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IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

RUTH N. BURNHEIMER,
Plaintiff

VERSUS

UNIROYAL CHEMICAL CO., INC. :
ET AL, :
Defendants

:
:
CASE NUMBER 91CV001653
:
JUDGE PARKS
:
:

* * * * *

The deposition of RICHARD D. KOGLER, a witness
in this proceeding, was taken at the instance of the
Plaintiff herein, before and by Sharon S. Wendt, a
Certified Shorthand Reporter for the State of Louisiana
and a Registered Professional Reporter, at the offices
of Baton Rouge Court Reporters, located at 11832
Newcastle Drive, Suite 16, Baton Rouge, Louisiana, on
the 10th day of November, 1992, commencing at
11:15 a.m. and ending at 1:00 p.m.

APPEARANCES:

PETER J. BRODHEAD, ESQ.) For the Plaintiff
Spangenberg, Shibley, Traci &)
Lancione)
1500 National City Bank Bldg.)
Cleveland, Ohio 44114)

VICTORIA L. VANCE, ESQ.) For the Defendants,
Arter & Hadden) Borden, Inc. and
1100 Huntington Building) Monochem, Inc.
Cleveland, Ohio 44115)

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1 ANNE Y. KOESTER, ESQ.) For the Defendant,
 Bunda, Stutz & DeWitt) Uniroyal Chemical
 2 One SeaGate, Suite 650) Company, Inc.
 Toledo, Ohio 43604)

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17 LIST OF EXHIBITS

- 18 Kogler 1 -- Minutes of 1-13-70 meeting
- 19 Kogler 2 -- MCA Minutes of 1-14-70
- 20 Kogler 3 -- Letter to Safety & Fire Protection
 Committee Occupational Health Committee
 21 from Mr. Stephenson dated 7-30-71
- 22 Kogler 4 -- "Carcinogenic Effect of Vinyl Chloride"
- 23
24
25

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and among the parties in the proceeding above numbered and entitled that the testimony of RICHARD D. KOGLER, a witness in this matter, shall be taken at the instance of the Plaintiff herein, before and by Sharon S. Wendt, a Certified Shorthand Reporter for the State of Louisiana and a Registered Professional Reporter, on the 10th day of November, 1992, at the offices of Baton Rouge Court Reporters, located at 11832 Newcastle Drive, Suite 16, Baton Rouge, Louisiana; that the witness shall be sworn by said Court Reporter so reporting; that the testimony shall be taken under oral examination reserving the right to make objections, except as to the form of the question and the responsiveness of the answer, until the time of the trial of this matter; that the reading and signing of the deposition are not waived by the parties and by the witness; and that the said deposition is being taken for discovery purposes and for any and all purposes authorized under the Ohio Rules of Civil Procedure.

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1 RICHARD D. KOGLER, after having been first duly
2 sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MR. BRODHEAD:

5 Q Mr. Kogler, your full name and address, please.

6 A Richard D. Kogler, K-o-g-l-e-r, 1555 Castlebury
7 Drive, Baton Rouge 70815.

8 Q Mr. Kogler, can you tell me a little bit about
9 your education beginning with high school and
10 thereafter?

11 A Well, I graduated from high school in Syracuse,
12 New York with what they call a regent's diploma
13 degree. It's a college entrance degree. I
14 worked for a year or so. Then I went to
15 Syracuse University, had two years in before
16 the great war of the 1940's. I came back out
17 of the service in 1945, the end of 1945, with a
18 medical discharge from war wounds.

19 I then went back to Syracuse. The
20 first six months I took refreshing myself since
21 I was away about three years and then finished
22 up in 1948 with a B.S. degree in chemical
23 engineering.

24 Q '48?

25 A '48, June of '48.

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1 Q From Syracuse?

2 A Right.

3 Q What did you do thereafter, sir?

4 A The first job I had out of college was with
5 Union Carbide at Institute, West Virginia. The
6 job was a -- they call it an assistant
7 department head, and I was responsible for the
8 operation and manufacture of -- you want to
9 write this down -- di 2-ethylhexylphthalate,
10 which is a plasticizer used for vinyl chloride
11 polymers. I stayed with Carbide about until
12 1952.

13 Q Then?

14 A Okay. At that point I decided I wanted out of
15 operations. I wanted to see if I could do
16 engineering work, do what I was trained to do,
17 so I joined Allied Chemical at Syracuse, New
18 York in the Solvay Division. I stayed with
19 Allied, until 1968, in various capacities.

20 I entered as a -- what you would call
21 a project engineer and, eventually, I worked my
22 way through. I got back into operations a
23 couple of times as technical manager of a
24 plant, technical superintendent. The last job
25 I had was director of engineering for the

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1 division. Then the division --

2 Q In '68?

3 A That was in '68, yeah, when I finished; but
4 during that period of time with Allied, about
5 1954, I was made project manager of a vinyl
6 chloride monomer plant that was to be designed
7 for Allied. The engineering work was done --

8 Q You were director?

9 A No. I was project manager. I was just a
10 young --

11 Q This is in '54?

12 A About '54. I think I was with Allied about two
13 years when they gave me the assignment. I
14 finally relocated to a little town outside of
15 Richmond, Virginia where Allied had their
16 nitrogen division headquarters at Hopewell,
17 Virginia; and using their Engineering
18 Department, I took a purchasing agent, an
19 instrument technician, and a few other people
20 down with me, and we spent about a year and a
21 half designing the operation.

22 Q Monomer production?

23 A VCM monomer, yeah. The design of that plant is
24 almost identical to the one at Monochem.
25 That's the way it turned out.

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1 Q In what way? Was it acetylene based?

2 A Right. That was back in '54. After the design
3 was finished, I went to Moundsville, West
4 Virginia, where the plant was to be erected,
5 and supervised the construction. After that, I
6 supervised the startup and operation of the
7 plant.

8 Then I stayed on as a technical
9 superintendent of the plant for a couple of
10 years and back to Syracuse to do engineering
11 work again. About 1965 -- I'm guessing here;
12 it's close, '64, '65 -- I was a -- let me think
13 of my title then. I was probably assistant
14 director of engineering, and one of my
15 responsibilities was to design another vinyl
16 chloride plant. This one was ethylene based.

17 We used the BF Goodrich technology.
18 We used Badger out of Cambridge,
19 Massachusetts. That was the engineering
20 contractor. That plant was then completed in
21 1967, I believe -- it's in that neighborhood --
22 along with a fairly large chlorine plant
23 because Solvay was chlorine oriented. They
24 were a chlor-alkali company, and this was one
25 way to upgrade their chlorine operations.

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1 The plant also had four gas turbine
2 generators or co-generation plants that you
3 hear about today. So we had an integrated
4 operation. We had our own power, made our own
5 chlorine. We bought the ethylene from one of
6 the other divisions, and it was my job to come
7 from Syracuse to Baton Rouge to put this all
8 together after the engineering was finished,
9 which I did.

10 Q For whom?

11 A For Allied. About that time, the Solvay
12 Division ceased to exist. The National Analine
13 Division of Allied also ceased to exist, and
14 their Nitrogen Division ceased to exist, and
15 they combined them all into one division called
16 Industrial Chemicals.

17 So there were three directors of
18 engineering available in one job, so I was the
19 youngest guy on the totem pole, so I took the
20 job in Baton Rouge, put this complex together;
21 and the fellow that was in charge of combining
22 all three engineering divisions took on the job
23 as the director of engineering for Industrial
24 Chemicals.

25 So I stayed in Baton Rouge during the

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1 erection, startup, and eventually I stayed at
2 the plant as the technical manager of the
3 entire Baton Rouge works, which included not
4 only this vinyl chloride, but the chlorine
5 plant, power plant, soda ash plant. It was a
6 major operation here at the time.

7 Following that, I saw the handwriting on
8 the wall that I wore a red hat, and the people
9 running the company wore white, so I left
10 Allied after seventeen, eighteen years.

11 Q I'm not sure I understand that.

12 A Why?

13 Q About the red hat and the white.

14 A Oh, well, I had red hats. That was me. I was
15 with one division. The people that were
16 running the new company --

17 Q Because of the merger?

18 A -- were all in another division, and, believe
19 me, it really didn't make much difference how
20 capable you were as I saw later. See, in
21 Syracuse I had a group of a hundred and sixty-
22 five engineers working for me, and I was asked
23 to transfer ten of those engineers to the
24 Morristown operation, which is a key for
25 Allied, and then discharge the other hundred

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1 and fifty-five, which is kind of a tough job,
2 so you can see they didn't want the people from
3 our group very much.

4 So I took this job in Baton Rouge to
5 put together the new VCM plant because I knew
6 quite a bit about VCM at the time. And then
7 when that was finished, I thought, well, okay,
8 what next? There really wasn't too much left,
9 so then I left, and I went to Great Lakes
10 Chemical in El Dorado, Arkansas.

