

STATE OF WISCONSIN : CIRCUIT COURT : SHEBOYGAN COUNTY

TECUMSEH PRODUCTS COMPANY, a

Milwaukee Corporation,

Plaintiff,

vs.

Case No. 90-CV-0415

THE TRAVELERS INDEMNITY COMPANY,

MARYLAND CASUALTY COMPANY, CONTINENTAL

CASUALTY COMPANY, AMERICAN EMPLOYERS

INSURANCE COMPANY, HARTFORD ACCIDENT

& INDEMNITY COMPANY, INSURANCE COMPANY

OF NORTH AMERICA, FIRST STATE INSURANCE

COMPANY, THE HOME INSURANCE COMPANY,

MICHIGAN MUTUAL INSURANCE COMPANY,

STONEWALL INSURANCE COMPANY, AFFILIATED

FM INSURANCE COMPANY, ALLSTATE INSURANCE

COMPANY OF NEW YORK, JEFFERSON INSURANCE

COMPANY OF NEW YORK, UNITED STATES FIRE

INSURANCE COMPANY and PURITAN INSURANCE

COMPANY,

Defendants.

DEPOSITION of PAUL G. BENIGNUS,

was taken at the instance of the Defendants, under and

pursuant to the provisions of Section 804.05 of the

1 Wisconsin Statutes, and the acts amendatory thereof and
2 supplementary thereto, and pursuant to Notice, before me,
3 KATHY A. HALMA, Registered Professional Reporter and
4 Notary Public in and for the State of Wisconsin, at
5 Fischer's Restaurant, Belleville, Illinois, on the 17th
6 day of August, 1993, commencing at 10:00 o'clock in the
7 forenoon.

8 A P P E A R A N C E S

9 FOLEY & LARDNER, 777 East Wisconsin
10 Avenue, Milwaukee, Wisconsin, 53202, by MR. THOMAS C.
11 EWING, appeared on behalf of the Plaintiff.

12 SONNENSCHNEIN, NATH & ROSENTHAL, One
13 Metropolitan Square, Suite 3000, St. Louis, Missouri,
14 63102, by MR. MARK D. RABE appeared on behalf of the
15 Defendant, The Travelers Indemnity Company.

16 OTJEN, VAN ERT, STANGLE, LIEB & WEIR,
17 S.C., 700 North Water Street, Suite 800, Milwaukee,
18 Wisconsin, 53202-4206, by MR. PAUL J. PYTLIK, appeared on
19 behalf of the Defendants, Hartford Accident & Indemnity
20 Company and First State Insurance Company.

21 PIETTE & JACOBSON, S.C., 1233 North
22 Mayfair Road, Suite 204, Milwaukee, Wisconsin, 53226-0577,
23 by MR. RONALD L. PIETTE, appeared on behalf of the
24 Defendant, The Home Insurance Company.

25 POPE & JOHN, LTD., 311 South Wacker

1 Drive, Suite 4200, Chicago, Illinois, 60606, by MS.
2 KRISTIN A. O'BRIEN, appeared on behalf of the Defendant,
3 Affiliated First Mortgage Insurance Company.

4 SMITH, HELMS, MULLISS & MOORE, Suite
5 1400, 300 North Greene Street, P.O. Box 21927,
6 Greensboro, North Carolina, 27420, by MR. TIMOTHY PECK,
7 appeared on behalf of Monsanto Company.
8

9 I N D E X

10	WITNESS	EXAMINATION	PAGE
11	Paul G. Benignus	By Mr. Piette	4
12		By Mr. Ewing	40

13
14
15 E X H I B I T S

16 None.
17
18

19 (The original transcript was sent to Attorney Vobornik.)
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22
23
24
25

P R O C E E D I N G S

PAUL G. BENIGNUS, called as a witness
herein by the Defendants, after having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PIETTE:

Q Would you again state your name, sir, for the
record, please.

A Paul Benignus.

Q And your address, please?

A 47 Metcalf Drive, M-E-T-C-A-L-F, Drive, Belleville,
Illinois, 62223.

Q And you have been a resident of Belleville,
Illinois all of your life, have you, sir?

A Yes.

Q And we're here today in Belleville, Illinois, are
we not, at Fischer's Restaurant or at least in a
conference room adjoining Fischer's Restaurant to
take your deposition; correct?

A Yes, sir.

Q And you formerly were with the Monsanto Company,
were you not, sir?

A Yes, sir.

Q When did you retire from Monsanto?

A In 1974.

- 1 Q And how long were you with Monsanto?
- 2 A I started with Monsanto in 1934.
- 3 Q And you spent then, if I calculated it correctly,
- 4 40 years with Monsanto?
- 5 A Yes, sir.
- 6 Q And what is your formal education, sir?
- 7 A I have a bachelor of arts majoring in chemistry,
- 8 minors in education and physics and a master of
- 9 science in organic chemistry.
- 10 Q Organic chemistry?
- 11 A Organic chemistry.
- 12 Q All right, sir, and you got these degrees, did you,
- 13 before you went with Monsanto?
- 14 A Yes, sir.
- 15 Q And then spent 40 years with Monsanto in a variety
- 16 of positions and jobs?
- 17 A Yes, sir.
- 18 Q Okay. One of the jobs that you held was a position
- 19 in -- before you retired in 1974. Would you tell
- 20 us what that job was, sir, just before you retired?
- 21 A I was a technical person, that was my function, and
- 22 it was strictly in the dielectric area.
- 23 Q And just tell us, please, briefly what do you mean
- 24 by "the dielectric area?"
- 25 A The dielectric is an insulator against the

1 electrical -- it does not conduct electricity.

