(Reading from video deposition)

Q There's almost no group that's more important within a company to have appropriate information on Monsanot's PCB product that the customer's industrial hygiene and toxicology product group; isn't that correct?

A Yes, sir.

Q Because that's the group within the customer that's responsible for looking after their own workers' safety?

A Not the only group, sir.

Q But it's one of the major groups, isn't it?

A Yes, sir.

Q That's what industrial hygiene is all about?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 232, line 8, with the plaintiffs' offer.

(Reading from video deposition)

Q Isn't it true that it was Monsanto's obligation to get appropriate information on toxicology and safe handling to the appropriate people within the customers' organization?

A It was our responsibility to see that the information was in the hands of the customers' plants, who could make the best use of that information within the procedures of that own company.

Q And among the people that Monsanto had an obligation to get that information into the hands of, would be the industrial hygiene and toxicology department of the customer, correct?

A I don't consider that an obligation, no, sir.

Q I see. So, if the program designed by Monsanto communicate information to customers wasn't good enough to get it in to the customers' industrial hygiene and toxicology department, that would not concern you as the assistant director of the medical department of Monsanto; is that correct?

A I would be disappointed that the information did not get to those people.

Q But you wouldn't think that Monsanto had failed to do its job; is that correct?

A That's right, sir.

Q Okay. Is there any group within a customer who, if the information on PCBs did not reach

that group, you would feel that Monsanto had failed to carry out its obligation to disclose the information about PCBs?

A I think I -- excuse me. I think I -- I think our obligation was to get the information to the people within the company who supervise the use of the product and ensure that they had the precautionary statements and technical bulletins on the information that we provided.

Q Well, who are those people, in your opinion?

A I would say, the production and supervisory people of that particular operation within that company.

Q Okay. So, as you view the obligation, it is to get it into the hands of production personnel, not into the hands of the medical personnel or industrial hygiene personnel, correct?

A I would expect the people that I have mentioned to rely on their sources of interpretation of any information.

(End of reading)

MR. LACEY: Going to Page 240, line 21.

(Reading from video deposition)

Q If somebody at Monsanto came to you and said, "Elmer, I have just found out that the industrial hygiene department at Texaco doesn't know that Aroclors are PCBs," would that cause you to want to try to investigate your information-generating and -sending program to see if maybe there was a breakdown that you needed to fix?

(End of reading)

MR. MUSSLEWHITE: I'm sorry. What page?

MR. LACEY: 240, line 21. And the answer is on 241.

MR. MUSSLEWHITE: All right.

(Reading from video deposition)

A No, sir.

(End of reading)

MR. LACEY: Going to Page 245, line 10.

(Reading from video deposition)

Q Was Mr. Sido the person with whom you and Dr. Kelly dealt in trying to get labels and

product information to contain the material that you wanted them to contain about safe handling and toxicology?

A Bob Sido, yes, sir.

(End of reading)

MR. LACEY: Going to Page 246, line 7, continuing with the plaintiffs' offer.

(Reading from video deposition)

Q Did the sales people have any role in the actual language used on the warning labels?

A I don't think so, sir.

Q You don't recall any situations where the sales people might suggest that the warning be toned down so as not to adversely affect sales?

A I can't think of any, sir.

(End of reading)

MR. LACEY: Going to Page 247, line 5.

(Reading from video deposition)

Q They wouldn't have any control over what labels went on what products, though?

A Not to my knowledge.

(End of reading)

MR. LACEY: Going to line 16, continuing with the plaintiffs' offer.

(Reading from video deposition)

Q Mr. Wheeler, let me hand you what has been marked as Wheeler Deposition Exhibit No. 1 and ask you to take look at that memo. I apologize for the fact that it's not a very good copy.

A Well, I believe I can make it out. I just wanted to check. Is this August, 1959, I guess? Is that the date?

Q That's what it appears to be to me -- August 19th, 1959. And there's down here a reference to a memo previous, of August 17th, 1959?

A Thank you. I can't make out that --

Q Okay.

(End of reading)

MR. LACEY: Stopping there and going all the way over to Page 252, line 6.

