

CLYDE CURTIS CLIPPARD, et al.

Plaintiffs,

V.

KEENE CORPORATION, et al.,

Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

331ST 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 four documents on 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, many 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.

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

¹ *Swinson, et al. v. Keene Corporation, et al.*, Cause No. 92-16996, 201st District Court, Travis County, Texas; *Burnham, et al. v. Keene Corporation, et al.*, Cause No. 93-01206, 250th District Court, Travis County, Texas; *Perkins et al. v. Keene Corporation, et al.*, 353rd District Court, Travis County, Texas.

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.

Finally, Westinghouse objects to these interrogatories as burdensome based upon the number of documents in issue. Plaintiffs assertion in their Motion to Compel that they are seeking authentication of only four documents is misleading. 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 is a true and correct duplicate of a genuine and authentic document.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
ee) WH-759	deleted
ff) WH-768	Westinghouse memo dated August 29, 1989 from R. A. Cancilla; re: Asbestos Notification. <u>ANSWER:</u> This document appears to be a true and correct duplicate of a genuine and authentic document.
gg) WH-769	Soil & Material Engineers letter dated May 20, 1989 from J. Phillips, B. Lester and Mike Cashio to Mike Cannon re: Westinghouse Micarta Division, Hampton South Carolina, Soil & Material Engineers Project #1238-89-164, with Asbestos Survey. <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 was merely found in Westinghouse's files. Accordingly Westinghouse can provide little information regarding its authenticity.
hh) WH-771	deleted

ii) WH-772 deleted

jj) WH-773 deleted

INTERROGATORY NO. 2.: 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.

EXHIBIT NO.

DESCRIPTION

cc) WH-756

Memo dated April 17, 1974 to G. T. Laney re: Fire Retardant Sales.

ANSWER: See general objection. Westinghouse further objects to this interrogatory as vague and ambiguous because the document provided is incomplete. Westinghouse can not adequately respond to this interrogatory without further information.

dd) WH-758

Asbestos. Measurement Requirements, Compliance, Impact, Medical Requirements, Permissible Concentrations, Record Requirements, Regulated Area. March, 1976.

ANSWER: No.. This document was produced by Westinghouse but its source is unknown.

ee) WH-759

deleted

ff) WH-768

Westinghouse memo dated August 29, 1989 from R. A. Cancilla; re: Asbestos Notification.

ANSWER: Yes.

gg) WH-769

Soil & Material Engineers letter dated May 20, 1989 from J. Phillips, B. Lester and Mike Cashio to Mike Cannon re: Westinghouse Micarta Division, Hampton South Carolina, Soil & Material Engineers Project #1238-89-164, with Asbestos Survey.

ANSWER: Because this document was not generated by Westinghouse, Westinghouse can provide no information regarding its creation.

hh) WH-771	deleted
ii) WH-772	deleted
jj) WH-773	deleted

INTERROGATORY NO. 3.: 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>
cc) WH-756	Memo dated April 17, 1974 to G. T. Laney re: Fire Retardant Sales. <u>ANSWER:</u> See objection and response to Interrogatory Number 2 above.
dd) WH-758	Asbestos. Measurement Requirements, Compliance, Impact, Medical Requirements, Permissible Concentrations, Record Requirements, Regulated Area. March, 1976. <u>ANSWER:</u> Because the source of this document is unknown, Westinghouse can provide no information regarding its authenticity.
ee) WH-759	deleted
ff) WH-768	Westinghouse memo dated August 29, 1989 from R. A. Cancilla; re: Asbestos Notification. <u>ANSWER:</u> This document contains extraneous information which causes a suspicion concerning its authenticity.
gg) WH-769	Soil & Material Engineers letter dated May 20, 1989 from J. Phillips, B. Lester and Mike Cashio to Mike Cannon re: Westinghouse Micarta Division, Hampton South Carolina, Soil & Material Engineers Project #1238-89-164, with Asbestos Survey. <u>ANSWER:</u> Because this document was not generated by Westinghouse, Westinghouse can provide no information regarding its authenticity.
hh) WH-771	deleted
ii) WH-772	deleted

INTERROGATORY NO. 4.: 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.

cc) WH-756

Memo dated April 17, 1974 to G. T. Laney re: Fire Retardant Sales.

ANSWER: Westinghouse objects to responding to this interrogatory for this incomplete document. Subject to the foregoing objections, Westinghouse responds that it is not aware of any stipulation to the authenticity of this document in its current state. However, Westinghouse may have stated that portions of this document were provided by Westinghouse via document production in various cases.

dd) WH-758

Asbestos. Measurement Requirements, Compliance, Impact, Medical Requirements, Permissible Concentrations, Record Requirements, Regulated Area. March, 1976.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the document was provided by Westinghouse via document production in various cases.

ff) WH-768

Westinghouse memo dated August 29, 1989 from R. A. Cancilla; re: Asbestos Notification.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the document was provided by Westinghouse via document production in various cases.

gg) WH-769

Soil & Material Engineers letter dated May 20, 1989 from J. Phillips, B. Lester and Mike Cashio to Mike Cannon re: Westinghouse Micarta Division, Hampton South Carolina, Soil & Material Engineers Project #1238-89-164, with Asbestos Survey.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the document was provided by Westinghouse via document production in various cases.

WHEREFORE, PREMISES CONSIDERED, Westinghouse prays that after notice and 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
WESTINGHOUSE ELECTRIC
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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