



MEMORANDUM

TO: City Council & the Mayor

FROM: 
Pamela A. Captain

SUBJECT: Appleton Papers Inc. et al. vs. George A. Whiting Paper Co., et al.
Case No. 08-C-16

DATE: December 17, 2009

The case against the Neenah-Menasha Sewerage Commission brought by Appleton Papers Inc. and NCR Corp. has been dismissed. As a result, the Final Pretrial Conference set for December 21st and the trial set to begin on January 4th are cancelled.

The Plaintiffs, Appleton Papers Inc. and NCR Corp., sought contribution, under CERCLA, from multiple defendants, including Neenah-Menasha Sewerage District, for costs incurred for PCB cleanup in the Fox River. Plaintiffs, due to ownership interests, have been named as potentially responsible parties by the U.S. Environmental Protection Agency for the environmental damage done to the Lower Fox River. NCP developed and sold and Appleton Coated Paper Company manufactured carbonless paper products coated with PCB-containing emulsion during the 1960s into the 1970s. Defendants, unknown to them at the time, either recycled the carbonless paper products or treated and/or released wastewater containing NCR's PCBs into the river.

On December 16, the Court issued its decision upon cross motions for summary judgment (there were five such motions under consideration). The Court took under consideration the motions for summary judgment and supporting documents which included roughly nine hundred exhibits consisting of such items as expert reports, government reports, corporate records (some dating back to the 1950s), correspondence, laboratory notebooks, and deposition testimony of employees. Judge Griesbach writes, “. . . Plaintiffs are denied contribution herein largely because they were the *mobilizers* of the toxin at issue here, not because they directed its disposal, and because of their passive approach to dealing with the problem once it became an appreciable risk.”

The parties are provided with 30 days within which to notify the Court if there are any other pending motions that need to be addressed or if there is any reason to delay the entry of judgment. Once the entry of judgment occurs, Plaintiffs will have 30 days within which to file notice of an appeal.