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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT NO. 31 HON. G. KEITH WISOT, JUDGE

TRANSWESTERN PIPELINE COMPANY,)
A DELAWARE CORPORATION,)
PLAINTIFF,)
VS.) NO. BC 026959
MONSANTO COMPANY AND DOES 1)
THROUGH 200, INCLUSIVE,)
DEFENDANTS.)

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, DECEMBER 22, 1993
VOLUME 25
PAGES 3873 THROUGH 4049

APPEARANCES:

FOR PLAINTIFF: SHEARMAN & STERLING
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FOR DEFENDANT: PREUSS, WALKER & SHANAGHER
BY: CHARLES F. PREUSS, ESQ.
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SAN FRANCISCO, CA 94105

DAVID A. SALYER, CSR #4410
OFFICIAL COURT REPORTER
111 NORTH HILL STREET
LOS ANGELES, CA 90012

1 THE CLERK: PLEASE, BE SEATED.

2 PLEASE STATE AND SPELL YOUR NAME FOR THE
3 RECORD.

4 THE WITNESS: MY NAME IS THOMAS M. BISTLINE,
5 LAST NAME B-I-S-T-L-I-N-E.

6 THE COURT: MR. PREUSS.

7 MR. PREUSS: THANK YOU, YOUR HONOR.

8

9 DIRECT EXAMINATION

10 BY MR. PREUSS:

11 Q GOOD AFTERNOON, MR. BISTLINE.

12 A GOOD AFTERNOON.

13 Q FOR WHOM DO YOU WORK, SIR?

14 A MONSANTO COMPANY.

15 Q AND WHAT IS YOUR BUSINESS ADDRESS, SIR?

16 A 800 NORTH LINDBERGH BOULEVARD, IN
17 ST. LOUIS, MISSOURI.

18 Q WHAT IS YOUR JOB TITLE WITH MONSANTO,
19 SIR?

20 A MY JOB TITLE IS ASSISTANT GENERAL COUNSEL
21 OF LITIGATION.

22 Q AND AS PART OF YOUR JOB RESPONSIBILITIES,
23 SIR, DO YOU HAVE -- DO YOU SERVE AS THE CUSTODIAN OF
24 MONSANTO'S DOCUMENTS RELATING TO PCB MATTERS?

25 A YES, MR. PREUSS, I DO.

26 Q AND HOW LONG HAVE YOU HAD THAT
27 RESPONSIBILITY, SIR?

28 A SINCE 1985.

1 Q AND WHAT IS THE NATURE OF THAT
2 RESPONSIBILITY?

3 A I AM THE PERSON AT MONSANTO WHO IS
4 CHARGED WITH MAINTAINING THE BUSINESS RECORDS STILL
5 IN MONSANTO'S POSSESSION THAT RELATE TO OUR
6 MANUFACTURE, PRODUCTION AND SALE OF PCB'S.

7 Q AND HOW DID YOU ACQUAINT YOURSELF WITH
8 YOUR RESPONSIBILITIES AS CUSTODIAN OF MONSANTO'S PCB
9 RECORDS, SIR?

10 A WELL, IN 1985 WHEN I ASSUMED MY
11 OBLIGATION AS CUSTODIAN OF THOSE RECORDS, I CONDUCTED
12 A GENERAL REVIEW OF THE FILES THAT WERE IN MONSANTO'S
13 POSSESSION.

14 I EXAMINED MANY OF THOSE DOCUMENTS, NOT
15 ALL OF THEM BUT A GREAT MANY OF THEM.

16 AND I FAMILIARIZED MYSELF, IN GENERAL,
17 WITH THE TYPES OF DOCUMENTS THAT I WAS RESPONSIBLE
18 FOR AND AM RESPONSIBLE FOR.

19 Q AND DO YOU HAVE EMPLOYEES THAT ARE UNDER
20 YOUR SUPERVISION THAT ASSIST YOU IN MAINTAINING THESE
21 DOCUMENTS OF MONSANTO RELATING TO PCB MATTERS, SIR?

22 A YES, SIR, I DO.

23 Q AND IS IT THEIR BUSINESS DUTY TO MAINTAIN
24 THOSE RECORDS?

25 A YES.

26 Q AND IS IT THERE BUSINESS DUTY TO BE
27 TRUTHFUL WITH RESPECT TO GATHERING INFORMATION AND
28 PROVIDING THAT INFORMATION TO YOU AS A CUSTODIAN OF

1 THOSE RECORDS?

2 A YES.

3 Q IN CONNECTION WITH THIS MATTER THAT WE
4 ARE HERE TODAY ON, MR. BISTLINE, DID YOU DIRECT A
5 SEARCH OF MONSANTO'S DOCUMENTS RELATING TO PCB'S FOR
6 INVOICE AND ACKNOWLEDGMENT FORMS USED BY MONSANTO TO
7 BILL FOR PCB PRODUCTS FROM 1962 THROUGH 1971?

8 A YES, MR. PREUSS, I DID DIRECT THAT SUCH A
9 SEARCH BE DONE.

10 Q AND THAT IS WITH RESPECT TO BOTH INVOICE
11 FORMS AND ACKNOWLEDGMENT FORMS?

12 A THAT IS CORRECT.

13 Q AND, SIR, WHAT IS THE DISTINCTION THAT
14 YOU HAVE LEARNED AS CUSTODIAN BETWEEN AN INVOICE FORM
15 AND AN ACKNOWLEDGMENT FORM?

16 A MY INFORMATION, MR. PREUSS, IS THAT AN
17 ACKNOWLEDGMENT FORM IS A FORM GENERATED AND SENT TO A
18 CUSTOMER TO REFLECT THAT AN ORDER FOR A MONSANTO
19 PRODUCT HAD BEEN PLACED BY THE CUSTOMER.

20 AN INVOICE FORM IS ONE THAT WAS SENT TO
21 THE CUSTOMER.

22 IT WAS THE BILL WE SENT TO THE CUSTOMER
23 IN ORDER TO OBTAIN PAYMENT FROM THE CUSTOMER FOR THE
24 GOODS THAT WERE SHIPPED BY MONSANTO.

25 Q AND DO THE INVOICES AND ACKNOWLEDGMENT
26 FORMS HAVE CERTAIN TERMS AND CONDITIONS ON THEM?

27 A YES, THEY DO.

28 Q OKAY. AND ARE THOSE TERMS AND CONDITIONS

1 THE SAME, BASED UPON YOUR REVIEW OF THE RECORDS, SIR?

2 A YES, THEY ARE, WITH ONE SMALL EXCEPTION.

3 THE INVOICE CONTAINS A -- CONTAINED FOR A
4 PERIOD OF TIME A CONDITION THAT REFERRED TO THE FAIR
5 LABOR STANDARDS ACT THAT WAS NOT CONTAINED ON THE
6 ACKNOWLEDGMENT.

7 Q AND ARE THE INVOICE ACKNOWLEDGMENT FORMS
8 USED OR WERE THEY USED AT OR ABOUT THE TIME OF THE
9 DATES OF SUCH FORMS?

10 A THAT IS MY INFORMATION, YES.

11 Q AND WERE THEY PREPARED AT OR ABOUT THE
12 TIME OF THE DATES INDICATED ON THEM?

13 A THAT'S MY INFORMATION.

14 Q AND HOW WERE THOSE FORMS PREPARED, SIR?

15 A I WAS ADVISED OR HAVE BEEN ADVISED THAT
16 THE FORMS THEMSELVES WERE PRINTED BY AN OUTSIDE
17 PRINTER, MOORE PRINTING SERVICES IN ST. LOUIS, AT THE
18 REQUEST OF PERSONS AT MONSANTO WHO HAD NEED OF THE
19 VARIOUS FORMS, THE INVOICES AND ACKNOWLEDGMENT FORMS
20 IN MONSANTO'S ACKNOWLEDGMENT OF ORDERS AND SALES OF
21 PRODUCTS.

22 Q AND DO YOU HAVE AN UNDERSTANDING AS TO
23 WHETHER ACKNOWLEDGMENT FORMS AND INVOICES WERE USED
24 IN CONNECTION WITH SALES OF MONSANTO PCB PRODUCTS TO
25 CUSTOMERS?

26 A YES, SIR, I DO.

27 Q AND WHAT IS YOUR UNDERSTANDING?

28 A MY UNDERSTANDING IS THAT THOSE FORMS, THE

1 GENERAL PRINTED FORMS, WERE USED IN MONSANTO'S SALE
2 OF PCB-CONTAINING PRODUCTS.

3 Q ALL RIGHT. COULD YOU REACH BEHIND YOU,
4 SIR, IF YOU WOULD, AND GO TO EXHIBIT 504.

5 A I HAVE IT.

6 Q CAN YOU IDENTIFY THAT DOCUMENT FOR US,
7 PLEASE, SIR.

8 A THIS DOCUMENT, MR. PREUSS, IS A CUSTOMER
9 ACKNOWLEDGMENT FORM THAT WAS IN USE FROM
10 APPROXIMATELY DECEMBER, 1960 BY MONSANTO COMPANY.

