SUPERIOR COURT
FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY)
)
PLAINTIFF,)
)
vs. NO. BC026959
)
MONSANTO COMPANY and)
DOES 1 through 200 inclusive)
)
DEFENDANTS.)

DEPOSITION OF DONALD POGUE
July 23, 1992

GORE REPORTING COMPANY
100 North Broadway St. Louis, Missouri
1-800-878-6750 314-241-6750

SUPERIOR COURT

FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY

PLAINTIFF,

vs. NO. BC 026959

MONSANTO COMPANY and
DOES 1 through 200 inclusive

DEFENDANTS.

Deposition of DONALD POGUE, taken on behalf of the Plaintiff at the offices of Bryan, Cave, McPheeters & McRoberts, One Metropolitan Center, in the City of St. Louis, State of Missouri, on the 23rd day of July, 1992 before Vickie L. Huelsman, Registered Professional Reporter and Notary Public.

HARTOLDMON0042125

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

Ms. Dana K. Welch
Shearman & Sterling
725 South Figueroa Street
Los Angeles, California 90017

FOR THE DEFENDANT:

Mr. Donald F. Zimmer, Jr.
Bronson, Bronson & McKinnon
505 Montgomery Street
San Francisco, California 94111

- - - - - - - - -

I N D E X

	PAGE	LINE
Examination by MS. WELCH	8	10

EXHIBITS	PAGE	LINE
Pogue Depo Exhibit 522 (Letter to Jim Galligan from D.R. Pogue 4-24-67 TRAN 056844)	50	16
Pogue Depo Exhibit 523 (Letter to James Armstrong from Dr. Kelly 4-9-68 TRAN 058123 through TRAN 058124)	55	5
Pogue Depo Exhibit 524 (Letter to Dr. Kelly from D.R. Pogue 5-3-68 TRAN 058105)	58	7
Pogue Depo Exhibit 525	59	17

Redacted

HARTOLDMON0042127

Pogue Depo Exhibit 526 66 10
(Letter to F.H. Dierker from
D.R. Pogue 3-27-69 TRAN 058550
through TRAN 058553)

Pogue Depo Exhibit 527 73 8
(Letter to a distribution list from
N.T. Johnson 2-16-70 TRAN 085833
through TRAN 085850)

Pogue Depo Exhibit 528 97 2
(Letter to Scott Tucker from D.R.
Pogue 4-2-70 0001498)

Pogue Depo Exhibit 529 103 20
(Letter to D.R. Pogue from E.S.
Tucker 5-11-70 0001631 to 1632)

Pogue Depo Exhibit 530 106 1
(Call report to N.T. Johnson from
Carl Clay 5-14-70 TRAN 004324 to
TRAN 004327)

Pogue Depo Exhibit 531 109 6
(Call report to N.T. Johnson from

HARTOLDMON0042128

Carl Clay 5-28 TRAN 004328)

Pogue Depo Exhibit 532 111 8
(Letter to J.M. Simpson from
Carl Clay 7-8-70 TRAN 004329)

Pogue Depo Exhibit 533 116 10
(Letter with attachments to C.L.
Curtis from D.R. Pogue 8-31-70
SCAL 000155 to SCAL 000178)

Pogue Depo Exhibit 534 121 17
(Letter to A. DeLeon from D.R.
Pogue 8-26-70 SCAL 000145)

Pogue Depo Exhibit 535 124 17
(Letter to J.N. Haggart from
D.R. Pogue 1-5-72 TRAN 002566)

Pogue Depo Exhibit 536 126 23
(Letter to a distribution list
from D.R. Pogue 2-19-71 0002038
to 0002039)

HARTOLDMON0042129

Pogue Depo Exhibit 537 (Letter to a distribution list from M.F. Baber 4-8-71 TRAN 063374 to TRAN 063379)	131	18	
Pogue Depo Exhibit 538 (Letter to a distribution list from C. Paton 10-14-71 TRAN 003313 to TRAN 003316)	134	15	

HARTOLDMON0042130

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. WELCH:**

Q: Good afternoon, Mr. Pogue. My name is Dana Welch, and I represent Transwestern Pipeline Company in this litigation. Are you represented by an attorney here today?

A: Yes.

Q: And who is that attorney?

A: Mr. Zimmer.

Q: Okay. Have you ever been deposed before?

A: Yes.

Q: In what case?

A: Monsanto regarding -- what was it -- the Outboard Marine.

Q: Do you remember what year that was, approximately?

A: Early '80s, '81, I think.

Q: Did you ever provide trial testimony in that case?

A: No.

Q: Well, some of what I say to you might sound repetitious, but I'm going to tell you a little bit about the ground rules about the deposition. First of all, you know that you're under oath and that means that just as if you were in a courtroom under oath, you're obligated to tell the truth and give me your best recollection of the events that I ask about.

When I ask questions, I never intend to confuse or obfuscate the issue. If you don't understand anything that I'm asking, please ask me to clarify or restate it. I'll be happy to do so. If you answer a question, I'm going to assume that you understood the question and your answer will stand as it is.

For the sake of the court

reporter, we really need to wait till each other has finished questions and answers because she can't get down a simultaneous rendition of statements.

And, lastly, you will have a chance after the transcript is prepared to review it, and if you want to make any changes to it at all, whether they be substantive or small, you're certainly welcome to do so. But at the time of trial, I or another attorney for Transwestern Pipe Company, may make comments upon those changes. Okay? Is that all understood?

A: Yes.

Q: The other thing is that everything has to be audible. Otherwise, it doesn't show up in the transcript. Okay? Mr. Pogue, what's your educational background?

A: Chemical engineering with business.

Q: Do you have a B.A. or B.S. in chemical engineering?

A: B.S.

Q: From where?

A: From University of Missouri, Rolla.

Q: And what year did you get that B.S.?

A: 1962.

Q: Did you do any postgraduate work?

A: Postgraduate in business.

Q: Did you obtain an M.B.A.?

A: No. I didn't finished my thesis.

Q: And where did you do your postgraduate work?

A: George Washington University.

Q: When did you first come to work at Monsanto?

A: In mid '65.

Q: In what position?

A: Sales representative.

Q: Did you sell certain products?

A: Yes.

Q: And what were the products you sold at that point?

A: Functional fluids.

Q: What products are considered

HARTOLDMON0042134

functional fluids or were in 1965?

A: The heat transfer, hydraulic and dielectric fluids.

Q: So the heat transfer would be the Therminol?

A: Correct.

Q: And the hydraulic would be the Pydrauls?

A: Correct.

Q: And the dielectrics would include a range of different products?

A: Yes.

Q: And did you sell Turbinol or MCS 153 during this period as a sales representative?

A: No.

Q: Any other products that you sold during this period?

A: Not that I recall.

Q: Who did you report to?

A: Initially?

Q: In 1965.

A: 1965, I reported to Frank Nemits N-e-m-i-t-s.

Q: And how long did you stay as a

sales representative in functional fluids?

A: Until 1968.

Q: Did you cover all parts of the country?

A: No.

Q: Okay. What was your region?

A: The western region.

Q: What happened in 1968?

A: I was promoted.

Q: To?

A: To a staff position in functional fluids in St. Louis.

Q: And what was that position?

A: I think my title was sales analyst.

Q: What were your job responsibilities as sales analyst?

A: In that position, it was to directly advise the sales director on trends, sales history, projected sales, etcetera.

Q: Who is the sales director?

A: Don Olson.

Q: Any other job responsibilities you had --

A: At --

Q: -- as a sales analyst.

A: I did perform a study on the dielectric fluids market.

Q: Were you back here in St. Louis?

A: Yes.

Q: How long did you stay as a sales analyst?

A: For roughly a year.

Q: Till 1970?

A: That's approximate.

Q: And what products did you work on during that period when you were a sales analyst?

A: None.

Q: Or what products did you look at in the functional fluids group?

A: Basically just the general product line.

Q: Did that include Turbinol 153 or MCS 153 at that point?

A: No.

MR. ZIMMER: Is the question did the product line include that or did he work on it?

MS. WELCH: Did he work on it.

MR. ZIMMER: I think -- is that how you understood the question?

A: Yes.

MS. WELCH: Okay.

MR. ZIMMER: I just wanted to make sure.

MS. WELCH: Thanks for helping me clarify.

Q: You didn't work on Turbinol 153 or MCS 153 at that point?

A: No.

Q: Okay. Who did you work with?

A: In Monsanto?

Q: Yes.

A: Names?

Q: Yes.

A: Don Olson, Howard Bergen, Norm Johnson, Paul Benignus, Don Roush, Dave Hall, Jim Roder, Larry Bradford, Dr. Herber, Lou Stark, Dr. Richards. Those are the ones I recall from that group.

Q: Did you have any contact with customers during this period as a sales analyst?

A: Yes.

Q: Why did you contact customers?

A: The study that I was doing required contact with our clients.

Q: So these were dielectric customers?

A: Yes.

Q: Okay. Did you have any contact with any other customers besides dielectric customers?

A: Not that I recall during that period of time.

Q: During this period of time, was Monsanto developing replacement products for the Aroclor line?

MR. ZIMMER: What do you mean by "the Aroclor line"?

MS. WELCH: Products containing Aroclor.

MR. ZIMMER: That's a pretty broad group.

MS. WELCH: In the functional fluids group, the products that you worked with.

A: Not to my knowledge.

Q: Okay. What happened in 1970 with your job.

MR. ZIMMER: Are we that far now? '60 --

A: To '70.

MS. WELCH: He said he worked until '70; is that right?

A: '70, right. Correct.

MR. ZIMMER: Two years as a sales analyst, '68 to '70?

A: Not quite, I don't think. It was probably about a year, year and a half, maybe. That would have put me up to probably late '69, early '70, as best I could recall.

MS. WELCH: And what was your job at that point?

A: At that point in time, I went into a group called the commercial development group.

Q: And what was your job title?

A: Probably commercial development specialist in that category.

Q: What were your job responsibilities?

A: To look for new business opportunities --

(Discussion off the Record)

MS. WELCH: Why don't you read back where he was?

(Requested portion of the record was read by reporter)

MS. WELCH: New business opportunities for what?

A: For Monsanto functional fluids group.

Q: So it was the same functional fluids group, right?

A: Yes.

Q: And what exactly did that entail? Did it entail looking for new customers or new products?

A: Looking for new markets.

Q: Who did you report to?

A: Reported functionally to Mike Baeber administratively to Don Johnson -- or to Don Olson.

Q: And at this point in time, did the products that you worked on or for include Turbinols or MCS 153?

A: Not to my knowledge.

Q: Did you ever have in any of your job responsibilities at Monsanto any responsibility for work on or have contact with MCS 153 or Turbinol?

A: Yes.

Q: And when was that?

A: As best as I recall, it would have been in late '70, early '71, in that period.

Q: Okay. Well, let's hold that aside a minute. I was just curious.

Okay. During this time period, which was as a commercial -- first of all, how long did you stay as a commercial development specialist?

A: For approximately a year and a half.

Q: What did you do then?

A: I was product supervisor for the carbonless paper market.

Q: Okay. So did you have contact with Turbinol 153 or MCS 153 during the time you were a commercial development specialist at all?