11 Q This is about late '67, early '68?

12 A That was in '68 as I remember.

13 Q The location one more time?

14 A El Dorado, Arkansas.

15 Q Great Lakes Chemical?

16 A Um-hum. This was a bromine operation, and how
17 I fit there was there was a group of chemicals,
18 if you know anything about chemistry, called
19 halogen chemicals, halide chemicals, chlorine,
20 bromine, iodine, et cetera. Well, bromine was
21 next to chlorine, I guess, so they figured I
22 knew a little bit about bromine. Well, I
23 really didn't, but the technology is pretty
24 much the same. So I stayed up there as plant
25 manager of this operation for about a year.

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1 My family was living in Baton Rouge,
2 and I got into -- I didn't get into this but
3 the State of Arkansas and the people got into a
4 fairly significant integration problem up there
5 with the colored folks, blacks, and my wife
6 wouldn't move. I can't say that I blame her
7 any because I had three kids in school, high
8 school. One was in college. He was at the
9 University of Miami, and the other two were in
10 high school.

11 So we decided that I would have to
12 leave this job. It was a good job, too. It
13 paid well and I enjoyed it. And so I went out
14 on the open market, and about that time, Borden
15 was looking for someone to take care of their
16 interest at Monochem. They told me they were
17 looking for someone that knew VCM, which I did,
18 and had management background, operations and
19 so forth.

20 So I interviewed with John Lynn and a
21 fellow named Dick Moffit, who I think was one
22 of the members of the Monochem board at the
23 time, and I guess after a couple of interviews,
24 they hired me as their production manager at
25 Monochem.

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1 Q Who hired you?

2 A John Lynn.

3 Q To work for what company?

4 A Borden. I was on the Borden payroll. I had
5 the Borden benefits. I was a Borden employee,
6 simply that, and I was told I would be over
7 there perhaps a couple of years or whatever to
8 look out for the Borden interest at the plant.

9 There was sort of, as I was told, an
10 unwritten agreement that -- or arrangement or
11 whatever that if the -- let's say the plant
12 manager or the vice-president of operations was
13 a Uniroyal employee, then that the production
14 manager should be a Borden employee.

15 Well, Bill Boyne was the Borden plant
16 manager before he was moved to Columbus, and
17 Jack Little took over Bill Boyne's job as plant
18 manager. That meant that Jack, who was
19 production manager, had to be replaced, so they
20 had to find a Borden employee.

21 Well, Borden had no employee that I
22 know of, at the time, that knew anything at all
23 about VCM. All of their knowledge came through
24 what they acquired at Uniroyal. So,
25 apparently, that's why they liked my

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1 credentials, and they hired me.

2 So I stayed over there from October
3 of 1969, if I remember, to about May of '71,
4 about a year and a half, watching the
5 production unit for Borden.

6 Q And what did the production unit produce?

7 A Well, the first thing we had was a major
8 utility plant. We had steam generation, took
9 in water from the river, clarified it so it was
10 usable for processes, had portable water for
11 drinking. These materials I'm talking about
12 now were fed to both Uniroyal and to Monochem
13 and to Borden, see.

14 Beside the utilities plant, there was
15 air compressors for plant air, and the
16 Operations Department per se, it started out
17 with a -- they had a pair of twin oxygen plants
18 that produced gaseous oxygen, no liquid, and
19 nitrogen. Nitrogen was again pumped into the
20 grid freeze by any one of the partners, an
21 acetylene plant that was technology purchased
22 from BSAF, German, a VCM plant, which was
23 technology acquired from Uniroyal.

24 Q Which technology?

25 A Uniroyal's.

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1 Q Which technology?

2 A Oh, acetylene based. All this happened long
3 before I joined Monochem. My job was to
4 oversee the operation of those facilities. In
5 1960 -- I'm sorry, let me back up. In 1971, in
6 May, I left there and returned to Borden per se
7 as their general production manager. Now, at
8 this point --

9 Q In Baton Rouge?

10 A Baton Rouge, at Geismar, right next to the
11 Monochem plant. I just went across the fence
12 and had a new office over there.

13 Q Did your job de facto change?

14 A Oh, yes, definitely, because I now was no
15 longer involved in VCM, and my major
16 responsibilities, on the Borden operation, was
17 two methanol plants. Those are what we call
18 high pressure plants. There was an acetic acid
19 plant, an ammonia plant, a urea plant, vinyl
20 acetate plant.

21 I held that job as general production
22 manager for a number of years, and I went
23 through a number of job title changes but
24 worked my way up and eventually became
25 vice-president of engineering.

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1 Q For Borden?

2 A For Borden; vice-president of engineering,
3 construction, and planning. And during that
4 period, I designed or oversaw the design of
5 another vinyl chloride plant.

6 Q Which one was that?

7 A This time it was on Borden's site. It was
8 technology purchased from Stauffer, ethylene
9 based.

10 Q In Geismar?

11 A Geismar, right. The only interconnection at
12 the time -- let's say during this period of
13 when I was in operations now, not in
14 engineering as such at the Borden site -- was
15 with Monochem.

16 As far as I was concerned, my
17 responsibilities or duties was to see that we
18 were getting the proper quantities of acetylene
19 off-gas, which was owned by Borden, that we
20 also received a certain percentage of the
21 acetylene, which we used to make vinyl acetate,
22 and that we had the utilities that they were
23 supplying to the Borden site.

24 I don't recall any contact, after I
25 left Monochem, with their vinyl chloride plant

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1 at all because there was no -- there was just
2 no need for that. I wasn't involved in that
3 anymore. I was trying to make methanol and
4 some of these other petrochemicals.

5 Q For Borden?

6 A For Borden. Then I retired in March of 1986,
7 and the last job was vice-president, as I said,
8 of engineering, construction, and planning.

9 Q I'm a little unclear as to specifically what
10 was your date of hire for Borden.

11 A October 1969.

12 Q And you went across the fence in May of '71?

13 A Right, for about a year and a half.

14 Q And then you were involved in the new venture.
15 You said you went across for about a year and a
16 half in May of '71. Where did you go after
17 that year and a half period?

18 A Went back -- went to Borden as their general
19 production manager.

20 Q But you had nothing more to do with Monochem?

21 A I told you what I had to do with them. At the
22 Borden site, not only was Borden's interest in
23 Monochem VCM, they also were interested in the
24 acetylene off-gas, which is used to make
25 methanol, some of the acetylene which is used

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1 to make vinyl acetate, water, steam, you know,
2 the utilities. So there was constant talking
3 back and forth between the two plants, but as
4 far as the VCM, there was nothing more at that
5 point.

6 Q Did you ever draw a paycheck from Monochem?

7 A I'm not sure whether my paycheck was on a
8 Monochem system or was on Borden's system, but
9 my benefits were all Borden's, and I know
10 that -- I'm going to have to guess here. If I
11 was paid on a Monochem check, then it would be
12 billed back to Borden. I know that my
13 incentives, my bonuses, were paid --

14 Q By Borden?

15 A -- by Borden to me.

16 Q Did you work closely, at anytime, with Jack
17 Little?

18 A Yeah. I had to. He was the boss.

19 Q To your knowledge, was he ever employed by
20 Monochem?

21 A When was he employed?

22 Q Was he ever employed by Monochem?

23 A I don't think so. There were three employees
24 of Uniroyal at the time as I remember. I'm not
25 sure this is exact, but we had a fellow named

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1 Thudium who was our Comptroller. I believe he
2 was a Uniroyal employee. We had Jerry Braun,
3 who was the superintendent of the vinyl
4 chloride plant, and Jack Little. The only
5 other, as I remember, outside employee was me
6 from Borden; and the rest of the people, I
7 believe, were all hired specifically as
8 Monochem and on the Monochem benefit programs,
9 et cetera.

10 Q Who did Jerry Braun work for?

11 A He worked for me.

12 Q Worked for Borden?

13 A No, he worked for me. He was a Uniroyal
14 employee, but he reported to me.

15 Q I see. So Thudium and Braun were both Uniroyal
16 employees?

17 A Yeah. Again, I don't know how they were paid,
18 but I know that Jerry Braun told me he came
19 down from somewhere up north, probably the
20 Cleveland operation, the PVC plant, to help
21 start up the VCM operation.

