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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.	)	

The continued deposition of WILLIAM B. PAPAGEORGE, called by the Defendant Outboard Marine Corporation for examination, pursuant to adjournment 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 the offices of Kirkland & Ellis, 200 East Randolph Drive, 58th Floor Conference Room, Chicago, Illinois 60601, on the 1st day of September, A.D. 1981, commencing at 9:45 o'clock a.m.

PRESENT:

MR. JAMES T. HYNES,
Deputy Chief, Civil Division
(United States Attorney's Office
219 South Dearborn Street, Room 1486
Chicago, Illinois 60604),

appeared for the United
States of America;

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PRESENT: (Continued)

MR. MICHAEL A. POPE,
MR. RICHARD J. PHELAN,
(Phelan, Pope & John, Ltd.
30 North LaSalle Street
Chicago, Illinois 60602),

and

MR. JEFFREY C. FORT,
(Martin, Craig, Chester & Sonnenschein
115 South LaSalle Street
Chicago, Illinois 60603),

appeared for Outboard Marine Corporation;

MR. JAMES H. SCHINK,
(Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601),

appeared for Monsanto Company.

ALSO PRESENT:

MR. HUGH THOMAS.

- - -

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I N D E XWITNESS:Direct Cross Redirect Recross

WILLIAM B. PAPAGEORGE

By Mr. Pope

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E X H I B I T SPapageorge-OMC Deposition
ExhibitMarked for ID

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E X H I B I T S (Cont'd.)Papageorge-OMC Deposition
ExhibitMarked for ID

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CERTIFIEDQUESTIONSPageLine

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WILLIAM B. PAPAGEORGE,
called as a witness herein, having been previously
duly sworn, was examined and testified further as
follows:

DIRECT EXAMINATION (Resumed)

BY MR. POPE:

Q Good morning, Mr. Papageorge. You understand
you are still under oath in this case?

A Yes.

Q Can you tell me whether Monsanto ever had a
task force similar to the task force that you worked
with on the PCB matter for any other product?

A No, I don't know.

Q And you don't know of any such group in
Monsanto, either before or after the one that you were
involved in on PCBs, is that right?

A Right.

MR. SCHINK: I think he said he didn't know one
way or the other.

BY THE WITNESS:

A I don't know.

BY MR. POPE:

Q I am trying to clarify as to the past history
or later on.

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A I do not know.

Q To your knowledge, were there any other Monsanto products that were found to be voluntarily taken off the market because of environmental concerns other than PCB products?

A Not to my knowledge.

Q I take it your answer to my question would be to both before and after the PCB matter, is that right?

A Yes, that is my understanding.

Q Do you know, Mr. Papageorge, where the Pydraul A-200 which was shipped to Johnson Motors by Monsanto was manufactured?

A No, I don't.

Q How about the A-200A and A-200B products. Do you know where they were manufactured?

A No.

Q What plants at Monsanto during the period from 1960 to 1970 were manufacturing A-200, as far as you know?

A As far as I know, it would either be the W. G. Krummrich Plant in Illinois or the J. F. Queeny Plant in St. Louis.

Q That would be manufacturing Pydraul in the

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sense that we talked about it last week of blending Aroclors with other products?

A Yes.

Q Would the Aroclor products that went into the Pydraul have been manufactured in Anniston, as far as you know, during the 1960s?

A Some of them.

Q And the other ones at Krummrich?

A Yes.

Q Those are the only two places that the Aroclors would have come from to go into a Pydraul product, is that right?

A Yes.

MR. POPE: I would have the court reporter mark as Papageorge Exhibit 43 for identification, a copy of a one-page memorandum dated December 12, 1961.

(Papageorge-OMC Deposition

Exhibit No. 43 marked for

identification, 9/1/81, TLU.)

BY MR. POPE:

Q Would you look at that document, Mr. Papageorge, and tell me if in fact it is a memorandum from Mr. R. E. Soden?

A Yes.

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Q Who is Mr. Soden, do you know?

A He was the Plant Manager of the W. G.

Krummrich Plant at that time.

Q Can you tell me what Department B-246 is?

MR. SCHINK: Is now or was?

BY MR. POPE:

Q Was in 1961.

A I don't remember.

Q Were departments with numbers or designations such as that allocated within the Monsanto organization for responsibility of manufacturing certain products such as A-200?

A I don't think I understand the question.

Q The memorandum says that Department B-246 will be designated for the manufacture of Pydraul A-200.

A Yes.

Q I understand you may not specifically remember what Department B-246 is. My question is were designations made in 1961 within the Monsanto organization of certain areas of responsibility for the manufacture of a specific product such as Pydraul A-200?

A Yes, just as demonstrated by this memo.

Q And is it your understanding that this memo designates an entity within Monsanto for the manufacture

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of this particular product?

A Yes.

Q Would that be a group within the Krummrich Plant?

A Yes.

Q Is the format of this Exhibit No. 43, the type that would be used to record changes that had been made within the designation within a plant such as Krummrich for the manufacture of specific products?

A Yes.

Q The memorandum in the second sentence says, "There will be no M&E assigned to this department."

Do you know what that means?

A Machinery and equipment.

Q What is the significance of that statement in the context of the memo?

A It is an accounting procedure in which the capital cost of that equipment is not transferred on paper under this newly designated Department B-246. It remains under the original department designated A-246.

Q In terms of internal accounting?

A Yes.

Q Would it be a safe assumption for me to make

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that following December 1961, this was the designation, Department B-246, which at least at Krummrich made Pydraul for some period of time, Pydraul A-200?

A Yes.

Q Manufactured it, is that right?

A Yes.

Q Would there also be a different department designation at Queeny for the manufacture of Pydraul A-200?

A Yes.

MR. POPE: I would like to mark as Papageorge Deposition Exhibit No. 44, a copy of a memorandum dated December 8, 1961 from R. Smith, entitled Pydraul A-200.

(Papageorge-OMC Deposition
Exhibit No. 44 marked for
identification, 9/1/81, TLU.)

BY MR. POPE:

Q Mr. Papageorge, if you will take a look at Exhibit 44 for identification, please, tell me whether you have ever seen that document before.

A I don't remember it, no.

Q Is the format one you are familiar with?

A Well, yes.

Q Would this be a memorandum recording the

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methodology for the measurement and weights of various ingredients in Pydraul A-200?

A Yes.

Q As of December 1961, is that right?

A Yes.

Q And henceforth, I take it, at least up to some point in time?

A Yes.

Q Was this the methodology that you followed within your responsibilities when it was your responsibility to blend various Pydraul products including A-200?

A No, because if I recall correctly, this applies to tanks at the Krummrich Plant.

The tanks at the Queeny Plant may be different; therefore, these inches of outages will very likely be different.

Q So the numbers listed here from certain inches with respect to Aroclor 1242, measurement of inches regarding Aroclor 1248 are indications of measurements in tanks, is that right?

A Yes.

Q Can you tell me under the 8,000 gallon batch, approximately how much of that indication for Aroclor

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1242 is in volume?

A I could estimate.

Q Would you, please?

A Based on the total volume of 8,000 gallons and noting that there are five ingredients in addition to the two Aroclors that are of minor consequence in terms of volume, by taking the inches of outage of two Aroclors, one could estimate that there is about twice as much 1242 as there is 1248; therefore, I would suggest that a third of this 8,000 gallons is roughly the amount of Aroclor 1248 and two-thirds is roughly Aroclor 1242.

Q Out of the 8,000 gallons?

A Yes.

Q I take it the proportions would be the same for the 12,000 gallon batch?

A No, I was wrong on that, I was wrong. This outage is the void space in a tank.

I do not know the full space, the amount of liquid.

Q Based on your experience in the manufacture of this product, do you have an estimate as to how the percentages vary for either an 8,000 gallon batch or a 12,000 gallon batch?

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A I don't remember.

Q Who is R. Smith, do you know?

A No, I don't remember.

Q In order to calculate these numbers, would you have to know how large the mixing tank is?

A Yes.

Q We talked yesterday about some discussions I believe you said you had with Mr. Pogue regarding Outboard Marine Corporation in April or May of 1970, is that correct? Do you remember that?

MR. SCHINK: I don't remember that.

BY THE WITNESS:

A Not yesterday, sir.

BY MR. POPE:

Q In connection with our discussion of Papageorge Deposition Exhibit 38 for identification?

A No.

Q Did you tell me you had some discussions with Mr. Pogue regarding Outboard Marine?

A Yes, yes.

Q In those discussions with Mr. Pogue, did he tell you anything about his visit to Outboard Marine?

A Yes.

Q What did he tell you?

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A I don't remember specifics. I only remember in general that he mentioned, as I recall, more than one visit and in his talking with representatives of Johnson Motors about the proper handling and control and disposal of the Pydrauls.

Q Was that a matter of concern to Monsanto with respect to OMC's handling of Pydrauls?

MR. SCHINK: Was that a matter of concern?

MR. POPE: OMC's handling and disposal of Pydrauls.

BY THE WITNESS:

A Yes, as with other companies, all companies.

BY MR. POPE:

Q What did he tell you with regard to Johnson's handling and disposal of Pydraul fluids, as best you recall?

A As best I recall, he left me with the impression that Pydrauls were getting into the water systems or sewer systems; that he was working with representatives of the company to improve the control of the losses. That is all I remember.

Q Did he tell you anything regarding -- and this is in April or by April of 1970 or earlier -- did he tell you anything about the sophistication of the analytical people that OMC had available to it?

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A I don't recall that discussion.

Q As of April 1970, did you make any assumptions regarding the ability of Outboard Marine Corporation to analyze its discharge for the presence of PCBs?

A No.

Q Did anyone at Monsanto tell you anything about that ability or inability of OMC to analyze its discharge for presence of PCBs by April of 1970?

MR. SCHINK: Are you including, Mr. Pope, people available to OMC, or are you talking about employees of OMC?

MR. POPE: I am including both.

BY THE WITNESS:

A I don't recall any discussions.

BY MR. POPE:

Q Do you recall any discussions regarding the degree to which Outboard Marine Corporation was relying on Monsanto Company for detection of PCBs in OMC's discharge waters?

A I was aware that samples at OMC's plants were analyzed by Dr. Tucker's laboratory. I have no recollection of the degree of reliance that OMC had on Monsanto's laboratory.

Q I realize this is secondhand, no one told

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you secondhand one way or the other whether they were relying completely on Monsanto or whether they had independent people as well?

A That is correct.