(Reading from video deposition)

Q That memo was written by Mr. Sido, correct?
A Yes, sir. It's over his signature.
Q And it deals with the labeling that is supposed to go on Aroclor products, correct?
A Yes, sir.
Q And in that memo Mr. Sido is talking about sales having agreed to certain particular cautionary information going on products, is he not?
A Yes, sir.
(End of reading)

MR. LACEY: Going to Page 253, line 3.

(Reading from video deposition)
Q Now, that memo makes it very clear that at least with regard to these warning labels that are discussed in that memo that the sales department had input in a decision-making process over what labels went on PCB products discussed in that memo, doesn't it?
A I would say they did not have the final decision over what went on the label.
(End of reading)

MR. LACEY: Going to line 22.

(Reading from video deposition)

Q Well, there are another list of products that were sold there besides Inerteen, aren't there -- that memo dealt with?

A It says Pyranols, yes, sir.

Q And there are others listed, aren't there, besides Interteen and Pyranol.

A It says, "Aroclors, Pyranols, and Interteens."

Q That's all the PCB products that Monsanto made, isn't it?

A Well, I think that Aroclors is referenced here because they were in the Pyranols and Interteens.

(End of reading)

MR. LACEY: Going to line 20.

(Reading from video deposition)

Q The first sentence of the memo says, "Sales have agreed" -- and then it references Mr. Paul Benignus -- "to use the same caution statement for all Aroclor, Pyranol, and Interteen

containers"; isn't that correct?

A Yes, sir.

Q So, this memo deals with a statement that went on all of the PCB products that Monsanto was shipping out, whether they went under name "Aroclor," "Pyranol," or "Interteen," correct?

A I believe that's so. And the reason is -- my recollection is that about the time there were state laws being developed that said products containing chlorinated hydrocarbons should so state. And this developed because of research efforts in the Los Angeles smog situation that indicated chlorinated hydrocarbons played a role in the development of the smog. And I suspect that in this case, Westinghouse said, "What are we going to do to comply with the laws that are developing that indicate -- that mandate that we must say they contain chlorinated hydrocarbons?"

Q Let me just make sure I understand. It's your understanding that this memo is discussing labels that were you were making for your customers to put on their products that they sold to third parties?

A In the case of Inerteen, certainly. I can't recall whether Pyranol was a G.E. trademark or

not.

(End of reading)

MR. LACEY: Going to Page 256, line 2.

(Reading from video deposition)

Q Is it your testimony that people at Monsanto decided what information should be on the labels that were put on the products sold by G.E. and Westinghouse, that contained PCBs?

A Yes. At their request.

Q I see. So, you assumed that responsibility for them and told them what to put on there?

A In this case. But I think, sir, you will find that all of the other comments there are standard for PCB-containing materials, the only difference being that the, quote, "contains chlorinated hydrocarbons," end quote, was a new statement.

Q And with regard to that new statement, the only reason Monsanto started putting that statement on its PCB products is because state law in California required you to do so, correct?

A Well, my recollection is that California was not the only state that was proposing such

legislation.

(End of reading)

MR. LACEY: Going to Page 257, line 10, Monsanto's offer.

(Reading from video deposition)

Q And but for that legislation, Monsanto would not have changed its labels, correct?

A Not to use the word, quote, "chlorinated hydrocarbons," because we were use the "chlorinated biphenyl" terminology.

(End of reading)

MR. LACEY: Going to line 15, continuing with the plaintiffs' offer.

(Reading from video deposition)

Q Now, at least with regard to this label that was developed in response to this state legislation, the sales department -- and in particular, Mr. Benignus -- had a role in deciding whether to use this label on all PCB products, did he not?

A I'm not sure that that's the case.

Q Let me hand you Wheeler Exhibit No. 1 again. It says very clearly -- and this is -- Mr. Sido is responsible for labeling at Monsanto. Am I correct, this is Mr. Sido's memo?

A "Has agreed" -- it said that that "Mr. Benignus has agreed to use the following language," yes, sir.

(End of reading)

MR. LACEY: Continuing with Monsanto's offer, line 2.

(Reading from video deposition)

Q So, clearly, Mr. Sido is indicating that the question has been put to Mr. Benignus, quote, "Is it agreeable to use this label on all these products," close quote. And he finally agreed, quote, "Yes. We'll use it on all these products," close quote.