22 Q Braun did?

23 A I think that's what he told me.

24 Q Do you know where Braun is now?

25 A I think Jerry may have died. He had diabetes

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- 1 real bad, and the last time I saw Jerry was
2 when I -- not when I left Monochem to go back
3 to the Borden site, but sometime maybe five or
4 so years after that I'd run across him
5 occasionally. He used to live in Baton Rouge.
- 6 Q In any event, Jack Little, to your knowledge,
7 was always a Borden employee?
- 8 A Jack Little was never a Borden employee.
- 9 Q He was a Uniroyal employee?
- 10 A He was Uniroyal.
- 11 Q Thank you. I got you. So what you're saying
12 is Thudium, Braun, and Little were all
13 Uniroyal?
- 14 A Yeah.
- 15 Q And the rest, except for this -- except for
16 perhaps you, who may have been always a Borden
17 employee --
- 18 A I always was. I was never anything else.
- 19 Q You're not sure whether you ever drew a
20 Monochem paycheck?
- 21 A Well, I don't think that's important, though.
- 22 Q Whether or not it's important, the question
23 remains the same. You're not sure?
- 24 A I'm not sure of what?
- 25 Q Whether or not you ever drew a Monochem

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1 paycheck.

2 A I would have to go back and -- I could check my
3 pay stubs if you want me to go look.

4 Q I'm just asking you --

5 A I don't remember honestly.

6 Q Okay. You're not sure. Do you know where Jack
7 Little is?

8 A Well, I can tell you that about a year and a
9 half ago, the superintendent of the acetylene
10 plant of Monochem died, and I called Jack
11 Little at his home in Bay St. Louis,
12 Mississippi and told him about it, because he
13 knew this fellow pretty well, and asked him if
14 he would like to come to the funeral and so
15 forth, and he said he would see what he could
16 do. That's the last I talked to Jack. I don't
17 know whether he is still over there. I don't
18 even know his address.

19 Q Who was the superintendent?

20 A Owen Martin.

21 Q Did you ever have any dealings with or
22 membership in the Manufacturing Chemists
23 Association?

24 A Yeah. I attended one meeting in Washington,
25 D.C. as Jack's delegate. He had been handling

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1 some work with MCA. In fact, as I remember, I
2 joined them in October, and Jack went to, I
3 think it was New Orleans, in November or
4 something, to one of the subcommittee meetings;
5 and then there was another meeting, a follow-up
6 meeting, sometime early the next year that he
7 wasn't able to go to, and he asked me to attend
8 it for him, and it was up in Washington at
9 their offices. That was the only meeting I
10 ever attended with MCA.

11 It was on tank car safety, and it had
12 to do with how to prevent safety valves from
13 leaking if a car should tip over or if they are
14 leaking in transit because they were improperly
15 put on and what could the industry do about
16 this.

17 Q What committee was Jack on?

18 A Don't ask me that. I can say there was a
19 subcommittee on tank cars. That had to be the
20 one because I was there on his behalf at one of
21 the meetings.

22 Q Would that be the Transportation Equipment
23 Committee?

24 A Probably.

25 Q Is it your understanding that all of the VCM

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1 manufactured by Monochem went either to
2 Uniroyal's Painesville facility or to Borden?

3 A As far as I know, it did.

4 Q Have you ever been to Uniroyal's Painesville
5 facility?

6 A No. I don't even know where it is. I've been
7 to the two Borden facilities. There's one in
8 Leominster, Mass. and one in Illiopolis.

9 Q Were you there while they were -- were you
10 there before you went over the fence to Borden?

11 A No.

12 Q It was after?

13 A I visited these plants after I returned to
14 Borden and during the design of our Borden's
15 PVC plant which they now have at Geismar. I
16 got involved in it a little bit there. I
17 didn't know anything much about PVC.

18 Q I'm showing you what's been marked as Variani
19 Exhibit 9. That is the Chemical Safety Data
20 Sheet for vinyl chloride, revised 1972. My
21 question to you, sir, is, did you have anything
22 to do, in any way whatsoever, with the
23 formulation of that?

24 A Not to my knowledge. We had this -- there was
25 an earlier sheet that we used when I was at

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1 Monochem dated 1950 something as I remember.
2 These sheets were used by the Operation
3 Department and design people as the area, I
4 guess, on VCM, but I had nothing to do with
5 putting this -- the package together.

6 Q I'm showing you what's been marked Exhibit 5.
7 Is that the 1954 document?

8 A It says it is, yes.

9 Q Now, was that a document that was referred to
10 as a reference point at Monochem?

11 A Um-hum.

12 Q Who would have referred to that?

13 A Well, I think anyone in the plant that was
14 interested in vinyl chloride: laboratory
15 people, maintenance people that had to get into
16 equipment, operations people. It was the only
17 sheet I knew that existed at the time with any
18 safety information on it about vinyl chloride.
19 It was our source of information except for
20 that we were getting from Uniroyal's agreement.

21 Q What were you getting, in the way of
22 information, from Uniroyal?

23 A The only thing I got from Uniroyal was through
24 Jack Little, see. Jack had the contact with
25 the people up in Connecticut, and he'd talk

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1 with them, write to them, and I never
2 corresponded with any of the people up there.

3 The only person I knew up there was
4 Gordon Anderson who, I think, was one of the
5 members of the board at Monochem. I met Gordon
6 when I was hired. I had to be interviewed by
7 him to make certain I was acceptable to the
8 other partner. And then Gordon would visit the
9 plant from time to time, and he would meet with
10 Jack, and sometimes he would meet with the
11 staff, and I was one of the members of the
12 staff.

13 Q Mr. Kogler, at any time when you moved over to
14 Borden or when you were on the Monochem side of
15 the fence or even when you were back on the
16 Borden side of the fence as you put it, did you
17 have anything to do with the formulation of
18 labels or warnings or information that would
19 accompany the shipment of VCM out of the
20 Monochem plant?

21 A I didn't have anything to do with that at all
22 at Monochem because I don't think we ever did
23 anything like that. The material was going to
24 the two owners. If it was being sent out, it
25 would probably had to have been sent out -- I'm

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1 going to guess here -- by the laboratory
2 because, normally, when a shipment is made --
3 I'm going now to my days with Allied and again
4 with Borden -- the laboratory analyzes these
5 tank cars, and they then prepare a certified
6 laboratory sheet which the chief chemist signs;
7 and they send it ahead of the shipment so that
8 the receiving party doesn't have to take the
9 time to go through a lengthy analysis of
10 whatever the commodity is.

11 Now, as far as I can recall at
12 Monochem, we never did that at all. If it was
13 done, I didn't know about it; and if it was
14 done, it probably would have had to have been
15 done by Dick Crawford, the laboratory's chief
16 chemist there.

17 Q The laboratory involvement with the shipments
18 I'm unclear on. Can you explain that for me?
19 Did they send some sort of certification along
20 with the rail cars, or how did that work?

21 MS. VANCE: You're talking about your
22 Allied days or Monochem? That might help to
23 clarify.

24 THE WITNESS: Well, they are both the
25 same pretty much, but let's stick with

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1 Monochem. How is that?

2 MR. BRODHEAD: Fine.

3 A I think the way it worked is when material was
4 produced at the plant, it would be sent out
5 into a storage tank. The plant had a number of
6 tanks. The material in those tanks was owned
7 by the two owners in some proportion based on
8 some allocations that I think you're aware of.

9 When a tank was filled, it was then
10 sampled, circulated through pumping, sampled by
11 the laboratory. They would then run through a
12 complete specification of what the product was
13 to be sold at. The specifications, as I
14 recall, were those that were generally accepted
15 by the industry at the time. All manufacturers
16 of VCM were trying to meet the same set of
17 specifications.

18 I have to make the assumption, at
19 this point, that Crawford then would label that
20 tank 105 or whatever it is. Six of those tank
21 cars that were loaded, let's say, came out of
22 tank 105, and he would give that tank car all
23 those analyses, and he would make up a data
24 sheet on them or analysis sheet.

25 BY MR. BRODHEAD:

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1 Q How was that transported? I guess you
2 hypothesize that it might have been sent in
3 advance?

4 A I'm not sure. You could stick it in the mail
5 and mail it to the people up there. Now, I do
6 know that most good chemical people would not
7 unload a tank car until they received a sheet
8 and was absolutely certain everything was right
9 on it. If they questioned anything, they would
10 resample the car themselves and verify it.

11 MS. VANCE: Mr. Kogler, I'm just
12 going to interject and --

13 THE WITNESS: Sure.

14 MS. VANCE: -- caution -- and I think
15 you're understanding this, but we're asking
16 here for your information that you know about
17 in terms of the Monochem operation versus
18 Allied or anybody else in the industry and to
19 the extent anything was done differently at
20 Monochem. That's what we're trying to focus on
21 is the Monochem operations.

22 If you're not sure or if it was
23 outside of your purview or your balliwick of
24 responsibility, we will find out who are those
25 responsible individuals and question them.

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1 THE WITNESS: All right. Then I
2 think you better talk to someone in the
3 laboratory then.

4 BY MR. BRODHEAD:

5 Q Like Dick Crawford?

6 A Yeah. I would think --

7 Q What's he doing? Do you know?

8 A No, I don't.

9 Q Do you know W. D. Harris? Dr. Harris?

10 A No, I do not.

11 Q Before coming to Borden or Monochem, did you
12 have any experience with what the threshold
13 limit values were for VCM?

