COPY

SUPERIOR COURT

FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	BC026959
	)	
MONSANTO COMPANY and	)	
DOES 1 through 200 inclusive	)	
	)	
DEFENDANTS.	)	
	)	

DEPOSITION OF DONALD POGUE
MARCH 20, 1993

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Deposition of DONALD POGUE, taken on behalf of the Plaintiff, at the Adam's Mark Hotel, in the City of St. Louis, State of Missouri, on the 20th day of March, 1993 before Julie A. Mitchell, Notary Public.

HARTOLDMON0042342

APPEARANCES OF COUNSEL:

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DONALD POGUE,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

EXAMINATION

QUESTIONS BY MS. GRADY:

Q. Good morning, Mr. Pogue. My name is Janet Grady. I'm with the firm of Shearman & Sterling and we represent Transwestern Pipeline Company in this litigation. I'm sure Mr. Zimmer has explained this to you but after your last deposition in this case, additional documents were produced that had your name on them and for that reason, we find ourselves back in St. Louis again. You received all these instructions the last time and I'm not going to belabor them but I did want to make sure that we're operating under the same ground rules here this morning. You understand that you are under oath just as if you were providing testimony in a court of law?

HARTOLDMON0042345

A. Yes.

Q. If you do not understand one of my questions, will you let me know?

A. Yes.

Q. In your work at Monsanto, do you remember a gentleman named G. Robert Sido, and that's S-i-d-o?

A. I don't recall.

Q. You don't recall his name?

A. No.

Q. Let me show you a document that I've pre-marked with Exhibit 1160. Mr. Pogue, as you're reviewing this document, I will describe it for the record. It's a multi-page document bearing Bates range TRAN 088258 through 088265 and I'd ask you to review the pages of this Exhibit 1160, please. You've had a chance to review Exhibit 1160, is that correct?

A. Yes.

Q. Is 1160 documents that you received from Monsanto's Labeling Department in the spring of 1972?

A. I don't recall.

Q. Do you recall receiving documents from Monsanto's Labeling Department in the spring

HARTOLDMON0042346

of 1972?

A. Yes.

Q. What were those documents?

A. They were documents relating to the labeling history of some aroclors.

MS. GRADY: A-r-o-c-l-o-r-s.

A. And I do recall therminol products.

Q. Prior to receiving documents from the Labeling Department, did you put in a request for certain documents?

A. I do recall asking for those labels.

Q. And what was your specific request?

A. I don't recall.

Q. Who did you talk to in the Labeling Department?

A. I don't recall.

Q. Does the name Virginia Koenig sound familiar to you?

A. No.

Q. Was the time that you received documents from the Labeling Department around 3-16-72?

A. I don't recall.

Q. You recall it was in the spring of 1972, is that right?

HARTOLDMON0042347

A. No.

Q. When did you receive documents from the Labeling Department?

A. I would estimate it would have been in the early 70's.

Q. And what is that estimate based on?

A. My work for the Legal Department occurred during that period.

Q. And let me see if I can refresh your recollection at all about when that work was. I'm referring to your deposition taken earlier in this case where you testified, and I'm reading from page 37, line 5, and I'd be happy to show you this, Mr. Pogue.

"Q. What kind of information are you talking about?

A. Documenting labeling history, researching the source of the fish meal and the location where the fish meal was processed.

Q. Anything else?

A. No.

Q. And who did you work with?

A. I worked with a lawyer and I don't remember his name.

Q. Was it Mr. Park or Mr. Parks?

HARTOLDMON0042348

A. No.

Q. And what year was this?

A. This would have been in late '71 to mid '72, in that period."

I finished reading with line 20. Does that testimony, that you gave in this case earlier, actually in 1992, refresh your recollection about when you were working in the Litigation Department?

A. It sounds as though it would be correct.

Q. You don't want to change your testimony, is that right?

A. I have no reason to, one way or the other.

Q. That's a no? You don't want to change your testimony, is that right?

A. I have no reason to because my memory was more -- was fresher back then having gone through quite a bit of discussion than it is at 8 o'clock this morning after having been away from it for a year.

Q. So you believe that testimony was accurate when you gave it, is that right?

A. Yes.

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MS. GRADY: Just for the record, Mr. Pogue's previous deposition in this case was taken on July 23rd, 1992.

