

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 78 C 1004
)
OUTBOARD MARINE CORPORATION)
AND MONSANTO COMPANY,)
)
 Defendants.)

The deposition of THOMAS LAYTON GOSSAGE,
called by the Defendant Outboard Marine Corporation
for examination, pursuant to agreement and pursuant
to the Rules of Civil Procedure for the United States
District Courts pertaining to the taking of depositions,
taken before Thea L. Urban, a Notary Public in and for
the County of Cook, State of Illinois, and a Certified
Shorthand Reporter of said State, at 200 East Randolph
Drive, Room 5800, Chicago, Illinois 60601, on the 29th
day of July, A.D. 1981, commencing at 9:30 o'clock a.m.
PRESENT:

MR. SEBASTIAN T. PATTI,
(Enforcement Division
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604),

appeared on behalf of the
United States of America;

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PRESENT: (Continued)

MR. MICHAEL A. POPE,
MS. MARY KAY KELLY,
(Phelan, Pope & John, Ltd.
30 North LaSalle Street
Chicago, Illinois 60602),

and

MS. JOANNA C. NEW,
(Martin, Craig, Chester & Sonnenschein
115 South LaSalle Street
Chicago, Illinois 60603),

appeared on behalf of Outboard
Marine Corporation;

MR. JAMES H. SCHINK,
(Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60611),

and

MR. JAY R. GENTRY ORTIZ,
(Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166),

appeared on behalf of Monsanto Company.

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I N D E X

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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THOMAS LAYTON GOSSAGE

By Ms. Kelly	5	181
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By Mr. Patti	177
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E X H I B I T S

<u>Gossage-OMC Deposition Exhibit</u>	<u>Marked for ID</u>
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No. 1	71
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No. 2	80
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No. 3	102
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MR. POPE: Mr. Schink, Miss Kelly will handle the interrogation.

There is one matter I think I would like to make of record at the beginning of this deposition. There have been a number of Monsanto witnesses who we would normally speaking postpone the taking of depositions pending a ruling by the Judge on the outstanding discovery motion which she has taken under advisement.

I think given the dates that have been set by the Court, it makes the most sense for the lawyers and the witnesses, for us to go ahead with the depositions and I propose we do that, but it may well be that we cannot really complete the deposition depending on what the Judge rules by way of further discovery for Monsanto.

MR. SCHINK: I think you should ask any questions of Mr. Gossage that you deem appropriate and I will object and direct the witness not to answer in the event some of the questions touch on areas that we deem to be irrelevant to the case.

MR. POPE: I am sure you will, but nonetheless, it may be impossible to totally complete the deposition pending the ruling of the Court.

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MR. SCHINK: I still would just state for the record that you pose to the witness any questions you deem to be appropriate. Do not withhold any questions. It is not our intention that Mr. Gossage be later available, obviously, except of course for the --

MR. POPE: If the Court requires you to produce documents that relate to his area or would be appropriate for him to answer, it may well be necessary that we have further interrogation on the additional documents or further answers from Monsanto.

MR. SCHINK: That may be. Why don't we proceed.

(Witness sworn.)

T H O M A S L A Y T O N G O S S A G E,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KELLY:

Q Will you state your full name.

A Thomas Layton Gossage, L-a-y-t-o-n.

Q Mr. Gossage, what is your present address?

A 464 Edgewood Drive, Clayton, Missouri 63105.

Q Is Clayton --

A A suburb of St. Louis, County of St. Louis.

Q What is your age, Mr. Gossage?

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A 47.

Q Have you ever given a deposition in any lawsuit prior to this time?

A No, I haven't.

Q Have you ever provided a statement to any person including your attorneys concerning PCB-bearing fluids?

A State that again.

MR. SCHINK: Do you understand what a statement is, where a reporter would ask you questions and they would be transcribed?

THE WITNESS: No, I haven't.

BY MS. KELLY:

Q Have you ever testified in any trial concerning PCB-bearing fluids?

A No, I haven't.

Q Would you tell me your educational background beginning with high school.

A Where I went to school?

Nashville, Tennessee, East Nashville High School.

Q Did you go on to college?

A Yes.

Q What college?

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A The Georgia Institute of Technology.

Q Did you receive a degree?

A Yes.

Q What kind of a degree did you receive?

A Bachelor and Master's in Chemical Engineering.

Q When did you receive your Bachelor's Degree?

A '56.

Q And your Master's?

A '57.

Q Have you taken any postgraduate courses since obtaining the Master's Degree in '57?

A I took some courses when I was in the Air Force in Dayton, Ohio at Ohio State; several courses, mathematics, thermodynamics, contract law.

I think that is essentially it.

I also took while in the Air Force a two or three-week course at MIT, engineering course on fluids, and I took advance management training at Stanford in 1969. That is a six-week course.

Q Have you received any degree since receiving your Master's?

A No, I have not.

Q Both your Bachelor and Master's were in Chemical Engineering?

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A Correct.

Q Did you concentrate in a particular field of chemical engineering?

A My thesis during my Master's was in Fluids Flow.

Q Could you explain for me what you mean by fluids flow?

A The flow of fluids in pipes and valves that was related to an Air Force contract on fuel flow in jet aircraft.

Q The courses which you took at MIT while you were in the Air Force pertaining to fluids, could you describe what those courses involved?

A It was one course and it is a highly theoretical course on fluid mechanics.

Q Any particular fluids?

A No, just fluids in general.

Q Again, did that apply to jet aircraft?

A No.

Q After you received your Master's Degree in Chemical Engineering in 1957, I take it you went into the Air Force.

A I went with Exxon, called ESSO at that time, their Baton Rouge Refinery for about six months before

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I was called into the Service. I took ROTC at college and had had a two-year obligation, three-year obligation in the Service, so I left Exxon a few months after I joined them and was in the Air Force for two and a half years.

Q What were your responsibilities at Exxon?

A I was a process engineer doing design work on new capital projects in the refinery.

Q What type of capital projects?

A The ones I worked on while I was there, as I recall, one was the movement of some lower olefins, C2, C3 and C4 out of the refinery for some storage some number of miles away. I designed the piping and the equipment for moving that.

I was involved in heat transfer, heat exchanger equipment for one of the refinery units, and that is all I can recall. There may have been one or two other projects, but those are the ones I recall.

Q Did your responsibilities at Exxon involve any hydraulic fluids?

A No.

Q What were your major responsibilities in the Air Force?

A I was at Wright Patterson Air Force Base in

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the Fuels and Lubes Laboratory. I was a project manager responsible for doing contract research with universities and industry and my focus was in the fuels area.

Q I take it you left the Air Force approximately 1959?

A Let me think about that a minute. It would have been very early '60, the first quarter of '60. I don't remember exactly.

Q Where did you go?

A I went back to the Baton Rouge Refinery, the same company but it was called Humble Oil then, later called Exxon.

Q Were your responsibilities the same as when you were previously there?

A I went back essentially to the same job working on those projects. In fact some of those projects I mentioned may have been done after I came out.

Q Those are the capital projects involving the design for piping and the heat transfer systems?

A That is correct.

Q How long were you employed by, at that time, Humble Oil?

A For about a year. I left in May of 1961.

Q Did your responsibilities during that time ever change from designing of capital projects?

A No, the same job but the projects were the same or I worked on different projects that were assigned to me. But my position was the same.

Q After you left Humble Oil, where did you go?

A I joined Monsanto.

Q That was 1961?

A Yes.

Q When you joined Monsanto, what was your responsibility?

A My title was Assistant Director of Government Relations, a subsidiary of Monsanto called Monsanto Research Corporation, was and is a subsidiary dedicated to doing Government research.

Q What did those research projects involve?

A We had a number of programs with the Atomic Energy Commission, some of those which were highly classified; with the Air Force, some of which also were classified; with the Army and Navy, Department of Health.

We certainly had a number of Air Force contracts relating to lubricants, fuels and hydraulic fluids, but hydraulic fluids for aircraft.

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Q Did your responsibilities as Assistant Director of Government Relations for Monsanto Research Corporation involve PCB-bearing fluids?

A No.

Q Pydraul fluids?

A No.

Q How long did you hold that position as Assistant Director of Government Relations?

A I was with Monsanto Research Corporation from '61 to '68 and somewhere in the middle, I would say about '65, I became Director of R&D Marketing. That really was the same department. We changed the name of the department.

I was the assistant head of the department when I came and I became head of the department. We changed the title of Government Relations Department to R&D Marketing Department.

Q So in 1965 you became the Director of --

A Of that department.

Q Of what was formerly the Government Relations Department?

A Yes.

Q Did you understand the question?

A Yes.

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Q You were now the Director of that department which in 1965 was known as the Research Department for Marketing?

A In 1965 it became the R&D Marketing Department.

Q Did your responsibilities change with the change of title?

A I took on the responsibility for the entire department.

Q Did the functions of that department change in 1965?

A No.

Q How long did you remain in the position of R&D Marketing?

A Until late 1968.

Q From 1965 until 1968 did you have any involvement with the sale or marketing research of PCB-bearing fluids?

A No.

Q In 1968 how did your position change at Monsanto?

A I moved from Dayton, Ohio to St. Louis.

Q What was your title?

A I joined a part of Monsanto called the New Enterprise Division which was just being formed at that

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time and my title was Group Marketing Director.

Q What was the purpose of the New Enterprise Division?

A We were trying to develop new business for Monsanto.

Q The New Enterprise, was it originated in 1968 when you joined the division?

A It was formed either in late 1968 or early 1969, I don't remember. It was formed when I joined them, but I don't know whether officially it became a division in late December 1968 or January '69. It was in that time period.

Q How many employees were there in the New Enterprise Division?

A I would guess a couple of hundred, I don't know.

Q And you had direct responsibility and supervision?

A Not over the entire department. I was merely one of the managers within that division.

Q How long did you remain in that position?

A Until October or November of 1970.

Q While you held the position of Group Marketing Director in the New Enterprise Division, did you have any

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involvement with PCB-bearing fluids or Pydraul fluids?

A No, I didn't.

Q At that time were you aware that Monsanto sold products bearing the trade name Pydraul?

MR. SCHINK: At that time refers to when he was Group Marketing Director?

BY MS. KELLY:

Q At that time, from the period 1968 to 1970.

A I may have been familiar with the trade name. I was not familiar with the product, no more so than I would be familiar with any other trade name at Monsanto.

Q You at that time were not familiar with the purpose of Pydraul?

A No.

Q Or its composition, the chemical composition?

A No.

Q From 1968 until 1970, did you become aware of the presence of PCBs in the environment?

A No.

Q Can you explain how your position changed in 1970?

A I became Director of Sales for, at that time, it was called Functional Fluids Business Group of the

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Organic Division.

Q How long did you remain in that position?

A Within, let us say that I joined that group in October. By December, in fact it was in December I was in Atlanta for Christmas. There was an organizational change and another group was added to that, the Paper Chemicals Group.

The two of those business groups were then called the Specialty Chemicals Business Group. That was December 1970 and I was made Sales Director for that group.

Q So the Functional Fluids Business Group was combined with the Paper Products Group?

A Paper Chemicals Business Group.

Q Paper Chemicals to form the Sales --

A To form the Specialty Chemicals Business Group.

It was Specialty Products Business Group at that time.

Q Are you saying that later there was a further name change?

A It is now called the Specialty Chemicals Division, but that is much later.

Q How long did you hold the title of Director of

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Specialty Products Business Group?

A I was essentially in that position until 1975. There was a title change from Sales Director to Marketing Director in 1972, I believe; no change in the position, just the change of title.

Q How long did you hold the position of Marketing Director?

A Until 1975.

Q In 1975 how did your position change?

A I became Director of Results Management.

Q Is that the position you hold at Monsanto today?

A No, we've got a long way to go.

Q Bring us up to date on your titles.

A I was there for about 15 or 18 months. I then became Assistant General Manager of the Plasticizer Division. That would have been sometime in late '75. I was in that position for less than a year, say 10 months. I then became a General Manager of the Plasticizer Division, then became General Manager of the Detergent & Phosphate Division.

Q That was in 1977, I take it?

A Yes, '78, '77, and then in July of 1980, I became Assistant Managing Director of Monsanto

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Industrial Chemical Company and that is the position I am in now.

Q Going back to October of 1970 when you became the Director of Sales for Functional Fluids Business Group, how many Monsanto employees were there in that division or that group?

A Reporting to me?

Q Reporting to you.

A I would guess about 20.

Q How many Monsanto employees were there in the entire department?

MR. SCHINK: Do you mean in the business group?

BY MS. KELLY:

Q In the business group.

A Reporting into that business group, I'd say 50 to 60.

Q Who were your immediate supervisors?

A At that point in time?

Q Yes, in October 1970.

A Howard Bergen.

Q Anyone else?

A No.

Q Who was the director of that department?

A That business group, he was. I reported to

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the head of the business group.

Q What was his title?

A Business Director.

Q What was the function of the Functional Fluids Business Group?

A We had worldwide responsibility for a number of different specialty products that broadly could be classified as fluids.

Q Can you categorize these fluids in any way?

A There were a number of different fluids. There were a number of heat transfer fluids, hydraulic fluids, dielectric fluids, solvents and some specialty lubricants. That may not have been all of them, but that was the majority of the business at that time.

Q Did you have responsibility for sales pertaining to all of these different types of fluids?

A Yes.

Q Can you approximate for me which of these fluids represented the largest share of the Monsanto market in October of 1970?

A I am not sure what you mean by largest share of the Monsanto market. Do you mean largest amount of sales by total?

Q Largest amount of sales by total out of --

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A Out of that group?

Q Out of that group.

A Dielectrics would have been the largest sale -
dollars.

Q And approximately what percentage of sales
were represented by dielectrics?

A I can't recall. I would guess 30 percent.

MR. SCHINK: You don't have to guess.

BY MS. KELLY:

Q What would be the second largest? Which of
the fluids was second largest in terms of sales?

A Hydraulic fluids.

Q Did you undergo any type of training before
you became Director of Sales or thereafter in order to
familiarize yourself with the department and its purpose?

A What do you mean by training?

Q What did you do to familiarize yourself with
Functional Fluids Business Group?

A Through reading what was available in the
files, through talking to the person whom I replaced.

Q Who was the person that you replaced?

A Don Olson, and through discussions with other
department heads and with Mr. Bergen, the Director.

Q What did you learn from Mr. Bergen about the

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presence of PCBs in the environment?

A The only knowledge I can recall is that it was about that time that we were preparing to make the first conversion of our Pydraul products away from polychlorinated biphenyls to the chlorinated terphenyls.

Q Were you informed as to the reason for this conversion?

A Yes.

Q What was that?

A Because of concern by the Government of the presence of PCBs in the environment.

Q When did you first learn of the presence of PCBs in the environment?

A It would be in October of 1970.

Q From what source did you learn of the presence of PCBs in the environment?

A From Don Olson, Howard Bergen and my initial discussions with these two individuals.

Q Did they inform you as to how the PCBs got into the environment?

A I cannot recall anything specific, other than from the effluent of our various customers' use of the product.

Q What types of effluent were you informed caused

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the presence of PCBs in the environment?

A Either from solid wastes or from the liquid or collection of fluids in the customer plant.

Q Were you aware of the use of PCB-bearing fluids in insecticides?

A No.

Q At that time?

A No.

Q Are you aware that Monsanto marketed products for use in insecticides with PCB-bearing fluids?

A No.

Q In October of 1970 when you became Director, when you joined the Functional Fluids Group, were you aware of the use of PCB-bearing fluids in adhesives?

A Yes.

Q What were you told with regard to adhesives?

A We were withdrawing from those markets at the same time or essentially the same time that we were converting our Pydraul fluids to chlorinated terphenyl.

Q Were you shown any research at the time you joined the Functional Fluids Group pertaining to the chemical composition of Pydrauls?

A Certainly.

Q Are you familiar with the chemical composition

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of Pydraul F-9?

A No.

Q Or the chemical composition of Pydraul A-200?

A In general terms, on both of those I know that at that time they were chlorinated biphenyls but there are different formulations and I have no recollection of them at this time.

Q Are you aware that PCB fluids bearing the trade name Aroclors were used in both Pydraul F-9 and Pydraul A-200?

A Well, Aroclor was a trade name for a dielectric use for those same products.

Q Absolutely.

So you were aware that Aroclor was to include Pydraul F-9 and A-200?

MR. SCHINK: Aroclor is a trade name. He has already told you that Aroclor is a chlorinated biphenyl.

THE WITNESS: Yes.

BY MS. KELLY:

Q Do you know what Aroclor was used in Pydraul F-9?

A No.

Q Do you know what Aroclor was used in Pydraul A-200?

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A Not at this time.

Q At any time did you know what Aroclor was used?

A I'm sure I knew which Aroclors or which chlorinated biphenyls were used in the various fluids at that time.

Q Do you know what Aroclor was used in Pydraul A-200A?

A No, I did then. I don't know.

Q Do you know what Aroclor was used in Pydraul A-200B?

A I know it is a chlorinated terphenyl rather than a biphenyl, but I don't know which one it was at this time.

Q Were you shown any tests or research which was performed on any of the Pydraul fluids by Monsanto when you joined the Functional Fluids Group?

MR. SCHINK: Research regarding anything?

BY MS. KELLY:

Q Research involving the functions of these products.

A I had access to all the research reports and saw routine monthly reports out of Research.

Q Did you review any reports concerning the

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solubility of Aroclors or Pydraul when you joined the Functional Fluids Group?

A Solubility in?

Q In water.

A I don't recall that data.

Q Did you ever review any data on the specific gravity characteristics of Pydrauls?

A I would have seen and would have generally known the specific gravities of the Pydrauls at that time.

Q Were you shown any testing concerning the toxicity of Pydrauls?

A Not at that time, that I can recall.

Q Do you know if prior to 1970 any tests were performed by Monsanto on biodegradation qualities of Pydraul?