11 Q OKAY. AND HOW MANY PAGES DOES THIS
12 DOCUMENT HAVE?

13 A IN REALITY, THE DOCUMENT ITSELF IN THE
14 ORIGINAL WAS A ONE-PAGE DOCUMENT.

15 THE EXHIBIT HERE IS TWO PAGES. ONE PAGE
16 IS THE FRONT AND THE OTHER IS THE BACK.

17 Q TO THE BEST OF YOUR KNOWLEDGE THIS
18 EXHIBIT IS THE FRONT AND BACK OF A SINGLE DOCUMENT IN
19 ITS ORIGINAL STATE?

20 A YES, SIR, IT IS.

21 Q AND WHAT INFORMATION IS CONTAINED ON THE
22 BACK OF THIS ACKNOWLEDGMENT FORM, SIR?

23 A THE BACK OF THE ACKNOWLEDGMENT FORM,
24 WHICH IS THE SECOND PAGE OF THIS EXHIBIT, CONTAINS
25 THE STANDARD TERMS AND CONDITIONS, WHAT WE REFER TO
26 AT MONSANTO ARE THE TERMS AND CONDITIONS OF THE SALE
27 OF WHATEVER PRODUCT WAS BEING ACKNOWLEDGED ON THE
28 ORDER.

1 Q AND DO THE TERMS AND CONDITIONS HAVE A
2 CLAUSE RELATING TO THE ASSUMPTION OF RISK ON THE PART
3 OF THE PURCHASER, SIR?

4 A YES, IN PARAGRAPH FIVE OF THOSE TERMS AND
5 CONDITIONS.

6 Q AND DO THE TERMS AND CONDITIONS ALSO HAVE
7 A CLAUSE RELATING TO THE LIMITATION OF DAMAGE TO THE
8 PURCHASE PRICE OF THE SALE, SIR?

9 A THAT ALSO IS IN PARAGRAPH FIVE.

10 Q AND DOES THE DOCUMENT ALSO HAVE A CLAUSE
11 RELATING TO A WARRANTY DISCLAIMER, SIR?

12 A AGAIN, THAT IS IN PARAGRAPH FIVE OF THOSE
13 TERMS AND CONDITIONS, MR. PREUSS.

14 Q ALL RIGHT. COULD YOU GO TO 511, PLEASE.

15 A I HAVE IT.

16 Q AND COULD YOU IDENTIFY THAT DOCUMENT FOR
17 US, SIR.

18 A EXHIBIT 511, MR. PREUSS, IS A BLANK COPY
19 OF AN INVOICE THAT WAS IN USE BY MONSANTO COMPANY.

20 THIS DOCUMENT WAS IN USE FROM THE PERIOD
21 OF APPROXIMATELY APRIL OF 1964 UNTIL IT WAS NEXT
22 REVISED, I BELIEVE, IN 1966.

23 Q AND HOW MANY PAGES DID THAT DOCUMENT HAVE
24 IN ITS ORIGINAL FORM, SIR?

25 A AGAIN, AS WITH THE EARLIER EXHIBIT, IT
26 WAS A ONE-PAGE DOCUMENT.

27 THE EXHIBIT IS TWO PAGES BECAUSE THE BACK
28 IS SEPARATELY COPIED.

1 Q AND DOES THE BACKSIDE HAVE TERMS AND
2 CONDITIONS ON IT, SIR?

3 A YES, IT DOES.

4 Q AND DO THOSE TERMS AND CONDITIONS INCLUDE
5 AN ASSUMPTION OF THE RISK CLAUSE?

6 A YES, IN PARAGRAPH FIVE.

7 Q DOES IT ALSO INCLUDE A LIMITATION OF
8 LIABILITY DAMAGE CLAUSE TO THE PURCHASE PRICE OF
9 PRODUCT KNOWLEDGE AGAIN?

10 A YES, IT DOES, AGAIN IN PARAGRAPH FIVE OF
11 THAT.

12 Q AND DOES IT ALSO INCLUDE A TERM AND
13 CONDITION RELATING TO WARRANTY DISCLAIMER?

14 A YES, IT DOES, AGAIN IN PARAGRAPH FIVE.

15 Q NOW, WITH RESPECT TO 504 AND 511, SIR, IS
16 IT YOUR UNDERSTANDING THAT THESE FORMS WERE PREPARED
17 AT OR ABOUT THE DATE INDICATED ON THE TOP OF THE
18 FORM?

19 A THAT'S MY INFORMATION, MR. PREUSS, YES.

20 Q AND IS IT YOUR UNDERSTANDING THAT THESE
21 TWO FORMS WERE ALSO PREPARED FOR USE IN CONNECTION
22 WITH MONSANTO'S PCB BUSINESS?

23 A YES.

24 THESE -- AN INVOICE OF THIS TYPE, THIS
25 FORM WAS USED AT THAT PERIOD OF TIME, ACCORDING TO MY
26 INFORMATION FOR SALES OF PCB PRODUCTS.

27 Q AND THAT THESE TWO EXHIBITS WERE PRINTED
28 BY MOORE'S PRINTING SERVICE?

1 A MOORE BUSINESS FORMS OR SOMETHING OF THAT
2 NATURE WAS THE COMPANY IN ST. LOUIS THAT PRINTED
3 THESE FORMS.

4 Q AND THESE FORMS WERE USED IN CONNECTION
5 WITH SALE OF MONSANTO PRODUCTS TO MONSANTO CUSTOMERS
6 WITHIN THE TIME FRAME INDICATED ON THE TOP OF THE
7 EXHIBITS?

8 A THAT'S CORRECT.

9 Q NOW, MR. BISTLINE, IF YOU WOULD, PLEASE,
10 SIR, LOOK FURTHER AT EXHIBIT 512.

11 A YES, MR. PREUSS, I HAVE IT.

12 Q 515.

13 A I HAVE THAT ONE.

14 Q 518?

15 A AND THAT ONE.

16 Q 519?

17 A YES.

18 Q 520?

19 A YES, I HAVE THAT ONE, TOO.

20 Q 521?

21 A YES.

22 Q 522?

23 A YES.

24 Q 523?

25 A YES.

26 Q 536?

27 A 36?

28 YES, I HAVE THAT ONE HERE, TOO.

1 Q 539?

2 A YES, SIR.

3 Q AND 553?

4 A YES, I HAVE THAT ONE HERE, ALSO.

5 Q LET ME ASK YOU ONE QUESTION AS TO 512.
6 IS 512 AN ACKNOWLEDGMENT FORM?

7 A THIS IS A CUSTOMER ACKNOWLEDGMENT FORM,
8 THAT'S CORRECT.

9 Q AS TO THE OTHER EXHIBITS I ASKED YOU TO
10 LOOK AT, SIR, ARE THOSE INVOICE FORMS?

11 A THESE OTHER EXHIBITS WERE INVOICES.
12 THAT'S CORRECT.

13 Q AND WHAT IS THE DIFFERENCE BETWEEN --
14 WITHDRAW THAT.

15 IS THE ONLY DIFFERENCE BETWEEN THE
16 EXHIBIT NUMBERS THAT I ASKED YOU TO LOOK AT IN
17 SEQUENCE THE DATES ON WHICH THOSE FORMS HAVE ON THE
18 TOP?

19 A WELL, THAT IS ONE DIFFERENCE.

20 Q IS THERE ALSO A DIFFERENCE WITH RESPECT
21 TO THE WAY THE TERMS AND CONDITIONS ARE SET FORTH?

22 A YES.

23 THERE WAS A REVISION, A PRETTY
24 BROAD-SCALE REVISION OF THE TERMS AND CONDITIONS THAT
25 APPEARED ON THE BACK OF THE PRINTED FORMS ACCORDING
26 TO MY INFORMATION IN OR ABOUT 1966.

27 Q WITH RESPECT TO THE TERMS AND CONDITIONS
28 OF BOTH BEFORE AND AFTER THE REVISIONS DID EACH OF

1 THE EXHIBIT NUMBERS THAT I ASKED YOU TO LOOK AT HAVE
2 AN ASSUMPTION OF THE RISK CLAUSE?

3 A YES, EACH DID.

4 Q AND DID EACH HAVE A LIMITATION OF
5 LIABILITY DAMAGE CLAUSE TO THE PURCHASE PRICE OF THE
6 PRODUCTS?

7 A YES, SIR, THEY DID.

8 THE COURT: LET ME CLARIFY, MR. PREUSS.

9 YOU ARE ASKING ABOUT THE FORMS HE LOOKED
10 AT IN THE EVIDENCE BOOK?

11 ARE THOSE QUESTIONS DIRECTED TO THE FORMS
12 HE IS LOOKING AT IN THE EVIDENCE BOOK?

13 MR. PREUSS: THAT'S CORRECT. I'M SORRY.

14 THE COURT: YOU ARE NOT ASKING ABOUT THE
15 REVISION?

16 THAT'S WHAT I WANT TO CLARIFY.

17 MR. PREUSS: I AM ASKING ABOUT THE SEQUENCE OF
18 THE EXHIBITS THAT I ASKED HIM TO LOOK AT AFTER THE
19 TWO THAT I STARTED WITH.

20 THE COURT: THANK YOU.

21 DID YOU UNDERSTAND THAT, SIR?

22 THE WITNESS: YES, I DID.

23 THE COURT: GO AHEAD, MR. PREUSS.

24 MR. PREUSS: THANK YOU, YOUR HONOR.

25 Q AND DID ALL OF THE EXHIBIT NUMBERS THAT I
26 ASKED YOU TO LOOK AT IN SEQUENCE THERE, HAVE A
27 WARRANTY DISCLAIMER CLAUSE?

