

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLAINTIFF'S EXHIBIT

WH-1112

IN RE ASBESTOS PRODUCTS
LIABILITY LITIGATION (NO. VI)

MDL No. 875

This Document Relates
to All Actions

AFFIDAVIT

I, C. Wayne Bickerstaff, after being duly sworn, do depose and say:

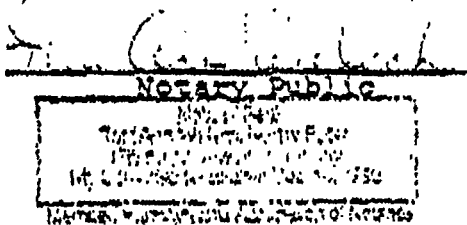
1. I am, and have been since 1976, the Manager of Industrial Hygiene and Materials Transportation with the Westinghouse Electric Corporation, and I have personal knowledge of the matters set forth in this affidavit.
2. I recently have become aware of a 22 page draft memorandum (the "Draft Memorandum") prepared by Jeffrey J. Bair in late 1987 concerning proposed document retention guidelines for the Westinghouse Industrial Hygiene Department ("Industrial Hygiene"). Initially, as a point of clarification, although my name appears typed at the end of the Draft Memorandum, I did not participate in the drafting of it. I was, however, aware at that time of Mr. Bair's work on formulating proposed guidelines for Industrial Hygiene document retention and assisted Mr. Bair in his review, inventory and categorization of the types of files maintained by Industrial Hygiene.
3. I am also familiar with the other memoranda related to the Draft Memorandum on which my name appears as the author or a recipient. It is my understanding that these other memoranda are being made available along with this Affidavit to certain plaintiffs' counsel pursuant to Westinghouse's agreement to do so in its withdrawal of its claim of privilege with respect to the Draft Memorandum.
4. I do not recall having been informed by Mr. Bair in early March 1988 to begin discarding certain categories of Industrial Hygiene documents and, in any event, did not implement any such advice.
5. The last communication I recall receiving prior to January 8, 1993 which related to this proposal was that the proposal would not proceed due to the pending insurance coverage litigation.

No files or documents of the Westinghouse Industrial Hygiene Department were ever discarded in response to, or as a result of, the general proposal or the specific guidelines set forth in the Draft Memorandum or any of the other memoranda related to the Draft Memorandum.

Further the affiant sayeth not.

C. Wayne Bickerstaff
C. Wayne Bickerstaff

HORN TO and subscribed
before me this 17th day
of March, 1993.



WESTINGHOUSE ELECTRIC CORPORATIONTENDER OF DOCUMENTS

Westinghouse Electric Corporation ("Westinghouse") hereby tenders documents from its files relating to a proposal for retention of documents from its Industrial Hygiene Department as discussed in a certain draft memorandum prepared in late 1987 or early 1988 by Jeffrey J. Bair, a lawyer in the Westinghouse Law Department. This tender is directed to all liaison counsel in the asbestos cases pending in the United States District Court for the Eastern District of Pennsylvania, including those transferred to that court by the Panel on Multidistrict Litigation, and to lead counsel in certain state cases to which Westinghouse is a party.

This submission confirms what Westinghouse has maintained since issues were first raised relating to the 1987-88 draft memorandum -- that the proposed program always contemplated retaining documents relating to litigation, and that no documents were discarded as a result of the draft memorandum. Thus, in his February 9, 1988 memorandum to Industrial Hygiene, Mr. Bair expressly stated that "[o]f course, all documentation which relates to asbestos, welding fumes and PCBs, and any other litigation which you are aware of, should be maintained." The documents hereby tendered also indicate that on March 21, 1988 a decision was made not to proceed with the program and, as stated in the affidavits of Mr. Bair and Mr. Bickerstaff -- and as has already been testified to in various proceedings -- no documents were destroyed as a result of this proposal.