2 It's an insulation.

3 Q So that Monsanto sold a dielectric fluid, did they?

4 A Yes.

5 Q And what were the names of those dielectric fluids?

6 A Monsanto's trade name was Aroclor, A-R-O-C-L-O-R.

7 Q For how many years, sir, were you in the dielectric
8 field where you were dealing with the Aroclors?

9 A I was entirely concerned with dielectric from 1952
10 until my retirement.

11 Q In 1974?

12 A In 1974.

13 Q Can you tell us what month you retired in 1974,
14 sir?

15 A October. I was 65.

16 Q All right. When you retired, your position with
17 Monsanto was as a technical person?

18 A That was my function, a technical person, correct.

19 Q And in the dielectric field dealing with the
20 Arochlor, which was the Monsanto fluid sold for
21 dielectric purposes?

22 A Correct.

23 Q Your name came up, sir, in connection with a
24 telephone call report that was produced by Monsanto
25 in May of this year and it's a telephone call

1 report dated January 7, 1974. You saw a copy of
2 that, did you, sir, just before your deposition
3 here today?

4 A Yes.

5 Q Okay. I'll ask you if you will look at that
6 telephone call report or a copy of it that I'm
7 showing you. You will notice, sir, that there is
8 in the lower, right-hand corner the designation --
9 You have a copy in front of you now?

10 A Yes.

11 Q You will notice in the lower, right-hand corner the
12 designation TPC 000282 and on the second page
13 TPC 000283. Do you see that, sir?

14 A Yes, sir.

15 Q Those numbers were added by Monsanto to designate
16 these two sheets of paper that they had produced in
17 May of this year. Those stand for Tecumseh
18 Products Company and the numbers 282 and 283. That
19 simply identifies these two sheets of paper. All
20 right, sir?

21 A Yes, sir.

22 Q Other than those two numbers, do you recognize the
23 telephone call report dated January 7, 1974 as a
24 report that you generated as a Monsanto employee?

25 A Yes, sir.

- 1 Q And is the P. G. Benignus on the second page, is
2 that you, sir?
- 3 A Yes, sir.
- 4 Q And the Paul -- You see the signature "Paul." Is
5 that your signature?
- 6 A Yes, sir.
- 7 Q All right. You authored, then, this document, did
8 you?
- 9 A I authored it.
- 10 Q Do you recall after having read this telephone call
11 report dated January 7, 1974 that you did have a
12 telephone conversation with these gentlemen from
13 Tecumseh Products Company of Tecumseh, Michigan?
- 14 A Now that I see it, yes.
- 15 Q Now that you see the telephone call report, it
16 refreshes your recollection that you did have this
17 telephone call with them; is that correct?
- 18 A Not exactly.
- 19 Q All right. Tell us what you do recall.
- 20 A That I wrote -- must have written this.
- 21 Q All right. And if you wrote it at the time, it
22 would have been fresh in your mind at the time,
23 would it not have, sir?
- 24 A Certainly.
- 25 Q And it would have accurately reflected or recited

1 what the report was that you prepared at the time?

2 A Right.

3 Q And so it would be an accurate, fair representation
4 of your telephone call with them at the time?

5 A Right.

6 Q And do you recall that there was a gentleman --
7 Strike that.

8 Let me ask you this. How was it, sir,
9 that you even made this telephone call? How did
10 that come about?

11 A Because I was in the dielectric -- Oh. I was
12 requested to make the call.

13 Q Do you recall by whom, sir?

14 A Not specifically.

15 Q But it was somebody at Monsanto who requested you
16 to make the call?

17 A Certainly.

18 Q All right. And you were a Monsanto employee at the
19 time?

20 A Certainly.

21 Q And you were making the phone call as a technical
22 person for Monsanto in the dielectric field?

23 A Certainly.

24 Q Okay. Do you recall, sir, having had the names of
25 one or both of these gentlemen, Ron Wisner and Tom

- 1 Jacoby, before or don't you recall that?
- 2 A I never heard of them before.
- 3 Q All right. Was this your one and only contact with
- 4 Tecumseh Products Company of Tecumseh, Michigan?
- 5 A Yes, sir.
- 6 Q You didn't contact them either before or after
- 7 this?
- 8 A No, sir.
- 9 Q Okay. You will notice that you sent a copy of the
- 10 report or I should say you addressed the report to
- 11 C. Paton; is that correct?
- 12 A Yes, sir.
- 13 Q Did I pronounce it right?
- 14 A No.
- 15 Q I'm sorry. How do you pronounce it?
- 16 A Paton.
- 17 Q I'm sorry. To C. Paton --
- 18 A Wait a minute.
- 19 Q Go ahead.
- 20 A I don't think his name is spelled right, but that's
- 21 neither here nor there. It's Dr. Cumming Paton,
- 22 P-A-Y-T-O-N (sic).
- 23 Q And he is or at that time, sir, who was he?
- 24 A He was the -- in charge of or the head of the
- 25 product area involved in this.

1 Q So that is the reason why you directed the report
2 to him, sir?

3 A Certainly.

4 Q Okay. And I see you sent carbon copies of the
5 report to a number of people. Do you see that?

6 A Yes, sir.

7 Q Okay. Mr. Papageorge is the last one on the list.
8 Do you see that?

9 A Yes.

10 Q And who was he at that time?

11 A At that time, as he was called to St. Louis in
12 1970, as you no doubt know, he was concerned with
13 the environmental things that were coming up. That
14 was his area of activity.

