

CARTER PERKINS and MATTIE PERKINS, GEORGE W. ROBINSON, SR. and LUCILLE ROBINSON, JESSIE WILLARD HIGHSMITH and MARGARET JEAN HIGHSMITH, HOWARD N. BLACKMON and BERTHA M. BLACKMON, JACKSON WESTLEY TUCKER and ELLENE S. TUCKER, HORACE WILSON GRAY and MATILDE C. GRAY, JOSEPH ALAN SMITH, and FRANK THOMAS ROBERTS.

Plaintiffs,

V.

KEENE CORPORATION, et al.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

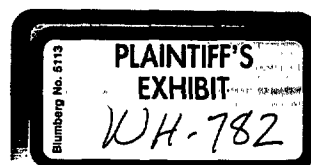
**DEFENDANT WESTINGHOUSE ELECTRIC CORPORATION'S RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL AND SUPPLEMENTAL RESPONSE AND
OBJECTIONS TO PLAINTIFFS' INTERROGATORIES**

TO: Plaintiffs, by and through their attorney of record, Russell W. Budd, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

COMES NOW, Westinghouse Electric Corporation ("Westinghouse") and files this its response to Plaintiffs' Motion to Compel along with its Supplemental Response and Objections to Plaintiffs' Interrogatories served on or about November 23, 1993, and would show the Court the following:

I. BACKGROUND

Plaintiffs propounded interrogatories to Westinghouse relating to the authenticity and admissibility of 17 documents on or about November 23, 1993. These interrogatories were



served in conjunction with similar interrogatories relating to approximately 30 additional documents in three other cases pending before this court.¹

Plaintiffs seek responses regarding these documents notwithstanding their past similar discovery regarding over 100 other documents in other cases pending either in Dallas or Travis County. Plaintiffs are apparently trying to authenticate all documents, approximately 800 in number, listed as exhibits against Westinghouse. Many of these exhibits are patently irrelevant to these cases and are inadmissible. Westinghouse has reasonably attempted to cooperate with Plaintiffs' counsel, Baron & Budd, while appropriately objecting to the burdensome nature of these requests. Westinghouse again objects to these requests in their entirety but provides further reasonable responses.

II. OBJECTIONS TO INTERROGATORIES

Some of the documents in issue in these interrogatories presumably were produced previously by Westinghouse to Plaintiffs along with literally thousands of other documents. However, all of these documents were not prepared by Westinghouse and Westinghouse cannot attest to their authenticity. Likewise, the origin of many documents cannot be confirmed because Plaintiffs have supplied incomplete or illegible copies or copies which contain extraneous information. Furthermore, these interrogatories are vague and ambiguous because the pages are not organized in a manner making it clear which pages constitute each exhibit. Finally, the Bates numbers listed in the interrogatories do not match those on the documents.

¹ *Clippard, et al. v. Keene Corporation, et al.*, Cause No. 93-03155, 331st District Court, Travis County, Texas; *Burnham, et al. v. Keene Corporation, et al.*, Cause No. 93-01206, 250th District Court, Travis County, Texas; *Swinson, et al. v. Keene Corporation, et al.*, Cause No. 92-16996, 201st District Court, Travis County, Texas.

Without more accurate information from Plaintiffs, Westinghouse can not accurately respond to these interrogatories.

Westinghouse also objects to these interrogatories as burdensome in that they require an unreasonable amount of investigation and attempt to force Westinghouse to do Plaintiffs investigative work. As noted above, some of the documents were neither generated nor produced by Westinghouse. Others were produced by Westinghouse, but it would require unreasonable efforts to track down the original source of the document and the circumstances of its creation and retention. Westinghouse is a multinational corporation that has been in existence for over 100 years in dozens of locations and has employed hundreds of thousands of employees. Finally, some of the documents have been the subject of extensive deposition questioning of their authors, recipients, or others with knowledge of them. However, instead of requesting information regarding authenticity from the author or source of the document or reviewing these depositions, Plaintiffs instead attempt to shift the burden of investigation to Westinghouse.