Q. Okay. Mr. Pogue, could you look at the first page of Exhibit 1160 and tell me if in the course of your work, in gathering information concerning labeling history, you were concerned with a supplemental environmental label placed on certain PCB products?

A. Could you restate that question?

Q. Sure. You indicated that you had requested, from the Labeling Department, certain documents relating to the history -- the printing history of some aroclors, is that right?

A. Yes.

Q. As part of that task were you interested in the printing of a supplemental environmental label?

A. Not specifically.

Q. What were you specifically interested in?

A. In the overall history of all labels.

Q. And what do you mean by "history"?

A. My instructions were to gather the labeling history for a number of aroclor and

HARTOLDMON0042350

related products. That was the extent of my involvement.

Q. What were the products?

A. Some aroclors, as I recall, and therminol. Beyond that, I don't remember any other products.

Q. Which aroclors?

A. I recall the name aroclor. I don't recall other products beyond just the name aroclor.

Q. How did you go about gathering the labeling history of the aroclors and therminol?

A. There was a specific individual that I remember working primarily with and his name hasn't been mentioned yet.

Q. What is his name?

A. I don't remember.

Q. And how did you go about working with this individual to gather the labeling history of the aroclors -- a certain number of aroclors and the therminol?

A. I contacted him by phone, told him what I needed and the documents then were sent to me.

Q. What did you tell him you needed?

HARTOLDMON0042351

A. That I needed the labeling history of the aroclor products, as best I remember.

Q. Did you describe what you meant by "labeling history"?

A. Yes, the actual labels or copies of labels and the dates that those labels were incorporated.

Q. What do you mean by "the dates the labels were incorporated"?

A. The dates that they were used for the first time on the aroclor products.

Q. Did you ask for the distribution of the labels?

MR. ZIMMER: What do you mean by distribution?

MS. GRADY: To what Monsanto organization the labels were sent.

A. Could you repeat the question? I don't understand it.

Q. Sure. Did you ask for where the labels were shipped?

A. No.

Q. How do you remember that?

A. I wouldn't have any reason to ask that.

HARTOLDMON0042352

Q. Where was therminol produced?

MR. ZIMMER: When?

MS. GRADY: 1972.

A. To the best of my knowledge, it was in Anniston, Alabama, and Krummrich. Those were the only 2 places that I remember that the products were produced, the only 2 locations.

Q. When you just said "where the products were produced", what products were you referring?

A. The aroclor products.

MR. ZIMMER: I thought that your question asked about therminol. Was I mistaken?

Q. Yes, I asked where therminol was produced.

A. Therminol was an aroclor.

Q. Your best recollection is where products that contained aroclors were produced was at Anniston and Krummrich --

MR. ZIMMER: That's a different question entirely.

Q. -- is that right?

MR. ZIMMER: Let's make sure -- let's have that read back.

MS. GRADY: I'm going to object to

HARTOLDMON0042353

coaching the witness.

MR. ZIMMER: I'm not coaching the witness at all. You're throwing a different question at him implying that his answer was something that it wasn't.

A. Could you repeat the question?

MR. ZIMMER: It's going to be read back.

(The record was read as directed.)

A. Let me restate my answer the way I think I said it and that was that the aroclors were produced, to the best of my knowledge, at Anniston, Alabama, and the Krummrich plant.

Q. Where were products containing aroclors produced?

MR. ZIMMER: Which products?

MS. GRADY: Therminol.

A. I never thought about it. I assume the same plants.

Q. So your best information is that products containing aroclors were produced at Anniston and Krummrich, is that right?

MR. ZIMMER: Objection, no foundation. And, Mr. Pogue, don't assume anything, which is what this question is now

HARTOLDMON0042354

asking you to do.

MS. GRADY: I'm going to admonish Mr. Zimmer not to coach the witness.

MR. ZIMMER: My objection stands.

Q. Do you want the question read back?

A. No. I don't know. I never really thought about it. I had no reason to think about it.

Q. How did you know that the labels went on the aroclors that you were researching?

A. Because each product that was shipped out had labels and we wanted to be sure, we being Monsanto, that the history of safety instructions and so on were documented correctly.

