

Westinghouse
Electric Corporation

Law Department

Westinghouse Building
Gateway Center
Pittsburgh, Pennsylvania 15222
Telecopier 412-642-4905

October 11, 1991

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Honorable Edwin G. Salyers
Administrative Law Judge
Occupational Safety and Health
Review Commission
1365 Peachtree Street, N.E., Room 240
Atlanta, Georgia 30367

Re: Martin v. Westinghouse Electric Corporation, Docket No. 91-1874

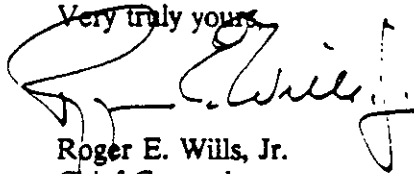
Dear Judge Salyers:

In accordance with the Rules of the Commission, I enclose the originals and one copy of the Answer to the Complaint, received by Westinghouse Electric Corporation on September 13, 1991, in the above-referenced matter and the Notice of Appearance of the undersigned counsel for Westinghouse.

I request that the originals be filed and that a conformed copy of each be returned to me in the enclosed preaddressed envelope.

As shown in the Certificate of Service attached to the Answer, I have served copies of the enclosed documents on the Complainant and the Steward of the Millwrights Union Local 1544.

Very truly yours,


Roger E. Wills, Jr.
Chief Counsel

Enclosure



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IN RE: ALBIRAIMIS

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Honorable Edwin G. Salyers
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cc: (w/enclosures)

Ralph D. York, Esq.
Associate Regional Solicitor
United States Department of Labor
2002 Richard Jones Road, Suite B-201
Nashville, Tennessee 37215

Mr. Harry Roberts, Steward
Millwrights Union Local 1544
295 Plus Park Boulevard, Suite 203
Nashville, Tennessee 37217

84-90947-1111
IN RE: ABRAMS
DECEMBER 1 1991

BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
OF THE
UNITED STATES OF AMERICA

SECRETARY OF LABOR,	)	OSHRC DOCKET NO.
	)	
Complainant,	)	<u>91-1874</u>
	)	
v.	)	REGION IV
	)	
WESTINGHOUSE ELECTRIC CORPORATION,	)	
	)	<u>ANSWER TO COMPLAINT</u>
Respondent.	)	

Now comes Westinghouse Electric Corporation, the Respondent, by and through its undersigned counsel, files this answer and admits, denies and alleges as follows:

I.

Respondent denies each and every allegation contained in the complaint not otherwise specifically admitted herein.

II.

The Respondent denies the allegation of a violation of Section 5(a)(2) of the Act and the Safety and Health Regulations contained in the preamble to the Complaint. The Respondent neither admits or denies the allegations of Paragraph I of the Complaint in that these allegations set forth conclusions of law.

III.

The Respondent admits in part and denies in part the allegations of Paragraph II of the Complaint. The Respondent has a place of business in Chicago, Illinois and a principal place of

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business in Pittsburgh, Pennsylvania. Further, Respondent is not required to admit or deny the allegations in Paragraph II of the Complaint to the extent that they set forth conclusions of law as to jurisdiction.

IV.

The Respondent admits in part and denies in part the allegations of Paragraph III of the Complaint. The Respondent admits that an inspection of the workplace took place on May 30 and 31, 1991 by a representative of the Complainant and that it received a form entitled Citation and Notification of Penalty.

V.

The Respondent admits in part and denies in part the allegations of Paragraph IV of the Complaint. Respondent admits that the form entitled Citation and Notification of Penalty is attached as Exhibit A and denies the allegations that the violations, which are the subject of the Notice of Contest, occurred at the workplace.

VI.

The Respondent admits in part and denies in part the allegations of Paragraph V of the Complaint. The Respondent admits that Respondent submitted a notification of intent to contest the Citation and Notification of Penalty Items No. 1 and 2b. The Respondent is without sufficient information and knowledge to form an opinion or belief as to the date the Complainant received the Respondent's notification. The Respondent neither admits or denies the remainder of Paragraph V in that these allegations set forth conclusions of law.

VII.

The Respondent admits in part and denies in part the allegations of Paragraph VI of the Complaint. The Respondent admits that it employed employees at the workplace and that one

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or more employees were represented by the United Brotherhood of Millwrights, Millwrights Local 1544. The Respondent denies the remaining allegations of Paragraph VI.

VIII.

The Respondent denies the allegations contained in Paragraph VII of the Complaint.

IX.

A. Respondent denies the allegations contained Paragraph VIII A of the Complaint that it violated 29 CFR Section 1926.58(f)(i). Respondent admits that the violation alleged in Paragraph VIII of the Complaint is also alleged in the form attached to the Complaint as Exhibit A, entitled Citation and Notification of Penalty, as Citation No. 1, Item No. 1.

