

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**KATHLEEN McHUGH and
DEANNA SCHNEIDER,
Individually and on behalf of
all persons similarly situated,**

Plaintiffs,

-v-

Case No. 11-cv-724-bbc

**MADISON-KIPP CORPORATION,
CONTINENTAL CASUALTY
COMPANY, COLUMBIA CASUALTY
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY and ABC
INSURANCE COMPANIES 1 – 50,**

Defendants.

DECLARATION OF MICHAEL D. HAYES

I, Michael D. Hayes, declare under penalty and perjury under the law of the United States that the following is true and correct:

1. I am a shareholder in the law firm of Varga Berger Ledsky Hayes & Casey. I am one of the attorneys who represent Plaintiffs in this case, and am one of the attorneys who has been appointed by the Court to serve as Class Counsel.

2. I make this declaration to authenticate certain documents which are referenced in Plaintiffs' Response Memorandum in Opposition to Defendant Madison-Kipp Corporation's Motion for Summary Judgment (Doc. 198), Plaintiffs' Response to Defendant Madison-Kipp Corporation's Proposed Findings of Fact (Doc. 197), and in Plaintiffs' Additional Proposed

Findings of Fact that Warrant the Denial of Defendant's Motion for Summary Judgment. (Doc. 196)

3. All of the exhibits referenced below in this declaration are authentic copies of documents that were produced by parties or third-parties in connection with this lawsuit, or are public records available on the Wisconsin Department of Natural Resources ("DNR") and other governmental web sites.

4. Attached hereto as Exhibit 1 is a true and correct copy of historical and summary information posted on DNR's website concerning the MKC environmental investigation.

5. Attached hereto as Exhibit 2 is a true and correct copy of DNR's November 1, 2012 letter to MKC.

6. Attached hereto as Exhibit 3 is a true and correct copy of DNR's July 18, 1994 letter to MKC.

7. Attached hereto as Exhibit 4 is a true and correct copy of Wisconsin DOJ's state court complaint against MKC.

8. Attached hereto as Exhibit 5 is a true and correct copy of Wisconsin DOJ's September 28, 2012 press release concerning its state court lawsuit against MKC.

9. Attached hereto as Exhibit 6 is a true and correct copy of DNR's May 4, 2012 letter to MKC.

10. Attached hereto as Exhibit 7 is a true and correct copy of an October 18, 1994 internal MKC memo.

11. Attached hereto as Exhibit 8 is a true and correct copy of DNR's June 30, 1999 letter to MKC.

12. Attached hereto as Exhibit 9 is a true and correct copy of DNR's November 7, 2000 letter to MKC.

13. Attached hereto as Exhibit 10 is a true and correct copy of DNR's December 13, 2000 internal memo.

14. Attached hereto as Exhibit 11 is a true and correct copy of DNR's September 28, 2006 letter to MKC.

15. Attached hereto as Exhibit 12 is a true and correct copy of DNR's Remediation Requirements memo dated September 12, 2012.

16. Attached hereto as Exhibit 13 is a true and correct copy of Soil Vapor Analysis Data figure prepared by MKC's environmental consultant.

17. Attached hereto as Exhibit 14 is a true and correct copy of Raymond Taffora (Michael Best & Friedrich) email and attachment dated September 14, 2011.

18. Attached hereto as Exhibit 15 is a true and correct copy of Schmoller (DNR) email dated November 23, 2011.

19. Attached hereto as Exhibit 16 is a true and correct copy of Schmoller (DNR) email dated December 15, 2011.

20. Attached hereto as Exhibit 17 is a true and correct copy of Dames & Moore retention agreement dated August 25, 1994.

21. Attached hereto as Exhibit 18 is a true and correct copy of Arcadis retention agreement dated February 1, 2012.

22. Attached hereto as Exhibit 19 is a true and correct copy of MKC supplemental privilege log dated November 26, 2012.

23. Attached hereto as Exhibit 20 is a true and correct copy of MKC Arcadis privilege log dated November 21, 2012.

24. Attached hereto as Group Exhibit 21 are true and correct copies of Figures 5-3, 5-4, and 5-7 from Arcadis Site Investigation and Interim Actions Report (February 2012 – January 2013).

25. Attached hereto as Exhibit 22 is a true and correct copy of DNR's Madison Kipp VOC Soil Sampling Status figure, currently posted on the DNR's website.

26. Attached hereto as Exhibit 23 is a true and correct copy of DNR's Madison Kipp PCB Soil Sampling Status figure, currently posted on DNR's website.

27. Attached hereto as Exhibit 24 is a true and correct copy of DNR's Madison Kipp PAH Soil Sampling Status figure, currently posted on the DNR's website.

28. Attached hereto as Exhibit 25 is a true and correct copy of US EPA Consumer Factsheet on Tetrachloroethylene, currently posted on the US EPA's website.

29. Attached hereto as Exhibit 26 is a true and correct copy of Arcadis letter report dated February 14, 2013.

30. Attached hereto as Exhibit 27 is a true and correct copy of DNR Sub-Slab PCE vapor results map dated November 30, 2012

31. Attached hereto as Exhibit 28 is a true and correct copy of Wisconsin Department of Health Services ("DHS") fact sheet for tetrachloroethylene, currently posted on DHS's website.

32. Attached hereto as Exhibit 29 is a true and correct copy of DHS fact sheet for PAHs, currently posted on DHS's website.

33. Attached hereto as Exhibit 30 is a true and correct copy of DHS fact sheet for PCBs, currently posted on DHS's website.

34. Attached hereto as Exhibit 31 is a true and correct copy of DNR vapor intrusion fact sheet, currently posted on DNR's website.

35. Attached hereto as Exhibit 32 is a true and correct copy of Wisconsin Department of Health and Family Services vapor intrusion fact sheet, currently posted on its website.

36. Attached hereto as Exhibit 33 is a true and correct copy of DNR June 23, 2011 letter to MKC.

37. Attached hereto as Exhibit 34 is a true and correct copy of December 20, 2011 email from John Hausbeck (Madison and Dane County Public Health) to DNR's Schmoller.

38. Attached hereto as Exhibit 35 is a true and correct copy of DNR April 19, 2012 letter to MKC.

39. Attached hereto as Exhibit 36 is a true and correct copy of the results from testing conducted on the property located at 106 S. Marquette Street.

40. Attached hereto as Exhibit 37 is a true and correct copy of the results from testing conducted on the property located at 138 S. Marquette.

41. Attached hereto as Exhibit 38 is a true and correct copy of the Wisconsin Department of Health Services fact sheet for vinyl chloride, currently posted on its website.

42. MKC made written Rule 26(a)(1) disclosures to Plaintiffs. In these disclosures, MKC did not identify either Marvin Jellings or George Schluter as persons under Rule 26(a)(1)(A)(i) that have discoverable information and whom MKC "may use to support its claims or defenses."

43. Plaintiffs served requests for production of documents on MKC in this case which sought documents concerning MKC's purchase and disposal of PCE. MKC has not produced any documents which reflect its purchase or disposal of PCE, and in follow up communications with MKC's counsel on this subject Plaintiffs' counsel has been told that MKC no longer possesses such documentation.

Dated: March 25, 2013

s/ Michael D. Hayes