Q. And how did your job responsibilities involve documenting the history of safety instructions?

A. I was the person who was asked to do the work, to put together the information. In turn, I passed it on.

Q. Who did you pass it along to?

A. It would have either had to have been to the Legal Department or directly to Bill Papageorge.

Q. Why do you say that?

HARTOLDMON0042355

A. Because I worked for Bill Papageorge but reported to the Legal Department for this work, for my day-to-day instructions.

Q. Who did you report to in the Legal Department?

A. Could I speak with Fritz for a second, please?

Q. Sure.

(Recess)

MR. ZIMMER: I'm going to let Mr. Pogue answer the question about who his contact in the Legal Department was but I do want to interpose a continuing objection to questions that relate to his employment as a legal assistant on grounds of privilege, in addition to work product. I'll let him answer as they relate to documents that have been produced here and reserve the objection for trial.

MS. GRADY: I don't understand that objection.

MR. ZIMMER: Well, he was working for the Legal Department during that period of time. I'm giving you leeway to ask him about what we did because it might pertain to documents that have been produced here, so I'm going to let him

HARTOLDMON0042356

tell you if he remembers who the attorney was but I just want to have a continuing objection to the entire line of questions because it's work product and/or attorney/client privilege.

MS. GRADY: How can you have a continuing -- I'm not trying to hassle you, I'm just trying to understand how you can have a continuing line of objections if you're going to let him answer because then I'm going to say that you have waived your privilege.

MR. ZIMMER: My point is, I'm trying to give you leeway is what I'm indicating because I think since we produced these documents, that you have some legitimate things to inquire to. I may move to exclude evidence at trial because of the fact that his work was for the Legal Department but I think that it's also periphery, it really doesn't matter.

MS. GRADY: Okay.

MR. ZIMMER: In other words, I'm not going to instruct him to answer each and every question that you're asking him now. I think it would be within my right to do so but since I think it's just tangential, I'm going to let you proceed.

HARTOLDMON0042357

MS. GRADY: I understand that.

Q. Do you recall the question that was on the table, Mr. Pogue?

A. Yes. The lawyer's name was Dick Stohr.

Q. Is that S-t-o-h-r?

A. I believe so, yes.

Q. Did you work with Mr. Papageorge in making sure that the history of safety information was documented?

A. I worked with him, yes. Most of my instructions, though, were from the Legal Department and not direct from Bill Papageorge.

Q. What assignments did you take from Mr. Papageorge?

MR. ZIMMER: Are we talking about the period during which he was working with the Legal Department or any other --

MS. GRADY: Well, he worked for -- I guess we're talking about the period when he worked for Mr. Papageorge and then I'm going to segment it into whether for all of that period he reported to the Legal Department or only part of it. That's just preamble to kind of set the stage here. Let me back up and re-pose the

HARTOLDMON0042358

question with that in mind.

Q. Did you work with Mr. Papageorge in making sure that the history of safety information was documented?

A. Not directly with him. It was directly with the Legal Department.

Q. How did you come to work for Mr. Papageorge?

A. I was reassigned from the Marketing Department to Mr. Papageorge's area.

Q. What was Mr. Papageorge's area?

A. He was the gentleman in charge of the environmental affairs for our group.

Q. And that group was what?

A. At that time it was called the Functional Fluids Group which comprised dielectric fluids, heat transfer fluids, hydraulic fluids and aircraft hydraulic fluids.

Q. Mr. Papageorge explained to you what your job would be?

A. Yes.

Q. What did he say?

A. I was to assist the Legal Department in the interface between the Legal Department and the Marketing Department to provide them with

HARTOLDMON0042359

whatever assistance they needed.

Q. Did he say anything else?

A. Other than the purpose of the work was for pending litigation on the PCB issue.

Q. And then after you went to work for Mr. Papageorge, one of your assignments was to document the history of safety information provided to customers concerning certain aroclors and therminols, is that correct?

A. That's correct.

Q. I may have asked you this and if I have, I apologize; do you recall who gave you that assignment?

A. No, I don't.

Q. Was it Mr. Papageorge?

A. I don't recall.

Q. Other than asking some gentleman, whose name has not yet arisen, for information concerning the labeling history of these certain aroclors and therminol, did you undertake any other activities to document the safety information provided to customers?

