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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT OF GENERAL
SERVICES, PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION, PENNSYLVANIA PUBLIC
UTILITY COMMISSION, PENNSYLVANIA
EMERGENCY MANAGEMENT AGENCY, and
PENNSYLVANIA DEPARTMENT OF STATE

Plaintiffs

Vs.

UNITED STATES MINERAL PRODUCTS COMPANY,
CERTAINTIED CORPORATION, COURTAULDS
AEROSPACE, INC., CHEMREX, INC., PHILIPS
ELECTRONICS NORTH AMERICA CORPORATION,
ADVANCE TRANSFORMER COMPANY and MONSANTO

Defendants

: THIS DEPOSITION IS TO BE
: READ & SIGNED AND RETURNED
: TO THE DEPOSING ATTORNEY:
: SEE INSTRUCTIONS TO WITNESS
: IN BACK OF TRANSCRIPT.

: NO. 284 M.D. 1990

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1 Oral deposition of Cumming Paton, Ph.D,
2 taken pursuant to Notice, held at the law offices of
3 White & Williams, 1800 One Liberty Place, 1650 Market Street,
4 Philadelphia, Pennsylvania 19103, on Thursday, August 28,
5 1997, at 10:10 a.m., before John W. Begley, a Registered
6 Professional Reporter - Notary Public there being present.
7

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I N D E X

WITNESS

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Cumming Paton, Ph.D

By Mr. McClain

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By Mr. Juettner

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EXHIBITS

EXHIBIT

DESCRIPTION

PAGE

Paton 1

Deposition Notice

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Paton 2

Document entitled "Call Report -
Organic Division dated 6/3/70"

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Paton 3

Document entitled "Call Report -
Organic Division 6/17/70"

29

Paton 4

Document entitled "Call Report -
Organic Division 10/4/71"

29

Paton 5

Document dated 1/20/72 from
Cumming Paton to W.S. Clark

29

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1	EXHIBIT	DESCRIPTION	PAGE
2	Paton 6	Defendant Monsanto's Answers to	31
3		Plaintiff's First Set of	
4		Interrogatories	
5	Paton 7	Memo to H.L.Gray from	65
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7	Paton 8	Document entitled "Company	70
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Questions Marked

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1 THE COURT REPORTER: Usual stipulations?

2 MR. HENSON: That's fine

3 MS. MANERO: That's fine

4 MR. LANGFITT: That's fine

5 MR. JUETTNER: That's fine

6 MR. SLATER: That's fine

7 MR. MC CLAIN: That's fine

8 MR. GOUTMAN: That's fine, except the witness
9 will read and sign the transcript.

10 - - -

11 (It is hereby stipulated and
12 agreed by and among the respective parties
13 that sealing, certification
14 and filing are hereby waived, and that all
15 objections, except as to the form of the questions,
16 be reserved until the time of trial.)

17 - - -

18 CUMMING PATON, Ph.D,
19 after having been first duly sworn, was examined
20 and deposed as follows:

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. MC CLAIN:

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- 1 Q. Would you state your full name, please.
- 2 A. Cumming, C U M M I N G, Paton.
- 3 Q. I'm told you are Dr. Paton.
- 4 A. Yes, but you don't have to use that.
- 5 Q. Tell me what your doctorate is in.
- 6 A. It is in chemistry.
- 7 Q. And is it a Ph.D?
- 8 A. Yes.
- 9 Q. When did you receive it?
- 10 A. 1959.
- 11 Q. From what institution?
- 12 A. University of Aberdeen, Scotland.
- 13 Q. When did you first go to work for Monsanto?
- 14 A. Initially I went to work for them in Wales, as Tom
- 15 just said. Immediately after I took my Ph.D, which would
- 16 have been 1959.
- 17 Q. How long did you work for them after you went to work
- 18 the first time?
- 19 A. Until some time in early '62, as I recall.
- 20 Q. And during that time did you have anything to do with
- 21 the manufacture of PCBs?
- 22 A. No.
- 23 Q. What did you do from 1962 on?
- 24 A. I joined the Geigy Company and I was in charge of

1 their laboratory for application, development, and customer
2 technical service and additives for plastics.

3 Q. In what country were you then?

4 A. I was in England.

5 Q. And how long were you in that job?

6 A. I stayed with Geigy for two years.

7 Q. So that's until 1964.

8 A. Yes.

9 Q. And then what did you do?

10 A. I decided to leave Britain for personal, family
11 reasons and set about trying to find a job outside Britain.
12 I got interviewed by a number of American companies, one of
13 whom hired me in Europe and took me to the United States.

14 Q. And what company was that?

15 A. It was -- at the time it was Diamond Alkali. I
16 believe now it is Diamond Shamrock.

17 Q. What did you do at Diamond Alkali?

18 A. There I was head of technical service for a new
19 product that they were commercializing.

20 Q. And what was it?

21 A. It was polysulfide, I believe.

22 Q. How long did you remain at Diamond Alkali?

23 A. Approximately two years.

24 Q. That takes us up to 1966.

1 A. Yes.

2 Q. Did you go to work for another company after that
3 time?

4 A. I then decided that although I loved and still do the
5 United States, ~~but~~ the career move that I made to Diamond
6 Shamrock wasn't the right one, so I set about looking for
7 another position and got rehired by Monsanto.

8 Q. In 1966?

9 A. Yes.

10 Q. What was your position with Monsanto when you came to
11 work for them at that time?

12 A. My initial position would have been some title like
13 product specialist, I believe.

14 Q. And in some introductory comments before the
15 deposition Mr. Goutman indicated that in about 1968 you began
16 working for the plasticizing^{er} division?

17 A. I began working for the plasticizing^{er} division in '66,
18 but the plasticizing^{er} division had several parts to it. I was
19 in one related to, as he said, ~~for~~ products related primarily
20 ^{PVC.} PCBs, polyvinyl chloride. Are you asking me what I did in
21 '68? Is that where you are leading to?

22 MR. GOUTMAN: Go ahead.

23 BY MR. MC CLAIN:

24 Q. Yes.

1 A. Then I was made a market manager for a group of
2 products which were sort of more specialized in nature, but,
3 again, in the plasticizer group or division, whatever it was
4 called back then. I can't recall.

5 Q. Did you begin working with PCBs in 1968?

6 A. Yes.

7 Q. We sent a notice to take a deposition pursuant to a
8 rule in Pennsylvania called Rule 4007.1(e) asking for a
9 person that was most knowledgeable about various subjects.
10 Have you seen that?

11 A. I think that was what you showed me yesterday?

12 MR. GOUTMAN: The witness has seen it.

13 MR. MC CLAIN: Let's have it marked. I
14 didn't make copies of this for everyone. I should
15 have, but actually I didn't have a copy until last
16 night when it was faxed to me. Tom made one copy for
17 me today, but I should have asked him to make
18 additional copies. It is just the 4007.1(e) Notice
19 designation.

20 (The above-referred to document was marked as
21 Paton Exhibit 1 for identification)

22 BY MR. MC CLAIN:

23 Q. In this notice we asked Dr. Paton or Mr. Paton --
24 what do you prefer to be called?

1 A. Call me Mr. because that is much easier.

2 Q. Mr. Paton, we asked for the person from Monsanto who
3 is most knowledgeable about various subjects, and I want to
4 know if, in your judgment, you are that person who is as
5 knowledgeable as anyone within the company on these subjects.

6 The first one is the manufacture of PCBs
7 during the period '50 through '82.

8 MR. GOUTMAN: I would just interpose an
9 objection. The decision to select Dr. Paton was not
10 Dr. Paton's; it was ours as counsel, so he is not
11 privy to the thought processes of counsel as to why
12 Dr. Paton was selected for this purpose.

13 MR. MC CLAIN: I'm not asking him that at
14 all. I'm just asking him if, in his judgment,
15 there's someone that is more knowledgeable than he is
16 on these subjects within the company.

17 MR. GOUTMAN: I would also, and this
18 objection was raised in a letter to you, I think,
19 dated July 21st, I believe the subject encompassed in
20 number one, the manufacture of PCBs, is overly broad
21 and outside the scope of the permitted discovery
22 pursuant to the court's frequently amended case
23 management order.

24 MR. MC CLAIN: I'm just trying to figure out

1 whether he thinks that he fits any of these
2 categories or just what his level of knowledge is,
3 and this is as good a way to go about this as any.
4 We can fight about whether or not you have got to
5 produce someone else at some other time, but that's
6 really not my purpose.

7 THE WITNESS: In the period 1968 to about
8 1970, whenever I moved to the North American
9 position, I would have probably been the one that
10 would have been looked to be most knowledgeable about
11 the sales and the marketing of the PCBs, the
12 marketing responsibility for PCBs in the plasticizer
13 area, I might add, because there were other uses
14 for PCBs that I was not involved with at that time.

15 BY MR. MC CLAIN:

16 Q. We can talk about them in just a minute.

17 A. Okay. Sure.

18 Q. Does your answer likewise apply to item number two in
19 the notice, the sale or supply of PCBs?

20 MR. GOUTMAN: I think he was addressing item
21 number two.

22 THE WITNESS: Yes.

23 MR. GOUTMAN: I don't think he has ever made
24 a claim for expertise in the manufacture of PCBs, but

1 you can explore that with him.

2 MR. MC CLAIN: That's what I want to know.

3 THE WITNESS: I wouldn't make a claim for
4 number one.

5 BY MR. MC CLAIN:

6 Q. What division would such a person be associated with
7 in your view that would be knowledgeable about that subject?

8 A. I can't recall exactly now how the organic division
9 was organized at that time. I suspect it was along a
10 functional line where there would have been a manufacturing
11 department within the division, marketing, sales, and so on,
12 but given this lapse of time I couldn't swear that that was
13 100 percent. That was my recollection.

14 Q. As being associated with marketing, did you interact
15 with the manufacturing division on a frequent basis or was
16 that function completely separate from --

17 A. No, I would have interacted.

18 Q. You would have interacted?

19 A. Yes.

20 Q. Can you recall any of the individuals that you
21 interacted with in the manufacturing division during that
22 time period regarding the manufacture of PCBs?

23 A. No, not anymore.

24 Q. If you look at number two it talks about various

1 entities to which PCBs might have been sold, and you
2 responded to some Interrogatories with documents about some
3 of these companies. We are going to talk about them. Do you
4 have familiarity with any of these companies?

5 A. CertainTeed, I reviewed some product shipping
6 documents yesterday that I recalled CertainTeed as a
7 corporation.

8 Q. Gustin Bacon, did you remember them?

9 A. I didn't and I still can't recollect them.

10 Q. Products Research and Chemical Company, did you
11 remember them?

12 A. Yes.

13 Q. Did you remember Sonneborn Building Products
14 Division?

15 A. I was refreshed when I saw some documents.

16 Q. So you do recall them?

17 A. I do recall them vaguely now, yes.

18 Q. Now, did you ever sell PCBs to Philips Electronics
19 North American Corporation or Advance Transformer Company, as
20 far as you know?

21 A. I can't recall.

22 Q. Not within the plasticizing^{er} division anyway?

23 A. In the plasticizing^{er} division these names don't ring a
24 bell, I'm sure.

1 Q. What other divisions of Monsanto utilized or sold
2 PCBs?

3 A. At what period in time are you talking?

4 Q. This same period, '68 through '72.

5 A. There was another group. I cannot recall at all now
6 whether it was just one or more than one and what the titles
7 were. I can't remember that.

8 Q. What uses did that group sell PCBs for?

9 A. I cannot -- at that point in time I'm not sure how
10 much I would have really known about these other divisions.

11 Q. Did you sell PCBs for use in transformers or light
12 ballasts?

13 That was not what you were selling them for?

14 A. Not at that point.

15 MR. GOUTMAN: You mean this witness as
16 opposed to Monsanto corporately?

17 MR. MC CLAIN: Yes.

18 THE WITNESS: No.

19 BY MR. MC CLAIN:

20 Q. No?

21 A. No.

22 Q. That was not what the plasticizing^{er} division was
23 marketing them for?

24 A. Not to my knowledge, that's right.

1 Q. Did Monsanto sell PCBs for those uses, use in
2 transformers and light ballasts and such things?

3 A. I believe they did.

4 Q. What division did that? Do you know?

5 A. It would have been within the organic division. What
6 the title of the group was I cannot recall at this point in
7 time.

