you have any instructions from anybody
8 above you to take into account in your pricing policies
9 in the 1970's making enough money to offset the
10 possibility that the company might go out of business?

11 A. Absolutely not and quite to the contrary. What
12 I was instructed to do was to -- to be socially
13 responsible and to continue this product as long as the
14 customer insisted that he had to have it and in a manner
15 and in a way that we were being responsive to the
16 industry. And, in fact, as I was rewarded financially,
17 I wasn't rewarded for income performance. I was
18 rewarded by how well the company judged that I was
19 managing this very delicate environmental and customer
20 situation.

21 Q. And were you judged to be handling it well?

22 A. Well, I -- I, as well as a number of the
23 employees in here, received bonuses for -- not for the
24 income we generated, but for the way we got out of
25 certain of these businesses in a responsible manner.

1 Q. And I guess, to the extent we can look at your
2 position as whether it's one of the top 10 people in the
3 company today or one of the top 20 people or whatever
4 the number is, you've risen very high in the company at
5 a very early age.

6 A. I may not be as young as I look.

7 Q. You're about 52 or 53, aren't you?

8 A. That's close. That's not young.

9 Q. Well, compared to the other people on that list
10 up there, you're one of the youngest in that top ten,
11 aren't you?

12 A. Some are younger; some are older.

13 Q. Who is the youngest person in the top ten?

14 A. Well, Mr. Potter, who I referred to as my boss,
15 is -- is -- is my -- is younger by a number of years.

16 Q. Okay.

17 Who else is younger in that group?

18 A. You'll have to show me the list again.

19 Q. Let's not bother to do that.

20 A. Mr. Reading, who is one of the executive
21 vice-presidents, is younger than me.

22 Q. Okay.

23 A. Whether there are others or not, I don't know.

24 Q. Two or three may be younger than you?

25 A. At least.

1 Q. Okay.

2 How many times have you testified before,
3 either by deposition or live at trial?

4 A. This would be the third time.

5 Q. By deposition?

6 A. By deposition.

7 Q. Have you ever testified live at trial?

8 A. No, I have not.

9 Q. What did the other depositions involve?

10 A. They also were on the subject of PCBs.

11 Q. Do you remember what cases those depositions
12 were given in?

13 A. The first was Johnson Motors, and the second --
14 I really -- I don't remember. It -- it seems to me
15 it -- if I ever knew, it was more than one situation. I
16 don't remember what the second one was.

17 Q. Do you remember what the circumstances that led
18 to the Johnson Motors case was? Was it a heat transfer
19 fluid or --

20 A. No. It was the hydraulic fluid. It was the --
21 it was the PCBs in the waterways of their plant site and
22 the getting out of the Pydraul business, the transition
23 from PCBs to polychlorinated terphenyls to phosphate
24 esters.

25 Q. And do you recall what the other case dealt

1 with, what type of PCB products?

2 A. Yeah. It was -- it was a case involving
3 dielectrics. I do remember what it was now.

4 Q. Was it brought by a customer? Was it an
5 environmental-type case, or do you recall?

6 A. Well, it was -- I want to say it was brought by
7 a municipality. I believe it was brought by a city
8 against a customer of ours, and we were also brought
9 into it as I -- as I recall.

10 Q. The City of Bloomington, Indiana, versus
11 Westinghouse and Monsanto?

12 A. That's correct.

13 Q. And you were recently deposed in that case?

14 A. I -- I think September of last year.

15 MR. LACEY: Pass the Witness.

16 MR. ANDREWS: I have nothing further.

17 (DEPOSITION CONCLUDED AT 6:25 P.M.)
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SIGNATURE OF WITNESS

I, THOMAS L. GOSSAGE, solemnly swear or affirm, under the pains and penalties of perjury, that the foregoing 331 pages contain a true and correct transcript of the testimony given by me at the time and place stated, with the corrections, if any, and the reasons therefor noted on a separate sheet of paper and attached hereto, and that I am signing this before a Notary Public.

THOMAS L. GOSSAGE

THE STATE OF TEXAS]

Subscribed and sworn to before me, the undersigned authority, by the said THOMAS L. GOSSAGE on this the ____ day of _____, 1987.

Notary Public in and for
the State of Texas

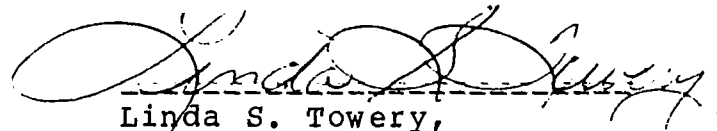
1 THE STATE OF TEXAS]

2
3 CERTIFICATE

4
5 I, Linda S. Towery, Certified Shorthand
6 Reporter No. 2413 and Notary Public in and for the State
7 of Texas, do hereby certify that I am not related to or
8 employed by any of the parties hereto, or their counsel,
9 and that I am not in any way interested in the outcome
10 of this matter.

11 I further certify that the above and
12 foregoing contains a true and correct transcript of the
13 testimony.

14 Certified on May 28, 1987.

15 
16 Linda S. Towery,
17 CSR No. 2413
18 2900 Smith, Suite 104
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19 My Certificate Expires January 1, 1989.
20 My Notary Commission Expires April 28, 1991.

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