A: I believe it was during the latter stages of the commercial development --

Q: Okay. What --

A: -- position.

Q: What was the nature of your contact? Did you sell the product or did you look for new markets? Well, first, did you sell the product?

A: No.

Q: Did you look for new markets for the product?

A: For Turbinol?

Q: Yes.

A: Looked for the applications, the markets for the product.

Q: And what kind of work did that involve?

A: Contacting prospective clients.

Q: Anything else?

A: Working with the research group to insure that the market requirements were met by the product.

Q: And was that with Dr. Richard and Lou Stark?

A: Yes.

Q: Anybody else?

A: Dr. Herber.

Q: Okay. During this period of time when you started or when you worked with -- if I use the term Turbinol 153 or MCS 153, you'll understand that they're the same product?

A: Not really.

Q: Okay. What was it called when you worked on it? Was it called Turbinol 153?

A: I don't recall.

Q: Okay. I'm going to call it Turbinol 153, and you understand that I'm talking about the lubricant for gas turbines?

A: Yes.

Q: Okay. Did any of your job responsibilities entail developing an alternate product to Turbinol 153?

A: Not that I recall.

Q: So you don't recall any development during that time period of a product that -- a product for gas turbines

that did not include the Aroclor?

MR. ZIMMER: You mischaracterized his testimony. He said he doesn't recall working on it.

MS. WELCH: Okay.

Q: Do you recall working on a replacement product for Turbinol 153 that did not include Aroclor?

A: I don't recall.

Q: Okay. Do you know if Monsanto was generally working on a replacement product for Turbinol 153?

A: I don't recall what Turbinol 153 was.

Q: How about a replacement product for gas -- or product for gas turbines that did not include PCBs? Did you work on that at that time period?

A: Yes.

Q: Okay. Do you remember what that product was called?

A: No, I don't. There were so many product numbers that were being used that the number just doesn't mean anything to me.

Q: Okay. And what time period exactly was this in?

A: This would have been probably in the '71, 1971 period.

Q: How long did you stay? You said you stayed in the commercial development group until '70, '71?

A: Correct.

Q: Okay. When did you leave there?

A: Let's see. I was in the commercial -- from the commercial development function, I then worked for a short time in the carbonless paper area.

Q: Okay. When exactly did you join the carbonless paper area, to the best of your recollection?

A: Sometime in mid to late 1971.

Q: So would I be accurate, and please tell me if I'm not, that you were working on the replacement for a lubricant for gas turbines that did not include PCBs in the beginning part of 1971; is that correct?

A: To the best of my knowledge, yes.

Q: And did you work with the individuals we talked about before; namely, Lou Stark and Dr. Richard on this product?

A: Yes.

Q: Did you have an understanding of why Monsanto was developing a product for gas turbines that did not include PCBs at this time?

A: Yes.

Q: And can you tell me what that understanding is?

A: I don't recall.

Q: Okay. Did it have something to do with a concern that Monsanto had about environmental dangers from PCBs?

A: Not to my knowledge.

Q: Did it have something to do with worries about the toxicity of PCBs?

A: Not to my knowledge.

Q: Did it have something to do with a public perception that PCBs were dangerous?

A: As I recall, the -- one of the initiatives was the long-term concern, and

we wanted to be a responsive supplier and have a product that would be able to perform that was not a PCB product.

Q: Okay. What long-term concern are you referring to?

A: The environmental aspects.

Q: Do you recall if this product was a phosphate ester product?

A: Yes, it was.

Q: Do you know what I mean when I say straight phosphate ester?

A: Yes.

Q: Okay. So it was a phosphate ester that included no other -- or didn't include PCBs, is that correct, the product that you worked on?

A: Yes. As I recall.

Q: And what were your responsibilities in terms of the development of this product?

A: I had primary market responsibility.

Q: What does that mean?

A: That means to do whatever was necessary from the marketing department to

promote the product.

Q: And what did that include?

A: That included contacting clients and the specific market was in the steam turbine market, which is the market we were after.

Q: Did the market also include the gas turbines?

A: No.

Q: Why did you isolate out the steam turbine market as opposed to the gas turbine market?

MR. ZIMMER: Assumes facts not in evidence.

MS. WELCH: You can go ahead and answer.

A: That was considered to be a large potential market for Monsanto.

Q: Had there been any sales of PCB-containing lubricants to the steam turbine market up to 1971?

A: Not to my knowledge.

Q: So this was a brand new market?

A: Yes.

Q: If I asked you whether the

HARTOLDMON0042149

product replacement you were looking for, the new product you were looking at, was called T 153A, would that refresh your recollection?

A: No.

Q: How about MCS 1122?

A: No.

Q: How about MCS 1223?

A: No.

Q: Okay. Which clients did you contact?

A: My personal contacts were with G.E. in Schenectady, G.E. in Albany, and those are the only ones I remember.

Q: Okay. Were these OEMs or ultimate consumers?

A: These would have been OEMs. They were the manufacturers of the turbines.

Q: Do you know if G.E. in Schenectady, G.E. in Albany also produced gas turbines?

A: No, I don't.

Q: Was their only contact with them in relationship to steam turbines?

A: Yes.

MS. WELCH: Okay. Can we go off the record for a minute?

MR. ZIMMER: Sure.

(Discussion off the Record)

MS. WELCH: Let's go back on the record.

Q: Did you have some comment you wanted to make, Mr. Pogue?

A: Yes. Let me see if I can clarify something to the best of my knowledge which is confusing. My responsibility was to develop the turbine market with folks like G.E. for, again, to the best of my knowledge, a gas turbine, but those turbines that were manufactured by G.E. are altogether different than a natural gas turbine that's used for like Texas Eastern Transmission, and this was a market that -- these particular turbines were used to generate electricity, steam, so, you know, they're not the same, but both could be called gas turbines but they're just different markets.

So when you asked me earlier a question about was I aware of efforts on

the part of Monsanto to develop a non-PCB fluid for the gas turbine market, and I think I said yes, it was for that market.

Q: It was for gas turbines to be used in applications of generation of steam?

A: Correct.

Q: Is that your testimony?

A: And electricity.

Q: And electricity and as opposed to be used in conjunction with a gas pipeline; is that correct?

A: As best as I can recall, that's correct.

MR. ZIMMER: That's probably my fault for not asking for a definition of gas turbine.

MS. WELCH: This is news to all of us.

MR. ZIMMER: So I guess, just for sake of clarity, what we probably will have to do now is say natural gas turbine as opposed to gas or steam turbine.

MS. WELCH: Do you know what the difference between a gas turbine,

which is used for the generation of steam and electricity, versus natural gas turbine that's used to put the gas in a natural gas pipeline?

A: No.

Q: Do both require lubricants, as far as you know?

A: As far as I know, they would.

Q: Okay. Earlier you testified that you worked on or that you were familiar with Turbinol 153 during this time period. How did that familiarity come if it didn't come from this particular project?

A: Could you restate the question?

Q: You want her to read it or rephrase it?

A: Just rephrase it so I understand what you're asking.

Q: Okay. Earlier when I was asking you about when you first became familiar with Turbinol 153, you said that it was during the latter part of the period when you were in commercial development?

A: Yes.

Q: Okay. How did you gain that familiarity with this product?

A: Through the work with our research group.

Q: Why were you looking at this product?

MR. ZIMMER: I think he said he was looking at it and he said he gained familiarity.

MS. WELCH: Why did you gain familiarity? Why did the product come to your attention?

A: Because of the large potential market in these turbines.

Q: Okay. Did you ever look for or did you ever work on in any capacity the development of a replacement for Turbinol 153 during this time period when you were in commercial development?

A: Not to my knowledge.

Q: So your work strictly had to do with the developing a market for Turbinol 153 as it was?

A: That's correct.

Q: Not with developing a product

that would replace Turbinol 153 but that would exclude the PCBs?

A: That's correct.

Q: Okay. And when you worked or you had -- you gained your familiarity with Turbinol 153, which individuals did you work with?

A: Dr. Herber and Lou Stark.

Q: Did you work with Dr. Hatton?

A: No.

Q: Did you have contact with customers or potential customers of Turbinol 153?

A: What kind of contact?

Q: Did you ever visit a customer?

A: G.E., as I mentioned earlier.

Q: Did you ever visit the ultimate user, the customer who would be the ultimate user?

A: No.

Q: Did you ever have telephone contact with the customer who would be the ultimate user of the fluid?

A: Not that I recall.

Q: So it wasn't your job

responsibility to actually go and market the product but to basically do studies to develop -- to figure out where the market would be? Is that correct?

A: In this particular case, that's correct.

Q: Any other responsibilities in terms of Turbinol 153?

A: No.

Q: Okay. And what happened when you finished this job?

A: I was product supervisor for the carbonless paper area.

Q: And that was in mid '71?

A: That would have been -- that sounds about right.

Q: Was one of your customers NCR?

A: I didn't have any customers.

Q: Okay. So what did you do as product supervisor?

A: Looked at new formulations for the carbonless paper market.

Q: What do you mean by "new formulations"?

A: Formulations that, as best I

recall, did not include the higher chlorinated biphenyls in them.

Q: Do you remember the names of any of those formulations?

A: Which formulations?

Q: That you looked at for the carbonless paper market that did not include the higher chlorinated biphenyls.

A: I recall a product called HB-40.

Q: Do you recall a product by the name of the MCS-1016?

A: No.

Q: When you say "higher chlorinated biphenyls," what do you mean?

A: As you can tell, my memory is not perfect from twenty years ago.

Q: As is mine.

A: The Aroclors 1254 and 1260 were the ones that were called the higher chlorinated biphenyls, and those were the ones that we were concerned about because they were the ones that had been detected in the environment.

Q: Are you aware of the fact that prior to the reformulation of the

carbonless paper to include products that were of lower chlorinated biphenyls that the Aroclor that was being sold to that market was 1242?

A: To the --

Q: Carbonless paper market.

A: I don't recall.

Q: If I use the term penta chlorinated biphenyl, would you know what that meant?

A: Yes.

Q: Okay. What does it mean?

A: That would be those that have five chlorines.

Q: Okay. How about hexa chlorinated biphenyl? Do you know what that means?

A: Six.

Q: Okay so you're familiar with the terminology. Are you familiar with the fact that Aroclor 1242 contains a certain percentage of higher chlorinated biphenyls?

A: No.

MR. ZIMMER: Assumes facts not

in evidence.

MS. WELCH: How long did you stay in your job as product manager for carbonless paper?

A: Wasn't very long. Maybe six months.

Q: And what did you do then?

A: I then was on special assignment assisting the legal department in their discovery process.

Q: What's the discovery process you're referring to?

A: The fish meal poultry litigation.

Q: So you actually worked with the legal department on the discovery that was being conducted as part of the litigation pending?

A: Yes.

Q: And what were your job responsibilities?

A: Fact gathering.

Q: So you went out to the field and found out what had happened?

A: No.

Q: Okay. What did you do?

A: Summarized in-house information and contacted various departments within Monsanto to gather information.

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?

A: No.

Q: And what year was this?

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

Q: Do you know what happened with that litigation?

A: No.

Q: What happened in mid '72?

A: I was moved to a new position

within Monsanto.

Q: What was the position?