8 Q. Let's back up just for a moment.

9 What are PCBs?

10 A. Polychlorinated biphenyls.

11 Q. And if you were going to describe, I know as a
12 chemist you have a clear understanding of what that means,
13 but if you were going to describe that to a layman, what is a
14 polychlorinated biphenyl?

15 MR. GOUTMAN: I believe questions of this
16 sort are beyond the scope of the permitted discovery
17 at this point. We are not presenting this witness as
18 an expert chemist; we are presenting him as somebody
19 who can give you some insight as to who we sold our
20 products to --

21 MR. MC CLAIN: I understand.

22 MR. GOUTMAN: But subject to that objection
23 and assuming that you are not going to carry on too
24 far with this, I'll permit the witness to answer the

1 question.

2 MR. MC CLAIN; Go ahead, Doctor.

3 MR. HENSON: Mr. McClain, may we have an
4 agreement that objections stated by one party will --

5 MR. MC CLAIN: More than suffice.

6 MR. HENSON: -- be more than sufficient so
7 that we don't have to interrupt and qualify?

8 MR. MC CLAIN: You are right.

9 MR. HENSON: Thank you.

10 THE WITNESS: Well, a biphenyl is a product
11 where you take two benzene rings that have been
12 joined together. As I recollect, it is a solid
13 material. And you can then take that biphenyl and
14 you can do various chemical reactions on it and
15 produce other products. In the case of
16 polychlorinated biphenyls, what you are doing is
17 chlorinating the biphenyls and you produce materials
18 that have more than one chlorine atom, as it would be
19 described, on the biphenyl, because if you only have
20 one it is a mono; two or more it is called poly.

21 BY MR. MC CLAIN:

22 Q. Why is that useful in a product?

23 MR. GOUTMAN: Objection. That's overly
24 broad. What products?

1 MR. MC CLAIN: I'm trying to understand --
2 for plasticizers, and then we can talk about for
3 insulating oils if necessary.

4 MR. GOUTMAN: Go ahead.

5 THE WITNESS: One of the perceived benefits,
6 at least -- well, not perceived, the real benefits at
7 that time of these products was that the chlorine
8 gave the product fire resistance, flame retardance,
9 so from a safety standpoint in uses that was very
10 important. There were other uses which would
11 tend to get detailed and specific, depending on what
12 resin you used and what the application was, and I
13 wouldn't claim to know all of these, nor was I
14 necessarily privy to it, because the customers would
15 often keep this information as proprietary to
16 themselves.

17 BY MR. MC CLAIN:

18 Q. Monsanto had a trade name, Aroclor, for PCB products.

19 A. Yes.

20 Q. Was that true when you came to work in 1966?

21 A. I have no reason to think it wasn't. Certainly I was
22 aware of it in 1968.

23 Q. Were there any other manufacturers of PCBs under
24 other trade names in the United States from 1968 through '72?

1 A. You mean manufacturers within the United States?

2 Q. Yes.

3 A. I can't recall any.

4 Q. Is it fair to say that within this country Monsanto
5 had virtually the entire market for PCBs?

6 A. That might not necessarily be accurate, no.

7 Q. Why not?

8 A. Because there were other producers of PCBs outside
9 the United States.

10 Q. Do you ever recall having competition from outside
11 the United States for your plasticizing division in selling
12 products?

13 A. I can't recall specifics of accounts specifically,
14 but I certainly was aware of companies that produced them
15 outside it. And yesterday, as I recall, I saw a document
16 which indicated that some company indeed was importing at
17 some point in time.

18 Q. What company was that? What document was it that you
19 saw?

20 A. I can't recall. It was one --

21 MR. GOUTMAN: It was Sonneborn, which is
22 in production folder number four.

23 THE WITNESS: I think it was Sonneborn.

24 MR. GOUTMAN: I don't know the Bates stamp

1 number off the top of my head.

2 THE WITNESS: I think it was Sonneborn.

3 MR. GOUTMAN: Do you want me to find that
4 now?

5 MR. MC CLAIN: You don't need to find it now.
6 We can find it at a break, if you like. Just give me
7 the date of it and I can find it because I have it
8 broken down by dates.

9 MR. GOUTMAN: I don't know the date. I think
10 it was after 1970.

11 MR. MC CLAIN: If you find the document it
12 will have a date on it, won't it?

13 MR. GOUTMAN: I'm just asking you do you want
14 me to take the time to find the document now?

15 MR. MC CLAIN: We can do it on a break.

16 BY MR. MC CLAIN:

17 Q. What is a plasticizer?

18 A. A plasticizer --

19 MR. GOUTMAN: I will interpose the same
20 objection, that this witness is not being presented
21 by Monsanto as its expert on chemistry and this
22 witness makes no pretensions in that regard. Subject
23 to that objection, the witness can answer the
24 question as best he can.

1 THE WITNESS: A plasticizer, probably most
2 simply stated is something that softens a plastic.
3 Makes it more flexible.

4 BY MR. MC CLAIN:

5 Q. And why were PCBs added to plasticizers?

6 A. Well, I think this --

7 MR. GOUTMAN: Objection to the form of the
8 question.

9 Go ahead.

10 THE WITNESS: The fact that the name might
11 have been the plasticizer division or plasticizer
12 group, but every product in that group, although most
13 of them had a use as an additive in plastics, they
14 were not necessarily plasticizing or softening it, so
15 my recollection is that in certain plastics PCBs were
16 not used at all, or if they were to a very, very
17 limited extent. Polyvinyl chloride being one, as I
18 recall. I could stand corrected because I obviously
19 didn't know what each and every customer did.

20 BY MR. MC CLAIN:

21 Q. So merely because the plasticizing division sold
22 Aroclors to a company didn't mean that they used it as a
23 plasticizer; is that correct?

24 A. If you think of plasticizer in the technical sense of

1 what a plasticizer is, correct.

2 Q. But Monsanto would sell through the plasticizing^{er}
3 division for other purposes.

4 A. Other purposes.

5 Q. How did you go about marketing this product to
6 companies? What then was the way that you would sell to
7 companies?

8 MR. GOUTMAN: Can we just clarify which
9 product you are talking about? Aroclors?

10 MR. MC CLAIN: Aroclors, yes.

11 THE WITNESS: Well, the business had been in
12 place before I joined it. I obviously inherited what
13 my predecessor had done. I was obviously trying to
14 increase the business because customers' business was
15 increasing. I would therefore be giving commercial
16 direction to the field sales force in terms of
17 carrying out our budgets and our plans, I would be,
18 to some extent, giving them some help in trying to
19 address questions that the customers would bring up
20 of a commercial/technical nature that the
21 salespersons didn't feel able to handle without some
22 backup, ^A and I also was the -- what's the word I'm
23 looking for. It is a job where there's a great deal
24 of liaison with other departments: Manufacturing,

1 production forecasting, order and billing, customer
2 technical service, so I was a gateway, if you like,
3 for the field sales force and customers to ^{come in} sales to
4 Monsanto to answer questions if I could, know where
5 to put them to get support and follow up, if
6 necessary. So sometimes the questions, if they were
7 sufficiently technical, I would go to the people that
8 had the more technical capability than I did in that
9 area, ~~and go to them,~~ explain it, and follow up,
10 channel it back to ~~them,~~ the salesperson.

11 BY MR. MC CLAIN:

12 Q. Did you ever, in your job responsibility, visit any
13 of the companies that you sold products to?

14 A. Oh, yes.

15 Q. Any of those that are mentioned within this grouping?
16 "This" being Exhibit 1. (Indicating)

17 A. This A to I on page two?

18 Q. Yes, sir.

19 A. I possibly could have visited Products Research. I
20 vaguely remember I might have, but I couldn't swear to it
21 now. Sonneborn I can't recall visiting them, but yesterday I
22 saw reference to conversations that I had with a gentleman
23 there, so somehow or another I must have met him.

24 MR. MC CLAIN: Do you have that document with

1 you, Tom?

2 MR. GOUTMAN: Yes.

3 MR. MC CLAIN: I'll look at that on the same
4 break, if you are willing to show it to me.

5 MR. GOUTMAN: Sure.

6 BY MR. MC CLAIN:

7 Q. Any visits to CertainTeed?

8 A. I can't recall any.

9 Q. Would other individuals within the company have
10 visited your customers like you visited Sonneborn and
11 Products Research from time to time?

12 MR. JUETTNER: Objection to the form of the
13 question.

14 MR. GOUTMAN: I also object. Did they?

15 MR. MC CLAIN: Yes, did they?

16 MR. GOUTMAN: Just so I'm clear, did all of
17 Monsanto's customers get visits from sales people?

18 MR. MC CLAIN: No. Did those that are on
19 this list.

20 THE WITNESS: I can't say.

21 BY MR. MC CLAIN:

22 Q. Was it the general practice of Monsanto to visit your
23 customers?

24 A. Yes, I would say yes.

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1 Q. Why?

2 A. Well, I can speak in my case. In my case there would
3 be two reasons. One, a request by the salesman to come in to
4 assist them in whatever was happening at that customer at the
5 time involving our products. And that would have been the
6 way it would have normally happened in my case. Sometimes
7 customers would call me direct and I would then relay that
8 back to the sales force. That might lead to some follow-up
9 and a suggestion that I go and visit.

10 Q. Did Monsanto provide technical assistance to
11 customers who desired it?

12 MR. GOUTMAN: Objection. It is overly broad.
13 Monsanto had millions of customers.

14 MR. MC CLAIN: I'm talking about customers of
15 the plasticizing^{er} division.

16 MR. GOUTMAN: They had thousands of
17 customers for the plasticizing^{er} division. That is an
18 overly broad question. Please narrow it down. Which
19 customers are we talking about?

20 MR. MC CLAIN: Let's talk about the ones on
21 this list, the ones that you know about, Products
22 Research, Sonneborn as examples.

23 BY MR. MC CLAIN:

24 Q. Did you provide technical assistance to them in the

1 use of Aroclors in their products?

2 A. I can't recall that with the -- I can't recall us
3 doing much of that in any of these. (Indicating)

4 MR. GOUTMAN: Referring to A through I?

5 THE WITNESS: Referring to A through I.

6 Possibly given documentation that I saw yesterday,
7 there was reference to Sonneborn. I cannot recall
8 anything being requested of me or coming through me,
9 and the odds are it would have come through me or my
10 assistant on those other customers.

11 BY MR. MC CLAIN:

12 Q. After having your recollection on that refreshed,
13 what was the technical assistance being offered to Sonneborn?

14 A. I think it had to do with replacing PCBs.

15 Q. What year was that?

16 A. I'm going to say 1970, but the document would be
17 there and we can get the exact date.

18 MR. MC CLAIN: Why don't we do that if you
19 have that handy?

20 MR. GOUTMAN: It's not handy. I will look
21 through them.

22 Off the record.

23 (Off the record discussion)

24 MR. GOUTMAN: Back on the record.

1 I pulled out some of the documents and will
2 show them to the witness. I don't know if they are
3 all the documents that he is thinking of. They are
4 Bates stamp numbers 821, 849, 858, 859.

5 BY MR. MC CLAIN:

6 Q. Do you want to look at them? Are these the documents
7 that you were shown that refreshed your recollection about
8 having contact with Sonneborn?

9 A. Two of them -- three of them are.

10 These are all Clark. (Indicating)

11 MR. GOUTMAN: Clark is his successor.

12 THE WITNESS: Okay. That was probably what I
13 was thinking about. But these are the ones that I
14 had in mind that talk about us, I don't know if we
15 did work, but at least talking to them about other
16 products.

17 BY MR. MC CLAIN:

18 Q. Let me just ask you some general questions. We will
19 mark these in sequence as two, three, four, and five.

20 (The above-referred to documents were marked,
21 respectively, as Paton Exhibits 2 through 5 for
22 identification)

23 BY MR. MC CLAIN:

24 Q. Let's take Sonneborn for a moment. Do you know what

1 Sonneborn was using Aroclors for, for what products or what
2 purposes?

3 A. Specifically, no.

4 Q. In general do you know?

5 MR. JUETTNER: Objection to the form of the
6 question.

7 MR. MC CLAIN: You can answer.

8 MR. GOUTMAN: You can answer.

9 THE WITNESS: I recall that Sonneborn would
10 have belonged in a group of companies that I regarded
11 as being part of the adhesives and sealants industry,
12 and that is about the extent of my recollection.

