

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

NEVADA POWER COMPANY, et al.,)
)
)
 Plaintiff,)
-vs-)
) CV-S-89-555-LDG (LRL)
)
MONSANTO COMPANY, etc., et al.,)
)
 Defendants.)

DEPOSITION OF GEORGE J. LEVINSKAS

On the part of the Plaintiff

30(b)(6)

July 14, 1993

 **Concannon
& Jaeger**
General
Court
Reporters
705 Olive Street, Suite 604
St. Louis, Missouri 63101
(314) 421-1000

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA POWER COMPANY, etc.,)
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 Plaintiff,)
 -vs-) # CV-S-89-555-LDG (LRL)
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 MONSANTO COMPANY, etc., et al.,)
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* * *

I N D E X

WITNESS: Page:

GEORGE J. LEVINSKAS

Direct Examination by Mr. Bradley 4

E X H I B I T S

30(b)(6) Deposition Exhibit # 1 4

Deposition Exhibit # 517. 20

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA POWER COMPANY, etc.,)
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 Plaintiff ,)
)
 -vs-) # CV-S-89-555-LDG (LRL)
)
)
 MONSANTO COMPANY, etc., et al.,)
)
 Defendants.)

30(b)(6) DEPOSITION OF WITNESS, to be used in an
action pending in the District Court of the United States,
for the District of Nevada, wherein NEVADA POWER COMPANY,
etc., is Plaintiff, and MONSANTO COMPANY, etc., et al. are
Defendants, pursuant to Notice, under the provisions of
Rule 26 of the Rules of Civil Procedure, taken on July 14,
199²~~1~~, at the law offices of Messrs. Husch & Eppenberger,
100 North Broadway, St. Louis, Missouri, before John T.
Concannon, a Notary Public within and for the State of
Missouri.

A P P E A R A N C E S

The Plaintiff was represented by Mr. Ralph A.
Bradley, of the law firm of Bradley & Merrell, 700 Bank of
America Plaza, 300 South Fourth Street, Las Vegas, Nevada,
89101.

The Defendant, Monsanto Company, was represented by
Mr. Scott Bauer, of the law firm of Kirkland & Ellis, 1999
Broadway, Denver, Colorado, 80202.

The Defendant, Westinghouse Electric Corporation,
was represented by Mr. Robert P. Morgan, Westinghouse
Electric Corporation, Gateway Center, Pittsburg,
Pennsylvania 15222.

1 Before commencement of the deposition, the reporter marked
2 Plaintiff's 30 (b)(6) Deposition Exhibit Number One, for
3 identification.)

4 GEORGE J. LEVINSKAS,
5 of lawful age, being first duly sworn to tell the truth,
6 the whole truth, and nothing but the truth, deposes and
7 says on behalf of the Plaintiff, as follows:

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. BRADLEY:

10 Q. Dr. Levinskas, we've just completed your
11 personal deposition and you have been designated in part as
12 the Monsanto designee on a Federal Rule of Civil Procedure
13 30(b)(6) Notice. That is correct, is it not?

14 A. Yes.

15 Q. And I have had marked as Plaintiff's IBT
16 30(b)(6) Number One, the notice sent out by Nevada Power
17 seeking a 30(b)(6) deponent on those items listed on
18 Attachment A, and as I understand it, your attorney is
19 offering you not as a sole Monsanto designee to cover those
20 areas on Attachment A, but to cover some of those areas,
21 and I, at this point, I think it would be useful to have
22 your attorney designate for the record those areas that you
23 are being tendered as Monsanto's 30(b)(6) deponent.

24 MR. BAUER: This is Scott Bauer representing
25 Monsanto. I will do so. A slight caveat to what you just

1 said. I think with respect to some of these topics, he
2 will be the only designee but with respect to most of the
3 topics, he's not. Specifically with respect to the last
4 topic, he's not a designee at all.