A: Sales manager in sulfuric acid plants, design and construction of sulfuric acid.

Q: Okay. After your last position, previous position, where you assisted the legal department in the discovery process, when that position terminated, did you ever have another position at Monsanto that had anything to do with PCBs or replacement for PCBs?

A: No.

Q: So that was the end of your contact with the whole PCB issue?

A: That's correct.

Q: Okay. How long did you work at Monsanto after '72?

A: To 1978.

Q: And did you stay in the sulfuric acid area?

A: Yes.

Q: And what happened in 1978?

A: I resigned.

Q: And what do you do currently?

A: I have a manufacturers rep business.

Q: And what kind of business is that?

A: It's a company that specializes in the sale of waste water treatment equipment.

Q: In any of your jobs at Monsanto, did you ever do work on analyzing effluent samples?

A: I don't understand the question.

Q: Did you ever work with anybody or have contact with -- let me rephrase that. Did you ever work on reclamation while you were at Monsanto?

A: Yes.

Q: What period was that?

A: As best I recall, would have been in 1970, '71, in that period, when I was in commercial development.

Q: Okay. So it was part of your work in commercial development?

A: Yes.

Q: Okay. Is there anything else that I'm missing about what you did in

commercial development? Maybe I should have asked you what else did you do besides the things we talked about?

A: No.

Q: So you worked on reclamation, you worked on developing new markets for the functional fluids group?

A: Correct.

Q: Particularly in the gas turbines for the steam and electrical markets?

A: Yes.

Q: The customers that you recalled were G.E. for the gas -- I'm going to call them the gas/steam turbines rather than natural gas turbines. You analyzed markets. Did you during that time period work on any other, besides for the steam turbines, the development of any other products that would replace Monsanto's functional fluids that contain PCBs?

A: No.

Q: Okay. So you worked on that, and then after that, you worked on replacements for carbonless paper, and that was after that job finished?

A: Correct.

Q: When you first became a sales rep at Monsanto, were you ever involved in the course of sales training?

A: Yes.

Q: How long did the course last?

A: Approximately six months.

Q: And was it full time for six months?

A: Yes.

Q: So you didn't work during this period, you just attended a sales school?

A: That's correct.

Q: And where was this sales school?

A: In St. Louis.

Q: Who taught?

A: Instructors within Monsanto and then we also had training within the product group that we were assigned to.

Q: You were assigned right away to the functional fluids group; is that correct?

A: No.

Q: Okay. What was the sales group that you were assigned to?

A: The initial training at Monsanto was a generalized training period for all salesmen within the division, and I'm guessing that was probably a six to eight-week course, and upon graduation from that course, you were then assigned or picked by different groups, and I was chosen by the functional fluids group, and then we received additional training within the group for, as best I recall, another couple of months.

Q: Okay. What did that training consist of? I'm not talking about the first six to eight weeks. I'm talking about after you joined the functional fluids group. Can you tell me about that training?

A: An in-depth training on the products, their chemistry, their performance and the markets.

Q: Did you receive training on the applications for the products?

A: Yes.

Q: So you knew something about how the customer would actually use the

product?

A: Yes.

Q: Were you told that the products contained Aroclors?

A: Yes.

Q: Were you told that Aroclors were formulations of PCBs?

A: Yes.

Q: Were you told that the composition of these products; namely, the fact that they contained Aroclors was proprietary information?

A: No.

Q: Were you told that the fact that the Aroclors were composed of polychlorinated biphenyls was proprietary information?

A: No.

Q: Did you ever have a discussion about or were you aware whether Monsanto had a patent on the Aroclor process?

A: Yes.

Q: And what was your understanding?

A: My understanding was that it was an extremely difficult product to

manufacture and that the risk of anyone else making the product domestically was nill.

Q: So your understanding is that there was no patent?

A: I assume that -- I think I've always assumed that there were patents on the product but --

Q: Did anybody tell you there was a patent on the product?

A: Not that I recall. No.

Q: Were you told anything during the sales training course, again I'm referring to the period when you were training for functional fluids, about the toxicity of the product?

A: Yes.

Q: What were you told?

A: That the product was a -- an irritant, typical of many organic chemicals, and to avoid prolonged breathing of the vapors, use normal sanitary precautions after handling the fluid; that is, to wash your hands.

Q: Did a particular individual give

the part of the course that had to do with toxicity?

A: Not that I recall.

Q: Do you recall whether in relation to this time period the name Dr. Kelly?

A: Dr. Kelly, I recall Dr. Kelly. He was pretty much the guru as far as the individual that we always went to for interpretation of safety matters.

Q: Did he come and teach any part of the course?

A: I don't remember.

Q: Were you ever told that exposure to the Aroclors might cause liver damage at this sales training course?

A: No.

Q: Were you ever told that exposure to the Aroclors might cause jaundice?

A: No.

Q: Were you ever told that exposure to Aroclors might induce liver enzymes?

A: No.

Q: Have you ever -- when I say that phrase, induce liver enzymes, does that

mean anything to you?

A: No, other than it's -- it sounds bad.

Q: You never heard that in connection with the Aroclors?

A: No.

Q: Okay. Did you ever hear at that time that there was a worry that it could be toxic if ingested?

A: No. I drank it.

Q: You drank it? When did you drink it?

A: I've just put it in my mouth before.

Q: What context was this?

A: Huh?

Q: What context was this?

A: Just to find out what it tasted like many times.

Q: And what quantity did you ingest?

A: All total?

Q: Yes.

A: I would imagine no more than maybe a little (indicating) thimble full.

Q: Several milligrams?

A: Probably.

Q: Did you ever hear that Aroclors or PCBs exposure to them might cause chloroacne?

A: No.

Q: Have you ever heard the term chloroacne?

A: Yes.

Q: In what context?

A: That exposure to certain chlorinated products can create an acne, dark acne condition. I don't know whether it's fatal or not but that's -- I remember some studies or something in Japan.

Q: Okay. But you didn't hear about this at the sales training course?

A: No.

Q: You heard about it subsequently?

A: Yes.

Q: Did you hear about it in relationship to the Yusho incident? Does that mean anything to you if I said the Yusho incident?

A: No.

Q: How about if I told you that or referred you to an incident in 1968 where a large number of people in Japan accidentally ingested PCB-containing bran oil and got sick. Does that refresh your recollection at all?

A: No.

Q: Okay. Do you remember about when you heard about the chloroacne?

A: No.

Q: Sometime after '65 though?

A: Yes.

Q: Was it during the time that you were in the field as a sales rep?

A: No.

Q: When you came back to St. Louis?

A: Yes.

Q: Okay. So it was after the time that you really had contact with customers or significant contact with customers?

A: Yes.

Q: Did you learn in the sales course that there was a concern that the Aroclors that contain PCBs would be hazardous to wildlife?

A: No.

Q: Did you ever learn that there was a concern that it could be hazardous to birds?

A: No.

Q: Did you ever learn that there was concern that it might enter the food chain?

A: No.

Q: In the course of your training in functional fluids, did you receive any training in the operation of a natural gas turbine?

A: No.

Q: When you were a sales rep for the first few years you were at Monsanto were you stationed on the west coast?

A: Yes.

Q: What city?

A: L.A.

Q: And you had responsibility for the whole west coast?

A: Nine western states.

Q: States include New Mexico?

A: Yes.

Q: Before this litigation, have you heard of Transwestern Pipeline Company?

A: No.

Q: Okay. Were they ever -- I guess if you hadn't heard of them, they were never a customer of yours?

A: No, not to my knowledge.

Q: Okay. Was Texas Eastern during this time period you were a sales rep ever a customer of yours?

A: Of mine, no.

Q: Was Texas one of your states during this period?

A: No.

Q: Please introduce as Exhibit 522.

(Pogue Depo Exhibit No. 522 mark'd for identification)

MS. WELCH: Exhibit 522 is a one-page document dated April 24th, 1967. Identifying number is TRAN 056844, and it appears to be a letter to a Mr. Jim Galligan from Mr. Pogue, and please take a few minutes to read this.

Okay?

A: Yes.

Q: Okay. Do you remember writing this letter?

A: No.

Q: Okay. Was Esco Corporation one of your customers?

A: I don't know.

Q: Was Oregon one of the states you covered during the time period you were a sales rep?

A: Yes.

Q: Could you safely assume then that Esco was one of your customers based on that?

MR. ZIMMER: Well, we don't want him to assume anything, so he can tell you what he remembers. Like he said, he doesn't know.

MS. WELCH: Does reading this letter refresh your recollection about this customer at all?

A: This letter appears to be a client not of ours, but one who is interested in Pydraul, and he questioned not only the information on medical but also whether his packing would be

compatible with Pydraul, and I answered both his questions.

Q: Okay. So this is a potential customer?

A: This appears to be a potential customer.

MR. ZIMMER: Mr. Pogue, let's try to stick with her questions even though I understand your interpretation of the document. She can do that for herself. What she had asked you whether it refreshed your recollection as to whether this was a customer or not.

MS. WELCH: What was the application of Pydraul 312?

A: As a hydraulic fluid.

Q: What kind of machine would it go in?

A: Die casting machines.

Q: Did you generally tell customers or potential customers that, as it says here, that the vapors are practically nontoxic under press conditions? I don't know whether that's a type of a test condition or if there's a strange

understanding of press conditions that I don't know. Did you generally tell them that the vapors were practically nontoxic?

MR. ZIMMER: Lacks foundation.

A: Would you state the question again?

MS. WELCH: You want me to restate it or want to hear it again?

A: I want to hear it again.

(Requested portion of the record was read by reporter as follows:

"Q. Did you generally tell customers or potential customers that, as it says here, that the vapors are practically nontoxic under press conditions? I don't know whether that's a type of a test condition or if there's a strange understanding of press conditions that I don't know. Did you generally tell them that the vapors were practically nontoxic?")

A: Yes.

MS. WELCH: What does

"press conditions" mean?

MR. ZIMMER: Same objection. Lacks foundation.

A: Press conditions means the operating piece of equipment.

MS. WELCH: So it's part of the die cast machine?

A: Yes.

Q: And is the production of vapors one of the things that happens in the course of operating a press?

A: Yes.

Q: And why is that? Does it just get hot?

A: Yes.

Q: Did you generally tell customers or potential customers that the Pydraul 312 was classed as a slight skin and eye irritant under test conditions?

A: Yes.

Q: Where did you get this toxicity information from?

A: Dr. Kelly.

Q: And if you can recall, did you forward this information based on the

customer's or potential customer's request?

A: Yes.

Q: Please mark this as Exhibit 523.

(Pogue Depo Exhibit No. 523 mark'd for identification)

MS. WELCH: Exhibit 523 is a two-page document dated April 9th, 1968 with the identifying mark of TRAN 058123 and TRAN 058124, and it is dated April 9th, 1968 to a Mr. James Armstrong, and it's signed by Dr. Kelly with a cc to D.R. Pogue in Seattle.

Was this your customer?

A: Yes.

Q: Do you recall this customer?

A: Yes.

Q: Why did you ask Dr. Kelly to forward this information?

A: I don't recall.

Q: Did you generally forward a request for toxicity information to Dr. Kelly?

A: Yes.

Q: Did you sometimes attempt to

answer them by yourself?