MR. SCHINK: You are asking now Pydraul as opposed to Aroclors or PCBs?

THE WITNESS: Biodegradation?

BY MS. KELLY:

Q Yes.

A And the question again was?

Q Are you aware of any biodegradation studies conducted by Monsanto on Pydrauls prior to 1970?

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A I am aware that they were done. I have no recollection of them.

Q Do you know who performed those tests, the biodegradation tests?

A That would have been under the sponsorship of the Research Department, which was run by Bill Richard.

Q Can you recall any of the results of those tests?

A No.

Q Do you have any familiarity where biodegradation tests would be conducted?

A No.

Q Would have been conducted in 1970?

A No.

Q Do you know whether the state of scientific testing was adequate to perform biodegradation tests prior to 1970?

A Prior to '70?

MR. SCHINK: Some of your previous questions were in 1970. Now you are asking whether he knows prior to 1970 whether the state of art was sufficient for someone to run a biodegradation test on what?

MS. KELLY: That's correct.

MR. SCHINK: On what?

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MS. KELLY: On Pydraul.

BY THE WITNESS:

A I don't know that I am qualified to answer that.

BY MS. KELLY:

Q What is your understanding of the potential harm of PCBs in the environment today?

A What is my understanding?

Q Yes.

MR. SCHINK: In what quantities, in what kind of a medium?

BY MS. KELLY:

Q Do you understand the question?

A Restate the question.

Q What is your understanding of the potential harm of the presence of PCBs in the environment?

A I really have no direct understanding. I am not an expert in either toxicity or the effects on the environment.

I can only comment on what I have read or what I was exposed to during the years I have been involved, but I certainly cannot give you any scientific comments on that.

Q Based on what you have read and what you know

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to date, what is your understanding of the potential hazards of PCBs in the environment?

MR. SCHINK: Now you are asking what he knows today, not what he knew in 1970?

MS. KELLY: That is correct.

BY THE WITNESS:

A It is my understanding that it is a persistent chemical which means it does not biodegrade and I am using "it" in the broadest terms of a number of higher chlorinated biphenyls which would have been the basic ingredients in the Pydraul; that it accumulates in certain aquatic species, in animals.

It is my understanding that it is not a highly toxic material, but there certainly are and have been published some concerns about toxicity in animals exposed over long periods of time at high dosage.

BY MS. KELLY:

Q How have you obtained this information?

A Through reading internal Monsanto documents, through reading published reports by the Government and the scientific community.

MS. KELLY: Would you repeat his prior answer.

(Record read as requested.)

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BY MS. KELLY:

Q Mr. Gossage, how did you learn that PCBs are a persistent chemical?

MR. SCHINK: He has already answered that question. He has cited the two general sources with respect to this.

He has answered that question, Miss Kelly.

BY MS. KELLY:

Q Can you give me any specific recollection about how you learned that PCBs are a persistent chemical?

A The first letter that we sent out to our Pydraul customers, which must have gone out in early '70 as we were changing fluids, cited the concern by the Government and our concern about their concern of the persistency of the chlorinated biphenyls in the environment.

Q That was your first knowledge of that quality of PCBs?

MR. SCHINK: Of certain PCBs. He said the higher chlorinated ones.

BY THE WITNESS:

A That is the first specific reference I can give you. Certainly it was discussed as I entered the

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job with Mr. Olson and Mr. Bergen and the other department heads.

BY MS. KELLY:

Q What did Mr. Bergen tell you about that fact?

A That we were going through a period of converting our Pydraul fluids away from the higher chlorinated biphenyls to chlorinated terphenyls because of the Government concern about finding these higher chlorinated, polychlorinated biphenyls in the environment and our concern about that particular application being what we described as an open system versus a closed system and thus being a likely source in the environment of PCBs.

Q What particular application?

A Pydrauls.

Q When you say open application, can you describe what you mean by that?

A It is a system where the fluid is not contained and losses are incurred as the new fluid is used in its hydraulic application and has the potential for escaping into the environment.

Q Prior to your arrival in the Functional Fluids Group, Monsanto did not restrict sale of its Pydraul to closed uses, I take it?

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A They were in the process of doing that at the time I came to the job. Mr. Olson, my predecessor, as I understood at the time had been around to the industry talking about the Government's concern and about our moving toward a reformulation of those products.

Q Prior to that reformulation period Monsanto did not restrict its sale of Pydraul to closed uses?

A Prior to that period in 1970, they did not.

Q What is the basis for your knowledge that, as you testified, certain PCBs accumulate in aquatic species?

A From what I said earlier, from articles in the trade journals, from Government reports and communications and through our research organization as it translated that information to us in the market.

Q What were you told, who in your Research Department told you that certain PCBs accumulate in aquatic species and animals?

A I don't recall who would have first told me. Bill Richard certainly would have.

Q Can you recall any specific articles or reports that you read concerning the accumulation of certain PCBs in aquatic species?

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A Nothing specific. There were a number of reports showing up in early 1970 when I joined and maybe shortly before that on that subject. As I say, many of them were published in journals.

Q When you refer to reports, are some of those Monsanto internal reports?

A I am sure that in the routine monthly reports there were citings of published articles on the findings of PCBs in the environment.

Q When you became affiliated with the Functional Fluids Group in 1970, to your knowledge was there anyone at Monsanto who had direct responsibility for the environmental impact of Monsanto fluids?

A Bill Papageorge.

Q Do you know when Mr. Papageorge assumed that responsibility?

A It was before I joined the group and I cannot tell you exactly when it was. He had not been there very long when I moved in the position.

Q Prior to Mr. Papageorge assuming the position of research on environmental impact of Monsanto fluids, was there another person at Monsanto who assumed that position?

A You said research this time. He was not

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responsible for research. He was responsible for the environmental impact.

Q What was Mr. Papageorge's title?

A Product Acceptability Manager.

Q Was that a new position when he assumed it?

A Yes.

Q So as far as you know, no one prior to Mr. Papageorge had any involvement with the environmental impact of Monsanto fluids?

MR. SCHINK: Wait a minute. Are you asking was that position created and was Mr. Papageorge the first person to occupy it, or are you asking who carried out those responsibilities prior to his assuming that job?

BY MS. KELLY:

Q Was there anyone at Monsanto who carried out those responsibilities under any title?

MR. SCHINK: Any single person or a group of people?

MS. KELLY: Either.

BY THE WITNESS:

A There was no individual within the Business Group that had a full-time responsibility. The responsibility was shared by a number of members of the business group and by various corporate staff groups.

BY MS. KELLY:

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Q Who were those people?

A Certainly within the business group, it would have been shared by the Research Director.

Q Who was that at that time?

A Bill Richard; by the Manufacturing Manager.

Q Who was that in 1970?

A Jim Savage.

Q Anyone else?

A Well, the Business Director would have overall responsibility.

Q Who was the Business Director in 1970?

A Howard Bergen. That would be the major managers with responsibility in that area before Mr. Papageorge.

As I said though, there were corporate staff people who shared in that responsibility.

Q How many chemists were there in the Functional Fluids Division in 1970?

MR. SCHINK: What do you mean by chemists, people who had chemistry backgrounds or people who had that title?

BY MS. KELLY:

Q People who had chemical educational training.

A Chemistry as compared to chemical engineering or --

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Q Take chemists first.

A I don't know specifically.

Q Are you familiar with anyone else besides yourself who had a chemical engineering degree?

A Within Research, all of the Research professionals would be chemists or engineers of some training, mechanical, chemical, electrical; some physicists.

Q So out of the 50 to 60 employees in the Functional Fluids Division which you were employed by Monsanto in 1970, it is your testimony that approximately all of them had some chemical training?

A No, I said all of the professionals in the Research Department.

Q How many are professionals in the Research Department?

A I said earlier there were about 20 in Marketing out of that 50 or 60. Research was the largest group and it would have constituted 30 to 35 professionals and technicians. I have no recollection of what the split was between the professionals and the technicians. It was predominantly professional.

Q Will you describe your direct responsibilities as when you joined the Functional Fluids Group in 1970?

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A I had worldwide responsibility for the marketing and sales of all the products produced in that business group.

Q Did you deal with salesmen on a day-to-day basis?

A Not on a day-to-day basis. They were part of the organization.

Q Did you have customer contact?

A Some.

Q When would you have customer contact?

A At any time during the period I was in that job, I tried to develop some relationships with most of the major customers and there would be not frequent, but occasional trips out to visit customers.

Q Did you at any time after 1970 have contact with Johnson Motors personnel in Waukegan, Illinois?

A Yes.

Q Did you ever visit the Waukegan Harbor Plant?

A Yes.

Q How many occasions?

A How many occasions after 1970?

Q Yes.

A Two that I recall.

Q I assume you never visited the Johnson Motors

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Plant prior to 1970?

A Yes, I was just clarifying whether you meant in 1970 or after 1970.

Q Did you before joining the Functional Fluids Group in 1970 have any involvement in die casting operations?

A No, I did not.

Q Any familiarity with how that process works?

A No.

Q Did you have any contact with the use of hydraulic fluids?

A Prior to 1970?

Q Prior to 1970.

A Yes, not for industrial applications; for aircraft applications.

Q Did your involvement with hydraulic fluids prior to 1970 ever bring you into contact with Pydrauls?

A No.

Q Prior to 1970, did your contact with hydraulic fluids have any involvement with other PCB-bearing fluids?

A No.

Q At the time you joined the Functional Fluids Group in 1970, you testified that the department was in the process of changing over from Pydrauls bearing PCB.

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Can you tell me what the purpose of that was?

A What the purpose --

Q Of the changeover was.

MR. SCHINK: He already testified to that.

You may repeat it if you wish.

BY THE WITNESS:

A It was our awareness that the Government was becoming concerned about the presence of PCBs in the environment --

BY MS. KELLY:

Q What did you -- I am sorry, I didn't mean to cut you off.

A And the identification that Pydrauls and what you described as adhesive applications were applications that we would define as open systems that would have a high probability of resulting or could result in some environmental build-up.

Q What did you inform the salesmen about this changeover?

A I didn't inform the salesmen of anything.

Q You never had direct contact with the salesmen to inform them of this changeover?

A That would not have been done by me. That

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would have been done by people who reported to me.

Q Who would have had that direct responsibility?

A Yes.

Q What are the names of those --

MR. SCHINK: You want to know who did?

BY MS. KELLY:

Q Who did the informing of the salesmen about the changeover?

A The responsibility about informing the salesmen and training the salesmen on the conversion at that time would have rested with Norm Johnson.

Q And the changeover that we are --

A Let me just -- Norm Johnson and Larry Bradford because there was in early 1970 an organizational change where these two had slightly changing responsibilities.

MR. SCHINK: You mean '71 or 1970 with Bradford and Johnson's responsibilities changing?

THE WITNESS: I guess that's '71, yes. It was Norm Johnson.

MR. SCHINK: It was after you took on the job as Sales Director?

THE WITNESS: Yes.

MR. SCHINK: Excuse me.

THE WITNESS: You're right. I have a year there,

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it is '71 they made that organizational change.

BY MS. KELLY:

Q So in 1971 it was Mr. Johnson who had that responsibility?

A In late 1970 when I came on the job, it was Norm Johnson who had that responsibility. In December of that year when another group was combined, as I testified to earlier, there was an organizational change and after that time, which would be early in '71 and beyond, it would be Norm Johnson and Larry Bradford.

Q Is the changeover you are referring to now the changeover from use of Pydraul A-200 to Pydraul A-200B?

A Yes.

Q What is your knowledge of the chemical composition of A-200B?

A I have no specific knowledge of it now. I would have known the composition then. I can only tell you now the A was a chlorinated biphenyl and B was a chlorinated terphenyl, but exactly the level of chlorination, I have no recollection.

Q Did you learn at any time that Pydraul A-200B contained PCBs in any amount?

A State that again.

Q Have you learned at any time whether Pydraul

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A-200B contained PCBs in any amount?

MR. SCHINK: In your question you are asking not what it was formulated with but what it contained?

MS. KELLY: What it contained.

BY THE WITNESS:

A Yes.

BY MS. KELLY:

Q When did you learn that?

A Sometime after the product was introduced and I would say in the latter half of 1971, but I'm not sure of when.

I was aware that the polychlorinated terphenyl which would include 200B was contaminated with minor amounts of the chlorinated biphenyls.

Q Is it your testimony that Pydraul A-200B is not formulated with PCBs?

A That is absolutely correct.

Q Is it also your testimony that Pydraul A-200B was never intended to have PCBs in it but was simply contaminated?

A That is correct, contaminated in that process for making the terphenyls would not be able to deliver a product that did not have parts per million of chlorinated biphenyl.

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Q Why is that?

A Because the separation of the raw materials which is biphenyls and terphenyls could not totally separate out the biphenyl and when you chlorinated the resulting terphenyl, you would likewise chlorinate whatever minor contaminant of biphenyl that was contained in the terphenyl and that would result in a minor amount in parts per million of chlorinated biphenyl.

Q How did you learn that?

A It was, it came up in one of our staff meetings. I believe I posed the question myself to Bill Richard as to whether we might not expect to find some minor quantities of the PCBs in the chlorinated terphenyls.

Q Was that because of your knowledge of how Pydraul A-200B was formulated accompanied with your knowledge of chemistry?

A No, it would be more my knowledge of chemistry and my knowledge of the process for making the chlorinated terphenyls.

Q When was this that you discussed this fact with Mr. Richard?

A I don't know exactly. It was sometime before the end of 1971, I would guess somewhere near the latter

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half of the year.

Q What did you do after you discussed this with Mr. Richard?

A Well, I'm sure that Research did some analytical work to determine the level of PCBs in the chlorinated terphenyls and that resulted in much discussion within the business group about withdrawing that product since the Government was becoming even more concerned about the environmental problems of PCBs.

Q I take it you did no analytical work in order to come to the conclusion that Pydraul A-200B contained PCBs in whatever amount?

A The data was developed about that time and the results were presented to the management of the business group.

Q But my question is when you suggested to Mr. Richard at the staff meeting sometime at the end of 1971 that PCBs were likely to be present in Pydraul A-200B, you had done no analytical work?

A I had done none. I would not have done any analytical work myself. It was more of an inquiry of wouldn't we expect to find low levels of PCBs in those products.

Q And that was from just a basic understanding

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of the chemical composition?

A And the process for making the product.

Q What was Mr. Richard's response when you informed him of the likelihood of the presence of PCBs in the presence of Pydraul A-200B?

A I don't recall other than he would have not confirmed but said it was worthy to look at analytical procedures for low levels to see and see if they were in the Pydrauls.

Q Who did he contact in the Research Department?

A I don't know.

Q Do you know who conducted the analytical work to determine if PCBs were present in Pydraul A-200B?

A Who specifically, no.

Q Under whose supervision would that have been done?

A Bill Richard's.

Q What was the action taken by Monsanto after it was determined that Pydraul A-200B contained PCBs?

A Within a reasonable period of time the business decision was made to once again reformulate the product.

Q What is that reasonable period of time?

A Within a few months.

Q Approximately the very end of 1971?

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A Certainly before the end of 1971.

Q You testified before that you did not have any direct contact with salesmen regarding the reformulation of Pydraul A-200A, is that correct?

A That is correct.

Q Did you prepare any reports or memoranda --

MR. SCHINK: Did you say Pydraul A-200A or A-200? I believe you asked him previously about the reformulation of Pydraul A-200 and he said that was the responsibility of Mr. Johnson and Mr. Bradford to deal with the salespeople.

Is that the testimony you are alluding to?

MS. KELLY: Let us clarify that.

BY MS. KELLY:

Q Did you have any direct contact with salesmen concerning the reformulation of Pydraul A-200 to Pydraul A-200A?

A No.

Q And you had no direct --

MR. SCHINK: Do you mean A-200B?

MS. KELLY: No, I mean A, 200A.

BY THE WITNESS:

A I think it is 200 to 200B.

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BY MS. KELLY:

Q Are you familiar with a product manufactured and marketed by Monsanto at any time bearing the trade name Pydraul A-200A?

A I am speculating.

MR. SCHINK: You don't have to speculate. If you know anything about whether there was such a product ever manufactured and sold by Monsanto, you certainly can testify about it.

BY THE WITNESS:

A Well, I don't know.

BY MS. KELLY:

Q Was there ever a reformulation of Pydraul A-200?

A There was a reformulation of Pydrauls from chlorinated biphenyls to chlorinated terphenyls. Those products, the terphenyls were called the B series products. Pydraul A-200B and so forth, those were all the B products.

Q Are you familiar with the marketing and knowledge of manufacturing of Pydraul F-9?

A Yes.

Q Was Pydraul F-9 marketed while you were in the position of Business Director in the Functional

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Fluids Division?

A Yes.

Q Were you involved with the reformulation of Pydraul F-9?

A I was involved in the reformulation of all of the Pydrauls from the chlorinated biphenyls to the chlorinated terphenyls.

I do not remember all of the trade names of the Pydraul series that were the chlorinated biphenyls.

Q Do you remember how many times there was a reformulation of Pydraul, Monsanto Pydraul products?

A Twice.

Q And what were the --

A Twice since 1970 that I am aware of.

Q What were those reformulations?

A Moving from chlorinated biphenyls to chlorinated terphenyls and then moving from chlorinated terphenyl to phosphate ester.

Q What were the trade names of those reformulations from one to the next?

A The B series products were the terphenyls. The E series products were the phosphate esters.

Q To date you do not recall any products manufactured and marketed by Monsanto bearing the name

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Pydraul A-200A?

A I cannot distinguish between A-200 and A-200A. That was when I was coming into the organization and I don't know whether those products existed as independent products or not.

Q Did you prepare any reports or memoranda to be used in training salesmen with regard to the reformulation of Pydraul F-9 to Pydraul A-200?

A No, I did not.