14 A Well, we used this 1954 sheet at Allied. The
15 500 parts per million limit.

16 Q Was that monitored at Allied?

17 A As I recall, it was, yeah.

18 Q What kind of instrumentation was used?

19 A You're stretching me. I'm not sure. I can
20 only give you an estimate of what I think it
21 might have been.

22 Q Give me your best recollection.

23 A Probably gas chromatography.

24 Q The threshold limit value of 500? Do you know
25 what its origins were, sir?

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1 A No, I don't.

2 Q Did you have any experience with the ACGIH,
3 the American Conference of Government and
4 Industrial Hygienists?

5 A I've never even heard of them.

6 Q In any event, your first experience with
7 monomer production was apparently in 1954?

8 A It was shortly after the plant was built. I
9 would say '55, around in there.

10 Q That would coincide with the effective date of
11 Exhibit 5, which is 1954, correct?

12 A Um-hum.

13 Q Were you utilizing that sheet at Allied
14 Chemical?

15 A I think so, as I remember.

16 Q Carrying it forward, for how many years
17 thereafter was that sheet still in use, to the
18 extent you know, at Monochem?

19 A Well, it was in use when I was at Monochem.
20 Beyond my time there, I can't tell you.

21 Q But at least until '69 -- excuse me -- '71?

22 A '71, yeah.

23 Q There are a couple of documents that have your
24 name on them, Mr. Kogler, and I would like to
25 ask you a couple of questions about them.

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1 A Okay.

2 Q I'm showing you what's been marked Exhibit 1
3 for the purposes of this deposition. That is
4 minutes of a January 13th, 1970 meeting
5 entitled Task Group "B" on Vinyl Chloride
6 Monomer Transportation Safety. Is that correct?

7 A Yes.

8 Q And that was a meeting which you, apparently,
9 attended for Mr. Little --

10 A Right.

11 Q -- in Washington, and that's the one to which
12 you referred previously?

13 A Right.

14 Q Do you recall, at that meeting, as to whether
15 or not there was any discussion as to the
16 potential carcinogenicity of vinyl chloride?

17 A Well, I don't think so. I don't remember, but
18 it would seem to me that if there was, I would
19 have remembered it, and I don't recall that
20 ever having come up.

21 Q You don't recall this?

22 A No. This was strictly a meeting to discuss
23 relief valves, that part that I was involved
24 in. Jack Little had worked on this committee
25 prior to this, had developed some drawings. I

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1 took the drawings with me, and they were
2 reviewed by this committee.

3 Q I'm showing you Variani Exhibit 8.

4 A Yes. That was the drawings that were developed
5 early on.

6 Q And this was for the purposes of sharing it
7 with the MCA committee on transportation
8 safety?

9 A Yeah. I think they were trying to develop a
10 universal gag, if you would, on relief valves,
11 should they leak in transit, that would fit all
12 tank cars. And somehow -- I don't know how
13 this happened, but Jack, apparently, must have
14 agreed to work on the committee and help
15 develop a drawing, and there were two drawings
16 as I recall. (Witness reviews document.)
17 Yeah, there is the other part of it, right.

18 Q They are both there on Exhibit 8?

19 A Yeah. And I picked these up back in -- when
20 was it, January, we had the meeting? Yeah --
21 and took Jack's work up there and discussed it
22 with these people.

23 Q Why was this safety valve emergency closure a
24 matter of such concern?

25 A Well, I can't tell you that. I was just

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1 sitting for Jack in the meeting, but I would
2 have presumed that because of prior accidents
3 on the railroad -- rail line with VCM.

4 Q Were there a number of accidents?

5 A It's a matter of record. I can't tell you,
6 from memory, what they were, but I'm sure they
7 are all documented.

8 Q It's my understanding that in a three-year
9 period, from 1971 to '74, there were sixteen
10 reported rail accidents involving vinyl
11 chloride tank cars. Assuming that to be true
12 for the sake of my question, was this an effort
13 to reduce spillage?

14 A Well, yeah, I think so. It was not only from
15 an accident standpoint, but suppose you had a
16 relief valve on a tank car that was leaking
17 when the car left the loading site and somebody
18 in the rail yard smelled it, or it got jerked
19 or humped, you know, the cars how they get
20 humped sometimes. It could jar a bolt loose.
21 And this was the intent, to stop that as best
22 they could.

23 As I recall, Jack started these
24 drawings. I picked them up, and then we were
25 supposed to, at Monochem, make a model of this

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1 and submit it to the group for approval.

2 Q Was that eventually done?

3 A I wish you hadn't asked me that because I don't
4 remember. I'm not sure. I don't know. It may
5 have been done after I left. I do know that we
6 did revise the drawings at the plant because
7 after we took the comments from the committee,
8 I brought them back to the plant, and then
9 Jerry Braun and Ramirez, the loading foreman,
10 reviewed them and made some suggestions on it.

11 After that, I don't recall having any
12 further contact with that committee. Jack must
13 have picked it up from there. I just don't
14 remember.

15 Q The minutes of the meeting reflected in Exhibit
16 1 indicate that the recommendations made at
17 this particular meeting which you attended were
18 recommended to be incorporated into the
19 revision of the Chemical Safety Data Sheet; is
20 that correct?

21 A I would have to read the thing. I don't know.

22 Q Please look at number eleven.

23 A (Witness reviews document.)

24 Q The question, sir, was merely whether or not it
25 was recommended that they be incorporated, not

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1 that they, in fact, were.

2 A Yeah. I'm sorry. Yeah, it says here it was
3 recommended.

4 Q Was it your understanding, at that time, that
5 there was underway a project to reformulate the
6 safety data sheet for --

7 A No, it was not because I didn't know they were
8 going to make any revisions. I went to the
9 meeting specifically for a tank car relief
10 valve presentation.

11 Q Other than Jack Little, who, to your knowledge,
12 participated at all in the Manufacturing
13 Chemists Association for Monochem?

14 A For Monochem?

15 Q Yes, or on behalf of Monochem.

16 A I don't think there would've been anyone else
17 because we had a very small staff there, and if
18 you think about who the key people were at the
19 plant, you had Jack, who was director or VP of
20 operations. You had myself in manufacturing.
21 You had Sid Evans in maintenance. He wouldn't
22 have been on it. You had a chemist, and he
23 certainly wouldn't have been on it. And
24 Thudium was the Comptroller, and that's it.
25 That's the group.

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1 Q Did Borden have anyone who was involved in the
2 MCA?

3 A If they did, I didn't know about it. The only
4 person that might have -- not the only one, but
5 if there was one, it might have been Bill
6 Boyne, but I would say it would be very highly
7 unlikely, though, because --

8 Q How about Uniroyal? Please go ahead and
9 answer.

10 A I was going to say because, at the time, we are
11 now, remember, in Monochem time here, in the
12 sixties, early seventies. Borden had no VCM
13 technology at Columbus. All we had was, you
14 know, bought through the technical agreement
15 with Uniroyal. So I just don't think Borden
16 would have anyone on that committee or on the
17 group. There again, I don't know.

18 Q I'm showing you what's been marked Exhibit 2.
19 It's a January 14th, 1970 document, on MCA
20 stationery, indicating the Safety and Fire
21 Protection Committee Conference of Technical
22 Representatives of VCM Manufacturers,
23 Washington, D. C., correct?

24 A Yeah. That's what it says.

25 Q It indicates thereon that you were there, and

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- 1 there, apparently, is a correction.
2 Continental Oil was crossed off, and Monochem
3 has been written in by someone, correct?
4 That's not your writing, I don't imagine.
5 A No.
6 Q And attached to that, of course, are the
7 minutes of the meeting we have just identified,
8 right? I think two pages back.
9 A (Witness reviews document.)
10 Q One more page. There you go. Those are the
11 minutes we just discussed?
12 A Um-hum.
13 Q Was this something that would've been sent back
14 to you? Did you receive any documents back
15 from the MCA in consequence of your meeting?
16 A It could've been sent to me. Could have been
17 sent to Jack. It could've been either of us.
18 I would think protocol, they might have sent it
19 to me since I was at the meeting, and I would
20 have given it to Jack; but my recollection is I
21 wrote up or set up some minutes of that
22 meeting.
23 Q Where would those have been kept?
24 A What they basically said is the same thing
25 you've got right here because I usually write

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1 that stuff the day after I get back so I don't
2 forget what went on.

3 Q Mr. Kogler, I'm showing you what's been marked
4 Exhibit 3. It's dated July 30th, 1971. It's
5 on Manufacturing Chemists Association
6 stationery, and it is to Safety and Fire
7 Protection Committee, Occupational Health
8 Committee, and Chairman of Air Quality
9 Committee, Chemical Packaging Committee, Labels
10 and Precautionary Information Committee,
11 Transportation and Distribution Committee,
12 Transportation Equipment Committee, and Water
13 Resource Committee. You are listed as a
14 recipient of that on behalf of Monochem; is
15 that correct?