A I suspect, sir, the reverse is true. Mr. Benignus was contacted by the Inerteen and Pyranol folks and said, "What are we going to do to comply with the law? Would you agree that the simple wording, single quote, 'caution, contains chlorinated hydrocarbons,' end of single quote,

would be adequate," end quote.

And from this, I would say that Mr. Benignus agreed on the basis that the producers of Pyranol and Inerteen agreed.

(End of reading)

MR. LACEY: Continuing at line 16 with the plaintiffs' offer.

(Reading from video deposition)

Q In any event, Mr. Benignus had a role to play in deciding what cautionary statements went on warning labels, correct?

A In this instance, yes.

(End of reading)

MR. LACEY: Going to Page 262, line 19.

(Reading from video deposition)

Q Mr. Wheeler, have you had a chance to review that second page of Jones Deposition Exhibit No. 1, which is labeled on the back as the 1959 Supplemental Stick-on, with the language in Mr. Sido's memo of 1959, which is Exhibit No. 1 to your deposition?

A Yes.

Q Doesn't it appear that the language Mr. Sido in his memo indicated had been approved by Mr. Benignus is the language that went on the supplemental stick-on label?

A This section appears to be word-for-word, this section in the Sido member.

Q Uh-huh. When you say, "this section," you mean the section at the top that says, quote, "caution," close quote?

A On the exhibit, yes, sir. Is there any difference between these two?

Q I don't think so. But please feel free -- I think those are two different labels, one large and one small in size.

A They appear to be identical.

(End of reading)

MR. LACEY: Continuing at Page 263, line 25, with Monsanto's offer.

(Reading from video deposition)

Q Well, was the medical department responsible for these labels and all these cautionary statements?

A Yes.

Q I mean, when we get right down to it, the second page of Jones Exhibit Number 1, there isn't anything on there that wouldn't be the responsibility of the medical department.

A That's right, sir.

Q Okay. And that meant you and Dr. Kelly, did it not?

A Yes, sir.

Q And I understood you to say that you and Dr. Kelly pretty much discussed in your business back and forth what you did so that both of you were familiar with it?

A Yes. Although I don't recall this specific instance.

(End of reading)

MR. LACEY: Going to Page 275, line 18. continuing with the plaintiffs' offer.

(Reading from video deposition)

Q If we go back to Mr. Sido's memo that we previously looked at, which has been marked as Wheeler Deposition Exhibit No. 1, when the caution talks about going on Aroclors,

Interteens, and Pyranols, it's talking about going on products that were manufactured and sold by Monsanto, correct?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 276, line 4.

(Reading from video deposition)

Q Who in the medical department was responsible for these labels at this time?

A 1971?

Q Yes.

A I presume I was.

Q But you don't recall seeing them?

A No, sir.

Q Do you suppose maybe the sales department was still having some input into what the labels said and how they looked?

A I can't say whether the normal procedure of preparing labels were sent to the sales department for comments.

(End of reading)

MR. LACEY: Monsanto offer, line 17.

(Reading from video deposition)

Q Mr. Wheeler, Dr. Kelly was still in the medical department as of 1971, wasn't he?

A Yes, sir.

(End of reading)

MR. LACEY: Going to Page 227, line 6, with the plaintiffs' offer.

(Reading from video deposition)

Q Let me hand you a document, 18731 through 18737, and ask if you have seen that before.

(End of reading)

MR. LACEY: And let me stop there, if I could, Your Honor, and provide to the jury copies of that those documents.

THE COURT: Go ahead.

MR. LACEY: All right.

(Reading from video deposition)

Q Let he hand you a document, 18731 through 18737, and ask if you've seen that before.

A Do you know the date of this, sir?

Q My question to you is: Have you ever seen it before?
A I don't recall seeing it as such, sir.
Q I see. This is a document that deals with the toxicology and safe handling of Monsanto Aroclor, is it not?
A That's the title of it, yes, sir.
(End of reading)

MR. LACEY: Going to Page 278, line 10

(Reading from video deposition)
Q All right. Where is that?
A You asked if I had seen this document, and I said I didn't recall seeing it. And perhaps the reason is that this was -- according to this, this was developed at Monsanto Europe.
Q How are you able to tell that?
A Well, it would appear here -- it says, quote, "Monsanto House Number, Victoria Street, London, South Wales."
Q And what does that tell you about the document, sir?
A Well, I think it means it was generated in Great Britain.