28 A YES, MR. PREUSS, THEY ALL DID HAVE A

1 WARRANTY DISCLAIMER CLAUSE.

2 Q AND IF I WERE TO ASK YOU THE SAME
3 FOUNDATIONAL QUESTIONS THAT I ASKED YOU WITH RESPECT
4 TO EXHIBITS 504 AND 511, WOULD YOUR ANSWERS BE THE
5 SAME, SIR?

6 A YES, THEY WOULD.

7 Q MR. BISTLINE, DID YOU ALSO DIRECT A
8 SEARCH FOR INVOICES RELATING TO THE SALE OF OS-81,
9 MCS-153 AND TURBINOL-153 TO EITHER TEXAS EASTERN OR
10 TRANSWESTERN?

11 A YES, I DID.

12 Q WOULD YOU PLEASE TURN TO EXHIBIT 559,
13 SIR.

14 A I HAVE 559.

15 Q AND COULD YOU IDENTIFY THAT FOR US,
16 PLEASE.

17 A THIS IS A COPY OF AN INVOICE DATED, I
18 BELIEVE, 12-23-70 TO TEXAS EASTERN TRANSMISSION
19 CORPORATION.

20 Q AND IS IT A TWO-PAGE DOCUMENT OR TWO
21 COPIES OF A SINGLE PAGE?

22 A AGAIN, AS WITH THE OTHER EXHIBITS WE
23 LOOKED AT, IN THE ORIGINAL THIS WOULD HAVE BEEN A
24 SINGLE PAGE.

25 THE EXHIBIT IS A SEPARATE PAGE FOR THE
26 FRONT AND ONE FOR THE BACK.

27 Q AND THE TERMS AND CONDITIONS ON EXHIBIT
28 559, DO THEY CONTAIN A LIMITATION OF LIABILITY

1 CLAUSE?

2 A THERE IS ONE.

3 IT'S NOT VERY LEGIBLE HERE, BUT IT DOES
4 CONTAIN A LIMITATION OF LIABILITY CLAUSE HERE.

5 Q DOES IT ALSO CONTAIN A WARRANTY
6 DISCLAIMER CLAUSE?

7 A YES, SIR, IT DOES.

8 Q AND DOES IT ALSO CONTAIN AN ASSUMPTION OF
9 RISK CLAUSE?

10 A YES, THAT IS IN HERE.

11 Q AND IF I WERE TO ASK YOU THE SAME
12 FOUNDATIONAL QUESTIONS, WOULD YOUR ANSWERS BE THE
13 SAME?

14 A YES.

15 Q IN OTHER WORDS, THIS DOCUMENT WAS
16 PREPARED AT OR ABOUT THE TIME INDICATED?

17 A YES.

18 THAT'S MY INFORMATION.

19 Q AND PREPARED IN CONNECTION WITH
20 MONSANTO'S INVOICING OF ITS CUSTOMERS FOR PRODUCTS?

21 A THAT'S CORRECT.

22 Q AND TEXAS EASTERN IN PARTICULAR?

23 A THAT'S WHAT THIS INVOICE REFLECTS, YES.

24 Q ALL RIGHT.

25 COULD YOU TAKE A LOOK AT EXHIBIT 561,
26 SIR.

27 A I HAVE EXHIBIT 561.

28 Q MR. BISTLINE, I NEGLECTED TO ASK YOU, WAS

1 THE SALE INDICATED ON THE INVOICE OF 559 FOR THE SALE
2 OF TURBINOL-153?

3 A I BELIEVE IT WAS, BUT LET ME CHECK.

4 Q PLEASE DO.

5 A YES, IT IS FOR TURBINOL-153.

6 Q AND EXHIBIT 561, SIR, CAN YOU IDENTIFY
7 THAT FOR US, PLEASE.

8 A I WILL BE RIGHT WITH YOU.

9 NOW, IF YOU WOULDN'T MIND REPEATING YOUR
10 QUESTION.

11 Q COULD YOU IDENTIFY THE DOCUMENT FOR US,
12 SIR.

13 A EXHIBIT 561 IS A COPY OF AN INVOICE TO
14 TEXAS EASTERN TRANSMISSION CORPORATION DATED, IT
15 APPEARS, 2-16-71 FOR THE SALE OF TURBINOL-153.

16 Q NOW, WAS THIS DOCUMENT PREPARED AT OR
17 ABOUT THE TIME INDICATED?

18 A THAT IS MY INFORMATION, YES.

19 Q WAS IT PREPARED FOR -- IN CONNECTION
20 WITH THE BUSINESS OF MONSANTO IN INVOICING ITS
21 CUSTOMERS FOR ITS PCB PRODUCT?

22 A YES, SIR.

23 Q AND WHAT IS YOUR UNDERSTANDING OF THE
24 MANNER OF ITS PREPARATION, SIR?

25 A IT'S MY UNDERSTANDING, MR. PREUSS, THAT
26 THIS DOCUMENT WAS GENERATED BY MONSANTO'S INVOICING
27 OR BILLING DEPARTMENT, REFLECTING A REQUEST BY
28 MONSANTO FOR PAYMENT FOR DELIVERY TO TEXAS EASTERN

1 WITH THE QUANTITY OF TURBINOL-153 SHOWN ON HERE.

2 Q WOULD THAT BE TRUE WITH RESPECT TO THE
3 PREVIOUS EXHIBIT 559 AS WELL?

4 A YES, IT WOULD.

5 Q NOW, DOES THIS HAVE A TERM AND CONDITION
6 PAGE AS PART OF THIS EXHIBIT, SIR?

7 A I HAVE ONLY THE FRONT PAGE OF EXHIBIT
8 561.

9 Q OKAY. AND TO THE BEST OF YOUR KNOWLEDGE,
10 SIR, AS TO EACH EXHIBIT THAT YOU AND I HAVE
11 DISCUSSED, ARE WHAT YOU HAVE IN FRONT OF YOU TRUE AND
12 CORRECT COPIES OF WHAT THE ORIGINAL WAS, SIR?

13 A THESE ARE TRUE AND CORRECT COPIES OF
14 DOCUMENTS I HAVE IN MY CUSTODY WHICH I UNDERSTAND TO
15 BE DOCUMENTS GENERATED BY MONSANTO IN THE ORDINARY
16 COURSE OF ITS BUSINESS.

17 Q NOW, WITH RESPECT TO YOUR SEARCH FOR
18 DOCUMENTS RELATING TO THE SALE OF PCB PRODUCTS IN
19 TURBINOL AND SPECIFICALLY TO TEXAS EASTERN, SIR, DID
20 YOU FIND ANY WRITTEN RECORD OF ANY OBJECTION TO THE
21 FOLLOWING THREE TERMS AND CONDITIONS: ASSUMPTION OF
22 THE RISK CLAUSE, THE LIMITATION OF LIABILITY CLAUSE
23 AND THE WARRANTY DISCLAIMER CLAUSE?

24 A I FOUND NO RECORD OF OBJECTIONS FROM
25 TEXAS EASTERN TO ANY OF THOSE.

26 Q NO WRITTEN OBJECTION?

27 A NO WRITTEN OBJECTION, NO.

28 Q DID YOU FIND ANY DOCUMENTS, ANY INVOICES

1 OR ACKNOWLEDGMENTS RELATING TO ANY SALE OF OS-81,
2 MCS-153 OR TURBINOL-153 TO A COMPANY KNOWN AS
3 TRANSWESTERN?

4 A NO.

5 WE LOOKED AND FOUND NO INVOICES OR
6 ACKNOWLEDGMENTS RELATING TO SALES OF TURBINOL OR
7 MCS-153 OR OS-81 TO TRANSWESTERN.

8 Q NOW, MR. BISTLINE, WITH RESPECT TO -- WHY
9 DON'T YOU TAKE -- YOU STILL HAVE 559.

10 YOU CAN USE 561, ACTUALLY.

11 DO YOU HAVE THAT IN FRONT OF YOU?

12 A I HAVE 561, YES.

13 Q YOU WILL NOTE THAT THERE IS, IN ABOUT TWO
14 INCHES DOWN, THERE ARE TWO WHAT I WOULD CALL BOXES
15 WITH SOLID LINES?

16 A YEAH, ABOUT A THIRD OF THE WAY DOWN THE
17 PAGE.

18 Q AND ONE SAYS, "SOLD TO"?

19 A CORRECT.

20 Q AND THE OTHER SAYS "SHIPPED TO"?

21 A THAT'S CORRECT.

22 Q BASED ON YOUR UNDERSTANDING OF THE
23 RECORDS FROM MONSANTO RELATING TO PCB DOCUMENTS, SIR,
24 WHAT IS YOUR UNDERSTANDING AS TO WHAT THESE TWO BOXES
25 INDICATE?

26 A WELL, THE "SOLD TO" BOX IS THE IDENTITY
27 OF THE CUSTOMER TO WHOM THE PRODUCT WAS SOLD. THAT
28 IS WHERE THE BILL WOULD BE SENT.