A. Not that I recall.

Q. When you received the information from this gentleman, did you write up a report?

HARTOLDMON0042360

A. No.
Q. What did you do with the information?
A. It was compiled and forwarded on, either to Mr. Papageorge or to the Legal Department.
Q. What do you mean by "compiled"?
A. I recall gathering a number of documents together to send it forward as a complete package rather than just piecemeal.
Q. What were the documents?
A. I recall copies of labels, and labels.
Q. Do you recall print orders?
A. No.
Q. Do you recall information that indicated when the labels were printed?
A. Yes.
Q. What form did that information take?
A. I remember copies of labels with dates on the copy.
Q. And what did you understand the date on the copy to be?
A. The date that that label was first used on the product when it was shipped to the client.

HARTOLDMON0042361

Q. Was the date handwritten?

A. Yes.

Q. Did you have an understanding of how the information, indicating the first print date of the label, was generated?

A. No.

Q. You relied on this information to report to your superiors on when the label was first printed, is that right?

A. That's correct.

Q. Could you look at the second page of Exhibit 1160. In the middle of the page there is a list of numbers with an arrow pointing to the word "aroclors", do you see that?

A. Yes.

Q. Were those the aroclors that you were inquiring about in the spring of 1972?

A. I don't recall.

Q. Did you have any conversations with Mr. Papageorge about the information that you gathered concerning labeling history?

A. I don't recall.

Q. Did you put a cover memo of any sort on the labeling history information you gathered?

A. I don't recall.

HARTOLDMON0042362

MS. GRADY: Could we go off the record for just a minute?

MR. ZIMMER: Sure.

(Recess)

Q. Mr. Pogue, I found the name I was looking for. Mr. Sido, who was head of the Labeling Department, testified during his deposition on page 56, line 6 through 11:

"Q. During the time period from about 1968 to about 1972, who were the employees of the labeling and products registration section?

A. Mr. Litteken, L-i-t-t-e-k-e-n, Virginia Koenig and Virginia Bogner and myself, Mr. Sido."

Does the name Litteken sound familiar to you?

A. No.

Q. Was the person that you recall talking to in the labeling section at Monsanto?

A. I don't recall. I vaguely recall the name Sido but he, to the best of my knowledge, wasn't the prime contact that I had. There was another gentleman that used to physically bring information to me sometimes and it was not Mr.

HARTOLDMON0042363

Sido, to the best of my knowledge.

Q. Other than this assignment that we've been discussing, documenting the labeling history for the certain aroclors and therminol, in any of your other job responsibilities at Monsanto, did you have -- did you request information from the Labeling Department about the labeling history of any product?

A. No.

Q. Let me get you to look at the fourth page of Exhibit 1160 which purports to be a label with some handwriting down at the bottom, "copy to Don Pogue 3-16-72", which Mr. Sido has identified. Is this the form of the information that you recall receiving when you were gathering information concerning the labeling history?

A. Yes.

Q. And could you look at the sixth page which is TRAN 088263. Is that the form of information you recall receiving?

A. Yes.

Q. And could you look at the eighth page which is TRAN 088265. Is that the form of information you recall receiving?

A. Yes.

HARTOLDMON0042364

Q. Do you, in fact, recall receiving these labels that appear at TRAN 088261, 263 and 265?

A. The only one that I remember seeing is 88265.

Q. And is there something that triggers that particular memory?

A. Yes, I thought that three cents a pound was a hell of a deal.

Q. And you're referring to the language on the label that says, "Used polychlorinated biphenyl fluids may be returned freight prepaid for proper incineration at three cents per pound."?

A. Yes.

Q. Did you determine, as part of your assignment concerning the labeling history, that the waste disposal label at TRAN 088265 had been used on therminol containers?

A. No.

Q. Was that part of your assignment, to determine whether the waste disposal label was used on therminol containers?

A. Could you repeat the question?

Q. Was it part of your assignment to

HARTOLDMON0042365

determine whether the waste disposal label, which is shown at TRAN 088265, was used on therminol containers?