16 A Yes.

17 Q That is from F. G. Stephenson, who was the
18 secretary of the Safety and Fire Protection
19 Committee. He states, "Enclosed is a draft for
20 a revised edition of SD-56, Vinyl Chloride.
21 Please review it, not only for accuracy but
22 also for sufficiency of coverage. Please
23 address comments on Medical Management sections
24 to Mr. W. E. McCormick, B. F. Goodrich..." and
25 the address in Akron. "Comments on all other

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1 sections should be forwarded to me." Is that
2 correct?

3 A Yes.

4 Q Did you, in fact, proceed to review this
5 document?

6 A Well, that was twenty-three years ago. I
7 honestly can tell you I don't remember. If you
8 can find somewhere in the files where I have
9 written a reply to that, I would be happy to
10 review it and answer you better.

11 MS. VANCE: Excuse me. Has this been
12 produced in discovery? Was this something that
13 was produced by Uniroyal?

14 MR. BRODHEAD: I don't know.

15 MS. VANCE: Because I don't recognize
16 it. I don't think I've ever seen this document
17 before today.

18 BY MR. BRODHEAD:

19 Q Mr. Kogler, what, in the normal course of
20 events at Monochem, would you do with this
21 document upon receipt of it?

22 A Well, first, I wasn't at Monochem, and I would
23 assume that the individual that took my place
24 would inherit this or Jack Little would have
25 inherited it. The fellow that took my place

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1 was a Borden employee, Jack Davis, and I would
2 assume they would respond to it through Jack as
3 plant manager. That's why I say if we could
4 find a document that I did indeed do this, I
5 would like to look at it.

6 Q Your successor was who?

7 A I think it was Jack Davis.

8 Q All right. It's your understanding that in the
9 normal course of events then, this would have
10 stayed within Monochem?

11 A Yeah, unless Jack Little decided he wanted me
12 to review it. Then he would get a hold of John
13 Vellecci, who was my boss at Borden -- he was
14 the VP of the Borden site -- and ask me to do
15 this. Jack wouldn't have come to me directly
16 at that time.

17 Q And as I understand it, you have no
18 recollection of that.

19 A No. I was busy with many, many other things at
20 that time.

21 Q Did anyone consult you, from Monochem, as a
22 result of this correspondence?

23 A Not that I can remember.

24 Q During your time at Monochem, was the parts per
25 million of the ambient vinyl chloride monitored

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1 there?

2 A I think you better check with the safety
3 people.

4 Q To your knowledge, sir, was it --

5 A I can only say I'm sure it had to have been,
6 but I can't say positively. That's an open air
7 plant, and there probably wouldn't be that much
8 in the atmosphere unless you had a major
9 leakage anyway. That's a lot of VCM.

10 Q You're right.

11 A You would probably smell that much.

12 Q At what level is it detectable?

13 A I just don't know, but I've smelled it before.

14 Q Where?

15 A Over at Allied and other places, but there was
16 equipment available, as I'm sure -- to analyze
17 those levels; otherwise, there would not have
18 been any VCM safety issues.

19 Q Do I understand you have no particular
20 knowledge of what monitoring devices would've
21 been at Monochem?

22 A No, not specifically, no.

23 Q Are you able to state, as you sit here today,
24 that it was, in fact -- ambient levels were, in
25 fact, monitored for the threshold limit value

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1 for exposure?

2 A No, I can't say that. I said I don't remember
3 that it was, but it should've been done.

4 Q Fair enough. As far as -- I want to direct
5 your attention to a couple of particular areas
6 of this document. That's Exhibit 2.

7 A Three.

8 Q Excuse me. Before I get to that, do you have
9 any knowledge of there being a reduction in the
10 threshold limit value from 500 to 200 or a
11 suggested reduction?

12 A Remember my background now. I left Monochem in
13 May of 1971, and as far as VCM, it was out of
14 my mind until Borden decided to build the next
15 VCM plant, which was late in the seventies,
16 early eighties, somewhere around there, a long
17 period of time.

18 Q Have you ever been associated with a
19 polymerization facility?

20 A Only to walk through them. Like I said
21 earlier, I visited the Illiopolis plant once
22 just to get a feel for what went on at the
23 other end.

24 Q Is that an indoor facility?

25 A I think it was. The Leominster plant had

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1 reactors, also, as I recall, that were inside.
2 Q That was a polymerization plant?
3 A I think they were inside. Yeah, that was a
4 polymer plant.
5 Q You have been in both of those or just --
6 A Just walk-throughs.
7 Q Did you know as to whether or not they were
8 monitoring --
9 A No. I have no idea.
10 Q -- the air -- please let me finish my question.
11 A Oh, I'm sorry.
12 Q That's okay. You anticipate well, but the
13 record won't reflect that. You have no
14 knowledge as to whether or not, in those
15 particular plants, ambient levels were being
16 monitored for compliance with the TLV?
17 A No, I do not.
18 Q All right.
19 A I think it's safe to say, though, that --
20 MS. VANCE: Well, there is no
21 question pending, so let him ask another
22 question.
23 BY MR. BRODHEAD:
24 Q On page 4 of that document, Mr. Kogler --
25 A There is no page 4.

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1 Q I'll tell you what. Let's do this then. Let's
2 re-mark this. Take my copy. I will have to
3 look over your shoulder, however.

4 A Okay.

5 Q Under 4.4.3 on page 4, it says, "Vinyl chloride
6 monomer vapor concentrations in air near or
7 within the explosive range are most easily
8 determined by the use of a standard combustible
9 gas indicator. The concentrations of vinyl
10 chloride monomer vapor may be read directly in
11 the meter which is usually graduated in percent
12 of the lower flammable limit. The above may
13 not be used for the detection of health
14 hazards." The question to you, sir, is, to
15 your knowledge, was that ever discussed, by
16 anyone at Borden or Monochem, with you?

17 A No, not to my knowledge. That instrument was
18 used specifically for determining explosive
19 ranges before you entered any equipment.

20 Q Do you know what the explosive range is?

21 A I would have to go look it up. I don't
22 remember now.

23 Q Under 4.4.4, it says, "A specially calibrated
24 indicator is commercially available for vinyl
25 chloride monomer determinations within the

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1 toxic range. Ampules which change color on
2 exposure to vinyl chloride monomer vapors are
3 also commercially available and may also be
4 employed for the detection of toxic
5 concentrations of vinyl chloride monomer."
6 Question number one is, have you seen that
7 statement before, Mr. Kogler?

8 A No.

9 Q Second, are you aware of what they are
10 referring to as far as those ampules are
11 concerned?

12 A I can answer that by I think, generally, I know
13 what they are talking about. These are called
14 drager tubes.

15 Q Drager tubes?

16 A I think that's what they used to call them.

17 Q How do you spell that?

18 A D-r-a-g-e-r.

19 Q How long have they been around?

20 A I don't know.

21 Q Were they around in '54?

22 A Gee, I couldn't tell you. They are made for a
23 variety of chemicals for detection. They're
24 just a colormetric device where you aspirate a
25 sample of whatever chemical you're trying to

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1 analyze, and you pump it through these little
2 tubes; and if they turn color, then you're
3 below a limit or you're above a limit. But I
4 don't know what limits they are talking about
5 here. I don't even know what toxicity they are
6 talking about.

7 Q It's not apparent to you?

8 A Uh-uh.

9 Q Did anyone from Borden and/or Monochem discuss
10 that particular paragraph or its content with
11 you to your knowledge?

12 MS. VANCE: At what time? In
13 connection with this being a draft?

14 MR. BRODHEAD: At anytime.

15 A Well, this came out after I left Monochem.

16 BY MR. BRODHEAD:

17 Q You left in May?

18 A I left in May, and this is in July, so I was
19 gone by then. I would not have seen this
20 unless they say Jack Little would have sent it
21 over to me and asked me to comment on it. I
22 don't recall that. By the time our next VCM
23 plant came out, this thing had, apparently,
24 been approved.

25 Q On page 10 of Exhibit 3, do you recall having

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1 seen any of that information previously?

2 A No.

3 Q Let me go through a couple of paragraphs with
4 you. 10.1.1 said -- reads, excuse me -- "Vinyl
5 chloride monomer does not present a serious
6 industrial health hazard provided workers are
7 adequately supervised and instructed in the
8 proper means of handling it. The TLV,
9 established by the Occupational Safety and
10 Health Administration (Department of Labor), is
11 500 parts per million as a ceiling value." Mr.
12 Kogler, do you have any memory, at anytime, of
13 OSHA setting a 500 parts per million ceiling
14 level?

15 A I don't even -- no, I don't. I don't think
16 OSHA was even in existence at the time I was at
17 Monochem. If it was, it wasn't very active in
18 those days. Later they became very active.