5 MR. BRADLEY: Okay. Go ahead and go through
6 it then.

7 MR. BAUER: I will go through them one-by-one.
8 There are eight topics listed on Attachment A; there's no
9 numbers on them but I'm going from the start to the finish,
10 one through eight. The first topic, summarizing it,
11 Monsanto hiring Industrial BIO-TEST Laboratory in whatever
12 capacity to conduct research on Monsanto products. Dr.
13 Levinskas will be Monsanto's designated corporate
14 representative for that topic for the period starting in
15 July of 1971 and moving forward. With respect to topic
16 two, knowledge of any inaccuracy in reports of the conduct
17 of tests regarding PCB compounds produced by Monsanto, Dr.
18 Levinskas is being designated as a corporate
19 representative. He has knowledge about the investigation
20 he undertook with respect to that. At this time, I do not
21 know whether Monsanto had knowledge of inaccuracies, other
22 than the work Dr. Levinskas did, but if we identify other
23 knowledge of inaccuracies, we will have to designate
24 another corporate representative. Number three, knowledge
25 of conditions at IBT and reliability of studies conducted

1 by IBT. Dr. Levinskas is, again, a corporate
2 representative, but because of the date of his employment
3 at Monsanto, again he can only cover the period from late
4 1971 forward. As I understand it, Dr. Levinskas is the
5 person most knowledgeable and therefore, is the only
6 corporate representative with respect to topic number four,
7 hiring of Industrial BIO-TEST employees after their
8 termination from Industrial BIO-TEST. With respect to
9 topic number five, Monsanto's discussions of proposed
10 experiments, experiments actually conducted, Dr. Levinskas
11 will, again, be a corporate representative for that topic
12 covering the period starting in 1974, which was when he was
13 involved in those efforts.

14 MR. BRADLEY: You had indicated to me that it
15 would be '74 to '75. Is my note incorrect? Will he cover
16 '74 on, or just '74 and '75 relative to topic five?

17 MR. BAUER: Well, I don't -- I'm not sure
18 that's not the same thing. I'm not sure there was any IBT
19 experiments, or proposed experiments, on PCBs after 1975,
20 so I think it's '74 forward.

21 MR. BRADLEY: All right.

22 MR. BAUER: In any case, you can ask him
23 questions from '74 forward and if we later find out there
24 are other things, we'll take care of that. Monsanto's
25 reviews of experiments conducted by IBT on Monsanto PCB

1 products and their reports. Again, Dr. Levinskas is a
2 corporate representative designated on that topic for the
3 period from 1974 forward, especially including the work IBT
4 did in 1974 and 1975 and his review of that work.
5 Comparison of that work to work begun by other people and
6 Monsanto's hiring of other toxicologists to review all that
7 work together, and then also Dr. Levinskas' own review in
8 1981. So again, to my understanding, he will cover the
9 entire period from 1974 forward with respect to topic
10 number six. The same statement with respect to topic
11 number seven, communications between Monsanto and IBT, and
12 again, for the record, I'm summarizing, previously
13 summarizing all these topics which are in the Exhibit. He
14 is a corporate representative designated for the period
15 from 1974 forward.

16 MR. BRADLEY: And nothing on topic eight.

17 MR. BAUER: And nothing on topic eight.

18 MR. BRADLEY: Let's go off the record for a
19 moment.

20 (Whereupon, a short colloquy was held between Counsel, off
21 the record.)

22 Q. (By Mr. Bradley) Dr. Levinskas, as I
23 understand it, if I asked you all of the questions in your
24 30(b)(6) deposition that we're now conducting that I asked
25 you in your personal deposition, your answers would be the

1 same; is that correct?

2 A. Yes, it is.

3 MR. BRADLEY: Let's go off the record for a
4 moment.

5 (Whereupon, a short colloquy was held between Counsel, off
6 the record.)

7 MR. BAUER: For the record, with respect to
8 that last answer, we're not agreeing necessarily that all
9 the questions asked of Dr. Levinskas in his personal
10 deposition are coextensive with the topics for which he's
11 been designated as a corporate representative, but there is
12 a substantial overlap between the two and with respect to
13 the overlap, his answer is on the record.