Q Do you know of your own knowledge whether the results of those samples we were talking about yesterday, the analysis of those samples by Dr. Tucker's laboratory, were ever communicated directly to Johnson Motors?

A I was informed by Mr. Pogue that they were.

Q Did Mr. Pogue tell you that he himself conveyed results of those samples to someone at Johnson Motors?

A I don't recall that. I don't know.

Q Do you know what format the conveying of that information took?

A No, I don't recall.

MR. POPE: I ask the reporter to mark as Papageorge Deposition Exhibit No. 45 for identification, a 2-page document, first page of which says "PCB Analysis Effluent Samples," dated May 11, 1970 from which certain information has been blanked out at the top.

Attached thereto is the second sheet, bottom of which bears the number 0001632.

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(Papageorge-OMC Deposition
Exhibit No. 45 marked for
identification, 9/1/81, TLU.)

BY MR. POPE:

Q Mr. Papageorge, I hand you that deposition exhibit and ask you to take a look at it and tell me if in fact that is a copy of a document you received on or about May 11, 1970.

A It appears to be, yes.

Q Was that a report from Dr. Tucker regarding the samples we were just discussing?

A I don't know if it is the same samples.

Q Is there any way you can tell from examination of Papageorge Exhibit 38 for identification whether it was the same samples?

A No, there is nothing to tie the two together here.

Q The date tends to tie it together, doesn't it, in terms of when results would have been done if they were begun in early April?

MR. SCHINK: You are asking him to speculate about that, Mr. Pope. He said he doesn't know.

MR. POPE: No, I am asking if the dates are consistent with his knowledge of how long it would take

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to do that sample.

BY THE WITNESS:

A The time period represented by the two numbers is more than adequate to analyze for samples reported. It is a six-week period here, almost.

BY MR. POPE:

Q That would be consistent with what you understood to do such samples during April and May of 1970?

A It is more than enough.

Q Do you know where the other sample came from that is discussed there?

A I don't know what you mean by other sample. The report is confusing as I read it here. The report refers to seven samples by number, or let us say the number of transmittal, the attachment only refers to four samples by different numbers.

I don't know the relationship of the two sets of numbers.

Q Do you know who the other samples came from?

A No, I don't.

Q How about in connection with Exhibit No. 38 for identification. Do you know where those other samples came from?

A I don't recall.

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Q Do you recall discussing with anyone the results of this analysis as exemplified there by Deposition Exhibit No. 45?

A Not specifically.

Q Do you remember generally?

A Generally, this type of topic would be discussed as the information is available and with the appropriate people routinely.

Q What was the purpose of sending that report, a copy of that report to you?

A I had asked to be copied in on all analyses results that Dr. Tucker's laboratory had developed.

Q For what purpose?

A To keep me knowledgeable of results that were obtained on many, many samples from as many other sources as possible.

Q Was one of the purposes to keep you advised of the degree to which PCBs were being detected in the environment from samples that were taken at or near customers' premises?

A That is one of the purposes, yes.

Q Did you ever discuss the samples taken at Outboard Marine or the analysis of those samples with Mr. Damiani?

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A I don't remember.

Q Do you recall that Mr. Damiani was one of the salesmen that called on Outboard Marine during that period of time?

A Yes.

Q He worked for Johnson, Johnson's Division?

A Yes.

Q Did you ever talk to or have a meeting with Mr. Damiani?

A Several times, yes.

Q What was the context or purpose of those meetings or discussions?

A The general subject of PCBs, presence in Pydraul, control. These are sort of a review or reinforcement of what he had heard from his superiors and he discussed his visits to customers' plants, his observations, his attempt to keep me tuned in as to what was in his area, what he was finding.

Q In his area, you are talking about the Chicagoland area?

A Yes, he was assigned a certain geographic area out of Chicago.

Q I understand from your answer that you are talking now about an individual meeting as opposed to

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addressing a large group of people where he was one of the listeners. Is that correct?

A Yes, but it was more than just one meeting. It would be a telephone call or chance encounter in the corridor when he was in St. Louis or he might make it a point to drop by when he was in the office; very informal exchange of information.

Q How many times would you say you talked on the telephone with Mr. Damiani?

A I don't know, a couple, three, four times.

Q What was he finding in his area with respect to PCBs?

A I don't remember specifics. Generally he was finding the full spectrum of control in his customers' plants from near perfect to some pretty loose control. He was working, of course, very hard with these. They either didn't understand the problem or didn't have the resources to cope with it.

Q Was Outboard Marine one of those?

A I remember, yes, he was working very hard with Johnson Motors at the time.

Q My question is whether you recall him including Johnson Motors in the category of didn't have the resources or didn't understand the problem.

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A I don't know that he characterized Johnson Motors in any particular way other than they did have a situation that required the attention and he was working with them and wanted my support to continue giving him the laboratory services that they might need currently and in the future.

Q As far as you know, how was he working hard with them, what was he doing?

A I was left with the impression that he was communicating, either by phone or personal visits, relatively frequently compared to other accounts in his area.

Q For the purpose of helping them control the handling and disposal of Pydraul, is that your understanding?

A That is my understanding, yes.

Q Did you ever review any of the call reports from Mr. Damiani?

A I don't remember specifically any from Mr. Damiani.

Q Do you recall him telling you that Outboard Marine had loose controls with Pydraul?

A I don't know that he used that word.

Q Did he tell you something as to where Outboard

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Marine Corporation fit in the spectrum with respect to the control of Pydraul?

A No, he didn't try to rank them.

Q Was Outboard Marine one of his more important customers?

A Yes.

Q As far as you understood, did he also call on General Motors?

A I believe he did, yes.

Q Did he call on any customers in Milwaukee, as far as you know, the Milwaukee area?

A I don't remember.

Q The General Motors Plant that he called on, was that in New Bedford, Indiana?

A I don't know.

Q Did you yourself ever visit any General Motors Plants in connection with PCB matters?

A Not plants, no.

Q Did you ever visit General Motors offices?

A Yes.

Q When was that?

A Sometime in the Summer of 1970. I don't recall the specific date.

Q Where was the office that you visited?

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A Detroit, Michigan.

Q What was the purpose of your visit?

A It was the typical visit of talking with the appropriate people within a company to discuss PCBs in a very general way, to review with them our state of information that we had at our disposal, including toxicity studies, presence in the environment, need for control.

Q Is this in connection with General Motors' use of hydraulic fluids?

A It's one of the uses, yes.

Q What other uses did they make of PCB products?

A Oh, they had just about every use represented in their worldwide operations.

Q Including heat exchangers, heat exchange fluid?

A Heat exchangers, plasticizers, adhesives.

Q Did they use plasticizers in the manufacture of automobiles?

A It is present in their plastic materials.

Q With whom did you meet at General Motors?

A I have forgotten their names. I believe, and I am not certain, there was a Mr. D-e-l-o-s.

Q One "l"?

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A Yes. I can't remember the names of the others.

Q Approximately how many people were present at the meeting?

A Three or four from General Motors.

Q How many from Monsanto?

A I was accompanied by the -- I don't remember, I don't remember.

Q Was one of the purposes of your discussion with General Motors to advise them which products were being taken off the market, which ones were being replaced or reformulated?

A That was one of the purposes, yes.

Q Did you also discuss with them the report that Monsanto had received concerning the lower chlorinated Aroclors having some adverse effect in some species of animals?

A Yes. That was part of our toxicity summary.

Q At the time you met with General Motors, had they initiated a program to analyze the discharge water from their plants to eliminate the presence of PCBs?

A As I recall they had just started to set up their laboratory to do the analyses and were seeking analytical procedures which we offered to them.

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Q Was General Motors setting up a program to do the sampling and analysis in-house?

A That was my understanding, yes.

Q They were asking Monsanto for assistance in how to go about the analytical detection and methodology, is that right?

A Yes.

Q Did you later learn that this program had in fact been set up and was functioning at General Motors?

A Yes.

Q Did you call on them at any other time?

A No.

Q Were there any other customers that you called on besides NCR and besides the dielectric users in 1970?

A I don't remember.

Q In June of 1970, did you call on two customers in New Bedford, Massachusetts?

A I don't recall the exact date, but I have been to customers in New Bedford, yes.

Q Would that be the Aromatic Company and Cornell-Bilier?

A Yes.

Q What types of Monsanto products were they using

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at that time?

A They made electrical capacitors that used at that time PCB fluids.

MR. SCHINK: Any hydraulic fluids?

THE WITNESS: Not to my knowledge -- well, no.

BY MR. POPE:

Q What was the purpose of that visit?

MR. SCHINK: At this point, I am going to object with respect to a user that has no involvement with hydraulic fluids. I am going to object with respect to relevancy and direct the witness not to answer questions pertaining to discussions with non-hydraulic fluid customers.

BY MR. POPE:

Q Are you going to follow the recommendation or advice of your counsel?

A Yes.

MR. POPE: We will have to go in before the Judge on that matter. It may even necessitate a further deposition.

Mr. Schink, are you instructing the witness not to answer any further questions regarding what he did, what the discussion was at those meetings?

MR. SCHINK: With respect to non-hydraulic fluid

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customers, based on his testimony that these were non-hydraulic fluid customers, right, in 1970.

MR. POPE: You are not permitting me to inquire any further in any discussions with these people, is that right?

MR. SCHINK: Right.

MR. POPE: On any subject matter?

MR. SCHINK: Well, what subject matter? Why don't you pose a question.

BY MR. POPE:

Q My question was what did you talk about with those people?

MR. SCHINK: Right.

MR. POPE: And his answer may well be we talked about hydraulic fluids and problems they had or, yes --

MR. SCHINK: He already testified they were not involved in hydraulic fluids.

MR. POPE: He didn't testify that is what they talked about.

MR. SCHINK: I have no objection to your asking questions with respect to whether there were discussions relating to hydraulic fluids. I thought that it was established that these were not hydraulic fluid customers.

It was on that basis that I objected and

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directed the witness, so I certainly want to give you every opportunity to establish that, if it was the case that these companies were involved with hydraulic fluid applications of the type involved in this litigation.

MR. POPE: Whatever they were involved in, that doesn't tell us anything about what the discussion was. That is my question, what did you talk about?

MR. SCHINK: I will permit the witness to answer with respect to any discussions that related to hydraulic fluid, if there were discussions.

MR. POPE: How about the question of PCB which is in the environment, about the health effects of PCBs?

MR. SCHINK: In the case of by June 1970, PCBs in the environment were no longer an issue.