15 Q In connection with the PCB's?

16 A In connection with PCB.

17 Q When was the last time that dielectric fluid
18 Aroclors were manufactured by Monsanto? Do you
19 recall that, sir?

20 A Yes, sir.

21 Q And when was that, sir?

22 A 1977.

23 Q All right. So this report then dated January 7,
24 1974 was during a period of time when Monsanto was
25 still manufacturing their dielectric fluid, the

1 Aroclors?

2 A Yes, sir.

3 Q Okay. Can you tell me who the other gentlemen were
4 that you sent copies of the report to?

5 A Yes, sir.

6 Q If you would, please, just tell us who Mr. Bergen,
7 H. S. Bergen, was at the time?

8 A Bergen was the head of the business group.

9 Q And Mr. Gossage?

10 A He was under, directly under, Bergen.

11 Q And Mr. Munch?

12 A It's Dr. Munch. He was in research.

13 Q And Mr. Richard?

14 A He was Munch's boss. That's Dr. Richard in
15 research.

16 Q And D. Mellon?

17 A I don't know at this time.

18 Q And Mr. C. F. Seger?

19 A I found out through this that he was the salesman.
20 I didn't know these people.

21 Q Okay. When you say you found out through this,
22 somebody told you he was the salesman?

23 A Right.

24 Q Who told you he was the salesman?

25 A I don't know.

- 1 Q But in any event, you now know that?
- 2 A He was in the district.
- 3 Q You now know that Mr. Seger was a salesman at that
- 4 time?
- 5 A I think I know this.
- 6 Q Do you know -- Do you recall why you sent a copy to
- 7 Mr. Seger or you just don't recall?
- 8 A I really don't recall.
- 9 Q Okay. Fair enough.
- 10 A I was probably told the distribution was wanted
- 11 this way. I wasn't concerned with that.
- 12 Q All right. Your concern was to make the telephone
- 13 call, address whatever their concerns were at
- 14 Tecumseh, Michigan and dictate a report and you did
- 15 that?
- 16 A Directed to Dr. Paton.
- 17 Q Okay. I'd like to talk, first of all, about the
- 18 report from the standpoint of Tecumseh Products
- 19 Company of Tecumseh, Michigan. Had you had any
- 20 dealings with them before this telephone call?
- 21 A No, sir.
- 22 Q Were you aware of who they were?
- 23 A No, sir.
- 24 Q Are you today aware of who they are?
- 25 A I think many people know they make air

1 conditioners.

2 Q All right. And so did you place the telephone
3 call, do you recall?

4 A I believe so from the tenor of the writings that I
5 was asked to call. Yes, it says here appreciated
6 my phone call.

7 Q In the memo?

8 A Yes, in the memo.

9 Q In the last paragraph, "He appreciated my phone
10 call." Does that refresh your recollection that
11 you placed the call to him then or to them?

12 A Really not, but I did, but it doesn't refresh
13 anything.

14 Q Okay. But because it's in the memo --

15 A I called them.

16 Q You know you did?

17 A Yes, sir.

18 Q All right. Do you know that on the first page, if
19 I may just put that back, sir, on the first page
20 you say, "Company, Tecumseh Products Company,
21 Tecumseh, Michigan," because that's the company
22 that you called, right?

23 A Right.

24 Q Okay. On the next line it says, "For Tecumseh,"
25 and you will notice you have the names of two

1 gentlemen there, Mr. Ron Wisner, Manager Product
2 Engineering and Mr. Tom Jacoby, Assistant Director
3 Engineering. Do you see that, sir?

4 A Yes, sir.

5 Q Okay. Did you speak with both of those gentlemen?

6 A I don't know.

7 Q Do you know if you have placed both names on your
8 report for Tecumseh at that time, was it your
9 practice to put down the names of whoever you spoke
10 with, including whoever was on the telephone?

11 A I would certainly do so, if I knew.

12 Q Okay. So if you put both names down there, Mr.
13 Benignus, on this report, 1/7/74, does that tell
14 you that you would have spoken with both of these
15 people?

16 A No, sir.

17 Q What do the names Wisner and Jacoby after "For
18 Tecumseh" mean to you in looking at that report?

19 A One or the other or both were on the receiving
20 end --

21 Q All right.

22 A -- in my response.

23 Q You have references throughout your report to Mr.
24 Wisner himself saying things to you. Do you see
25 that?

1 A I see one.

2 Q Sure. There's one in the fourth paragraph and then
3 the fifth paragraph starts out, "He said." The
4 next paragraph, "He said." Do you see that?

5 MR. EWING: I'm going to object. The
6 document speaks for itself and I don't think it's a
7 fair characterization to suggest that "he"
8 necessarily is Mr. Wisner, unless the witness can
9 specifically remember that.

10 A Yes.

11 Q Mr. Benignus, the report indicates that you spoke
12 with either or both Mr. Wisner and Mr. Jacoby;
13 correct?

14 A I don't think one can draw that as a fact. I spoke
15 to one or the other.

16 Q And you refer in the fourth paragraph, do you not,
17 sir, to "Mr. Wisner said." Do you see that?

18 A Yes.

19 Q And if you said in your report that Mr. Wisner
20 said, you were reflecting in your report what he
21 told you; correct?

22 A I would say so.

23 Q Would you tell me, please, after having read this
24 report, would you tell me, please, overall what the
25 subject matter of the telephone call dealt with?

1 MR. PECK: If you have any recollection
2 of it, Paul, beyond what's on the paper.

3 MR. PIETTE: Just in your own words.

4 A I have nothing to recall other than what's written
5 here.

6 Q And having read what's written here, can you tell
7 me what the subject matter was of your phone
8 conversation?

9 MR. EWING: I object to the form of the
10 question and foundation unless you can establish
11 that he remembers anything other than what is in
12 the document independent of the document. I think
13 that's an inappropriate question. You may answer.

14 A Should we start with the first paragraph? How do
15 you want to do this?

16 Q I would like you to tell me, starting with the
17 first paragraph, what you recall having read the
18 first paragraph about the subject matter of the
19 phone conversation.

20 MR. EWING: Well, I guess I object.
21 That's been asked and answered. He said he
22 remembers only what's in the document itself.

23 BY MR. PIETTE:

24 Q Did you read the first paragraph now, sir?

25 A Yes.

1 Q Your first paragraph states, does it not,
2 "Tecumseh, a large USA supplier of air conditioning
3 equipment, has licenses in Japan and other overseas
4 areas. Informed that Japan will ban PCB equipment
5 January 1, 1974. Tecumseh wonders about possible
6 similar action in other foreign countries." Did I
7 read that correctly, sir?

