

Telephone: (702) 385-4202

BRADLEY & MERRELL
c/o Jones, Jones, Close & Brown
300 South Fourth Street, Seventh Floor
Las Vegas, Nevada 89101-6026

Fax: (702) 385-1655

July 14, 1993

VIA HAND DELIVERY

Honorable Lawrence R. Leavitt
Magistrate Judge of the United States District Court
District of Nevada
300 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Re: Nevada Power Company v. Monsanto Company, et al.
USDC, District of Nevada Case CV-S-89-555-LDG (LRL)

Dear Judge Leavitt:

Enclosed is a courtesy copy of "Plaintiff Nevada Power Company's Reply to Its Motion for Reconsideration of Magistrate Judge's Order of May 17, 1993" in the above-referenced matter.

Please note, for your reference, we have attached copies of documents already in the Court record (nos. 363, 376, 395 and 398) which are referred to in the Reply.

Sincerely,

BRADLEY & MERRELL



DEBORAH N. MAILANDER

DNM:lsg
Enclosure

cc: Steven R. Kuney, Esq. (w/enclosure via telefax)
Arvin Maskin, Esq. (w/enclosure via telefax)
J. Bruce Alverson, Esq. (w/enclosure via telefax)
John L. Thorndal, Esq. (w/enclosure via telefax)
Bruce A. Featherstone, Esq. (w/enclosure via telefax)

I. Areas of Agreement for Stipulations

A. Preserving the right to object to specific questions, Westinghouse agrees as a general matter that it has waived privilege claims as to the subject matter of Plaintiff's Exhibit 1212, any discussions involving the decisions to prepare it, its preparation, discussions regarding the decision not to implement the program, and the decision not to implement the program, whether participants received commendations or reprimands because of their involvement with the subject matter of Plaintiff Exhibit 1212; providing however, that Westinghouse reserves its privilege claim as to _____ documents that were appended to Exhibit 1212; and providing further that Westinghouse does not concede that documents lost their privileged status merely because they were reviewed by Mr. Bair. Generally, Westinghouse will have no objections in the following areas, subject to its right to object to specific questions:

1. conversations between Mr. Bair and Mr. Bickerstaff and Mr. Lawrence concerning Plaintiff's Exhibit 1212.

2. the purpose and meaning of Plaintiff's exhibit 1212);

3. Specific documents, cases or issues raised in plaintiff's exhibit 1212 subject to appendices subject to claimed privileges; COME BACK TO THIS ONE.

4. the 1986 company wide sweep for PCB documents. MAKE SEPARATE ISSUE.

B. Westinghouse will bring to the Bair/Bickerstaff depositions any written record of commendations or reprimands given to Westinghouse personnel regarding the program described in plaintiff's exhibit 1212.

C. Westinghouse will consider bringing portions from the personnel files of Bair, Bickerstaff, Lawrence, and Pashke to their depositions if Nevada Power identifies narrow categories.

D. As a general proposition, Westinghouse does not anticipate any objections based on privilege during Mr. Pashke's deposition relating to the mechanics of the 1986 collection of PCB documents in Pittsburgh and its relationship if any to Plaintiff's exhibit 1212. Westinghouse is attempting to locate Mr. Pashke and envisions making him available for a deposition which may have to take place after July 23.

E. Westinghouse intends to submit to the court for in camera review _____ documents that were originally attached Plaintiff's exhibit 1212. Westinghouse will provide a copy of the cover letter to Nevada Power and indicate in that letter that

Nevada Power wishes to make a short presentation to the Court of the related privilege issues.

II. Issues to Be Discussed Further

A. A method to allow Nevada Power to verify whether or not all of the documents relating to PCBs, dioxins, and furans in Industrial Hygiene at the time of the Bair/Bickerstaff 22 page memoranda are still in Westinghouse's possession. REVISIT IN MORNING.

1. Westinghouse has proposed a method in its motion. Should Nevada Power wish to inspect documents after the relevant depositions, Westinghouse would reserve the right to object on grounds of burdensomeness and relevance but would not object based on the discovery deadline. Paul Merrell suggested that the Westinghouse option might be more acceptable to Nevada Power if the depositions could take place on-site so that records could be reviewed as they are identified in the deps.

2. David Schalk suggested that he be provided with an index of the documents in Industrial Hygiene in 1989 and the most recent index and he be permitted to select a few specific documents for production. David Schalk also suggested that a method of verification would be physical inspection of the premises to see if they correspond with the description of the microfiche and files described by Mr. Bair in plaintiff's exhibit 1212. Paul Merrell also suggested that the type of documents produced relating to PCBs, dioxins, and furans be compared to the type of documents in Westinghouse's possession for other chemicals.