A. Not specifically. I was the intermediary virtually passing information on and whether it was used specifically for therminol, that was not my responsibility. I was told to be sure that I got all the information that was available on the labeling and I passed it on and didn't really pay any attention to which specific products it involved and so on. I will mention that at the time, on waste disposal, this 265, I recall that the primary concern that I remember was for the dielectric fluids for incineration.

Q. Did you keep copies of the materials that you gathered and then passed along to either Mr. Papageorge or someone in the Legal Department in connection with the assignment you had concerning the labeling history?

A. Not that I remember.

Q. Did you ever have any discussions, after you passed the materials along, with anyone in the Legal Department about the results of your fact gathering?

A. I don't recall.

HARTOLDMON0042366

Q. Do you recognize the label on 088259 which is the second page of 1160 up in the right hand corner?

A. Yes.

Q. What is that?

A. Could you repeat the question?

Q. What is that label?

A. This label says, "This product contains polychlorinated byphenyls."

Q. What do you recognize that label to be?

A. A label that was prepared to alert clients that there was a concern over PCB's being found in the environment.

Q. Did you call this particular label, which has a number down at the bottom, 1020/53, did you call that particular label by any name?

A. It was an environmental alert label.

Q. In this litigation we call it, fairly consistently, the supplemental environmental label; is that a phrase you're familiar with at all?

A. No.

Q. Did you gather information concerning the history of this particular label as part of

HARTOLDMON0042367

your assignment?

A. Not specifically that I remember.

Q. But generally, as part of your assignment to do a labeling history for certain aroclors and therminol, did you seek information about the environmental label you see there on page 088259?

A. Yes.

Q. Let me show you another document, Mr. Pogue. This I've marked as 1159 but it is being marked for the first time in this deposition. I will describe it, for the record, as a one-page document bearing Bates number TRAN 088257 which is handwritten notes. I'd ask you to read it. Mr. Pogue, look at that section that says, "PCB label, 1020/53, two inches by three and a half inches, printed May 11, 1970. How many? Where shipped? When?" Does that spur any recollections you have about conversations with anyone concerning the labeling history that was your assignment?

A. No.

Q. Does anything on this page spur any recollections about conversations you had with anyone concerning your assignment?

HARTOLDMON0042368

A. No.

Q. Do you recognize this number down at the bottom, 811.01 - 245.11/53?

A. No.

Q. Were you asked to get shipping destinations for the therminol label?

MR. ZIMMER: Asked and answered.

A. No.

Q. Did you get such shipping destinations?

A. Not to my knowledge.

Q. And when you say "not to my knowledge", what does that mean?

A. I don't recall.

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

A. Correct.

Q. Let me show you another document we're going to mark here today as Exhibit 1158. It doesn't have a Bates number. It has a number down at the bottom, number 235, and up at the top it says "Privileged Document Form". Mr. Pogue, this is a document generated by Monsanto's counsel, Bronson, Bronson & McKinnon, that is an inventory of the documents withheld from

HARTOLDMON0042369

production because of privilege and I'd ask you to read this document and then I'm going to ask you some questions about it. The "General Summary of Contents" of this document is "Memo from subordinate of in-house counsel describing advice of in-house counsel regarding labeling of PCB products" and you're identified as the author of the document and the date of the document is listed as 3-10-72. Does this document refresh your recollection about any other assignments you had concerning labeling history?

A. No.

Q. Who is A. Leisy, L-e-i-s-y?

A. I believe his name is Art. I don't know who he is now. I don't remember what he did.

Q. Was he in the Legal Department?

A. I don't recall.

Q. R.A. Stohr is Dick Stohr, is that right?

A. Yes.

Q. Who is R.B. McCutchan?

A. He's the gentleman that I recall having worked most closely with on labeling and his first name is Bob.

HARTOLDMON0042370

Q. So that's who you recall having the conversation with?

A. Yes.

Q. So you, in fact, asked Mr. McCutchan to provide information concerning the labeling history of certain aroclors and therminol?

A. That's correct.

Q. Where did Mr. McCutchan work?

A. I think he worked at the Krummrich plant.

Q. And what was his position at Krummrich?

A. I don't recall.

Q. Did you talk to anyone at Anniston?

A. I don't recall.

Q. Did you talk to anyone at the Queeny plant?

A. I don't recall.

Q. Now that we've identified Mr. McCutchan's name, does it refresh your recollection about anymore details of the conversation you had with him concerning your assignment to get the labeling history of certain aroclors and therminol?