MR. SCHINK: I object to the form of the question. It assumes that F-9 was reformulated into A-200. I have not heard any evidence in this case that that occurred.

BY MS. KELLY:

Q Mr. Gossage, did you prepare any reports or memoranda regarding the reformulation of Pydraul A-200 to Pydraul A-200B for use in training salesmen?

A No, I did not.

Q Were you involved in the preparation of any reports or memoranda that were used in the training of salesmen with regard to the reformulation of Pydraul A-200B to 50E?

A No, I did not.

Q What was your involvement with the reformulation

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of Pydraul F-9 to Pydraul A-200?

MR. SCHINK: I object again. I think the testimony in fact in this case is that A-200 was a product that was developed at the time while Pydraul F-9 continued to be sold and that A-200 did not represent a reformulation of F-9.

BY MS. KELLY:

Q Mr. Gossage, is it your testimony that Pydraul A-200 is a reformulation of Pydraul F-9?

A I do not know.

Q But you do know that at some time Monsanto began marketing a product known as Pydraul A-200?

MR. SCHINK: He has already testified that a product was being marketed at the time he assumed his position of Sales Director in October or November of 1970.

BY THE WITNESS:

A I have no awareness of their beginning to produce. It was a product in the product line when I came on board.

BY MS. KELLY:

Q Was Pydraul A-200 a product on the product line the same time as Pydraul F-9?

A I don't know that.

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MR. SCHINK: Were you marketing Pydraul F-9 when you assumed the position in October of 1970, if you recall?

THE WITNESS: I am just not familiar with the product F-9 and when it was marketed; therefore, I can only relate to you polychlorinated biphenyls, polychlorinated terphenyls.

BY MS. KELLY:

Q What was your involvement in the reformulation or the changeover from polychlorinated biphenyls to polychlorinated terphenyls?

A As Sales Director I had responsibility of converting the customers or having the Marketing Department convert customers to the new formulation.

(Mr. Bruce Featherstone entered the deposition room.)

BY MS. KELLY:

Q Did you meet with any salesmen in that regard?

A You mean individually?

Q As a group or individually.

A I have no recollection of it.

Q Did you prepare any manuals or reports or memoranda to be used in the training of salesmen with regard to the changeover from Pydrauls that were

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polychlorinated biphenyls to Pydrauls that were polychlorinated terphenyls?

A No.

Q What type of training was given to the salesmen with regard to that changeover?

A Responsibility for that training would have been with someone who reported to me and I don't know what type of training that was.

Q What did you, and I assume this is Mr. Johnson and Mr. Bradford who had that responsibility?

A It was certainly Mr. Johnson. Mr. Bradford may have come in after that reformulation. I cannot tell you exactly when his involvement took place.

It was early 1971, but I don't know whether it was before or after the salesmen training would have taken place.

Q Did you give Johnson instructions as to how the training of salesmen with regard to the changeover should be conducted?

A No.

Q Did you read any reports prepared by Mr. Johnson and Mr. Bradford concerning the training of salesmen with regard to the changeover?

A I cannot recall that.

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Q Did you inform either salesmen or any person who would be involved with customers concerning the conversion as to how to describe the reason for the changeover?

A I did not.

Q Did anyone within the Functional Fluids Group have that responsibility?

A Mr. Olson would have that responsibility before me.

Q Did you review any of Mr. Olson's reports or communications regarding how to inform customers about the changeover?

A I read his entire files when I came on the job.

Q As far as you were concerned, no further action was necessary with regard to communicating to customers the reason for the changeover?

A It was in the process of being implemented at that time.

Q After you took over Mr. Olson's position in 1970, did you take any further action to communicate to customers as to the reasons for Monsanto's changeover?

MR. SCHINK: Which changeover?

BY MS. KELLY:

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Q From polychlorinated biphenyl to polychlorinated terphenyl in Pydrauls.

A I did not take any initial, I did not have any meetings with customers at that time for that purpose.

Q Did you take any action as to instruct any person as to how the customers, how it should be explained to the customers, the purpose for the reformulation, the changeover?

A The changeover had already been planned and was in the process of being implemented when I came on the job, and I did not have to take any additional action.

Q How was that process being implemented?

A It had been agreed upon within the management of the business group and the implementation of it was initiated by communications to the customers and a letter to the customer notifying them of our intention of converting.

Q Did you receive any questions from customers concerning that changeover?

A I did not.

Q Did you learn of any questions from customers concerning the changeover?

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A Questions from customers regarding the changeover?

Q Yes.

A None specifically.

Q Did you learn of any general?

A Bill Papageorge was certainly involved with a number of customer inquiries.

Q What did Mr. Papageorge tell you about inquiries from customers concerning the changeover?

A That the conversion had taken place; that there had been no serious problems and that most of the inquiries were just of an informational nature.

Q Did you learn anything specifically concerning the changeover from Pydraul fluids bearing polychlorinated biphenyl to polychlorinated terphenyl at Johnson Motors at Waukegan, Illinois?

A No.

Q When was the changeover from Pydraul fluids or hydraulic fluids bearing polychlorinated terphenyls to phosphate esters?

A Sometime in 1972.

Q At that time Mr. Olson was no longer within the Functional Fluids Group?

A That is correct.

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Q He had not set up a procedure by which customers would be informed of that changeover?

A No.

Q Were you involved in either the training of salesmen with regard to the changeover from PCT to phosphate esters or informing customers of that fact?

A The responsibility for training the salesmen and informing the customers rested with people who reported to me.

Q You testified that Mr. Olson had set up a procedure by which customers were informed of the changeover from PCBs to PCTs in Pydraul?

A Yes.

Q And you testified that letters had been sent to customers concerning that fact?

A Yes.

Q Did you review the letters sent to the customers?

A Which conversion?

Q The conversions from PCBs to PCTs now.

A Yes.

Q Was it a form letter?

A Yes.

Q Was the same letter sent to all customers?

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A Yes.

Q Did you review any letters in response to the letters sent out by Monsanto?

A In response back to Monsanto?

Q Back to Monsanto.

A None that I can recall.

Q Do you know of any process by which Monsanto kept a record of who to send the customer letters to?

A Yes. We used, I think it's called an addressograph system of all of our Pydraul customers.

Q How did you determine who the Pydraul customers were?

A We have records of who buys Pydrauls or any product of Monsanto.

Q Records within the Functional Fluids Department?

A Within the division.

Q Whose responsibility was it to compile the list to whom the letters concerning the changeover from PCBs to PCTs?

A The list was maintained by a staff department which we now call our Customer Order Processing Group. That list would have been made available to the responsible people within the business group and they would have reviewed the list.

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It is my recollection that the list was reviewed by the Regional Office and by the salesmen to be sure it was up to date and be sure all customer names were on it. It was very carefully gone over so that we included everyone that bought Pydrauls within a reasonable time.

Q Was there any program of personal customer contact developed to follow up the letter?

A You are still talking about the first?

Q The first changeover.

A I have no direct knowledge of what that program entailed. There was salesman follow-up, but I can't describe to you the nature of that and where it broke off.

We didn't personally contact all customers as a follow-up, but we certainly contacted major customers.

MS. KELLY: I would like to take a break now.

(Brief recess had.)

(Record read as requested.)

BY MS. KELLY:

Q Mr. Gossage, what were Monsanto customers told concerning the changeover from Pydraul fluids bearing PCBs to PCTs?

MR. SCHINK: You are now asking in general?

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BY MS. KELLY:

Q Anything you know about what they were told.

A There were several customer letters that went out at that time similar to and there was at least one general letter that was similar to the first letter.

MR. SCHINK: Just so I am clear, the question relates to PCBs to PCTs, what customers were told generally, the first conversion?

THE WITNESS: I am sorry, I am thinking about the second conversion.

BY MS. KELLY:

Q The Pydraul fluids with PCBs to PCTs.

A As I testified earlier, there was a customer letter sent out to all customers informing them of the concern of PCBs being found in the environment and our decision to convert those fluids to polychlorinated terphenyls.

Q That was when --

MR. SCHINK: I am not sure he has completed his answer.

BY MS. KELLY:

Q Have you completed your answer?

A Yes.

Q Was that after the customers were informed

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that Monsanto was changing its Pydraul from PCB-bearing fluids to PCT-bearing fluids, was that when the customers were offered A-200B as a replacement fluid?

A It was one of the fluids, yes.

Q What were some of the other fluids?

A There were a whole series of numbers and I really can't recall. There were some 400 series, I believe some 100 series products.

Q The Pydraul A-200B was a replacement fluid offered when customers were informed that Monsanto was no longer going to market Pydraul bearing PCBs?

MR. SCHINK: No, he testified that when they were informed they were going to market a product formulating PCTs.

BY MS. KELLY:

Q Could you respond to that question?

A Can you ask the question again?

Q Pydraul A-200B was the replacement fluid after the changeover from Pydraul fluids bearing PCBs?

A It was one of the replacement fluids.

Q And sometime after the changeover from Pydraul fluids bearing PCBs to PCTs, Monsanto changed from Pydraul A-200 which also contained PCTs?

A Yes.

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Q Were Monsanto customers informed that Pydraul
A-200B contained PCBs?

A Repeat the question again.

MS. KELLY: Could you reread it?

(Question read.)

BY THE WITNESS:

A I can't testify that all customers were told
that.

BY MS. KELLY:

Q Were some customers told?

A Yes.

Q Which customers?

A The ones that I personally had knowledge of?

Q Yes.

A Johnson Motors and one other customer that I
personally have knowledge of.

Q Who is that other customer?

MR. SCHINK: You can identify it.

BY THE WITNESS:

A General Motors.

BY MS. KELLY:

Q Is the General Motors that you are referring
to here located in New Bedford, Indiana?

MR. SCHINK: General Motors is General Motors

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located all over the country.

BY MS. KELLY:

Q Did the customer which you referred to as General Motors use a Pydraul A-200B in New Bedford, Indiana?

A I don't know that it used A-200B.

Q Was there a General Motors Plant in New Bedford, Indiana which was changing or using hydraulic fluids in 1971?

A I do not recall the specific location.

Q To your knowledge, were any other customers besides Johnson Motors and General Motors informed about the presence of PCBs in Pydraul A-200B?

MR. SCHINK: By Mr. Gossage?

MR. POPE: No.

BY MS. KELLY:

Q Anyone at Monsanto.

MR. SCHINK: He testified that he knew of two customers that he dealt with on that subject.

BY MS. KELLY:

Q As far as you know, Mr. Gossage, were any other customers informed of the presence of PCBs in Pydraul A-200B?

MR. SCHINK: He has already answered that question

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generally before he got into the two specific customers.

BY THE WITNESS:

A I only have direct knowledge of those two customers.

BY MS. KELLY:

Q Did you instruct any of the people who worked under you at Monsanto to inform Monsanto customers of the presence of PCBs in Pydraul A-200B?

A I certainly informed those working for me who were involved in this to be honest and open with the customers and inform them of the reasons that we were converting to the phosphate esters.

Q Who did you instruct?

A Larry Bradford and Norm Johnson.

MR. SCHINK: And the reason you were converting to the phosphate esters was because of the trace presence of PCBs?

THE WITNESS: Contaminant presence of PCBs and our concern about that getting into the environment, if our customers were not careful in the use of the product.

MR. PATTI: Could you read back her last question and his last response, please.

(Record read.)

BY MS. KELLY:

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Q You did not specifically tell Mr. Johnson or Mr. Bradford to inform customers that Pydraul A-200B contained PCBs, did you?

A I would have given no instructions on any individual product. I gave them broad policies on how we would communicate to the customer, the change of all of our Pydrauls from chlorinated terphenyls to phosphate esters.

Q Did you inform Mr. Bradford or Mr. Johnson that Pydraul A-200B had PCBs in them?

A They were certainly aware of it. I cannot tell you whether I informed them or Research informed them, but however, they were aware of it.

Q How do you know they were aware of it?

A Because it was discussed between Bradford and myself in preparation of those customer visits that I made.

Q Did you discuss it with Mr. Johnson?

A I can only tie down the discussions with Mr. Bradford in relationship to the meetings that I had with him about customers.

Q Mr. Johnson may have been present at those meetings but you cannot --

A I cannot tell you that he was or he was not at

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the customer meetings.

Q Did you review any documents that were circulated to Monsanto salesmen of hydraulic fluids which informed the salesmen that PCBs were present in Pydraul A-200B?

A I reviewed all of the letters that went out to the customers and would have also gone to the salesmen notifying them of our plans to convert.

Q Did any of those letters to the salesmen inform the salesmen that Pydraul A-200B contained PCBs?

A I cannot recall.

Q Did you prepare any memorandum to any person at Monsanto informing those persons that Pydraul A-200B contained PCBs?

A I cannot recall any specific memo. It was broadly discussed and generally known within the business.

Q How do you know it was generally know?

A It was generally known amongst all the people that I related.

Q What was generally known?

A That we were converting from polychlorinated terphenyls to the phosphate esters because of our knowledge of small amounts of PCBs as a contaminant in those formulations.

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Q You cannot recall any specific document which informed Monsanto personnel of that fact?

A I cannot come forward with any specific written document.

Q Can you recall any meeting besides the meeting at which you informed Mr. Richard that it was your opinion that Pydraul A-200B would contain PCBs other than at that meeting?

Can you recall any other meetings at which that fact was discussed?

A Well, there were a number of discussions on that subject as we planned for the conversion to the phosphate esters. There were specific meetings for preparation of customer visits where I was involved in where it was discussed and it was discussed at customer meetings.

Q Did Monsanto prepare a second set of letters to go to customers who had previously received the letter concerning the changeover from Pydraul fluids bearing PCBs to PCTs?

Was there another general letter that went out informing them that Pydraul A-200B contained PCBs?

A There was a general letter that went out

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notifying the customer of our intent to withdraw the terphenyl product and reform using the phosphate.

Q That letter did not contain any reasons, reference to the presence of PCBs in Pydraul A-200B?

A That I do not know.

Q When did you learn that Pydraul A-200B contained PCBs?

A I learned that the Pydraul series of polychlorinated terphenyls, that is separate from that one individual product, sometime during 1971, before the end of the year; probably somewhere around the middle of the year.

Q And was that when you first suggested it to Mr. Richard?

A That is my recollection.

Q Prior to that had you ever been involved in any discussions concerning possible presence of PCBs in the PCT-bearing fluids?

A No.

Q In 1970 when you joined the Functional Fluids Group, was Johnson Motors the largest purchaser of Monsanto Pydraul fluids?

A They were one of the largest. I really can't say whether they were the largest or second largest or

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third largest, but they were certainly in the top three or four customers.

Q When you took over the job in the Functional Fluids Group in 1970, did you familiarize yourself with hydraulic operations in die casting plants?

A No. You mean the technology or the application of the fluid in die casting?

Q In any.

A In no depth.

Q Did you review it in any depth?

A I was aware, I became aware and familiarized myself with the various uses of Pydraul in various pieces of equipment.

Q How did you familiarize yourself with the uses of Pydraul?

A By talking with those in the Marketing Department who had some expertise on that and by reading whatever documents were available in the file and talking to Research.

Q What documents did you review?

A Certainly the long range plan and any marketing plans or business plans that would have been available at that time.

Q What do you mean by the long range plan?

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A Each year each business unit of Monsanto writes a long range business plan that covers five, ten years of forward forecast of the markets that we serve, both financial and technology and business-related.

Q Do you recall whether you reviewed the long range plan regarding the Pydraul fluids marketed by Monsanto?

A I reviewed all of the long range plans of the products that I was responsible for.

MS. KELLY: Have these documents been produced to OMC?

MR. SCHINK: Any document that has been called for has been produced subject to the objections we raised with respect to the second set.

MS. KELLY: Well, do you know if you objected to these, the production of these documents?

MR. SCHINK: If those documents were called for, they were produced if they existed.

MS. KELLY: Let's go off the record for a minute.

(Discussion off the record.)

BY MS. KELLY:

Q What was the forecast for Monsanto's hydraulic fluids market in 1970?

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A What was the forward forecast?

Q Yes.

A I don't recall.

Q Do you recall that any mention that the forward forecast -- and I assume you are referring to an economic forecast?

A I said economic, technology and business forecasts for all the products that we sell.

Q Was there any mention in the forward forecast or any discussions you had concerning the forward forecast regarding the effect of the presence of PCBs in the environment on Monsanto sales, the future sale of Pydraul fluids?

MR. SCHINK: Does he recall whether that was specifically discussed in a 1970 plan, is that the question?

MS. KELLY: That is correct.

BY THE WITNESS:

A I cannot specifically recall.

BY MS. KELLY:

Q Do you remember any discussions with any personnel at Monsanto concerning the effect of the presence of PCBs in the environment on the profitability of the sale of hydraulic fluids?

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A No.

Q You testified that --

A This was in 1970, you say?

Q In 1970.

At any time since your involvement with Monsanto hydraulic fluids, do you recall discussions concerning the impact of the presence of PCBs in the environment on Monsanto's market share of the sale of hydraulic fluids?

A Market share?

Q Yes.

A No.

Q Do you recall any discussions concerning the profitability of Monsanto's hydraulic fluids as affected by the presence of PCBs in the environment?

A We were instructed as a business group, the management of the business group, to disregard any concern about the profitability of the product --

Q Who was --

MR. SCHINK: Let him complete his answer, first.

BY THE WITNESS:

A (Continuing.) -- and to take those actions that seemed appropriate to be responsive to the Government concern, to the environmental concern about those

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products.

BY MS. KELLY:

Q Who was the Business Manager?

A Howard Bergen.

MS. KELLY: Would you read back his second to the last answer.

(Record read.)

(Gossage-OMC Deposition Exhibit
No. 1 marked for identification,
7/29/81, TLU.)