MR. POPE: Judge Schink, you are ruling on issues right and left. How is that not at issue?

MR. SCHINK: I don't think we have to debate this on this point. We made our position here.

Why don't you proceed.

BY MR. POPE:

Q You are going to follow your counsel's recommendation?

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MR. SCHINK: Yes, and I have indicated I will direct the witness not to answer questions with respect to whether these customers were involved with hydraulic fluids or whether there were discussions regarding hydraulic fluids.

BY MR. POPE:

Q My question was whether there were discussions regarding PCBs and that is the question you are not going to answer, is that right?

MR. SCHINK: You want to ask him about hydraulic fluids, Mr. Pope, you may.

BY MR. POPE:

Q Mr. Papageorge, did you discuss PCBs with these customers?

MR. SCHINK: You can answer that question yes or no.

BY THE WITNESS:

A Yes.

BY MR. POPE:

Q Did you discuss with them what results were available to Monsanto at that time with respect to the presence of PCBs in the environment?

MR. SCHINK: I direct the witness not to answer that question unless you can establish that that was a

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hydraulic fluid customer.

MR. POPE: Let us bring the whole matter to the Judge.

BY MR. POPE:

Q In June of 1970, Mr. Papageorge, did you visit a customer in Bennington, Vermont by the name of Jard Company, J-a-r-d?

A Yes.

Q What did you discuss with that customer, do you recall?

A PCBs in general.

Q What was the purpose of your meeting with that customer?

MR. SCHINK: Again with respect to -- apparently you have a list of several customers. With respect to any of those that are hydraulic fluid customers, I will not instruct the witness. With respect to the others, I will.

Perhaps to expedite the examination, you just might cover each one of the customers individually.

MR. POPE: Cover them with what?

MR. SCHINK: Rather than going through a whole series of questions and go with each one leading up to an instruction --

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MR. POPE: I would certainly be happy to proceed with the way you suggest.

What would you have me do, give you the names and have you relay them? You want to come back and relate it or --

MR. SCHINK: Why don't you ask if each of those customers as he recalls were hydraulic fluid customers.

MR. POPE: That would be lending my imprimatur to your objection, which I don't think is well founded.

MR. SCHINK: If you want to waste more time with another procedure, you are certainly welcome to do it.

MR. POPE: I don't want to waste any time with the procedures, Mr. Schink.

MR. SCHINK: Would you read the question?

(Question read.)

BY THE WITNESS:

A I thought I answered PCBs in general.

BY MR. POPE:

Q Do you know whether they were an entity that did not use any hydraulic fluid?

A I cannot speak for the use of hydraulic fluid in a customer's plant. I know they did not use Monsanto's hydraulic fluid.

Q How do you know that?

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A Because they were not a customer. They were not a customer of record.

Q So you did discuss that fact with them, their use of hydraulic fluid, that that was not a Monsanto product?

A I don't know if they used hydraulic fluid.

Q Did you discuss with them the effects of PCB and potential effects on animal or man?

MR. SCHINK: I am going to object and direct the witness not to answer as not having been established that this was a hydraulic fluid customer of Monsanto.

BY MR. POPE:

Q Do you follow your counsel's direction?

A Yes.

Q Did you advise the Jard Company of what the management plan was with respect to the handling of PCBs?

MR. SCHINK: Again, I am going to object and direct the witness.

THE WITNESS: I didn't hear you.

MR. SCHINK: I am going to object and direct with respect to the discussions with the Jard Company, given your testimony that they were not, to the best of your recollection, a hydraulic fluid customer.

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BY MR. POPE:

Q Are you not going to answer that question?

A Yes.

Q How about Sprague Electric. Did you visit with them in Massachusetts in June of 1970?

A Yes.

Q Did you have any discussions with them regarding PCBs?

MR. SCHINK: Again, I am going to object and direct the witness not to answer unless it be established that this customer was a hydraulic fluid customer of Monsanto at that time.

MR. POPE: And it is your position that I have the duty to establish that before I go any further with any further interrogation, is that right, Mr. Schink?

MR. SCHINK: Yes.

BY MR. POPE:

Q Are you going to follow your counsel's direction with regard to the Sprague Electric Company?

A Yes.

Q Did you visit General Electric in June of 1970?

A Yes.

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Q Does General Electric use hydraulic fluid?

A You speak of Monsanto's hydraulic fluid?

Q I thought I would first find out if they used, to your knowledge, hydraulic fluids of any kind.

A I don't know.

Q Did you have any discussions with them regarding PCBs?

MR. SCHINK: Again, I am going to object and direct unless you can establish that they were a Monsanto hydraulic fluid customer.

BY MR. POPE:

Q Are you going to follow that advice from your counsel?

A Yes.

Q Were they a Monsanto hydraulic fluid customer?

A Not the plants that I visited.

Q Other plants were or you just don't know?

A I don't know about the rest of General Electric.

MR. POPE: Where do we go with that one, Mr. Schink? Is that established or is it not established?

MR. SCHINK: I don't think you have established that the people that he visited were Monsanto hydraulic fluid customers.

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BY MR. POPE:

Q How long did you spend with General Electric at Pittsfield, Massachusetts in June of 1970?

MR. SCHINK: Object and direct.

BY THE WITNESS:

A I don't remember.

BY MR. POPE:

Q What did you talk about?

MR. SCHINK: Again, I'm going to object and direct the witness not to answer that question.

BY MR. POPE:

Q Are you going to refuse to answer the question?

A Yes.

Q Did you go the next day to another General Electric Plant in Hudson Falls, New York?

A I don't remember the sequence.

Q Were they the same trip, the two plants, one day and the other plant the other day?

MR. SCHINK: With respect to this, nothing in this record has been established that General Electric was a hydraulic fluid customer, a Monsanto hydraulic fluid customer. Therefore, a question with respect to this witness' contact with General Electric would be

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the subject of objection and direction not to answer.

BY MR. POPE:

Q Mr. Papageorge, are you going to refuse to answer all my questions with respect to General Electric?

A Depends on your questions.

Q Okay.

Did you talk with the people at General Electric in Hudson Falls?

MR. SCHINK: Objection and direction not to answer.

MR. POPE: Why don't you make the statement for the record that you are not going to answer.

THE WITNESS: I am going to follow the counsel's advice and not answer that question.

BY MR. POPE:

Q Did you then visit Electronic Components in Bridgeport, Connecticut in June of 1970?

A Yes.

Q What was the purpose of that visit?

MR. SCHINK: Again, with the whole series, Mike, if you want to establish that the customer was a Monsanto hydraulic fluid customer --

MR. POPE: Jim, I don't know whether any of them were Monsanto hydraulic fluid customers.

MR. SCHINK: Why don't you ask with respect to

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each one. I indicated I will direct and object, direct the witness not to answer regarding his contact with customers that were not Monsanto hydraulic fluid customers.

MR. POPE: On the grounds of relevance?

MR. SCHINK: Right among others.

MR. POPE: Among others?

MR. SCHINK: It is your burden, we are in the fourth day now of the deposition of a man who never talked with Johnson Motors, never had any contact with Johnson Motors.

The majority of questions in this case have related to products other than products involved in this litigation. The allegations relate to specific products and things that were tied to specific products.

I am trying to accommodate you, but we are also trying to move the deposition along.

MR. POPE: Your objection isn't to the form of the question. It is to the substance?

MR. SCHINK: That is correct.

BY MR. POPE:

Q How about Hevi-Duty Electric in Goldsboro, North Carolina in June of 1970?

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A Yes.

MR. POPE: Mr. Schink, as long as you are not going to claim that I have waived something, I would be happy to go through the list and establish all the customers he did visit during this period of time.

MR. SCHINK: Why don't you just show him the list and ask if he visited any of those customers rather than prolonging the thing.

He could answer that he visited the customers. I think that would be the most expeditious way to proceed and then ask with respect to that list of customers whether any of them were hydraulic fluid customers.

MR. POPE: I have no intention of asking that question, Mr. Schink. I will be happy to give you the list and if you are going to tell me you will instruct him not to answer with all these, we can get along with it.

MR. SCHINK: Why don't we do that.

(Papageorge-OMC Deposition

Exhibit No. 46 marked for

identification, 9/1/81, TLU.)

BY MR. POPE:

Q Mr. Papageorge, I would like to show you a

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2-page document which the court reporter has just marked as Papageorge Deposition Exhibit No. 46 for identification, dated from February 9, 1970 to December 1, 1971.

I am tendering that list to your attorney and ask you if in fact you visited those plants indicated on that list.

MR. SCHINK: Don't answer the question.

Mr. Papageorge has reviewed what the reporter has marked as Exhibit 46 and advised me that with the exception of the last entry, Chevrolet Division, Detroit, Michigan, none of those customers were Monsanto hydraulic fluid customers and indeed, some of these entities are not even Monsanto customers.

With respect to the Chevrolet Division, December 1, 1971 visit, he advises that that is the visit about which you have already interrogated, so on that basis, I would object to any further question regarding these visits, save for the General Motors visit, and direct the witness not to answer the questions.

BY MR. POPE:

Q Are you going to follow that direction, Mr. Papageorge?

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A Yes.

Q With respect to those customers on that list that you visited, were they all PCB-bearing fluid customers of Monsanto?

A Yes.

Q As further foundation, the purpose of your visit was to discuss PCB matters, was it not?

MR. SCHINK: I object and direct the witness not to answer.

BY THE WITNESS:

A I will follow counsel's advice.

BY MR. POPE:

Q Which ones of those companies listed on that list were not Monsanto customers?

A Rollins Purle, Swedesboro, New Jersey, and Chem Trol, Buffalo, New York.

Q What are those entities?

A These companies were in the waste disposal business.

Q Did you talk to those customers with respect to disposal of PCB waste fluids?

MR. SCHINK: I object to the form of the question. You characterize them as customers. I am not sure that that characterization is accurate.

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MR. POPE: I am sorry.

BY MR. POPE:

Q Those entities?

A Your question referred only to fluids. I talked to them about wastes, PCB in general.

MR. POPE: Mr. Schink, we have an agreement, do we not, that it is not necessary for me to go through each one of these other entities on that list and ask him the same sort of questions which I started to ask before regarding the discussion and subject matter of discussion and what they talked about and what information was passed along back, is that right?

MR. SCHINK: Right.

MR. POPE: And I will be happy to agree to that in the interest of an out of town witness who has been very patient with us. We will reserve that matter for ruling by the Judge.