1 THE "SHIPPED TO" BOX INDICATED THE
2 LOCATION TO WHICH A PRODUCT PHYSICALLY WOULD BE
3 SHIPPED FROM MONSANTO AS A RESULT OF THE ORDER BEING
4 PLACED.

5 Q MR. BISTLINE, WOULD YOU TURN TO EXHIBIT
6 60?

7 A 60?

8 Q 60.

9 YOU WILL HAVE TO GO BEHIND YOU, THERE.
10 60, 64 AND 231.

11 A AND 231, MR. PREUSS?

12 Q PLEASE.

13 A I HAVE THEM.

14 Q CAN YOU IDENTIFY THESE THREE EXHIBITS FOR
15 US, PLEASE.

16 A THESE ARE DOCUMENTS, AGAIN, COPIES OF
17 DOCUMENTS FROM THE PCB DOCUMENTS OF WHICH I AM
18 CUSTODIAN AT MONSANTO, WHICH ARE SALES SUMMARY
19 DOCUMENTS.

20 IT'S MY UNDERSTANDING THAT THESE WERE
21 PREPARED BY THE ACCOUNTING FUNCTION AT MONSANTO AS A
22 PERIODIC SUMMARY OF SALES OF ALL OF MONSANTO'S
23 PRODUCTS.

24 Q AND WERE THESE DOCUMENTS PREPARED IN THE
25 REGULAR COURSE OF BUSINESS, TO YOUR KNOWLEDGE?

26 A YES, THAT'S MY INFORMATION.

27 Q AT OR ABOUT THE TIME OF THE SALE OF
28 MONSANTO PRODUCTS?

1 A IT WAS AT OR ABOUT THE TIME INDICATED ON
2 THE DOCUMENT.

3 Q AND WHAT IS YOUR UNDERSTANDING OF THE
4 MANNER OF PREPARATION OF THESE DOCUMENTS?

5 A WELL, THIS WAS --

6 MR. TALLON: I WILL OBJECT TO THE FOUNDATION
7 FOR THAT.

8 THE COURT: OVERRULED.

9 YOU MAY ANSWER.

10 THE WITNESS: IT'S MY UNDERSTANDING,
11 MR. PREUSS, THAT THESE ARE SUMMARY DOCUMENTS FOR USE
12 BY MANAGEMENT WHICH CONSOLIDATES IN A CONVENIENT
13 FORM, IN A TABULAR FORM, REALLY, WHAT SALES OF EACH
14 OF MONSANTO'S PRODUCTS HAS BEEN FOR THE TIME PERIOD
15 STATED ON THAT DOCUMENT.

16 Q BY MR. PREUSS: AND WHERE WAS THE
17 INFORMATION, TO YOUR KNOWLEDGE, OBTAINED FOR THE
18 SUMMARY?

19 A ULTIMATELY THAT INFORMATION WAS TAKEN
20 FROM THE INVOICE FORMS.

21 Q AND DO THESE DOCUMENTS, BASED ON YOUR
22 UNDERSTANDING OF THE DOCUMENTS IN THE PCB FILES OF
23 MONSANTO, REFLECT SALES TO CUSTOMERS?

24 A YES.

25 MR. TALLON: I WILL OBJECT ON FOUNDATION FOR
26 INTERPRETING THE DOCUMENT.

27 THE COURT: OVERRULED.

28 YOU MAY ANSWER.

1 THE WITNESS: THAT IS MY UNDERSTANDING, YES.

2 A COPY OF THE INVOICE -- THE INVOICE WAS
3 A MULTIPLE COPY DOCUMENT SO THAT ONE COPY WOULD BE
4 SENT TO THE CUSTOMER FOR PAYMENT AND ANOTHER COPY OF
5 THAT WOULD BE SENT TO THE MONSANTO ACCOUNTING
6 FUNCTION.

7 AND THAT WOULD SERVE AS THE SOURCE OF
8 THIS TABULAR SUMMARY OF THE TYPE WE SEE IN EXHIBIT
9 231 OR THE OTHER TWO EXHIBITS.

10 Q LET'S LOOK TAKE A LOOK AT 231, SIR.
11 IF YOU GO DOWN THE LIST ON THE LEFT,
12 SIR --

13 A YES.

14 Q IS THE LIST OF THE ENTITIES THERE, ARE
15 THEY ALL CUSTOMERS OR ARE THEY REFLECTING SOMETHING
16 ELSE?

17 MR. TALLON: I WILL OBJECT.

18 THE COURT: OVERRULED.

19 YOU MAY ANSWER.

20 THE WITNESS: IT'S MY UNDERSTANDING,
21 MR. PREUSS, THAT THE NAMES THAT YOU SEE HERE IN THAT
22 COLUMN REFLECT THE INFORMATION TAKEN FROM THE
23 "SHIPPED TO" BOX ON THE CUSTOMER INVOICE FORM THAT
24 WOULD REFLECT THE DESTINATION OF THE PRODUCT.

25 Q BY MR. PREUSS: ALL RIGHT. LET'S TAKE A
26 LOOK AT 561.

27 A 561?

28 Q YES, SIR.

1 YOU DON'T HAVE THAT?

2 YOU MIGHT BE ABLE TO SEE IT ON THE
3 SCREEN, IF YOU CAN'T GET IT.

4 WHATEVER IS EASIER.

5 A I CAN SEE IT.

6 Q DO YOU HAVE A POINTER THERE?

7 CAN YOU INDICATE YOUR UNDERSTANDING AS TO
8 WHERE THE INFORMATION ON THE SUMMARY SHEETS WAS TAKEN
9 FROM THE INVOICE?

10 A YOU ARE REFERRING TO THE COLUMN WE WERE
11 TALKING ABOUT ON THE LEFT-HAND SIDE?

12 Q 231, YES, SIR.

13 A IT CAME FROM THIS BOX RIGHT HERE.

14 Q SO IF WE ARE TO LOOK AT 231 THERE, ON THE
15 LEFT SIDE, WHAT IS LISTED THERE WOULD INDICATE WHERE
16 THE PRODUCT WAS SHIPPED TO; IS THAT CORRECT?

17 A THAT'S MY UNDERSTANDING, YES.

18 Q AND DOES NOT INDICATE WHERE THE INVOICE
19 WENT?

20 A THAT'S CORRECT.

21 Q WOULD YOU TAKE A LOOK AT EXHIBIT 64,
22 PLEASE.

23 A I HAVE IT.

24 Q AND GO TO PAGE 2 OF THAT.

25 YOU WILL SEE THERE THAT THERE ARE TWO
26 NOTATIONS IN THE UPPER LEFT, IT SAYS "TRANSWESTERN
27 PIPE, CORONA, NEW MEXICO, TRANSWESTERN PIPE, ROSWELL,
28 NEW MEXICO"?

1 A YES, I SEE THAT.

2 Q IS IT YOUR UNDERSTANDING BASED ON YOUR
3 KNOWLEDGE OF THE RECORDS, THAT THOSE ARE LOCATIONS TO
4 WHICH THE PRODUCT PURCHASE WAS SENT?

5 A THAT IS MY UNDERSTANDING, YES,
6 MR. PREUSS.

7 Q AS OPPOSED TO A CUSTOMER; IS THAT
8 CORRECT?

9 A AS OPPOSED TO THE ENTITY THAT PAID FOR
10 AND ORDERED IT, YES.

11 Q NOW, COULD YOU TAKE A LOOK AT EXHIBIT
12 253, SIR.

13 A YES, I HAVE IT.

14 Q COULD YOU IDENTIFY THAT DOCUMENT FOR US,
15 PLEASE?

16 A YES, MR. PREUSS.

17 THIS IS A DOCUMENT PREPARED BY MY STAFF
18 AT THE MONSANTO LAW DEPARTMENT BASED UPON DOCUMENTS
19 OF THE TYPE WE LOOKED AT BEFORE, THE
20 COMPUTER-GENERATED SALES SUMMARIES.