Westinghouse also objects these interrogatories by requiring more than 30 responses. Combined, the interrogatories require, for a variety of documents, that Westinghouse investigate and respond whether: a) they were generated or kept by Westinghouse, b) in the regular course of business, c) by an employee or representative of Westinghouse, d) with knowledge of the act, event, condition or opinion recorded, e) found in files so as to create no suspicion of authenticity, f) copies attached are true and correct copies of original documents and g) the authenticity has ever been stipulated to in any court in any case. Pursuant to the Tex. R. Civ. P. Rule 168, these voluminous interrogatories are improper.

Finally, Westinghouse objects to these interrogatories as burdensome based upon the number of documents in issue. As noted above, Plaintiffs have already served authentication interrogatories for over 100 other documents and have designated 779 exhibits against Westinghouse in this or other litigation. With 779 documents in issue and without court protection, Westinghouse can look forward to an endless supply of such requests. The purported authentication of these 779 exhibits is no less burdensome merely because Plaintiffs served these interrogatories on a piece-by-piece basis. The interrogatories go beyond the scope of proper discovery and are an abuse of the discovery process. Therefore, Westinghouse objects to Plaintiffs interrogatories in their entirety.

III.

RESPONSE

Subject to the foregoing objections Westinghouse has reasonably attempted to provide further responses. However, these responses are made without in any way waiving: 1) the right to object, on the grounds of competency, relevancy, materiality, hearsay, or any other proper grounds, to the use of any such information for any purpose, in whole or in part, in any subsequent stage or proceeding in this action or any other action; or 2) the right to object on any and all grounds, at any time, to any other discovery procedure relating to the subject matter of these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1: For each document listed below, please answer whether such document was kept and/or generated in the regular course of a regularly conducted business

activity of any Westinghouse Entity by an employee or representative of any Westinghouse Entity with knowledge of the act, event, condition or opinion recorded.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
g) WH-732	Westinghouse letter dated August 7, 1959 from D. E. Baldwin to A. J. Steiner. <u>ANSWER:</u> See general objection. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by Westinghouse and generated by a Westinghouse employee with knowledge of the act or event recorded.
h) WH-733	Westinghouse Wire Message dated August 7, 1959 from Crest to Dement. <u>ANSWER:</u> See general objection. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by Westinghouse and generated by a Westinghouse employee with knowledge of the act or event recorded.
i) WH-744	Hopeman Brothers, Inc. memo dated November 11, 1965 from B. C. Hopeman to A. L. Peters. <u>ANSWER:</u> Although this document appears to be a copy of material provided by Westinghouse to Plaintiff, this document is not a Westinghouse generated document but merely may have been found in Westinghouse's files. Accordingly, Westinghouse can provide little information regarding its origin.
j) WH-746	Westinghouse Electric Corporation P D Spec 42331Aa thru AC Rev Y or 2118. Asbestos Paper, dated June 5, 1968. <u>ANSWER:</u> See general objection. Westinghouse further objects to this interrogatory as multifaceted. However, this document appears to be Westinghouse generated document, but it is unclear who created this document and Westinghouse can provide little information regarding its creation or retention.
k) WH-747	Hopeman Brothers, Inc. memo dated 1968 from B. C. Hopeman to Wood, Marcus, Beil, Kovasevich. <u>ANSWER:</u> See general objection. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document does not appear to be a Westinghouse generated document but instead appears to have been created by Hopeman Brothers. Because Westinghouse was not even an original recipient

of the document, it can provide no information regarding its origin or authenticity. Instead, Westinghouse can state merely that the document was found in Westinghouse's files and properly produced to Plaintiffs in one of many previous document productions.