14 Q. (By Mr. Bradley) And the purpose of
15 conducting the 30(b)(6) after the personal deposition is to
16 remove the requirement that the same questions be asked
17 again, so to the extent that my prior questions don't
18 overlap, those questions will stand as questions posed to
19 this witness in this 30 (b)(6) deposition and the answers
20 given will stand as answers given in this 30(b)(6)
21 deposition. Is that correct, counselor?

22 MR. BAUER: You said to the extent they don't
23 overlap. To the extent they do overlap, I agree with that.

24 MR. BRADLEY: Yes. That's correct.

25 MR. BAUER: All right.

1 MR. MORGAN: I take it all objections are on
2 the record as well, to the extent there were objections
3 made to questions in the personal deposition?

4 MR. BRADLEY: That's correct.

5 Q. (By Mr. Bradley) When Monsanto hired Dr.
6 Wright for the second time in 1972, it knew that Dr. Wright
7 had been responsible for conducting tests on PCBs while he
8 was at IBT; is that correct?

9 A. There may be individuals at Monsanto who were
10 aware of that. I, from my prospective, since I was
11 involved in his hiring, the only thought I gave was that he
12 had been at IBT; I was cognizant of the fact that Monsanto
13 was using IBT as a contract laboratory. I did not
14 particularly or specifically think of the specific products
15 he was involved with.

16 Q. And after Paul Wright became reemployed with
17 Monsanto in 1972, he continued to have contact with IBT
18 regarding their testing of Monsanto products; that's true,
19 isn't it?

20 A. I think I've indicated that we made an offer
21 to hire Paul to work with me on environmental assessments.
22 Because of the untimely death of Dr. Hunt, he was then put
23 into a relationship working back with IBT, but that was not
24 the premise or the intent when we hired him.

25 Q. How long had Dr. Wright worked at IBT before

1 Monsanto rehired him in 1972?

2 A. I do not know that.

3 Q. When Dr. Wright worked at IBT, he worked as a
4 toxicologist; is that correct?

5 A. Yes, I believe that was -- I don't know the
6 specific title, but he worked as a toxicologist.

7 Q. And when Dr. Wright was rehired by Monsanto in
8 1972, he was rehired as a toxicologist; isn't that true?

9 A. Yes.

10 Q. And it is also true that after Dr. Wright
11 became re-employed with Monsanto in 1972, that he took
12 trips to IBT to discuss their tests of Monsanto products;
13 that is true, isn't it?

14 A. That's correct. He assumed Dr. Hunt's duties
15 and that was one of the things Dr. Hunt had been doing.

16 Q. And on these trips that Dr. Wright made to
17 IBT, Dr. Wright instructed secretaries at IBT to change the
18 wording in some of the reports that were generated by IBT
19 regarding Monsanto products; that's true, isn't it?

20 A. I have no knowledge of that.

21 Q. Monsanto also hired a gentleman named Manuel
22 Reyna, M-a-n-u-e-l, R-e-y-n-a, sometime during the 1970s;
23 isn't that true?

24 A. Yes.

25 Q. Manuel Reyna worked at IBT during part or all

1 - excuse me - during part of the 1970s; isn't that true?

2 A. Yes.

3 Q. And Manuel Reyna's work at IBT was also as a
4 toxicologist; isn't that true?

5 A. I do not know his title but he was working in
6 the toxicology area.

7 Q. And prior to being hired by Monsanto, Manuel
8 Reyna had been an IBT employee; isn't that true?

9 A. Yes.

10 Q. And prior to hiring Manuel Reyna, Monsanto
11 knew that Manuel Reyna, while at IBT, had been responsible
12 for some parts of the IBT testing of Monsanto products;
13 isn't that true?

14 A. I would give an answer to that similar to the
15 one earlier about Paul Wright. I don't know what Monsanto
16 knew. I was aware that Manny, as we called him, Reyna had
17 been at IBT and that he may well have worked on Monsanto
18 products.