A: No.

Q: Do you know what accounts for the answer in the previous document that you wrote as opposed to one that Dr. Kelly would write?

A: In that case, I was interpreting the information that was attached.

Q: I see. So there was an enclosed information, you were just writing a cover letter about the information; is that right?

A: That's right.

Q: Okay. So all toxicity information would come from him?

A: Yes.

Q: And you would basically try to adhere to Dr. Kelly's interpretation of the toxicity information; is that correct?

A: Yes.

Q: In terms of your oral contacts with customers; is that correct?

A: Yes.

Q: Okay. On page 2, it states, "We conclude from the above that accidental

ingestion on the part of humans is not a particular hazard in view of the high oral lethal dose in rats."

Is that in accord with your understanding at the time?

MR. ZIMMER: Wait a minute. How is he possibly going to know that? He just told you he refers all toxicity questions to Dr. Kelly.

MS. WELCH: Well, he can answer the question. He can tell me if he can't.

MR. ZIMMER: It's totally without foundation though. That's really unfair.

MS. WELCH: Did you understand the question?

A: No.

MR. ZIMMER: If you have an answer, go right ahead.

MS. WELCH: The question is: Did you have an understanding at the time that there wasn't a particular hazard for ingestion of the product?

A: Yes.

Q: Okay. And you testified earlier

that you never had heard of the Yusho incident of accidental ingestion of PCB-containing products?

A: Yes.

MS. WELCH: This is Exhibit 524.

(Pogue Depo Exhibit No. 524 mark'd for identification)

MS. WELCH: Exhibit 524 is a one-page document dated May 3rd, 1968 from Mr. Pogue to Dr. Kelly and Dr. Emmett Johnson. The identifying stamp is TRAN 058105.

Okay?

A: Uh-huh.

Q: Okay. Who was Dr. M.N. Johnson?

A: I don't recall.

Q: What did you mean by the "recent rash of frequent requests for Pydraul 312 toxicity and safe handling letters"?

MR. ZIMMER: Lacks foundation.

A: Pydraul 312 was a new product, and I was trying to introduce it into those accounts, and since they were existing customers, they wanted updated

information on this new product.

MS. WELCH: They had previously purchased other Pydrauls?

A: Yes.

Q: When was Pydraul 312 introduced?

A: The best of my recollection, '67, maybe, '6 -- in that period.

Q: Do you remember any customer articulating any concerns about the fact that the product contained PCBs?

A: No.

Q: So as far as you were concerned, the inquiries had to do with the introduction of a new product?

A: That's correct.

Q: Please introduce Exhibit 525.

(Pogue Depo Exhibit No. 525 mark'd for identification)

MS. WELCH: Exhibit 525 is a two-page document with the identifying stamp of TRAN 069370 to TRAN 069371.

Redacted

Redacted

HARTOLDMON0042182

Redacted

HARTOLDMON0042183

Q: Did Mr. Roush work with you as a salesman?

A: No.

Q: Do you know where he worked?

A: Yes.

Q: Where was that?

A: He was one of the product supervisors handling Therminol.

Q: So you worked with him in terms of the development of the product or what was the context of your contact with him?

A: He was the resource home office person that I utilized as a field salesman.

Redacted

HARTOLDMON0042184

Redacted

HARTOLDMON0042185

Redacted

Q: Did you expect to make one sale during this time period or did you make one sale of Therminol one time and never sell it again?

A: Yes.

Q: So you expected to sell an initial fill?

A: Yes.

Redacted

Q: So there was not the expectation at least with Therminol of making a

HARTOLDMON0042186

monthly or yearly sale to the same customer; is that correct?

A: Yes. That's correct.

Q: Unless there was new machinery put in; is that correct?

A: Yes.

Q: How about in the Pydraul area? Did you have the same expectation that there would be the sale from the initial fill and no replacement sales?

MR. ZIMMER: For what type of machine and what Pydraul product?

MS. WELCH: For the die cast machines. Let's start with that.

A: No.

Q: Why was that?

A: Because the machines leaked. They were what we called opened systems.

Q: So you would sell an initial fill; is that correct?

A: Yes.

Q: And then you would expect monthly or yearly sales beyond the initial fill; is that correct?

A: Yes.

Q: And the usage of the material would be -- the material would be used because of leaks, that's how it would be used up; is that correct?

A: Yes. That's correct.

Q: Any other way that the material was used up?

MR. ZIMMER: That he's aware of?

MS. WELCH: Absolutely.

A: By contamination, which was rare.

Q: Okay. What other applications did you sell Pydrauls for --

A: Pydrauls.

Q: -- during this period.

A They were used in the metals industry for extrusion presses, casting machines, for both steel and aluminum.

Q: Okay. Now, either in the metals industry or with the die casting machines, did you make replacement sales as a normal course of business?

A: Yes.

Q: And for the same reasons as you

made it for the die cast machines?

A: Yes.

Q: So that if you saw a customer that had sales that you made on a regular basis, you knew that it was because the Aroclor-containing material was being used up; is that correct?

A: Yes.

Q: Okay. Introduce as Exhibit 526.

(Pogue Depo Exhibit No. 526 mark'd for identification)

MS. WELCH: Exhibit 526 is a four-page document dated March 27th, 1969. Bate stamp TRAN 058550 to TRAN 058553. It's to a Mr. Fred Dierker, and it's signed by -- states Donald R. Pogue for Donald S. Bergen. Please take a few minutes to read this document.

Okay? Is that your signature on the last page?

A: Yes.

Q: Do you remember preparing this letter?

A: No.

Q: Did you prepare this letter?

A: No.

Q: Do you remember that somebody else prepared this letter?

A: No.

Q: Do you remember why you signed the letter?

A: No.

Q: How do you know that you didn't prepare the letter?

A: I wasn't capable of writing that letter.

Q: Because the information in here is beyond the scope of your understanding?

A: Yes. At that time it was and still is.

Q: With that in mind, I'm going to ask you certain questions about the document. If you don't -- there might be parts that you do understand, there might be parts that you don't understand, and please tell me if you don't and we'll just move on.

First of all, during this time period, did you report to Mr. Bergen?

A: No.

Q: Did you work with Mr. Bergen?
A: Yes.
Q: In what capacity?
A: As sales analyst.
Q: In the functional fluids group?
A: Yes.
Q: And what was his position?
A: Mr. Bergen?
Q: Yes.
A: Director.
Q: Okay. Do you know what the statement of low solubility of PCB in water means?
MR. ZIMMER: What are we referring to?
MS. WELCH: The paragraph enumerated one on the first page, it says, "Because of the low solubility of PCB in water."
A: Yes.
Q: And what does that mean?
A: It means that it does not dissolve in water.
Q: Does that have any significance to you, that fact?

HARTOLDMON0042191

A: Yes.

Q: What's the significance?

A: That it's admissible in water, it's hydrophobic.

Q: And that's the property of the chemical; is that correct?

A: Yes.

Q: And what impact does that have on the application of the chemical, if any?

MR. ZIMMER: In what sort of application?

MS. WELCH: In those that he's familiar with in functional fluids.

A: It is a positive feature.

Q: How is it a positive feature?

A: That water would not combine with the product to cause corrosion in the system or cause operational problems.

Q: Do you have any idea or do you have any knowledge about what the fact that PCBs have low solubility in water, what effect that has on the food chain?

A: No.

Q: Okay. Turning to the second

page, at the bottom of the page, the paragraph that's second from the bottom, it states, "PCB finds further application in industrial hydraulic, excluding aviation, and heat transfer systems. As in the case of dielectric applications, these systems are designed for essentially indefinite fluid life."

Given your earlier testimony that -- well, first of all, do you know what "indefinite fluid life" means?

MR. ZIMMER: Objection. Lacks foundation. Calls for speculation. And, understand, Mr. Pogue, that she doesn't mean in general. She's talking about the context of this letter.

A: That it's -- it is not typically going to thermally degrade. It's a very stable product.

MS. WELCH: Okay. Would you include in that definition that the product would need to be replaced in a particular system?

MR. ZIMMER: Well, it's not important what he would include because he

HARTOLDMON0042193

didn't write the letter.

MS. WELCH: Well, he signed the letter.

MR. ZIMMER: I know, but he told you already he didn't write it. I don't know why we're dwelling on this.

MS. WELCH: He can answer the question. I'm not going to dwell on it very much. He can answer the question.

MR. ZIMMER: He wasn't answering the question. He's not going to answer it in the concession of this letter. If you are asking him how he uses the term, that's a different matter.

MS. WELCH: That's a good idea.

Q: Let me ask you something. Would you characterize -- earlier you were talking about the use of the fluids in hydraulic systems. Would you characterize the use of those systems or the fluid in those systems as having indefinite fluid life?

MR. ZIMMER: In which kind of system?

MS. WELCH: The hydraulic

systems we were talking about earlier.

MR. ZIMMER: Which ones are those? There's a bunch of them.

MS. WELCH: All the ones we talked about.

MR. ZIMMER: Well, I don't recall --

MS. WELCH: We talked about die cast machines. We talked about -- there were a few we talked about; die cast machines, extrusion presses and casting machines.

A: Yes.

Q: You would say that that was indefinite fluid life?

A: Yes.

Q: So in that context, indefinite fluid life would not mean, for instance, that the product was never replaced?

A: That's correct.

Q: Okay. You would just mean it was that they were naturally stable?

A: That's correct.

Q: Anything else that you would mean if you used the phrase in that

context?

A: It was used typically to mean that, that this fluid is so stable that it will be around indefinitely in the application for the application.

Q: Okay. Please introduce as Exhibit 527 the following document.

(Pogue Depo Exhibit No. 527 mark'd for identification)

MS. WELCH: Exhibit 527 is a fairly lengthy document dated February 16th, 1970 from N.T. Johnson to a number of recipients, and there's a cc list which includes Mr. Pogue.

A: Can we take a break?

Q: We're just going to identify it and take a break.

A: Okay.

Q: Identifying number TRAN 085833 to TRAN 085850.

Okay. We can take a break now.

Why don't you take some time to review this document.

(Discussion off the record)

MS. WELCH: Back on the record.

Why don't we do this in terms of the document. This is a very lengthy document. Why don't you read the first six pages up until where it says "Possible Customer Questions on PCBs," read that first, and I'm going to ask you questions about that part of the document first.

A: The first six pages?

Q: The first six pages which includes the February 16th, 1970 memo from N.T. Johnson; the February 9th, 1970 letter from Don Olson; and the February 18th, 1970 letter from Don Olson. Read those three documents first and we'll talk about those before we get into the other part of the document.

Okay?

A: Yes.

Q: Earlier you testified that you worked in St. Louis in the functional fluids as a sales analyst, I believe, around this time period; is that correct?

A: Yes.

Q: So in February, 1970, you were a sales analyst in St. Louis?

A: I don't think so.

Q: What was your position in February of '70?

A: As best I recall would have been commercial development.

Q: So you had moved over to commercial development by that point?

A: Yes.

Q: Okay. During the period of time around this period of time when you were in commercial development, do you recall any questions being asked to you by customers about PCB problem?

A: I don't recall.

Q: Okay. Did you have any direct contact with customers during this period?

A: Yes.