BY MS. KELLY:

Q Mr. Gossage, I'm going to show you what has been marked as Gossage Deposition Exhibit No. 1. I would like you to take a look at that. It is a nine-page memorandum dated December 8, 1971 from Mr. Bradford to yourself.

A Do you want me to read the whole thing?

Q I'm going to call your attention to the first paragraph on Page 1 under the paragraph entitled Objective.

First I would like to ask you --

A Wait, let me read that.

I have read it.

Q Have you reviewed this document recently?

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A No.

Q Is this a document that you received some-time around the date it bears?

A It would appear so.

Q Is this a document that is kept in the regularly maintained business files of Monsanto?

A Repeat that again.

Q Is this a document that would be found in the regularly maintained business files of Monsanto?

A I really don't know.

Q But you assume you received this on or about the date it bears?

A Yes.

Q From Mr. Bradford?

A Yes.

Q After reading the first paragraph under the section on Page 1 labeled Objective, Mr. Gossage, I would like to ask you if it was in fact Monsanto's objective to salvage as large a share of the market as possible at a profit?

MR. SCHINK: I object to the form of that question. Your preceding questions related to a 1970 plan and objective and their PCB to PCT transition. Now you have jumped ahead two years to a separate transition.

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Are you now asking him about that transition as opposed to the earlier transition?

MS. KELLY: Could you repeat my question and Mr. Gossage's response two questions ago?

(Record read as requested.)

BY MS. KELLY:

Q Mr. Gossage, after reading the first sentence of the paragraph labeled Objective on Page 1 of the Gossage Deposition Exhibit No. 1 which states:

"Our objective in this transition program simply stated is to be out of PCBs/PCTs by June 30, 1972, to salvage as large a share of the market as possible at a profit..."

After reviewing that sentence, is it your testimony that Mr. Bergen altered his instruction to you concerning Monsanto's concerns in 1971?

A No. The statement is the objective in the transition program is simply stated to be out of PCBs/PCTs by June 30, 1972.

That was consistent with the policy that we had received from the company, that we will do whatever is necessary regardless of the profit impact to be responsible and to withdraw the products that could be causing environmental exposure.

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Q I take it then you disagree with the sentence or the portion of the sentence in Deposition Exhibit No. 1 which states that, "Our objective..." is "to salvage as large a share of the market as possible at a profit"?

A I would take exception to it if stated by itself. The objective is to be out of PCBs and PCTs by June 30, 1972. That was the overriding objective at that time.

Q After reviewing the sentence which we have reviewed on Deposition Exhibit No. 1, that objective stated there accurately summarizes Monsanto's objective on or around December 8, 1971?

A Taken in its entirety, the objective was to withdraw those products from the marketplace.

Q After reviewing the portion of that section and continuing on where we left, "and to be left with zero inventory of our current fluids," how was it that Monsanto intended to obtain a zero inventory of those fluids?

A By timing the transition from one fluid to the other. As we converted customers from the old product to the new product, we would do it in a manner that we would end up with nominally zero inventory.

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Q By selling the inventory that you had to your current customers?

A By scheduling our production so that we did not end up with inventory.

At the time you initiate, we initiated the transition, you would have a certain inventory of these products and you would have certain production capability of new product.

You had to make that transition and plan your production of old product so that you ended your total conversion with nominal, zero inventory.

Q But during that period of time, you were selling the inventory which you had to customers?

A We were converting the customers as quickly as their programs would allow them to convert by using inventory which was in Monsanto's possession, inventory and the planned production.

The target date had been set of June 30 to have been completed at that time. I guess, I think we need to point out, which I am sure you know what I would at least like to say, we were under no Government action to withdraw this product. We were doing it voluntarily in consultation with the Government as being appropriate action based on the information that was

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available to them and to us at that time.

They knew what our program was and we couldn't shut down the steel industry, the aluminum industry, the die casting industry by not providing a reasonable time, nor would our lawyers allow us to be precipitous in the conversion of that.

MR. PATTI: Could you read the first part of his answer.

(Answer read as requested.)

BY MS. KELLY:

Q What do you mean by planned production?

A We have to schedule our production. We have to tell our plant how much material to produce, how much material to formulate of each formulation. We had to balance what we had in inventory versus what we were producing to balance what the customers needed after they made the conversion.

Q After Monsanto decided to change from PCB-bearing fluids to PCT-bearing fluids, Monsanto continued to use PCB-bearing fluids which had already been produced, is that correct?

A Run that by again.

Q After Monsanto decided to change from PCB-bearing fluid to PCT-bearing fluid, Monsanto continued

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to use the existing inventory of those PCB-bearing fluids?

A We now have switched from the phosphate ester conversion to the first conversion?

Q Yes.

A Most of the polychlorinated biphenyls had ongoing production for other applications as we made the transition from polychlorinated biphenyl to polychlorinated terphenyl. When we made this transition, we would have no further use of PCTs. When we made the transition to phosphate esters, we would have no use because there was no more use of that product.

Q Mr. Gossage, you had testified about the Government's concern in 1970 about PCBs in the environment.

Did Monsanto share that concern that PCBs in the environment could present a danger to humans?

A In 1970?

MR. SCHINK: Now, he didn't testify that that was the Government's concern. He said the Government's concern was the presence of them as I heard his testimony.

Is the question did Monsanto know that there was evidence that PCBs were present in the

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environment in 1970?

BY MS. KELLY:

Q Mr. Gossage, you have testified that it is your understanding that PCBs have some toxicity to animals.

MR. SCHINK: He testified that as of 1980 it is his understanding they are not highly toxic material, but they can accumulate in certain species. Is that the testimony you are referring to?

MS. KELLY: Correct.

BY THE WITNESS:

A That question related to my current knowledge and the source of that knowledge.

BY MS. KELLY:

Q In 1970 you have testified that the Government was concerned about the presence of PCBs in the environment?

A They are concerned, yes.

Q And they were concerned in 1970?

A About the presence in the environment, yes.

Q Did Monsanto share that concern of the Government's?

A We recognized in 1970 that there was PCB present in the environment.

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Q What was your understanding of the Government's concern about the presence of PCBs in the environment?

A What was my understanding then?

My understanding was they were concerned about the build-up of any chemical in the environment.

Q Did Monsanto share that concern in 1970?

MR. SCHINK: Other than insofar as they took the steps that he has indicated in response to that?

MS. KELLY: I move to strike Mr. Schink's answer.

BY MS. KELLY:

Q Do you want to answer the question?

A What is the question?

MS. KELLY: Would you repeat the question.

(Question read.)

BY THE WITNESS:

A We recognized the Government's concern. We acknowledged that there was the presence of polychlorinated biphenyls, certain higher chlorinated biphenyls in the environment.

We initiated programs to look at our sales of those products and to find those applications where if it would appear there could be losses from our customers' uses into the environment, and what we

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started identifying as closed systems and open systems, open systems being one that we felt we could not assure ourselves that we could limit or control exposure of PCBs in the environment.

And we started taking action to stop selling to those applications.

BY MS. KELLY:

Q Based on the Government concern which was communicated to you?

A Based upon our mutual concern that indeed the product was showing up in the environment.

(Gossage-OMC Deposition Exhibit
No. 2 marked for identification,
7/29/81, TLU.)

BY MS. KELLY:

Q Mr. Gossage, I place before you Gossage Deposition Exhibit No. 2. Will you review that, please.

After reviewing Deposition Exhibit No. 2, Mr. Gossage, isn't it true that Mr. Bradford, who reported directly to you, circulated a memorandum informing a Mr. Garnsworthy that PCB fluids should not be sold after the date it bears?

MR. SCHINK: The document doesn't say anything. That is not what the document says.

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The document speaks for itself. Mr. Bradford wrote it. It is one of a series of documents that you carefully culled out of a set and that is not what the document says, ma'am.

BY MS. KELLY:

Q Mr. Gossage, Deposition Exhibit No. 2 states that, "I think" a "Telex of 1/28/72 to Giles/Witcombe answers your first question whether you can continue to sell certain PCB fluids. Cannot be done."

Isn't that true?

MR. SCHINK: If that is what the words say, we will stipulate to that. Now, what is the question?

BY MS. KELLY:

Q Is it your understanding or did you instruct Mr. Bradford that PCB fluids were not to be continued to be sold in January of 1972?

MR. SCHINK: Did he inform him at that time or did he inform him that they could not be sold after that time?

What is the question?

BY MS. KELLY:

Q Had you informed Mr. Bradford as of January 1972 that PCB-bearing fluids could not be continued to be sold?

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MR. SCHINK: After when? I object to the form of the question.

MS. KELLY: As of that time.

THE WITNESS: State the question again.

BY MS. KELLY:

Q As of January 1972, had you instructed Mr. Bradford that PCB-bearing fluids should not be sold to customers?

A Polychlorinated biphenyl Pydrauls, not the terphenyls, the biphenyls were not to be sold in the United States well before this date.

Q And as of this date you were aware, weren't you, that the fluids which were marketed as PCT-bearing fluids contained PCBs?

Isn't that true?

A As of what date?

Q January of 1972.

A I was aware that PCT Pydrauls were contaminated with PCB.

Q Isn't it a fact that Monsanto continued to sell after it was learned that Pydraul fluids bearing PCTs contained PCBs, Monsanto continued to sell its existing inventory of those fluids?

A That has nothing to do with this.

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Q Answer my question.

A Unrelated to this exhibit?

When we found out that PCT Pydrauls were contaminated with PCBs, we moved as quickly as we could to reformulate and withdraw those from the marketplace.

Q While continuing to sell existing inventory of those fluids to Monsanto customers?

A While continuing to sell those products both out of the production and inventory.

There was no Government regulation.

MR. SCHINK: You just answered the question.

BY MS. KELLY:

Q Looking at Deposition Exhibit No. 2, what does the sentence that you cannot continue to sell certain PCB fluids indicate?

A It would indicate to me that there was some inventory of the old formulations, the polychlorinated biphenyl formulations, and Garnsworthy who was Marketing Director in Melbourne for our operations was asking whether he could get rid of that inventory by selling it, and if not, what was the proper disposal because during that period of time, we were informing all of our world areas that they could not sell nor dispose of

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those polychlorinated biphenyl formulations except by our approved procedures.

Q Was that a part of an agreement with the United States Government?

A I don't recall the Government being involved ever in what we were doing outside the United States.

Q Is that part of an agreement with the United States Government or the US EPA concerning sale of PCB fluids in the United States?

A Was what part of an understanding?

Q The date of the last date in which PCBs could be sold.

A No. To my knowledge the Government was never involved in any decisions we were making about the sale of products outside the United States.

Q The Government was involved concerning the sale of PCB-bearing fluids in the United States, isn't that correct?

MR. SCHINK: Are you talking about the Pydrauls during this time period?

MS. KELLY: The Pydrauls.

BY THE WITNESS:

A As a courtesy we informed the Government as we developed our plans and implemented our plans for

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removing polychlorinated biphenyls and reformulated polychlorinated terphenyls and as the whole program progressed, they were communicated with on a frequent basis.

BY MS. KELLY:

Q Did you inform the Government that Pydraul A-200B and the other PCT-bearing fluids contained PCBs?

A I do not know.

Q Did the United States EPA or the U.S. Government ever conduct any investigations concerning the presence of PCBs in those Pydrauls bearing PCTs?

A I do not know.

Q Did you review call reports prepared by salesmen after visits to Monsanto customers?

A There was a period of time early after I took over the job that I got copies of all salesmen's call reports.

I cannot say that I reviewed them all, but I received a copy of all of them.

Over a period of time as I became more knowledgeable in my job, I withdrew more and more from seeing individual call reports and left it up to the individual regions and to Norm Johnson who was Field

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Sales Director at that time as to pertinent call reports that he felt or Product Managers had felt had information in it that I should see. It was left to their judgment to send it to me.

Q In 1970 in the Functional Fluids Group, who was the salesman who was responsible for the Johnson Motors account?

A Damiani.

Q Did you have any meetings with Mr. Damiani about Johnson Motors?

A One-on-one individual meetings with him?

Q Individual or in a group.

A On Johnson Motors?

Q Yes.

A No.

Q Did you review any reports prepared by Mr. Damiani concerning the Johnson Motors account?

A Call reports?

Q Reports of any other type?

A None that I can recall.

Q Did you review call reports?

A As I said, when I came on the job I received copies of all reports for awhile. I did not read them all, but I did see them. I don't have any specific

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recollection of any call report from him on Johnson Motors.

Q You testified that you made actual visits to the Johnson Motors facilities in Waukegan, Illinois on two occasions.

A Yes.

Q Can you describe the purpose of your first visit?

A The purpose of the first visit was to discuss with them the conversion from chlorinated terphenyls to the phosphate esters and the urgency which we placed on that conversion.

Q Do you recall when that meeting was?

A The latter part of 1971, the very end of '71.

Q Who was at that meeting?

A From Monsanto?

Q From Monsanto.

A In addition to myself, Larry Bradford, Lou Stark and the salesman, Weyland, first name I can't remember.

Q Was Mr. Damiani no longer on the Johnson account at the time?

A I think he was no longer with Monsanto at that time.

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Q Was Mr. Weyland the person at Monsanto who replaced Mr. Damiani?

A Yes.

Q Who from Outboard Marine was present at that meeting?

A I cannot recall the names. There were four, five or six people there including the man who ran their operation. Whether he was called Plant Manager or General Manager, I can't recall; someone above him from what I will describe as Corporate, that was my impression at that time, and several engineers, environmental people.

Q How many?

A As I say, I don't know, four to six.

Q All employed by Johnson Motors?

A That was my --

Q To your knowledge?

A Yes. That was my impression at the time.

Q Was there anyone else from any other company or organization present at the meeting?

A No.

Q What was discussed at that meeting?

A We went there to discuss the conversion from polychlorinated terphenyls to phosphate esters, their

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questions and concerns which they had expressed to us about phenolics and in their effluent and the impact that the new phosphate esters would have on that; their concern about the comparative fire-resistance of phosphate esters to the chlorinated terphenyls and their reluctance to make the conversion.

Q From PCTs to phosphate esters?

A From a more fire-resistant product to a less fire-resistant product and a product that was to their understanding exposed their equipment to their existing phenolic problem which as I recall was some involvement between themselves and the State at that time about phenolics in the effluent.

Q Prior to the meeting in late 1971 at Johnson Motors, had you made Johnson Motors aware of the fact of Monsanto's intention to change Pydraul fluids from PCT-bearing fluids to phosphate esters?

A Yes.

Q How were they apprised of that fact?

A It would have been the salesman's responsibility through Norm Johnson. My instructions were to Norm Johnson to inform the customers, both in writing and where necessary through meetings, of our plans and intentions to convert to the phosphate esters.

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Q Did you review any communications which were issued to Johnson Motors in relation to the conversion to phosphate esters?

A I reviewed all of the form letters that went to all customers, including Johnson Motors, regarding the changeover to phosphate esters.

Q I take it you did not review any memoranda or communications to Johnson Motors specifically describing the changeover to phosphate esters with regard to the Johnson Motors account?

A I do not know that I reviewed any specific correspondence to Johnson Motors.

Q Would Mr. Weyland have been the salesman who would have been responsible for informing Johnson Motors of the changeover?

A He would have been the salesman responsible for that account and thus the one responsible for informing them of our plan.

Q Did Mr. Weyland inform you that he communicated to Johnson Motors that the Monsanto Company intended to change to phosphate ester Pydrauls?

A I cannot recall any direct discussions I had with Weyland on the subject prior to the meeting.

Q Prior to the meeting, did Mr. Weyland or

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anyone from Monsanto give you any kind of background information concerning the Johnson Motors account?

A There were a number of at least references made in monthly reports from the Marketing Group about certain major accounts who were reluctant to make this conversion, Johnson Motors being one of them, specifically.

Q Who prepared those monthly reports?

A Larry Bradford would have handled the marketing report for that product.

Q Is that something different from the call report?

A Yes. The call report usually is written after every salesman call on the account.

A monthly report is a report, in this case from the Market Manager or Product Manager, to management summarizing what took place that month in terms of customer problems, customer contacts, sales, just reviewing his month's performance.

Q Did you review anything else besides the monthly reports from Marketing in preparation for the meeting at Johnson, your first meeting at Johnson Motors in 1971?

A We met prior to going to Johnson Motors on

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several occasions in St. Louis, but I can't tell you how many.

Q Did you review any other documents besides the monthly reports from the Marketing Group in preparation for the meeting at Johnson Motors?

MR. SCHINK: And the letters that he talked about reviewing?

MS. KELLY: The form letters to customers, the letters that he said were presented to Johnson Motors, yes.

BY THE WITNESS:

A I would have reviewed the material presented at that meeting.

BY MS. KELLY:

Q Was that material discussed at these prior meetings, the internal meetings that Monsanto had prior to going to Johnson?

A We were discussing what we were going to say to Johnson Motors and how we were going to present our strong feelings for the conversion of phosphate esters and at the same time provide them with information on helping solve our understanding of their phenolic problem.

Q Who was present at these meetings prior to the meeting at Johnson Motors?

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A It would have been those that were at the meeting: Myself, Mr. Bradford, Lou Stark, Bill Richard who was not at the meeting but Stark reports to Bill Richard, and I cannot say whether Norm Johnson was there or not.

Q How many occasions did you meet?

A I do not know. It could have been as few as one or it could have been as many as two or three.

Q Who prepared the documents that you stated you discussed and which were to be presented to Johnson Motors?

A Bradford and Stark would have prepared whatever visual aids, either handouts or transparencies to be used at those customer meetings that were going on.

Q What did Mr. Bradford tell you concerning the Johnson Motors account at those meetings prior to the meeting at Johnson Motors?

A I was involved in this meeting because of his concern, of his ability or the ability of the Marketing Department without some upper management involvement in convincing Johnson Motors to convert from the chlorinated terphenyls to the phosphate esters.

Q Did Mr. Bradford relate to you the basis for

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his concern of not being able to convince Johnson Motors to change over?