19 Q. After Monsanto hired Dr. Wright in 1972, how
20 frequently did Dr. Wright travel to IBT to discuss with
21 them the tests they were performing on Monsanto products?

22 A. I really could not give any estimate of how
23 often or how frequently he made the trips.

24 Q. Can you estimate it was more frequently than
25 once a month?

1 A. I really -- The travel records, travel
2 vouchers, may exist to substantiate it but I really have no
3 basis for even speculating how often he went.

4 Q. I don't want you to speculate. Do you have
5 any basis of knowing whether it was more than once a year?

6 A. Oh, I'm sure it was more than once a year.

7 Q. While Dr. Wright was employed at Monsanto
8 following his work at IBT, did he have any job
9 responsibilities regarding reports being prepared by IBT
10 regarding Monsanto products containing PCBs?

11 A. Dr. Wright would have been operating under the
12 situation that I described. He'd be asking for draft
13 reports when they came in. Depending on the urgency of the
14 study, availability of time, he or I would review them. He
15 may well have reviewed reports on PCBs if they arrived at
16 this time. I cannot specifically identify reports he
17 looked at or I looked at at that time.

18 Q. Did Dr. Wright, or anyone else at Monsanto,
19 request any changes in the wording of the reports being
20 generated by IBT regarding their testing of Monsanto
21 products containing PCBs?

22 A. I have indicated earlier, I think that it
23 would be my practice to perhaps request changes depending
24 on my review of the report. I would not be surprised if
25 others had done it. I have no specific knowledge of

1 instances when this was done.

2 Q. And if it was done and it was done by writing,
3 would you expect those letters or reports or writings to
4 have been maintained as part of Monsanto's business
5 records?

6 MR. BAUER: Object to the form of the
7 question. You may answer.

8 A. You use the term "business records." It was
9 my practice, and would be my practice, to document, or to
10 keep a file copy of such written correspondence, yes.

11 Q. (By Mr. Bradley) And you instructed the
12 toxicologists under your supervision to also keep copies of
13 that type of correspondence, isn't that true?

14 A. The secretaries were instructed to file copies
15 and they, to the best of my knowledge, they did.

16 Q. As part of your designation here, then, as a
17 30(b)(6) deponent, I want to know who and on what dates
18 people within Monsanto made requests to IBT to change
19 wording in the reports they were generating on the testing
20 they were conducting of Monsanto products containing PCBs.

21 MR. BAUER: In addition to what he's already
22 testified to?

23 MR. BRADLEY: In addition to what he's already
24 testified to. So at this point, we have a choice. We can
25 either stop the deposition while the witness goes over and

1 reviews the records so that he can answer the question, or
2 we can handle it by having him return after he's had a
3 chance to review the records, or I'm open to any other
4 suggestions that you have.

5 MR. BAUER: Well, the problem with that is,
6 that assumes there are any others, other than the ones he
7 already testified about, which --

8 MR. BRADLEY: Well, he's already indicated in
9 testimony that he would expect there to have been requests,
10 and he's said that he doesn't know whether, in fact, any
11 copies were kept of the requests.

12 MR. BAUER: Right.

13 MR. BRADLEY: But I'm certainly entitled to
14 know whether or not there is a way for him to answer my
15 question as Monsanto's 30(b)(6) designee.

16 MR. BAUER: Well, for the record, if documents
17 existed, other than the ones that have already been marked
18 in the depositions in the case, indicating changes in IBT,
19 in the language of IBT reports for Monsanto PCB products,
20 other than the ones that have already been marked here, I
21 believe that they would have been provided to him already.
22 If I determine that there are such other reports, we will
23 have Dr. Levinskas appear again, or designate another
24 person with respect to those other changes.

25 MR. BRADLEY: All right. Thank you.

1 MR. BAUER: Other changes during the time
2 period for which he has been deposed. We already have a
3 caveat that there would be another time period which would
4 have to be covered by a different witness, in any case.