Q: And anybody beyond G.E?

A: Yes.

Q: And who did you have direct contact with?

A: A number of die casters and steel mills.

Q: These were actual customers of Monsanto?

A: Yes.

Q: Did they purchase Aroclor-containing products from Monsanto?

A: Yes.

Q: Did anyone ever tell you -- or let's put it this way: Did Mr. Johnson ever tell you why he stated that only verbal answers should be given to questions in response to questions by PCBs rather than answers in writing?

A: No.

Q: Okay. Did anyone else ever tell you why that was so?

A: What was the question?

Q: The question is -- I'm referring to a statement in the first paragraph which states, "You can give verbal answers; no answers should be given in writing." And the question to you is: Did anyone tell you why answers to questions by customers receiving the PCB Aroclor letter, why those answers should be given verbally rather than in writing?

MR. ZIMMER: Assumes facts not in evidence.

A: It was my understanding that the position of the company should come from the company and not from a salesman who may not have all the facts.

MS. WELCH: So, in other words, the salesman should not write responses to customer's questions? Is that what you're saying?

A: About things they did not know the full facts about. That's correct.

Q: Okay. How about verbal answers to customer's questions?

A: It was my understanding it was all right to discuss it verbally with the client in an attempt to answer their questions on the spot, but that if an official position was needed, that that should come from the company.

Q: Did you have any understanding of why that was so?

A: Just good common sense.

Q: What is that?

MR. ZIMMER: What is good common sense?

MS. WELCH: I know what good

common sense is, but how does that relate to -- how does good common sense lead to the conclusion that you can discuss things with a customer verbally but you can't put it in writing?

A: Well, one shouldn't expect salesmen to be silly enough to take a position for the company for Monsanto because they weren't in a position to have all the facts.

Q: Do you recall during this period of being aware of reformulated products that are referred to in the second paragraph?

A: Yes.

Q: And those are the reformulated Pydrauls?

A: Yes.

Q: Did you have an understanding why the Pydrauls were being reformulated?

A: Yes.

Q: And what's your understanding?

A: That there was a concern on the part of Monsanto that there might be potential problems with these two products

since they had been found in the environment.

Q: And by "these two products," what products are you talking about?

A: Aroclor 1254 and Aroclor 1260, and Monsanto was going to replace them and not take a chance.

Q: Did you have an understanding during this time period of why Mr. Johnson or anyone else at Monsanto didn't want the fluid to be taken back as is stated in that second paragraph?

A: Yes.

Q: What was that understanding?

A: That Monsanto was acting responsibly, and that there was no reason to have an unnecessary cost associated with the project of taking fluid back. It wasn't necessary.

Q: Do you have an understanding at this time in February 16th, 1970 of why there was a preference that the customer use up his current inventory before purchasing replacement products?

MR. ZIMMER: Assumes facts not

in evidence.

A: Could I hear the question again, please?

(Requested portion of the record was read by reporter as follows:

"Q. Do you have an understanding at this time in February 16th, 1970 of why there was a preference that the customer use up his current inventory before purchasing replacement products?")

A: That at that time there was not a ~~real~~ concern ~~about the~~ of an immediate problem, ~~that there was an immediate problem.~~

MS. WELCH: What do you mean by that?

A: That the company suspected -- well, the company suspected that there could be a potential problem but nothing at that time was conclusive. So they were making an effort at that time to be responsive, and they didn't see that there was a need to take fluid back.

Q: Okay. Did you have an understanding at that time in February, 1970 about why Monsanto would -- if they did advise customers that they could top off with a new fluid?

MR. ZIMMER: Lacks foundation. Assumes facts not in evidence.

A: Could I hear the question again, please?

(Requested portion of the record was read by reporter as follows:

"Q. Okay. Did you have an understanding at that time in February, 1970 about why Monsanto would -- if they did advise customers that they could top off with a new fluid?")

A: If I understand the question correctly, which is that customers could top off with a new fluid, the answer is yes.

MS. WELCH: And what's your understanding of why they could do that?

A: Because the fluids were compatible.

Q: Did you have any concern at this time that the PCB products would still remain in the system if there was simply topping off?

MR. ZIMMER: When you say PCB products, are you limiting that to the Pydrauls?

MS. WELCH: Limiting it to this letter.

MR. ZIMMER: Okay.

A: Yes. Was I concerned?

MS. WELCH: Yes.

A: No.

Q: Why weren't you concerned?

A: I didn't think that there was a serious problem.

Q: Do you know if anybody else was concerned about the issue of PCBs remaining in these systems?

A: No.

Q: Okay. So was it primarily a financial consideration that you are mentioning?

MR. ZIMMER: What's primarily?

MS. WELCH: That led to the

issue of not wanting to take fluids back saying you could top off.

A: No.

MR. ZIMMER: Well, wait a minute. He didn't make that recommendation nor did he write this letter.

MS. WELCH: I'm asking for his understanding, and that's all that my line of questions has been based on.

MR. ZIMMER: No. Your line of questioning is so clearly trying to substitute his opinion for Mr. Johnson's it isn't even funny, but --

MS. WELCH: Well, again, just as yesterday, you're not sworn in. I'm not here to have an argument with you. I want to get his understanding.

MR. ZIMMER: You're here to ask presumably fair questions of the witness which the record will speak to.

MS. WELCH: Let me rephrase the question. Maybe I can make it more clear.

Q: Is your understanding that Monsanto's concern about not wanting to

take inventory back about advising it was okay to top off with the fluid primarily motivated in an effort to be cost conscious or financial concerns?

A: No.

Q: What was your understanding of what the motivation was?

A: It was one of a responsive company concerned about the environment.

Q: And so that there were concerns that use of PCBs in the systems might lead to problems in the environment at that point?

A: I'm not sure in my mind that they were even that strong at that time. I think the general atmosphere was we're not sure, but let's don't take a chance.

Q: Okay. If Monsanto didn't want to take a chance as far as your understanding is, why leave PCBs in the system?

MR. ZIMMER: He's not testifying on behalf of Monsanto.

A: I don't know.

MS. WELCH: Okay. You had no

HARTOLDMON0042207

concerns at the time?

A: At that time, no.

Q: Okay. Did this letter, the letters that are attached here, the February 9th, 1970 letter, the February 18th, 1970 letters, go out to users of the Pydraul formulations that are mentioned on the first page?

MR. ZIMMER: Calls for speculation.

A: I don't know.

MS. WELCH: Do you have any idea about which customers letters went out to?

A: No.

Q: Did all of your Pydraul customers when you were a salesman use Aroclors 1254 and 1260?

A: No.

Q: Were some Pydrauls formulated with lower chlorinated Aroclors?

A: Yes.

Q: Which Pydrauls were those?

A: 312, ~~&~~ A 200, F9, ~~Thermino1, E41 and 2.~~

HARTOLDMON0042208

Q: Did those products contain 1242?

A: Yes.

Q: And as far as you know, at this time in February, 1970, the products that were containing 1242 in the Pydraul line had not been reformulated?

A: To the best of my knowledge.

Q: Okay. Okay. Why don't you take some time and read the attachment to this, "Possible Customer Questions on PCBs." We can do it either one of two ways.

We can read a paragraph at a time and talk about it or he can read the whole document and we can go back. I know that your preference is read the whole document.

MR. ZIMMER: Why don't we lay some foundation first.

MS. WELCH: I'm going to ask questions about it because it's attached to a document that he was cc'd on.

MR. ZIMMER: I haven't heard yet that he's seen any portion of this before.

MS. WELCH: Well, let's go back

to the first page. Is that your name that appears on the cc list?

A: Yes.

Q: Is the general practice at Monsanto if a name appears on the cc list, would the recipient receive the document?

MR. ZIMMER: Calls for speculation.

A: Yes.

MS. WELCH: Do you remember seeing this document before?

A: Yes.

MS. WELCH: Is that good enough?

MR. ZIMMER: I didn't know the answer.

MS. WELCH: Okay. Why don't you read -- now how do you want to do this, Mr. Zimmer? Do you want to read a paragraph at a time or would you rather he read the whole document?

MR. ZIMMER: I think he should read the whole thing.

MS. WELCH: Okay. Starting with "Possible Customer Questions on PCB,"

that page.

A: Okay.

Q: I think he wants you to read the whole document rather than a paragraph at a time.

A: Okay.

Q: Okay?

A: Yes.

Q: Besides seeing this document before, do you recall having any discussions about this document with anybody at Monsanto?

A: No.

Q: Okay. Turning to the first page of the attachment, which is entitled "Possible Customer Questions on PCBs Publicity," did any customer ever request any articles on the PCB problem around this time from you?

A: Not from me.

Q: So you never sent any articles to any customers at this time, in this time period?

A: That's correct.

Q: Okay. Did you or are you

familiar with any of the articles that are mentioned here; namely, the San Francisco Chronicle article or the Hartford Times article?

A: No.

Q: You don't recall ever reading those?

A: No.

Q: Turning to the next page, did you ever hear what the articles that had been published at that time said?

A: No.

Q: You never heard any discussion about the San Francisco Chronicle article --

A: No.

Q: -- at that time? Did you ever hear of somebody by the name of Dr. Robert Risebrough at that time?

A: I recall the name.

Q: What do you recall about him?

A: Just the name is familiar.

Q: Okay. If I told you that he was a scientific researcher who had discovered the presence of PCBs in various organisms

in the environment, would that refresh your recollection about him?

MR. ZIMMER: Assumes facts not in evidence.

A: No.

MS. WELCH: Do you have any recollection of what context you heard the name?

A: No.

Q: Okay. Turning to the page which says "Legislation" --

A: Yes.

Q: -- did any customer ever ask you whether the DDT and PCB problem were related?

A: No.

Q: Do you have any understanding of whether the DDT problem and PCB problems were related?

A: No.

Q: Okay. Turning to the page which says 4 on the upper right-hand corner, are you familiar with the terms present-day GLC and mass spectrometric techniques? Do you know what that means?

A: No. In general, yes, but not specifically.

Q: Okay. Turning to the next page, page 5, the answer under question 2 talks about gas liquid chromatography. Do you know what gas chromatography is?

A: In general.

Q: What's your general understanding?

A: That it's a chromatograph analysis of the constituents of a liquid to get much finer determinations down to the parts per billion, I think. Also shows the wave lengths, I believe.

Q: Okay. The parts per billion, what are you referring to?

A: Of the contaminant which would be DDT or PCB.

Q: Okay. How did you gain your understanding of gas liquid chromatography?

A: Just by -- I don't know. By the business.

Q: Okay. Was it in conjunction with any work you did in analyzing

effluent samples?

A: Part of that could have been developed through that. Yes.

Q: Okay. Do you know whether Monsanto ever employed gas liquid chromatography to analyze samples from the environment?

A: I think they did. Yes.

Q: Turning to the next page, page 6, under the answer to question 4, did -- or the question actually, did any customers ever ask you about problems with Monsanto's Aroclor plants?

A: No.

Q: Did you have an understanding that the Aroclor process was a dry process or closed system?

MR. ZIMMER: The manufacturing process?

MS. WELCH: I think that's what's referred to here. Yes.

A: I didn't know.

Q: So you had no contact with the actual manufacturing process of Aroclors?