A Their concern was based upon the phenolic problem that they were having in their effluent system and the probability that this new formulation could make that problem worse and their concern about the comparative fire-resistance of the new product versus the chlorinated terphenyl.

Q You don't dispute that the fire-resistance qualities of hydraulic fluids is a legitimate concern to a purchaser and user of hydraulic fluids, do you?

A It is a very real concern to many users of the product.

Q And you would not dispute the fact, would you, of a user of hydraulic fluids being concerned with any potential pollution problems in the use and purchase of hydraulic fluids?

A He should be concerned about pollution problems, be it any kind, be it in the phenolic or chlorinated biphenyls or terphenyls.

Q What did you discuss at the meetings prior to the meeting at Johnson Motors as to how to deal with Johnson Motors' concerns?

A We discussed, we reviewed the data that we

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had accumulated in their behalf on their phenolic problem. We presented our data on the comparative properties of new formulations with the old formulations, including fire-resistance, and we discussed, I guess I would say how aggressive we would get with the customer in taking a Monsanto position that we were going to withdraw this product from the marketplace and the reasons for that.

(At 12:30 o'clock p.m., a luncheon recess was taken to 12:50 o'clock p.m., this same date.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 78 C 1004
)
OUTBOARD MARINE CORPORATION)
AND MONSANTO COMPANY,)
)
 Defendants.)

July 29, 1981,

1:00 o'clock p.m.

The deposition of THOMAS LAYTON GOSSAGE
resumed at 200 East Randolph Drive, Room 5800, Chicago,
Illinois 60601, before Thea L. Urban.

PRESENT:

MR. SEBASTIAN T. PATTI,
MS. MARY KAY KELLY,
MS. JOANNA C. NEW,
MR. JAMES H. SCHINK,
MR. JAY R. GENTRY ORTIZ.

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(Record read.)

T H O M A S L A Y T O N G O S S A G E,
called as a witness herein, having been previously
duly sworn, was examined and testified further as
follows:

DIRECT EXAMINATION (Resumed)

BY MS. KELLY:

Q Mr. Gossage, what was the date at which you
accumulated --

A We took some, they gave us some samples of
their effluent and we ran some phenolic tests on those
for them and this was merely a part of the meeting
that was responding to some earlier meetings or samples
that had been picked up as to what we had found in our
laboratory on those samples.

Q Who obtained these samples?

A I don't know who would have picked them up,
possibly Weyland, but Lou Stark was the person who was
responsible for the work on them and was reporting on
them.

Q What was Mr. Stark's position at that time?

A He was a Group Leader in Research under Bill
Richard.

Q Who actually obtained the samples from Johnson

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Motors' premises?

A I don't know.

Q Do you know if it was any person employed by Monsanto?

A It would be unlikely that samples were taken by someone from Monsanto. They probably were picked up by somebody from Monsanto and they could have been mailed to somebody at Monsanto. I didn't know.

Q Why do you say it is unlikely that the samples would originally have been obtained from somebody at Monsanto?

A We would not typically go into someone's plant and pull samples. We would do it, have it done by their employees.

Q Prior to this time were you aware of any time when Monsanto employees did do the actual sampling?

A I just wouldn't know that.

Q On whose instructions were these samples from Johnson Motors' premises reviewed or analyzed?

A On whose instructions?

MR. SCHINK: If you know.

BY THE WITNESS:

A I don't know.

BY MS. KELLY:

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Q Did you learn that sampling was being conducted on Johnson Motors' premises after the analyses on those samples were completed?

A Would you say that again?

MR. SCHINK: You want to know when, before or after the samples were collected?

BY MS. KELLY:

Q When did you learn that samples from Johnson Motors' premises had been obtained?

A At or before the meeting that I referred to, the meeting at Johnson Motors.

Q I take it you did not instruct those samples to be taken?

A I had nothing to do with the samples that were collected.

Q Where were those samples collected from?

A It would be out of their effluent system and I don't know if there were a number of collection points or if it was out of their ponds or whatever retention they had before I left the plant site.

I don't know the details of where the samples were pulled from. They were described as samples out of their effluent system. That could have been anywhere in the system.

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Q Were the samples taken on more than one occasion?

A That I don't know.

Q What did you discuss at your meetings prior to the meeting at Johnson Motors with regard to these samples?

A The data that we collected, prepared, was reviewed in our meetings prior to going to Johnson Motors and dealing with their phenolic issue that they were concerned about.

Q What did you discuss at those meetings concerning the data which Monsanto had prepared concerning that phenolic issue?

A I have no recollection of what we discussed other than reviewing the data that was to be presented at the meeting.

Q Did you make any decision at that time as to what recommendations to make to Johnson Motors concerning the samples?

A Say that once more.

Q Did you at these meetings come to any conclusion about the recommendations which Monsanto could make?

A Yes at the end of that, but then you carried

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on.

Q Concerning the phenolic issue?

A The samples were not really the issue. We were merely responding to a concern that they had about a problem with their effluent. We were running some data for them to help them look at that problem. That was not the purpose of the meeting.

Q I am not even to the meeting at Johnson Motors.

We are talking about the meetings at Monsanto with only Monsanto employees.

A Yes.

Q What was the conclusion reached concerning the sampling that was analyzed by Monsanto?

A I don't know that it requires any conclusion. It was merely a reporting back to them of data that we had collected on their samples having to do with their problem.

It was not the primary purpose of the meetings that we were having. It was merely a part of the meeting. It was a part of a communication that we would have been having with them in their meeting.

Q What was the record pertaining to or what was the data that you were to report concerning the samples that you took?

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A That data had to do with the phenolic content of their effluent sample.

Q Did you discuss at your meetings before the meeting at Johnson Motors the causes for the phenol in Johnson Motors effluent?

A If we did, I have no recollection of the substance of that because that was not the purpose of my involvement in those meetings, in preparation of the meeting with Johnson Motors.

Q To this day do you know what is the cause for a phenolic content in effluent from a user of hydraulic fluids?

MR. SCHINK: Do you understand the question: What is a cause.

BY MS. KELLY:

Q What is this cause or causes?

A Are you asking what was the cause of the phenolic in their effluent?

Q Yes.

A I have no idea. It could be from any number of chemicals that they were using at that time.

(Gossage-OMC Deposition Exhibit
No. 3 marked for identification,
7/29/81, TLU.)

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BY MS. KELLY:

Q Mr. Gossage, who would know, who would have a recollection?

MR. SCHINK: Who would know what? Let us hear the question.

BY MS. KELLY:

Q Who would know at Monsanto what was the cause of the phenolic problem at Johnson Motors in 1971?

A Who would have known at that time?

Q Or knows to this day.

A I can't answer who would remember to this date, but certainly --

Q Who knew it?

A Lou Stark would have known it at that time.

Q I would like you to review Deposition Exhibit No. 3 which is a memorandum dated November 24, 1971 to Mr. Bradford from Mr. Stark. It is a three-page document.

A Okay.

Q Have you seen that document before?

A I saw it yesterday.

Q Prior to yesterday, do you recall reviewing this document?

A I have no recollection.

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Q Do you know if this was a document issued in preparation for the meeting at Johnson Motors which you testified to?

A I do not know that it was. It certainly appears to be some reporting of data resulting from samples taken.

Q After reviewing Page 1 of Deposition Exhibit No. 3, does that refresh your recollection as to what may have been the cause for the phenolic content in Johnson Motors?

A There is nothing on Page 1 that would suggest what the cause is.

Q Reading from Deposition Exhibit No. 3, the sentence beginning:

"Those samples which are basic to nature... were antagonistic to fluids containing phosphate esters. These caused increased decomposition of phosphate esters to release free 'phenolics.'"

A It refers to those samples and that's as far as it goes on Page 1.

Q Referring to those samples, it is --

A I think in the first sentence --

MR. SCHINK: Wait until she poses the question.
She asked does looking at this refresh your recollection

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as to the cause of the known phenolic problem of discharge, and you answered no and now there is another series of questions.

BY MS. KELLY:

Q Does the document Exhibit 3 refresh your recollection as to the cause for the phenolics in the samples?

A No.

Q Do you agree that these caused increased decomposition of phosphate esters to release free phenolics?

A I have no technical basis for agreeing or disagreeing.

Q Do you know whether phenolic content of effluent is caused from decomposition of phosphate esters?

MR. SCHINK: Of whose effluent?

MS. KELLY: Any.

THE WITNESS: State the question again.

BY MS. KELLY:

Q Do you know if the decomposition of phosphate esters can cause phenolics in effluent?

A Decomposition of what?

Q Phosphate esters.

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A Can decompose in phenolics?

Q The decomposition products of phosphate esters can cause phenolics?

A In an effluent?

Q Yes.

A Yes, I am reasonably aware that that could happen.

Q Did you or anyone at Monsanto provide Johnson Motors with copies of Page 2 and 3 of Deposition Exhibit No. 3?

MR. SCHINK: This exhibit was produced by Johnson Motors, was it not, in this litigation?

MS. KELLY: I assume it was produced by Monsanto.

MR. SCHINK: No, I do not believe that was the case.

Do you know, Miss New?

MS. NEW: I do not know.

BY MS. KELLY:

Q Do you know?

A The cover memo would appear to be from Monsanto.

Q But the two pages, Page 2 and 3 of that document, was that information issued to personnel at Johnson Motors?

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A I do not know.

Q Do you know if any of the data which was accumulated regarding the sampling at Johnson Motors in 1971 was provided to personnel at Johnson Motors?

A In the meeting we presented the results from our tests, which that looks like it constitutes those results.

Q Were copies of those results issued to personnel at Johnson Motors?

A We used visual aids. I cannot say whether we left copies of them or not.

MR. SCHINK: I would state for the record that what was marked as Exhibit 3, that is Pages 2, 3 and 4 of the document, was marked at the Atkin deposition as Exhibit No. 7, was identified by counsel at that time as a document emanating from the files of Outboard Marine.

(Gossage-OMC Deposition Exhibit
No. 4 marked for identification,
7/29/81, TLU.)

MR. SCHINK: With respect to what has been marked as Deposition Exhibit No. 4, that is an incomplete copy of the document that was marked as Luplow Exhibit No. 10. I would object to the use of this exhibit

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unless it is marked in its entirety.

MS. KELLY: Could we go off the record?

(Discussion off the record.)

MS. KELLY: On the record, I would like to state that many of the documents which were produced by Outboard Marine are duplicated in the production by Monsanto and substituting for what has been marked as Deposition Exhibit No. 3 is Luplow Exhibit No. 10.

MR. SCHINK: If you want my copy of Luplow Deposition Exhibit No. 10 to attach as an exhibit to Mr. Gossage's --

MS. KELLY: That's okay, keep it as that.

(Gossage-OMC Deposition Exhibit No. 4 previously marked for identification was withdrawn.)

MR. SCHINK: Do you want the witness to review the exhibit?

MS. KELLY: Yes.

BY MS. KELLY:

Q Mr. Gossage, have you seen Luplow Deposition Exhibit No. 10 before?

A Yes.

Q When was that?

A I saw it yesterday. It appears to be the

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information that was prepared in preparation for the meeting with Johnson Motors.

Q Do you recall reviewing that document prior to yesterday?

A It is the type of material we reviewed in our meetings before going to Johnson Motors and the usual visuals that we used at Johnson Motors.

Q Do you know today whether that is the material that was presented to Johnson Motors?

A I cannot tell you exactly whether that absolutely is the information that was presented. It is like the material we presented.

MR. SCHINK: I will state for the record that Luplow Deposition Exhibit No. 10 is a document presented in this litigation by Outboard Marine.

BY MS. KELLY:

Q Mr. Gossage, you testified that at your meetings prior to the meeting at Johnson Motors in 1971, you discussed how aggressive Monsanto should be.

Can you elaborate?

A I think I said how aggressive we would be in communicating to them our decision to convert from the chlorinated terphenyls to the phosphate esters, is what I said.

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Q What did you conclude?

A We concluded that we would tell them specifically that the chlorinated terphenyls contained limited amounts of PCBs; that as we had taken the position in our earlier withdrawal of the chlorinated biphenyls to the chlorinated terphenyls, that there was concern by the Government and by us of the chlorinated biphenyls showing up in the environment and as a result of the product that they were now buying being contaminated or containing small quantities of chlorinated biphenyls, that we had decided to withdraw those likewise from the market and that they would be replaced with phosphate esters.

Q What did you tell Johnson Motors personnel at the meeting which you testified was in late 1971 concerning the changeover from Pydrauls containing chlorinated terphenyls?

A What did I tell them in that meeting?

Q You or any person on behalf of Monsanto.

A We reviewed the entire list of the transaction of polychlorinated biphenyls, the environmental problem, the polychlorinated terphenyls, the need to keep polychlorinated biphenyls out of the environment; the need to even be concerned about any hydraulic fluid, even

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mineral oil getting into the effluent.

We specifically informed them that polychlorinated terphenyl contained a limited, small quantities of chlorinated biphenyl and that their product that they were using at that time contained polychlorinated biphenyls in small quantities and that Monsanto had decided to withdraw those formulations from the marketplace and was replacing them with phosphate esters.

Q At that time did you tell Johnson Motors personnel what amount of polychlorinated biphenyls were in the hydraulic fluids that they were using at that time?

MR. SCHINK: By amounts, you mean the precise percentage or --

MS. KELLY: In any manner.

MR. SCHINK: He has already indicated there were trace amounts present and that had been communicated further to Johnson.

Do you want him to elaborate further on that?

BY MS. KELLY:

Q Did you tell Johnson Motors specifically what the proportion was of the PCBs in the fluids that they

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were using?

A I do not know that we told them the specific quantities. I don't know if in their fluid we could quantify that precisely, but certainly we discussed that there were trace quantities of parts per million of PCBs contained in their chlorinated terphenyls.

That really was the sole purpose of my being there.

Q Who called the meeting at Johnson Motors?

A We did.

Q What was the response after you informed them of Monsanto's decision to take the fluids which Johnson Motors was using off the market?

A It was my impression at that time that they clearly understood our message, had clearly understood this was a corporate decision being taken and they were going to consider their alternatives.

Q Was there any discussion at that meeting concerning the phenolic content in Johnson Motors' effluent?

A We reviewed with them the results of data that we had collected from the samples they had given us or we had gotten from them.

Q Was any resolution reached concerning that phenolic problem?

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A I do not recall any resolution. I recall there were some options given them of what kinds of solutions might have been available to them about their phenolic problem.

Q What were the kinds of solutions that you suggested to Johnson Motors?

A I have no recollection of it other than, and from what I can see in that document. I think there are several references in there.

Q Did anyone on behalf of Monsanto inform Johnson Motors that the phenolic problem which they were dealing with may have been caused by the phosphate ester content of hydraulic fluids being used?

A At that time they were using polychlorinated terphenyls as their Pydraul formulation. They had not converted.

Q Mr. Gossage, are you aware that the Pydraul formulations which Johnson Motors was using in 1971 contained phosphate esters in addition to polychlorinated terphenyls?

A They did not contain phosphate esters. Let me just stop there for a minute.

To my knowledge, they did not contain phosphate esters. There may have been some Pydrauls

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where the polychlorinated terphenyls were formulated with phosphate esters, but I am not aware of those.

Q Do you have any knowledge?

A Let me just finish.

There were some formulations that contained some other materials other than just the polychlorinated terphenyls. I do not know what Pydraul A-200B was, whether it was a true terphenyl or whether it contained some other material.

Q Do you know whether some Pydrauls containing chlorinated terphenyls also contain phosphate esters?

A I do not know that it contained phosphate esters. They contain some other degree, sometimes mineral oils and hydrocarbons. I have no recollection at that time that any phosphate esters were contained in them or not.

Q Pydraul 50E is a hydraulic solution comprised totally of phosphate esters, isn't that correct?

A That is my impression. It is totally phosphate esters.

Q Was that the hydraulic fluid you were suggesting to Johnson Motors that they change over entirely to?

A I believe so.

Q What were Johnson Motors' questions to Monsanto

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personnel at the meeting in late 1971 concerning the analysis which had been conducted by Monsanto?

A On their fluid?

Q That is correct.

Q I do not recall.

Q But you did, as you testified, present certain data to Johnson Motors concerning the sampling analysis which had been conducted by Monsanto?

MR. SCHINK: The "you" there, you are referring to the group as a whole, not Mr. Gossage?

I believe he testified earlier that was someone else's responsibility, Mr. Stark.

MS. KELLY: That's correct, the group as a whole.

THE WITNESS: The question was?

MS. KELLY: Would you read the question.

(Question read.)

BY THE WITNESS:

A That was presented at that meeting by some of the Monsanto people.

BY MS. KELLY:

Q What was discussed at that meeting concerning the sampling analysis which had been conducted by Monsanto?

A I do not recall.

Q Did anyone at that meeting discuss the impact

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which the changeover would have on the phenolic problem which Johnson Motors was experiencing?

A I can't recall any specifics on it.

Q Do you recall whether Johnson Motors personnel at that meeting were concerned about the phenolic content in their effluent?

A They were concerned before the meeting and at the meeting about the phenolic problem they had in the effluent and whether the switch to 50E or to the phosphate esters formulations would aggravate or make that condition worse.

Q Did you or anyone in the group of Monsanto employees present at that meeting inform Johnson Motors personnel whether the use of 50E would aggravate the phenolic problem?

A Those reports that you have shown me as Exhibits 3 and 4 would indicate so, but I have no recollection.

Q Who would have a recollection of that, who would know?

A Lou Stark, the author of the memo that you show as Exhibit No. 3, is speaking to the point in that memo of the -- I guess I will use the word aggravation, that the phosphate esters would have with their phenolic

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problem as I interpret that memo that you have shown me.

Q At the meeting in late --

A At Johnson Motors in 1971.

Q Was there any discussion as to the procedure by which Johnson Motors would convert to 50E?