BY MR. POPE:

Q Mr. Papageorge, the Rollins Purle Company, where did you learn about that company?

A I don't remember.

Q What did you know about it before you went and visited them?

A I knew that they were in the business of

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disposing of chemical wastes and I knew that they had an incinerator in New Jersey for the disposal of some of the wastes.

Q Was the purpose of your visit to examine that incinerator, to talk to the people about the incineration?

A Yes.

Q Was the focus of inquiry the possible incineration of possible PCB-bearing matter?

A Yes.

Q That would be both liquid and solid, is that right?

A Yes.

MR. SCHINK: Mike, while you are on that document, you might just want to have Mr. Papageorge clarify since he is under oath the statement that I made with respect to the last entry, the Chevrolet entry, and relate it back to the previous series of questions you asked him about the General Motors visit, since that was something he told me and I am sure you want the record clear on that.

MR. POPE: I will get to that in a second.

BY MR. POPE:

Q Mr. Papageorge, where was the incinerator

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that they had set up? Was that the Swedesboro, New Jersey plant?

A No, it's located at Gloucester City, New Jersey.

Q Did you learn anything from your visit to either of those two plants, Rollins Purle, with respect to their capacity to dispose of PCBs, fluids or solids --

A There is only one plant involved, Gloucester City. Swedesboro is, as I understood it, the home office, something similar to that.

I learned that they had the potential for destroying PCBs and they were getting started and setting themselves up to do so.

Q Did you have discussions with them at these meetings with respect to their providing a service to Monsanto or for Monsanto customers?

A Yes.

Q For disposal of such materials?

A Yes.

Q And was that plan to be by incineration?

A Yes.

Q And did in fact that take place?

A Yes.

Q Was that in 1971?

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A Was what in 1971?

Q The actual disposal of materials for Monsanto or Monsanto customers?

A As I recall, yes; shortly after my visit.

Q Which was it, for Monsanto materials in-house or was it customers' materials?

A It was customers' material.

Q Did you in effect recommend Rollins Purle to your customers as an appropriate place to go for incineration of PCB matter?

A Yes.

Q Was that done by letter?

A As I remember, I had a memorandum which included Rollins Purle Company and this was made available to the Marketing Department for their use.

Q What about Chem Trol? What did you know about Chem Trol before you went to Buffalo in March of 1971?

A I knew they were in the waste disposal business and I also heard that they had an incinerator. That is all I knew.

Q Were they taking or contemplating taking PCB fluids or solid matter?

A Yes, they were interested in the business.

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Q Did you examine their incinerator process?

A Yes.

Q Was it acceptable to you as far as you could see?

A Yes.

Q Did you ultimately recommend them as a source that your customers could go to for the incineration of PCB materials?

A Yes.

Q Were there any other outside entities that Monsanto recommended to customers for the incineration of PCB waste material?

MR. SCHINK: When?

MR. POPE: Sometime after 1970.

BY THE WITNESS:

A We by that time, after 1970, had our own incinerator which was also available to our customers in addition to Chem Trol and Rollins Purle.

BY MR. POPE:

Q Those people are the only two outside sources recommended to your customers?

A As best I recall, yes.

Q Mr. Schink advises that Chevrolet Division here on December 1, 1971 was the customer visit you

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previously discussed with us, is that correct?

A Yes.

Q That is when Mr. Delos and two or three other people were present?

A Yes.

Q That is where you talked about hydraulic uses as well as the heat exchanger, plasticizers, adhesives and the whole range of products, is that right?

A Yes.

Q What was the status in November of 1971 of your sales of PCB products to General Motors?

A I don't know that I ever knew that. I don't remember.

Q Had various of the products they had previously been using been reformulated so as to not have any PCBs in those products by December of 1971?

A Yes.

Q Which uses were those products?

A Certainly the hydraulic fluids and the heat transfer was discontinued.

Q The heat transfer fluid was discontinued by --

A The PCB-type. I don't know what alternate they used, and the plasticizer applications had been discontinued. I have no way of knowing what they were using.

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Q Were the heat transfer fluids that were discontinued, did Monsanto formulate those fluids so they would not have PCBs in them?

A Yes.

Q Was that reformulation accomplished at the time the heat transfer fluid was taken off the market?

A Yes.

Q As far as you know, did Monsanto keep the majority of its heat transfer customers following the taking off the market of the PCB fluids?

A I have no measure of that, I don't know.

Q With respect to plasticizers that you just testified had been taken off the market by December 1, 1971, were those products reformulated without PCBs?

A I am confused by the use of the word reformulation. Many times it is just a matter of substituting something that is already available rather than conducting research and making a new blend and testing it and offering it as an alternate.

Q With that as a definition, would that definition be included in the concept of reformulation, the plasticizers that General Motors had been terminated. Were there new products that Monsanto was selling to them that did not contain PCBs in their place?

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A I don't wish to misinform you. Many of the plasticizers used by General Motors were not purchased from Monsanto directly. General Motors has suppliers who fabricated these items so the suppliers to General Motors are really Monsanto's customers.

Q With reference to General Motors as of December of 1971, which of their products did they purchase directly from Monsanto that had been either taken off the market or reformulated so as to not contain any PCBs?

A The heat transfer applications and the hydraulic fluid applications.

Q And the heat transfer application had been reformulated as not to contain PCBs but still be sold by Monsanto to General Motors, is that right?

A They were available to General Motors. I don't know if they purchased it from us.

Q How about the hydraulic fluid? Is that the same situation?

A They continued to purchase the new Pydrauls.

Q What Pydrauls had they previously purchased?

A Oh, I don't remember.

Q Is it a wide range of different ones?

A It is more than one is all I remember.

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Q And do you know which new fluids they purchased after the reformulation?

A No, I don't.

Q Was it also more than one?

A Yes.

Q Are you familiar of any sampling done by Monsanto at General Motors Plants or in the vicinity of any of the General Motors Plants?

MR. SCHINK: When?

MR. POPE: Ever.

(The witness conferred
with Mr. Schink.)

MR. SCHINK: You can answer the question with respect to any knowledge of sampling done by General Motors prior to 1970.

Do you know of any samples or analyses done to PCBs, similar analyses done for General Motors prior to 1970?

THE WITNESS: I am aware.

MR. SCHINK: Prior to your assuming your position?

THE WITNESS: I am aware of sampling for PCBs, but there weren't any for General Motors to my knowledge.

BY MR. POPE:

Q Prior to 1970?

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A Yes.

Q How about afterwards?

MR. SCHINK: I object and direct the witness not to answer.

MR. POPE: What are the grounds?

MR. SCHINK: Same.

MR. POPE: Relevance and burdensomeness?

MR. SCHINK: Yes.

BY MR. POPE:

Q Mr. Papageorge, are you going to follow the direction of your counsel?

A Yes.

Q How about before?

Is the 1970 the cutoff date, Mr. Schink, is that it?

MR. SCHINK: Yes.

BY MR. POPE:

Q How about before 1970? Did you ever sample or do you know whether anyone at Monsanto ever analyzed samples from General Motors Plants for anything?

A I don't know that.

Q How about after January 1, 1970? Are you aware of any analysis done by Monsanto of General Motors Plants for anything other than PCBs?

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MR. SCHINK: Same objection, same instruction.

THE WITNESS: I will follow counsel's advice and not respond.

BY MR. POPE:

Q With respect to any other customers of Monsanto, prior to 1970, did Monsanto analyze samples taken at or near customers' plants for the detection of PCBs?

A I do not know.

Q You never came across any information about that having been done before you took your job, is that what you mean?

A Before -- wait a minute. There were --

MR. SCHINK: Customers' plants prior to 1970?

BY THE WITNESS:

A Customers' plants 1970, I don't remember any.

BY MR. POPE:

Q You understood my question whenever you learned of it, you may have learned it yesterday, but if it took place before, that is what I am asking.

A I don't remember any samples, any results prior to 1970.

Q How about after 1970?

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MR. SCHINK: With respect to Johnson Motors, you may answer if it isn't redundant. With respect to other customers, I am going to object and direct.

MR. POPE: We are not talking about the frequency about this, Mr. Schink. We are talking about whether there was an established practice for the diagnosis of PCBs, whether there were five customers or 100.

Your claim is it all relates --

MR. SCHINK: What does it have to do with this lawsuit, that is right.

BY THE WITNESS:

A I will follow counsel's advice and not respond.

BY MR. POPE:

Q Do you know how many samples from customers' plants came into the laboratory for analysis?

MR. SCHINK: You are talking now pre-1970? There is no foundation.

MR. POPE: Post-1970.

MR. SCHINK: With respect to post-1970 samples at the plant of customers other than Johnson Motors, I will object and direct the witness not to answer.

MR. POPE: On the grounds of burdensomeness and relevance, is that right?

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MR. SCHINK: Correct.

BY THE WITNESS:

A I will follow counsel's advice and not respond.

MR. POPE: Can we have a similar agreement, Mr. Schink, that it would be a waste of all of our time to try to lay any more foundation as opposed to post-January 1, 1970?

MR. SCHINK: Other than with respect to Johnson Motors, that is correct.

MR. POPE: Certainly. What I want to do is get the framework in which to evaluate the work that Monsanto did at Johnson Motors.

We have an understanding I don't have to go into all those additional foundation questions, is that right?

MR. SCHINK: Right.

MR. POPE: We will take that one before the Judge.

BY MR. POPE:

Q Mr. Papageorge, the entities listed on Papageorge Deposition Exhibit No. 46 for identification with the exception of the two companies, the waste disposal area, Rollins Purle and Chem Trol, and with the further exception of General Motors, all related

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to either electrical use customers or carbonless carbon paper customers, is that correct?

A No, there's also heat transfer.

Q Which one is that?

A That is the Goodrich, the Goodrich reference.

Q Goodrich-Americo, Cleveland, Ohio on February 9, 1971?

A There are two entries of Goodrich, actually.

Q With that exception, is my statement true?

A Yes.

Q Who determined that you would call on these customers as opposed to any of the other customers Monsanto had for PCB uses?

A The managers responsible for that application made the request and I would try to help out, time permitting.

Q Who was that manager, who was the manager in charge of electrical?

A Paul Benignus.

Q Would it be fair to say that Mr. Benignus called on you to see all customers and whoever was in charge of hydraulic uses didn't have similar need for your assistance?

MR. SCHINK: Can you answer that question?

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If you know, fine. Do you know?