8 A Correct.

9 Q Having read that now, do you recall overall what
10 the subject matter of the conversation was with Mr.
11 Wisner, Tecumseh Products Company, Tecumseh,
12 Michigan or Mr. Tom Jacoby?

13 MR. EWING: Same objections. No
14 foundation that the witness has any recollection
15 other than what is in the documents. You may
16 answer.

17 A Exactly as stated in the document.

18 Q You recall that the conversation with either or
19 both of these two gentlemen had to deal with PCB's
20 being ban in Japan?

21 A Yes.

22 MR. PECK: I'll object to the form of
23 that question. That's not what the document
24 states.

25 MR. PIETTE: PCB equipment. I'm sorry.

1 You are correct. Let me rephrase the question.

2 BY MR. PIETTE:

3 Q Your memo states or your telephone call report
4 states in effect that Tecumseh was informed that
5 Japan will ban PCB equipment 1/1/74. Do you see
6 that?

7 A Yes.

8 MR. EWING: Object to the form.

9 BY MR. PIETTE:

10 Q Is that something that they advised you in your
11 phone conversation?

12 A That's what they said.

13 Q In other words, whichever gentlemen, either Wisner
14 or Jacoby, whoever you were speaking with or both
15 of them, referring to "them" as Tecumseh, Tecumseh
16 advised you that Japan -- that they were advised
17 that Japan will ban PCB equipment 1/1/74?

18 A Exactly.

19 Q Okay. And Tecumseh was wondering about possible
20 similar action in other foreign countries; correct?

21 MR. PECK: Object to the form of the
22 question.

23 BY MR. PIETTE:

24 Q Is that correct?

25 A Correct.

1 Q And that's what Tecumseh advised you on the phone?

2 MR. PECK: Object, no foundation that
3 he recalls anything other than what is written in
4 the document.

5 BY MR. PIETTE:

6 Q Correct?

7 A Correct.

8 Q Is that written in the document just that way, that
9 Tecumseh wondered about possible similar action in
10 other foreign countries?

11 A Right.

12 Q And that's the way you reported it, right?

13 A Right.

14 Q Will you tell the court and jury, please, what the
15 second paragraph reads?

16 MR. PECK: Do you want him to just read
17 it?

18 MR. PIETTE: Please.

19 A "Seeking to cover their immediate concern in Japan,
20 Tecumseh requested trial non-PCB air conditioner
21 capacitors from their suppliers."

22 Q And that's the report that you made on January 7,
23 1974?

24 A Right.

25 Q Did they advise you in the conversation who their

1 suppliers were?

2 A I don't think so.

3 Q Do you have any knowledge yourself, sir, of who --

4 A I repeat, no.

5 Q I'm sorry.

6 A Let me correct this. The answer is, no, I had no
7 need to know that and they didn't.

8 Q Okay. Do you have an understanding of who their
9 suppliers of capacitors might have been?

10 MR. PECK: Object.

11 A It would be conjecture.

12 Q You can state your conjecture, if you would,
13 please.

14 MR. EWING: I would object, foundation,
15 calls for speculation.

16 MR. PECK: I'll ask you not to
17 speculate, Paul, unless you have a recollection
18 either from this conversation or independent
19 knowledge from another source as to who Tecumseh's
20 suppliers of capacitors were.

21 A It would not have been of concern to me to begin
22 with, and I wouldn't want to speculate as to who
23 they bought their capacitors from.

24 Q Right. And that really wasn't my question, Mr.
25 Benignus. What I was asking you was who suppliers

- 1 of capacitors would have been at that time.
- 2 A To anyone?
- 3 Q Sure.
- 4 A The leading suppliers of capacitors at that time
- 5 were General Electric, Westinghouse, Lein Material.
- 6 It causes me to think this out, because you're
- 7 asking about motor-run capacitors.
- 8 Q Yes.
- 9 A You might have specified that.
- 10 Q All right.
- 11 A These are air conditioners and motor-run
- 12 capacitors, they are not power line capacitors, et
- 13 cetera.
- 14 Q All right. So that for this --
- 15 A It's limited.
- 16 Q All right. Then please limit your answer.
- 17 A I'm trying to.
- 18 Q As far as the names that you have given us, were
- 19 they the leading suppliers of motor-run capacitors?
- 20 You gave us GE, Westinghouse, Lein Material.
- 21 A Strike Lein Material.
- 22 Q Anything else that comes to mind, sir?
- 23 A Electric Utilities Company. That's a company, not
- 24 a utility. Aerovox.
- 25 Q Mr. Benignus, can you tell me if Monsanto sold

1 Aroclors to each of these companies that you just
2 listed?

3 A Certainly.

4 Q So it would have been Monsanto who supplied the PCB
5 Aroclors to these companies?

6 A We were the only supplier.

7 Q All right. When you say "we," you mean Monsanto?

8 A Yes.

9 Q And these Aroclors or PCB's were being supplied as
10 a dielectric fluid for these motor-run capacitors?

11 A Yes, sir.

12 Q And the concern expressed in this memo by
13 Tecumseh -- or I keep calling it a memo and it's a
14 telephone call report, I'm sorry, the concern being
15 expressed by Tecumseh was that they no longer would
16 have a supply of the PCB equipment in Japan?

17 MR. EWING: I object, foundation.

18 There is no foundation that this witness has any
19 recollection of this conversation other than what
20 is written in the document and I object. The
21 document speaks for itself. You may answer.

22 A The document speaks for itself.

23 Q And it speaks for itself that their concern was
24 that Japan would ban PCB equipment 1/17/74?

25 MR. EWING: Same objections. You may

1 answer.