19 Q I'm going to refer you simultaneously to
20 Variani Exhibit 9, which is the 1972 Chemical
21 Safety Data Sheet as it was revised in 1972.
22 The only reason I bring this up, sir, is
23 because there, apparently, have been some
24 revisions made between the July 30th of '71
25 draft and its final form in 1972.

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1 Without getting to the specifics of
2 it, my question to you is, has anyone consulted
3 you, either from Monochem or Borden or
4 Uniroyal, with respect to an evaluation of the
5 July 30th, '71 draft, concerning suggested
6 changes or reformulation of it as it ultimately
7 came out in the final form in 1972?

8 A Not to my knowledge.

9 Q I want to refer you to Exhibit 9 from the
10 Variani deposition, paragraph three under
11 10.1.1: "Recent research studies reported from
12 Italy indicate that repeated, long-term high
13 level exposures of rats to vinyl chloride
14 monomer vapor can result in the development of
15 malignant tumors. However, many years of
16 industrial experience with human exposures to
17 concentrations frequently far above current
18 standards have not demonstrated any
19 carcinogenicity to humans."

20 My question to you, Mr. Kogler, is,
21 do you have any knowledge or has anyone from
22 Borden or Uniroyal or Monochem discussed with
23 you the reason for the conclusion that many
24 years of industrial experience have shown no
25 carcinogenicity to humans?

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1 A Try that again.

2 Q Has anyone discussed that with you from Borden,
3 Monochem, or Uniroyal? Did that come up in a
4 meeting in a reformulation of the July 30th,
5 '71 letter?

6 A I can recall only that there was some
7 discussion, at one of our staff meetings
8 maybe -- I'm not sure where it occurred -- with
9 Jack that someone in Uniroyal was watching the
10 work done by some Italian scientists regarding
11 tumors in rats. At the time, it didn't hit me
12 as a major problem because this was the first
13 that we had ever heard of that or knew anything
14 about this problem.

15 I don't think there was much comment
16 on it because it would've been late in '70 or
17 early in '71 that this happened, but any
18 discussion I had would've had to have been with
19 Jack because he got all of his feedback or
20 feeddown from the people in Uniroyal.

21 Q In any event, and in specific response to my
22 question, with respect to the conclusion stated
23 in the 1972 draft that many years of industrial
24 experience with human exposures to
25 concentrations frequently far above current

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1 standards have not demonstrated any
2 carcinogenicity to humans, do I correctly
3 understand that you have no independent
4 knowledge nor have you conferred with Uniroyal,
5 Borden, or Monochem employees concerning that
6 particular conclusion?

7 A I had no other knowledge other than what I just
8 mentioned earlier.

9 Q Understood. But that was having to do with a
10 discussion involving, apparently, some Italian
11 study and a Uniroyal employee following that
12 study?

13 A And that was after Jack -- Jack brought it up
14 at one of the staff meetings.

15 Q What was the frequency of your staff meetings?

16 A Daily, five days a week.

17 Q When Jack brought that up, were you a Monochem
18 employee? Excuse me. Were you on the Monochem
19 side of the fence?

20 A I was a Borden employee at Monochem, yes.

21 Q Were the meetings first thing in the morning?

22 A They were very early. They were about 8:30,
23 gave us time to get into the plant, make a
24 round, read the logbooks. Then we'd congregate
25 and discuss what happened the day before and

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1 what would happen that day, and the turnarounds
2 and so forth.

3 Q I'm showing you what's been marked Exhibit 4.
4 It's a May 1970 International Cancer Congress
5 in Houston, Texas --

6 A May of 1970.

7 Q -- referencing a paper "Carcinogenic Effect of
8 Vinyl Chloride" by a P. L. Viola.

9 MS. VANCE: Has this been marked in
10 any prior depositions to your knowledge?

11 MR. BRODHEAD: I don't believe so.

12 MS. VANCE: Again, it's something I
13 don't think we've seen before.

14 BY MR. BRODHEAD:

15 Q That's my first question to you, Mr. Kogler.
16 Have you seen that document before?

17 A No, I don't believe I ever have.

18 Q To the extent you're able to discern just from
19 a cursory review at this time, has it been
20 discussed with you in your capacity as a Borden
21 employee?

22 A This alludes to that rat problem apparently.
23 As far as the report itself, I don't think we
24 had that report at the plant. If we did, I
25 never saw it.

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1 Q When you were receiving documents from the MCA,
2 did anyone at the meeting -- strike that. Was
3 there anything in any of the documents you had
4 received from the MCA that referenced this
5 study in any way?

6 A Well, I would have to go back and look at all
7 the documents I received before I can answer
8 that, but I would have to say probably not
9 because that set of documents I would receive
10 was strictly for tank car relief valve
11 emissions and gagging.

12 Q Would it be fair for me to conclude then that
13 the only thing you knew about this -- and we're
14 talking about Exhibit 4 -- in any way, before
15 you came in here today, was what you recalled
16 from a meeting with Jack Little?

17 A That's right.

18 Q I believe you told me you had never met W. D.
19 Harris nor did you know of him really.

20 A The only Harris I know is the Dr. Harris -- he
21 is the doctor for Borden for giving us physical
22 examinations.

23 Q Locally?

24 A Milton Harris. Yeah, he is local.

25 Q Did you overlap with Mr. Landry at Monochem?

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- 1 A Did I ever what?
- 2 Q Overlap your period of employment.
- 3 A Yes. He was there at the plant when I was
- 4 there.
- 5 Q What did he do?
- 6 A He was safety director or safety manager or
- 7 safety superintendent. I'm not sure of the
- 8 title, but he was in charge of safety.
- 9 Q Was it any part of -- strike that. I believe
- 10 you told me previously that at least so far as
- 11 you understand it, it was not generally
- 12 Monochem's practice to send out material that
- 13 accompanied the monomer other than whatever the
- 14 chemist would have transmitted. Is that
- 15 correct?
- 16 A That's not exactly what I said.
- 17 Q Please correct me then.
- 18 A What I said is that when monomer was shipped to
- 19 the owners, I was -- I'm almost certain that
- 20 the laboratory performed an analysis on the
- 21 tank that was used to fill the tank car. The
- 22 chief chemist probably then certified that
- 23 analysis for the tank car. That analysis was
- 24 then sent, I'm certain by mail, to the plant
- 25 receiving the tank wagon.

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1 If there was any other transmittals,
2 I wasn't aware of it; and if there was, I
3 wouldn't even know what they would be.

4 Q On Exhibit 5 -- this is the 1954 MCA sheet --
5 under 3.2.2, it states that the MCA recommends
6 the following in addition to, or in combination
7 with, any label warnings or other statements
8 required by statutes, regulations or
9 ordinances. And there is a label below; is
10 that correct?

11 A Yes.

12 Q Likewise, on the 1972 document, under 7.2.2.1,
13 it states "The Manufacturing Chemists'
14 Association recommends that all containers of
15 VCM should bear a label as shown. The text is
16 designed for the product as shipped for
17 industrial use." And it has a label on the
18 bottom of page 11.

19 My question is, do you have any
20 knowledge as to whether or not Monochem shipped
21 its monomer, for industrial use, with such a
22 label?

23 A This one I can't tell you about.

24 Q The '72 one?

25 A Yeah. Because I wasn't at Monochem then.

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1 Q Yes, sir.

2 A It seems -- I recall we did label our cars.
3 That's all we shipped. There was no other
4 cylinders to my knowledge. I think to check
5 that, you could talk to Ramirez. He was in the
6 Loading Department.

7 Q Who is that?

8 A Ramirez. He was a Monochem employee that
9 shipped the monomer or loaded it really.

10 Q Could I have the full name, please?

11 MS. VANCE: Warren.

12 THE WITNESS: Warren. Okay. Thank
13 you. R-a-m-i-r-e-z. He may still be working.

14 MS. VANCE: He has retired a long
15 time ago.

16 BY MR. BRODHEAD:

17 Q He was a shipping supervisor?

18 A No, no. He was just a loader, an hourly
19 employee if you would. His main job, only job,
20 was loading vinyl chloride for Monochem. He
21 loaded for both the owners.

22 Q And with respect to the 1954 document, do I
23 understand it's your testimony that you simply
24 have no knowledge as to whether or not --

25 A I can only assume that when I was at Borden --

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1 we finally produced it over there -- that if
2 this was in existence, that this would've been
3 used by Borden.

4 MS. VANCE: That's '72 or '54?

5 MR. BRODHEAD: '54.

6 A I can't help you on that at all then because I
7 wasn't at -- you said this was '70 here.

8 BY MR. BRODHEAD:

9 Q This is '72. Let me rephrase the question.

10 A Okay. Please do.

11 Q Since you left in May of '71, I can only expect
12 that your --

13 A Right.

14 Q -- better knowledge would be with what occurred
15 at Monochem prior to that time.

16 A Right.

17 Q My question, with respect to the 1954 label is
18 as to whether or not you have any knowledge as
19 to whether the VCM was shipped with such a
20 label or one like it.