Westinghouse believes that issues relating to these documents are wholly irrelevant, and expressly reserves the right to assert the lack of relevance in any proceeding in which it is or may be a party. Westinghouse has agreed to waive any applicable claim of privilege with respect to the documents hereby being tendered that relate to the document proposal outlined in the 22-page draft memorandum; however, Westinghouse does not, by so doing, waive any applicable privilege with respect to any related matters or documents not hereby tendered.

Westinghouse Electric Corporation
By Counsel

McGuire Woods Battle & Boothe
One James Center
Richmond, VA 23219
(804) 775-1000

1 assumptions for this project?

2 A The underlying assumption, going back to your
3 prior question, was we had to retain all of the
4 asbestos documents, but what we were not clear on
5 was what was the law for statutory and regulatory
6 requirements, such as OSHA, on keeping other types
7 of documents.

8 So what we needed to do was determine
9 what types of documents were out there, and what
10 types of requirements existed for the retention of
11 those documents.

12 Q All right, sir. What next happened in the
13 chronology with this memo?

14 A After the conversation in the latter part of 1990
15 with Sam Pitte, I asked Jeff Bair to determine the
16 categories of documents in industrial hygiene, and
17 to examine any regulatory or statutory
18 requirements for the retention of those documents.
19 And that's what led to this memo which is
20 Plaintiff's Exhibit 1.

21 Q All right, sir. Now, as a document, was that
22 document finalized, or how would you characterize
23 the document there?

24 A It's clearly just a draft of a memorandum. It's
25 clearly not a final memorandum. One can tell that.

1 litigation was threatened, if it was reasonably
2 anticipated or foreseeable, similarly the parties
3 ought to keep the documents.

4 Q All right, sir. In 1987 was asbestos litigation
5 pending against Westinghouse?

6 A Yes, it was.

7 Q Was other litigation pending against Westinghouse?

8 A Yes, it was.

9 Q What categories?

10 A We had two other basic categories of toxic tort
11 cases. One was welding rod toxic litigation, and
12 another one was PCB toxic tort litigation. There,
13 of course, were other types of litigation as well.
14 One of those was that Westinghouse had filed in
15 1987 a lawsuit against its insurance carriers
16 seeking insurance recovery for these types of
17 cases and for other types of things as well.

18 Q All right. Let me take you back to the memo that
19 I think you've already indicated to the Judge that
20 the assignment was made to study a document
21 retention and destruction program for industrial
22 hygiene.

23 A Yes.

24 Q All right, sir. And what was the underlying
25 assumption or what were the underlying

1 Q And after your consultation with them, what
2 decision did you reach?

3 A That we needed to meet again with Mr. Pitts and
4 discuss this document retention program in light
5 of the insurance recovery cases, so that in, I
6 would say, December, March, or at least in the
7 first quarter of 1988, we did meet with Sam Pitts.
8 The "we" included Jeff Blair, included a lawyer
9 from Minneapolis, and myself.

10 And we recommended to the Board, I think, to
11 do that in December, or at least in the first
12 quarter of 1988. I think we had a meeting in
13 March of 1988. We must have had a meeting in
14 March of 1988, for I think that was the date
15 that we had the meeting.

16 We had a meeting in March of 1988, and I think
17 that was the date that we had the meeting.
18 And I think that was the date that we had the meeting.

19 Q And what happened as a result of that meeting?

20 A We decided to do it.

21 Q So that in March of 1988 that the
22 project was concluded with a decision that no
23 documents should be destroyed?

24 A That's correct.

25 I did stress, I think, to be very clear that

1 just referred to, when Mr. Pitts said that the
2 program could be implemented, then Jeff Bell had
3 to determine how to implement the program. The
4 how in this kind of situation was a pretty big
5 question and it meant that he had to determine
6 what the limits were on what he could do. He
7 had to determine what the limits were on what he
8 had to do. He had to determine what the limits were
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