21 Q THIS DOCUMENT IS NOT IN THE PCB FILES FOR
22 MONSANTO COMPANY'S OF WHICH YOU ARE THE CUSTODIAN; IS
23 THAT CORRECT?

24 A IT'S NOT A BASE DOCUMENT.

25 IT'S A SUMMARY DOCUMENT PREPARED BY
26 MEMBERS OF MY STAFF AT MY REQUEST.

27 Q MR. BISTLINE, ARE YOU AWARE THAT PRIOR TO
28 THIS LAWSUIT BEING INSTITUTED THAT THERE WAS AN

1 ARBITRATION WHICH TOOK PLACE BETWEEN SOUTHERN
2 CALIFORNIA GAS COMPANY AND TRANSWESTERN?

3 A YES, SIR, I AM AWARE OF THAT.

4 Q AND WHEN DID MONSANTO RECEIVE ITS FIRST
5 NOTICE OF THAT ARBITRATION, SIR?

6 A WE RECEIVED OUR FIRST NOTICE OF THAT
7 ARBITRATION SOMETIME EARLY IN MAY OF 1989 WHEN WE
8 RECEIVED A SUBPOENA.

9 Q FOR WHAT?

10 A THE SUBPOENA REQUESTED THE PRODUCTION BY
11 MONSANTO OF DOCUMENTS RELATING TO PCB PRODUCTS.

12 Q AND THE DATE, AGAIN?

13 A MAY OF 1989.

14 Q OKAY.

15 MR. PREUSS: NO FURTHER QUESTIONS, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. TALLON?

18 MR. TALLON: THANK YOU, YOUR HONOR.

19
20 CROSS EXAMINATION

21 BY MR. TALLON:

22 Q MR. BISTLINE, I WANTED TO TALK TO YOU FOR
23 A COUPLE OF MINUTES ABOUT YOUR JOB AS CUSTODIAN OF
24 RECORDS.

25 A SURE.

26 Q WHEN YOU SAY THAT THE PCB DOCUMENTS ARE
27 IN YOUR CUSTODY, YOU DON'T MEAN ACTUALLY IN YOUR
28 OFFICE, RIGHT?

1 A NO, SIR, THEY ARE NOT IN MY OFFICE.

2 Q THAT IS BECAUSE THERE ARE ABOUT A MILLION
3 PAGES OR SO?

4 A APPROXIMATELY, YES.

5 Q OKAY. AND THEY ARE KEPT IN A PCB
6 ARCHIVE?

7 A YES.

8 WE HAVE AN AREA IN A DIFFERENT BUILDING
9 THAT IS SECURED AND THAT IS WHERE THE DOCUMENTS ARE
10 KEPT.

11 Q OKAY. AND YOU ARE THE PERSON AT MONSANTO
12 MOST KNOWLEDGEABLE ABOUT WHERE MONSANTO KEEPS ITS PCB
13 DOCUMENTS?

14 A THAT'S CORRECT.

15 Q AND PCB DOCUMENTS HAVE NO RETENTION
16 PERIOD, RIGHT?

17 A THAT'S RIGHT.

18 THEY HAVE BEEN TAKEN OUT OF OUR NORMAL
19 CYCLE OF DESTROYING BUSINESS RECORDS AT THE REQUEST
20 OF THE LAW DEPARTMENT.

21 Q RIGHT. CORPORATIONS LIKE MONSANTO HAVE
22 USUALLY, ORDINARILY PROGRAMS CALLED DOCUMENT
23 RETENTION PROGRAMS, RIGHT?

24 A THAT'S CORRECT.

25 Q AND DOCUMENT RETENTION PROGRAMS FOR A
26 CORPORATION LIKE MONSANTO SAY, WE ARE GOING TO KEEP
27 SUCH AND SUCH A KIND OF BUSINESS RECORD FOR SO MANY
28 YEARS, MAYBE FOR TAX PURPOSES, AND THEN AFTER THAT

1 TIME PERIOD IS UP WE WILL TOSS IT?

2 A TAX PURPOSES IS ONE REASON, BUT, IN
3 GENERAL, YES.

4 Q RIGHT. AND MONSANTO HAS A DOCUMENT
5 RETENTION PROGRAM THAT SAYS, WE WILL KEEP SOME
6 DOCUMENTS FOR A FEW YEARS AND THEN THROW THEM AND
7 THEN KEEP OTHER DOCUMENTS FOR FIVE YEARS AND THEN WE
8 WILL THROW THEM AWAY AND SO FORTH, RIGHT?

9 A THAT'S CORRECT.

10 Q BUT THAT DOESN'T APPLY TO ANY DOCUMENT
11 THAT HAS TO DO WITH PCB'S, RIGHT?

12 A THAT'S CORRECT.

13 Q AND, IN FACT, THAT POLICY OF NOT THROWING
14 AWAY ANY PCB DOCUMENTS WAS FIRST GIVEN IN 1971?

15 A THAT'S MY INFORMATION.

16 THAT'S CORRECT, MR. TALLON.

17 Q AND WHEN YOU TOOK YOUR JOB AS ASSISTANT
18 GENERAL COUNSEL --

19 A CORRECT.

20 Q -- OR WHATEVER YOUR POSITION WAS WHEN YOU
21 FIRST GOT IT.

22 A IT WASN'T QUITE THAT GRANDIOSE.

23 Q WELL, YOU DESERVED IT EVEN THEN.

24 LET'S SAY, WHEN YOU GOT THAT POSITION YOU
25 GAVE AN INSTRUCTION, YOU REAFFIRMED THE INSTRUCTION
26 THAT NO DOCUMENTS RELATING TO PCB'S ARE TO BE
27 DESTROYED, RIGHT?

28 A I REAFFIRMED THAT INSTRUCTION, THAT'S

1 CORRECT.

2 Q YOU KNOW THAT THAT INSTRUCTION HAD FIRST
3 BEEN GIVEN IN 1971 AS WE JUST SAID, RIGHT?

4 A THAT WAS MY INFORMATION, YES, I WAS TOLD
5 THAT.

6 Q SO THAT DOCUMENTS RELATING TO PCB'S THAT
7 WERE IN EXISTENCE IN 1971, WE WOULD EXPECT TO SEE
8 TODAY?

9 A THEY SHOULD HAVE BEEN RETAINED.

10 Q OKAY. NOW, YOU KNOW THAT THE NORMAL
11 PROGRAM FOR KEEPING SALES DOCUMENTS WAS TWO OR THREE
12 YEARS, RIGHT?

13 A DEPENDING UPON TYPE OF DOCUMENT INVOLVED,
14 YES.

15 Q OKAY. AND SUMMARY REPORTS, LIKE THOSE
16 COMPUTER PRINTOUTS THAT WE JUST LOOKED AT, THOSE
17 WOULD BE KEPT FOR 10 TO 12 YEARS?

18 A DEPENDING UPON THE PERIOD OF TIME YOU ARE
19 TALKING ABOUT.

20 BECAUSE THE DOCUMENT RETENTION MANUAL WAS
21 REVISED AT SOME POINT.

22 I THINK THE PERIOD WAS CHANGED.

23 SO IT WOULD BE 10 TO 12 YEARS, IN
24 GENERAL, DEPENDING UPON THE TIME.

25 Q WE JUST SAW YOU SAVED THE SUMMARY REPORTS
26 FOR THE SALES OF TURBINOL?

27 A YES.

28 Q OKAY. THE ORIGINAL -- YOUR UNDERSTANDING

1 IS THAT THE ORIGINAL INSTRUCTIONS NOT TO DESTROY ANY
2 DOCUMENTS HAVING ANYTHING TO DO WITH PCB'S WENT OUT
3 TO THOSE INVOLVED IN THE PRODUCTION AND SALE OF
4 PCB'S, RIGHT?

5 A YES, THAT'S MY POSITION.

6 Q AS WELL AS THE MEDICAL STAFF AND THE
7 TOXICOLOGY STAFF, RIGHT?

8 A THAT'S CORRECT.

9 Q OKAY. SO, THEREFORE, TODAY, IN
10 ST. LOUIS, THERE ARE A MILLION PAGES OF PCB DOCUMENTS
11 IN YOUR CUSTODY?

12 A WELL, YES, THOSE DOCUMENTS ARE IN MY
13 CUSTODY.

14 THAT'S CORRECT.

15 Q OKAY. NOW, IN FACT, ONE OF THE THINGS
16 THAT YOU KNOW WAS DONE BACK IN THE EARLY 70'S,
17 STARTING IN '71, WAS THAT MANUFACTURING FACILITIES
18 WHERE PCB PRODUCTS HAD BEEN MADE OR BLENDED WERE
19 SEARCHED FOR, PCB DOCUMENTS?

20 A YES, AN EFFORT WAS MADE TO SEARCH THOSE
21 PLACES WHERE THERE WOULD BE DOCUMENTS FOR PCB'S.

22 Q LIKE KRUMMRICH?

23 A LIKE KRUMMRICH.

24 Q AND ANNISTON?

25 A ANNISTON, YES.

26 Q AND QUEENY?

27 A I BELIEVE SO, YES.

28 Q AND, LET'S SEE.

1 YOU TESTIFIED IN RESPONSE TO QUESTIONS
2 FROM MR. PREUSS THAT YOU LOOKED FOR AND DID NOT FIND
3 AN INVOICE ON MONSANTO INVOICE STATIONERY OR
4 LETTERHEAD FOR A SALE OF TURBINOL OR MCS-153 OR OS-81
5 TO TRANSWESTERN PIPELINE COMPANY, RIGHT?

6 A THAT'S RIGHT.

7 WE HAD NO INVOICES REFLECTING SUCH A
8 SALE.

9 Q NOR DID YOU HAVE ANY INVOICES TO TEXAS
10 EASTERN FOR SALE OF TURBINOL-153, MCS-153 OR OS-81 TO
11 BE SHIPPED TO CORONA, NEW MEXICO?

12 A I BELIEVE THAT IS CORRECT.

13 Q SO YOU DON'T HAVE ANY INVOICES TO
14 TRANSWESTERN AND YOU DON'T HAVE ANY INVOICES TO TEXAS
15 EASTERN FOR THE SALES OF GOODS GOING TO CORONA, NEW
16 MEXICO?

17 A I BELIEVE THAT'S CORRECT, NO INVOICES.

18 Q IN FACT, THE EXHIBITS THAT MR. PREUSS WAS
19 TALKING TO YOU ABOUT JUST A FEW MOMENTS AGO, 559 AND
20 561, LET'S TAKE A SECOND LOOK AT THOSE, IF YOU
21 WOULD.

22 A SURE.

23 559.

