FEB 24 REC'D

DRAFT

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KF/CB

TO : The File

cc: P.J. Marsh
J. Mason
J. Haggart
R. Vodden (Ruabon)

Note of the meeting with Bayer on February 15, 1972.

Present for Bayer : Dr. Ernst Komarek
Dr. M. Von Kroh
Dr. Volker Charbonnier (Lawyer)

Present for Monsanto : P.J. Marsh
J. Haggart
R. Vodden
K. Fletcher

P.J. Marsh opened the meeting by advising the Bayer representatives of the decisions taken by Monsanto relative to continuing sale of the PCBs in the U.S.A. and Europe. In response, Dr. Komarek advised that Bayer, since December 31, 1971 have accepted no new customers in respect of PCB fluids for open systems application which include plasticizers but exclude hydraulic fluids for mines and hydraulic systems for turbines. Bayer intend to cut off further PCB sales to open systems from June 30, 1972.

We advised Bayer of our proposed European indemnity procedure. Dr. Charbonnier advised that in their view a PCB producer selling these chemicals to closed systems i.e. capacitors and transformers would not be under liability to third parties under German law if leakage and resultant damage occurred unless the producer had failed to give warning of the relative hazards to their customers. Accordingly, Bayer would not ask their customers for these fluids for indemnities but agreed to our



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suggestion that warning plates should be issued for attachment to PCB containing transformers.

Dr. Charbonnier pointed out that Bayer and Monsanto could in any event not agree to a position of a common indemnity since this entailed antitrust problems. This we acknowledged. He also made an interesting point that insistence by us on customer signature of indemnities might well legally result in the indenities themselves being treated as unenforceable under German law. He considered such indemnities might be considered by a German court as being contrary to the principle of "Treu-handlung", roughly translatable as "dealing in good faith".

It was agreed Dr. Charbonnier and Keith Fletcher would jointly produce appropriate wording for warning plates on transformers etc.

K. Fletcher

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