21 A Well, my answer to that was I think you should
22 check with Ramirez who actually loaded the
23 cars. My recollection is we probably did this,
24 but he can tell you yes or no.

25 Q I appreciate you telling me that, but what I

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1 need to know, sir, is, as you sit here today,
2 do you have any specific recollection of
3 whether or not it was, in fact, done?

4 A No.

5 Q Thank you.

6 MS. VANCE: He did say it was his
7 recollection that we did, but he would have to
8 check with Ramirez.

9 THE WITNESS: Right.

10 BY MR. BRODHEAD:

11 Q Did you have anything to do, Mr. Kogler, with
12 the formulation of the Monochem safety manuals
13 or handbooks?

14 A No. That was Landry's responsibility pretty
15 much.

16 Q I'm showing you Exhibits 6, 7, and 10.

17 A Let me go one at a time then.

18 Q Exhibit 6 was April --

19 A 1962.

20 Q Right.

21 A That was before my time. This probably came
22 from Uniroyal since the company, Monochem, had
23 this Technical Service Agreement to supply this
24 type of information.

25 Q You're not certain of that?

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1 A No. But that's the only place they could get
2 it from.

3 Q For example, J. V. Lynn's signature is on the
4 third page of that document. Who was Mr. Lynn
5 employed by at the time?

6 A This was -- John Lynn was at Monochem, I
7 believe, in 1962. He was a Borden man.

8 Q So the fact that you now see Mr. Lynn's
9 signature on it, would that, in any way, alter
10 your strong hypothesis that it came from
11 Uniroyal?

12 A No, not at all because as far as I remember,
13 there was no one at Monochem that knew VCM,
14 prior to my coming in from the outside, except
15 the people from Uniroyal.

16 Q You feel that Mr. Lynn just signed that
17 document on behalf of someone else?

18 A Well, he's the boss. He was the VP.

19 Q I don't want to get too abstract here, but are
20 you suggesting to me he didn't have anything to
21 do with the preparation of that document?

22 A Oh, I'm not saying that. I'm saying that's --
23 the internal stuff in here I'm almost -- you
24 would almost have to conclude that it had to
25 come from Uniroyal.

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1 Q That document preceded your employment with
2 Monochem by a number of years?

3 A Many years, yes.

4 Q Okay. And Exhibit 7 is 1964, also preceding
5 your employment, also signed by Mr. Lynn. And
6 let me ask you about number seven nonetheless.
7 In the documents produced by Monochem in this
8 case, three handbooks are produced, and they
9 are Exhibit 6, 7, and 10 as you see them here.
10 Seven, with its effective date of May 22nd of
11 '64, is followed by one with an effective date
12 of August 1 of '74, ten years later. Might I
13 fairly infer, Mr. Kogler, that Exhibit 7 was in
14 effect at the time you went to Monochem?

15 A You could conclude that.

16 MR. BRODHEAD: Let's take a break for
17 a minute. I think I'm almost done.

18 [A short recess was taken.]

19 BY MR. BRODHEAD:

20 Q Mr. Kogler, I assume that so far as it related
21 to the reformulation of the Chemical Safety
22 Data Sheet, that you did not participate, on
23 behalf of Monochem or Borden, subsequent to the
24 mailing of Mr. Stephenson's July 30th, 1971
25 letter.

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1 A That's right. As I said earlier, the only
2 contact I had with MCA was a meeting in
3 Washington. Before that, Jack took care of it,
4 and I'm assuming he did it afterwards.

5 Q What is your knowledge of the harmful or
6 adverse health effects of vinyl chloride
7 generally?

8 A You mean in today's environment?

9 Q Yes, sir.

10 A Well, I think there is enough information that
11 has been published on the carcinogenic effects
12 on the human body. This came to light when we
13 were designing our second vinyl chloride plant,
14 Borden's first on its side but the second for
15 the group there.

16 We had considerable safety devices
17 built into the plant that were not built in
18 early on because nobody knew about these things
19 then. We had EPA in there monitoring our
20 effluent stacks. We had scrubbers.

21 Q What year was this?

22 A I wish you hadn't have asked me that. It was
23 in the late seventies, early eighties,
24 somewhere in that neighborhood. In fact, I
25 even went to France to look at some technology

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1 to reduce the emissions further and license a
2 process from the Rhone Poulenc people, which we
3 ultimately spent some fifteen million dollars
4 on and put in.

5 Once the facts were known, Borden did
6 what was necessary to correct the problems or
7 fix the problems so they wouldn't happen. As I
8 recall, too, our Nursing Department there,
9 dispensary, went into a blood testing -- I'm
10 not sure if that was required by law or not,
11 but it was done anyway.

12 Then on -- I know myself, personally,
13 in my annual physicals, they had to include a
14 panel, I guess they call it, on -- your liver
15 panel or whatever it is to check to see how
16 you're doing. I don't know if that answers
17 your question; but in today's environment, I
18 think there is a lot out there that wasn't
19 known in the early days.

20 Q Who is J. C. Werner?

21 A I don't know.

22 Q Who was the plant physician at Monochem when
23 you were there?

24 A I don't think I could tell you because I didn't
25 go to him. My physicals were given to me by

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1 Borden. We had a nurse at the plant. If there
2 was a plant physician, he would be used for the
3 physicals for the hourly employees and the
4 Monochem employees. Now, I don't know what
5 Jack Little did. He was a Uniroyal employee
6 where he took his physicals.

7 Q But you have no knowledge of a --

8 A Of a Werner?

9 Q Or a specific plant physician for Monochem?

10 A Well, I can't say that because each plant had a
11 physician, but he wasn't at the plant.

12 Q Yes, sir. I understand. All I'm saying is, do
13 you recall a specific doctor who was the
14 physician for Monochem?

15 A No, I don't.

16 Q Would you agree with me that as a general
17 proposition, polymerization affords the greater
18 opportunity for VCM exposure, that is higher
19 levels of exposure, than does creation of the
20 monomer itself?

21 A Well, I base my answer on recent technology
22 then if I may. Borden built a PVC plant at
23 Geismar late in the eighties, and I was
24 involved in that design.

25 Q Was this polymerization or fabrication?

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1 A Polymerization just like the one that I think
2 Uniroyal has at -- where is it? Painesville?

3 Q Yes.

4 A Only new technology, modern stuff. In the
5 processing of the polymer powder, granules, or
6 whatever, the new technology -- and I don't
7 know if it was available in those days -- goes
8 through a tremendous stripping effort to remove
9 the VCM from it, so that the effluent granules
10 that are packaged and sold are, essentially,
11 free of monomer.

12 So I think to answer your question in
13 a backward way, I would say the hazards of VCM
14 in polymer are far greater than in a monomer
15 plant by a magnitude. Everything in a monomer
16 plant is closed. It's captive, tight. But
17 somewhere in the PVC polymer plant, you have to
18 package stuff. It has to be out in the air.
19 It's almost impossible to have it come down a
20 chute and into a closed container without
21 having some exposure someplace to the
22 atmosphere.

23 Q As far as places where Monochem's monomer was
24 sent, it went only to polymerization plants,
25 correct?

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1 A As far as I know. Borden sent theirs to their
2 plants. I'm certain Uniroyal sent theirs to
3 their plants. There was no sale that I know
4 of. If they were sold, it would be done by the
5 owners, and I wouldn't be involved in that
6 anyway.

7 Q Well, in any event, the monomer is produced at
8 Monochem, correct?

9 A Correct.

10 Q And it's loaded at Monochem?

11 A Correct.

12 Q Shipped out of Monochem?

13 A Correct.

14 Q And it has a bill of lading from Monochem to
15 its destination?

16 A Correct.

17 Q And then the tank comes back, and the process
18 repeats itself, correct?

19 A Correct.

20 MR. BRODHEAD: That's all I have, Mr.
21 Kogler. Thank you.

22 THE WITNESS: Okay.

23 MS. KOESTER: I have no questions for
24 you, sir.

25 THE WITNESS: You have some?

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1 MS. KOESTER: No, I don't.

2 THE WITNESS: Okay, good.

3 MS. VANCE: Mr. Kogler, I do have a
4 couple of questions I would like to ask you
5 just to clarify some of your testimony.

6 THE WITNESS: Okay.

7 MR. BRODHEAD: Show my objection to
8 inquiry by counsel for Monochem.

9 EXAMINATION

10 BY MS. VANCE:

11 Q When you were stationed over at Monochem from
12 1969 to 1971, to whom did you report?

13 A Jack Little.

14 Q And to whom did Jack Little report?

15 A Gordon Anderson at Uniroyal.

16 Q You made a reference or used the phrase earlier
17 in the deposition about information feeding
18 down -- I think that was your expression --
19 from Uniroyal. Can you just explain to me and
20 for the record what you meant by that phrase.

