

Telephone: (702) 385-4202

BRADLEY & MERRELL
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300 South Fourth Street, Seventh Floor
Las Vegas, Nevada 89101-6026

Fax: (702) 385-1655

July 18, 1993

VIA TELEFAX

Konrad L. Cailteux
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

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

Dear Konrad:

I am disappointed that the Court ruled that it would be unnecessarily disruptive for me to obtain personal knowledge that the Bair/Bickerstaff inventory of Westinghouse Industrial Hygiene documents still exists. I thought the simplest way to verify Westinghouse's contention that the documents exist would be to take a look at them.

In order to make the most of a less than ideal situation, I need to verify the existence of the Industrial Hygiene documents by deposing Westinghouse employees with personal knowledge of the whereabouts of the documents at issue. Therefore, I wish to depose your witnesses pursuant to part 3 of Friday's Order, a copy of which is attached, beginning at 9:00 a.m. on Tuesday, July 20, 1993. To save time, I ask that you provide me with all documents coming under part 4 of the Order tomorrow, Monday, July 19, 1993.

On Tuesday, I hope to discover all of Westinghouse's admissible evidence that the documents at issue exist. All hearsay testimony must be followed by testimony from the declarant with personal knowledge. Please have such people readily available to testify. This process could take all week, but I am going to try to finish on Tuesday. If the attorneys who testify about their investigation did not actually look at all of the documents inventoried by Bair and Bickerstaff, I need to depose their paralegals, or secretaries, or whoever saw them.

Konrad L. Cailteux
July 18, 1993
Page 2

Please note that the Westinghouse employees responsible for routine document destruction are presumed to have knowledge regarding whether or not the documents of interest were destroyed. I wish to depose someone with knowledge of Westinghouse's document destruction system. Ideally, I would want to depose the person who would have been responsible for destroying the documents of interest, if any were destroyed. I would ask that such a witness be prepared to show me disposal logs so we could determine what, if any, inventoried Industrial Hygiene documents were on them.

My intention this week is to set the "smoking gun" issue to rest once and for all. My role is to gather evidence. Yours is to provide it. If the documents exist, it would be in your client's best interest for you to prove it on Tuesday. Please let me know how I can cooperate to make that task as easy as possible for you. I know you understand why I cannot be satisfied with hearsay or less than fully responsive answers. I hope by the end of the week you will respect the fact that I am trying to be as considerate of your client as I possibly can, consistent with thoroughly exploring the fate of the documents inventoried by Bair and Bickerstaff.

I look forward to meeting you on Tuesday.

Sincerely,

David E. Schalk/lsg
DAVID E. SCHALK

DES:lsg
Attachment

cc: David S. McCrea - via telefax
Michael T. Gallagher - via telefax
John H. Kim - via telefax

[DICTATED BUT NOT READ]

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 NEVADA POWER CO.,)
7 Plaintiff,) CV-S-89-555-LDG (LRL)
8 v. ,)
9) ORDER
10 MONSANTO CO., et al.,)
11 Defendants.)

12 This matter is before the Court on a number of discovery
13 disputes. Some are formalized in written motions, some are not.
14 They will be considered seriatum.

15 1. Nevada Power's Motion to Compel Discovery Relevant to Alleged
16 Destruction of Documents by Westinghouse (filed July 8, 1993):

17 Reserving its right to object on privilege grounds to specific
18 deposition questions, and subject to Westinghouse's objections to
19 two of the ten documents appended to Exhibit 1212, Westinghouse has
20 agreed to allow Nevada Power to inquire into Exhibit 1212 itself,
21 the circumstances surrounding its preparation, and the circumstances
22 surrounding the decision not to implement the program in Exhibit
23 1212. Accordingly,

24 IT IS ORDERED that the motion is denied as moot.

25 IT IS FURTHER ORDERED that Westinghouse's objections to the
26 disclosure of the above-referenced two documents which were appended

1 to Exhibit 1212 are sustained. The Court finds that they are
2, irrelevant within the meaning of Rule 26(b)(1). The two documents,
3 which were submitted to the Court under seal on July 15, 1993, and
4 which the Court has reviewed in camera, need not be disclosed to
5 Nevada Power.

6 IT IS FURTHER ORDERED that the Clerk of Court shall file the
7 Confidential In Camera Submission under seal.

8 2. Nevada Power's Motion to Compel Entry upon Westinghouse's
9 Headquarters for Purpose of Inspection, Copying and Depositions
10 (filed July 8, 1993):

11 The Court finds that Nevada Power's proposal to conduct an
12 inspection concurrently with the deposition of Westinghouse's Rule
13 30(b)(6) witness would be overly time-consuming and disruptive of
14 Westinghouse's ongoing business activities. Accordingly,

15 IT IS ORDERED that the motion is denied. Nevada Power shall
16 not be permitted to conduct an on-site inspection of Westinghouse's
17 headquarters.

18 IT IS, HOWEVER, FURTHER ORDERED that prior to the Rule 30(b)(6)
19 deposition, Westinghouse shall respond to Nevada Power's demand for
20 those PCB, dioxin and furan documents which Nevada Power believes it
21 does not have, by searching for the requested documents and
22 providing production numbers of those documents already produced,
23 and producing those documents which have not been produced. Where
24 the requested documents cannot be found, Westinghouse shall provide
25 an affidavit of the responsible searching party explaining the
26 circumstances of non-production.

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MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 18, 1993

TO: Konrad L. Cailteaux

FAX #: (212) 310-8516

PHONE #: (212) 310-8904

FROM: David E. Schalk

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

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: July 18, 1993 letter re: deposing Westinghouse employees

NUMBER OF PAGES (including cover page): ~~Three (3)~~ 6

MESSAGE:

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MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 18, 1993

TO: David McCrea

FAX #: (812) 336-5307

PHONE #: (812) 336-4840

FROM: David E. Schalk

CLIENT/MATTER: Nevada Power/Monsanto

CLIENT/MATTER NO.: 11927.2

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MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 18, 1993

TO: Michael T. Gallagher

FAX #: (713) 654-5070

PHONE #: (713) 654-4433

FROM: David E. Schalk

CLIENT/MATTER: Nevada Power v. Monsanto

CLIENT/MATTER NO.: 11927.2

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DATE: July 18, 1993

TO: Michael T. Gallagher

FAX #: (713) 654-6070

PHONE #: (713) 654-4433

FROM: David E. Schalk

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DATE: July 18, 1993

TO: John H. Kim

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PHONE #: (713) 654-4433

FROM: David E. Schalk

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