2 A Correct.

3 Q It's your document, is it not, sir? You prepared
4 this, right?

5 A Right.

6 Q Okay. So it seems to me you can speak for your
7 document, right?

8 MR. EWING: Object, it's argumentative,
9 but he can speak to the extent he has a
10 recollection of the conversation.

11 MR. PIETTE: I don't think that's the
12 law, Counsel.

13 MR. EWING: We can argue about that at
14 the appropriate time, Counsel.

15 MR. PECK: Paul, you just speak about
16 what your recollection is. If you have an
17 independent recollection separate from the
18 document, we talked about that. If the document is
19 all you know, then just refer to that.

20 BY MR. PIETTE:

21 Q The motor-run capacitor, based on your knowledge
22 going back as the technical person for Monsanto,
23 that would be the kind of capacitor that would go
24 into a compressor for air conditioning equipment;
25 is that correct?

1 A Correct.

2 Q So that the suppliers for an air conditioning
3 manufacturer or the compressors for it, such as
4 Tecumseh, would get their supplies of these
5 capacitors from somebody manufacturing motor-run
6 capacitors such as the names you just gave us?

7 A Right.

8 Q Thank you.

9 And you know that going back from your
10 own knowledge, right, back in 1974?

11 A Correct.

12 Q The next paragraph, if you read that, please,
13 Paragraph 3 of your telephone call report dated
14 1/7/74 starting with, "Not knowing how else?"

15 A "Not knowing how else to approach this, they called
16 for the same standards, quality specs and one-year
17 minimum satisfactory field performance by the
18 capacitor maker as required for approval of
19 Arochlor capacitors normally used for air
20 conditioners."

21 Q And having read that now from your report, you
22 would have accurately reported on what Tecumseh
23 told you in that conversation?

24 A Yes.

25 Q Okay. The next paragraph, sir, if you would read

1 that starting with, "Mr. Wisner said."

2 A "Mr. Wisner said that Tecumseh will not offer
3 non-PCB capacitors unless they can guarantee them."

4 Q Unless they can guarantee them?

5 A Unless they can guarantee them.

6 Q And then the next paragraph starts with, "He said."
7 Having read your report now and knowing what your
8 practice was at that time, is it your understanding
9 that when you refer to "he said," you're continuing
10 to report on what Mr. Wisner told you?

11 A Yes.

12 Q Would you read that next paragraph then, please.

13 A "He said that domesticly (USA) they do not want to
14 disturb nor change their position regarding Aroclor
15 capacitors. They do not want to increase size nor
16 increase cost nor increase risk, to any extent
17 possible, loss of the reliability and performance
18 long provided by Aroclor units."

19 Q Thank you for reading that paragraph, Mr. Benignus.
20 Let me ask you this about that paragraph. Aroclor
21 units refer Monsanto -- Strike that.

22 Aroclor refers to Monsanto's product;
23 correct?

24 A Right.

25 Q So when he refers to an Aroclor unit, he's

1 referring to a capacitor that -- and you say he
2 also refers to an Aroclor capacitor in the first
3 sentence there, sir?

4 A Yes.

5 Q Okay. When you're referring to an Aroclor
6 capacitor or an Aroclor unit, that's referring to a
7 capacitor with Aroclor PCB fluid in them; is that
8 correct?

9 A Right.

10 Q The next paragraph also starts out, does it not,
11 sir, with, "He said?"

12 A Yes.

13 Q Is it your understanding that this is, again, Mr.
14 Wisner that you're reporting on?

15 A I assume.

16 MR. EWING: Object, no foundation.

17 BY MR. PIETTE:

18 Q Well, your practice at that time in dictating a
19 report, you say it refers to, in the fourth
20 paragraph, Mr. Wisner. Do you see that?

21 A Yes.

22 Q And then the next paragraph you understood that as
23 being Mr. Wisner telling you that; correct?

24 A Yes.

25 Q Now I'm asking the same thing for this paragraph.

1 Would your practice have been to refer back to the
2 gentleman that I previously identified, that is, in
3 this case Mr. Wisner in starting that paragraph?

4 A Yes.

5 Q Would you read that paragraph, then, please.

6 A "He said that they sure hope that what they are
7 doing to cover their position in the Japanese
8 market will not result in weakening the PCB
9 position domestically. He said that they do not
10 expect PCB replacement in domestic air conditioner
11 capacitors to occur until many years to come."

12 Q Thank you for reading that, Mr. Benignus. That
13 concludes the first page of your report, does it
14 not, sir?

15 A Yes, sir.

16 Q What did you understand Mr. Wisner to mean in
17 stating to you that he sure or they sure hope that
18 what they are doing to cover their position in the
19 Japanese market will not result in weakening the
20 PCB position domestically?

21 MR. PECK: Only if you have a present
22 understanding of that. If you have no
23 recollection, then state that.

24 A I can't assume what was in his mind. I reported
25 what he said.

1 Q All right. And that's what he told you?

2 A That's what he told me.

3 Q Let's talk about the second page of your report, if
4 we may, Mr. Benignus. You start out the paragraph
5 specifically referring to Mr. Wisner, do you not,
6 sir?

7 A Yes, sir.

8 Q So you're reporting on your conversation with Mr.
9 Wisner at this point, are you not, sir?

10 A Yes, sir.

11 Q Your paragraph says, does it not, this is the top
12 of Page 2, "Yet Mr. Wisner seemed to know very
13 little of what is being done to support this desire
14 to retain PCB's." Did I accurately read that, sir?

15 A You did.

16 Q What do you understand that to mean?

17 MR. PECK: Again, if you have an
18 independent recollection of that conversation,
19 Paul.

20 MR. EWING: I object, foundation.
21 There is no foundation that he has any recollection
22 other than what's written in the document.

23 MR. PIETTE: You may tell us what your
24 understanding of that means.

25 A I think what these gentlemen just said, it's a

1 very -- I wrote it the way I reacted to what he
2 said.