24 Q 559.

25 A I HAVE THE WRONG BOOKS UP HERE. IT WOULD
26 BE RIGHT AT THE END.

27 Q IS IT? OKAY.

28 A OKAY. AND 561 WAS THE OTHER ONE?

1 Q YES.

2 WELL, WHY DON'T YOU FOCUS ON 559 FOR A
3 MOMENT.

4 I ONLY HAVE A COUPLE OF QUESTIONS.

5 559 IS MONSANTO'S INVOICE AND IT'S MADE
6 OUT TO TEXAS EASTERN TRANSMISSION CORPORATION, RIGHT?

7 A CORRECT.

8 Q AND IN THE "SHIPPED TO" BOX IT SAYS
9 "SAME, CUTOFF LA."

10 THAT PROBABLY SANDS FOR SOMEWHERE IN
11 LOUISIANA, RIGHT?

12 A THAT WOULD BE MY UNDERSTANDING, CUTOFF
13 LA, YES.

14 Q NOW, LET'S LOOK FOR 561.

15 A YES, I HAVE IT.

16 Q AND THAT IS ANOTHER MONSANTO INVOICE TO
17 TEXAS EASTERN, SHIPPED TO SAME, OFF HIGHWAY 22,
18 GRANTVILLE, PA.?

19 A THAT'S CORRECT.

20 Q WHICH WOULD BE PENNSYLVANIA?

21 A THAT IS MY UNDERSTANDING.

22 Q AND YOU KNOW FROM LOOKING AT YOUR RECORDS
23 THAT YOU WERE NOT ABLE TO FIND A SINGLE INVOICE TO
24 TEXAS EASTERN TRANSMISSION CORPORATION THAT SAID,
25 SHIPPED TO CORONA, NEW MEXICO OR ROSWELL, NEW MEXICO
26 OR NEW MEXICO, PERIOD?

27 A THAT'S CORRECT.

28 THE COURT: MR. TALLON, WE'LL TAKE THE

1 AFTERNOON BREAK.

2 LADIES AND GENTLEMEN, WE WILL BE IN
3 RECESS UNTIL THREE O'CLOCK.

4 PLEASE RETURN AT THAT TIME.

5 (RECESS.)

6 THE COURT: AND RESUMING.

7 GO AHEAD, MR. TALLON.

8 MR. TALLON: THANK YOU, YOUR HONOR.

9 Q OKAY. MR. BISTLINE, LET'S JUST DO A VERY
10 BRIEF RECAP.

11 YOU HAVE A MILLION PAGES OF PCB DOCUMENTS
12 IN ST. LOUIS, RIGHT?

13 A RIGHT.

14 Q YOU GET A REQUEST FROM MR. PREUSS OR
15 SOMEBODY IN HIS OFFICE THAT SAYS, "WE NEED TO FIND
16 DOCUMENTS RELATED TO THESE ISSUES," RIGHT?

17 A CORRECT.

18 Q AND WHAT YOU DO IS YOU TURN TO A LEGAL
19 ASSISTANT OR SOMEBODY IN YOUR OFFICE AND YOU SAY, "GO
20 FIND EVERYTHING THAT RELATES TO THESE CATEGORIES,"
21 RIGHT?

22 A DEPENDING UPON WHAT THE NATURE OF THE
23 REQUEST IS, YES..

24 Q OKAY. BUT THAT IS A GENERALLY CORRECT
25 DESCRIPTION OF THE PROCESS, RIGHT?

26 A RIGHT.

27 Q OKAY. AND YOU HAVE A COMPUTER SYSTEM
28 THAT ENABLES YOU, YOU DON'T HAVE TO LOOK THROUGH A

1 MILLION PAGES, PAGE BY PAGE, YOU HAVE A COMPUTER
2 SYSTEM THAT HELPS YOU TO DO THAT?

3 A THAT'S CORRECT.

4 Q AND WHAT YOU DIDN'T FIND WAS ANY INVOICE
5 SHOWING SHIPMENT OF -- SALE OR SHIPMENT OF TURBINOL
6 TO TRANSWESTERN IN NEW MEXICO, RIGHT?

7 A THAT'S CORRECT.

8 Q AND WHAT YOU DIDN'T FIND WAS ANY INVOICE
9 SHOWING SALE OR SHIPMENT OF TURBINOL TO TEXAS EASTERN
10 FOR DELIVERY TO NEW MEXICO?

11 A THERE WERE NO INVOICES OF THAT NATURE.

12 Q SO WHAT YOU ARE SAYING IS THERE ARE NO
13 RECORDS EITHER WAY SHOWING SALE OF THE TURBINOL THAT
14 WAS USED IN CORONA, NEW MEXICO?

15 A I'M SAYING THERE WERE NO INVOICES THAT
16 SHOWED THAT.

17 Q NO INVOICES?

18 A THAT'S CORRECT.

19 Q BECAUSE WE DO HAVE THE SALES SUMMARY
20 SHEETS WE LOOKED AT A MOMENT AGO?

21 A THAT'S CORRECT.

22 Q SO WE DO KNOW THE STUFF USED IN CORONA
23 WAS TURBINOL-153, RIGHT?

24 A THAT'S WHAT THAT SALES SUMMARY INDICATES,
25 YES.

26 Q BUT YOU HAVEN'T FOUND AN INVOICE THAT
27 ESTABLISHES WHO WAS IN THE "SHIPPED TO" LINE AND WHO
28 WAS IN THE "SOLD TO" LINE?

1 A I DON'T HAVE A MONSANTO INVOICE THAT
2 GIVES ME THAT INFORMATION.

3 CORRECT.

4 Q NOW, WHEN MR. PREUSS WAS ASKING YOU ABOUT
5 SOME OF THE EXHIBITS THAT HE TALKED WITH YOU ABOUT,
6 TWO OF THEM WERE MADE OUT TO TEXAS EASTERN.

7 THOSE WERE THE TWO WE JUST LOOKED AT,
8 RIGHT, TO GRANTVILLE, PA. AND CUTOFF, LOUISIANA?

9 A YES.

10 Q NOT TO CORONA, NEW MEXICO OR ROSWELL, NEW
11 MEXICO?

12 A NO, THAT IS AS YOU JUST DESCRIBED THEM.

13 Q AND ALL THE REST OF THE INVOICES THAT
14 MR. PREUSS ASKED YOU ABOUT, DATING BACK TO 1960,
15 THOSE WERE ALL BLANKS?

16 THEY DON'T HAVE ANYBODY'S NAME ON THEM?

17 A THOSE WERE THE BLANK FORMS, CORRECT.

18 Q THOSE ARE JUST THE ONES THAT COME OUT OF
19 THE FILE, NOT USED FOR ANYBODY?

20 A THAT'S CORRECT.

21 THAT IS A SAMPLE OF THE FORM IN USE
22 DURING THAT PERIOD OF TIME.

23 Q OKAY. YOU DON'T KNOW, OF YOUR OWN
24 PERSONAL KNOWLEDGE, WHETHER THOSE FORMS WERE ACTUALLY
25 USED FOR SHIPMENTS OF TURBINOL TO TRANSWESTERN OR
26 NOT?

27 A I KNOW ONLY THE INFORMATION THAT I GOT
28 WHEN I WAS FULFILLING MY JOB AS CUSTODIAN OF THE

1 RECORDS.

2 I WASN'T AT MONSANTO DURING THAT TIME
3 PERIOD.

4 Q WHAT YOU ARE SAYING IS THAT THESE
5 INVOICES WERE USED AT THAT TIME BUT YOU, THOMAS
6 BISTLINE, HAVE NO PERSONAL INFORMATION AS TO WHETHER
7 THOSE INVOICES WERE USED IN CONNECTION WITH SHIPMENTS
8 OR SALES TO TRANSWESTERN OR NOT?

9 A I WASN'T THERE.

10 I DIDN'T SEE THE INVOICES BEING FILLED
11 OUT.

12 I'M ASSURED BY PEOPLE WHO DO KNOW THAT
13 THEY WERE, IN FACT, USED.

14 Q WE ARE TALKING ABOUT YOUR KNOWLEDGE,
15 NOW.

16 A OH.

17 Q OKAY.

18 A I KNOW WHAT I WAS TOLD, MR. TALLON.

19 Q OKAY. NOW, LET'S SEE.

20 MONSANTO WAS THE SOLE U.S. PRODUCER OF
21 PCB'S, TO YOUR KNOWLEDGE?

22 A TO MY KNOWLEDGE, THAT'S CORRECT.

23 Q AND YOU HAVE MONITORED THE PCB ISSUE AS
24 IT'S ROLLED ALONG THROUGH THE YEARS, RIGHT?

25 A SINCE 1985, SIR.

26 Q AND EVEN BEFORE THEN MONSANTO MAINTAINED
27 A CLIPPING SERVICE TO GET ARTICLES IN NEWSPAPERS AND
28 MAGAZINES THAT RELATED TO PCB'S?

1 A I BELIEVE THERE WAS ONE, YES.

2 Q AND THAT DATES BACK AS FAR AS, LET'S SAY,
3 1981?

4 A PROBABLY.

5 I THINK BILL PAPAGEORGE PROBABLY HAS ONE
6 BACK AS FAR AS 1970.

7 Q OKAY. YOU WERE TESTIFYING IN RESPONSE TO
8 QUESTIONS FROM MR. PREUSS ABOUT THE SUBPOENA THAT YOU
9 GOT IN CONNECTION WITH THE ARBITRATION BETWEEN SOCAL
10 AND TRANSWESTERN.