A Not that I recall; only that we were taking the position that we were going to withdraw the product. The meeting concluded, as I said earlier, with their saying they would like to take it under advisement and consider their alternatives and they had alternatives.

Q At the meeting in late 1971 at Johnson Motors, did anyone on behalf of Johnson Motors question whether the 50E could be used in conjunction with the hydraulic fluids which were already present in the die casting machines at Johnson Motors?

A We were informed, the industry in general as they made the conversion from chlorinated terphenyls to phosphate esters, they could top up if you will, they could add the masses in on top of the polychlorinated terphenyl formulation. They were compatible and they could make the transition as they drained or topped up their equipment.

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Q Did you offer at the meeting at Johnson Motors in 1971 to take back Pydraul which contained polychlorinated terphenyls on Johnson Motors premises?

A I can't recall specifically discussions at that meeting on that subject. The industry had been informed by Monsanto to some of the reclamation services that were available and other disposal, I can't recall, for example, whether our incinerator was on at that time or coming on stream, but we eventually had an incinerator available for such disposal.

But I have no recollection at that meeting of discussing such disposal, if they would have chosen to clean their systems.

Q I am not talking about fluid already being used in systems at Johnson Motors.

Did you at the meeting in 1971 at Johnson Motors offer to take back any unused quantities of Pydraul containing PCTs?

A That which they might have an inventory?

Q That is correct.

A I have no independent recollection of that.

Q Are you aware at any time whether Monsanto offered any of its customers the option of returning any unused Pydraul fluid containing PCTs?

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A Monsanto, at least the part of Monsanto I was in, that particular business group had a broad policy that we would accept return unopened, unused product at a 10 percent discount off the purchase price.

I have no recollection of that policy being restated at that meeting.

Q When was that policy delineated?

A It wasn't specific to PCBs. It was specific to all of our products and as far as I know, that general policy still is available to the customers.

Q Did anyone at Monsanto inform Monsanto customers that upon the changeover from PCTs to phosphate esters, the customer had the option of returning unused fluid?

A I do not know.

Q Do you know whether in fact any customers did return unused fluids?

A I do not know.

Q Monsanto did continue after the 1971 meeting at Johnson Motors to sell to Johnson Motors Pydraul fluids containing PCTs, isn't that correct?

A I would assume so, yes. The policy at that time was to make all the conversions by June of that year.

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MR. SCHINK: Excuse me, do you mean June of the following year, 1972?

THE WITNESS: Yes, 1972.

BY MS. KELLY:

Q Did you say that was June 30, 19 --

MR. SCHINK: The end of June.

BY MS. KELLY:

Q How was the June 1972 date established?

A I cannot recall specifically. I would assume that seemed like the amount of time that would be necessary for us to communicate to the industry and get to the industry and give them the support they needed for those conversions. It may also have had to do with how long it would take us to get Government approval of our formulation with relation to the fire-resistance.

You have to go through a series of tests with the Government and getting some approval on the degree of flame or fire-resistance that those products have.

And, as I say, I don't know what the balance of that all was, but it was a laid out program of how long it would take for the entire industry to make a conversion.

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Q Was the ability of Monsanto to continue to sell its existing inventory of Pydraul containing PCTs a consideration concerning that June '72 date?

A No. The inventories that we would typically carry of products at that time, and I can't speak specifically to how much inventory at that time, but typically it would be 15 to 45 days of inventory. It would not be six months of inventory if it was suggested we were waiting from December to June to use up all of our stock, to make the conversion.

We carry now and then very little levels of inventory.

Q Who at Monsanto would know, who would have knowledge of the amount of inventory in hydraulic fluids in 1971?

A I would doubt that anyone would today, have knowledge of that as to how much we had in that time period. I think they could state for you how they attempted to run the department vis-a-vis inventory, but I don't know that anyone would be able to tell you we carried X amount of days of solid inventory.

Q Where would records concerning inventory of hydraulic fluids in 1971 be kept?

A I would doubt that we have any such records.

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Q Which department at Monsanto would have the responsibility for determining inventory needed and production control at Monsanto?

A Production Planning and Distribution had and has the responsibility for our production schedule and our level of inventory.

Q Who was the supervisor in that department in 1971?

A Earl Potter was the individual responsible for the production and planning and inventory control of those products.

Q He was the person with the highest level of supervision in that department?

A No, he would be the person whose full-time job was managing those products for our business group.

Q Who was the Director of Production Planning and Distribution in 1971?

A Howard Tippey.

Q Could you spell his name?

A T-i-p-p-e-y.

Q Is Mr. Tippey still with Monsanto?

A Yes, he is.

Q In St. Louis?

A Yes.

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Q How about Mr. Potter?

A He retires Friday.

Q Do you know if Mr. Potter will still be located in St. Louis?

A Yes.

Q Did you at any time suggest to any Monsanto purchasers of Pydraul fluids that hydraulic machines be emptied and steam cleaned before converting to a new series of Pydraul?

A Did I?

Q Or anyone to your knowledge from Monsanto?

A The policy at that time was that the customers using Pydraul chlorinated terphenyls could top up and mix the new fluids with the old fluids.

Q Did that policy change since 1971?

A As in the Pydraul area?

Q Yes.

A Not to my knowledge.

Q Was that policy the same for the changeover from Pydraul fluids containing PCBs to PCTs?

A I believe so. Again, we were under no Government requirement that we withdraw the chlorinated biphenyls.

We were doing it out of concern that

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certain applications, if not carefully monitored by the customer, could end up in the environment. And our communications with the customer was to protect against that and as further support to that we were converting the customers away from the biphenyls to the terphenyls, but that did not change their obligation to keep it out of the environment.

Q On your visit to Johnson Motors in 1971, did you have an opportunity to review Johnson Motors' facilities?

A I did not. I cannot recall going through their facilities at that time.

I did at a subsequent meeting.

Q When was the next meeting at Johnson Motors that you attended?

A I attended a meeting -- no, I should say I visited the account. I would guess in '74, it could have been early '75, with Chuck Seger at a time when Johnson Motors was adding capital to their facility and was putting in new die casting machines and moving many of their old die casting machines from their old operation to their new facility, which I recall was built adjacent to it. And it was at that meeting that I was taken through their facility.

Q Going back to the meeting in 1971 at Johnson Motors, were you aware at that time of the disposal of used Pydraul fluids at Johnson Motors' facilities?

A Was I aware of their disposal of used Pydraul?

I was aware that their mode of operation was such that significant quantities of Pydrauls and other fluids from their operations was going through their system and into the environment.

Q How did you become aware of that?

A It was discussed in our meetings prior to my going to Johnson and possibly earlier, but specifically in those meetings.

Q Do you know where the quantities of used Pydraul from the Johnson Motors facilities were going?

A Whatever riverway or waterway adjacent thereto. My recollection is they have a collection system and some series of a, I guess I would call them settling ponds which as I recall were according to our technical people undersized, the results of which was much waste or much organic substance including our products were going out of their plant site and into the waterway.

As I described earlier, this was generally, these could be open systems rather than closed systems with the fluids being completely contained and Johnson

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Motors was one that certainly I classified as a system with fluid that was getting out of their plant site, fluid and other liquid wastes.

Q Are you aware of at any time prior to your arrival at Johnson Motors where Monsanto restricted the use or sale of its Pydraul to closed uses?

A We had taken a policy in 1970 or late 1969 that we defined certain systems including what you described earlier as an adhesive application and Pydraul applications as applications where Monsanto could not assure ourselves or the Government that we could contain those materials through our customers' plants.

They would likely, unless customers took extreme precautions, there could be leakage outside of the plant site.

Q Prior to 1969?

A No.

Q Did Monsanto have a policy of restricting the sale of Pydraul to closed uses?

MR. SCHINK: I object to the form of the question. That suggests that a closed/open distinction was that as he described before this time. He has used that and you have used it in your question to describe the state

of the knowledge of what was in existence in '70.

I don't think there has been any testimony prior.

MS. KELLY: Mr. Gossage used the same description, open and closed, today.

MR. SCHINK: Right, in connection to what was existing in 1970 and now you are examining him about an earlier period of time. All I am saying is I don't think there is a foundation in this gentleman's testimony that that distinction existed prior to 1970. It may well have, but I don't think he described it.

MS. KELLY: I don't think I need to establish that.

BY MS. KELLY:

Q Did Monsanto restrict its sale of Pydraul to closed uses prior to 1969?

MR. SCHINK: I am again going to object to the form of the question. It assumes there was such a thing as open or closed usage prior to that time.

BY MS. KELLY:

Q You may answer.

A The definition of closed versus open did not come about until 1970 when we started addressing ourselves to the concern about PCBs being present in the

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environment.

It is my understanding from reviewing the earlier records when I came on the job that we were not aware of PCBs being an environmental problem until 1969.

Q Then I take it Monsanto did not restrict the sale of Pydraul to closed uses before 1969?

A We did not restrict sale of Pydrauls prior to 1970, to my knowledge, but I was not on the job at that time.

Q Are you aware of the amount on a month-to-month basis of Pydraul which Johnson Motors was purchasing from Monsanto in 1970?

A I could not cite a number. I think I said earlier that they certainly were one of our top four or five customers.

Q Do you have any knowledge concerning the rupture of lines and spillages, leaks which occur in die casting plants where hydraulic operations are ongoing?

A Am I aware of or do I have knowledge of them, no.

Q At any time after your arrival in the Functional Fluids Department at Monsanto, did you have

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occasion to review documents pertaining to the use of Pydraul in hydraulic systems?

A Review documents on the use of Pydrauls in hydraulic systems, yes.

Q Did you review any documents prepared by Monsanto concerning the disposal of used fluids, used Pydraul fluids after use in hydraulic systems?

A At some point in time we made available a service to the industry to incinerate used Pydrauls and other uses of polychlorinated biphenyl.

Q When was that?

A I would guess some --

MR. SCHINK: Just give her the best approximation you can.

BY THE WITNESS:

A (Continuing.) '72.

BY MS. KELLY:

Q After 1971 --

A I can't recall when that incinerator came on, but it was certainly after we had converted the industry to terphenyls, but I can't speak whether it was the end of '72 or early '73. I just don't remember when that unit was brought on.

Q Did you after your arrival at Monsanto review

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any documents prepared by Monsanto concerning the collection of Pydraul after use in hydraulic systems?

MR. SCHINK: You are talking about in his job as a Sales Director or back in 1969 when he joined the company?

MS. KELLY: When he joined the Functional Fluids Group.

BY MS. KELLY:

Q I believe you testified that you reviewed documents concerning the history of the department and various fluids.

MR. SCHINK: I'm just trying to get clear the time. Your question was anytime after he arrived at Monsanto?

MS. KELLY: In the Functional Fluids Department.

MR. SCHINK: Maybe you could restate the question.

BY MS. KELLY:

Q At any time after your arrival in the Functional Fluids Department, did you have occasion to review documents concerning the proposal by which a user of hydraulic fluids would dispose of fluids after use?

A From 1970 and on including the transition to polychlorinated terphenyls, there was a considerable

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amount of emphasis put on within the Marketing Department and with us to contain those products and not let them get into the environment. There would have been endless numbers of meetings between our salesmen and the customers to that point. There would have been a number of documents available to the salesmen for that purpose as to how you handle the effluent system and with strong emphasis on not letting it get into the environment.

There were documents, yes, I reviewed them. I cannot cite to you what those documents were, other than the policy was the salesmen were given a number of tools to allow them to emphasize to the customer the importance of containing those products.

Q Are you aware of any program developed by Monsanto by which a customer would contain its hydraulic products before 1970?

A No, I am not aware of it because I wasn't there before that time.

Q Did you have occasion to review any documents that would indicate there was such a program?

A I may have. I certainly, there were companies available at or before or about that time who offered the services of reclaiming Pydrauls and returning them

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to the customer.

Q That was not a Monsanto company?

A No, it was not a Monsanto company.

Q After 1970 what were the various ways which Monsanto suggested to a Pydraul user of disposing of used Pydraul?

A When the incinerator was available, he had that as an option to himself. He had the option of reclaiming through a number of reclaimers that were available at that time.

We made available to the customers information of using what I would call kitty litter, a substance to absorb spills of Pydrauls at the customer plant sites.

We recommended things like retainer walls, separate systems for collecting spills rather than through the plant effluent system. We provided technology on settling tanks. There was certainly the suggestion that if they used settling tanks they could package the material in drums and if no other source were available, they could bury it in approved landfills.

This was a major part of Bill Papageorge's job, to provide customers and our salesmen with that kind of information.

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Q Did you have any contacts with Johnson Motors concerning the disposal of Pydraul fluids used at Johnson Motors?

A I did not personally other than that meeting that we had and I have no recollection of discussions of a disposal of polychlorinated terphenyls or PCBs contaminated in those products at that meeting.

It was the responsibility of the salesman to discuss that with all of our customers.

Q In 1971 was Mr. Weyland the salesman for the Johnson Motors account?

MR. SCHINK: When in '71?

BY THE WITNESS:

A He was.

MR. SCHINK: Are you talking about during the entire year?

BY THE WITNESS:

A He was during the meeting I was at. He had been named salesman of the account. I cannot tell, if you will, the transition when he and his predecessor who we talked about earlier --

BY MS. KELLY:

Q Damiani?

A Yes, Damiani.

Q Who is this next salesman after Mr. Weyland?

A Chuck Seger. The next meeting, whether there was another individual between Weyland and Seger, I can't recall.

Q Do you know for what reason Mr. Damiani left Monsanto Company?

A He left to join a company that was in the fluids reclamation business.

Q Which company is that?

A I do not recall the name of it.

Q Do you know if Mr. Damiani was fired from Monsanto?

A I don't think so. I am almost sure he left because he had another business opportunity.

Q Was there any training of salesmen with regard to disposal alternatives for customers using Pydraul fluids?

MR. SCHINK: He already talked about the various methods and already talked about Papageorge's role and what Mr. Papageorge did assisting the salesman.

Do you want to go over this again?

BY MS. KELLY:

Q What was the training program, if any?

A All new salesmen joining Monsanto, new meaning

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first employment at Monsanto, all salesmen in Monsanto are given broad sales training. There are formal courses for that purpose in Monsanto. There was, there are new, beyond what they were given, individual product training on the products they would be selling and in this case Pydrauls and other fluids.

That training would have been done by the Research people, by the Product people in St. Louis and by Papageorge as it relates to the environmental concern at that time on those products.

All three of those groups at least would have been involved in that training and that training could have taken anywhere from two weeks to a month if the time were available to give them that much training. They would then be brought in from time to time in national sales meetings or in regional meetings where there would be updating of the training which would include environmental concerns.

Q Was there any specific program as with regard to disposal of Pydraul fluids?

A I am sure there was, but I cannot, that would have been the responsibility of people under me. I cannot specifically say what that was.

Q Are you aware of what disposal methods were

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suggested to Johnson Motors for use in this Waukegan facility?

A No, I am not.

Q What alternative was first proposed to customers using Pydraul fluids, reclamation or incineration?

A Reclamation because it was available before incineration was and beyond reclamation, it was the containment of the spills and the separation of those spills from the total plant effluent system and I guess logically one should say and the prevention of leakage and spills where possible.

Q Was reclamation used as a method to address the problem of used Pydraul fluids at Johnson Motors?

A I do not know. Certainly the Monsanto salesmen were aware of reclamation services available in the industry. I know some customers used reclamation of their Pydrauls on a regular basis. I cannot tell you to what extent Johnson Motors either used reclamation or pursued that alternative.

Q Did Monsanto ever get involved in establishing a reclamation service to offer to customers?

A It was considered a number of times.

Q Did Monsanto ever establish a reclamation

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center?

A No.

Q Why?

A Well, I am going to have to give you my personal opinion to the extent that I was involved in those considerations and they were considered a number of times while I was in the job.

My position was always that there were a number of such reclamation services available, that they tended to be small companies, localized areas reasonably close to major markets and that Monsanto would not be very effective in competing in that marketplace.

(Brief recess had.)

(Record read.)

BY MS. KELLY:

Q Mr. Gossage, are you familiar with Findett Company?

A Findett.

Q When did you first become aware of their services?

A Shortly after I took the job, but I can't give you a specific time.

MR. SCHINK: You are talking about the job as

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Sales Director in '70?

THE WITNESS: Yes.

BY MS. KELLY:

Q What was the service which they offered?

A They provided service for Pydrauls and certain other fluids that were reclaimable.

Q What type of services?

A They would take used or contaminated Pydrauls, for example, and they would reclaim the material, as I recall, buying make-up from us and returning to the customer a fluid reusable in their equipment.

Q Where was Findett located?

A I think it is close to St. Louis. It may have been a suburb of St. Louis.

I have not been there, but our people would go there to observe some testing or observe some work they were doing, so it must have been close to St. Louis.

Q Is Findett a subsidiary of Monsanto?

A No, it was not.

Q Was there any connection at all between the owners of Findett and Monsanto employees?

A There was certainly a relationship between the two in that we were aware of their services, we

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recommended their services. We had them do some work for us and I think they did some testing.

I believe that our fire test might well have been done on their facilities, so there was certainly a customer relationship or service relationship that we had with them as well as recommending them to others.

Q Do you know what Monsanto itself did with used or contaminated Pydraul fluids prior to 1970?

A No.

Q Do you know prior to 1970 whether Monsanto used Findett for its own purposes?

A I would not have knowledge of that.

Q Are you familiar with EnviroChem?

A Yes.

Q What are the nature of services provided by EnviroChem?

A Today?

Q In 1970.

A I was not familiar with them in 1970 except that I knew they were in the business of selling sulfuric acid plants, selling catalysts for sulfuric acid plants.

They did work in the area of developing systems for disposing of solid waste and that is the

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extent of my knowledge at that time.

Q When did you become familiar with EnviroChem?