3 Q Let's go to the next paragraph. Are you again
4 referring to Mr. Wisner in this paragraph starting
5 with "He?"

6 A Yes, sir.

7 Q Would you read the next paragraph starting, "He
8 (speaking for Tecumseh)?"

9 A "He (speaking for Tecumseh) did not have the ANSI
10 guide nor the FDA tolerance report. He did not
11 know Aroclor 1016 and how it relates to prior PCB's
12 relative to environmental problems. He pointedly
13 said that, 'No one has been around to tell them
14 anything along these lines.'"

15 Q Thank you for reading that paragraph. Let me ask
16 you some questions about some of the references
17 within the paragraph. Let me repeat what I just
18 said, Mr. Benignus. Let me ask you some questions
19 about some of the references within the paragraph.
20 You refer to the ANSI guide. Do you see that?

21 A Yes, sir.

22 Q What do you mean by the ANSI guide?

23 A ANSI refers to American National Standards
24 Institute.

25 Q And is there a specific guide you're referring to

1 there?

2 A Number C-107.

3 Q And you were on that committee, were you not, sir,
4 as an alternate to Mr. Papageorge?

5 A That's all right.

6 Q Is that fairly said?

7 A It doesn't matter. I was chairman of the steering
8 committee.

9 Q That's what I was asking you for.

10 A No, you didn't.

11 Q I didn't say it right, did I.

12 A You didn't.

13 Q You were chairman of the steering committee?

14 A Yes.

15 Q What does that mean, sir?

16 A That means when this program of work was being
17 formulated, I was asked to be chairman of the
18 steering committee rather than chairman of a
19 working committee. I wasn't going to do anything
20 other than for many years I knew the people in the
21 industry and I would have known who to call on in
22 government, in academia, in industry, in capacitor
23 makers, Monsanto and so forth who should be
24 invited, EPA, who should be invited to work on this
25 committee.

1 Q Because of all your background and experience with
2 Monsanto?

3 A Because of my background of knowing people, which
4 was a privilege of having been at Monsanto.

5 Q And the title of that -- or do you recall what the
6 title of that ANSI standard was, that C-107, just
7 in general?

8 A I don't recall the title at the moment.

9 Q Does it refresh your recollection if I suggest
10 American National Standard Guidelines for Handling
11 and Disposal of Capacitor and Transformer Grade
12 Askerels Containing Polychlorinated Biphenyls?

13 A This is very correct.

14 Q Okay. And that is the ANSI committee that you were
15 the chairman of the steering committee for, is that
16 right?

17 A Yes, sir.

18 Q And Askerels, what does that mean?

19 A Askerels is a generic name for these type of
20 nonflammable dielectrics under this generic name,
21 as we already referred to Aroclor as Monsanto's
22 trade name. GE's trade name was Pyronol.
23 Westinghouse was Inerteen. Allis-Chalmers was
24 Chlorextol, C-H-L-O-R-E-X-T-O-L. The makers of the
25 capacitors and the makers of the transformers used

1 their own trade names and there's a list of these.

2 I have given examples.

3 Q Even though all of these trade names contained
4 Aroclor's or PCB's?

5 A Correct.

6 Q And you stated --

7 A Excuse me.

8 Q Sure. Go ahead.

9 A Because Aroclors, PCB's, qualified as being
10 Askerels as specified and documented at the
11 American Society for Testing and Materials
12 Standards.

13 Q Also known as ASTM?

14 A Known as ASTM.

15 Q Did I hear you say that Westinghouse's trade
16 name -- I'm sorry -- the Westinghouse trademark or
17 trade name for their dielectric fluid was Inerteen?

18 A Yes.

19 Q I-N-N-E-R-T --

20 A I-N-E-R-T-E-E-N.

21 Q And Inerteen would have contained Aroclors or
22 PCB's?

23 A Correct.

24 Q It's true, then, that Monsanto sold PCB's or
25 Aroclor's, I should say, to Westinghouse as well as

1 GE and the other companies you mentioned?

2 A Correct.

3 Q This ANSI committee that you were on, the chairman
4 of the steering committee, that started in the
5 early-1970's, did it not?

6 A Yes.

7 Q Do you recall when?

8 A Wait a minute.

9 Q Go ahead.

10 A Approximately.

11 Q Do you recall when you were chairman of that
12 steering committee, approximately?

13 A The early-'70's.

14 Q Okay. You mentioned before about all these people
15 that you would have known, representatives of these
16 various companies and government agencies and so
17 forth. Were a lot of them or all of them part of
18 this committee?

19 A Not all.

20 Q But a lot?

21 A But all invited.

22 Q Okay. Did a lot of them participate in this
23 committee?

24 A Excuse me?

25 Q Did a lot of them participate on this committee for

1 ANSI?

2 A I don't know what "a lot of them" signifies, sir.
3 They were highly qualified people.

4 Q How many were on your committee?

5 A I didn't have a committee.

6 Q You were chairman of a steering committee?

7 A And I didn't have the committee.

8 Q All right. How many were on the committee itself?
9 Do you recall that, sir?

10 A That's reported.

11 Q Yes, I understand.

12 A I can't recall the exact number.

13 Q All right. Was one of the purposes of that
14 committee to deal with the proper disposal of
15 PCB's?

16 A That's what it was all about.

17 Q Returning now to your report, I want to ask you
18 another question about that second paragraph on
19 Page 2. You refer to the FDA tolerance report. Do
20 you see that, sir?

21 A Yes.

22 Q What do you mean by that?

23 A I don't recall this specifically, but FDA,
24 obviously, is the Food and Drug Administration. He
25 did not have the ANSI guide nor the FDA tolerance

1 report. I didn't have it myself, either, but he
2 said he didn't have this and so I reported it.
3 There must have been such.