BY THE WITNESS:

A I have no way of knowing a need, a judgment call.

BY MR. POPE:

Q Did you make yourself equally available in the hydraulic fluid area?

A Yes.

Q Was that Functional Fluids, is that the division that that refers to?

A All of those applications are all Functional Fluids.

Q What is the designation for the hydraulic fluid area and who would the manager have been or what was his title?

A I believe it's Industrial Fluids or Hydraulic Fluids.

Q Who would have been the person who would call on you if you needed assistance?

A Mr. Norm Johnson or members of his team.

Q Do I understand correctly that during 1970-71 period, Mr. Johnson only asked you to see one customer?

A It was either Johnson or one of the members of his staff. I don't know if it was Mr. Johnson himself.

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Q Was my question correct?

A Somebody in that group asked me to visit, yes.

Q They asked you to visit one and only one of their customers, is that correct?

A Yes.

Q And that was General Motors?

A Yes.

Q Did you ever go Johnson or a member of his staff and volunteer to visit other of their customers?

A Yes.

Q What response did you get?

A As I remember, it was a very favorable one, "Thanks for the offer to help and we will let you know if you can help us."

Q And they never got back to you for any further help except as to General Motors, is that correct?

A That is correct.

Q When did they call on you to visit General Motors? Was it roughly contemporaneously with the time shown here in late November, early December of 1971?

A On or about that, yes.

Q Was there a specific incident that called for that visit as far as you recall?

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A I don't recall any specific incident, no.

Q Were you briefed by anyone at Monsanto prior to the visit to General Motors with respect to what matters were going to be discussed at that meeting?

A We certainly talked about our planned visit, yes, we had a discussion.

Q With whom?

A I have forgotten who had joined me in that visit, but I don't recall who the Monsanto people were.

Q As far as you recall with respect to Exhibit No. 46, are the cities listed next to the company places that you physically visited?

A May I see that again?

The list is for the most part correct in terms of which cities the customers' facilities are located in.

(Mr. Richard Phelan entered
the deposition room.)

BY THE WITNESS:

A I do have some loss of recollection regarding a few of them.

BY MR. POPE:

Q You don't have any specific recollection that any of those cities listed are wrong on a couple of them,

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you are not sure, is that right?

A I am not sure.

Q Have you seen that list before?

A No, sir.

Q With respect to the question of testing analysis of samples prior to January 1, 1970, is it your recollection that there were no analyses made by Monsanto people of samples taken from General Electric's Plant for the purpose of detection of PCBs?

A I don't recall any.

Q Calling your specific attention to the Hudson Falls Plant of General Electric, you are familiar with that, are you not?

A Yes.

Q That is a place that they had some PCB problems in their discharge, is that right?

MR. SCHINK: I object to that and direct the witness not to answer the question unless you can tie it in pre-1970.

MR. POPE: How does pre-1970 become relevant and post-1970 become irrelevant, Mr. Schink?

MR. SCHINK: We have addressed the issue before and I won't litter the record further on that.

MR. POPE: As a further indication, that is how

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he is familiar with the plant?

MR. POPE: Right. That is a foundation question.

THE WITNESS: I am following counsel's advice and not responding.

BY MR. POPE:

Q It is your testimony that as to that plant, prior to 1970, to your knowledge, Monsanto conducted no analysis of samples taken from in or around the Hudson River Plant in order to determine the presence or lack of presence of PCBs, is that correct?

A That is correct.

Q Are you aware, Mr. Papageorge, whether General Electric conducted any pre-1970 sampling of discharges or other sources in or around its Hudson Falls Plant for the presence of PCBs?

A I don't know of any personally.

Q Do you know when they began sampling at that plant?

A Not exactly when.

MR. SCHINK: The question is do you know. Do you know when they began sampling at that plant?

THE WITNESS: I am confused.

MR. SCHINK: You can answer the question yes or no. Do you know when they began sampling at that plant?

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THE WITNESS: Yes.

BY MR. POPE:

Q When was it?

MR. SCHINK: If it is pre-1970, the witness may answer.

MR. POPE: If it is post-1970 --

MR. SCHINK: I am going to direct the witness not to answer.

BY THE WITNESS:

A I am following counsel's advice and not responding.

MR. POPE: We will add that to the list of things we will take before the Judge and not take any of your time, Mr. Papageorge, at this point.

I am going to show the witness what has previously been marked as Pogue Deposition Exhibit 9 for identification, which is a portion of a 2-page document from which certain information has been excised dated May 12, 1970 entitled Effluent Analyses.

BY MR. POPE:

Q Mr. Papageorge, will you take a look at that document and tell me whether you have seen it before.

MR. SCHINK: Do you want to give him the document that has been identified by the author as well?

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MR. POPE: Mr. Schink, you can give him whatever you want.

MR. SCHINK: Here, there is an attachment to it.

BY THE WITNESS:

A I don't remember this memorandum specifically.

BY MR. POPE:

Q You were out of the country at the time it was done?

A Yes.

Q Would it be safe for us to assume that that was a copy of a report that you received on or about May 12, 1970 from Mr. Pogue?

A Yes.

Q I take it when you received the original, it was with all the information in there, nothing had been blanked out, is that right?

A Yes.

Q Did you have any discussions with either Mr. Damiani or Mr. Pogue regarding the subject matter of that memorandum?

A I don't recall any.

Q Did you only discuss with Mr. Pogue the OMC samples at the time they were first collected or did you talk with him on more than one occasion?

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MR. SCHINK: I object to the form of the question. I don't think it has been established that the conversation that he has recounted with Mr. Pogue occurred at the time the samples were collected. Nor do I think it has been established with this witness that he knows when those samples were collected.

I object to the form of the question.

BY MR. POPE:

Q You haven't answered the question.

A My discussions with Mr. Pogue were held fairly regularly on the general subject of customers and sampling. I did discuss with Mr. Pogue Johnson Motors' samples, results, as the results were available.

I at this time do not recall any other details.

Q Can you tell me when you discussed with him the scenario we discussed yesterday regarding reclamation of oil from the bottom of the ditch filled with water.

MR. SCHINK: I object to that characterization. I don't believe that is correct. I made several objections yesterday, Mr. Pope, to your discussion with respect to a ditch.

I don't believe you ever established that

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that hypothetical ditch that you discussed with Mr. Papageorge in any way related to Johnson Motors.

MR. POPE: All right, let us determine that.

BY MR. POPE:

Q Mr. Papageorge, did you ever have a discussion with Mr. Pogue about a ditch and the ability to recover fluids such as Pydraul from a ditch that had water in it?

A I don't recall any mention of a ditch in our discussions.

Q And you did not intend to say yesterday that that was one of the scenarios that was discussed with Mr. Pogue?

A I forget the contents of our discussion yesterday regarding a ditch. I thought that that was a hypothetical description of a typical situation.

Q I see. Okay.

As far as you recall, you never discussed with Mr. Pogue the possibility or feasibility of reclaiming Pydraul fluid at the bottom of a ditch filled with water, is that correct?

A I don't know quite how to respond to that question because the reclaiming of fluids in water systems was discussed in a general way with no mention

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specifically to whether a pipe was involved or a ditch or other means of conveying that fluid and the water mixture.

Q That is the discussion we talked about yesterday where you allowed as how that was feasible as of 1970, is that right?

A Yes.

Q Did you ever specifically talk with Mr. Pogue about the reclaiming of fluid from the environment near the Johnson Motors plant?

A No.

Q Did you have any discussions with Mr. Pogue regarding reclamation at Johnson Motors in the early 1970s?

A Yes.

Q What was your understanding, what was attempted or going to be attempted to be reclaimed?

MR. SCHINK: Are you talking about future plans of Johnson Motors as opposed to what they were doing at that time?

MR. POPE: Yes, I presume that is what the discussion was with Mr. Pogue.

BY THE WITNESS:

A My understanding was --

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MR. SCHINK: Well, do you understand the question that you are answering?

THE WITNESS: He is asking me if I had conversations with Mr. Pogue regarding the reclamation of fluid at Johnson Motors plant.

MR. POPE: Right.

MR. SCHINK: Their future plans as of 1970 for reclamation.

MR. POPE: Whose future plans?

MR. SCHINK: That is what I asked you before for clarification.

Are you asking what they were doing at that time or doing in the future?

MR. POPE: Or what Monsanto was planning to do in the future with respect to reclamation.

MR. SCHINK: What question are you asking?

MR. POPE: Let us find out from the witness what the discussion was and then we can proceed in some orderly fashion.

MR. SCHINK: You didn't ask him that.

You may answer that question.

BY MR. POPE:

Q Mr. Papageorge, will you tell me what you talked about with Mr. Pogue with regard to reclamation?

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A As I remember the subject of reclamation centered around the feasibility of such step and my role was to encourage pursuing that thought and supported the sampling of the fluids that might be involved in reclamation and my support in his efforts to determine whether or not it could be done.

Q What do you mean by such a step?

A I am sorry, such a step?

MR. SCHINK: You said feasibility of such a step.

BY THE WITNESS:

A Well, that is a poor choice of words -- the feasibility of reclaiming fluids for subsequent use in systems.

BY MR. POPE:

Q What was the source for which these anticipated fluids were going to be reclaimed, where were they?

A Anywhere, sources is really immaterial.

MR. SCHINK: He is asking you specifically at Johnson, if you recall.

THE WITNESS: Oh.

BY MR. POPE:

Q From your discussion with Mr. Pogue or other sources, where the fluids were to be reclaimed, not generally but at Johnson Motors.

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A No mention was made of where the fluids were.

Q Wasn't that a relevant consideration in your analysis of whether the process was feasible or not?

A No.

Q If the fluids were in Antarctica that would be relevant, wouldn't it, as to where they could be reclaimed?

A Not if they are sitting there in drums.

Q Was it your understanding that whatever fluids were being talked about were in drums?

A No, it is my understanding the fluids were available in liquid form, in fairly close to the original condition with some minor changes.

Q As far as you knew at that time, you weren't talking about trying to determine the feasibility of fluid that was out in water or located out in the environment, is that correct?

MR. SCHINK: Wait a minute. I object to the form of that question.

You mean in water, the fluids were mixed with water? What do you mean by that? Would you please clarify.

MR. POPE: You have already had the effect of

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what your point was.

MR. SCHINK: I will object.

MR. POPE: I didn't ask you the question, Mr. Schink.

MR. SCHINK: And I stated my objection.

MR. POPE: Absolutely.

BY MR. POPE:

Q Do you understand the question?