A. I think, as I said earlier, that the

HARTOLDMON0042371

-- I remember going to Mr. McCutchan and perhaps a few others to provide the labels and the copies of the labels and that's about the extent of what I remember.

Q. Did you contact anyone at the Anniston plant to get copies of labels?

A. I don't recall.

Q. Was Mr. McCutchan the gentleman that you recall bringing you certain documents?

A. Yes.

Q. And did he bring you documents on more than one occasion?

A. Yes, to the best of my knowledge.

Q. Did all those documents relate to this labeling assignment you had?

A. Yes.

Q. Do you recall if he brought you documents from Monsanto's Labeling Department?

A. No, I don't recall.

Q. So in carrying out your assignment concerning the documentation of safety information given to customers concerning certain of the aroclors and therminol, your best recollection is that it took awhile to gather the information concerning that documentation, is

HARTOLDMON0042372

that right?

A. Yes.

Q. And as part of that gathering process, your best recollection is Mr. McCutchan brought you documents on more than one occasion, is that right?

A. Yes.

Q. Who's P. Gann?

A. I don't recall.

Q. Do you recall this memo that's described here, and that's a yes or no question?

A. No.

MS. GRADY: Out of deference to my colleague here.

MR. ZIMMER: Thank you.

Q. All right. Let me ask you about a couple more documents that were subsequently produced. This document was marked in a prior deposition as Exhibit 840 and I just have the one copy. Exhibit 840 is a one-page document bearing Bates number TRAN 088256. Is that your printing on Exhibit 840, Mr. Pogue?

A. No.

Q. Have you ever seen this document before?

HARTOLDMON0042373

A. No.

Q. I'm going to get our reporter to mark the next exhibit as Exhibit 1161.

(Exhibit Number 1161 was marked for identification.)

Q. For the record, I'll describe Exhibit 1161 as a one-page document bearing the Bates number TRAN 088350. It appears to be the text of the supplemental environmental label with some handwritten notations. Mr. Pogue, is that your printing on Exhibit 1161?

A. No.

Q. Have you ever seen Exhibit 1161 before?

A. No, not to my knowledge.

Q. Your best recollection is that you don't recall seeing it?

A. That's correct.

Q. Our next exhibit is one that was marked in a previous deposition as Exhibit 836. Exhibit 836 is a four-page exhibit bearing Bates TRAN 088529 through 088532. Do you recall Exhibit 836?

A. Vaguely.

Q. What do you recall about it?

HARTOLDMON0042374

A. It just brings back a memory that I think I recall having seen this.

Q. And do you recall having any communications about a development product with which you were associated with Bob Sido?

A. This would have been roughly the time that I was in Commercial Development prior to being assigned to the legal group, and MCS 1109 would have been either a carbonless paper fluid or concerned with the turbine market.

Q. One of the possibilities is that MCS 1109 was the gas turbine fluid you were working on in your job as a Commercial Development Analyst, is that correct?

MR. ZIMMER: Can we have that read back? I think it assumes facts not in evidence and misstates testimony from his prior deposition.

MS. GRADY: Okay. I'll just strike that question and ask you this.

Q. This is from your prior deposition, Mr. Pogue, and I'm reading from page 23, line 18:

"Q. So I would be accurate, and please tell me if I'm not, that you were working on the replacement for a lubricant for gas

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turbines that did not include PCB's in the beginning part of 1971, is that correct?

A. To the best of my knowledge, yes."

With that prior testimony in mind, my question is, one of the possibilities is that MCS 1109 was the PCB free replacement for a lubricant for gas turbines that you were working on, is that correct?

A. No.

MR. ZIMMER: I'll add, just to help clarify, I think there is further testimony that corrects that passage about gas turbines and refines it to mean steam turbines. I don't want to dig through it or what not. You can ask him about that and see what he recalls.

MS. GRADY: I've read that testimony.

Q. And I don't mean to have confusion in the record. Mr. Pogue, you previously testified that your commercial development work was with turbines that burned gas to produce steam or electricity, is that right?