Q Was the medical department responsible for the information distributed in Great Britain about toxicology and safe handling of PCBs?
A Not routinely, sir.
Q So, people in Europe then who worked for Monsanto were free to develop their own information about the toxicology and safe handling of PCBs, and it might be different than that supplied in the United States?
A I believe that's correct, sir.
(End of reading)

MR. LACEY: Going to Page 280, line 19, continuing with the plaintiffs' offer.

(Reading from video deposition)
Q Have you had a chance to review it?
A Yes, sir.
Q Do you find anything in there with which you disagree?
A No, sir.
(End of reading)

MR. LACEY: Continuing with Monsanto's offer at line 24.

(Reading from video deposition)

Q So, then in terms of the statements contained about, for example, precautions in use of Aroclors and the toxicology of Aroclors, you would find all of those things to be appropriate statements?

A I would say they were consistent with the type of documents that we would have prepared in St. Louis, for the most part, yes, sir.

(End of reading)

MR. LACEY: Going to line 7, continuing with the plaintiff's offer.

(Reading from video deposition)

Q Was this document used in the United States?

A I don't know, sir; I have never seen it before.

Q To your knowledge, was it used in the United States?

A No, sir.

Q You have indicated you think that this document was generated in England?

A Yes, sir.

Q Did, to your knowledge, Monsanto have a document like this on toxicology and safe handling that it distributed in the United States?

A I believe we did, sir.

Q A document which dealt only with the subject of toxicology and safe handling?

A I'm not sure that's the case, sir.

Q Well, that's what I was really asking about.

A I'm sorry. I don't recall.

Q And this document is one that is limited solely to toxicology and safe handling, is it not?

A I beg your pardon?

Q This particular document, 18731 through 737, is limited solely to toxicology and safe handling of Aroclors, is it not?

A Yes, sir.

(End of reading)

MR. LACEY: Continue with the plaintiffs' offer at line 19.

(Reading from video deposition)

Q I'm just trying to find out if there is

anything about this document that makes it not suitable for distribution to customers, industrial hygienists, toxicologists, and medical departments.

A I don't see any.

Q Okay. And it's a document that dealt solely with toxicology and safe handling. That's the specific information that industrial hygienists or toxicologists or medical officer of a customer would want to look at, correct?

A Yes, sir.

(End of reading)

MR. LACEY: Going to line 22.

(Reading from video deposition)

Q Certainly some of the responsibility, as I understand your testimony, lies with the industrial hygienist and the medical department to know about end uses and to have appropriate warnings and instructions to protect people who are end users, correct?

A Yes, sir.

Q Now, as far as you know, all of the United States literature on toxicology and safe handling

of PCBs was contained in -- to the extent they were in technical bulletins like this -- in technical bulletins that had much other information besides toxicology and safe handling, was it not?

A I can't recall, sir, whether there was an equivalent booklet on just toxicology and safe handling prepared for U.S. distribution.

Q You do remember that many technical bulletins that covered many other topics though besides just toxicology and safe handling?

A Oh, yes, sir.

Q And you do not recall, do you, any technical bulletins -- that contained other information in addition to toxicology and safe handling -- having as much detail as Document 18731 through 18737 had on toxicology and safe handling, do you?

A I don't recall that there was such a bulletin.

(End of reading)

MR. LACEY: Ending at line 25.

(Reading from video deposition)

Q Of course, if you had a bulletin that had the toxicology and safe handling information buried somewhere in it, it would not be as easy a reference for an industrial hygienist or a toxicologist or a medical officer as a single-purpose bulletin containing all that information in one ready reference, would it?

A Certainly. A bulletin like this would highlight the data that was summarized in other bulletins.

(End of reading)

MR. LACEY: Going to line 24.

(Reading from video deposition)

Q And at the end it says in all caps, "You have read this." Now, that is designated or designed for the person that is actually seeing the bulletin to catch his attention that he has read this material on precautions, correct?

A Yes, sir.

Q And then it asks the question, "Does the man on the job know how to handle thse products"; is that correct?

A Yes, sir.