- l) WH-748 Ketchum, MacLeod & Groves, Inc. memo dated August 29, 1969 from Ray Flechenstein to S. E. Palazzolo; re: Fire Retardant System Publicity.
ANSWER: See general objections. Furthermore, Westinghouse objects to this interrogatory as multifaceted. Because this document appears to be a copy of material provided by Westinghouse to Plaintiffs but not a Westinghouse generated document, Westinghouse can provide little information regarding its authenticity or origin.
- m) WH-749 Asbestos Cloth Characteristic Material Card dated October 5, 1969 (M 41511BF thru BG Rev B)
ANSWER: See general objection. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this appears to be a Westinghouse generated document. However, due to its complex nature it is unlikely to have been created by one person. Accordingly, Westinghouse can provide little information regarding its origin or authenticity.
- n) WH-750 Brochure titled "Westinghouse Micarta Fire-retardant Wall-paneling System" dated March, 1972.
ANSWER: See general objection. Westinghouse further objects to this interrogatory as multifaceted. Additionally, Westinghouse objects to this interrogatory as vague and ambiguous because the document itself is partially illegible. Subject to these objections, this appears to be a Westinghouse generated document. However, due to its complex nature it is unlikely to have been created by one person. Accordingly, Westinghouse can provide little information regarding its origin or authenticity.
- o) WH-756 Memo dated April 17, 1974 to from R. J. Polk G. T. Laney re: Fire Retardant Sales.
ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by or for Westinghouse and maintained in the regular course of business.
- p) WH-760 Materials File Card. Re: Fiber, Heat Insulation, Powdered. February 5, 1967. Westinghouse Standards Department. Bates No. 000760.

ANSWER: See general objection. Westinghouse further objects to this interrogatory as multifaceted. Finally, Westinghouse objects to this interrogatory as vague and ambiguous in that the document itself is illegible. Accordingly, Westinghouse can provide no information regarding its origin or authenticity.

q) WH-762

Memo dated December 30, 1987 from Law E & AT Gene C. Bartsch to Bickerstaff; re: Meeting January 5, 1988.

ANSWER: See general objection. Westinghouse further objects to this interrogatory as multifaceted. This document appears to be a document which Westinghouse produced in conjunction with the deposition of Wayne Bickerstaff of the Industrial Hygiene Department. Accordingly, Westinghouse refers Plaintiffs to this deposition, which, upon information and belief, is in Plaintiffs' counsel's possession.

INTERROGATORY NO. 2: For each document listed below, please answer whether such document was found in your files in such a condition as to create no suspicion concerning its authenticity.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
a) WH-716	Westinghouse memo dated January 20, 1956 from George F. Sutton to D. E. Baldwin; subject: Customer Order Development D-8-56 Moore McCormick. <u>ANSWER:</u> Yes.
b) WH-717	File No. M 20403 AA through AK, Asbestos Fiber <u>ANSWER:</u> Westinghouse objects to this interrogatory as vague and ambiguous as this exhibit appears to relate to an entire file of approximately 75 other documents. Furthermore, some of the pages contained herein are illegible, indecipherable, or mutilated. Accordingly, Westinghouse can not properly or accurately respond to this request.
c) WH-718	Westinghouse Process Specification 600916 <u>ANSWER:</u> Yes.
d) WH-719	Brochure titled "Westinghouse Micarta... the industrial plastic" No. B-3184-D. <u>ANSWER:</u> Yes.