A More than that? More than that knowledge?

Q At that time, when was that, 19 -- approximately?

A 1970.

Q Did EnviroChem services extend to reclamation of Pydraul fluids?

A Not to my knowledge.

Q Did you suggest to purchasers of Pydraul fluids that they use EnviroChem services?

A I did not.

Q Did anyone on behalf of Monsanto?

A Not to my knowledge.

Q Reclamation of Pydraul fluids at any time would have a negative impact on sales of Pydraul by Monsanto, isn't that correct?

A Reclamation -- say that again.

Q Reclamation of Pydraul fluids for reuse at any time would have a negative impact on the sale of Pydraul.

MR. SCHINK: You mean vis-a-vis its competitors?

MS. KELLY: By Monsanto.

BY THE WITNESS:

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A I have to say not necessarily. It would depend on how that service were made available. I could describe a method in which it would enhance our position.

It is possible that it would have a negative impact depending on how it was used.

BY MS. KELLY:

Q If a purchaser or if a user of a reclamation service was able to reuse its Pydraul, it follows, does it not, that the purchaser would not have to add to its supply as often as it would have without the reclamation service?

A Yes, under that kind of a situation, that is correct.

(Gossage-OMC Deposition Exhibits
Nos. 4 through 8, inclusive,
marked for identification,
7/29/81, TLU.)

BY MS. KELLY:

Q If you will look at Gossage Deposition Exhibit No. 4 for identification, have you seen that document before?

It is a document dated January 19, 1972 to Mr. Gossage from C. L. Bradford.

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A Yes.

Q When did you review that document?

A I would have received it on the date that is indicated there.

Q Have you reviewed that document recently?

A Yes, yesterday.

Q The proposal at the end of Paragraph 2 at the end of Deposition Exhibit No. 4 is that Monsanto would raise its price for incineration to Pydraul customers who chose not to purchase additional Pydraul fluids or to force Monsanto to bid for the business, is that not --

A This is the second paragraph?

MR. SCHINK: You are talking about the language that is crossed out?

THE WITNESS: The document I have, it is crossed out.

MS. KELLY: I don't know if it is crossed out.

THE WITNESS: One way to reduce?

BY MS. KELLY:

Q Exactly.

A Your question is?

MS. KELLY: Would you read the question.

(Question read.)

BY THE WITNESS:

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A Yes, that is the recommendation Mr. Bradford is making to me.

BY MS. KELLY:

Q Do you know if in incineration prices were raised after January 19, 1972?

A They were raised a number of times after that.

Q Referring to that handwriting at the bottom of Deposition Exhibit No. 4, do you recognize that handwriting?

A It is mine.

Q Can you tell me --

A As is the marking out of that sentence there.

Q Can you tell me who in Washington you told that Monsanto would make incineration available at cost?

A No, I refer to the environmental community in Washington and I am referring there to a meeting that Papageorge and others had had and that informed them of their availability. They were not direct discussions I had.

Q Do you know the names of any persons that Papageorge met with in Washington?

A No, I do not.

Q When were these meetings in Washington that you do know?

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A I can't give you the dates of the meetings. It would have been after we decided to build the incinerator and before June 19, 1972, but specifically when they were, I cannot comment on it.

Q Can you read the last sentence, the handwritten notice on Exhibit No. 4?

A I can read down to a price increase here could come back to haunt us, something, something is a lot in favor of something to all people.

No, I cannot make anything, help you on that.

Q Do you know what you are referring to there?

A No. The nature of the response is that I take exception to Mr. Bradford's recommendation that you referred to that our position had been earlier that we would make that service available at cost to the industry and that we had told both the industry and told the Government that, and I thought to move away from that would be improper.

Q After January 19, 1972, did Monsanto make incineration available at cost to all of its customers?

A All of its Pydraul customers or all of its customers?

Q Pydraul customers.

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A The policy, as I recall, was the service was available to anyone who had PCB-containing materials that wanted to dispose of them, including Pydraul.

Q And they could dispose of it at cost to the customer?

A That was the intent when the policy was put in place. When we started having experience with that incinerator, it had a significant number of problems and we were constantly chasing the costs, meaning the costs were going up and we were having difficulty containing the cost or a number that we could communicate to our customers, so there was a constant series of increases because we could not control the cost. The bricks, for example, constantly fell out of that and we had to go back and replace the brick so we could keep disposing in the incinerator.

Q Where was that located?

A At our W. G. Krummrich Plant in St. Louis.

Q Was that the only incinerator that was available to Monsanto purchasers of Pydraul?

MR. SCHINK: You are talking about by Monsanto?

MS. KELLY: Yes.

BY THE WITNESS:

A It was the only incinerator that Monsanto had.

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BY MS. KELLY:

Q I would like to show you Deposition Exhibit No. 6 for identification which is a memorandum dated February 14, 1972, a two-page memorandum to T. L. Gossage from H. S. Bergen.

A Okay.

Q Have you reviewed this document before?

A Well, I saw this yesterday. Obviously I saw it when it was sent to me.

Q You received it on or about the date it bears in the regular course of business?

A Yes.

Q After reviewing this first page of Deposition Exhibit No. 6, does this refresh your recollection as to whether Monsanto offered Pydraul incineration to its customers on a cost basis?

A I still say that was our intent, to charge on a cost basis. Now, what Mr. Bergen -- this, by the way, is my memo on the back, my comments on the back.

Q Referring to Page 2?

A Yes, what would appear to have been sent to him and his response is to my note and other conversations we had. The five cents a pound for Pydraul incineration takes into consideration that not only would

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we be receiving back our product from the customer, but once we had converted them to phosphate esters, we were subject to receiving back our competitors' products as well.

There was no way we could split the phosphate esters coming back to us from our source and a competitor's source, so the five cents a pound is, as I interpret that, he is saying here, this was not the original intent of incineration. The intent of incineration was to burn PCBs, not PCTs and phosphate esters, particularly phosphate esters that were also our competitors' phosphate esters as well as ours.

Q Pydraul has only been manufactured by Monsanto?

A The trade name is Monsanto.

Q And Mr. Bergen states in Deposition Exhibit No. 6 that in the case of Pydraul we had no intention of burning them, and if we should do so, we should make money on them.

Mr. Bergen is not stating that Monsanto intends to make a profit on the incineration of Pydrauls?

MR. SCHINK: I think he says a slight profit.

MS. KELLY: Profit nonetheless.

BY THE WITNESS:

A If you read it, it says:

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"The reason for the increased price on Pydrauls is that the incinerator was designed and costs established based on 100 percent PCBs and for that specific purpose in mind."

In February of 1972, Pydrauls were polychlorinated terphenyls, with a very minor amount of PCBs, and we were in the process of converging the industries to phosphate esters. The incinerator was not intended for either of those two purposes and the process for costing of those were all scoped around PCBs.

We had no idea what the costs were going to be between PCB, PCT and phosphate esters, but we were going to find ourselves, as soon as phosphate esters were in the marketplace, not only burning our product but our competitor's product. The five cents was intended to cover all those uncertainties, number one, of not knowing the cost to incinerate PCTs, polychlorinated terphenyls, and two, having to burn things other than our own product.

BY MS. KELLY:

Q Mr. Bergen's memorandum states that in the case of Pydrauls and Monsanto, only a Monsanto product.

MR. SCHINK: But it doesn't say PCBs and that is why I object to this arguing with the witness. The

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witness explained the difference between PCBs which were to be burned at cost and Pydrauls which included in addition to PCBs, I think he explained.

THE WITNESS: If you will look at my letter --

MS. KELLY: There is no question pending, please.

THE WITNESS: I have to refer to my letter because --

MR. SCHINK: She is going to pose a question.

MS. KELLY: Excuse me, there is no question pending.

BY MS. KELLY:

Q Mr. Bergen's memorandum dated February 14, 1972 indicates that in his opinion in the case of Pydrauls, Monsanto should make money in the incineration process, does it not, looking only at the document before you?

A Well, I can't only look at the document.

Q I am asking you does that statement say that?

MR. SCHINK: Whatever the document states, it states. This witness, if you have a question to put to this witness, you may.

The document, that sentence, you can read it. It is here in the exhibit.

THE WITNESS: If you are asking for my opinion --

BY MS. KELLY:

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Q No, I am not asking you for your opinion.

I am asking you a question. My question is I am asking you does the document state that?

MR. SCHINK: The documents tates what it states. Get on with this.

MS. KELLY: The witness can answer the question.

MR. SCHINK: The document speaks for itself.

MS. KELLY: I don't need your testimony, Mr. Schink. I am asking him a question. If you instruct him not to answer --

MR. SCHINK: I am not instructing him not to answer the question. I am suggesting, however, that the document states what it states and merely to get the witness to affirm that it says that serves no useful purpose here.

There is no question pending now.

MS. KELLY: Please read back the last question.

(Question read.)

BY THE WITNESS:

A It states that the increased price from three cents to five cents is because the incinerator was not designed and the cost established based on 100 percent PCBs. The phrase not 100 percent PCBs --

BY MS. KELLY:

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Q Pydraul was Monsanto's product, is that correct?

A The material returned to us by customers was called Pydraul. It was many times mineral oil, solid wastes, garbage. It was frequently not Pydraul.

What he is referring to here is Pydraul generally as the material that is returned to us by customers.

Q Pydraul is manufactured by Monsanto under that trade name, is that correct?

MR. SCHINK: Are you talking about as Mr. Bergen is using the word?

MS. KELLY: He can answer; I don't need your testimony.

MR. SCHINK: I am not going to give you testimony, but I am not going to let you ask improper leading questions to the witness.

MS. KELLY: That is a straightforward question.

MR. SCHINK: If you are asking what he understands Pydraul to mean in Mr. Bergen's memo, ask him that.

MS. KELLY: That is not what I am asking.

MR. SCHINK: You are not asking that?

BY MS. KELLY:

Q The trade name Pydraul is a trade name for

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Monsanto's product, is it not?

A Well, technically it is a trade name for Monsanto when it is indicated with a small "r" and a circle around it with the word Pydraul; frequently used generally as a hydraulic fluid, industrial hydraulic fluid.

Q Frequently used to describe a series of hydraulic fluids manufactured by Monsanto, correct?

A It is frequently used as a name of a hydraulic fluid, not necessarily manufactured by --

Q But answer the question. It is also used to describe products manufactured by Monsanto in hydraulic systems?

A Yes, it is.

Q After February of 1972, were Pydrauls incinerated by Monsanto at a price of five cents per pound?

A Yes.

Q Do you know if a Pydraul customer had to pay freight for the return of contaminated Pydraul to Monsanto for incineration?

A I believe so. I believe that the price was -- I don't know if any of these documents say, but I believe the price was the charge to them based upon our receipt of the material. In other words, they paid the delivery.

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Q And to your knowledge, what was the rebate system in the incineration procedure offered by Monsanto?

A I can only recall what is in front of me here. Do you want me to describe what those words mean to me?

Q Yes.

A That indicates that we received used material for incineration from customers, charged them three cents per gallon, or I guess subsequently, five cents per gallon --

MR. SCHINK: You mean per pound.

BY THE WITNESS:

A (Continuing.) Per pound, excuse me, and then reduced the price of the phosphate ester Pydraul formulations by a corresponding amount to give them incentive, if you will, to buy from us rather than our competitor.

MR. PATTI: I'm sorry, I missed that. Could you read that back?

(Answer read.)

BY THE WITNESS:

A (Continuing.) The bottom line of this is we didn't charge them for incineration.

BY MS. KELLY:

Q To your knowledge, were Monsanto customers who used the Monsanto incinerator charged for incineration

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of the portion of Pydraul fluids that were not PCBs?

A I can't really answer that. I don't know how that was done. In my memo on the second page, I recommended a procedure for handling that, but I do not know the outcome of that. I don't know how that was done.

I don't think there is any reference to it in Howard's memo, so I cannot answer.

Q Was it your recommendation though that Monsanto customers who used the Monsanto incinerator for Pydraul would only get a rebate for the portion of Pydraul returned which represented PCBs? Isn't that true?

A PCB or PCT where indicated.

Q Or PCTs, referring again to Page 1 of that document, Exhibit No. 6.

I am looking at the last paragraph, last sentence of Page 1.

Did Monsanto determine the rebate on a case by case basis as suggested there?

A I do not know whether we had a common policy or whether we varied that. I cannot tell you how we handled that parameter. That was set by Mr. Bergen.

Q Will you look at Deposition Exhibit No. 7, Mr. Gossage, which is a memorandum dated February 22, 1972

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to Mr. A. J. Koenig, K-o-e-n-i-g, and Mr. D. Elden.

I will give you a chance to look at that document.

A Do you want me to read the entire thing?

Q I don't think it is necessary right now.

For the record, does Deposition Exhibit No. 7 refresh your recollection as to whether Monsanto charged its customers for incineration of Pydraul on a case by case basis?

A No, I don't think that is what this is referring to.

Q What do you think it is referring to?

A Well, first, this is Mr. Koenig who was the Controller or the accountant for our group, and the purpose of the memo is to establish cost centers for charging the incineration cost and the revenue purely from an accounting standpoint.

His reference where he says something about different ways, his point, so will be paid for by Monsanto, others by customers, I believe he is dealing with heat transfer fluids and a different policy of how we handle the disposal of some of our heat transfer fluids rather than different means of handling Pydrauls, and the point is made that --

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Q There is no question.

MR. SCHINK: There is no question pending.

BY MS. KELLY:

Q Do you know whether incineration costs for Pydraul was decided on a case by case basis after February 1972?

A I do not know.

Q Do you recall Mr. Bergen suggesting that the amount, the price of incineration to a customer would be negotiated on a case by case basis considering the competitive factors of sales volume?

MR. SCHINK: You already asked him that question. He said he didn't recall. You showed him the next document and he said he did.

Are you going to ask the question now for the third time?

MS. KELLY: No, I am asking about Mr. Bergen ever discussing this with him.

BY THE WITNESS:

A I have no recollection other than what I read in this memo.

BY MS. KELLY:

Q Are you looking now at Deposition Exhibit No. 6?

A Yes, I am.

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Q It is Mr. Bergen's suggestion that the incineration costs be determined depending on the customer involved?

MR. SCHINK: No, he said the amount of rebate, not the amount of incineration cost. That is what the document says.

What is your question?

BY MS. KELLY:

Q You may answer.

A The document sets a parameter from him to me that says you can charge up to three cents a pound. Beyond that, Marketing has the authority, it would imply to me, to negotiate on a case by case basis.

I have no recollection of how Marketing implemented that.

Q Do you know how incineration policy was applied to Johnson Motors?

A No.

Q Do you know whether Johnson Motors ever paid for incineration?

A I do not.

Q Do you know whether Johnson Motors ever used the incineration?

A I don't know.

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Q Or whether the incinerator was made available for use by Johnson Motors?

MR. SCHINK: He has already answered that question. He said it was available to all customers.

THE WITNESS: Available to all customers.

BY MS. KELLY:

Q Could the incinerator, the Monsanto incinerator at the Krummrich Plant, dispose of Pydraul in a solid state?

A There were no Pydrauls in a solid state, if you are referring to Pydraul as our hydraulic fluid.

Q Pydraul mixed with solids?

A It had some limited capability. If it were diluted enough so that the solid material could pass through the piping into the system -- it was designed specifically for the incineration of polychlorinated biphenyl, not polychlorinated terphenyl, not phosphate ester, not mineral oil and not solids, all of which we received from customers.

Q When you received material in that form that you have just described from a customer, what would you do, what would Monsanto do?

A The judgment was made at the plant as to whether what we received could be burned in the

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incinerator without damaging the incinerator.

It is my understanding that we received things that we could not incinerate and we had to dispose of by other means.

Q What means were they?

A Typically it would be landfill, improved landfill, if it were so solid we couldn't handle it in our incinerator.

Q Would that be around the Krummrich Plant?

A Not necessarily. There would have been several landfills that were approved and were used by Krummrich and I could not state the location of those. I just don't know.

Q Would Monsanto personnel actually do the landfill?

A No.

Q Who would perform that?

A It would be a contract service.

I would also add that some material is still at Krummrich and is awaiting approved incinerators for handling the disposal of drummed chlorinated biphenyls, so we are even today carrying at our cost some of that material.

Whether it is Pydraul or some other

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product, I can only say it is PCB contained material.

MR. PATTI: Could you repeat the witness' answer?

(Answer read.)

BY MS. KELLY:

Q Do you know, was Pydraul manufactured at the Krummrich Plant?

A In part at the Krummrich Plant.

Q Anywhere else?

A Some of the formulation and drumming was done at the Queeney Plant.

Q Do you know what methods the effluent from the Krummrich Plant was disposed of?

MR. SCHINK: I am going to object to that on the grounds of relevance.

For any period of time after 1969?

If he knows prior to that time, certainly you are entitled to inquire.

BY MS. KELLY:

Q Do you know prior to 1969?

A No.

Q Do you know after 1969?

MR. SCHINK: The question is do you know.

BY THE WITNESS:

A Do I know how Monsanto handles its effluent?

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BY MS. KELLY:

Q At the Krummrich Plant.

A No.

Q What about at the Queeney Plant prior to 1969?

A No.

Q Do you know by what methods they dispose of their effluent, what they did since 1969?

A No.

Q Did Monsanto ever address the issue of the PCBs escaping in the environment through the stack after the incineration process at the Krummrich Plant?

A That was measured and monitored.

Q At what point in time?

A After the incinerator came on stream.

Q After?

A After the incinerator was started up.

Q Who monitored that?

A It was done at the plant.

Q Was there ever a governmental investigation into that?

A I do not know, but the incinerator was designed so that there was total combustion of PCBs and no material escaping into the environment.

Q Is the incinerator at the Krummrich Plant still

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in use today?

A No, it is not.

Q Why is that?