13 BY MR. MC CLAIN:

14 Q. When you say "adhesives and sealants industry", do
15 you know whether they make caulk? Was that a sealant?

16 MR. GOUTMAN: What's your question? Did they
17 make caulk or is that a sealant?

18 BY MR. MC CLAIN:

19 Q. Is caulk a sealant in your view?

20 A. I probably would have associated it with a sealant.
21 Now, whether I'm strictly correct or not, I probably would
22 have regarded that as a sealant.

23 Q. Did Aroclors have uses in caulks?

24 A. I can't think specifically of caulks. I think of it

1 more in the terminology of sealants and adhesives.

2 Q. Why were Aroclors useful in sealants in the view of Monsanto?

3 A. One recollection I have is that they had properties
4 that manufacturers of these products were looking for ~~to~~
5 ~~give~~, to "tactify" the resins, to make them sticky and adhere
6 to the surfaces to which they were applied.

7 Q. Now, you had mentioned resins a couple of times. Are
8 you talking about the resins that the Aroclors were added to --

9 A. I would be talking about the resins, plastics,
10 polymers, depending on what terminology that you want to use,
11 that the Aroclors would be added to.

12 Q. Now, how were the Interrogatory Answers that we have
13 that we will mark as Exhibit 6 --

14 A. Where do you want me to look or read?

15 MR. GOUTMAN: Off the record.

16 (Off the record discussion)

17 (The above-referred to document was
18 marked as Paton Exhibit 6 for identification)

19 BY MR. MC CLAIN:

20 Q. Back on the record.

21 These are questions that were posed to
22 Monsanto that Mr. Goutman's office prepared and then he
23 signed on the last page, but I think they attempt to
24 summarize the sales of Aroclors to these companies which

1 these invoices I think reflect fairly closely in terms of
2 quantities. I haven't made a total yet, but they appear to
3 be close.

4 Looking at actually page six, which details
5 the sales to Sonneborn, because we are dealing with them now,
6 these Aroclors that were sold to Sonneborn during this time
7 period, 1242, 48, 54, 60, 62, and 68, what is the
8 significance of the differing numbers associated with those
9 Aroclors?

10 A. Well, this is one thing I do recall, so my memory
11 hasn't totally faded. 12, the first two digits, 1-2, refer
12 to biphenyls, I believe.

13 Yes, biphenyls.

14 Q. So every biphenyl mentioned by Monsanto would bear a
15 12 number.

16 A. An Aroclor manufactured by Monsanto that was based in
17 biphenyls would have the first two digits as 12. Then the
18 second two digits refer to the percentage of chlorine in the
19 PCB, so 1242 meant that it was a biphenyl chlorinated to 42
20 percent by weight, I believe, and so on, and 68 would be 68
21 percent.

22 Q. Now, you mentioned, you said something, you said an
23 Aroclor based on biphenyl.

24 A. Yes.

1 Q. Could you explain what an Aroclor that was not based
2 on biphenyl would be?

3 A. Yes, that would be a terphenyl.

4 Q. So it would be a three --

5 A. Three, correct.

6 Q. And what were those products utilized for?

7 A. Some of them were ^{*used*} ~~used~~, I think, in the plasticizer
8 group when I was in it, ~~would have sold some of these~~
9 ~~products~~ for use in resins to certain customers.

10 Q. For what purposes were terphenyls --

11 A. Terphenyls?

12 Q. -- utilized for that differed from biphenyls?

13 A. Terphenyls, even chlorinated terphenyls, the best of
14 my recollection, I think they tended to be higher or more
15 viscous, but I think in general they were all solids. I
16 think. Now, again, I might be wrong in one or two cases, and
17 therefore they would have higher melting points, therefore
18 they would be used where the specifications called for
19 different things. The customer specifications; not ours.

20 Q. So these would typically, the terphenyls would
21 typically be solids that were sold to companies for use?

22 A. I think that's a fairly accurate statement.

23 Q. And can you tell me about their density? Were they a
24 dense product? If I was a customer receiving a terphenyl

1 what would it look like?

2 A. It would be a white, yellow kind of a powder
3 material. Maybe flake material. Again, I'm --

4 Q. I got you. So it wouldn't be solid like a plastic;
5 it would be some type of granular material.

6 A. Yes, because it would have to be mixed, so I'm sure
7 that customers wouldn't want us to send them blocks of stuff
8 that they had to chip up.

9 Q. Sure. Let's go to the Aroclors. If I receive a
10 shipment of 1242's what is it going to look like?

11 A. It was a liquid. ~~As you go from,~~ ^{as} the degree of
12 chlorination increases, the material gets progressively more
13 viscous. In fact, at close to 1268 that might have been
14 close to being solid.

15 Q. When you say " viscous" --

16 A. Difficult to pour. That's ^{at} room temperature.

17 Q. And as a layman I would be looking at oils like I put
18 in my car, it would be the thicker motor oils as opposed to
19 the thinner motor oils as you get progressively --

20 MR. GOUTMAN: Let me object to the form of
21 the question.

22 You can answer it if you can.

23 BY MR. MC CLAIN:

24 Q. Is that a good analogy?

1 A. You know, the lower ones I cannot recall now how
2 viscous they were, but they poured, I think, at room
3 temperature as I recall, and I'm saying they got more -- it
4 would be more viscous, slower to pour as you went up in
5 chlorination, but, you know, I haven't seen an Aroclor for
6 years.

7 Q. And if we have a 1242, that's going to be easier to
8 pour than a 1262, as an example.

9 A. Yes. That's correct.

10 Q. But to a layman they would look like an oil; correct?

11 MR. GOUTMAN: Objection.

12 THE WITNESS: I have no idea how a layman
13 would look --

14 BY MR. MC CLAIN:

15 Q. How do they look to you? What color were they?

16 A. I have even forgotten that.

17 Q. Did they come in drums?

18 A. Yes.

19 Sorry. They could also come in tank trucks
20 or tank cars.

21 Q. Any type of --

22 A. Container.

23 Q. -- container that could transport a liquid?

24 MR. GOUTMAN: Objection. The types of

1 containers he said. He didn't say any type of
2 container. He said drums and he said tank cars.

3 BY MR. MC CLAIN:

4 Q. Did they come in any others?

5 A. Not that I could recall.

6 Q. Looking at the Sonneborn example --

7 MR. GOUTMAN: Referring to page six of the
8 Answers to Interrogatories?

9 MR. MC CLAIN: Yes.

10 BY MR. MC CLAIN:

11 Q. In a company that made sealants and adhesives, what
12 would be the differing -- what would be the advantages of
13 these differing Aroclors for such products?

14 MR. JUETTNER: Objection to the form of the
15 question. Foundation.

16 MR. GOUTMAN: Same objection.

17 You can answer it if you can.

18 THE WITNESS: I don't know.

19 BY MR. MC CLAIN:

20 Q. Did you know at one time?

21 A. I doubt if I knew that at one time in any great
22 detail.

23 Q. Would anyone within the company have been responsible
24 to know the various qualities of these various Aroclors,

1 their properties, so that you could sell more of them?

2 MR. GOUTMAN: Objection to the form of the
3 question. I don't, frankly, understand the question.
4 Could you, perhaps, rephrase it so I can?

5 MR. MC CLAIN: Sure.

6 BY MR. MC CLAIN:

7 Q. Mr. Paton, the marketing division's job was to sell
8 Aroclors; am I right?

9 A. Yes.

10 Q. And, in fact, your goal was to sell more Aroclors
11 every year.

12 A. Yes.

13 Q. Was it at all helpful, in carrying out this task, to
14 know the advantages of these various Aroclors?

15 A. You had to know something about the properties, but I
16 alone or Monsanto alone couldn't say that this was the
17 product best suited for the customer because the customer
18 knew what they were looking for. Many times they chose not
19 to disclose what they were doing, but they would ask us
20 questions about, say, what the physical properties were and,
21 yes, we would know what the physical properties ~~were~~ ^{of} the
22 Aroclors were.

23 Q. And do you know what the physical properties of those
24 --

1 A. At one time I would.

2 Q. But you don't currently remember?

3 A. I don't know, but at the same time I also would have
4 relied, if there were people that might have asked some
5 questions which I wouldn't have known, ~~I would have gone to~~
6 on our technical people and asked them.

7 Q. Can you recall any of the technical people you would
8 have looked to during this time to ask about the
9 characteristics of the product?

10 MR. GOUTMAN: The product is the Aroclors;
11 not the final product that is produced by the
12 customers?

13 MR. MC CLAIN: Yes. That's right.

14 THE WITNESS: There's a name of a man Morgan,
15 I think, rings a bell. Possibly Joe Darby, although
16 Joe may have then given it to somebody in his
17 department.

18 BY MR. MC CLAIN:

19 Q. Is he the person that is referred to as J.R. Darby on
20 Exhibit 2?

21 A. That would be the person, yes.

22 Q. Do you know whether they are still with Monsanto?

23 A. Darby has retired, I believe, a number of years ago;
24 Al Morgan, I have lost touch with him.

1 Q. Are you still employed by Monsanto, by the way?

2 A. No.

3 Q. Are you retired?

4 A. Yes.

5 Q. When did you retire?

6 A. End of 1991.

7 Q. Between '72 and '91 did you remain employed with
8 Monsanto?

9 A. Yes.

10 Q. And what were your jobs after '72?

11 A. '72 I became a product manager in a group of products
12 that were fluids, known as fluids within the company, and I
13 was involved with that until, I'm going to say, 1977, 1978, I
14 believe.

15 Q. What did you do after '78?

16 A. Then I think I had a spell as director of development
17 for a division in the organic area.

18 Q. For how long were you director of development?

19 A. That might have been a year, two years at the most.
20 I then went to Brazil.

21 Q. In what capacity?

22 A. I was a commercial director for our chemical business
23 in Brazil.

24 Q. For how long?

1 A. For about three years. Then I got another assignment
2 in Brazil.

3 Q. So in 1983 what did you do?

4 A. I then moved -- we were involved in trying to build
5 up our investment internationally, and my role was to try to
6 double, plan how we were going to double our investment in
7 Brazil in about a five year period.

8 Q. And how long did you remain in that job?

9 A. I remained there until about the end of 1985.

10 Q. Then what did you do?

11 A. I came back to St. Louis and reported to the head of
12 our international operations, ^{and was} in charge of the administration,
13 global business development, business ^{planning,} development, and
14 liaised with the heads of our ^{world} various areas, and I was in
15 that role for two years or so. Then I got involved, ^{with} ~~we were~~
16 trying to enter Korea, so I was in charge of negotiations as
17 to how we could have a joint venture in Korea. Then some
18 time in 1987, as I recall, I was asked to go to Korea to head
19 up the joint venture on the Monsanto side with a Korean
20 group. I was there for about three-and-a-half years.

21 Q. And then you retired?

22 A. No, I came back to St. Louis and was head of business
23 development for Asia Pacific, ^I spent most of my time trying to
24 put together a three way joint venture for a big investment

1 in Thailand.

2 Then Monsanto announced they were
3 restructuring and there were opportunities to consider
4 retiring. My goal to retire from there was 1994, but I
5 decided, when I saw what the financial advantages were, to me
6 it made more financial sense to leave, to retire then, and
7 Monsanto then asked me, ~~I then~~^{to} ~~consulted~~^o for them until the
8 Thailand project was approved by the Board the Directors.

9 Q. Which was in what year?

10 A. I'm going to say that was some time end of '92, '93.
11 Somewhere around then.

12 Q. Do you still consult for Monsanto?

13 A. I have consulted with them once since then.

14 Q. And are they paying for your time here today?

15 A. At this deposition?

16 Q. Yes.

17 A. No.

18 Q. What was the situation that you consulted with them
19 after '92?

20 A. It had to do with -- it was a relationship between
21 them and a company in Germany.

22 Q. Back to Sonneborn, do you recall the discontinuation
23 of Aroclors in this 1970 time period?

24 A. I think -- well, when I went to the position in Latin

1 America they were still selling these products in their
2 plasticizer area.

3 Q. And that would have been --

4 A. I think it was 1970, I believe. It was some time in
5 the 1970 to 1971 time frame. I can't recollect the exact
6 dates now.

7 Q. Did you have any knowledge that the products were
8 going to be discontinued when you went to South America, the
9 Aroclor products?