A: That's correct.

Q: Did any customer ever ask you how does Monsanto think Aroclors can get into the environment and cause so much pollution?

A: No.

Q: Or did any customers ever ask you a general variation on that question about how Aroclors got into the environment?

A: No.

Q: Okay. Turning to the next page, page 7, did any customers ever ask you if PCB is a danger to fish and birds, how about humans?

A: No.

Q: Was your understanding at that time that the question related to birds as opposed to fish and humans?

MR. ZIMMER: Could I hear that again, please?

(Requested portion of the record was read by reporter as follows:

"Q. Was your understanding at that time that the question related to birds as opposed to

fish and humans?")

MR. ZIMMER: What question are we --

MS. WELCH: Well, I'll read from the document exactly. It says here, "The amounts being found in the environment are not considered a danger to humans or fish. The whole question on chlorinated pesticides relates to birds." Is that in accord with your understanding or did you have an understanding of that?

A: Yes. As best I recall.

Q: And what was your understanding?

A: That the -- pretty much as it says here, that the concern over the effects of chlorinated hydrocarbons was related to birds and not to humans or fish.

Q: And where did you get that understanding from?

A: Just from what information I had picked up and read and heard.

Q: And do you remember what that information, where it came from?

A: Internal discussions with my

peers and -- that's the primary source, I think.

Q: And you never had any discussion with anybody about the Yusho incident in Japan?

A: No.

Q: Do you know what the effect or did you have any understanding of what the effect was on birds?

A: I thought it related to the egg shells, problem of egg shells being soft.

Q: And to the best of your recollection, did that understanding come through discussions with people at Monsanto?

A: I don't recall.

Q: Do you have any recollection of discussing this issue with any particular individual at Monsanto?

A: No.

Q: Okay. Turning to the answer to the question number 2, did any customers ever ask you whether Aroclor 1254 and 1260 were more toxic than other Aroclors?

A: Not that I recall.

Q: Okay. Did you have an understanding at that time of the differences in toxicity between the various levels of chlorination, chlorinated Aroclors?

A: No.

Q: Did you ever gain an understanding about the difference in toxicity?

A: No.

Q: Were you aware at this time that scientists were identifying penta and hexa and higher chlorinated biphenyls in the environment?

A: Yes.

Q: And how did you become aware of this?

A: Through Monsanto.

Q: Through discussions in Monsanto?

A: Right.

Q: Do you remember who the individuals who communicated that information to you were?

A: No.

Q: Okay. Introduce as Exhibit 528

the following document.

(Pogue Depo Exhibit No. 528 mark'd for identification)

MS. WELCH: Exhibit 528 is a one-page document from D.R. Pogue to Scott Tucker, and there are several identifying stamps. I'm going to use the one of 0001498.

Are you ready?

A: Yes.

Q: Okay. Was this during the period you were in commercial development?

A: Uh-huh.

Q: And what was your particular role with PCB analysis and effluent samples?

A: It was to determine if Pydraul was in the effluent at these facilities, and if so, whether it was a hundred percent of the sludge sample that we obtained or what percentage content the total was.

Q: Okay. Why did you want to determine if Pydraul was in the effluent at the facilities?

HARTOLDMON0042220

A: To determine if it would be feasible to recover it and recycle it.

Q: Were there any other reasons?

A: No.

Q: Did you have a concern that there was a certain amount of outflow of PCBs and you were concerned with the environment? Was that a motivating factor?

A: That was not the primary motivation of this work. It was a long-term potential benefit, but it was not the purpose of this study.

Q: Was it a conscious long-term potential benefit or just something that you learned would be a benefit in the long-term term?

A: It was just happenstance. It just happened.

Q: But it wasn't the purpose of this study?

A: Absolutely not.

Q: Did you actually go out and collect the samples from the facilities?

A: Yes.

Q: And what facilities did you visit to collect samples?

A: Johnson Motors in Waukegan. That was also called Outboard Marine. Lester Die Casting, Cleveland, Ohio. There were several others but I've forgotten.

Q: And were these all manufacturing facilities that incorporated Aroclor in their product?

A: They were die casting operations.

Q: That used the Pydraul?

A: Yes. They were our clients.

Q: So they actually used the Pydraul in their machinery?

A: Yes.

Q: And did you tell these clients that you were doing this study?

A: Yes.

Q: So they were aware that their effluent was being tested?

A: Yes.

Q: And what did you tell them why you were testing the effluent?

A: We told them that we were

looking at this as a business opportunity, and in turn they should be aware that long-term they were going to need to try to close up their system because the higher chlorinated Aroclors had been found in the environment.

Q: Do you remember what Aroclor Johnson motors used?

A: Aroclor would have been Pydraul 200, I believe.

Q: Was that a 1242?

A: 1248.

Q: How about Lester Die Casting? What Aroclor did they use?

A: I don't recall.

Q: So when you told them that there was a need to close up the system because the higher chlorinated Aroclors were in the environment, this was a concern that evolved in the course of the project?

A: Yes. At the time I was conducting this, this whole thing evolved.

Q: When did you begin this project?

A: This was started in early 1970, I believe, or late 1969.

Q: Did you tell people at Johnson motors that they needed to close up the system because there was a concern that the higher chlorinated Aroclors appeared in the environment?

A: Yes.

Q: And did you tell them that because you knew that the Aroclor that they were using contained a certain percentage of higher chlorinated biphenyls?

A: No.

Q: Why did you tell them that then?

A: As a responsive supplier so they were aware of the most up-to-date information that we felt we had within our company.

Q: Did you consider a 1248 a higher chlorinated biphenyl -- or higher chlorinated Aroclor, excuse me?

A: No.

Q: Then why did you feel it was necessary at the time in 1970 to tell a customer who wasn't using a higher chlorinated Aroclor that there was a

concern about higher chlorinated PCBs in the environment?

A: Just so that they were aware that the product they were using was not one of those that had been found, but that we didn't have, you know, control over the future, and they should be aware of it.

Q: What do you mean "we didn't have control over the future"?

A: I'm not sure what I meant by that statement.

Q: Was there a concern that there might be future legislation or controversy over the use of Aroclors?

A: We felt that there was going to be pressure exerted on clients to control their discharges.

Q: And where did you feel the pressure might come from?

A: Federal and state.

Q: What ultimately happened to the reclamation project?

A: It didn't go ahead.

Q: Why was that?

A: Mr. Bergen made the decision

that this business which I had -- I proposed was not the kind of business that Monsanto should be in.

Q: Did he tell you why?

A: Just not -- yes. That it was just not a business that Monsanto would be good at. There were other smaller companies who could do it and do it much better.

Q: When was the project finished or when did you abandon the project?

A: Sometime in 1970, maybe mid to late 1970.

Q: And at that point you stopped obtaining effluent samples from the customers?

A: Yes.

Q: Introduce this exhibit as -- or this document as Exhibit 529.

(Pogue Depo Exhibit No. 529 mark'd for identification)

MS. WELCH: Exhibit 529 is a one-page -- or two-page document dated May 11th, 1970 to Don Pogue from E.S. Tucker with several identifying stamps. I'm

going to use the one of 0001631 to 1632.

A: Okay.

Q: Okay? Did you give your effluent samples to Scott Tucker for analysis?

A: Yes.

Q: And did you give them to anybody else or just to Scott Tucker?

A: Only to Scott Tucker, to the best of my knowledge.

Q: It states here that -- Dr. Tucker states here that some of the chromatograms, which unfortunately are not listed here, it looks like the document was redacted, were equivalent to that of Aroclor 1242. Does that refresh your recollection about the kind of Aroclor that any of the customer's effluent you examined consisted of?

A: No.

Q: Do you know if Dr. Tucker looked at the effluent samples to determine the kind of Aroclor that was being found?

A: Yes.

Q: And he was able to determine

specifically what Aroclor was found?

MR. ZIMMER: Lacks foundation. Calls for speculation.

A: Could you repeat the question?

(Requested portion of the record was read by reporter as follows:

"Q. And he was able to determine specifically what Aroclor was found?")

MR. ZIMMER: Same objections.

A: I don't recall.

MS. WELCH: Were you concerned about his findings?

MR. ZIMMER: What findings?

MS. WELCH: That are reflected here.

A: No.

Q: You weren't concerned that this confirmed that PCBs were being found in the environment?

A: No.

Q: Okay. Off the record.

(Discussion off the Record)

MS. WELCH: This is Exhibit 530.

(Pogue Depo Exhibit No. 530
mark'd for identification)

MS. WELCH: Exhibit 530 is a multi-page document dated -- the date of the call that's reflected is 5-14 to 15, 1970. It is from Carl Clay to N.T. Johnson and a cc to an individual who's identified as John Pogue, and it's Bate stamp TRAN 004324 to TRAN 004327. Take a few minutes to review this document.

Okay?

A: Uh-huh.

Q: Mr. Pogue as of this date, which is -- first of all, is there a John Pogue at Monsanto?

A: Not to my knowledge.

Q: Okay. I might note here that Mr. Pogue has his name -- there's a number of places that's referred to in this document a John Pogue and Tom Pogue. The Tom Pogue is crossed out and a Don Pogue is on top of there. Is that your handwriting on the last page where it says Don Pogue? Did you cross it out and write Don over Tom?

A: No.

Q: Okay. Have you seen this document before?

A: I don't recall having seen it.

Q: Do you have any reason to believe that or do you think that this John Pogue is an unknown person to you at Monsanto or do you believe you received this document?

A: I believe that I received the document.

Q: As of May, 1970, did you have responsibility for developing the marketing of Turbinol 153?

A: Yes.

Q: And that was as in the commercial development department; is that correct?

A: Yes.

Q: Did you have any contact with this customer, Columbia Gulf Transmission Corporation?

A: No.

Q: Do you remember this customer, Columbia Gulf Transmission Corporation?

A: No.

Q: Did you have any contact with G.E. about getting their stamp of approval on the use of Turbinol 153?

A: I called on G.E.

Q: Did you discuss Turbinol 153 with them?

A: I have a difficult time recalling Turbinol 153. If -- I called on G.E. with respect to new turbine fluids.

Q: But earlier you testified that was with the steam/gas turbines rather than natural gas turbines?

A: Right.

Q: And so did you ever attempt to get, to the best of your recollection, their approval for the use of Turbinol 153 in a natural gas turbine?

A: Not to my knowledge.

Q: Okay. On the last page, there's a reference to Trans-Canada. Was that one of your customers?

A: No.

Q: Do you know anything about Trans-Canada?

A: No.

Q: Do you know what an AGTL test is?

A: No.

Q: This is Exhibit 531.

(Pogue Depo Exhibit No. 531 mark'd for identification)

MS. WELCH: Okay. Exhibit 531 is a one-page document. The date of the call says 5-28 with no year referenced. It's written by C.L. Clay to N.T. Johnson and to a cc this time it's Don Pogue, and the Bate stamp number is TRAN 004328.

Okay?

A: Uh-huh.

Q: Does this help refresh your recollection at all about Columbia Gulf Transmission Corp?

A: No.

Q: Do you know who Mr. Clay is?

A: Uh-huh.

Q: Who is he?

A: Carl Clay is a salesman for Monsanto.

Q: Did you have any contact with

him?