11 A YES.

12 Q AND DID YOU SAY THAT THAT WAS THE FIRST
13 TIME YOU HAD HEARD ABOUT IT OR THE FIRST RECORD YOU
14 HAD AT MONSANTO RELATING TO THE SOCAL TRANSWESTERN
15 PCB POLLUTION PROBLEM?

16 A THE SUBPOENA THAT I GOT WAS MY FIRST
17 KNOWLEDGE OF IT.

18 WHETHER SOMEBODY ELSE AT MONSANTO MIGHT
19 HAVE KNOWN ABOUT IT, I CAN'T TELL YOU. BUT IT WAS
20 OUR FIRST OFFICIAL NOTICE OF THE PENDENCY OF THAT
21 ARBITRATION, CERTAINLY OUR FIRST WRITTEN NOTICE.

22 Q OKAY. WELL, YOU HAVE BEEN SITTING IN
23 COURT EVERY DAY SINCE THE BEGINNING OR ALMOST EVERY
24 DAY SINCE THE BEGINNING?

25 A ALMOST EVERY DAY.

26 Q AND YOU WERE HERE WHEN MR. VOGEL
27 TESTIFIED WEEKS AGO, IT SEEMS, FROM SOCAL GAS, RIGHT?

28 A I RECALL MR. VOGEL, YES.

1 Q AND YOU RECALL MR. VOGEL TESTIFYING THAT
2 HE ATTENDED A MEETING IN 1981 WHERE DR. CRADDOCK WAS
3 PRESENT, RIGHT?

4 A I DON'T RECALL SPECIFICALLY, BUT HE -- HE
5 MAY HAVE.

6 I JUST DON'T RECALL RIGHT NOW.

7 Q AND DO YOU RECALL THE PART WHERE
8 MR. VOGEL WAS TESTIFYING ABOUT DR. CRADDOCK,
9 MONSANTO'S PCB GUY, BEING PRESENT AT THE MEETING OF
10 THE GAS RESEARCH INSTITUTE WHERE PCB CONTAMINATION OF
11 PIPELINES WAS DISCUSSED IN 1981?

12 A I BELIEVE THAT IS WHAT HE SAID.
13 THAT IS MY BEST RECOLLECTION, ANYHOW.

14 Q DID YOU TALK TO DR. CRADDOCK OR LOOK FOR
15 A RECORD TO SEE WHETHER DR. CRADDOCK HAD COME BACK
16 AFTER THAT MEETING AND WRITTEN UP THAT MEETING --

17 A DID I -- I'M SORRY, YOU DIDN'T FINISH
18 YOUR QUESTION.

19 Q MR. VOGEL TESTIFIED IN THIS CASE THAT HE
20 ATTENDED A MEETING IN 1981 PUT ON BY THE GAS RESEARCH
21 INSTITUTE?

22 A RIGHT.

23 Q WHICH WAS ALSO ATTENDED BY DR. CRADDOCK?

24 A RIGHT.

25 Q DR. CRADDOCK WORKED FOR MONSANTO AND
26 BASICALLY WAS IN CHARGE OF PCB'S FROM AN
27 ENVIRONMENTAL STANDPOINT?

28 A HE WAS A REGULATORY MANAGER.

1 SO HE WOULD HAVE BEEN INVOLVED WITH
2 REGULATORY AGENCIES DEALING WITH PCB'S.

3 Q AND DR. -- EXCUSE ME, MR. VOGEL TESTIFIED
4 THAT DR. CRADDOCK WAS PRESENT AT THE GRI MEETING WHEN
5 THE SUBJECT OF PCB CONTAMINATION OF NATURAL GAS
6 PIPELINES WAS DISCUSSED AT THAT MEETING?

7 A RIGHT.

8 Q AND I'M ASKING YOU WHETHER YOU LOOKED FOR
9 A MEMO OR A RECORD THAT DR. CRADDOCK WROTE WHEN HE
10 GOT BACK TO ST. LOUIS AFTER THAT MEETING.

11 A I DON'T RECALL SPECIFICALLY WHETHER WE
12 LOOKED FOR SUCH A MEMO OR NOT.

13 IF DR. CRADDOCK HAD WRITTEN SUCH A MEMO,
14 IT WOULD BE IN OUR FILES.

15 Q DID YOU LOOK FOR THE PCB OPERATING MANUAL
16 FROM THE JOHN F. QUEENY PLANT THAT HAD THE LABELING
17 INSTRUCTIONS FOR TURBINOL IN IT?

18 A WE DID LOOK FOR SUCH A MANUAL.

19 Q AND YOU DID NOT FIND THAT?

20 A THAT'S CORRECT.

21 WE DID NOT FIND THAT.

22 Q THAT WAS SUBJECT TO THE PCB POLICY NOT TO
23 DESTROY PCB DOCUMENTS?

24 A THAT'S CORRECT. I WISH THAT DOCUMENT HAD
25 BEEN SAVED.

26 Q OKAY. NOW, LET'S SEE.

27 YOU TESTIFIED IN RESPONSE TO SOME
28 QUESTIONS FROM MR. PREUSS ABOUT THOSE SALES

1 SUMMARIES?

2 A THE COMPUTER FORMS?

3 Q ONE PARTICULAR ONE I THINK WAS 253,
4 TRANSWESTERN 253.

5 SO WOULD IT BE A BLUE BINDER?

6 A A BLUE BINDER, YES.

7 Q AND YOU SAID THAT YOU HAD ASKED YOUR
8 PARALEGAL OR PARALEGALS TO PREPARE THEM; IS THAT
9 CORRECT?

10 A THAT IS CORRECT.

11 Q AND THIS WAS THE ONE THAT SAID SALES
12 SUMMARY, ALL PCB PRODUCTS, TEXAS EASTERN
13 TRANSMISSION, CORONA, NEW MEXICO?

14 A THAT'S CORRECT.

15 Q FLIP THE PAGE, WILL YOU, TO LOOK AT 254.

16 A YES.

17 Q THAT SAYS "SALES SUMMARY, ALL PCB
18 PRODUCTS, TRANSWESTERN PIPELINE, CORONA, NEW MEXICO,"
19 RIGHT?

20 A THAT'S CORRECT.

21 Q IT SHOWS IN 1968, '69, '70 TURBINOL AND
22 MCS-153, RIGHT?

23 A THAT'S CORRECT.

24 Q OKAY. AND WHEN YOU GOT THIS FROM YOUR
25 PARALEGAL DID YOU SAY, "OH, YOU KNOW, WHAT I REALLY
26 WANTED WAS FOR THIS TO SAY 'SHIPMENT SUMMARY'?"

27 A NO, I DIDN'T SAY THAT.

28 Q OKAY. AND IT DOES SAY SALES SUMMARY ON

1 THE TOP OF THE PAGE, RIGHT?

2 A YES, SIR, IT DOES SAY SALES SUMMARY.

3 Q LOOK IF YOU WOULD, PLEASE.

4 I DON'T THINK IT'S IN THAT SAME BOOK, BUT
5 EXHIBIT 20.

6 A NO, IT'S NOT.

7 YES, I HAVE EXHIBIT 20.

8 Q YOU HAVE SEEN A LOT OF MONSANTO DOCUMENTS
9 AS A RESULT OF YOUR JOB AS CUSTODIAN OF PCB RECORDS,
10 RIGHT?

11 A THAT IS CORRECT.

12 Q NOW, YOU RECOGNIZE EXHIBIT 20 AS BEING ON
13 MONSANTO COMPANY LETTERHEAD, RIGHT?

14 A YES, I DO.

15 Q AND IT'S A LETTER DATED OCTOBER 19, 1961,
16 RIGHT?

17 A I THINK IT SAYS JUNE 19, 1961.

18 Q DOES IT SAY JUNE 19, 1961?

19 A THAT IS WHAT MY COPY SAYS.

20 Q AND THE SIGNATURE BLOCK IS FOR DR. ROGER
21 HATTON, RIGHT?

22 A YES.

23 Q AND YOU KNOW DR. HATTON?

24 A I HAVE MET DR. HATTON, YES.

25 Q AND HE WORKED FOR MONSANTO THEN?

26 A MY INFORMATION IS, YES, HE DID WORK FOR
27 MONSANTO IN 1961.

28 Q AND HE WAS IN THE DEVELOPMENT DEPARTMENT

1 FOR MCS-153, RIGHT?

2 A WELL, HE WAS GENERALLY IN THE RESEARCH
3 DEPARTMENT.

4 Q OKAY. AND, IN FACT, IN THIS LETTER
5 DR. HATTON IS WRITING TO OLLIE FLETCHER ABOUT THE
6 SWITCH IN PRODUCTS BETWEEN OS-81 AND MCS-153, RIGHT?

7 A YEAH, THAT IS ONE OF THE THINGS TALKED
8 ABOUT HERE, YES.

9 Q AND THE SECOND PAGE OF THE DOCUMENT IS A
10 LIST OF THE SPECIFICATIONS OF MCS-153 AND OS-81,
11 RIGHT?

12 A YES.

13 IT SAYS, "COMPARATIVE DATA ON MONSANTO
14 FIRE RESISTANT TURBINE LUBRICANTS, TWO COLUMNS, ONE
15 FOR MCS-153 AND ONE FOR OS-81."