5 MR. BRADLEY: The time period, as I understand
6 it, would be from '70/'71 forward for that particular item;
7 is that correct? Well, as a practical matter, our
8 Attachment A doesn't have a limitation by time.

9 MR. BAUER: Right.

10 MR. BRADLEY: And so you would tender Dr.
11 Levinskas if it covered an appropriate period of time, as
12 you've already indicated, relative to the eight subsections
13 in Attachment A?

14 MR. BAUER: Correct.

15 MR. BRADLEY: And you would have somebody else
16 appear if the time period was outside what you've
17 designated for Dr. Levinskas?

18 MR. BAUER: Correct.

19 MR. BRADLEY: Okay.

20 MR. BAUER: If we --

21 MR. BRADLEY: If you find anything.

22 MR. BAUER: If we become aware of other
23 documents fitting the category for the question which you
24 asked. I can tell you sitting here today, I'm not aware of
25 any.

1 MR. BRADLEY: I also assume from your response
2 you will make inquiry to see whether or not those documents
3 do exist?

4 MR. BAUER: Yes. Well, my first inquiry will
5 be whether that search has already been done, and I believe
6 it has been, and I will confirm it has been done. If it
7 hasn't been done, we'll make such a search.

8 MR. BRADLEY: All right.

9 Q. (By Mr. Bradley) Dr. Levinskas, you've
10 already testified regarding the review you conducted in
11 '80/'81 of the IBT tests that had been previously done
12 regarding PCB products?

13 A. Yes.

14 Q. Did anyone within Monsanto -- Let me back off
15 a moment. You also indicated in footnote six of the report
16 that you wrote that there were some databases missing and
17 that there may have been some inaccuracies in the prior
18 reports; is that a fair summary of what you indicated
19 previously?

20 A. I said there was - we could only get certain
21 databases. Now, whether they're missing or not, they were
22 not available. So I don't know their status, and that
23 where I saw some differences between the records I had and
24 what was in the reports, I tried to note those in the
25 review.

1 Q. Okay.

2 A. That I prepared, yes.

3 Q. And did anyone within Monsanto, as far as you
4 know, conduct any investigation into why there were missing
5 databases or why there were some inaccuracies in either the
6 files of IBT or in the reports they wrote regarding the
7 tests they were conducting on PCBs?

8 MR. BAUER: Object to the form,
9 characterization of the files as missing, but you can
10 answer.

11 MR. BRADLEY: Well, let me rephrase it.

12 Q. (By Mr. Bradley) Did anyone within Monsanto
13 indicate to you that they had investigated the reasons for
14 any inaccuracy that you noted in your '80/'81 report?

15 A. I'm not aware that anybody attempted to make
16 an investigation of why the differences were in the reports
17 and the data. I'm not aware that anybody made that effort.
18 I made no such effort.

19 Q. And are you aware of anyone within Monsanto
20 conducting an investigation into why databases were missing
21 as identified in your '80/'81 report?

22 MR. BAUER: Same objection. Characterization
23 of the files as missing.

24 A. I would go back to answer -- As I've
25 indicated earlier, that at that time, IBT had ceased to

1 exist as a functional operation. We made a request for
2 information. They sent us the information they could
3 locate. How thoroughly they looked, how effectively they
4 looked or such, I have no basis for speculating or
5 surmising why they sent us only that limited amounts of
6 information.

7 Q. (By Mr. Bradley) Did anyone within Monsanto
8 conduct an investigation into why the databases were
9 insufficient, as noted in your footnote six of your '80/'81
10 report?

11 A. I'm not aware that anybody did. I did not.

12 Q. Did anyone within Monsanto attempt to locate
13 any databases that you considered insufficient, as noted in
14 footnote six of your '80/'81 report?

15 A. What I describe in footnote six is the result
16 of our efforts to obtain the data. Paltry as they were,
17 those are the results of our effort.