Q The point of that being in all caps there and with that question is to convey to the industrial hygienist or medical officer or toxicologist who is reading this type of bulletin the importance of getting the information he has just read about precautions down to the men in his plant who were actually working with the product; isn't that correct?

A In Great Britain, yes, sir.

Q Well, that's something that is important wherever the medical person or industrial hygienist may be, to emphasize to him the importance of getting precautionary information to people who were actually working with the product.

A I don't know, sir. The capacity or -- excuse me -- the expertise of the people in the customers' plants for the Great Britain production, I can't -- I don't know the purpose that they prepared this bulletin. I feel very strongly that as far as the United States was concerned, our efforts in presenting precautionary information and warnings were adequate.

(End of reading)

MR. LACEY: Going to line 9, with the plaintiffs' offer continuing.

(Reading from video deposition)

Q It is important that the industrial hygienist, the toxicologist, or medical officer make sure that the precautionary information he is aware of with regard to products that his workers are going to be handling actually gets to the workmen and is put in use; isn't that correct?

A I would think so, yes, sir.

(End of reading)

MR. LACEY: Continue at line 16 with Monsanto's offer.

(Reading from video deposition)

Q The fact that the industrial hygienist or the toxicologist or the medical officer may know what precaution should be taken doesn't protect a single workman unless those precautions are put into place, does it?

A Would you phrase that again?

Q Surely. The industrial hygienist or the toxicologist or the medical officer for a company knows how to protect the workers of that company --

A Yes, sir.

Q -- from danger of the product they are working with. That knowledge doesn't do those workers any good unless the industrial hygienist, toxicologist, or medical officer makes sure that those precautions are actually put into practice in the plant; isn't that correct?

A I can't speak for the practice in plants outside of Monsanto. The responsibility may well have been with the production supervisors.

(End of reading)

MR. LACEY: Going to line 11, with the plaintiffs' offer.

(Reading from video deposition)

Q The fact that the industrial hygienist for a company knows what the hazards of a product are and how to protect the workers at that company from being injured doesn't do the workers any

good unless the precautions are put into effect, does it?

A That's correct.

Q Okay. And what this all capitalization statement on Document No. 18734 emphasizes is the importance of the person who is reading this document -- people like industrial hygienists, toxicologists, medical officers -- of getting the warnings and the precautions into the plant to protect the workmen, correct?

A Sir, I think you referred specifically to this document. And again I say, I don't know who got these documents in Great Britain. I'm not sure that the practice of industrial hygiene had developed to the point that there were industrial hygienists in the plants that received this information.

Q Fine. Let me broaden my question for you then. It's clear that this document was not intended to be handed to individual workmen in the plant, isn't it?

A I believe that's right, sir.

Q And it's clear that it was intended to go to the appropriate personnel who had the ability to put into place work procedures to protect

workmen; isn't that correct?

A Yes, sir.

Q And the point of this bold capitalization statement at the end of the precaution section on Page 18734 -- Document No. 18734 -- was to emphasize to people who were reading this, the importance of making sure that these precautions were actually put into practice.

A Yes, sir.

Q Okay. Now, they precautions were very specific, were they not? You may want to look at them again.

A I would say they were specific, yes, sir.

Q For example, they specifically instructed that one should wash well with soap and water before smoking a cigarette.

A Yes, sir.

Q One should wash well with soap and water before taking a drink?

A Yes, sir.

Q That one should wash well with soap and water at the end of a shift?

A Yes, sir.

Q They were very --

(End of reading)

THE COURT: I think this too detailed and too repetitious; so, let's see if we can't eliminate some of that.

MR. LACEY: Thank you, Your Honor. For the record, I will skip on over to Page 291, line 18, and just note in this section that the witness has identified and validated all the statements that are on that precaution page.

Page 291, line 18.

(Reading from video deposition)

Q To your knowledge, does the United States operation of Monsanto have any document giving as much specific detail about precautions to be used in the handling of Aroclors intended for United States customers?

A I don't recall any, sir.

Q Can you agree with me that, in retrospect, having precautions and the level of detail provided in this document that was put out by Monsanto in Great Britain was a good idea?

A I would say in the case of Great Britain the people involved thought it was a good idea. In

this country, I would say that we felt that business and manufacturing operations and handling operations, shipping operations were such that we accomplish the avoidance of injury without such detailed precautions spelled out.