10 A. Not that I recall.

11 Q. When you left the division was there any controversy
12 about their use?

13 MR. GOUTMAN: Objection.

14 Don't answer the question.

15 It is beyond the scope of the deposition
16 notice and the case management order.

17 MR. MC CLAIN: I think it directly relates to
18 product identification

19 MR. GOUTMAN: Well, it doesn't and he's not
20 answering the question.

21 MR. MC CLAIN: So you are instructing him not
22 to answer the question?

23 MR. GOUTMAN: Yes.

24 BY MR. MC CLAIN:

1 Q. Mr. Paton, are you going to follow his direction to
2 you?

3 A. Absolutely.

4 MR. GOUTMAN: He's not going to answer that
5 question. I'm his attorney and I'm not going to
6 permit him to answer the question.

7 MR. MC CLAIN: What are you going to do;
8 wrestle him to the ground if he wants to answer?

9 THE WITNESS: Mr. Goutman --

10 MR. GOUTMAN: There's no question pending.

11 BY MR. MC CLAIN:

12 Q. In this 1972 time period, Dr. Paton, there's a
13 document here, Exhibit 5, which deals with a conversation
14 that you had with a man named Schwerd. Is that the way you
15 would say his name?

16 A. I guess. The name doesn't ring a bell with me at all
17 now. I don't dispute this, that I wrote this at the time.

18 Q. What brought you into this situation in '72? Weren't
19 you in Latin America at this time?

20 A. From the period from some time probably early '70, as
21 best I recall, until I think again early '72 or maybe the
22 very end of 1971 I was a marketing manager for Monsanto's
23 organic products for Latin America. Then I was asked to
24 consider taking a position reporting to the director of

1 marketing for the fluids, what was known as the fluids group,
2 with responsibility initially I believe for heat transfer
3 fluids. I decided to accept that position.

4 Q. Were PCBs being utilized for heat transfer fluids in
5 1972?

6 A. Some of the Monsanto line of heat transfer fluids at
7 that time were PCBs, yes.

8 Q. Was there discussion at that time of discontinuing
9 them?

10 MR. GOUTMAN: Well, what does this have to do
11 with this case? There are no heat transfer fluids
12 implicated in your Complaint or in any investigation
13 that I have seen in the Transportation --

14 MR. MC CLAIN: I have no idea. That's what
15 I'm trying to figure out.

16 MR. GOUTMAN: You should have some idea.
17 There has been discovery now for seven years. There
18 are no heat transfer fluids indicated --

19 MR. MC CLAIN: You know this is the first
20 Monsanto witness we have taken, so that's
21 disingenuous. Unless U.S. Minerals' witnesses had
22 some probing knowledge about heat transfer fluids,
23 that's a specious objection. And I am circumscribing
24 this and being very patient about this, but I don't

1 want to be interfered with.

2 MR. GOUTMAN: I appreciate your being
3 patient, sir, but there are no heat transfer fluids
4 that have been implicated by your experts, by your
5 testing, and I don't know why you are asking these
6 questions unless you are not familiar with your own
7 testing.

8 MR. MC CLAIN: I'm glad to have your
9 testimony about this subject.

10 MR. GOUTMAN: Tell me where there are heat
11 fluid implications in the Transportation --

12 MR. MC CLAIN: I'm asking questions of this
13 witness.

14 BY MR. MC CLAIN:

15 Q. Dr. Paton, in 1972 what uses in the fluids division
16 were PCBs being utilized for?

17 A. They were being used -- sorry. PCBs?

18 Q. Yes.

19 A. They were being used in systems to heat equipment.

20 Q. Did that include transformers?

21 A. At that time I don't think I had responsibility for
22 transformers, transformer fluids, but I can't recall.

23 Q. What were ballast fluids, what division were they
24 part of?

1 MR. GOUTMAN: Ballasts in fluorescent lights?
2 Is that what you mean?

3 MR. MC CLAIN: Yes.

4 THE WITNESS: The fluids area had, again,
5 several parts to it. That would have been in the
6 part known as dielectrics. When I first joined the
7 fluids group, and it had to be very close to this
8 date, the -- (Indicating)

9 BY MR. MC CLAIN:

10 Q. "This date" being the date shown on Exhibit 5.

11 A. From this particular Exhibit 5, January of 1972, I
12 recollect that my first area of responsibility was the heat
13 transfer fluids. I may have had the others then. I had them
14 later, but I can't recall that I had them this early.

15 Q. Mr. Goutman raises a good point. What were heat
16 transfer fluids used for?

17 MR. GOUTMAN: I appreciate your comment that
18 I raised a good point.

19 MR. MC CLAIN: You are welcome.

20 BY MR. MC CLAIN:

21 Q. See, Dr. Paton, I'm not an expert in this area; I'm
22 just trying to find out this whole area of Aroclors which you
23 knew about at one time, and I recognize that you have moved
24 on from, but I'm trying to understand what they are used for,

1 so what are these being used for in this heat transfer
2 area.

3 A. You can heat things by hot water, as you well know,
4 but hot water has limitations in how hot you can heat
5 something.

6 Q. I understand.

7 A. If you get into processing equipment you need higher
8 temperatures, and so therefore you can go to synthetic
9 materials, you can use mineral oils or more synthetic
10 products. PCB was more synthetic. It had the advantage,
11 since it was chlorinated, that it had fire resistance.

12 Q. So it could be heated to higher temperatures.

13 A. Heated to higher temperatures, and many customers
14 felt that the advantages of having a chlorinated material was
15 very good because if there was a breakage or rupture in the
16 line then you would minimize fire damage.

17 Q. So were you responsible for dielectrics when you came
18 back to the fluid?

19 A. At some time frame end of '71, early '72, through to
20 somewhere maybe '77, at some point in time I took on
21 responsibility for all of the products that had PCBs in them.
22 I don't think I had it as early as this particular exhibit.
23 (Indicating)

24 Q. When did you take over for all products that had PCBs

1 in them?

2 A. It evolved over that period of time, and so I cannot
3 sit here today and say because my memory, I just don't
4 recollect. (Indicating)

5 Q. For how long after 1972 did Monsanto continue to
6 manufacture PCBs?

7 A. I think we continued on through 1977, but we phased
8 out of certain applications as time went along.

9 Q. What applications did you phase out of?

10 A. The ones that I have specific knowledge of would have
11 been the heat transfer area and an area called ^phydraul, which
12 is hydraulic fluids.

13 Q. Through '77 was Monsanto still selling PCBs for
14 adhesives and sealants?

15 A. I very much -- in fact, I can say almost certainly
16 they were not.

17 Q. Why not?

18 A. Because they had decided to discontinue the use in
19 the so called plasticizer type of area.

20 Q. In this time period that your memo reflects?

21 A. I think they may have done that when I had my
22 position in Latin America, but, you know, again, with this
23 lapse of time, I have a hard time pinning down exact dates,
24 but I think it was -- I'm pretty much certain it was after --

1 it was in the time that I had this market manager position in
2 Latin America.

3 Q. Do you recall that they phased out PCBs in this
4 adhesive area?

5 A. I don't recall because I was not part of that at the
6 time.

7 MR. GOUTMAN: It is in these documents.

8 (Indicating)

9 THE WITNESS: Is it?

10 MR. GOUTMAN: That's what these documents are
11 about.

12 MR. MC CLAIN: That's what I'm asking this
13 witness about.

14 THE WITNESS: If you would want me to read
15 these again to refresh my memory I will.

16 (Indicating)

17 BY MR. MC CLAIN:

18 Q. Yes.

19 A. Let's get them in chronological order. Is that what
20 you want?

21 Q. They are in the way we marked them.

22 A. Okay. So I have got Exhibit 2 in front of me now.

23 Well, as you can see in one, two, three of
24 them, through '70 and '71, my name doesn't, you know, I'm not

1 the recipient.

2 Q. That's when you were in South America.

3 A. Yes, and these documents refresh me that Will Clark
4 probably was the person that took my place, and so it was on
5 his watch that I believe it appears that they were discussing
6 phasing out the Aroclors and the so called plasticizer
7 applications.

8 Q. Do you know whether he is still with Monsanto?

9 A. I'm not sure whether he is or he isn't.

10 MR. JUETTNER: Can you identify, just for the
11 record, what exhibits you just referred to.

12 MR. GOUTMAN: They are Bates stamp number
13 821, 849, 858, and 859.

14 MR. JUETTNER: I was referring to the one
15 that he identified Mr. Clark as being copied on or
16 involved with.

17 MR. GOUTMAN: That would be all of the
18 documents.

19 THE WITNESS: Wait a minute. He's not on
20 this one, is he? (Indicating)

21 MR. GOUTMAN: He's not on 858; he's on all of
22 the others.

23 THE WITNESS: They are addressed to Mr.
24 Clark.

1 BY MR. MC CLAIN:

2 Q. So Mr. Goutman said all of these documents refer to
3 the phasing out of Aroclors and adhesives and sealants. Now,
4 does this refresh your recollection --

5 MR. GOUTMAN: I didn't say that; I said
6 plasticizers.

7 THE WITNESS: It appears that in the
8 documents which I have in front of me, June of 1970
9 through October of '71, there was discussion and
10 plans being discussed to phase them out, but I was
11 not a part of that.

12 BY MR. MC CLAIN:

13 Q. So you don't know why they were being phased out
14 during this time period?

15 A. I was not --

16 MR. GOUTMAN: Objection. That is beyond the
17 scope of this deposition. They were phased out. I'm
18 instructing the witness not to answer.

19 THE WITNESS: I accept his --

20 BY MR. MC CLAIN:

21 Q. You accept his direction?

22 A. Yes.

23 Q. Well, do you know what replaced them, if anything?

24 A. Other than what I see written on this particular

1 instance here, I have no knowledge. (Indicating)

2 Q. Was it at this time that you recall some other
3 companies attempting to import PCBs into this country? Is
4 that what you were referring to earlier?

5 A. At what time?

6 Q. '72.

7 A. Are you going back now to Exhibit 5?

8 Q. Exhibit 5.

9 A. Well, all I know from this is that I had a
10 conversation with this Mr. Schwerd, who told me that they had
11 begun to use PCBs imported from a Japanese company, as I
12 recollect, and I passed this information on to Will Clark.

13 Q. Do you remember what you did with this information
14 after you passed it on to Will Clark?

15 A. No.

16 Q. Did Monsanto make products as replacements during
17 this time period for PCBs that these companies could utilize?

18 MR. GOUTMAN: "These companies" meaning
19 plasticizers?

20 MR. MC CLAIN: Sonneborn.

21 MR. GOUTMAN: Sonneborn.

22 Do you know?

23 THE WITNESS: No, I don't know; all I know is
24 what I read on this report. (Indicating)

1 BY MR. MC CLAIN:

2 Q. How do you interpret that?

3 A. That the salesperson or whoever had been making some
4 suggestions of possible replacement.

5 Q. When you became in charge of all PCBs manufactured by
6 Monsanto -- what year was that again?

7 A. I would have been responsible for the marketing,
8 product management, business management of them, product
9 management, some time during the mid 1970's, I believe.
10 That's as near as I can pin down the date.

11 Q. Were dielectrics still being manufactured in that
12 time period?

13 A. To my recollection, yes.

14 Q. When were those phased out?

15 A. I cannot now recall that exact date.

16 Q. And what were they replaced with?

17 A. That I'm not entirely sure of.

18 Q. When the company was selling dielectric fluids -- is
19 that the proper term, "dielectric fluids"? Is that what they
20 were called?

21 A. It is a term.

22 Q. It is appropriate?

23 A. Yes.

24 Q. Did you have sales to Philips Electronics?

1 A. That's a name that doesn't ring a bell.

2 Q. Advance Transformer Company?

3 A. Doesn't ring a bell.

4 Q. Were fluids used in transformers, PCB fluids?

5 A. Yes.

6 Q. And what range of Aroclors would those have been, in
7 terms of viscosity?

8 MR. GOUTMAN: Just for clarification, there's
9 no allegation that those companies manufactured or
10 supplied the T&S Building, to my knowledge, any
11 transformers, and there were no PCB transformers
12 found in that building.

13 MR. MC CLAIN: I understand that.

14 MR. GOUTMAN: Go ahead.

15 I just don't understand the relevancy of this
16 line of questioning.

17 MR. MC CLAIN: Not I understand. Your
18 understanding is correct, I believe, but go ahead.

19 THE WITNESS: So do I answer?

20 MR. GOUTMAN: Yes.

21 THE WITNESS: Could you repeat the question
22 again?

23 BY MR. MC CLAIN:

24 Q. Let's talk about something that we agree is at issue.

1 What range of Aroclors, in terms of chlorination, were
2 utilized in ballasts?

3 A. You mean "ballasts" meaning --

4 Q. Light ballasts.

5 A. Capacitors?

6 Q. Yes.

7 A. Is that what you mean?

8 Q. Yes.

9 A. They were around the range of 1242.

10 Q. Is that because they needed to be less viscous to be
11 utilized for that purpose?

12 MR. GOUTMAN: If you know.

13 THE WITNESS: I think that was part of it,
14 but there were a whole host of other reasons and I'm
15 not the best person to ask that.