A: A little bit.

Q: In what context?

A: Primarily when he was back at the home office before he went out in the field as a field salesman.

Q: Did you talk to him about his sales calls?

A: No.

Q: Do you remember generally what your conversations pertained to?

A: No.

Q: Looking at the last paragraph on this page, there's a reference made to a meeting of the -- a meeting for Gas Turbine Users Association, in Atlanta. Do you remember any discussion about that meeting?

A: No.

Q: Okay. Did you ever hear that at that meeting comments were put forward with regard to the elimination of Turbinol 153 by Monsanto?

A: No.

Q: Or about the toxicity of

Turbinol 153?

A: No.

Q: Or about personnel damage done by the chlorine vapors?

A: No.

Q: Okay.

MS. WELCH: Exhibit 532.

(Pogue Depo Exhibit No. 532 mark'd for identification)

MS. WELCH: Exhibit 532 is a one-page document from Carl Clay to Mr. J.M. Simpson, Columbia Gulf Transmission, dated July 8th, 1970 with Bate stamp number of TRAN 004329.

Do you know if Turbinol 153 was a phosphate ester based fluid?

A: To the best of my knowledge, it was.

Q: Where does that knowledge come from?

A: Having worked with it before it was turned over to the sales group.

Q: And when was that?

A: In early 1970, April, May, thereabouts.

Q: And where were you working on it?

A: As an improved fluid -- I was working on it in the commercial development function.

Q: Okay. What did that work consist of?

A: To basically develop -- help develop the product in the market and then it then got turned over very quickly to the sales group.

Q: Okay. During this time period were any changes made in the product, as far as you know?

MR. ZIMMER: What time frame is this?

MS. WELCH: Early 1970s.

A: What type of change?

Q: Were any new materials added to it that hadn't been used before?

A: I don't recall.

Q: But when you said that you worked on it, that's not what you did with it, you didn't work on the composition?

A: No, I didn't work on the

composition.

Q: You worked on developing a marketing strategy?

A: And to make sure that the fluid, the correct fluid properties, performance properties, were met.

Q: And how did you do that?

A: By transmitting the information to our research group, and I think we also then had some products tested by G.E.

Q: Where did you get the information from that you transmitted?

A: From G.E.

Q: So you were transmitting information about the gas turbines from G.E. to the research group?

A: No. On the fluid properties that they needed.

Q: On the fluid properties that they needed, they would tell you we go this hot or we go this fast?

A: Correct.

Q: We do this?

A: Correct, and this is the type of fluid we're using now and this is its

properties. You need to be able to match those.

Q: Now we're talking natural gas turbines here, not steam gas turbines?

A: To the best of my knowledge, the turbines that I was working at that time with for G.E. were these big gas turbines that were used for generating electricity and for steam.

Q: Okay. Do you know if Turbinol 153 was ever used in those gas turbines that generated steam and electricity?

A: No, I don't. I don't think that they were.

Q: And so in what context were you working on Turbinol 153?

A: For that specific market.

Q: But earlier you testified that you transmitted information or requirements from G.E. to the research group with respect to Turbinol 153; is that correct?

A: Correct.

Q: If G.E. was not going to use Turbinol 153 in the steam turbines, why

HARTOLDMON0042237

were you transmitting information?

MR. ZIMMER: He didn't say they weren't going to. They were trying to get them to.

A: We were trying to get them to.

MS. WELCH: Oh, you wanted them to get to use the Turbinol 153?

A: And replace the oil that they were using with this new fluid.

Q: And what happened to that development process?

A: It didn't go for the market that I was working on, but the product was so good and Monsanto liked it so well, they then took it into the sales group and it became Turbinol 153, and they just moved with it, and then I was virtually out of the picture in the commercial development group because it was out of my domain from that point on.

Q: Okay. Were you aware that Turbinol 153 had been sold since 1968 to Transwestern Pipeline Company?

A: I don't recall.

Q: Okay. Were you aware that

Turbinol 153 and its predecessors had consulted Texas Eastern since 1958?

A: No.

Q: Did you think that it was a new product in 1970?

A: To the best of my knowledge, yes.

Q: I'd like to introduce as Exhibit 533 this document.

(Pogue Depo Exhibit No. 533 mark'd for identification)

MS. WELCH: Exhibit 533 is a multi-page document, cover sheet is from D.R. Pogue to C.L. Curtis, and it's dated August 31st, 1970 and includes a number of attachments. The identifying stamp is SCAL 000155 to SCAL 000178.

Okay. Off the record.

(Discussion off the Record)

MS. WELCH: Back on the record.

Q: Who's Mr. Curtis?

A: I don't recall.

Q: Is this your handwriting on the second page?

A: Yes.

Q: And does this reflect the work that you were doing that you talked about before, in other words, communicating the requirements from G.E. to -- or assessing the requirements from G.E?

A: No.

Q: What does this reflect?

A: This is the information that is to be included in the Turbinol bulletin, which is the specifications for this product.

Q: Where did you get this information from?

A: From our research department.

Q: Who in particular?

A: Lou Stark.

Q: Okay. Turning to the page which is Bate stamped SCAL 000166 -- first of all, do you remember seeing this document before, and by "this document," I'm referring to the attachment we're looking at now, which is fire resistant lubricants in gas turbines by Earl P. Farmer, Texas Eastern Transmission Corporation.

A: No.

Q: Okay. Looking at that page that I talked about before, which is -- please read to yourself the last paragraph.

Does that refresh your recollection at all about the fact that Texas Eastern had been using Turbinol 153 or its predecessor since 1958?

A: No.

Q: Have you ever seen a gas turbine, a natural gas compressor?

A: No.

Q: Do you know anything about how one works?

A: Anything?

Q: Well, let me rephrase that. Do you know how the lubricant works within the gas compressor and gas turbine?

A: In general.

Q: Okay. Turn to the page that's Bate stamp SCAL 000162. Okay. There's a reference here to, "Besides meeting all requirements for satisfactory lubrication," etcetera, "those synthetics must also function as a sealed oil in the gas compressor." Did you know that the

Turbinol 153 functioned as a sealed oil in the compressor?

MR. ZIMMER: Assumes facts not in evidence.

A: No.

MS. WELCH: Did you think that it was simply a lubricant?

A: Yes.

Q: Turning to the page that's Bate stamp SCAL 000172?

A: 001?

Q: 172. Is that your handwriting?

A: Yes.

Q: And on the next couple of pages, there's lot of scratch outs and various handwriting. Is any of the handwriting on the page that says fire resistance properties, is any of that handwriting yours?

A: Yes. All the light stuff is mine.

Q: By "light," you mean not in bold print?

A: Yes.

Q: Where it says, for instance,

"self extinguishing, does not ignite spontaneously"?

A: That's all mine.

Q: Okay.

A: "Low pressure spray test" is not. "Slight increase in flame intensity" is not.

Q: Do you know whose handwriting that is?

A: No, I don't.

Q: Do you know who worked with you on this document?

A: No, I don't.

Q: Do you have any recollection of why you were working on this document?

A: Yes.

Q: And what's your recollection?

A: For the Turbinol bulletin, sales bulletin.

Q: Do you recall who this sales bulletin was supposed to go to?

A: No, I don't. I don't even recall the bulletin.

Q: Do you remember who asked you to work on the bulletin?

A: No.

Q: Who did you report to at the time?

A: At the time I would have reported to -- I don't recall.

Q: Was it Howard Bergen?

A: Pardon?

Q: Was it Howard Bergen?

A: No.

Q: Was it Don Olson?

A: No. I think I reported to Norm Johnson.

Q: Okay.

A: I think he had responsibility for commercial development.

Q: This is Exhibit 534.

(Pogue Depo Exhibit No. 534 mark'd for identification)

MS. WELCH: Exhibit 534 is a one-page document dated August 26th, 1970 to Mr. A. DeLeon from D.R. Pogue with the identifying stamp of SCAL 000145.

Okay?

A: Uh-huh.

Q: Do you recall writing this

HARTOLDMON0042244

letter to Mr. DeLeon?

A: No.

Q: Do you know who Mr. O.M. Fletcher is?

A: The name is familiar.

Q: Do you know whether he's somebody who worked at Texas Eastern?

A: I think so.

Q: Did you ever have any contacts with Mr. Fletcher?

A: I don't recall.

Q: Did you ever sell Turbinol 153 to Texas Eastern?

A: No.

Q: Do you recall any other contacts with Texas Eastern other than what we've already seen reflected in this correspondence in the previous document?

A: I recall having talked to them by telephone a couple of times for purposes of getting their information for this brochure, but I don't recall who I talked to or what was said.

Q: Now, is this subsequent to the period of time in which you conducted the

analysis of the effluent samples from Johnson Motors and other accounts?

A: This was after.

Q: Yes?

A: Yes.

Q: So you had stopped working on the effluent analysis?

A: Yes.

Q: In your conversations with Texas Eastern during this time, did you relate any concerns about getting PCBs into the environment?

A: I don't recall.

Q: Okay. Do you recall whether you said to them that you have to close up your system because PCBs -- because higher chlorinated biphenyls are being found in the environment?

A: I don't know.

MR. ZIMMER: Assumes facts not in evidence.

MS. WELCH: Do you recall any kind of other discussion you had with them along the lines of PCBs pollution problems?

A: No.

Q: Do you recall the names of any of the people that you talked to?

A: Ollie Fletcher, Earl Farmer, those names are familiar. I don't recall talking to any -- either one of them.

Q: How about Mr. A. Smith? How about Mr. W.E. Worley?

A: No.

Q: Do you remember having any other discussion with Mr. DeLeon other than this letter?

A: No.

(Recess)

MS. WELCH: Okay. We're on Exhibit 535.

(Pogue Depo Exhibit No. 535 mark'd for identification)

MS. WELCH: Exhibit 535 is a one-page document from Don Pogue to J.N. Haggart in Brussels dated January 5th, 1971 with the identifying stamp of TRAN 002566.

Okay?

A: Okay.

Q: Okay. Do you recall drafting this document?

A: Vaguely.

Q: Do you know who Mr. Haggart is?

A: No.

Q: Does this document refresh your recollection that Texas Eastern had been using Turbinol 153 since 1958?

A: No.

Q: Do you know what a flush bearing failure is?

A: Yes.

Q: What is a flush bearing failure?

A: It's a bearing in the -- in the turbine.

Q: And what happens when there's a flush bearing failure?

A: It stops. To the best of my knowledge, it's a massive failure of the bearing -- of the turbine.

Q: Does that have any impact on the lubrication system?

A: Yes.

Q: What's the impact?

A: The lubrication system serves

the bearing.

Q: So what happens when there are flush bearing failures to the lubrication?

MR. ZIMMER: Calls for speculation.

A: To the best of my knowledge, the turbine stops, it fails.

MS. WELCH: Do you know if there's any leakage of lubrication when there's a flush bearing failure?

A: No.

Q: You don't know or there is not?

A: I do not know.

Q: Do you know enough about gas turbine gas compressor systems to know whether, for instance, similar to a die cast machine that there is an issue of leakage?

A: No.

Q: You don't know or there is not?

A: I don't know.

Q: Okay. This is Exhibit 536.