A Because it had served its purpose and after we had gone out of all of the uses of polychlorinated biphenyl, after we had actually stayed up there for awhile after that because we had had a backlog of burning material that could be handled, when that was completed, it was shut down and taken down.

Q You testified there is still material at the Krummrich Plant which needs to be incinerated?

A That is a modest amount of drum material that was not the type that could be handled in the incinerator and was received after the incinerator shut down.

Q Where are the drums today?

A They are in a warehouse in our Krummrich Plant along with other waste material that we will dispose of.

Q Is that PCB-bearing material?

A There is some that is PCB.

Q Is that all from the Krummrich Plant?

A No, it could be from a transformer at one of our plants that we have changed over from that kind of a product to a non-PCB-containing material.

Q Do you know if Monsanto's incinerator could

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incinerate Pydraul F-9?

A I do not know.

Q Do you know if it was capable of incinerating A-200?

A It was capable of incinerating polychlorinated biphenyls.

Q Does that include Pydraul A-200?

A It would include all of those products that were under the trade name Pydraul that were polychlorinated biphenyls.

Q Does it include Pydraul A-200B?

A That is a chlorinated terphenyl with some contamination of polychlorinated biphenyls. I think we disposed of those also in the incinerator.

It was not designed for polychlorinated terphenyls, but it was, I'm sure it handled those products.

Q Who would know, who would have more specific knowledge concerning that?

A Well, Papageorge for one.

Q Did Monsanto make the incinerator available to all purchasers, prior purchasers of Pydraul when the incinerator was first built?

A The policy was it was available to anyone who

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had materials containing PCBs that they needed to dispose of.

Q Was there ever any research performed by Monsanto as to the capacity of the incinerator in terms of how much it could handle?

A The answer is logical to me, but I have no knowledge of that.

Q Was there to your knowledge ever a backlog where Monsanto informed its customers that it would not accept Pydraul for incineration for any period of time?

A Yes, there was a backlog to my knowledge. We never refused to accept it.

Q So Monsanto just accepted it and stored it until the incinerator was available?

A Yes.

Q Who is Cumming Paton?

A Cumming Paton was a product manager who replaced Larry Bradford.

Q Was it Mr. Paton's responsibility to supervise the Johnson Motors account after Mr. Bradford left?

A He had product responsibility for Pydrauls after Mr. Bradford left. He would not have had sole responsibility. That would be Norm Johnson's job until he left, and then it would have been handled by

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regional managers thereafter.

Q Did Mr. Johnson leave the Monsanto Company?

A Yes, he did.

Q And Mr. Bradford as well?

A Yes, he did.

MS. KELLY: Let's take five minutes and we will come back.

(Brief recess had.)

BY MS. KELLY:

Q Will you take a look at Deposition Exhibit No. 1. On Page 1, Paragraph 2, there is a reference to the top five accounts, and this is referring to Pydraul products.

Can you tell me --

MR. SCHINK: No, the subject is industrial hydraulic fluids.

MS. KELLY: Well, industrial hydraulic fluids.

THE WITNESS: I haven't found the reference to the five. Okay.

BY MS. KELLY:

Q Can you tell me who or what the top five accounts were?

A No, I do not know who they were.

Q Was Johnson Motors one of them?

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A I'm sure they were.

Q General Motors?

A General Motors, I'm sure they were.

Q Can you think of any others?

A No.

MR. SCHINK: You don't have to guess.

BY MS. KELLY:

Q You testified earlier that you personally spoke with people at General Motors concerning the changeover.

Can you tell me the names of those people?

A No, I couldn't.

Q Do you know what department they were in at General Motors?

A I know the division that it represents, Central Foundry.

Q What is that, Central Foundry today?

A Yes.

Q Do you know where that is located?

A I don't recall the location, but that is a specific division and I believe it is a specific location, and if you know that you can find out what you want to know.

Q Looking at Page 2 under the section labeled Johnson Motors, there is a reference that:

"In terms of pricing and incineration, we will handle them in the same way as --"

Could you tell me who that is?

A No, I don't know who it is.

Q Do you know what is meant by the term, by the reference to the concessions made?

A Let me read it.

No, I don't know what that refers to.

Q Do you know why, as this memorandum states:

"All phosphate ester fluids will create phenolics in their effluent"?

A As I testified earlier, the decomposition of phosphate esters can generate some phenolics.

Q Is that true under all circumstances where phosphate esters are present and decomposing?

A Normal decomposition mode would be to generate some phenolics at some point in time.

Q Did you have at any time during your involvement with Functional Fluids Division at Monsanto and its subsequent division, whenever there was the change of name, any communications with the EPA?

A No.

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Q Do you know of anyone else at Monsanto who did?

A Well, Bill Papageorge would have had considerable communications with the EPA as he would with certain of the corporate staff people.

Q Who would have been the staff people?

A The Medical Health Department.

Q Do you know the names?

A I should say DMEH. That includes Environmental, or is that just Medical?

MR. SCHINK: Just answer based on your knowledge.

BY MS. KELLY:

Q So you are saying Mr. Papageorge and the Medical Department?

A Among others.

Q Who in the Medical Department?

A Garrett is the name that I recall that was involved in our concerns about PCBs.

Q Who else? You said among others.

A There were certainly people in the Law Department that would have had discussions.

Q Do you know who they were?

A Phocian Park.

Q Any others?

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MR. SCHINK: If you don't know, you don't have to guess.

BY MS. KELLY:

Q Do you know the names of any of the EPA representatives who were in contact with Monsanto during that period?

A I can recall none of them.

Q Are you aware of any agreement entered into between Monsanto and the US EPA concerning removal of PCB-bearing products from the market?

A There was no agreement necessary. Our involvement with them was to keep them informed as to the action we were taking as we were responding to the various removals of products from the marketplace.

Q Are you aware of any agreements between the EPA and Monsanto concerning the removal of PCB-bearing products?

A I am aware of no agreements.

Q You stated that you made a second trip to Johnson Motors in 1974.

A '73 or '4, somewhere in there, yes. It could have been early '75, but it was late in the time I was involved.

Q What was the purpose of that visit?

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A I think I testified that it was to see their new facilities as they were moving toward adding die casting machines and eventually moving old die casting machines to their new facility.

Q On that occasion who did you meet with?

A I do not recall the names. My recollection is it was kind of a low level visit, with me just kind of touring the facility. I am sure I talked to several people, but I don't know who they were.

Q Do you know who accompanied you, if anyone, from Monsanto?

A Chuck Seger.

Q Anyone else?

A No.

Q Did you on that visit have an opportunity to look through the new facility?

A Yes.

Q Did you go through the old facility as well?

A Yes. Now, the focus was on the new facility, but we did see the old facility.

Q Were you taken on a tour of these facilities by someone from Johnson Motors?

A Yes.

Q But you cannot recall any of the personnel at

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Johnson Motors that you had --

A No, no.

Q What were you shown in the old facility?

A I think I was just walked through the facility and given a general feeling of the die casting equipment that was going to be moved to the new facility.

Q Did you review any of the die casting machines that were not going to be moved?

A I have no recollection of that.

Q Did you review the containment operation in the old facility for Pydraul leakages and spills?

A No. The focus was on the new facility and what systems they were putting in place to contain hydraulic fluids in the new facility.

Q Did you see any of the interceptors for the collection of used Pydraul in the old facility?

A I don't recall.

Q What were you shown concerning the interceptors in the new facility?

A I can't recall other than their talking about whether they were putting in -- it was not in a complete form. It was somewhere during the construction period.

They were talking about the kinds of

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controls they were going to put in place to contain fluids in the new system.

Q What were the controls they were informing you of?

A I have no recollection of that.

Q What did you conclude from that meeting about the new facility?

A It was a very attractive new facility. It was substantially different from their old facility.

I certainly left with the impression that they had done a good job in beginning to think about how they were going to contain their spillages in the future.

Q Were you informed at that time that the new facility was going to contain all waste and effluent from the die casting operation in the new facility?

A I cannot say. I can only say the impression was they had spent a lot of time worrying about and including in their investment a significant amount of control.

Q Who requested that meeting?

A I think it was merely a part of my traveling with their salesman and in his territory and that was one of the accounts that he picked for me to see.

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Q Who was the salesman at that time?

A Chuck Seger.

Q Did you visit any other account at that time?

A I am sure I visited some other accounts of his, but they were not necessarily Pydraul accounts.

He was handling a broad line and I cannot recall whom else.

Q Other than the time in 1971 and this time we have been talking about in 1973 or '4, have you ever visited the Johnson Motors facility in Waukegan, Illinois?

A No, I do not believe I visited on any other occasions.

Q Are you aware of any indemnity or hold harmless agreement which Monsanto entered into with any of its customers or purchasers of Pydraul regarding Monsanto's agreement or the customer's agreement to hold harmless for any damage incurred?

A For Pydraul?

Q As with regard to Pydraul.

A No.

Q Have you ever had at any time any discussions with anyone concerning such agreements?

A On Pydraul?

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Q Regarding Pydraul.

A No.

Q Or regarding any other industrial fluids?

A Yes.

Q When was that?

A During that 1972 or '3 to '75 time period.

Q In what circumstances would an indemnity agreement or hold harmless agreement be entered into?

A We went to the dielectric industry, both capacitors and transformers, and informed the customers that we would only continue to sell them polychlorinated biphenyls which at that time they claimed they had no substitute for and would shut down their respective industries, that we would only continue to sell to them if they entered into a hold harmless agreement with Monsanto.

Q Do you remember, did customers accept and sign such agreements as a general rule?

A All did and we would only sell to them after that time if there was such an agreement between themselves and ourselves.

Q Was a similar agreement ever used to your knowledge with regard to any of the other industrial fluids apart from the dielectric?

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A It was never used anywhere except in the dielectric industry, to my knowledge, and it was used there because the industry indicated there was no other alternative for them if they were to continue to supply capacitors and transformers.

Q Was that a Monsanto decision or industry-wide decision?

A It was a Monsanto decision.

Q Do you know when Monsanto first began developing 50E, Pydraul 50E?

A No, I can't tell you whether it was before I joined the group or shortly after I joined the group.

I would say it was around the '70 time period.

Q Was it an objective of Monsanto to develop a hydraulic fluid which did not contain PCBs at the time you joined the Functional Fluids Group?

A I can't tell you whether the origin was for that purpose or not. Other hydraulic fluids we sold were phosphate esters. Our competitors had phosphate esters in their product line that was offered as an alternative to polychlorinated biphenyls or polychlorinated terphenyls. And whether the development was originally to be competitive or whether it was started

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as a result of our concern about PCBs, I cannot give you that origin.

Q Mr. Gossage, what did you do in order to prepare for this deposition today?

A Absolutely nothing until yesterday, and we met for a few hours yesterday.

Q Did you review documents?

A Yes, some documents.

Q Documents that we reviewed here today?

A Not all the ones that we reviewed here today; some of them.

Q Did you speak with anyone other than your attorney in order to prepare?

A Absolutely not.

Q Are you aware of any advertising which Monsanto purchased as regards to Pydraul?

A Advertising was the responsibility of Marketing Department which I ran, and yes, we had some advertising program on Pydrauls.

Q Did that include advertising in magazines?

A Yes.

Q Do you know the names of those magazines?

A It would have been like Chemical Engineers, Chemical Week.

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There were certain journals that were specific to the die casting industry and the metal working industry and I am not familiar with the titles of those. We would have picked those journals where our customers would typically subscribe to them.

Q Are you aware of any newspaper advertising?

A No.

Q Or radio --

A No, no. It would be focused on journal advertising.

Q And no television advertising?

A No. A very modest budget.

Q Can you think of any other journals or magazines besides Chemical Engineering or Chemical Week?

A As I say, there are a number of journals that service the metal working and die casting industry and I just cannot remember the titles of them. I was familiar with them at the time I was in that job, but I don't remember what the titles are.

MS. KELLY: That's all I have.

CROSS EXAMINATION

BY MR. PATTI:

Q Mr. Gossage, my name is Sebastian Patti and I represent the United States in this matter. I only

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have a few questions this afternoon.

I believe you testified earlier on a number of occasions that hydraulic fluids which were originally formulated to be PCT-based in fact included PCBs in trace amounts, is that correct?

A Yes, I testified to that.

Q I also believe you testified that as a trained chemical engineer, you expected to find low levels of PCBs in these PCT hydraulic fluids?

MR. SCHINK: I don't think that was his testimony.

BY THE WITNESS:

A My testimony was I recall in a meeting with Bill Richard I asked whether it would be expected that those products could contain minor quantities of polychlorinated biphenyls, and I posed the question based on my understanding of our process and whatever limited knowledge of chemistry I had. But that was a question, as a question I put to him and not a conclusion or a fact.

BY MR. PATTI:

Q All right.

Now, in a number of occasions today you characterized the presence of PCBs in these PCT fluids as contamination, is that correct?

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A Yes.

Q I ask you what do you mean by the word contamination?

A I used the word contamination in that it was not something that we intended to formulate into the product, that it was something that was there as a result of the process that our separation equipment would preclude the elimination of it in parts per million.

Q Would you characterize it as an impurity?

A Yes, I think that is maybe a better choice of words than contaminant, as by the way, biphenyl or terphenyl would also be an impurity if this were so that got through in chlorinating.

Q Would you characterize it as a defect?

MR. SCHINK: I would object to that as a conclusion if you are asking for a legal conclusion of defect in product liability sense as a layman.

MR. PATTI: All I am asking him for is a dictionary definition of the word.

MR. SCHINK: Why don't you ask him the question did the presence of PCBs in trace amounts in the product affect its usefulness or its use as a hydraulic fluid.

MR. PATTI: I think my question stands.

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BY MR. PATTI:

Q As the dictionary defines the word, would you define it as a defect?

MR. SCHINK: I'm going to object to the form of that question.

BY MR. PATTI:

Q You can answer.

A In terms of the product functioning as it was intended to function, in terms of it meeting the specifications that we set for it and that customers set in their purchase of the product, it was not a defect. It would perform equally as well as would the polychlorinated terphenyl.

Q You have testified that these PCBs were present in the PCT fluids in trace amounts at a parts per million level.

Do you know the exact parameter level they were found?

A No, I do not know the exact parameter level.

MR. PATTI: I have no further questions.

MS. KELLY: Do you have some questions?

MR. SCHINK: I may.

MS. KELLY: I think we will wait until we have a round.

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MR. SCHINK: I think we ought to complete the interrogation before I do anything.

MS. KELLY: Then I will reserve my right to ask questions after your questions.

MR. SCHINK: I have no further questions.

MS. KELLY: I have just two.

REDIRECT EXAMINATION

BY MS. KELLY:

Q Where is Mr. Olson today? Is he still with Monsanto?

A Yes, he is.

Q What division?

A He is with the Monsanto Intermediates Company as Marketing Director for the Commercial Division of that company.

Q Is that in St. Louis?

A Yes, it is.

Q Was the base stock, the composition of the various Pydrauls manufactured by Monsanto a trade secret?

MR. SCHINK: Are you talking about the fact that the Pydraul contained, for example, chlorinated hydrocarbons? Is that what you mean by that?

MS. KELLY: No, I mean the chemical composition.

MR. SCHINK: I am trying to clarify what you mean

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by chemical composition. Chlorinated hydrocarbon, that is a chemical composition or chlorinated biphenyl.

BY MS. KELLY:

Q Let me put it this way:

If a customer were to call Monsanto and said, "Give me the recipe for Pydraul," any of the Pydrauls, would Monsanto have released that information?

A I think that depends. He would have gotten an answer that at a point in time this is polychlorinated biphenyl. If he had asked on a certain product, he would have been told it is polychlorinated biphenyl or other additives or other ingredients. I doubt we would have given the 42 percent this and 5 percent that. That would not be a typical response.

We would tell him the chemical nature of the product.

Q Prior to 1970 would a Monsanto customer be informed as to the chemical composition of the Pydraul fluids back on then?

A That it was a chlorinated biphenyl.

Q Are you aware of any circumstances where a customer was informed of that fact?

A That was before I was in the organization.

Q On what do you base your opinion that that

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information would have been released prior to 1970?

A Because that is what we told them after 1970 on similar products like heat transfer fluids.

Q But you don't know of any instances where a customer requested that information?

A Not before 1970.

Q Or where Monsanto released that information before 1970?

A That is correct.

MS. KELLY: That is all I have.

MR. SCHINK: We will not waive signature.

(Witness excused.)

FURTHER DEPONENT SAYETH NOT. . .

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 78 C 1004
	)	
OUTBOARD MARINE CORPORATION	)	
AND MONSANTO COMPANY,	)	
	)	
Defendants.	)	

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 183, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, as it now appears.

Thomas L. Gossage

Subscribed and sworn to
before me this _____ day
of _____, A.D. 1981.

Notary Public.

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UNITED STATES OF AMERICA)
 NORTHERN DISTRICT OF ILLINOIS)
 EASTERN DIVISION) SS:
 STATE OF ILLINOIS)
 COUNTY OF COOK)

I, Thea L. Urban, a notary public in
 and for the County of Cook and State of Illinois, do
 hereby certify that THOMAS LAYTON GOSSAGE was by me
 first duly sworn to testify the whole truth and that
 the above deposition was recorded stenographically by
 me and was reduced to typewriting under my personal
 direction, and that the said deposition constitutes
 a true record of the testimony given by said witness.

I further certify that the reading and
 signing of said deposition was not waived by the
 witness and his counsel.

I further certify that I am not a
 relative or employee or attorney or counsel of any of
 the parties, or a relative or employee of such attorney
 or counsel, or financially interested directly or
 indirectly in this action.

IN WITNESS WHEREOF, I have hereunto
 set my hand and affixed my seal of office at Chicago,
 Illinois, this ____ day of August, A.D. 1981.

 Notary Public, Cook County, Illinois.
 My commission expires May 31, 1983.

 Thea L. Urban
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