B. The Respondent admits in part and denies in part the allegations of Paragraph VIII B of the Complaint. The Respondent admits that, under contract, its employees were engaged in the performance of maintenance and repair at a facility operated by the Tennessee Valley Authority. Respondent lacks sufficient information and knowledge as to the remaining allegations of Paragraph VIII B of the Complaint.

C. The Respondent admits in part and denies in part the allegations of Paragraph VIII C of the Complaint. Respondent denies that it violated 29 CFR Section 1926.58(f)(2)(i). The Respondent admits that it did not perform initial airborne monitoring before maintenance and repair operations were conducted on turbine units 1, 2 and 3.

1. With respect to Paragraph VIII C 1 of the Complaint, Respondent admits that initial airborne monitoring was not conducted at the initiation of the asbestos encapsulation on turbine units 1, 2 and 3.

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3. The condition of the fixed cloth insulation was verified and confirmed by a representative of the Tennessee Environmental Protection Agency before the encapsulation operation was conducted by one employee.

4. Respondent further alleges that only after this data was obtained and reviewed did one employee encapsulate the fixed cloth insulation.

B. The provisions of 29 CFR Sections 1926.58(f)(2)(i) and (ii) authorize encapsulation without airborne monitoring if data is available with respect to the work to be performed. The provisions of 29 CFR Section 1926.58(f)(2)(ii) applied to this work.

C. The employees engaged in the repair operations on turbine units 1, 2 and 3 were not engaged in activities that required work that could release asbestos fibers in excess of the action level and/or excursion limit.

D. Prior to initiation of work on turbine units 1, 2 and 3 Respondent had bulk samples taken from the areas covering the bolts and flanges to determine if asbestos was present in these areas. Prior to work on these units Respondent received the test results of the samples taken on each unit and these tests demonstrated that asbestos was not present in these areas.

E. The workplace was not subject to 29 CFR 1926.58 since the repair operations on turbine units 1, 2 and 3 did not involve asbestos. The articles, or class of articles, that were being repaired are not identified in 29 CFR 1926.58.

F. The diligence of Respondent and its knowledge of the turbine units 1, 2 and 3 made it clear that the employees would not be exposed to asbestos.

IN RE: ABRAHAM DECEMBER 1992

B. The Respondent admits in part and denies in part the allegations of Paragraph IX B of the Complaint. The Respondent admits that, under contract, its employees were engaged in the performance of maintenance and repair at a facility operated by the Tennessee Valley Authority. Respondent lacks sufficient information and knowledge as to the remaining allegations of Paragraph IX B of the Complaint.

D. Respondent denies the allegations contained in paragraph IX D.

F. Respondent denies the allegations contained in paragraph IX F.

G. Respondent denies the allegations contained in paragraph IX G.

DEFENSES TO PARAGRAPH IX OF THE COMPLAINT

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B. The Respondent maintained material safety data sheets in a red three ring binder in the trailer office.

C. The employees had daily access to the trailer office which contained:

1. The only telephone for the employees to use;
2. The employees' timecards;
3. The shop drawings for the turbines and the project;
4. All payroll activities; and
5. The manuals that the employees were required to use from time to time in order to perform their assigned jobs.

D. The office was the only feasible structure in which documents could be maintained on the worksite that was accessible to Respondent and its employees; that was heated/air conditioned; that was indoors; and that was not subject to adverse weather conditions.

E. The Employees also had access to the trailer office to obtain tools or materials from time to time as the employees required.

F. The employees had access to the trailer office to also review the material safety data sheets in the red three ring binder.

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DECEMBER 1992

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Roger E. Wills, Jr.
Attorney for

Roger E. Wills, Jr.
Attorney for
Westinghouse Electric Corporation
Room 2100
Westinghouse Building
11 Stanwix Street
Pittsburgh, PA 15222
(412) 642-5815

Nashville, Tennessee

NOTICE OF APPEARANCE

In the Matter of: Martin v. Westinghouse Electric Corporation
Docket No. 91-1874

The undersigned hereby enters an appearance as a representative
of Westinghouse Electric Corporation in the above-captioned matter.

Name: Roger E. Wills, Jr.Date: October 11, 1991Title: Chief CounselSignature: [Signature]

Employer/Organization:

Westinghouse Electric Corporation

Nature of Organization:

Manufacturing

Address:

Westinghouse Building, Room 210011 Stanwix StreetPittsburgh, PA 15222

Phone:

(412) 642-5815DESIGNATION OF REPRESENTATIVE

I hereby certify that Roger E. Wills, Jr., whose
appearance is noted above, is authorized to act as my representative
in the above matter, to discuss all facts and information related
thereto, to negotiate a settlement, and to accept service of pleadings
and other legal process on my behalf.

Name: Robert E. PetersDate: October 11, 1991Title: Assistant SecretarySignature: [Signature]

Employer/Organization:

Westinghouse Electric Corporation

Nature of Organization:

Manufacturing

Address:

Westinghouse Building, Room 172811 Stanwix Street, Pittsburgh, PA 15222

Phone:

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