16 BY MR. MC CLAIN:

17 Q. Who would be the best person to ask that?

18 A. There was a gentleman that I recall, a Paul Benignus.

19 Q. Could you spell his name, please?

20 A. B E N I G N U S.

21 Q. And what division was he associated with or what
22 function?

23 A. He was the market manager of dielectric fluids for a
24 number of years.

1 MR. MC CLAIN: Why don't we take a break.

2 (Deposition recessed)

3 BY MR. MC CLAIN:

4 Q. Back on the record.

5 Did you review any other documents, Dr.

6 Paton, in preparation for your deposition relating to any of
7 these companies?

8 A. I looked at documents in these two piles there, I
9 probably glanced at this, and glanced at this. (Indicating)

10 MR. GOUTMAN: Referring to Exhibits 1 and 6.

11 BY MR. MC CLAIN:

12 Q. Were there any other documents that you authored that
13 you reviewed?

14 A. Any other? I'm not sure I follow you.

15 Q. Any other documents that bore your name regarding
16 these subject matters?

17 A. In that pile? I can't remember. I do know that I
18 went, with Mr. Goutman I ~~went~~⁹ through some of these and
19 looked at them. I don't recollect that actually very many
20 did have my name.

21 MR. GOUTMAN: There may be. I can't tell you
22 that.

23 BY MR. MC CLAIN:

24 Q. Did you review mainly invoices or other documents?

1 A. I reviewed, went through not so much invoices, but
2 shipping documents. I went through a whole slew of those.
3 And then whatever the memos and stuff, some of which had my
4 name, but not that many, that I recall.

5 MR. GOUTMAN: For the record, he reviewed
6 documents that we produced to all parties that are
7 Bates stamped PDT 00001 to 996.

8 MR. MC CLAIN: Let me just glance through
9 those to make sure that they are the same ones

10 MR. GOUTMAN: They were the same ones with
11 the exception of the privileged document that
12 is now the subject of a motion.

13 MR. MC CLAIN: I didn't think that we were
14 going to go over that.

15 MR. GOUTMAN: We are not. He did not see
16 that.

17 MR. MC CLAIN: I hadn't planned to ask him
18 about it unless you want me to. I would be happy to.

19 MR. GOUTMAN: You can ask all you want. I
20 don't know that he's going to give any testimony.

21 MR. MC CLAIN: If he didn't review it, I
22 think that's fair.

23 MR. GOUTMAN: Those are largely shipping
24 documents and that's all of the information that

1 Monsanto has as to the companies that you have sued
2 or their alleged predecessor.

3 BY MR. MC CLAIN:

4 Q. Now, let me ask you a question. I have seen
5 reference, and I saw references as I was just looking through
6 here, that the 1262 had a ten percent toluol component. What
7 is toluol?

8 A. I think it is toluene, but toluol maybe, probably,
9 is another name for toluene in a technical sense.

10 MR. GOUTMAN: Let me just object to the form.
11 I don't think any document suggests that all Aroclors
12 had 1262, and I think if you review the documents you
13 will see that it was a special order.

14 MR. MC CLAIN: No, I'm saying that there are
15 documents which refer to 1262 as having ten percent
16 toluol.

17 MR. GOUTMAN: As that customer's order of
18 1260 please add ten percent toluene to it, if you
19 get my distinction. Not all 1260's had toluene.

20 BY MR. MC CLAIN:

21 Q. Well, 1262 as an example, to --

22 A. We are on page five, are we?

23 Q. Yes.

24 A. Okay.

1 Q. Ten percent toluene.

2 MR. GOUTMAN: Some of the 1262's that we sold
3 to Gustin Bacon had ten percent toluene.

4 MR. MC CLAIN: And some of it for
5 CertainTeed had ten percent toluene.

6 BY MR. MC CLAIN:

7 Q. And then we see again Sonneborn 1262 in this shipment
8 at least had ten percent --

9 A. Sonneborn. Well, if you look, you are switching now
10 because page six of that Interrogatory shows just 1262
11 without any toluene.

12 Q. Just -- I know. But this document refers to --
13 (Indicating)

14 A. Okay.

15 MR. GOUTMAN: This document does not say that
16 we supplied any of that to Sonneborn; it says it was
17 discussing that product.

18 MR. MC CLAIN: Was discussing that with them.

19 BY MR. MC CLAIN:

20 Q. My question is I don't really care about whether you
21 supplied it or not; I'm just trying to find out why it was in
22 there.

23 A. I cannot recall now why it is in there.

24 Q. Does toluene increase viscosity or a less viscous

1 material?

2 A. It would, I think, reduce the viscosity.

3 Q. Did polysulfide replace PCBs?

4 A. Polysulfide is the resin to which PCB could have been
5 added. Now, whether they went to polysulfide on its own,
6 that I have no way of knowing.

7 Q. Did Monsanto sell PCBs -- strike that.

8 Were one of the adhesives that PCBs were
9 utilized in mastics?

10 A. Mastics. I mean, that's a term that I have heard.
11 It's not a term that I'm very familiar with. Today, if you
12 ask me to define what I think a mastic is, I would have a
13 hard time. I think of it as -- well, you know, it's not a
14 term that I'm particularly familiar with, and I certainly
15 would have a hard time defining it today.

16 Q. What products did Products Research Company make?

17 A. My recollection of Products Research is that they,
18 again, were in the category that I regarded as adhesives and
19 sealants. Beyond that I have scant recollection.

20 Q. Do you recall visiting their plant?

21 A. I could have, but I could have also done it before,
22 when I was with Diamond Shamrock or Diamond Alkali, whatever
23 they were, because I seem to vaguely remember having
24 something to do with them, but that would have been two

1 entirely different phases, and so I seem to recall visiting
2 them, but I cannot remember for what employer, but I didn't
3 -- I couldn't have visited many times. It is another name
4 that jumps out.

5 Q. In the same document, Exhibit 2, it lists an Aroclor
6 54. Was that, again, a resin or --

7 MR. GOUTMAN: 5460?

8 MR. MC CLAIN: Yes.

9 THE WITNESS: It talks about a coating of a
10 resin and then the 5460 would have been added to it
11 to give it whatever property or so on that the
12 customer was looking for.

13 BY MR. MC CLAIN:

14 Q. But that was a solid --

15 A. 5460 was a solid, yes.

16 Q. Who would I ask within Monsanto, if you know, about
17 sales to Gustin Bacon or CertainTeed?

18 MR. GOUTMAN: For what time period?

19 MR. MC CLAIN: The same, '68 through '72 time
20 period.

21 THE WITNESS: Well, I have told you what I
22 know about it in the '68 to '70 time frame. That
23 would be based on what I was shown yesterday, the
24 various shipping documents.

1 MR. GOUTMAN: I think he wants the name of
2 somebody. Do you have any names that occur to you?

3 THE WITNESS: Another name, I cannot recall
4 who the salesperson would have been that was calling
5 on CertainTeed in that time frame.

6 BY MR. MC CLAIN:

7 Q. If we looked at some documents would that help us
8 maybe?

9 A. Possibly.

10 Q. Let's look.

11 Do you know a man by the name of Ross Neely?

12 A. It doesn't ring a bell at all.

13 Q. Was there a plant at Anniston, Alabama?

14 A. Yes.

15 Q. Would there have been anyone in the Anniston, Alabama
16 plant who would know about shipments from that plant?

17 MR. GOUTMAN: To --

18 MR. MC CLAIN: To CertainTeed or to anyone
19 that they were shipping to?

20 MR. GOUTMAN: To any customer at all? I just
21 want to clarify the question.

22 MR. MC CLAIN: No, I'm talking about
23 specifically to -- he doesn't know anything about
24 CertainTeed, so how can I ask that question?

1 BY MR. MC CLAIN:

2 Q. I have an invoice that we can mark. It indicates
3 that the sales to CertainTeed came from Anniston, Alabama.

4 A. Okay.

5 Q. I'm trying to figure out who at Anniston, Alabama
6 would know about sales from that plant in your estimation. I
7 know you can't know with certainty.

8 MR. GOUTMAN: Do you want him to look at
9 these? (Indicating)

10 MR. MC CLAIN: If he wants to.

11 MR. HENSON: If those aren't going to be
12 exhibits may we have the Bates stamp for convenience?

13 MR. MC CLAIN: Two, five, six, 15, one, four,
14 three. These are the ones that I was looking at.

15 MR. GOUTMAN: The CertainTeed ones are one
16 through 17.

17 THE WITNESS: There would have been a
18 shipping/warehouse department at the plant in
19 Anniston. Someone there would have received the
20 order, would have gone ahead and got the material
21 ready to be shipped out by whatever truck or freight
22 carrier had been selected, and they would come by and
23 pick it up and take it on its merry way.

24 BY MR. MC CLAIN:

1 Q. Who from Monsanto would liaison with a customer such
2 as CertainTeed? By category; not by specific individual.

3 A. You would have the sales department, then you would
4 have the customer ^{order} ~~or the~~ processing department, I believe is
5 the general term that Monsanto tends to use. Customer order
6 processing. Once they have got all of the information they
7 need worked out with the customer, they would then place the
8 order at the select^{ed} plant and it would then proceed from
9 there.

10 Q. Was an H.L. Gray associated with the Anniston plant?

11 A. That's a name that I vaguely remember.

12 Q. What was his capacity? Do you remember?

13 A. I'm not sure.

14 Q. Do you know a Ginnie Calloni?

15 A. No, that's not a name that rings a bell at all.

16 MR. GOUTMAN: What's the spelling of that
17 name?

18 MR. MC CLAIN: C A L L O N I.

19 MR. GOUTMAN: The witness is indicating --

20 THE WITNESS: That from -- see where it is
21 from? It says St. Louis district office. That means
22 that it would be the St. Louis district sales office.
23 This person would have been part of that office.

24 BY MR. MC CLAIN:

1 Q. Let's mark that for a minute.

2 MR. GOUTMAN: It is Bates stamp number 19.

3 (The above-referred to document was marked as
4 Paton Exhibit 7 for identification)

5 BY MR. MC CLAIN:

6 Q. Exhibit 7 is a document to H.L. Gray from a Ginnie
7 Calloni which indicates it is from the St. Louis district
8 office, Monsanto Chemical Company. Is that the way the
9 company was set up? There would be district sales offices
10 that would sell to plants or customers in various parts of
11 the country?

12 A. The district sales office would have a manager who
13 had several salespersons, and they had responsibility for
14 customers in their region. Gustin Bacon, which I understand
15 is in Kansas City, it would be eminently reasonable that that
16 fell within the --

17 Q. St. Louis sales office?

18 A. St. Louis sales office region.

19 Q. Do you recall who was in charge of the St. Louis
20 sales office during this time period, '68 through 1972?

21 A. No.

22 Q. They worked under you; correct?

23 A. No, sales was separate.

24 Q. Sales were separate from marketing?

1 A. Sales were separate from marketing.

2 Q. How so?

3 A. It goes backwards and forwards. Both the sales
4 organization and myself would have ^{reported to same persons} I reported probably in
5 the early days to a product manager, who in turn would have
6 reported to a director of marketing. That's where the two
7 functions came together, but they were kept separate.

8 ~~Sometimes~~ In general, yes, they are kept separate.

9 Q. Just to understand, in regard to marketing, you were
10 not responsible for sales to customers?

11 A. I was not responsible for going in regularly calling
12 on customers, making sure that they got sales; I would be
13 pushing, prodding, helping, supporting, doing all of the
14 things to make it happen.

15 Q. Were you at all involved, then, in finding uses for
16 these products?

17 A. To some extent, yes. The salesperson, the smart
18 ones, would be always looking for ways that they could serve
19 a customer, either with their current product line or even
20 others. New things that the customer would be trying to do.
21 Sometimes they were sufficiently skilled and knowledgeable
22 that they could initiate some of that on their own; other
23 times they would come back ^{to marketing}. If they came back, probably with
24 this particular group of products they would come to me and

1 say, Hey, Cumming. So and so told me this, that, and the
2 other. What ideas do you have for that? Sometimes I might
3 have ideas, sometimes I would say no, and other times I would
4 say, Gee, that's interesting and then I would go through the
5 network of other functions, discuss it to see if it merited ^{effort}
6 if it was something that we could bring to the party.