(Pogue Depo Exhibit No. 536 mark'd for identification)

MS. WELCH: Exhibit 536 is a

two-page document from D.R. Pogue to a distribution list dated February 19th, 1971 with several identifying stamps. I'm going to use 0002038 -- or it's 0002088 and 0002039.

Okay?

A: Okay.

Q: Okay. Do you remember drafting this document?

A: No.

Q: Do you remember the reclamation meeting that's referred to here?

A: Yes.

Q: Was this subsequent to the period of time that you were doing effluent analysis?

A: Yes.

Q: What was the purpose of the reclamation meeting?

A: To -- could you rephrase the question? What was the purpose of --

Q: Of the reclamation meeting.

A: This meeting?

Q: Yes.

A: I don't recall.

Q: Earlier you testified that your work with effluence and reclamation had ended sometime in 1970. Was this a separate -- was there a separate purpose for this meeting than for the earlier work that you had done?

A: I don't recall.

Q: Were you working on reclamation in 1971?

A: I didn't think so. I don't -- to the best of my knowledge, no.

Q: What do you remember about the meeting?

A: Nothing.

Q: Just that it occurred?

A: I don't remember it occurring.

Q: I think earlier you testified that you remembered it occurred.

A: I remember a meeting very vividly occurring on my reclamation project, and this, to the best of my knowledge, was not that meeting, and that meeting was the decision that was made for Monsanto not to go into that as a business.

Q: And is your recollection that that meeting occurred sometime prior to 1971?

A: Yes.

Q: Do you have any recollection of why Monsanto was interested in reclamation as of 1971?

A: Because of the -- I'd be speculating. No.

Q: I don't want your speculation, just if you have any understanding. Do you recall addressing any issues during 1971 that involved waste incineration?

A: Personally?

Q: Yes.

A: No.

Q: Do you recall how Monsanto determined to reclaim products versus dispose of products, during this period starting 1971?

MR. ZIMMER: Lacks foundation. Calls for speculation.

A: Yes.

MS. WELCH: Okay. Could you explain that to me?

A: This was a decision to determine what could be reclaimed, rejuvenated, and resold rather than -- or as opposed to those products that could not be salvaged and reused.

Q: Do you know what the basis of the decision on whether a product could be reclaimed rather than disposed, what the basis of that decision generally was?

A: Generally it was the extent of the contamination of the product.

Q: By "contamination," do you mean the entry of other substances into the product?

A: Yes.

Q: Do you know if at this point in time, which is February, 1971, that the issue of PCB pollution in the environment entered into Monsanto's decision about reclamation or disposal?

A: To the best of my knowledge, this was one of the key reasons for the decisions in '71.

Q: And that was --

A: And not in 1970.

Q: So starting in 1971, to the best of your knowledge, Monsanto was beginning to take back fluid based on its concerns about the environment; is that correct?

A: They then started to look at avenues to be able to do that. Yes.

Q: And how do you know that?

A: Based on this document.

Q: Do you remember anything else, any conversations you had with people about that?

A: No.

Q: Do you know if Monsanto covered the costs of taking products back during this time period?

A: No.

Q: This is Exhibit 537.

(Pogue Depo Exhibit No. 537 mark'd for identification)

MS. WELCH: Exhibit 537 is a multi-page document from M.F. Baber or B-a-b-e-r, to a distribution list which includes Mr. Pogue, dated April 8th, 1971, and the Bate stamp number is TRAN 063374 to TRAN 063379.

Again, I'm going to ask you some very specific questions. It's up to your counsel and you whether you want to read the whole document.

Why don't I start and we'll see where we are.

First of all, who is Mr. or Dr. Baber?

A: Mike Baber was in charge of commercial development.

Q: Did you report to him in 1971?

A: No. No, I didn't.

Q: Did you have any kind of dotted line or any other relationship with him?

A: Yes.

Q: And what was the relationship?

A: As a dotted line consultant, and then earlier in 1969, parts of 1969, 1970, I reported to him functionally.

Q: In what capacity?

A: In the commercial development capacity, and then also during part of my tenure as a business analyst.

Q: Do you know what I think I'm going to do is ask you to read the first

three pages of the document. Those are the only pages I'm going to ask you questions about, so maybe you can spend some time reading that.

Okay. You don't need to read the titles.

A: Okay.

Q: To the best of your knowledge, does chlorinated polyphenyls, that category, include biphenyls, terphenyls and quaterphenyls?

A: Yes.

Q: Do you know that based on your experience at Monsanto?

A: Yes.

Q: To your knowledge, were you not as concerned about the toxicity of persistence of terphenyls or quaterphenyls as PCBs during this time period 1971?

A: Yes.

Q: How do you know that?

A: Because of the information that we were receiving within the company.

Q: And that information was that there were less concerns --

A: Yes.

Q: -- about the terphenyls and quaterphenyls?

A: Yes.

Q: Are you aware that the Pydrauls were reformulated to include terphenyls sometime in 1970, 1971?

A: No.

Q: You had nothing to do with that reformulation program?

A: No.

Q: Okay.

MS. WELCH: This is Exhibit 538.

(Pogue Depo Exhibit No. 538 mark'd for identification)

MS. WELCH: Exhibit 538 is a multi-page document dated October 14th, 1971 from Cumming Paton to a number of recipients and it's cc'd to a number of people including Mr. Pogue. The identifying stamp is TRAN 003313 to TRAN 003316, and please take a few minutes to read this document.

Okay?

A: Okay.
Q: Do you recall seeing this document before?
A: Vaguely.
Q: Did you attend the meeting that's referred to here?
A: Where's the reference to the meeting?
Q: "The following are the notes I used in the PCB presentation that must have held you enthralled at midnight after a seventeen-hour day."
A: No.
Q: Did you have any reporting relationship to Cumming Paton?
A: Yes.
Q: And what was that relationship?
A: At a certain period of time, I reported to him.
Q: During what time?
A: Approximately latter half of '71.
Q: And what was your job at that time?
A: To the best of my knowledge, it

was in the carbonless paper area.

Q: Turning your attention to the paragraph that's enumerated 1 under "Dielectrics" where it says "Product Changes," were you aware that Aroclor 1242 for capacitors had been changed to a more biodegradable 1016?

A: I don't recall.

Q: Turning to the paragraph which says "Customer Notification," had you ever seen a letter on the pollution aspects of PCBs sent to customers about this time, which was October, 1971?

A: I don't recall.

Q: Turning to page 3 under "Process Fluids," there's a section here saying carbonless carbon paper, were you aware at the time there was no sales of chlorinated bi- or terphenyls in the contention of carbonless carbon paper?

MR. ZIMMER: Assumes facts not in evidence.

A: I don't recall.

MS. WELCH: Who were your customers in carbonless carbon paper?

A: Well --

MR. ZIMMER: At this point in time or this date?

MS. WELCH: During the six months that he was --

MR. ZIMMER: Oh.

MS. WELCH: -- in charge of it.

A: They were Nashua, Champion. Those are the only ones I can remember.

Q: Was that NCR was a customer or not?

A: I believe NCR was.

Q: When you arrived at this job, carbonless carbon paper sometime in 1971, had the fluids that were used for this group already been reformulated to exclude PCBs?

A: Not to my knowledge.

Q: So when you arrived there, they were still using PCB-containing fluids?

A: Yes.

Q: Do you know when the reformulation occurred?

A: To the best of my knowledge, it was during this period of time.

Q: And to the best of your knowledge, why was that reformulation done?

A: Because of the concerns, the growing concerns, on PCBs being found in the environment.

Q: Turning to the bottom of the page where it says, "Requests from Monsanto customers that we write letters stating whether or not the products supplied by any of our divisions are PCB-free," please read to yourself the paragraph which says "Specialty Product Group Products."

Okay?

A: Yes.

Q: Do you know or did you know as of this time, which is October, 1971, why Turbinol 153 was not included in the group of products that were being -- were now PCB-free?

A: No.

Q: You have no knowledge?

A: No.

Q: Did you know at this time that

HARTOLDMON0042261

Turbinol 153 as of October, 1971 still contained PCBs?

A: No.

Q: Had you stopped having responsibilities for Turbinol 153 as of this date?

A: Yes.

Q: And when did your responsibility for Turbinol 153 in whatever form that responsibility took when did that end?

A: Shortly after the time of these letters, which were in early to mid '70.

Q: September of 1970?

A: Even before then. My responsibility for the product technically ended because it went from the commercial development function to marketing.

Q: So by the summer of 1970, you had no more contact with Turbinol 153?

A: Right.

MS. WELCH: Okay. Why don't we take a few minutes break and I'll review some things and see if there are any further questions.

(Recess)

MS. WELCH: I have no further questions for Mr. Pogue and, Mr. Pogue, when the transcript is prepared, you understand as I instructed earlier that you have a chance to review that transcript and then forward your corrections and sign it.

A: Okay.

MS. WELCH: Mr. Zimmer will be in touch with you about that, I'm sure.

A: All right.

MS. WELCH: Thank you very much.

HARTOLDMON0042263

COMES NOW THE WITNESS, DONALD POGUE and having read the foregoing transcript of the deposition taken on the 23rd day of July, 1992, 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_____,1992.

My Commission expires:_____

_____

Notary Public

vlh

(Transwestern vs. Monsanto)

HARTOLDMON0042264

State of Missouri)
) SS.
City of St. Louis)

I, VICKIE L. HUELSMAN, 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 Circuit Court of the County of St. Louis, State of Missouri, to be used in the trial of said cause in said court, I was attended at the offices of Bryan, Cave, One Metropolitan Square, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 23rd day of July, 1992.

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

HARTOLDMON0042265

COMES NOW THE WITNESS, DONALD POGUE and having read the foregoing transcript of the deposition taken on the 23rd day of July, 1992, 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 5 day of Oct, 1992.

My Commission expires: 4-26-96

Tamara C. Conrad

Notary Public

TAMARA C. CONRAD
NOTARY PUBLIC—STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXPIRES APRIL 26, 1996

ORIGINAL

vlh

(Transwestern vs. Monsanto)

HARTOLDMON0042266

DEPOSITION CORRECTION SHEET

In Re:

Upon reading the deposition and before subscribing thereto, the deponent indicated the following changes should be made:

Page 11 Line 11 Should read: No, I didn't finish my thesis

Reason assigned for change: transcribing error (recording)

Page 69 Line 3 Should read: That it's immissible in water

Reason assigned for change: recording error

Page 85 Line 24 & 25 Should read: 312, A 200, & F 9, ~~[illegible]~~.

Reason assigned for change: recording error & corrected response

Page 84 Line 17 Should read: Not sure, but let's don't take a chance

Reason assigned for change: recording error

Page 80 Line 13 thru 16 Should read: That at that time There was Not a concern of an immediate problem.

Reason assigned for change: To clarify my response to the Question

Page Line Should read:

Reason assigned for change:

Page Line Should read:

Reason assigned for change:

Page Line Should read:

Reason assigned for change:

Page Line Should read:

Reason assigned for change:

Deponent

by me reported in shorthand and caused to be transcribed in to typewriting, and that the 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 28th day of August, 1992.

My Commission expires August 8, 1994.

Vickie L. Gulsman

Notary Public, State of Missouri

HARTOLDMON0042268