A I believe I do.

Q Okay.

A The fact that it is in water or not is not controlling. It depends where that water is and how much hydraulic fluid is present and whether the two can be separated and the hydraulic fluid segregated and reclaimed.

Q That was not my question. My question was when you had these discussions with Mr. Pogue, was it your understanding that what you were examining with respect to feasibility was the reclaiming of fluid that was already in drums as opposed to being in Lake Michigan, the Mississippi River or any other number of places outside the plant. Is that a fair statement?

MR. SCHINK: Again, I object to the question. It implies only two places Pydraul can be in. They can be

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in drums or out in some river.

BY THE WITNESS:

A I don't know how to answer the question. You limit me, it is not necessary that Pydraul or the hydraulic fluid be in a drum. It can be in a tank. It can be in a pit, in a hole in the ground, as long as it is available for handling and processing.

BY MR. POPE:

Q The question is what did you assume the condition was of this fluid that you were being asked to evaluate on the feasibility?

A I thought I answered that. I thought I answered the question.

I assumed the hydraulic fluid existing in a form which was acceptable such that it could be recovered and reprocessed for reuse and the form in which it exists is fairly close to its original virgin form with contamination that can be eliminated.

Q Was that the understanding that you had or that assumption that you made, would that also include hydraulic fluid which was located at the bottom of Lake Michigan?

A No.

Q Why not?

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A Primarily because we could not conceive of fluid being at the bottom of Lake Michigan in such a state that it is close to, as I described it earlier, close to its original form with contamination that is removable.

Q As of the time that you had the discussions with Mr. Pogue regarding the feasibility of reclamation at Johnson Motors, had you examined the feasibility of reclamation of hydraulic fluid from any body of water?

A No.

Q Was it Monsanto's position that as of this time, talking about early 1970, that such reclamation was unfeasible, impossible, whatever word you will?

A Yes.

MR. SCHINK: I gather you used the term body of water, Mr. Pope, as something like Lake Michigan?

MR. POPE: Lake Michigan or a small creek or river, or a stream or a bay as any other body of water, as that word is normally understood in the English language.

BY MR. POPE:

Q That is how you understood it, didn't you?

A Yes.

Q Mr. Papageorge, I'm going to ask the reporter

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if she would mark this 8-page document as Papageorge Deposition Exhibit No. 47 for identification, the first two pages of which appear to be a memorandum dated February 2, 1970, entitled Pydraul and Therminol - Customer Sample Analysis Program.

There are certain draft letters attached to that.

(Papageorge-OMC Deposition
Exhibit No. 47 marked for
identification, 9/1/81, TLU.)

BY MR. POPE:

Q Mr. Papageorge, I am going to hand you that Exhibit No. 47 and ask if you would look at it and tell me if that is a document you have seen before.

A I don't recall this document.

Q Do you remember the letterhead on which it is written or the format of the document?

A Yes.

Q That is one you are familiar with?

A With the logo?

Q Yes.

A Yes.

Q Are you familiar with the letters that are attached to the first two pages of this document?

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A I don't recall those letters.

Q The letters make reference to the Findett Service Company of St. Charles, Missouri, do they not?

A I see that reference.

Q Is that a company you are familiar with?

A Yes.

Q What was their role or what function did they serve as far as you know?

MR. SCHINK: This is the third time you have asked that question in the last four days.

You can answer it again.

BY THE WITNESS:

A It was a company that offered reclamation service to the chemical industry and industry in general.

BY MR. POPE:

Q That would include Pydraul and Therminol?

A It could include, yes.

Q To your knowledge, was it a company that was recommended by Monsanto to its customers for such services?

A Yes.

Q Is it your understanding from review of this document that the reclamation or analysis being referred to in that exhibit did not relate to PCB materials?

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A No, I cannot conclude that from the document.

Q As of February 1970, to your knowledge, were there sales bulletins going out to Monsanto customers relating to the products containing PCBs which were not sent to you, either before they went out or after they went out? What was the practice?

A In February 1970?

Q Yes.

MR. SCHINK: Are you using the term sales bulletin, Mr. Pope, to refer to the type of document you had the reporter mark as Exhibit 47 for identification, or are you referring to some other type of document?

MR. POPE: I guess I am referring to both, that specific format, Mr. Schink, as well as any other bulletins that went to salesmen with specific regard to certain products.

MR. SCHINK: Well, your question was with respect to sales bulletins that went to customers, and I don't believe there has been any foundation that a sales bulletin of the type marked as Papageorge Exhibit 47 went directly to the customers.

BY MR. POPE:

Q Can you answer the question? Do you have the question in mind?

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A I think I understand the question.

MR. SCHINK: You may answer it.

BY THE WITNESS:

A The type of literature described, that came to my attention if the authors of that literature perceived it related to the PCB environmental issue.

I did not see all sales bulletins and brochures describing products or services offered to customers or price lists or any of that.

BY MR. POPE:

Q So it was being left up to the individual person sending such information out as to whether or not it involved PCBs or your area, is that right?

A That's right.

MR. SCHINK: Let us take a five-minute break.

(Brief recess had.)

BY MR. POPE:

Q Mr. Papageorge, what fluid was ultimately chosen or initially chosen by Monsanto for replacement or reformulation of Pydraul A-200?

A It was a chlorinated terphenyl.

Q Did that chlorinated terphenyl contain PCBs?

A Eventually we found there were trace quantities of PCBs in it.

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Q Did those arise in the manufacture of the fluid?

A Yes, inadvertent.

Q Was there someone designated at Monsanto to test that fluid for PCB content prior to its sale?

A Not initially, no. It wasn't suspected to be present.

Q Who was basically in charge of formulating that fluid as far as you know?

A It was the Research Department under the direction of Dr. Richard.

Q Do you know to whom he assigned the work for that particular fluid?

A Lou Stark.

Q Do you know what designation that fluid was given?

A No.

MR. POPE: I ask the court reporter to mark a 4-page document as Papageorge Exhibit 48 for identification.

We have only been given a portion of this 61-page document. We've got four pages and the front page of which is dated May 20, 1970, entitled Monthly Summary Details - April, 1970, Functional Fluids -

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Research, stamped Confidential on the front.

(Papageorge-OMC Deposition

Exhibit No. 48 marked for

identification, 9/1/81, TLU.)

BY MR. POPE:

Q Mr. Papageorge, I will hand you the document we have had marked as Papageorge Deposition Exhibit No. 48 for identification and I would like to ask you whether you have seen that document.

A I don't recall this specific document.

Q Were you regularly provided with copies of the monthly summary from the Research Center of Dr. Richard?

A I don't remember.

Q Do you remember whether you regularly got those?

A That's right.

Q Research materials?

A Yes.

Q Did Dr. Richard provide a monthly summary of the work of his area in the Functional Fluids concentration during April 1970?

A The month of April 1970, yes. He did, but not necessarily to me.

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Q Calling your attention to what is designated on this exhibit as Page 20, but appears as our second page, I call your attention to the reference to Pydraul A-200A.

Will you read that over, please.

A All right.

Q Does that indicate that the Research Department was analyzing as of April 1970 a reformulation of Pydraul A-200 which contained Aroclor 1242?

A This information makes no reference whatever to any analytical activity, so I can't tell.

Q Let me ask you this:

Doesn't the use of the word reformulation --

MR. SCHINK: It is three sentences. This gentleman testified he has never seen it before. I don't see any foundation for asking him to interpret what the author meant when he wrote those three sentences.

MR. POPE: If we would have had the whole document, maybe we could have refreshed his recollection, Mr. Schink.

BY MR. POPE:

Q Was there, to your knowledge, in April of 1970 a 1242 version of A-200A that was being tested by Monsanto?

A Yes.

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Q Can you tell me what that substance was, is that a reformulation?

A It was a reformulation, yes.

Q Of what had previously been sold as Pydraul A-200?

A Yes.

Q It was under testing, is that right?

A Yes.

Q To the best of your recollection, how did it differ in its makeup from the original A-200?

A I don't know how to answer your question in terms of difference because I don't personally recall all of the physical properties that were measured and how the reformulation compared to the original.

I just don't have all the information.
I cannot remember it all.

Q Does the reference to "the 1242 version of A-200" indicate a concentration of Aroclor 1242 greater than the original?

MR. SCHINK: Are you asking him to interpret what the author meant, or are you asking whether looking at that document now refreshes his recollection about A-200, Mr. Pope?

MR. POPE: Let us start with whether that refreshes

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your recollection.

BY THE WITNESS:

A That does refresh my recollection.

BY MR. POPE:

Q Would you tell me with your recollection refreshed, what you remember about the Aroclor 1242 aspect of that fluid that was under testing in April 1970?

A As best I remember, this reminds me that we were looking for a PCB portion of the formulation and that was not a 1254 or a 1260.

Q This was during the period of time when the attempt by Monsanto was to replace those fluids with the higher chlorinated Aroclors and replace those with the lower chlorinated Aroclors, is that correct?

A Yes.

Q Do you recall what the results of those tests were?

A I don't understand the question.

Q The testing that you were just talking about on 1242 version of A-200A, was that testing successful?

A Yes.

Q Did that version of A-200 make its way to the production, as far as you know?

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A I don't remember.

Q You don't know whether it was ever sold in that form?

A That is right.

Q How is the best way for us determine what the composition of a product that was sold as A-200A, what documents within Monsanto would be the best place to look for them?

MR. SCHINK: I object to the form of the question. It assumes it was. This gentleman said he didn't know whether it was sold.

MR. POPE: It doesn't assume anything, Mr. Schink.
BY MR. POPE:

Q There was a product sold as A-200 and the question is what did it contain?

MR. SCHINK: I don't think that has been established as to this witness' testimony.

MR. POPE: I don't have to reinvent the wheel every time I ask the witness a question.

MR. SCHINK: I have not heard any testimony in this entire case that there was ever such a product sold by Monsanto.

BY MR. POPE:

Q Mr. Papageorge, the question is to you; are

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you able to deal with it?

MR. SCHINK: I object to the form of the question.

BY THE WITNESS:

A I would go back to the manufacturing, the Standard Manufacturing Process for the material we are discussing at this point in time and look up to see what ingredients were called for.

BY MR. POPE:

Q Looking up in a document entitled Standard Manufacturing Process for A-200A, is that right, see if there is one?

A Yes, for a given date.

Q Then determining what the components of that fluid are, is that right?

A Yes.