A. Correct.

Q. What do you think MCS 1109 was?

MR. ZIMMER: Calls for speculation.

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You can answer if you know.

MS. GRADY: I don't want a speculation objection on the record.

Q. You indicated to me that MCS 1109 could be one of two things, is that right?

A. Yes.

Q. What are the two things it could be?

A. Either carbonless paper product or a fluid for the turbine market.

Q. What was the fluid for the turbine market?

A. Hydraulic fluid.

Q. And what do you mean by turbine market?

A. The turbines that were being produced by General Electric and a few other firms that were currently using hydraulic oil. This was to be a safe fire resistant fluid for that market.

Q. This safe fire resistant fluid that you were working with that had a potential application for turbines produced by GE, did that product have PCB's in it?

A. To the best of my knowledge, the product that was being used at that time was oil and we were trying to replace the flammable oil

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with a fire resistant fluid.

Q. Is one of the possibilities here, focusing on the possibility that MCS 1109 was a hydraulic fluid for the turbine market, is that the product that you were involved with the development of and it was then turned over to marketing and was named Turbinol?

MR. ZIMMER: I'm concerned about all the possibilities that we're dealing with here. The question calls for speculation and also is compound. If you know something about the fluids she's asking about, you should tell her but we shouldn't be dealing in the realm of possibilities. There are endless possibilities.

MS. GRADY: No, we're only dealing with two.

MR. ZIMMER: Well, your question was about threefold which --

MS. GRADY: Actually this one only deals with one of those. Mr. Pogue has testified that MCS 1109, to the best of his recollection, was either a carbonless carbon paper fluid or was a hydraulic fluid for the turbine market. I'm asking him now about that latter, hydraulic fluid for the turbine market.

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Q. The question is, was the hydraulic fluid for the turbine market that you worked on the development for, when it was turned over to marketing, was that the product that was called Turbinol?

MR. ZIMMER: Turbinol what? Is there a number involved or just Turbinol generic?

MS. GRADY: Turbinol.

A. Yes.

Q. So one of the possibilities is that MCS 1109 was Turbinol -- later became Turbinol?

MR. ZIMMER: Calls for speculation.

A. Yes.

Q. What do you recall about working on the labeling of MCS 1109?

A. I don't recall anything.

Q. Did you work on the labeling -- on labeling issues for the carbonless paper fluid that you had some role in developing?

A. No.

Q. Did you work on labeling for the hydraulic fluid for the turbine market that you played some role in developing?

A. No.

Q. Were labeling issues related to the

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hydraulic fluid for the turbine market handled by someone else with whom you worked?

A. Yes.

Q. Who was that?

A. I don't know.

Q. What form of aroclor was in the hydraulic fluid for the turbine market that, when it was turned over to marketing, was called Turbinol?

A. I don't recall.

Q. You understood me to be asking, was it 1242 or --

A. Yes.

Q. Do you know who J.R. Fallon is?

A. Yes.

Q. Who's that?

A. Jack Fallon.

Q. What position did he have?

A. He was the --

Q. In 1971.

A. -- product manager for the -- he was a project manager in the functional fluids area.

Q. And what products fell under his domain?

A. The pydrauls, therminols.

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Q. Was he responsible for the hydraulic fluid for the turbine market that you were working on?

A. Not to my knowledge.

Q. He didn't work with Mr. Fallon on that project at all?

A. Did I work with him?

Q. Yes.

A. No.

Q. Was there any reporting relationship between Mr. Fallon and yourself when you were acting as a Commercial Development Analyst?

A. No.

Q. Who did you work with when you were a Commercial Development Analyst when you were working on this hydraulic fluid for the turbine market?

A. As best I remember, it was Cumming Paton.

MR. ZIMMER: P-a-t-o-n. C-u-m-m-i-n-g.

Q. Who was G.W. Kasten?

A. I think it's George Kasten and I don't recall who he was.

Q. Was the carbonless paper fluid

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product that you worked on when you were a Commercial Development Analyst, was that a formulation that was already marketed under a different name?

A. Under a different name from what?

Q. From what was being proposed.

A. I don't understand the question.

Q. Were you familiar with a practice at Monsanto that the same chemical formulation would be marketed under different names to different markets?