18 MR. BRADLEY: Would you read my question back,
19 please?

20 (Whereupon, the reporter propounded the previous question.)

21 Q. (By Mr. Bradley) Did Monsanto contact anyone
22 within the United States Government to determine whether
23 any databases that you referred to in footnote six of your
24 '80/'81 report were within the possession of the United
25 States Government?

1 A. I'm not aware that such effort was made. I
2 don't know who to contact for such a request.

3 Q. Did you ask the attorney of the United States
4 Government who interviewed you in Chicago -

5 A. We did not --

6 Q. - whether that person knew of any databases
7 that you considered insufficient as noted in footnote six
8 of your '80/'81 report?

9 A. I did not.

10 Q. To which agency was the -- Let me rephrase
11 it. To which agency were the IBT reports sent? By "IBT
12 reports," I mean the ones you reviewed in '80/'81.

13 MR. BAUER: Well, I've got to object on
14 vagueness grounds to that question, in terms of when the
15 reports were being sent. I think it's unclear whether
16 you're asking what was sent in 1981 or whether the reports
17 he reviewed in '81, which are dated much earlier, were sent
18 earlier, but Dr. Levinskas, you can answer the question.

19 Q. (By Mr. Bradley) Are you looking for your
20 report?

21 A. No. No. I thought there might be something
22 in here that would, in part, may be responsive to it.
23 Maybe not.

24 Q. For the record, would you identify what you're
25 reviewing?

1 A. I'm looking at the Plaintiff's Exhibit 517.

2 MR. BRADLEY: Okay.

3 A. I have not personally submitted any of the
4 reports that we're talking about to any regulatory agency.
5 I do know - I have heard and I assume that it was done - is
6 that these reports, before I came to Monsanto, had been
7 made available to FDA at its request. They had been sent
8 to EPA. Somewhere along the line, the impression I had, I
9 was told that they were given to several of the regulatory
10 agencies, which would include OSHA, Occupation and Safety
11 Health Administration, scientific agencies, such as the
12 National Institute of Occupational Safety and Health,
13 NIOSH, that they were discussed with members of Congress or
14 their staffs, but I was not a participant in those events
15 and I could not specifically say who they were sent to.

16 Q. Were the reports that you reviewed in '80/'81
17 written in 1971 or some other date?

18 A. They would have been written within a few
19 months of the dates on the reports.

20 Q. Well, --

21 A. Which was '81.

22 Q. My question wasn't clear then. Which reports
23 did you review in '80/'81?

24 A. I looked at the three two-year rat feeding
25 studies, which I think carry numbers something like 71-.

- 20 -

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1 They were the '71 year, and the extension of those studies,
2 which includes the extra liver sections, which were
3 discussed in '75. That information and the, quote, "raw
4 data" from those studies is what I looked at to prepare my
5 1981 report, and that report was done within a matter of a
6 few months of the date on the cover sheet.

7 Q. In footnote six of your '80/81 report, you
8 indicate that you reviewed necropsy reports. Did any of
9 those necropsy reports have the designation TBD next to
10 individual animals?

11 A. I think we've already made reference to that.
12 There may have been a few. I do not recall. If there were
13 substantial numbers, I would certainly have made a notation
14 or record, or might even have stopped there with my
15 assessments.

16 MR. BRADLEY: For purposes of this deposition,
17 Counsel, would you search the records to determine whether
18 the data that was reviewed by Dr. Levinskas to prepare his
19 '80/81 report is available and if it is available, if you
20 would provide it to us and then we can determine whether or
21 not we need to ask Dr. Levinskas some questions about it.

22 MR. BAUER: Well, I'll agree to make an
23 inquiry about whether that data still exists and if it
24 still exists, after confirming that it's responsive to the
25 discovery, I am not saying it's not, but I'm not saying I

1 know what all discovery requests are outstanding. If that
2 data exists and it hasn't been provided to you already, and
3 it is responsive, we would certainly provide it to you and
4 would discuss with you whether or not an additional
5 30(b)(6) deposition was appropriate after such a review.