7 Q. So were you essentially in a function of supporting
8 sales?

9 A. I think that's a fair statement, trying to give them
10 the commercial functional direction for the job. I was not
11 -- the regional manager ^{and} the sales office manager, would have
12 been the administrative sales manager, but I would have been
13 looked to to be the one to give the functional direction, ^{and}
14 ^{Matter} ~~things~~ regarding the other functions in St. Louis, technical,
15 manufacturing, whatever, would come to me or somebody with my
16 title and use that as the gateway to go to the sales force,
17 so that the sales force was getting some sort of a consistent
18 situation. They weren't picking up the phone and getting
19 somebody telling them one thing, getting someone else and
20 getting some other story; it was my job to try to get a
21 consistency.

22 Q. Is there anyone at the St. Louis office that you can
23 remember in the sales office during this time period that was
24 --

1 A. Not within any given time frame. Obviously I know, I
2 knew and still know of many people. They might have gone
3 through there at one time, but to pin it down now to specific
4 times, I would be hopelessly -- I just couldn't even begin to
5 hazard a guess.

6 Q. Do you ever remember developing applications for use
7 of Aroclors in ducting, duct work?

8 A. No.

9 Q. Do you remember coming up with uses for Aroclors in
10 adhesives to apply fiberglass materials to surfaces?

11 A. No, I can't recall that.

12 Q. What uses do you recall developing within marketing
13 or applications?

14 A. I don't know.

15 MR. GOUTMAN; When you say you developing,
16 you mean Monsanto originating?

17 MR. MC CLAIN: Yes.

18 THE WITNESS: I, in my tenure, I recall
19 something called hot melt adhesives.

20 BY MR. MC CLAIN:

21 Q. Hot melt adhesives?

22 A. Hot melt adhesives, which would have involved more
23 Aroclor 5460s, as I recall. In the PCB area, coatings.

24 Q. Coatings like what?

1 A. I seem to recall marine coatings to go on ships and
2 tanks and things. In many cases, as I recall, the prime
3 motivater for developing ^{these} ~~that~~ were the companies that
4 manufactured the resins, and they would then have to
5 formulate these resins to get them into a form suitable that
6 they could offer to their customers, and if their research
7 lead them to use a Monsanto product, we would tend to learn
8 about it second or third hand, and sometimes we would be
9 able, through looking at the resin producers' literature, see
10 reference to our products being used and why they were being
11 used. I would then tell our market manager. We then, in
12 turn, would attempt to alert our sales force, "Look. These
13 are some applications." Then they would see how, try to find
14 customers, who the customers might be, so that was the way it
15 worked.

16 Q. Do you ever remember developing applications for
17 caulk?

18 A. No. I would have done that at Diamond Alkali, but
19 not with Monsanto.

20 Q. When you say you would have done that with Diamond
21 Alkali, did you develop uses for PCBs at Diamond Alkali?

22 A. No, polysulfides were used.

23 MR. MC CLAIN: Let's mark this as Paton 8.

24 (Indicating)

1 (The above-referred to document was marked as
2 Exhibit Paton 8 for identification)

3 MR. GOUTMAN: Do you want the witness to read
4 it?

5 MR. MC CLAIN: Yes.

6 MR. GOUTMAN: It is marked Paton 8 and it
7 begins with Bates stamp number 692.

8 MR. MC CLAIN: 697, isn't it?

9 MR. GOUTMAN: 692.

10 MR. GOUTMAN: It's the same document, but it
11 was routed to a different person.

12 MR. MC CLAIN: Okay.

13 Go ahead. You can review it.

14 MR. GOUTMAN: Just read it.

15 The witness has read this.

16 BY MR. MC CLAIN:

17 Q. Do you recall this document?

18 A. Until I saw it yesterday I had forgotten all about
19 it, but I don't disagree that this is something that I have
20 written.

21 Q. Why did you write it?

22 A. The actual reason now would escape me, but it must
23 have been something that Bill Richard had asked me to do or
24 we discussed and I had agreed to do.

1 Q. It talks in this document about your largest
2 customers are Products Research at Burbank, under "Sealants",
3 four, and Gloucester City, Pennsylvania, and Sonneborn in New
4 Jersey.

5 A. Yes.

6 Q. And I guess that's 680 million pounds for Products
7 Research and 225 million pounds for --

8 A. Thousand. Sorry. In those days I used M for
9 thousands. I think now the terminology would be to use K for
10 thousand and M for million, but that means thousand. And
11 where I have got an M with a bar across the top that's where
12 I meant millions. So it is 1.4 million between these two,
13 the largest being -- (Indicating)

14 Q. Now, you indicate that where you sold these, on page
15 three, by states --

16 A. Yes.

17 Q. Pennsylvania was one of your larger states. In terms
18 of volume of product.

19 A. Yes.

20 Q. In fact, you summarize that in the next table.

21 A. Yes.

22 Q. Fourth in the country. Why? Did you ever analyze
23 why more PCBs were utilized in Pennsylvania than other areas?

24 MR. GOUTMAN: This doesn't purport to

1 summarize PCBs; this purports to summarize the use of
2 some PCBs in applications that he had.

3 MR. MC CLAIN: Let's rephrase it.

4 BY MR. MC CLAIN:

5 Q. Let's talk about plasticizer PCBs.

6 A. Yes.

7 Q. Did you ever analyze why it was that you were selling
8 more in these states than other places?

9 A. What you can deduce from this is that there were
10 customers in those states who had factories that produced
11 products that needed these plasticizer PCBs. That just
12 happened to be where they had decided to locate their
13 production facilities.

14 Q. Do I take it that this memo relates to some concern
15 about PCB contamination of the seas? Was that the purpose of
16 this memorandum?

17 A. It might have been related to that. I cannot now
18 recall specifically.

19 Q. You do a calculation here about water contamination
20 if all of these PCBs made their way into the sea. Do you
21 have any recollection about why you did that?

22 A. The only recollection I have is about the time that I
23 became involved as market manager in the specialty product
24 area somehow it was brought to my attention, an article in

1 some journal by two Swedish scientists, Jensen and Widmark, I
2 believe, and I recollect having a discussion with some people
3 in Monsanto about the pertinence of that to the Aroclors.
4 Jensen and Widmark purportedly, as I recollect, had done some
5 analytical work, found some products in egg shells or birds,
6 I can't recall now, that were chlorinated, I think, according
7 to their studies. They had looked at trying to relate what
8 they found to known chemicals. They talked about chlorinated
9 biphenyls, but other chlorinated materials as well, as I
10 recollect. Being a market manager for those products,
11 obviously this caught my attention. I didn't know the
12 accuracy, anything like that, so I would have gone to our
13 technical people, we might have had some environmental people
14 at that time, certainly in R.E. Kelly's department, I see
15 they were copied, and said, Gee, what's this about? As best
16 I recall now, the type of equipment that, the type of method
17 that was being used, something known as gas liquid
18 chromatography, which today is very commonplace, but in that
19 day it was still pretty much in its infancy, so there was
20 genuine debate as to how accurate this was. I certainly was
21 in no position to judge that. As I recollect, we decided to
22 try to see and find out what we could about how accurate this
23 statement was, etc., etc.

24 Later I recall being in San Francisco

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1 visiting a customer, a meeting there or something, I picked
2 up a newspaper that had a headline about a man, and I think
3 it was Risebrough, he was a scientist, finding PCBs somewhere
4 along the coast or in birds, and I brought that back with me
5 to St. Louis because, as I recall, and this is vague now, the
6 newspaper published it, went on into, you know, sort of a
7 somewhat emotional thing about what this all meant. That
8 conceivably could have triggered us trying to figure out,
9 trying to get a better idea of where our products had gone,
10 and since the insinuation, as I recall, in the article that I
11 picked up in San Francisco had, that it gets into the ocean
12 it gets into the fish, and I may have been trying here to try
13 to say, Well, what does that really mean in practical terms?
14 That's as much as I can recall about it.

15 MR. HENSON: I didn't have the exhibit in
16 front of me when the last question was asked. As I
17 see it, page 695 of Exhibit 8 mentions a calculation
18 of a possible concentration. Was that the correct
19 word that was used?

20 MR. GOUTMAN: We are looking --

21 MR. HENSON: Ken, I didn't hear your
22 question.

23 MR. MC CLAIN: I think it was what was this
24 all about.

1 MR. HENSON: I thought I heard the word
2 "contamination" and the word in the memorandum is
3 "concentration".

4 MR. MC CLAIN: I don't think I asked that.
5 Can you read back by last question.

6 (The last question was read back by the Court
7 Reporter)

8 THE WITNESS: So contamination was his word;
9 not mine?

10 MR. HENSON: Yes.

11 THE WITNESS: I should have picked up on that
12 and said it was concentration.

13 MR. GOUTMAN: Your lawyer should have.

14 BY MR. MC CLAIN:

15 Q. Do you ever recall being asked to consult any of the
16 businesses that are mentioned here about Aroclors and their
17 finding their way into the environment?

18 A. I would have probably had at some time, but I think
19 it was probably later that part of my job, certainly when I
20 came back and got involved in fluids was, in fact, helping
21 formulate information that was sent to customers, but I can't
22 recollect to what extent I did this in the plasticizer days
23 because, as I say, I wasn't there very long, and at the time
24 that I wrote this I had just become aware of this particular

1 article, and we were trying to get a better understanding of
2 what they had done and to see if we could, you know, had the
3 methodology to try to find out what it was, because there was
4 still a great deal of uncertainty about the particular
5 methodology, and this was sort of a new issue that had
6 appeared, so there had to be a certain time of study and
7 research done to try to -- not to refute it, but to try to
8 find out what the true situation was. You couldn't really do
9 much until you had those things. So this was all sort of
10 preparatory to understanding what the situation was.

11 Q. Did you prepare documents that went to the companies
12 that are involved in this case?

13 A. I don't think very much. I can't remember that at
14 all.

15 Q. How would we find out whether you did or not? What
16 files would we look in?

17 A. I think my recollection would be best, and I can say
18 pretty certainly that I did not.

19 Q. Is it because you know that by the time these were
20 prepared these companies, and I'm speaking of Gustin Bacon,
21 CertainTeed, Products Research, and Sonneborn, were no longer
22 using Aroclors or is there some other way that you know that?

23 MR. GOUTMAN: Objection to the form of the
24 question.

1 You can answer if you can.

2 THE WITNESS: The way you have worded it it
3 is very difficult to answer. All I can say is that
4 in my tenure as market manager for the plasticizer
5 group of PCBs I was not aware of any informing of
6 these specific customers. Some of these customers, I
7 think Gustin Bacon in particular, I have no
8 recollection of. What happened after I became
9 involved in early '70 or whatever the date was with
10 Latin America, I would have no reason to have been
11 involved.

12 BY MR. MC CLAIN:

13 Q. Working backwards knowing that you did, in fact, make
14 or send materials to your fluid customers --

15 A. Yes, because you worded it fairly broadly, so to
16 truthfully answer you I said at a certain time I did, but I'm
17 almost certain that I didn't do anything of that nature in
18 this particular job in this particular time frame of '68 to,
19 end of '68 or whenever it was, to early '70.

20 Q. Do you know whether at that time, at the time that
21 you were at fluids, whether PCBs were still being sold for
22 plasticizers?

23 A. My recollection is that they were not.

24 Q. Do you remember any information being sent to

1 companies in this 1977 time period -- strike that.

2 What was this information that you were
3 developing then in 1977 that was going to the heat, to the
4 fluids customers?

5 MR. GOUTMAN: Objection to the form of the
6 question.

7 You can answer if you understand the
8 question.

9 THE WITNESS: I don't think we would have
10 been sending anything to the heat transfer people in
11 1977 because I think we had phased out the heat
12 transfer before then. But somewhere, 1972 onward,
13 notices appeared in the federal register regarding
14 levels of PCBs allegedly being found in the
15 environment and some suggestions, so that this would
16 have been passing this type of information onto
17 customers so that they were aware of it.