4 Q In other words, he told you that?

5 A Yes. That's how I knew this.

6 Q Okay. So he told you --

7 A He did not have it.

8 Q -- that he did not have it?

9 A Excuse me.

10 Q You go ahead.

11 A He told me he had neither the ANSI guide nor the
12 FDA tolerance report.

13 Q And he also told you that he did not know Aroclor
14 1016?

15 A Right.

16 Q And how it relates to prior PCB's relative to
17 environmental problems?

18 MR. EWING: Objection, foundation.

19 BY MR. PIETTE:

20 Q Correct?

21 MR. EWING: Object, foundation. There
22 is no foundation that the witness has any
23 recollection about this document other than what it
24 says and the document speaks for itself.

25 BY MR. PIETTE:

1 Q I read exactly what your report says, did I not?

2 A Right.

3 Q That's what he told you?

4 A That's what he told me.

5 MR. EWING: Object, foundation.

6 BY MR. EWING:

7 Q Will you tell me, please, what is meant by or what
8 your recollection of Aroclor 1016 is, if you have a
9 recollection?

10 A I do.

11 Q Okay. If you would, please. Thank you. What is
12 Aroclor 1016?

13 A Aroclor 1016 is essentially Aroclor 1242, which had
14 been the prevalent PCB used for the type of
15 capacitors we're talking about. Aroclor 1016 has a
16 lower content of the slower to biodegrade isomers
17 in it than did the prior Aroclor 1042. This was a
18 move, an effort by Monsanto to satisfy
19 environmental objection to the slower biodegrading
20 PCB isomers.

21 Q The next paragraph, sir, if you would read that
22 starting with, "However, what he does have."

23 A "However, what he does have is a copy of GE's
24 promotional brochure entitled, 'New Econol non-PCB
25 Impregnated 26-F Capacitors for General

1 Applications Including Power Supply and Motor
2 Run.'")

3 Q Thank you for reading that paragraph, Mr. Benignus.
4 Do you recall what GE's promotional brochure was
5 that is referred to in that paragraph?

6 A I assume so.

7 Q I mean, you have a recollection that there was such
8 a promotional brochure?

9 A Yes.

10 Q Had you ever seen it or read it? Do you recall?

11 A I have seen it.

12 Q Okay. He, Mr. Wisner, told you he had a copy of
13 that GE promotional brochure with that title.
14 That's what your report states?

15 A I so state.

16 Q Okay. Would you read the last paragraph, then, of
17 your report, sir.

18 A "He appreciated my phone call, but as description
19 of details began to consume time, I sensed that Mr.
20 Wisner sought to get back to his more normal and
21 immediate chores. I thanked him, as we appreciated
22 having his views."

23 Q And that concluded your report, your telephone call
24 report?

25 A Yes, sir.

1 Q Correct?

2 A Yes, sir.

3 Q I want to ask you a follow-up question, sir, with
4 respect to your explanation of Aroclor 1016 and
5 Aroclor 1242, the two Monsanto products for this
6 dielectric fluid.

7 A Yes, sir.

8 Q The Aroclor 1016 that's referred to in your report,
9 your telephone call report of January 7, 1974, that
10 is the Monsanto product that was available at that
11 time in 1974; is that correct?

12 A That's correct.

13 Q The earlier Monsanto fluid, Aroclor 1242, would
14 have been available for capacitors earlier than
15 1974; is that correct?

16 A That's correct.

17 Q Do you recall when, sir, that change was made from
18 Aroclor 1242 to Aroclor 1016, approximately?

19 A I don't recall it specifically. I should know,
20 because I introduced that 16 myself. I just don't
21 recall the exact date.

22 Q Okay. Earlier than 1974 is the best you can tell
23 us?

24 A I would think so. Well, it had to be.

25 Q It had to be, right?

1 A I think you're right. It was between 1970 and
2 1974.

3 Q All right. Thank you for that.

4 A It had to be.

5 Q All right. Thank you, sir. After having made this
6 telephone call report in connection with this
7 telephone conversation with Tecumseh, did you have
8 any further follow up or involvement with this
9 subject matter at all?

10 A With who?

11 Q With anyone at Tecumseh, at Monsanto, anything at
12 all that you recall after this 1/7/74 telephone
13 call report?

14 A I was still at Monsanto working.

15 Q Okay. I understand. But do you recall any further
16 involvement with Tecumseh after this telephone call
17 report?

18 A No, sir.

19 MR. PIETTE: Thank you. That's all I
20 have, Mr. Benigus. That you very much for your
21 time and your patience.

22 EXAMINATION

23 MR. MR. EWING:

24 Q Mr. Benigus, as I introduced myself before we
25 started the deposition, my name is Tom Ewing and I

1 represent Tecumseh Products in this lawsuit that
2 brings us all together. Had this letter not been
3 shown to you, do you have any independent
4 recollection of this telephone conversation?

5 MR. PIETTE: Object to the form of the
6 question. You don't mean letter, you mean
7 telephone call report.

8 BY MR. EWING:

9 Q Had this telephone call report not be shown to you,
10 do you have any independent recollection of this
11 telephone conversation with Mr. Wisner and/or Mr.
12 Jacoby?

13 A Not when it was shown to me.

14 Q All right. And Mr. Piette went through the
15 telephone call report paragraph by paragraph and
16 had you read the paragraphs into the record. You
17 recall that?

18 A Right.

19 Q Other than what's stated in the document, do you
20 really remember anything about this telephone
21 conversation?

22 A No, sir.

23 Q And I would like you to direct your attention to
24 the second page of the call report and read into
25 the record something that Mr. Piette did not ask

1 you to read into the record. Would you read into
2 the record the entire Paragraph Two which starts
3 out, "He, speaking for Tecumseh." Would you read
4 that entire paragraph?