MR. POPE: I would ask the reporter to mark as Papageorge Deposition Exhibit 49 for identification, a 4-page document entitled Tentative Specifications, J. F. Queeny Plant, and the number indicated at the bottom of the document on the first page is 0003524.

(Papageorge-OMC Deposition

Exhibit No. 49 marked for

identification, 9/1/81, TLU.)

BY MR. POPE:

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Q Mr. Papageorge, I would ask you to take a look at that document and tell me if you have ever seen it before.

A I don't remember seeing this.

Q Can you tell me what the document consists of?

A Well, the first page is a documentation of the tentative specifications for Pydraul A-200B dated November 30, 1970.

The second page is a copy of a form used by the plant which triggers the review of a specification.

Q Who is Mr. Bammann?

A Mr. Bammann is the individual at the Queeny Plant who is the custodian of the specification primarily and it is his duty to see that the specifications are reviewed periodically.

Q Is that still his function?

A Yes.

The third page is a document that assigns a number to the product which is used in Monsanto for many business purposes, and the fourth page is another tentative specification sheet, handwritten, also for the same Pydraul of the same date and it appears to be

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the handwritten version of the information which appeared on the first page of the exhibit.

Q Is it the practice at Monsanto when a hydraulic fluid is reformulated that it be given a different designation than the product it is replacing?

A Yes.

Q Is one of the purposes of that practice to ensure that ability to identify the makeup of any product at any point in time?

A That is one of the purposes, yes.

Q On the third page of this exhibit, the reference to this product is to replace Pydraul A-200A, but the code for A-200A will be in use for several months.

Do you know what that refers to?

A No.

Q This third page is dated apparently November 10, 1970.

Does that indicate to you when A-200B replaced A-200A?

MR. SCHINK: I object to that characterization of A-200B replacing A-200A. It does not say that.

MR. POPE: No?

MR. SCHINK: No.

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MR. POPE: It states, "This product is to replace Pydraul A-200A."

MR. SCHINK: That is what that note says. That is not what the date says, Mr. Pope.

MR. POPE: Why don't you read the question back to me.

MR. SCHINK: I object to the form of the question as ambiguous, it is vague and it is misleading.

(Question read.)

BY THE WITNESS:

A No.

BY MR. POPE:

Q Why not? Is there something about the way these documents are prepared that leads you to say that doesn't tell you about the date of replacement?

A All this says is that as of that date, that number, that product sales code was set aside for use associated with Pydraul A-200B, when that need arises.

Q All right.

Does that indicate that if necessary the product could be sold, A-200B could be sold as of November 10, 1970?

A I don't know what it -- no, no.

Q As of the date that that third page was prepared,

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was there an A-200B in existence?

A I don't know.

Q Was it the practice of Monsanto simply to set aside or designate a fluid by number before it had been developed and tested?

MR. SCHINK: Now, wait. You talk about existence before. That is different from developed and tested, Mr. Pope.

MR. POPE: Do you have an objection to the question, Mr. Schink?

MR. SCHINK: Yes, I have an objection to the form of the question.

BY MR. POPE:

Q Mr. Papageorge, will you answer it?

A I find myself confused regarding your reference to a number assigned to a hydraulic fluid. There are many numbers possible.

Q When is a document such as the third page of Exhibit 49 prepared, at what stage along the development of a fluid?

A When the decision is made to go commercial.

Q At that stage as a usual matter, has the product already been developed and tested?

A Yes.

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Q Is it a fair inference from this document that as of November 10, 1970, a product known as Pydraul A-200B had been developed and tested by Monsanto?

A Yes.

Q Is it your testimony that the reference here at the bottom of that Page 3, namely, "This product is to replace Pydraul A-200A, but the code for A-200A will be in use for several months," does not indicate one way or the other when A-200B was to replace A-200A?

A That is correct.

Q As far as you know, A-200B was a replacement fluid for A-200A, is that correct?

MR. SCHINK: I object to the form of the question unless you define replacement.

Do you mean replacement as sold in the field or replacement as developed and tested within Monsanto?

MR. POPE: I would think I meant both.

MR. SCHINK: So from your question, you are assuming that a product called Pydraul A-200A was sold by Monsanto as well as developed and tested, is that right, Mr. Pope?

MR. POPE: Mr. Schink, if you want to talk to your client about any of these matters, I --

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MR. SCHINK: Clarify the question. It has been the practice in taking of depositions that as a courtesy to counsel --

MR. POPE: I don't have to clarify the question, Mr. Schink.

MR. SCHINK: Over the years, the courtesy has been extended to counsel when asked to clarify a question. Apparently courtesy is not something in which you have been well trained.

MR. POPE: I suggest you have abused that courtesy, Mr. Schink.

BY MR. POPE:

Q Mr. Papageorge, are you able to answer the question, or would you like the question read back?

A I would like it read.

(Question read.)

BY THE WITNESS:

A I don't know.

BY MR. POPE:

Q Who would know the answer to that question?

A Marketing representatives.

Q Would that be Norm Johnson?

A Yes.

Q Who else in Marketing would know the answer

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to that question, Mr. Papageorge?

A I don't recall them by a name, but all of the field salesmen.

Q How is the best way to determine in your opinion whether A-200A was sold as a hydraulic fluid?

A I would go to the Marketing representatives with that question.

Q If you wanted to know something that took place in 1970, what documents would you examine with respect to that question?

MR. SCHINK: Are you asking what documents he would currently examine or what documents he would have examined if he had asked that question in 1970?

MR. POPE: I have no reason to believe they would not be the same documents, Mr. Schink.

MR. SCHINK: I am not sure that is correct, Mr. Pope.

MR. POPE: I suspect Mr. Papageorge will tell us if it is not.

BY THE WITNESS:

A In the 1970s, the most efficient way to get the information is to talk to individuals like Mr. Johnson.

BY MR. POPE:

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Q They still have current knowledge about the subject?

A And he has the necessary papers right in his desk or accessible to him.

Q What do those necessary papers look like? Are they entitled?

MR. SCHINK: Excuse me, I object to the form of the question.

You may answer.

BY THE WITNESS:

A I don't recall them all. Sometimes there are typewritten notes to himself, sometimes they are copies of literature or information he sent out to a salesman. Sometimes it is a record of what sales had transpired in a given period of time, typical sales records, what was sold to whom, when.

BY MR. POPE:

Q Notes to himself wouldn't be the most official source to determine whether a product such as A-200A was actually sold in the field, would it?

A Did you say official source?

Q Yes.

A I have no way of judging whether something is official or not.

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Q That is 1970. What if you wanted to know about it in 1971. What documents would you go to to determine whether Pydraul A-200A was ever sold in the field?

A I would go to the available sales to customer records.

Q All right.

Is there a form within Monsanto whereby the Marketing Department is advised that a particular fluid such as a hydraulic fluid is now available for sale to its customers?

MR. SCHINK: Are you asking whether there was one?

MR. POPE: In 1970, '71.

BY THE WITNESS:

A I don't have a specific form. I don't recall a specific form.

BY MR. POPE:

Q Let me understand your answer. It wasn't done orally, was it?

MR. SCHINK: What wasn't done orally?

MR. POPE: The advising of the Marketing Department that a new product was available for sale.

MR. SCHINK: In 1970?

MR. POPE: 1970 or '71.

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BY THE WITNESS:

A Well, usually the first indication is oral and generally it is followed by some written report, memorandum, letter, bulletin to confirm.

BY MR. POPE:

Q These documents are maintained somewhere in the records of Monsanto?

A Usually, yes.

Q Those documents are maintained even after a product is replaced by another product, are they not?

A Well, they are maintained for given periods of time.

Q Who knows what that period of time is?

A Monsanto has a record retention program and this program defines the period of time certain documents must be retained and when they must be discarded.

Q My question was who knows what that policy is, do you?

A Everybody that works for Monsanto has a copy of the booklet.

Q How long, what is the policy?

MR. SCHINK: What is the current policy, Mr. Pope?

BY MR. POPE:

Q What is the policy, you have it.

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Is the current policy in effect from documents '70, '71?

A I don't recall. That is a multi-page booklet.

Q Calling your attention back to Papageorge Deposition Exhibit 48 for identification, the page indicated at the top, Page 20 of the 4-page exhibit, the second sentence on that page refers to Monsanto PCB versions of A-200 will be evaluated.

Do you know what those versions were?

A From reading the text here, now I do.

Q Do you know what the indication is in that text, TCB/5442 blend?

A TCB refers to trichlorobenzene and the 5442 refers to chlorinated terphenyl.

Q Was that a particular blend that you were familiar with at that time?

A Yes.

Q Do you know why the highest priority was given to that blend in the evaluation process?

A This is because the two materials were readily available.

Q Available at Monsanto?

A They were commercial materials. One was purchased and the chlorinated terphenyl was manufactured

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by Monsanto.

Q That version did not have PCBs in it, is that right?

A That is correct.

Q What is the second, "non-PCB version of A-200A" referred to on that sheet?

A The reference is to Arobromoclor 1232 which was a developmental product researching PCBs except that chlorine was replaced by bromine to a degree, not totally, so the reference to Arobromoclor.

The 5442 refers to the chlorinated terphenyl.

Q Do you know what the results of the evaluation of that fluid were?

A It was not pursued.

Q How about the TCB/5442 blend. Do you know if that was successfully evaluated and pursued?

A I don't remember.

Q During the period 1970, were you kept advised when a PCB replacement fluid was available for introduction to the marketplace?

A Yes.

Q That would include hydraulic fluids as well as other types of fluids?

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A Yes.

Q There is a reference on the third page of this Exhibit 48 that shows Page 31 at the top. It says Fluid Recovery and Reclamation.

Were you made aware in May of 1970 of the results of Dr. Richard's work with the samples taken from Johnson Motors?

A In a general way, as best I recall.

Q Who kept you advised of that progress?

A It came from Dr. Richard himself or from Mr. Lou Stark or from Mr. Pogue.

Q There is a reference on this page to samples from Johnson Motors, and then I presume other places followed by a sentence that is, "Qualitative results indicate large amounts of solid material present with the oily layer."

Were you advised by Dr. Richard or his staff of that problem in the analysis of samples taken from various customers?

A Yes.

Q Can you explain to me how that was a problem or what the feeling was at Monsanto as to how that problem had arisen?

A I don't recall specifically.

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Q Was that a difficulty that was attributable to the way the samples were taken, as far as you recall?

MR. SCHINK: Are you referring to the presence of solid materials, Mr. Pope, which you characterize as a difficulty? Is that right?