Q Did you ever go and visit any plant of a customer who purchased PCBs from Monsanto?

A Yes.

Q What plants did you go visit personally?

A I visited a dieletric plant in Wisconsin. I believe it was Milwaukee.

Q Who was customer?

A I can't recall the name.

Q That's fine.

A I think they probably -- they were probably the third largest producer of capacitors, following General Electric and Westinghouse.

(End of reading)

MR. LACEY: Going to Page 294, line 11, continuing with the plaintiffs' offer.

(Reading from video deposition)

Q So, you did actually observe the workmen working with the PCBs in the workplace?

A In this instance, yes, sir.
Q Okay. And you found a process being used by that manufacturer that you would not personally approve of; and therefore, you recommended changes.
A Yes, sir.
(End of reading)

MR. LACEY: Going to Page 295, line 8.

(Reading from video deposition)
Q You concluded that what they were doing was not appropriate?
A That's right.
Q And you recommended a change?
A That's right.
Q Now, my question to you is whether it was your opinion that that customer should have been able to determine solely from the literature that you provided to them -- technical bulletins and warning labels -- that the process that they were using was inappropriate?
A Was inappropriate?
Q Yes, sir.
A Yes, sir.

Q So, you were able to see in that circumstance that despite warning labels that you thought should be adequate and technical bulletins that you thought should be adequate to tell the customer what they were doing wasn't appropriate, for whatever reason, those labels and those technical bulletins had not caused the customer to reach that conclusion, correct?

A In this instance.

Q And it took a personal visit from you to determine the problem and cause the customer to change his conduct, correct?

A Yes, sir.

Q What other plants did you visit where PCBs were being used?

A I visited a similar plant in Sweden Sweden that was not having any problems.

Q Did they purchase PCBs from Monsanto?

A I believe they purchased some from Monsanto, Limited, although they may have also bought some from Germany or France. And I visited that plant in conjunction with the prevention of allowing the PCB to escape into environment.

(End of reading)

MR. LACEY: Going to Page 297, line 2.

(Reading from video deposition)

Q Now, this plant, you said, was buying PCBs from Monsanto, Limited?

A If they were buying it from Monsanto, it would have been from Monsanto, Limited.

Q And that would be the English group?

A Yes, sir.

(End of reading)

MR. LACEY: Going to line 16 --

THE COURT: I think we better stop here. Counsel, the Court feels that this is so repetitious and has already been covered that it can be eliminated. But if you can go over it with Counsel for the defendant, since you're offering both testimony offered by the plaintiff and the defendant -- see if you can't eliminate it.

MR. LACEY: We will do that at the lunch break, Your Honor.

THE COURT: Now, ladies and gentlemen, we are going stand recess until 1:30. And I'm sure it's unnecessary for the Court to

call your attention to this fact; but as the case goes on and the parties become more familiar with each other, sometimes they will engage in conversation with some of the parties who are attending the trial.

These may be witnesses in the case or they may be parties to the suit or they may be relatives or parties to the suit. Also, there are a number of attorneys; and occasionally the jury will engage -- will attempt to engage an attorney in conversation, or maybe a witness or a plaintiff or a defendant. And the Court would call your attention that this would be inappropriate. So, do not engage in conversation with anyone who is in the courtroom or who might be connected with the case.

Also, the Court would call attention to the plaintiffs and the defendants, representatives of the defendants and relatives: Do not impose upon the jury by attempting to engage them in conversation. So, please remember your conduct in this regard. This is particularly relative to

plaintiffs and their relatives and representatives of the defendants. Do not impose upon the jury by attempting to talk to them during the trial of the case. So, please adhere to these instructions.

If you should do this, it would be inappropriate and the Court would have to take some disciplinary actions. I do not anticipate that the attorneys will do this, but do not embarrass them by attempting to engage them in conversation.

All right. I think maybe the instructions are unnecessary, but I make them out of abundance of precaution. Please adhere to them. We stand recess until 1:30.

(WHEREUPON AT 11:55 A.M. COURT WAS IN RECESS UNTIL 1:30 P.M., AT WHICH TIME THE FOLLOWING PROCEEDINGS WERE HAD AND DONE.)