6 MR. BRADLEY: The difficulty with your
7 response is that I don't think I need to fit it under a
8 request for production that pre-exists because I've asked a
9 question about information that he's indicated he'd have to
10 review certain documents in order to answer my question.
11 Then as a practical matter, either I have the deposition
12 stopped while he goes to review the documents, if they
13 still exist, or we reschedule him again later after he's
14 had a chance to review the documents if they exist, or you
15 simply provide them to us if they exist, and we determine
16 whether or not we need to continue his deposition. So I'm
17 going to first see whether we can accommodate one another,
18 and so I'm asking whether if, after you make an inquiry of
19 whether they exist, whether you will provide them to us?

20 MR. BAUER: I don't know.

21 MR. BRADLEY: Okay. Then I want the
22 deposition to cease while Dr. Levinskas goes to review
23 whatever records he needs to review to answer the question
24 that I posed to him, which is whether the necropsy reports
25 listed in Exhibit Six have the designation "TBD" anywhere.

1 Footnote six to his '80/'81 report.

2 MR. BAUER: And which of the 30(b)(6) topics
3 is covered by the question which necropsy reports contain
4 the designation TBD?

5 MR. BRADLEY: Number two, when he talks about
6 his knowledge of inaccuracies in reports, and he indicated
7 that his knowledge of inaccuracies came through his review
8 of the documents provided to him, which resulted in the
9 preparation of his '80/'81 report and I'm entitled to
10 examine the inaccuracies, including anything that may have
11 a listing of TBD, which means too badly decomposed to be of
12 use.

13 MR. BAUER: That would be a fact, not an
14 inaccuracy. I am not agreeing that the designation TBD
15 constitutes an inaccuracy. You can terminate the
16 deposition if you desire.

17 MR. BRADLEY: It's over until I get an answer
18 to my question unless you're willing to simply provide me
19 with the documents if they exist.

20 MR. BAUER: I've already said -- You're going
21 to stay on this topic? If you want to ask any more
22 questions of Dr. Levinskas on any other topics, you're
23 welcome to.

24 MR. BRADLEY: I'll ask the questions after I
25 get an answer to that one. So I am considering this

1 deposition to remain open until he, Dr. Levinskas, as
2 Monsanto's 30(b)(6) deponent on those topics, conducts a
3 sufficient review of the records within Monsanto to answer
4 my question.

5 MR. BAUER: Let's go off the record for a
6 second.

7 (Whereupon, a short colloquy was held between Counsel, off
8 the record.)

9 MR. BRADLEY: Back on the record. Counsel
10 and I have not been able to reach an agreement on
11 continuation of the deposition. I have posed a question to
12 this witness that I believe is covered by item two of
13 Attachment A. The witness has indicated he cannot answer
14 the question without a review of documents. I requested
15 that there be a review of the documents presently so that
16 the witness can answer the question, and I am requesting
17 that that occur now and that after the review takes place,
18 that we continue the deposition.

19 MR. MORGAN: On behalf of Westinghouse, I'd
20 like to put on the record our objection to continuing this
21 deposition on the grounds that it subjects Westinghouse to
22 undue burden and expense to do so, and that it involves
23 travel of counsel from Pittsburgh, among other things, and
24 note as part of my objection the observation that I do not
25 detect anywhere on Attachment A to the Notice of Deposition

1 an area of inquiry as to the meaning of TBD, or to whether
2 or not TBD constitutes an inaccuracy in the report, test,
3 regarding PCB compounds and therefore, I see no obligation
4 on the part of Monsanto to produce a witness on the subject
5 of TBDs, or produce documents related thereto, to the
6 extent they have not already been requested, and so I would
7 request that the deposition be completed as scheduled and
8 not continued.