3. Peggy and Konrad will discuss whether or not they can and will produce an index of the documents. Nevada Power will consider whether they would be satisfied with Westinghouse's proposal. REVISIT IN MORNING. Possibility that Westinghouse might be willing to identify all PCB and dioxin/furan documents produced that came from IH files.

B. The parties discussed but did not decide whether they are willing to extend discovery regarding the destruction of documents beyond the July 23, 1993 deadline. LINKED TO WESTINGHOUSE PROPOSAL ABOVE AND AVAILABILITY OF DEPONENTS.

C. Westinghouse and Nevada Power did not reach agreement as to which state's law governs objections and privileges at the Bair, Bickerstaff, Lawrence, and Pashke depositions, but parties believe they will be able to agree on this topic prior to commencement of the deps.

D. Westinghouse agreed to produce prior to the depositions next week prior depositions, affidavits, and hearing testimony of

the upcoming deponents regarding the Plaintiff's Exhibit 1212 issue, plus the insurance litigation deposition of Wayne Bickerstaff; Westinghouse reserves for further discussion the potential production of similar materials for all persons on its witness list. MOVE TO AGREED LIST.

E. Westinghouse and Nevada Power did not concur on the best method of verifying the content of Mr. Bair's handwritten notes relating to the destruction of documents. Nevada Power has provided a draft typewritten transcription for preview by Mr. Bair. Westinghouse suggested that Nevada Power ask about specific words or phrases. Westinghouse agreed to consider Nevada Power's proposal that Mr. Bair review, correct, and attest to Nevada Power's type written version. REVISIT IN MORNING.

F. Nevada Power is only interested in post-1988 document retention policies insofar as they relate to the program outlined in Plaintiff's Exhibit 1212 and the 1986 company-wide document sweep. Nevada Power believes that these later document retention policies would only become relevant to the extent they were offered as a defense to whatever documents, if any, that existed in the above collections PLAY WITH LANGUAGE. Nevada Power would like a copy of Westinghouse's document retention or related policies which related to the 1986 document collection and the documents reviewed by Mr. Bair. There may have been a document produced as an attachment to the Francis Gary affidavit.

III. Issues to be discussed with Judge Leavitt:

A. Production of documents relating to dioxins and furans including a training guideline mentioned documents produced by Westinghouse in response to Nevada Power's motion for default. Deborah Mailander faxed Konrad a list of such documents. Konrad has agreed to check whether these documents have been/will be produced.

.....

Add to list from 7-13-93 phonecon with Leen, Cailteux, Merrell, Schalk:

X. Merrell faxed copy of Westinghouse brief indicating existence of an index for the 1985-86 company wide sweep for PCB documents. REVISIT IN MORNING.

Korad had concern about motions not filed for some materials. Paul suggested that they be identified today so motions could be filed in morning and all related decisions made in one session. PAUL will make list of issues needing a further motion and discuss in morning whether further motion or hearing is needed. REVISIT IN MORNING.

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 14, 1993.

TO: Peggy A. Leen, Esq.

FAX #: (702) 366-0327

PHONE #: (702) 366-0622

FROM: Paul Merrell

CLIENT/MATTER: Nevada Power v. Monsanto, et al.

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Agreements re: Stipulation

NUMBER OF PAGES (including cover page): Four (4)

**MESSAGE: PEGGY, THIS IS AS FAR AS KONRAD AND
I GOT LAST NIGHT.**

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

**IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615**

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024. (702) 385-1655

DATE: July 14, 1993

TO: Peggy A. Leen, Esq.

FAX #: (702) 366-0327

PHONE #: (702) 366-0622

FROM: Paul Morrell

CLIENT/MATTER: Nevada Power v. Morisanto, et al.

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Agreements re: Stipulation

NUMBER OF PAGES (including cover page): Four (4)

**MESSAGE: PEGGY, THIS IS AS FAR AS KONRAD AND
I GOT LAST NIGHT.**

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615

TRANSMISSION REPORT

THIS DOCUMENT WAS CONFIRMED
(REDUCED SAMPLE ABOVE - SEE DETAILS BELOW)

** COUNT **

TOTAL PAGES SCANNED : 4

TOTAL PAGES CONFIRMED : 4

*** SEND ***

No.	REMOTE STATION	START TIME	DURATION	#PAGES	MODE	RESULTS
1	PEGGY LEEN	7-14-83 12:38PM	2' 23"	4/ 4	EC	COMPLETED 9600

TOTAL 0:02'23" 4

NOTE:

No. : OPERATION NUMBER 48 : 4800BPS SELECTED EC : ERROR CORRECT G2 : G2 COMMUNICATION
PD : POLLED BY REMOTE SF : STORE & FORWARD RI : RELAY INITIATE RS : RELAY STATION
MB : SEND TO MAILBOX PG : POLLING A REMOTE MP : MULTI-POLLING RM : RECEIVE TO MEMORY