21 A Okay. I would say that the bulk, if not all,
22 of the outside information that came into the
23 plant would come through Jack Little's office.
24 Jack was a Uniroyal employee. He would receive
25 this information, whatever, from people in

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1 Connecticut. That's what I meant by feeding
2 down.

3 Now, Borden had only one person that
4 I knew of that was really interested in us, and
5 that was very, very subtle, and that was Bill
6 Boyne. Occasionally, Bill would come to the
7 plant and feed down but, essentially, it didn't
8 amount to anything at all.

9 Q Okay.

10 A But Jack would -- I would say he would meet or
11 talk regularly with his superiors in
12 Connecticut.

13 Q From your observation, did Borden have any
14 comparable experience or expertise in VCM
15 production as did Uniroyal at that point in
16 time?

17 A No. Borden didn't have any.

18 Q What did you observe about the degree of
19 interaction, if any, that Uniroyal had in the
20 oversight or operation of the Monochem plant?

21 A The interaction?

22 Q Yeah.

23 A Well, I think the operation was left pretty
24 much to Jack Little. He was the boss, and we,
25 the staff, operated the plant for the owners.

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1 If there was to be any interaction, it would
2 have to come down from Anderson to Little or
3 from someone of import, probably Boyne to
4 Little. That would be the only interaction I
5 would know of.

6 Q Did you have any occasion to visit any of the
7 Uniroyal facilities while you were stationed at
8 Monochem?

9 A No.

10 Q Did you observe anyone from Uniroyal come down
11 to either visit or inspect any aspect of the
12 Monochem operation?

13 A Yes. Gordon Anderson would come down.

14 Q How often was that done?

15 A Well, I would only have to guess at it. I
16 think Gordon might show up every maybe three or
17 four months.

18 Q What was Mr. Anderson's position at Uniroyal at
19 that point as far as you know?

20 A As far as I know, I would say Gordon probably
21 was vice-president of manufacturing or some
22 such job.

23 Q Was Monochem incorporated during the time that
24 you were stationed there?

25 A Yes.

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1 Q I heard you make reference or use the -- refer
2 to the owners of Monochem, and to whom did you
3 refer?

4 A Well, the owners are Borden and Uniroyal.

5 Q Owners in what sense?

6 A Well, they each infused capital to construct
7 these facilities, and each owner had a
8 percentage of the facilities that they owned.
9 It was theirs.

10 Q Were these owners in the sense of a shareholder
11 relationship with the corporation?

12 A I don't know how that worked. I wasn't
13 interested in the legal end of it.

14 Q All right. Fair enough.

15 A I just know that the ownership of each owner
16 and other parameters dictated the amount of
17 monomer that was produced, not necessarily
18 produced, but owned by the owners after it was
19 produced. It was a series of complicated
20 arrangements that dictated that.

21 Q And with respect to what happens to the monomer
22 after it's produced, Mr. Brodhead finished his
23 questioning of you with questions regarding the
24 loading and the shipment of the monomer in the
25 tank cars. Those tank cars were loaded at

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1 Monochem's facility, were they not?

2 A Yes.

3 Q At whose direction or whose scheduling dictated
4 how and when those cars were being loaded?

5 A My recollection is if there was a car in there
6 that was owned by Borden -- it was loaded; and
7 if it was a car that was in there ready to be
8 loaded -- this was now after testing and making
9 sure there was no oxygen in the car -- it was
10 loaded. Now, what -- who told it to leave the
11 plant, I don't know.

12 Q Do you know how it was arranged for those tank
13 cars to be there ready to be loaded or at whose
14 scheduling or direction the tank cars were
15 taken away from Monochem and sent on down the
16 railroad tracks?

17 A No. I don't remember that much about that. I
18 was just in the operations. I produced it and
19 got it into the storage tanks at the end of the
20 line, and I did supervise, through Jerry Braun,
21 the loading man, Wayne Ramirez.

22 Q Warren Ramirez.

23 A Warren, okay.

24 Q What was Mr. Braun's relationship with Mr.
25 Ramirez as far as you know?

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1 A His boss.

2 Q And Mr. Braun was from where?

3 A Uniroyal.

4 MS. VANCE: Very good. I have no
5 further questions. Thank you.

6 MS. KOESTER: Mr. Kogler, I now have
7 about two questions for you.

8 THE WITNESS: Okay.

9 EXAMINATION

10 BY MS. KOESTER:

11 Q Do you know who Jack Little's predecessor was
12 as plant manager at Monochem?

13 A Bill Boyne.

14 Q And do you know who his successor was as plant
15 manager?

16 A Boyne's predecessor?

17 Q No, Mr. Little's.

18 A I said Bill Boyne as I recall.

19 Q His successor was.

20 A Oh, successor?

21 Q Yes.

22 A Well, I think the system, the operation over
23 there, was purchased by Borden; and Tom Murray,
24 from Borden, went over as the general manager
25 or VP.

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1 MS. KOESTER: Okay. Thank you.

2 MS. VANCE: One more.

3 RE-EXAMINATION

4 BY MS. VANCE:

5 Q How long was Little vice-president --

6 MR. BRODHEAD: You're out of turn,
7 but I will defer to you, Counsel. Please, by
8 all means, don't let me interrupt your train of
9 thought.

10 BY MS. VANCE:

11 Q Do you know the term of service that Mr. Little
12 had as the vice-president in charge of
13 operations?

14 A I can come pretty close. Jack took the job
15 over the year I joined Borden, and that was
16 1969. I think Borden purchased that operation
17 from Uniroyal in 1980. I think it was 1980, so
18 eleven years.

19 Q He was there until Borden purchased the
20 operation?

21 A Yeah, right.

22 Q All right. Fair enough.

23 MS. VANCE: Nothing else.

24 A As far as I know, as far as I remember. See, I
25 was divorced from them at that time.

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1 MS. VANCE: That's fine. Thank you.

2 RE-EXAMINATION

3 BY MR. BRODHEAD:

4 Q Mr. Kogler, you are aware that at one time
5 Uniroyal made its own monomer, are you not,
6 at Painesville?

7 A Um-hum.

8 Q And it decided not to do that any longer and to
9 instead form a joint partnership and form a
10 corporation called Monochem, correct?

11 MS. VANCE: Objection to the term
12 joint partnership.

13 A Well, the company was formed. It was
14 incorporated.

15 BY MR. BRODHEAD:

16 Q They formed a separate corporation?

17 A They had two owners.

18 Q As shareholders?

19 A Well, I assume they had to be shareholders,
20 yes.

21 Q Monochem had a -- at least as designated by
22 Exhibit 3 and the other MCA documents I've
23 shown you today, they were designated
24 separately as attendees at MCA events, correct?

25 A Yes, they were.

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1 MR. BRODHEAD: Thanks very much.
2 That's all I have.

3 THE WITNESS: Okay. Anything else,
4 girls?

5 MS. VANCE: No.

6 MS. KOESTER: Thank you, Mr. Kogler.

7
8 WITNESS EXCUSED AT 1:00 P.M.

9 * * * * *

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1 STATE OF LOUISIANA

2 PARISH OF EAST BATON ROUGE

3 I, SHARON S. WENDT, a Certified Shorthand
4 Reporter and a Registered Professional Reporter, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the deposition of RICHARD D.
7 KOGLER, given under oath in the preceding matter on the
8 10th day of November, 1992, as taken by me in
9 Stenographic machine shorthand, complemented with
10 magnetic tape recording, and thereafter reduced to
11 transcript using Computer-Aided Transcription.

12 I further certify that I am not an
13 attorney or counsel for any of the parties; that I
14 am neither related to nor employed by any attorney
15 or counsel connected with this action; and that I
16 have no financial interest in the outcome of this
17 action.

18 Baton Rouge, Louisiana, this 14th day of
19 November, 1992.
20

21
22 
23 SHARON S. WENDT, CSR, RPR
24
25

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1 STATE OF LOUISIANA

2 PARISH OF EAST BATON ROUGE

3 BEFORE ME, the undersigned Notary Public,
 4 within and for the Parish of East Baton Rouge,
 5 Louisiana, personally came and appeared, RICHARD D.
 6 KOGLER, who, after having been first duly sworn, did
 7 depose and say:

8 THAT he is the witness named in the foregoing
 9 deposition; that he has read or has had read to him the
 10 preceding 72 pages of transcribed matter, and that the
 11 same constitute a true and correct transcription of the
 12 testimony given by him in this matter on the 10th of
 13 November, 1992, except for the following corrections,
 14 if any:

15 PAGE LINE DESCRIPTION

16		
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22 _____
 Richard D. Kogler

23 SWORN TO AND SUBSCRIBED before me, Notary,
 24 this ____ day of _____, 1992, in Baton Rouge,
 Louisiana.

25 _____
 NOTARY PUBLIC

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