5 MR. PIETTE: Excuse me. I am going to
6 object to the form of the question. He did read
7 the entire paragraph. If there is a word that was
8 left out, I'm sure it was inadvertent by Mr.
9 Benignus, and your reference to me saying that I
10 did not ask him to read the entire paragraph is
11 incorrect and I'm going to object to your statement
12 contained within your question that I did not ask
13 him to read the entire paragraph. I think the
14 record will speak for itself and I'm going to move
15 to strike that portion of your question referring
16 to me at the time of trial so that that portion of
17 your question I will be asking the trial judge to
18 strike from this record.

19 MR. EWING: You may answer, Mr.
20 Benignus. Would you read that entire paragraph
21 into the record, please.

22 A "He (speaking for Tecumseh), did not have the ANSI
23 guide nor the FDA tolerance report. He did not
24 know Aroclor 1016 and how it relates to prior PCB's
25 relative to environmental problems. He pointedly

1(1 said that, 'No one has been around to tell them
2 anything along these lines.'"

3 MR. EWING: Thank you, sir. That's all
4 the questions that I have.

5 MR. PIETTE: Thank you, Mr. Benignus.
6 Anybody else?

7 (No response.)

8 (Whereupon, the deposition was concluded
9 at 11:05 a.m.)
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1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY) SS:
3

4 I, KATHY A. HALMA, Registered
5 Professional Reporter and Notary Public in and for the
6 State of Wisconsin, do hereby certify that the deposition
7 of PAUL G. BENIGNUS was taken before me at Fischer's
8 Restaurant, Belleville, Illinois, on the 17th day of
9 August, 1993, commencing at 10:00 o'clock in the forenoon.

10 That it was taken at the instance of
11 the Defendants upon verbal interrogatories.

12 That said statement was taken to be
13 used in an action now pending in the State of Wisconsin,
14 Circuit Court, Sheboygan County, in which TECUMSEH
15 PRODUCTS COMPANY, a Milwaukee Corporation is the Plaintiff
16 and THE TRAVELERS INDEMNITY COMPANY, MARYLAND CASUALTY
17 COMPANY, CONTINENTAL CASUALTY COMPANY, AMERICAN EMPLOYERS
18 INSURANCE COMPANY, HARTFORD ACCIDENT & INDEMNITY COMPANY,
19 INSURANCE COMPANY OF NORTH AMERICA, FIRST STATE INSURANCE
20 COMPANY, THE HOME INSURANCE COMPANY, MICHIGAN MUTUAL
21 INSURANCE COMPANY, STONEWALL INSURANCE COMPANY, AFFILIATED
22 FIRST MORTGAGE INSURANCE COMPANY, ALLSTATE INSURANCE
23 COMPANY OF NEW YORK, JEFFERSON INSURANCE COMPANY OF NEW
24 YORK, UNITED STATES FIRE INSURANCE COMPANY and PURITAN
25 INSURANCE COMPANY are the Defendants.

A P P E A R A N C E S

1
2 FOLEY & LARDNER, 777 East Wisconsin
3 Avenue, Milwaukee, Wisconsin, 53202, by MR. THOMAS C.
4 EWING, appeared on behalf of the Plaintiff.

5 SONNENSCHNEIN, NATH & ROSENTHAL, One
6 Metropolitan Square, Suite 3000, St. Louis, Missouri,
7 63102, by MR. MARK D. RABE appeared on behalf of the
8 Defendant, The Travelers Indemnity Company.

9 OTJEN, VAN ERT, STANGLE, LIEB & WEIR,
10 S.C., 700 North Water Street, Suite 800, Milwaukee,
11 Wisconsin, 53202-4206, by MR. PAUL J. PYTLIK, appeared on
12 behalf of the Defendants, Hartford Accident & Indemnity
13 Company and First State Insurance Company.

14 PIETTE & JACOBSON, S.C., 1233 North
15 Mayfair Road, Suite 204, Milwaukee, Wisconsin, 53226-0577,
16 by MR. RONALD L. PIETTE, appeared on behalf of the
17 Defendant, The Home Insurance Company.

18 POPE & JOHN, LTD., 311 South Wacker
19 Drive, Suite 4200, Chicago, Illinois, 60606, by MS.
20 KRISTIN A. O'BRIEN, appeared on behalf of the Defendant,
21 Affiliated First Mortgage Insurance Company.

22 SMITH, HELMS, MULLISS & MOORE, Suite
23 1400, 300 North Greene Street, P.O. Box 21927,
24 Greensboro, North Carolina, 27420, by MR. TIMOTHY PECK,
25 appeared on behalf of Monsanto Company.

1 That said deponent, before examination,
2 was sworn to testify the truth, the whole truth, and
3 nothing but the truth relative to said cause.

4 That the foregoing is a full, true and
5 correct record of all the proceedings had in the matter of
6 the taking of said deposition, as reflected by my original
7 machine shorthand notes taken at said time and place.

8
9
10
11
12
13
14 

15 Notary Public

16 In and for the State of Wisconsin

17
18
19
20 Dated this 4th day of September, 1993,
21 Milwaukee, Wisconsin.

22
23 My commission expires October 16, 1993.
24
25

CERTIFICATE OF WITNESS

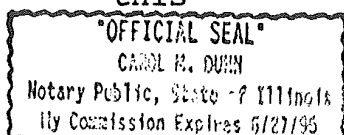
I have read the foregoing pages and
corrections, if any, have been noted, and the same
is a true and correct transcript of my testimony.

Paul G. Benignus

PAUL G. BENIGNUS

Dated at *Belleville*, *Illinois*,
(City) (State)

this *16th* day of *September*, 1993.



Carol M. Dunn

ERRATA SHEET

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REASON

[illegible]

SIGNATURE

DATE _____

Paul H. Benignus 9/15/93



Carol M. Quinn

CERTIFICATE OF WITNESS

I have read the foregoing pages and
corrections, if any, have been noted, and the same
is a true and correct transcript of my testimony.

PAUL G. BENIGNUS

Dated at -----, -----,
(City) (State)

this ----- day of -----, 1993.

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REASON

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SIGNATURE

DATE