16 Q AND THE THINGS IDENTIFIED IN THOSE
17 COLUMNS ARE VISCOSITY AND POUR POINT AND FLASH POINT,
18 ALL THE SPECIFICATIONS OF THE PRODUCT, CORRECT?

19 A PHYSICAL PROPERTIES, YES.

20 Q AND PHYSICAL PROPERTIES OF THE PRODUCT?

21 A YEAH.

22 Q AND YOU RECOGNIZE THAT AS BEING AN
23 AUTHENTIC MONSANTO DOCUMENT?

24 A I RECOGNIZE IT AS BEING OF THE TYPE THAT
25 APPEARS TO BE AN AUTHENTIC MONSANTO DOCUMENT, YES.

26 Q OKAY. YOU'RE RIGHT, IT IS DATED JUNE 19,
27 1961, RIGHT.

28 A I WAS LOOKING AT IT, YES.

1 I CAN READ IT RIGHT HERE.

2 Q I WASN'T.

3 SO APOLOGIES.

4 NOW, TAKE ANOTHER LOOK, IF YOU WOULD, AT
5 ONE -- MONSANTO EXHIBITS.

6 THAT SHOULD BE THE THICK ONE, 769.

7 A OKAY. I HAVE 769.

8 Q THAT IS A BIG THICK COMPILATION OF ALL OF
9 THE SALES SUMMARIES THAT MONSANTO GAVE US IN THAT
10 CASE, RIGHT?

11 A THAT'S MY UNDERSTANDING, YES.

12 Q OKAY. YOU KNOW, WHEN I WAS LOOKING
13 THROUGH THIS, MR. BISTLINE, I WAS LOOKING AT
14 DIFFERENT KINDS OF INFORMATION.

15 AND THERE WAS ONE THING I THOUGHT YOU
16 MIGHT BE ABLE TO HELP ME OUT WITH AS THE CUSTODIAN OF
17 RECORDS AND BASED ON YOUR UNDERSTANDING OF THESE
18 SALES SUMMARIES.

19 WOULD YOU FLIP TO THE PAGE FOR SALES
20 SUMMARY, ALL PCB-CONTAINING PRODUCTS, GENERAL
21 DYNAMICS, GROTON, CONNECTICUT?

22 A IF IT'S ALPHABETICAL. THAT'S IT.

23 Q ALL PCB-CONTAINING PRODUCTS GENERAL
24 DYNAMICS -- GROTON, CONNECTICUT, 1954 THROUGH 1977.
25 MAYBE I CAN BE OF ASSISTANCE?

26 A GENERAL DYNAMICS, GROTON, CONNECTICUT.

27 Q WHEN I LOOKED AT THIS PARTICULAR PAGE I
28 SAW THE TYPED PORTION ON THE BOTTOM THAT SAID ACCOUNT

1 RECEIVABLE NUMBER IDENTICAL TO GENERAL ELECTRIC IN
2 ATLANTA, GEORGIA, SEE GENERAL ELECTRIC ATLANTA FOR
3 SALES AFTER 1962.

4 DO YOU SEE THAT?

5 A YES, I SEE THAT.

6 Q SO THAT IS TALKING ABOUT ACCOUNT
7 RECEIVABLE NUMBERS, RIGHT?

8 A THAT IS WHAT IT SAYS.

9 Q OKAY. SO THEN FLIP TO THE PAGE FOR SALES
10 SUMMARY, ALL PCB PRODUCTS, TEXAS EASTERN
11 TRANSMISSION, BARTON, ALABAMA, 1954 TO 1977.

12 A BARTON, ALABAMA?

13 Q YEAH.

14 A YES, I HAVE IT.

15 Q SO THAT IS THAT ONE-PAGE SHEET THAT
16 SHOWS -- THAT IS THE ONE-PAGE SHEET THAT SHOWS TEXAS
17 EASTERN, BARTON, ALABAMA AND TURBINOL 153 IN 1968,
18 RIGHT?

19 A YES, THAT IS WHAT THAT SAYS.

20 Q AND THE SALES SUMMARY IS ATTACHED THAT
21 HAS JUST THAT ONE LINE ON IT OR THE ONE VISIBLE LINE,
22 IN ANY EVENT?

23 A THAT'S CORRECT, TEXAS EASTERN, RIGHT.

24 Q BUT THERE IS NO A.R. NUMBER ON THERE THAT
25 WE CAN SEE, RIGHT?

26 A NO.

27 Q OKAY.

28 A I'M SORRY.

1 I'M NOT SURE WHAT YOU MEAN BY AN A.R.
2 NUMBER, SIR.

3 Q LET'S LOOK AT THE VERY NEXT ONE WHICH IS
4 TEXAS EASTERN TRANSMISSION KOSCIUSKO?

5 A I SEE IT.

6 Q OKAY.

7 AND FLIP TO THE THIRD PAGE OF THAT.

8 A OKAY.

9 Q AND IN THE LOWER RIGHT-HAND CORNER OF THE
10 DOCUMENT THERE IS AN A.R. NUMBER, RIGHT?

11 A YES, I SEE THAT.

12 Q THAT IS THE ACCOUNT RECEIVABLE NUMBER,
13 RIGHT?

14 A I BELIEVE THAT IS WHAT THAT IS, YES.

15 Q OKAY. AND THAT IS 729887?

16 A YES.

17 Q OKAY. NOW, LET'S LOOK AT ANOTHER ONE.

18 SO THE ACCOUNT RECEIVABLE FOR KOSCIUSKO
19 IS 729887 AND WE WILL FLIP TO -- WELL, LOOK AT THE
20 NEXT ONE WHICH IS TEXAS EASTERN TRANSMISSION
21 TOSCUMBIA, ALABAMA. OKAY?

22 A OKAY.

23 Q AND IF YOU FLIP, I THINK TO PAGE 3, YOU
24 WILL SEE IT HAS GOT -- TERRIBLE FOCUS.

25 THERE WE GO.

26 IT'S GOT THE SAME ACCOUNT RECEIVABLE
27 NUMBER, 729887?

28 A YES, IT DOES.

1 Q OKAY. AND LOOK AT THE VERY NEXT ONE FOR
2 DANVILLE, KENTUCKY.

3 A OKAY.

4 Q IT HAS ACCOUNT RECEIVABLE NUMBER ON PAGE
5 3, 729887, RIGHT?

6 A YES, THAT IS WHAT APPEARS THERE.

7 Q AND LET'S SEE.

8 THE NEXT ONE, OWENSVILLE, KENTUCKY, TEXAS
9 EASTERN TRANSMISSION, OWENSVILLE, KENTUCKY?

10 A I SEE IT, YES.

11 Q ON PAGE 3 IT HAS ACCOUNT RECEIVABLE
12 NUMBER 729887?

13 A YES.

14 Q AND, OH, LET'S SEE.

15 LA ROSA, LOUISIANA, TEXAS EASTERN
16 TRANSMISSION --

17 A IS THAT THE NEXT ONE IN ORDER HERE?

18 Q YEAH.

19 A OKAY.

20 Q THAT HAS ACCOUNT RECEIVABLE NUMBER
21 729887?

22 A ON THE SECOND PAGE?

23 YES, I SEE THAT NUMBER.

24 Q OKAY. AND ON THE THIRD PAGE AS WELL OR
25 LAST PAGE OF THAT EXHIBIT OR THAT PART OF IT, RIGHT?

26 A YES, THAT'S RIGHT.

27 Q SO ALL OF THOSE TEXAS EASTERN
28 TRANSMISSION LOCATIONS THAT WE HAVE LOOKED AT HAVE

1 729887, RIGHT?

2 A THAT NUMBER APPEARS ON ALL OF THESE,
3 THAT'S RIGHT, AS YOU HAVE POINTED OUT.

4 Q NOW, FLIP TO THE PAGE FOR TRANSWESTERN
5 PIPELINE, CORONA, NEW MEXICO.

6 A I HAVE IT.

7 Q SALES SUMMARY, ALL PCB PRODUCTS,
8 TRANSWESTERN PIPELINE, CORONA, NEW MEXICO, 1954 TO
9 1977.

10 A YES.

11 Q DO YOU HAVE THAT?

12 A I DO.

13 Q AND IF WE FLIP TO THE THIRD PAGE OF THAT,
14 WE HAVE A DIFFERENT ACCOUNT RECEIVABLE NUMBER, A.R.
15 739844, RIGHT?

16 A THAT'S RIGHT.

17 MR. TALLON: OKAY.

18 NOTHING FURTHER.

19 THE COURT: ALL RIGHT.

20 REDIRECT, MR. PREUSS?

21 MR. PREUSS: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: MAY MR. BISTLINE BE EXCUSED, EXCEPT
23 FOR HIS OTHERWISE ATTENDANCE, BE EXCUSED FROM FURTHER
24 TESTIMONY?

25 MR. PREUSS: YES, SIR.

26 THE COURT: MR. TALLON?

27 MR. TALLON: YES.

28 THE COURT: WE THANK YOU, SIR, FOR YOUR