- e) WH-720 Instruction Book No. 1430-C95 "600 Kw Turbine Generator Units."
ANSWER: Westinghouse objects to this interrogatory as vague and ambiguous since the exhibit is illegible in part and contains duplicates and blank pages. Furthermore, this "exhibit" does not appear to consist of one document but instead may be a compilation of more than one manual. Therefore, it is unclear exactly what is comprised in this "exhibit."
- f) WH-728 Memo dated February 21, 1958 from T. B. Gettys to Steam Supervisors' Letter #58-10, Mailing List 6-A; re: Field Application of Turbine Insulation.
ANSWER: Westinghouse objects to this interrogatory as vague and ambiguous because the exhibit number is illegible. Subject to this objection, Westinghouse responds: yes.
- g) WH-732 Westinghouse letter dated August 7, 1959 from D. E. Baldwin to A. J. Steiner.
ANSWER: Yes.
- h) WH-733 Westinghouse Wire Message dated August 7, 1959 from Crest to Dement.
ANSWER: Yes.
- i) WH-744 Hopeman Brothers, Inc. memo dated November 11, 1965 from B. C. Hopeman to A. L. Peters.
ANSWER: Yes.
- j) WH-746 Westinghouse Electric Corporation P D Spec 42331Aa thru AC Rev Y or 2118. Asbestos Paper, dated June 5, 1968.
ANSWER: Yes.
- k) WH-747 Hopeman Brothers, Inc. memo dated 1968 from B. C. Hopeman to Wood, Marcus, Beil, Kovasevich.
ANSWER: See general objection and objection and response to Interrogatory No. 1 above. Subject to these objections, this document appears to be in a condition in which it was produced to Plaintiffs by Westinghouse.
- l) WH-748 Ketchum, MacLeod & Groves, Inc. memo dated August 29, 1969 from Ray Flechenstein to S. E. Palazzolo; re: Fire Retardant System Publicity.
ANSWER: See general objection and objection and response to Interrogatory No. 1 above. Subject to these objections, this document appears to be in a condition in which it was produced to Plaintiffs by Westinghouse.

- m) WH-749 Asbestos Cloth Characteristic Material Card dated October 5, 1969 (M 41511BF thru BG Rev B)
ANSWER: Yes.
- n) WH-750 Brochure titled "Westinghouse Micarta Fire-retardant Wall-paneling System" dated March, 1972.
ANSWER: Yes.
- o) WH-756 Memo dated April 17, 1974 to from R. J. Polk G. T. Laney re: Fire Retardant Sales.
ANSWER: Yes.
- p) WH-760 Materials File Card. Re: Fiber, Heat Insulation, Powdered. February 5, 1967. Westinghouse Standards Department. Bates No. 000760.
ANSWER: See general objection and objection and response to Interrogatory No. 1.
- q) WH-762 Memo dated December 30, 1987 from Law E & AT Gene C. Bartsch to Bickerstaff; re: Meeting January 5, 1988.
ANSWER: Yes.

INTERROGATORY NO. 3: Has Westinghouse stipulated or agreed to the authenticity of any of the documents referenced in Interrogatory No. 2 with any person prior to the date of these Interrogatories?

ANSWER: Except as noted below, Westinghouse is not aware of any stipulation to the authenticity of these documents except to the extent Westinghouse may have stated that the document was provided by Westinghouse via document production in various cases.

- a) WH-717 File No. M 20403 AA through AK, Asbestos Fiber
ANSWER: See general objection and objection and response to interrogatory number 2 above.
- b) WH-719 Brochure titled "Westinghouse Micarta... the industrial plastic" No. B-3184-D.
ANSWER: Although Westinghouse has not stipulated to the authenticity of this document, this document has been made an exhibit to the deposition of David Baldwin, a copy of which, upon information and belief, is in Plaintiffs' counsel's possession.

c) WH-720

Instruction Book No. 1430-C95 "600 Kw Turbine Generator Units."

ANSWER: See general objection and objection and response to Interrogatory No. 2 above.

WHEREFORE, Westinghouse prays that after notice and a hearing, this Court sustain these objections and issue an Order protecting Westinghouse from answering these or any further interrogatories regarding authentication of Plaintiffs' exhibits designated against Westinghouse, and for such other and further relief to which Westinghouse may be entitled.

Respectfully submitted,

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By:

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ATTORNEYS FOR DEFENDANT
WESTINGHOUSEELECTRIC CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing instrument has been served on counsel for Plaintiffs via hand delivery and to all other counsel of record via regular mail on this the ____ day of January, 1994.

ROBERT E. THACKSTON

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