

minutes



Vinyl Institute Legal Committee

Keller and Heckman
Washington, D.C.

Friday, August 5, 1983
9:00 a.m.

MINUTES

Attendees:

Susan Litzau (Chairman), Conoco, Inc.
15990 N. Barker's Landing Road, Houston, Texas

Harold Fast, B.F. Goodrich Co.
500 S. Main Street, Akron, Ohio 44318

Alan Mack, Occidental Chemical
P.O. Box 699, Pottstown, Pennsylvania 19087

Harvey Rosenzweig, Borden, Inc.
180 East Broad Street, Columbus, Ohio 43215

Richard J. Lorenz, Tenneco Oil Company
P. O. Box 2511, Houston, Texas 77001

Roy T. Gottesman, Vinyl Institute of SPI
355 Lexington Avenue, New York, New York 10017

Jerome H. Heckman, Keller and Heckman
1150 17th Street, N.W., Washington, DC 20036

Mark Evens, Keller and Heckman
1150 17th Street, N.W., Washington, DC 20036

Peter L. de la Cruz, Keller and Heckman
1150 17th Street, N.W., Washington, DC 20036

1. Chairman Litzau opened the meeting at 9:00 a.m.
2. Harold Fast reported on the proposed Battelle contract for computerizing documents relating to polyvinyl chloride (PVC). The Committee reviewed the contract with Brown, Todd & Heyburn. It should be executed shortly.

3. A general discussion was held on the desirability of a fire investigation team. Carl Henlein's letter was used as the basis for discussion.

Susan Litzau and Harold Fast suggested that the proposal should be forwarded to the Vinyl Institute's Executive Committee for approval. The proposal would address the difficulty of obtaining experts after a fire. For example, in the MGM Grand fire, all the experts were retained early in the litigation. Tenneco expressed the view that companies should hire experts independently.

By a vote of four to one, the Committee agreed to forward the litigation fire team report to the Executive Committee for approval. The proposal would be to retain three experts to use in following up on PVC-related fires. They would constitute an on-call technical advisory panel.

4. The next topic of discussion involved product disparagement law. Harold Fast reported that the Federal Trade Commission (FTC) had contacted B.F. Goodrich for background information on an FTC investigation of the National Fire Protection Association (NFPA). This FTC investigation related to the activities of Allied Tube and Conduit Corporation. BFG representatives met with the FTC on August 3, 1983, and presented all available information.

The Committee briefly discussed an "up-side--down-side" chart prepared by Bill Becker and Harold Fast analyzing the pros and cons of a law suit for product disparagement. The Committee endorsed the report. It was requested that further information or comments on product disparagement be sent to Harold Fast directly.

5. Jerry Heckman reported on Vinyl Institute issues being handled by Keller and Heckman. He briefly reviewed the history of Food and Drug Administration (FDA) and Bureau of Alcohol, Tobacco and Firearms (ATF) treatment of PVC bottles. A survey on the food contact uses of PVC was being completed for submission to FDA. FDA's request for environmental information had been answered previously. With the completion of the PVC survey, FDA will have all the information it requested and should be able to complete its review of PVC. This should lead to a reaffirmation of PVC's suitability for all food contact applications and ultimately ATF approval of PVC liquor bottles.

Mr. Heckman reviewed the status of Scott v. FDA. That case, which is pending before the United States Court of Appeal for the Sixth Circuit, is the first judicial review of FDA's carcinogen policy. The briefing has been completed, and the case will probably be argued in March, 1984, although, no date has been set at this time. The court's decision will likely be rendered during 1984.

Mr. Heckman also reviewed EPA's review of the vinyl chloride standard and EPA enforcement activity. The efforts of the Manufacturing Practices Committee and their recommendation that EPA adopt a numerical limit or discharge elimination plan approach were discussed.

The implications of Judge Parker's July 1, 1983, decision holding that the relief valve discharge provisions of the vinyl chloride standard are unenforceable work practice requirements were reviewed. Since EPA had filed two more cases in the same court after the Ethyl decision was rendered, there was some question concerning EPA's enforcement policy. Jerry Heckman and Gary Baise were authorized to contact EPA to discuss its enforcement activities and to attempt to dissuade them from pursuing these cases further. Gary Baise and Jerry Heckman would contact EPA some time after August 29.

6. The Committee conducted a general discussion on the relationship between Keller and Heckman and the Legal Committee. As explained by Harold Fast, the Executive Committee gave the Legal Committee an oversight function for Keller and Heckman activities. Mr. Fast viewed the Legal Committee as a type of inside legal staff for the Institute. To ensure that the Legal Committee was aware of all Keller and Heckman activities relating to the Vinyl Institute, the Legal Committee would be added to all Vinyl Institute mailings. To coordinate monitoring functions, the following individuals agreed to monitor specified areas:

Harvey Rosenzweig - EPA

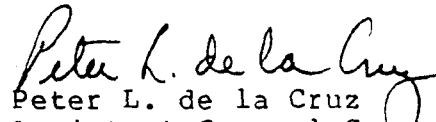
Harold Fast - Fire Matters

Alan Mack - FDA

Susan Litzau - General

7. Harold Fast discussed the possibility of Vinyl Institute participation in law suits in which Vinyl Institute members are not parties. Two examples were the MGM Grand fire, and a case involving ornamental Christmas tree decorations fabricated from PVC. The goal of such participation would be to provide resources and information to the parties to defend the status or characterization of PVC. Participation would be considered on a case-by-case basis.
8. The next meeting was scheduled for November 17, 1983, in the Keller and Heckman offices at 9:00 a.m.
9. The meeting was adjourned at 12:30 p.m.

Respectfully submitted,


Peter L. de la Cruz
Assistant General Counsel