MR. POPE: Well, the next sentence goes on:

"Filtrations have been difficult and relatively large amounts of fluid remain with the solids."

It appeared to be a difficulty to Dr. Richard.

MR. SCHINK: I am asking what you referred to in your question. The document is also fully clear as to what it states.

MR. POPE: The full document may be clear. This little extract is not clear to me.

MR. SCHINK: Will you clarify, would you please clarify or repeat that question?

BY MR. POPE:

Q Mr. Papageorge, do you understand?

A I don't think so.

Q Was it a feeling that a problem had arisen in the way the samples were taken that included solid material with the oily layer?

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A I don't remember.

Q Do you remember anything about a discussion of that situation in terms of a status of analysis of samples in May of 1970?

A I am not aware of any references to analysis of samples.

I am aware of the general problem associated with some materials being associated with solids of all kinds and the type of solid is related to the exposure the fluid had, whether it had been in the factory or out in the waste collection system.

Q Dr. Richard wasn't analyzing samples, was he?

A No.

Q Was he charged with the responsibility for evaluating the feasibility of recovering Pydraul for customers?

A Yes.

Q Was that or did that include responsibility for evaluating the feasibility of the recovering of Pydraul from effluent streams of various customers?

A Yes, that was part of his responsibility.

Q One of those customers was Johnson Motors, is that right?

A Yes.

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Q Do you know how his work concluded? Did he ever conclude that it was feasible to recover Pydraul from customers' effluent streams?

MR. SCHINK: Are you asking him specifically with reference to Johnson Motors, Mr. Pope?

MR. POPE: No.

MR. SCHINK: But your question includes Johnson Motors, is that correct?

MR. POPE: Well, if he wants to testify that he was successful for Johnson Motors and doesn't know elsewhere, I certainly would accept that as a responsive answer, Mr. Schink.

BY THE WITNESS:

A I can only recall the general conclusion which I mentioned that the studies on recovering PCB-type materials from waste streams indicated that some of the PCBs could be recovered but we could not find any method to get it to the no-detectable level.

BY MR. POPE:

Q Page 4 of Exhibit No. 48 which bears the number 61 at the top of the page is entitled Aroclor Defense. There is a sentence that indicates:

"The results indicate that all plants are discharging low ppb to high ppm amounts of PCBs to

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associated sewers, streams and lakes."

Do you see that?

A Yes.

Q Was it your understanding that the analysis that had been done as of May of 1970 on samples of customers' discharge indicated that all customers sampled were discharging some amounts of PCBs?

A No, only those customers from whom we had received samples.

Q I am sorry, that is what I meant.

From those customers from whom you had received samples of discharge by May of 1970, was it true that all of them were discharging some PCBs?

A Yes.

Q Is it your understanding that all of those customers were notified of this fact by Monsanto representatives?

A Yes.

Q And had that notification gone to those customers by May of 1970?

A Yes.

Q Would you agree with me, Mr. Papageorge, that Monsanto's timings of phased withdrawal of hydraulic fluids was scheduled to coincide with the exhaustion of

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Monsanto's inventory of such fluids and the introduction of a substitute fluid for its customers?

MR. SCHINK: Do you have the question in mind or do you want it read back?

THE WITNESS: No, I understand.

BY THE WITNESS:

A I cannot agree with the first part of the sentence.

BY MR. POPE:

Q In what way?

A I was never present nor did I hear of the exhaustion of inventory was a key factor in the development and introduction of a reformulated hydraulic fluid.

Q You testified to that in New Hampshire, didn't you?

A I don't recall it in that sense.

Q Mr. Papageorge, in your testimony you gave in United States District Court in New Hampshire in October 1974, were not these questions asked of you and did you not give these answers beginning at Page 113:

"Mr. Papageorge, you were explaining why the delays and cutoff and this type of thing from the customers' point of view."

MR. SCHINK: You are referring now to his testimony

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with respect to some Therminol fluids or with respect to hydraulic fluids, Mr. Pope?

MR. POPE: Well, you are just going to have to bear with me for a second, Mr. Schink.

MR. SCHINK: I am sure you don't want to mislead the witness that he testified with respect to hydraulic fluids which was your previous question.

BY MR. POPE:

Q Were you asked these questions and did you give these answers beginning at Page 113, Mr. Papageorge?

"Question: Mr. Papageorge, you were explaining why the delays and cutoff and this type of thing from the customers' point of view. Monsanto also, with regard to this withdrawal, staged the withdrawal in a fashion to enable Monsanto to move its existing inventory and also to prepare itself to come up with substitutes after withdrawing the substance that was considered should be withdrawn, correct?

"Answer: No, sir.

"Question: Isn't that what you told us when your deposition was taken?

"Answer: We are talking, I believe, about heat transfer fluids.

"Question: I am talking at this point,

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solely about heat transfer fluids.

"Answer: Heat transfer fluids?

"Question: Yes.

"Answer: Well, this reference to depletion of inventory is not correct, because the inventory on hand could be used in the dielectric application, which is still an active market, so there was no problem about what do you do with the inventory. Now, the question as it relates to heat transfer fluid is in terms of we needed more time to get replacement: This is not correct because we had the replacement. The big disadvantage, however, was it was not fire-resistant.

"Question: Well, is it your testimony here today that there was not a phased withdrawal to accommodate disposition and the development of replacement products, is that your testimony here today?

"Answer: For heat transfer fluids, yes, sir.

"Question: That was the approach in other aspects of the withdrawal but not with regard to heat transfer?

"Answer: That's correct, sir."

Were you asked those questions and did

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you give those answers on October 22, 1974?

A As best I recall, yes.

Q And the other fluids besides heat transfer fluids included hydraulic fluids, did they not?

MR. SCHINK: Are you asking with respect to testimony he gave?

BY MR. POPE:

Q With respect to the other fluids which were given a phased withdrawal from the market included hydraulic fluids, did it not?

MR. SCHINK: Are you asking with respect to his use of those words in his testimony or are you asking him generally?

MR. POPE: Well, there is no difference. You are referring to other fluids in withdrawal --

MR. SCHINK: I am not asking you to testify. I am asking you what your question was.

MR. POPE: Right.

MR. SCHINK: What was your question?

BY MR. POPE:

Q You referred to all the other fluids that were subject to a phased withdrawal by Monsanto except for a heat transfer fluid?

MR. SCHINK: Would you please give the witness

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the testimony that you read to him before he answers that question, Mr. Pope.

(Document tendered to
the witness by Mr. Pope.)

BY MR. POPE:

Q That was the approach and in other aspects of withdrawal but not with regard to heat transfer application?

A Yes, that is correct, sir.

MR. SCHINK: Now, what is the question?

BY MR. POPE:

Q Those other aspects of phased withdrawal of Monsanto products included hydraulic fluids, did they not?

MR. SCHINK: As he referred to it in his testimony at Page 113, 14 and 15, is that right?

BY MR. POPE:

Q Are you able to answer the question, Mr. Papageorge?

A The answer to your question is yes.

MR. POPE: Thank you.

MR. SCHINK: Yes, you are referring to hydraulic fluids there?

MR. POPE: Included.

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THE WITNESS: His question was was that in the phase-out program that those fluids, other than those used in hydraulic fluid mixtures.

BY MR. POPE:

Q Other than those used in heat transfer applications?

MR. SCHINK: I am sorry --

MR. POPE: Heat transfer applications followed a different phase-out program and I am including none of those.

Is that how you understood it?

MR. SCHINK: They followed a different program?

THE WITNESS: Yes.

BY MR. POPE:

Q And that was because the heat transfer fluids had other applications, is that right?

A Well, they always had other applications. I am confused. They always had other applications.

Q You had replacements available for heat transfer fluids, is that right?

A We had replacements when developed for the hydraulic fluid. The key difference is that the heat transfer fluids in inventory, which I think is what your initial point raised in that testimony, could be

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used in the dielectric service. Therefore, the minute the alternative was available, it was readily available to the heat transfer user.

Q There was no need to deplete any Monsanto inventory, is that right, in that area?

A There was a need, but it was accomplished in a different way.

Q How was that accomplished in the heat transfer area?

A By selling that fluid to the dielectric applications.

Q Was there ever a time that you are familiar with when Monsanto offered to repurchase from customers hydraulic fluids containing PCBs?

A I don't remember.

Q Was there any offer made by Monsanto to repurchase any of the PCB fluid from customers?

A I recall an offer to distributors of PCB-type products whereby they could return their unsold inventory and we would credit them for replacement material.

Q That was when you cancelled the distributorships, wasn't it?

A Yes, or shortly thereafter.

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Q With that exception, do you recall of any offers by Monsanto to repurchase PCB fluids or solids from customers?

A I don't remember.

Q In the hydraulic fluid area, were there any Monsanto inventories of PCB-bearing fluids that were left after those fluids were taken off the market, left at Monsanto?

A I don't know.

Q Would Mr. Gossage know the answer to that?

A I can't speak for Mr. Gossage.

Q Would it be his area of responsibility to know the answer to that question?

MR. SCHINK: The witness said he couldn't speak for Mr. Gossage.

MR. POPE: He said he can't speak for him personally. I wasn't asking him personally, but if his area of responsibility was such that he could be the kind of person that would know or have access to that kind of information. That is my question.

BY THE WITNESS:

A Normally he would.

BY MR. POPE:

Q How about Johnson?

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A Yes.

MR. POPE: Let us take a little lunch break.

MR. SCHINK: May I make a statement for the record, please.

At this point, Mr. Papageorge's deposition has continued for three and a half days. We offered to make him available early in the morning, the first day, second day, third day. This is the fourth day and those offers were rejected.

We offered to make him available beyond 5:00 o'clock Thursday, offered to make him available beyond 5:00 o'clock Friday. We offered and again those offers have been rejected by Mr. Pope.

I will state that for the record.

MR. POPE: Let us also state that I requested several weeks ago, suggested that we ought to start Wednesday instead of Thursday. We terminated Friday at 3:30 so Mr. Papageorge could catch a plane. Let us also say that with the exception of this morning, with the exception of five-minute breaks in the morning and afternoon and even taking a half hour or 45 minutes' lunch break, we are proceeding as fast as is humanly possible and under all those circumstances, Mr. Schink, I don't know what your purpose was for making the

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statement on the record.

(At 12:45 o'clock p.m., a
luncheon recess was taken to
1:30 o'clock p.m. this same
day.)

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