18 BY MR. MC CLAIN:

19 Q. When was that? What year was that?

20 A. It had to be somewhere around, starting some time in
21 '72 and going on forward.

22 Q. And so would companies such as Gustin Bacon,
23 CertainTeed, and Products Research Companies and Sonneborn,
24 to the extent that they were your customers for PCBs, receive

1 those notices?

2 MR. JUETTNER: Objection to the form of the
3 question.

4 MR. GOUTMAN: Same objection.

5 You can answer if you can.

6 THE WITNESS: Without having a list of
7 letters in front of me I can't recall today all who
8 got these letters.

9 BY MR. MC CLAIN:

10 Q. But generally your customers received them?

11 MR. JUETTNER: Objection to the form of the
12 question.

13 MR. GOUTMAN: Same objection.

14 THE WITNESS: I'm not sure about the
15 plasticizer area and some other areas because I did
16 not -- I didn't have continuous responsibility in
17 those areas.

18 BY MR. MC CLAIN:

19 Q. In the areas that you did have responsibility for,
20 did your customers in those areas receive such letters?

21 A. In the case of heat transfer fluids and in the case
22 of dielectric fluids, to the best of my knowledge and belief
23 they all received communications.

24 Q. And are records kept within Monsanto or were they

1 kept when you were active of such communications?

2 A. I believe they were. How complete they are, where
3 and what the policy was for keeping them, I don't know.

4 Q. And what department would have such records or did
5 have when you were there?

6 A. Again, administration people would have taken care of
7 these things, and who they were, I have long since forgotten.

8 Q. The company was called administration?

9 A. I'm saying there would have been someone in an
10 administrative capacity which would have taken care of that
11 sort of thing, and who they were, I couldn't give you any
12 names.

13 Q. And was there a department that was called anything
14 other than administration? Just administration?

15 A. I cannot recall.

16 Q. Were they attached to the marketing group?

17 A. No.

18 MR. GOUTMAN: Off the record.

19 (Off the record discussion)

20 BY MR. MC CLAIN:

21 Q. Let me come back to something we touched on briefly
22 because I don't understand it fully yet. Now that you have
23 made this explanation about the difference between sales and
24 marketing, would there be someone who regularly liaised

1 with your customers from marketing about new products
2 research?

3 A. If the plasticizer group, be specific to them, had an
4 idea for a new product or a new use which internally we had
5 talked about and thought up, then we would find ways to,
6 Okay. Who would be the best companies to be interested in
7 this? Again, that would depend on what kind of products we
8 thought these products might go into. And then we would set
9 about talking to the regional managers or our sales people as
10 to, Okay. Were they aware of customers in their region to
11 whom this might be of interest? If it were then they might
12 well make a preliminary contact. If the answer came back,
13 Gee, yes, we are interested, then I might well be the person
14 that would have gone in to make the preliminary one or, as I
15 recall, we also had a commercial development section whose
16 job that might have been, but I cannot recall if commercial
17 development covered the whole organic division product line
18 or whether it was within a plasticizer group. That would
19 vary depending on the work load. They might focus --

20 Q. Where would records of such, as an example, if you
21 developed a product for a company or improved upon a product,
22 would there be communications with the company by written
23 document that --

24 MR. GOUTMAN: Just so I understand, we are

1 talking about the uses of Aroclors in plasticizers?

2 MR. MC CLAIN: Yes.

3 MR. GOUTMAN: Developing new uses for
4 Aroclors.

5 MR. MC CLAIN: I know he doesn't recall one.

6 BY MR. MC CLAIN:

7 Q. Let's say they developed one for Gustin Bacon, as an
8 example. You say somebody within your company knew that
9 Gustin Bacon made various products and you came up with a new
10 use for an Aroclor and said, I think this would be a good
11 thing for Gustin Bacon. How would we find out if there was
12 such a communication? Where can we look?

13 Maybe Mr. Goutman has already looked, but we
14 will see.

15 A. I can't recollect that in the Aroclor area much of
16 that went on. A lot of the requests on information on
17 Aroclors came to us from customers. They were the ones that
18 did their own formulation or they relied on the resin
19 supplier, ^{whose} ~~that the~~ resin they decided to use for the product,
20 That resin supplier might have had recommendations on the
21 additives to apply. ~~They would have~~ ^{often} -- all we did was
22 accept orders for the products that they asked for, ship,
23 invoice, so on and so forth.

24 Q. How would Monsanto become aware of these new uses, if

1 they would become aware? Would somebody communicate with you
2 or did that happen from time to time?

3 A. Occasionally customers would call direct and say, I
4 have got an idea. They might be very vague about it. Do you
5 have any products that might do this, this, and so and so?

6 Q. Were those communications documented?

7 A. Probably, yes.

8 Q. What would be the format of those?

9 A. It could be anything. It could be just a handwritten
10 note from me to someone. In fact, it wouldn't always
11 necessarily be written down; sometimes it would have been a
12 phone call to a salesman saying, Look. Contact so and so
13 because they are interested in getting samples of X, Y, Z.

14 Q. But if there was a written memorandum, was there a
15 format that it had to follow within the company or should
16 have followed?

17 A. There wasn't a hard and fast policy. They would have
18 been filed either under that product name or under the
19 customer name.

20 Q. So files would be kept, as an example, for
21 communications with Gustin Bacon.

22 A. Yes. How complete they are, hard to say.

23 Q. Understand.

24 Why don't we take a break.

1 (Deposition recessed)

2 BY MR. MC CLAIN:

3 Q. Back on the record.

4 Do you know whether or not the information
5 that you have supplied within the memorandum that we have
6 marked as Exhibit 8 was utilized in any larger memoranda?

7 A. I have no idea.

8 Q. Let me ask you this, after Monsanto stopped
9 manufacturing PCBs in the United States did they sell PCBs
10 overseas?

11 A. I cannot recollect the exact phase out schedule,
12 whether it was simultaneously or phased. I can't remember
13 that now.

14 Q. I'm wondering, the only reason I ask this,
15 recognizing that this is a product identification, did you
16 ever sell it to any of the other companies that were
17 mentioned in the other memoranda where Sonneborn was trying
18 to get the PCBs from other companies? Did you ever supply
19 them to those companies mentioned in the memorandum?

20 I can't remember the names of them.

21 MR. GOUTMAN: Did we ever supply it to the
22 Japanese?

23 MR. MC CLAIN: Yes.

24 BY MR. MC CLAIN:

1 Q. Were those manufacturers of --

2 A. In a memo, which is not this memo, which is the other
3 one which I wrote to Willis Clark reporting on a conversation
4 with Mr. Schwerd --

5 Q. Yes. Did you ever supply to those companies
6 mentioned in that memo?

7 A. No. What you are trying to ask me is, Gee, did we
8 find a way around selling PCBs by selling to other people to
9 sell for us.

10 Q. No, what I'm saying is I'm not saying that you did
11 that directly; I'm saying did you sell to someone thinking
12 that they were going to sell outside of the United States,
13 but they ended up selling it back in this country?

14 A. I have no knowledge of that going on, but Kanegafuchi
15 was a manufacturer. K A N E G A F U C H I.

16 MR. GOUTMAN: That's Exhibit Paton 5.

17 BY MR. MC CLAIN:

18 Q. Mr. Paton, did you ever have any contact with United
19 States Mineral Products Company?

20 A. That's not a name that rings a bell at all.

21 Q. Were PCBs ever utilized in sprayed on fireproofing as
22 far as you know?

23 MR. JUETTNER: Objection.

24 BY MR. MC CLAIN:

1 Q. Do you know what that product is?

2 A. To me that's a broad term. I think of that as a
3 generic type term.

4 Q. Yes. I'm using it that way.

5 A. That's not something that I recollect anything about.

6 Q. In other words, you don't remember selling PCBs
7 either when you were with the fluids division or with the
8 plasticizing^{er} division for application to any company that
9 manufactured a spray applied fireproofing material?

10 A. I can't recall. That's not to say that we didn't,
11 but I can't recall customers that I would associate them with
12 that kind of application. That's not to say that they didn't
13 do it.

14 MR. MC CLAIN: On this subject I don't think
15 I have any further questions.

16 MR. JUETTNER: I have a few.

17 - - -

18 BY MR. JUETTNER:

19 Q. Mr. Paton --

20 MR. GOUTMAN: Can you just identify yourself
21 for the witness.

22 BY MR. JUETTNER:

23 Q. I was just going to do that.

24 My name is John Juettner. My firm represents

1 Chemrex.

2 A. Okay.

3 Q. I have a few follow-up questions regarding your
4 testimony.

5 Can you tell me what plasticizers in general
6 are used for?

7 A. I think, as I indicated, plasticizers are additives
8 to plastics to modify them usually by making them more
9 flexible. That's broad, but that's what they are.

10 Q. And what are some possible applications of
11 plasticizers?

12 A. They are used in floor tile, vinyl tiles, vinyl
13 flooring. You would need to add some plasticizer in order to
14 get the tiles sufficiently flexible to be able to be laid and
15 so on and so forth.

16 Q. And polychlorinated biphenyls are added to
17 plasticizers, is that correct, to make them more elastic or
18 flexible?

19 A. I don't think of polychlorinated biphenyls as
20 necessarily being plasticizers; I think of them being
21 additives that modify the behavior of plastics, but not
22 necessarily to plasticize them in the way that it softens
23 them and makes them more flexible, if you can make that
24 distinction. The group that I was in at that time that

1 handled these products was called plasticizers, but that was
2 used more like an umbrella term, ~~but then there were group~~
3 ~~products within those that had been used~~ *in the plasticizer group* and they were by far
4 the biggest volume, where you would have been using them
5 ~~mainly in PCB~~ *PVC* and so on for this plasticizing, flexibilizing
6 property. The specialty type of things, which Aroclors and
7 PCBs were one, and there were a raft of others, could be
8 added to plastics, give different properties, but to the
9 technical person and to somebody like me in between the
10 technical and the sales and the customer, I wouldn't have
11 used the term "plasticizer" if I was trying to define for
12 somebody what they did, and I hope I have not confused you
13 because that was not my intent.

14 Q. Well, an Aroclor is a plasticizer; is that correct?

15 MR. GOUTMAN: Objection to the form of the
16 question. I think we will stipulate that it can be
17 used as a plasticizing application.

18 THE WITNESS: Modifier of plastics.

19 BY MR. JUETTNER:

20 Q. Fair enough. And would one of the uses of Aroclors
21 be as an additive? For example, to plastic wrapping or
22 packaging which covers food.

23 A. I can't recollect it being used ever in that category
24 because I don't think it would be compatible with the plastic

1 that's used that I think of, ~~it~~^{it} is polyethylene, it wouldn't
2 have been compatible with it. It would not have stayed in
3 it, so there would have been no purpose in using it. In hot
4 melt adhesives, I don't know whether it would have been used
5 in contact with food or not.

6 Q. Are you aware of any use of Aroclors in any kind of
7 packaging of foodstuffs?

8 A. I, personally, am not.

9 Q. Would you have any concern if, for example, Aroclors
10 were used in a plastic or packaging for food stuffs?

11 MR. GOUTMAN: Objection.

12 Don't answer the question.

13 Other than from a chemical standpoint? He
14 already said that the PCBs were not compatible with
15 polyethylene. Are you talking about health concerns?

16 MR. JUETTNER: Yes.

17 MR. GOUTMAN: I'm not going to let him
18 answer. It's not a product identification, and as
19 far as I know the plaintiffs in this case are not
20 claiming that that application was found in the TNS
21 building.

22 MR. MC CLAIN: We might. We did have a
23 cafeteria.

24 BY MR. JUETTNER:

1 Q. Do you know at any time whether Monsanto sent
2 anything to any of its customers regarding concerns of
3 Aroclor leaching onto another product?

4 A. Leaching onto another product?

5 MR. GOUTMAN: Objection as overly broad, but
6 you can answer if you can.

7 THE WITNESS: I think if it leached onto
8 another product that would not necessarily, from my
9 standpoint, be Monsanto's responsibility; that would
10 be whoever had the two products, I would think.

11 BY MR. JUETTNER:

12 Q. But do you know if that concern was ever expressed to
13 any of Monsanto's customers?

14 A. Well --

15 MR. GOUTMAN: Don't answer the question.

16 He's answered the question. He's answered
17 the question. He said that was the product
18 manufacturers' concern; not Monsanto's

19 BY MR. JUETTNER:

20 Q. What did Monsanto use as a replacement for the PCBs
21 or Aroclors?

22 A. In what application?

23 Q. In, for example, sealants or caulks.

24 A. I don't know. As I think I saw in some

1 correspondence that was shown involving Mr. Clark, there was
2 some discussion with one company, I think it might have been
3 more, but the one memo I referred to, one about the possible
4 replacement. When that took place I was not the market
5 manager for those products at the time, so I really don't
6 know what happened to that.

