

# SUPREME COURT OF WISCONSIN

CASE No.: 00-3344 & 01-0580

COMPLETE TITLE:

State of Wisconsin,  
Plaintiff,

v.

Hydrite Chemical Company a/k/a Avganic  
Industries, Inc.,

Defendant-Third-  
Party Plaintiff-Appellant,

v.

Travelers Casualty & Surety Company f/k/a Aetna  
Casualty & Surety Company, American Casualty  
Company of Reading, PA, Chicago Insurance  
Company, Continental Casualty Company, First  
State Insurance Company and First State  
Underwriters Agency of New England Reinsurance  
Corp. a/k/a New England Reinsurance Corp.,  
Granite State Insurance Company, Great American  
Surplus Lines Ins. Co. a/k/a American Empire  
Surplus Lines Ins. Co., International Surplus  
Alliance Insurance Co. a/k/a International  
Insurance Co., Certain Underwriters at Lloyds  
of London a/k/a Certain London Insurers, and  
Affiliated FM Insurance Company,

Third-Party Defendants,

American Motorists Insurance Company, Home  
Indemnity Company and Home Insurance Company,  
Northbrook Excess & Surplus Insurance Company,  
as predecessor to Allstate Insurance Company,  
and United States Fire Insurance Co.,

Third-Party Defendants-Respondents,

Interstate Fire and Casualty Company,  
Fourth-Party Plaintiff,

v.

Maryland Casualty Company,  
Fourth-Party Defendant.

State of Wisconsin,  
Plaintiff,

v.

Hydrite Chemical Company a/k/a Avganic  
Industries, Inc.,

Defendant-Third-Party Plaintiff-Appellant,

v.

Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, American Casualty Company of Reading, PA, Chicago Insurance Company, Continental Casualty Company, First State Insurance Company and First State Underwriters Agency of New England Reinsurance Corp. a/k/a New England Reinsurance Corp., Granite State Insurance Company, Great American Surplus Lines Ins. Co. a/k/a American Empire Surplus Lines Ins. Co., International Surplus Alliance Insurance Co. a/k/a International Insurance Co., Certain Underwriters at Lloyds of London a/k/a Certain London Insurers, and Affiliated FM Insurance Company,  
Third-Party Defendants,

American Motorists Insurance Company, Home Indemnity Company and Home Insurance Company, Northbrook Excess & Surplus Insurance Company, as predecessor to Allstate Insurance Company, and United States Fire Insurance Co.,  
Third-Party Defendants-  
Respondents,

Interstate Fire and Casualty Company,  
Fourth-Party Plaintiff,

v.

Maryland Casualty Company,  
Fourth-Party Defendant.

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REVIEW OF A DECISION OF THE COURT OF APPEALS  
2002 WI App 222  
Reported at: 257 Wis. 2d 554, 652 N.W.2d 828  
(Ct. App.2002-Published)

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OPINION FILED: November 17, 2003  
SUBMITTED ON BRIEFS:  
ORAL ARGUMENT:

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SOURCE OF APPEAL:  
COURT:  
COUNTY:  
JUDGE:

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JUSTICES:  
CONCURRED:  
DISSENTED:  
NOT PARTICIPATING: Wilcox, J., did not participate

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ATTORNEYS :

# SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 00-3344 & 01-0580

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State of Wisconsin,

Plaintiff,

v.

Hydrite Chemical Company a/k/a Avganic  
Industries, Inc.,

Defendant-Third-  
Party Plaintiff-Appellant-Cross-  
Respondent,

v.

Travelers Casualty & Surety Company f/k/a Aetna  
Casualty & Surety Company, American Casualty  
Company of Reading, PA, Chicago Insurance  
Company, Continental Casualty Company, First  
State Insurance Company and First State  
Underwriters Agency of New England Reinsurance  
Corp. a/k/a New England Reinsurance Corp.,  
Granite State Insurance Company, Great American  
Surplus Lines Ins. Co. a/k/a American Empire  
Surplus Lines Ins. Co., International Surplus  
Alliance Insurance Co. a/k/a International  
Insurance Co., Certain Underwriters at Lloyds  
of London a/k/a Certain London Insurers, and  
Affiliated FM Insurance Company,

Third-Party Defendants,

American Motorists Insurance Company, Home  
Indemnity Company and Home Insurance Company,  
Northbrook Excess & Surplus Insurance Company,  
as predecessor to Allstate Insurance Company,  
and United States Fire Insurance Co.,

Third-Party Defendants-

**FILED**

**NOV 17, 2003**

Cornelia G. Clark  
Clerk of Supreme Court  
Madison, WI

Respondents-Cross-Appellants,  
Interstate Fire and Casualty Company,  
Fourth-Party Plaintiff,

v.

Maryland Casualty Company,  
Fourth-Party Defendant.

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State of Wisconsin,  
Plaintiff,

v.

Hydrite Chemical Company a/k/a Avganic  
Industries, Inc.,

Defendant-Third-  
Party Plaintiff-Appellant,

v.

Travelers Casualty & Surety Company f/k/a Aetna  
Casualty & Surety Company, American Casualty  
Company of Reading, PA, Chicago Insurance  
Company, Continental Casualty Company, First  
State Insurance Company and First State  
Underwriters Agency of New England Reinsurance  
Corp. a/k/a New England Reinsurance Corp.,  
Granite State Insurance Company, Great American  
Surplus Lines Ins. Co. a/k/a American Empire  
Surplus Lines Ins. Co., International Surplus  
Alliance Insurance Co. a/k/a International  
Insurance Co., Certain Underwriters at Lloyds  
of London a/k/a Certain London Insurers, and  
Affiliated FM Insurance Company,

Third-Party Defendants,

American Motorists Insurance Company, Home  
Indemnity Company and Home Insurance Company,  
Northbrook Excess & Surplus Insurance Company,  
as predecessor to Allstate Insurance Company,  
and United States Fire Insurance Co.,

**Third-Party Defendants-Respondents,**  
**Interstate Fire and Casualty Company,**  
**Fourth-Party Plaintiff,**  
**v.**  
**Maryland Casualty Company,**  
**Fourth-Party Defendant.**

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The Court entered the following order on this date:

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-third-party plaintiff-appellant-petitioner, Hydrite Chemical Company, and a motion to abate and/or enjoin appeal having been filed by third-party defendants-respondents-cross-appellants, Home Insurance Company and Home Indemnity Company, due to the fact that the New Hampshire insurance department issued an order of liquidation for Home on June 13, 2003, and considered by this court;

IT IS ORDERED that the petition for review is granted, the court of appeals' decision is summarily vacated and the matter is remanded to the court of appeals for further consideration in light of this court's decision in Johnson Controls, Inc. v. Employers Insurance of Wausau, 2003 WI 108, 264 Wis. 2d 60, 665 N.W.2d 257;

In light of the remand to the court of appeals,

IT IS FURTHER ORDERED that the motion to abate and/or enjoin appeal is denied. Third-party defendants-respondents-cross appellants may, if they wish, renew their motion in the court of appeals.

Wilcox, J., did not participate.

