Monsanto

FROM (NAME & LOCATION) [redacted]

DATE February 16, 1972

SUBJECT PCB Indemnity Program

REFERENCE

cc Messrs. R. B. Chapman
R. C. Hellwig
H. S. Bergen

TO Mr. W. R. Corey

As you know, Messrs. Bergen, Chapman, Hellwig and Stapleton have been designated an ad hoc MICC committee to coordinate the corporate Monsanto policy of continuing sales of PCB-containing products only to customers whose intended use is as a dielectric fluid in the manufacture of transformers and capacitors, and provided each executes a meaningful hold harmless agreement. This same dielectric program has recently been extended to a small group of customers using PCB fluids in the manufacture of closed switch gears, electric magnets and hermetically sealed electric motors.

In our original transformer/capacitor program, after much consideration, including a review of pending litigation, we concluded that for our hold harmless to be meaningful, we should require that the indemnifying customer should have a net worth of $10,000,000 or $10,000,000 in insurance to support our indemnity. Arriving at these levels was not easy and reflected a consensus of the combined judgments of the committee members. In establishing these criteria we then felt Monsanto's risk of exposure could well be as large whether a customer purchases a small or a large quantity of material from us if the fluid were to escape to the environment.

In attempting to decide whether we should require the same levels of net worth or insurance from customers engaged in the switch gear, magnet and motor manufacture, the additional thought given the matter suggested that while the potential for damage from a spill might be equally great regardless of the volume of purchases, the likelihood of an incident would probably be diminished if quantities purchased were small, and the damages sustained might be reduced as well. We felt that if we could verify our thinking in this regard with others, we might reasonably protect Monsanto if we were to require less insurance from customers whose volume of purchases fell below some level.

Bob Chapman verified our rationale with underwriters from Travelers. They confirmed our thinking that they would want to charge less, in dollar amount of premium for a particular level of insurance coverage, to companies using a small volume of PCBs than companies using a high volume, and they felt our attempt to make a distinction was justified.

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We then ranked all proposed PCB customers (transformers, capacitors, switch gears, magnets and electric motors) in descending order of purchase volume for both 1971 and 1970, a copy of which is attached.

On review of this data, it seemed 200,000 pounds per year of purchases was a logical breakpoint above which to request $10,000,000 of insurance and below which $5,000,000 of coverage ought to be enough.

The committee also considered the possibility of reducing the requirements for net worth in some relationship to the reduced level of insurance coverage being required. It was felt this overcomplicated the criteria, and that below $50,000,000 net worth, we would look to insurance for protection, and that the risk to pound usage relationship would be our criteria for requiring $10,000,000 or $5,000,000 coverage limits.

The committee realizes the extreme difficulty in supporting factually that 200,000 pounds/year is the absolutely correct breakpoint, that $5,000,000 is the foolproof level of insurance, or that there is real distinction between purchasing 199,000 pounds per year and purchasing 201,000 pounds per year. Again our decisions reflect a consensus of our judgments. We assumed, also, that we would review on a case by case basis any particular situation that fell close to the breakpoint. Having made this analysis for switch gear, magnet and motor customers, we felt it was equally applicable to those transformer and capacitor customers who were originally advised of our requirement of $10,000,000 in insurance.

We, therefore, recommend for approval a revision of our original policy. The new policy would require from all PCB dielectric fluid customers (whether manufacturers of transformers, capacitors, switch gears, magnets or motors) that, if their net worth were less than $50,000,000, they support their indemnity with $10,000,000 of insurance if their purchases are to be 200,000 pounds or more per year, or that they support their indemnity with $5,000,000 of insurance if their purchases are to be less than 200,000 pounds per year.

Can you advise us if we are authorized to proceed in this manner. If clearance is given to do so, we will advise all transformer and capacitor manufacturers previously contacted and whose purchases are below 200,000 pounds/year that our requirements now are only for $5,000,000 of insurance. If it is felt the distinction we are attempting to draw is not appropriate, we will continue to require net worth of $50,000,000 or $10,000,000 of insurance from all customers.

John F. Stapleton
John F. Stapleton
For the Committee

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JFS/mm
Attachment