7 Q. So that would have been after 1972?

8 A. No, it would have been after 1970, I think.

9 Q. Do you recall who the competitors were of Monsanto
10 with respect to your Aroclor sales?

11 A. There were companies outside the United States that
12 produced Aroclors. Kanegafuchi of Japan,
13 K A N E G A F U C H I, was one. There were two companies, I
14 believe, at least two companies in Europe. I think Bayer of
15 Germany was one. B A Y E R. There was a company in France
16 whose name I think was Prodelec, P R O D E L E C, which would
17 have been absorbed at some point in time more recently into
18 the Rhone Poulenc, R H O N E P O U L E N C. There could be
19 others.

20 Q. Any United States manufacturers?

21 MR. GOUTMAN: What time frame are we talking
22 about?

23 MR. JUETTNER: Say a time period between 1968
24 and 1972.

1 THE WITNESS: I can't recollect any.

2 BY MR. JUETTNER:

3 Q. What about prior to 1976?

4 A. Prior to 1976?

5 Q. 1976, prior to 1976?

6 MR. GOUTMAN: '76 going backward in time
7 forever?

8 MR. JUETTNER: Yes.

9 MR. GOUTMAN: If you know.

10 THE WITNESS: I'm not aware of any.

11 BY MR. JUETTNER:

12 Q. Do you know, with respect to these other
13 manufacturers, what their plasticizers consisted of?

14 MR. GOUTMAN: What their PCB plasticizers
15 consisted of?

16 MR. JUETTNER: Correct.

17 THE WITNESS: I knew that they produced PCBs,
18 I knew that they were selling PCBs for applications
19 similar to what we did in totality, but I had no
20 direct knowledge of who their customers were and the
21 applications, or really the exact composition of
22 their product.

23 BY MR. JUETTNER:

24 Q. Are you aware of any, can you recall any manufacturer

1 of plasticizers prior to 1976 but during the period of time
2 that you worked for Monsanto, that manufactured a plasticizer
3 that did not contain PCBs?

4 A. Was I aware of a manufacturer of plasticizers, non
5 PCBs plasticizers?

6 Q. Correct.

7 A. There are a whole host of them.

8 Q. Can you name some?

9 MR. GOUTMAN: There are thousands.

10 THE WITNESS: Having said that I should be
11 able to remember.

12 I'm going to say Exxon Chemical -- well, back
13 then is was Esso Company Chemical. Exxon Chemical
14 would be one, Bayer was another, Ashland, I think
15 Rhom and Haas, W.R. Grace, one that started with an H
16 whose name escapes me now.

17 BY MR. JUETTNER:

18 Q. But that's a representative sample; right?

19 A. We had a fair number of competitors.

20 Q. Do you know what they utilized instead of PCBs?

21 A. Do I know what they utilized instead of PCBs? I
22 don't understand --

23 MR. GOUTMAN: What plasticizers did they sell
24 instead of selling PCBs as a plasticizer?

1 THE WITNESS: Well, a lot of them sold what
2 were known as phthalate, P H T H A L A T E,
3 phthalate plasticizers. Some of them sold
4 plasticizers whose composition I have forgotten.
5 There were products that adipates, A D I P A T E S,
6 and so on and so forth, but they were not necessarily
7 being sold as a direct competitor to PCBs.

8 BY MR. JUETTNER:

9 Q. Do you know if they utilized any polychlorinated
10 terphenyls?

11 A. I suspect not.

12 Q. With regard to the Transportation Safety Building,
13 the allegations, at least against Chemrex, is that there were
14 PCBs in the caulking used in the building during a renovation
15 which occurred in the early 1980's. With respect to building
16 construction in general, though, I believe this building was
17 first constructed in the 1966, 1967 time frame. Would you
18 know today what other products used in the construction of
19 that building might conceivably contain PCBs?

20 MR. GOUTMAN: Objection to the form of the
21 question.

22 MR. LANGFITT: Objection to the form of the
23 question.

24 THE WITNESS: Until yesterday I never even

1 heard of the TNS building.

2 BY MR. JUETTNER:

3 Q. But you indicated before that PCBs, for example,
4 might be in tile; is that correct?

5 A. No, I think what I said was that plasticizers were
6 used in tiles, but all plasticizers are not PCBs and PCBs are
7 not necessarily always used as plasticizers. In fact, very
8 infrequently used in this definition of what a plasticizer
9 is, so I think part of the problem I see developing here is
10 flip-flopping between plasticizer as an organizational group
11 and plasticizer as a use of a product.

12 Q. Would you agree that PCBs were sold for use in
13 polysulfide caulk?

14 A. I believe that's the case.

15 Q. Or sealants; right?

16 A. Or sealants. In fact, maybe this is a case maybe
17 where caulk is a phrase that I don't use. I sometimes get
18 accused of getting into a problem of using English
19 terminology instead of American, but since I have been here
20 so long I get confused when I go back to Britain and I get
21 confused at times here. I apologize if I say I'm not sure
22 what caulk is. I say sealant; maybe you use sealant and
23 caulk differently or they are the same. I don't know.

24 Q. Do you know whether PCBs are used in urethane caulks?

1 MR. GOUTMAN: Are used or were used?

2 MR. JUETTNER: Are used.

3 THE WITNESS: That's not something that I can
4 recollect having heard about.

5 BY MR. JUETTNER:

6 Q. You have never heard of PCBs being used in urethane
7 caulk; is that correct?

8 A. I can't recollect it. Even as I'm thinking as you
9 speak, I can't think of ever having come across that.

10 Q. You never recall any sale of Aroclor for use in a
11 urethane caulk; is that correct?

12 A. I can't recall that, no.

13 Q. And would you agree that you have never heard anyone
14 ever using a PCB for use as a urethane caulk?

15 A. I can't recall that.

16 Q. Where do you currently reside?

17 A. In a suburb of St. Louis.

18 Q. Mr. Paton, you were shown a couple of documents. I
19 refer specifically to Exhibits two through five. I don't
20 have those in front of me, but from what I recall, I believe,
21 Exhibits two, three and four are sales calls; is that
22 correct?

23 A. Yes, they are what we would have called sales
24 reports.

1 Q. Is it true that you really don't have any firsthand
2 knowledge regarding the subject matter which is contained in
3 those documents?

4 A. That's correct, because they were addressed to what I
5 believe was my successor in two cases, and to Bill Coaker,
6 who was in our technical department in the third case.

7 Q. And with regard to Exhibit number 5, which I believe
8 incorporates your recollections of a conversation that you
9 had with Mr. Schwerd, would I be correct in saying that you
10 don't have any direct knowledge as to the use or application
11 of any Aroclor that you claim Monsanto sold to Sonneborn; is
12 that correct?

13 A. Could you just repeat that? I'm trying to remember
14 this, and I just wasn't listening. I apologize.

15 Q. Would I be correct in saying that you have no first
16 hand knowledge, based on Exhibit 5, as to what, if anything,
17 Sonneborn did with the Aroclor which is referenced in that
18 memo?

19 MR. GOUTMAN: Based solely on that exhibit?

20 MR. JUETTNER: Correct.

21 THE WITNESS: The only PCBs that I would be,
22 Aroclor PCBs would be the Therminol FR-1, but if you
23 are saying PCBs as regard to plasticizer use by
24 Sonneborn, the answer is no, I have no knowledge

1 based on this document.

2 BY MR. JUETTNER:

3 Q. And based on those four documents in general, you
4 don't have any first hand knowledge regarding any
5 representations Monsanto made to Sonneborn regarding the use
6 of Aroclors; is that correct?

7 A. Based on these documents, no, because three of them I
8 wasn't around when they were written. I didn't see them
9 until yesterday.

10 Q. There's also a memo, I think it's Exhibit 8. Is that
11 the 1969 memo?

12 MR. GOUTMAN: Yes.

13 BY MR. JUETTNER:

14 Q. In which Sonneborn is identified as a customer of
15 Monsanto. With regard to their reference to Sonneborn, would
16 I be correct in stating you do not have any direct knowledge
17 as to what Sonneborn did or didn't do with the product
18 referenced there?

19 A. I believe that I was aware at the time that both
20 Products Research and Sonneborn were in the sealant area and
21 I believe used polysulfides, and through call reports and
22 whatever I gained the impression that our Aroclors were going
23 into that, but to what extent, for what purpose, that I don't
24 know.

1 Q. So it may have gone into a polysulfide product.

2 A. That's correct.

3 Q. One last question, hopefully.

4 With regard to the memo, you referenced an
5 article or study which prompted you to draft that memo, or
6 did I misunderstand your testimony?

7 A. I think in answer to Mr. McClain, what was the
8 relevance of this, I related back that at the time this was
9 written I had been made aware of two pieces of information
10 that had been published; one, a Jensen and Widmark study and
11 then being in San Francisco; and picking up a newspaper which
12 had a headline, as I recall, which is I probably why I picked
13 it up, about PCBs and a Dr. Risebrough having found
14 something. It was about the time that these findings came to
15 my attention, and I was trying to learn more about it. I ~~had~~^{had}
16 went to people in the organization who then began to try to
17 understand what this was all about.

18 Q. Do you know when the Jensen article was published?

19 A. The date escapes me now. I think clearly it was
20 published before I knew about it, but how many years before I
21 don't know. I don't think it was a long time before that,
22 but I don't remember when.

23 Q. You don't know whether it was published in 1966 in
24 the New Scientist magazine?

1 MR. MC CLAIN: Apparently it was.

2 MR. GOUTMAN: He said he didn't know.

3 Don't answer the question.

4 THE WITNESS: It could well be.

5 MR. JUETTNER: I don't have any other
6 questions.

7 - - -

8 BY MR. MC CLAIN:

9 Q. When you answered a question regarding urethane caulk
10 and that you don't recall it, does that mean that it didn't
11 happen or you just don't know one way or the other.

12 MR. JUETTNER: Objection to the form of the
13 question. It mischaracterizes his testimony.

14 MR. GOUTMAN: You can answer.

15 THE WITNESS: I, personally, cannot recall
16 ever being aware that Aroclor was used in urethane
17 caulks. Now, the minute I say something like that
18 somebody is going to pop up and say yes, they were,
19 but I ~~don't~~^{do} know about it, and I don't know about it
20 today. If he hadn't mentioned it it wouldn't have
21 been something that I even would have thought of. He
22 may well be right, but I don't know about it.

23 BY MR. MC CLAIN:

24 Q. You don't know one way or the other?

1 A. I don't know one way or the other.

2 MR. MC CLAIN: Thank you. No further
3 questions.

4 MS. MANERO: I have no questions.

5 MR. HENSON: I have no questions.

6 MR. LANGFITT: I have no questions.

7 MR. GOUTMAN: I have no questions.

8 MR. JUETTNER: I have no further questions.

9 MR. SLATER: I have no questions.

10 (Witness excused)

11 (Deposition concluded at 1:05 p.m.)

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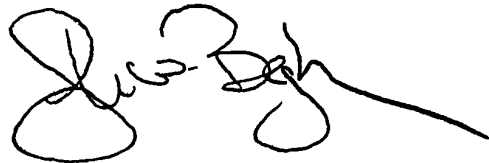
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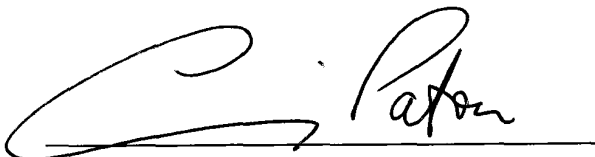
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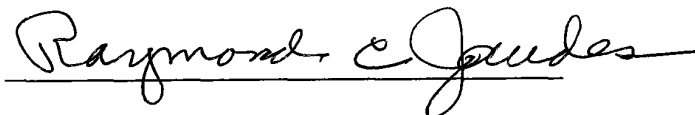
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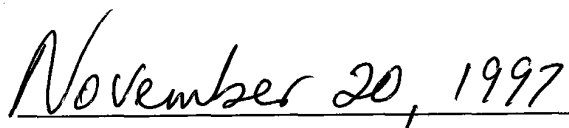
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Jurist-Begley Reporting Services