A. Yes.

Q. Were you dealing with that instance when you were working on developing a market for a carbonless paper fluid?

A. Yes.

Q. Where the same formulation was already marketed under a different name?

A. It wouldn't have been necessarily the same formulation. It would have been, perhaps, the same ingredient in a number of different products with other raw materials used in conjunction with that same ingredient.

Q. Right, I would classify that a different formulation. I'm keying off of a

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sentence here in this memo that says, "When you use different names for the same chemical composition, the options are:" and then it lists 2 options. This memo is Exhibit 836.

A. I see.

Q. So with that in mind, was the carbonless paper fluid, that you were working to develop a new market for, a formulation that already was marketed by Monsanto under a different name?

A. No.

Q. What about the hydraulic fluid for the turbine market, was that a formulation that was already marketed by Monsanto under a different name to a different market?

A. Not to my knowledge.

Q. Your best recollection is that the hydraulic fluid that you were working to develop a market for was a new formulation?

A. That's correct.

Q. After you left your work for the Legal Department, did you have any further contact with any issues related to the history of information provided to customers concerning PCB's?

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A. Yes.
Q. What was that?
A. Prior deposition on PCB litigation.
Q. Are you referring to the Outboard Marine case?
A. Yes.
Q. Other than -- okay. Let me make sure I understand this. After you worked for the Legal Department, you went and worked on a study that involved reclaiming pydrauls, is that right?
A. No.
Q. I have the chronology screwed up?
A. Yes.
Q. Okay. I was trying to shortcut to try to get an understanding of what you just said but I won't do that. You had another assignment after you left the Legal Department concerning the history of information provided to customers concerning PCB's, is that right?
A. No.
Q. You did work in that area, is that right?
A. Yes.
Q. And that work was what?
A. That work on the labeling was done at

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the time I was working with the Legal Department.

Q. And what was that other work, other than the work we've been discussing related to some aroclors and therminol?

A. Work in general or work relating specifically to labeling?

Q. Work specifically related to the information provided to customers about PCB's?

A. None that I'm aware of.

MR. ZIMMER: Let's go off the record.

(Discussion off the record)

Q. You had an assignment when you worked for the Legal Department in late 1971 to mid 1972 concerning the documentation of information provided by Monsanto to customers concerning PCB's, is that right?

A. Could you repeat the question?

Q. Sure. During the time that you worked for Mr. Papageorge but reported to someone in the Legal Department, in late 1971 to mid 1972, you had an assignment that related to the information provided to Monsanto's customers concerning PCB's, is that right?

A. Correct.

Q. Other than that assignment, did you

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do any other work at Monsanto related to information provided by Monsanto to its customers concerning PCB's?

A. Not that I recall.

MS. GRADY: Let's go off the record.

(Recess)

MS. GRADY: I don't have any further questions. Thank you very much.

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COMES NOW THE WITNESS, DONALD POGUE, and having read the foregoing transcript of the deposition taken on the 20th of March, 1993, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_____

DONALD POGUE

Subscribed and sworn to me before this _____ day of _____, 1993.

My commission expires: _____

_____

Notary Public

js

(Transwestern vs. Monsanto)

HARTOLDMON0042387

COMES NOW THE WITNESS, DONALD POGUE, and having read the foregoing transcript of the deposition taken on the 20th of March, 1993, acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

Donald R. Pogue

DONALD POGUE

Subscribed and sworn to me before this 12th day of April, 1993.

My commission expires: July 27, 1996

Helen A. Byrd

Notary Public

HELEN A. BYRD
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF ST. LOUIS
MY COMMISSION EXPIRES JULY 27, 1996

js

(Transwestern vs. Monsanto)

HARTOLDMON0042388

State of Missouri)
)
County of St. Louis)

I, Julie Mitchell, a Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the civil cause now pending and undetermined in the Superior Court, for the State of California, for the County of Los Angeles, to be used in the trial of said cause in said court, I was attended at the Adam's Mark Hotel, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 20th day of March, 1993.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand and caused to be transcribed into typewriting, and that the

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foregoing pages correctly set forth the testimony of the aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this 22 day of March, 1993.

My commission expires March 22, 1996.

Julie A. Mitchell

Notary Public in and for the State of Missouri

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