9 MR. BAUER: On behalf of Monsanto, I would add
10 that the specific request made was to review any necropsy
11 reports for the designation of TBD to answer a question
12 about how many necropsy reports were viewed by Dr.
13 Levinskas in 1981 that had that designation. He did not
14 recall the answer to that question. I agree that if
15 documents exist, documents still exist, that have that
16 information on it, that if the necropsy report still
17 exists, they would contain that information, but I do not
18 know at the present time whether those documents exist. I
19 have already offered to make an inquiry about whether those
20 documents exist and whether they are responsive to
21 requests, either with respect to this notice or with
22 respect to prior document requests, but it is my position
23 that the Attachment A to Plaintiff's 30(b)(6) Exhibit One,
24 from my readings of this today, it does not fairly request
25 that information and therefore, I am not willing to agree

1 that the deposition will be terminated, or will be
2 continued until that review is undertaken and for the
3 record, Dr. Levinskas has answered questions with respect
4 to some but not all of the topics on which he had been
5 designated. It seems to me more reasonable to proceed with
6 the rest of the questions posed of Dr. Levinskas as the
7 30(b)(6) designee on behalf of all the rest of the topics
8 and reserve that dispute solely for potential resolution
9 later, and I offered that resolution to Mr. Bradley and he
10 did not accept it. Therefore, I believe it would be our
11 position that Dr. Levinskas, assuming that we do make an
12 inquiry and the documents do not exist, or we prevail in
13 our position that they're not responsive to Attachment A of
14 the 30(b)(6) Notice, that Plaintiff has failed to avail
15 itself fully of the opportunity that it has had to examine
16 him on the other topics, and we would not voluntarily
17 present Dr. Levinskas for the rest of the topics for which
18 Plaintiff could have asked the questions today.

19 MR. BRADLEY: All right. Whether my question
20 falls within the terms of the Attachment, let me represent
21 that in response to this 30(b)(6) deposition notice,
22 counsel for Monsanto indicated that Dr. Levinskas would be
23 testify regarding his '80/'81 report and Dr. Levinskas
24 testified that he found some inaccuracies, which is
25 identified under item two of Attachment A, in prior reports

1 of IBT regarding PCBs and in addition, he found databases
2 insufficient, and he identified in his report and footnote
3 six databases that were insufficient and he identified in
4 other parts of his reports certain inaccuracies and he
5 pointed them out in his deposition. He also indicated that
6 if there had been TBD designations in a sufficient number
7 that it would have, I think it's fair to say his testimony
8 was that if those designations had been sufficiently high,
9 it would have led him to reject the reports in there
10 entirety, which certainly is a support for concluding that
11 any TBD designations would have made the report inaccurate.
12 So it's my position that if Dr. Levinskas cannot identify
13 for me orally, today, the number of TBD designations that
14 were on the necropsy reports, then he has an obligation
15 under item two of Attachment A to seek that information
16 out, and I have not accepted counsel's offer to go forward
17 with the remainder of the deposition because I am entitled
18 to conduct a deposition as I see fit, and I have quizzed
19 the witness on an area that he already identified would
20 produce a report that was inaccurate and I'm entitled to an
21 answer to that at this point in time and I am entitled to
22 have the witness go seek out whatever reports or documents
23 exist that would enable him to answer my question. From
24 Nevada Power's point of view, this deposition remains open
25 until the witness makes the review and is able to respond

1 to the question.

2 MR. MORGAN: Off the record.

3 (Whereupon, a discussion was held between Counsel, off the
4 record.)

5 

6 GEORGE J. LEVINSKAS

7 Subscribed and sworn to before me this 25th day of
8 February, A.D., 1994.

9 

10 Notary Public

11 Notary Public within and for the State of Missouri.

12 MY COMMISSION EXPIRES THE 15th DAY OF

13 
14 January, A.D., 1995.

15 JOSEPHINE S. NIBLOCK
16 NOTARY PUBLIC STATE OF MISSOURI
17 ST. LOUIS COUNTY
18 MY COMMISSION EXP. JAN. 15, 1993

1 STATE OF MISSOURI)
2) SS
3 COUNTY OF ST. LOUIS)

4 I, John T. Concannon, a Notary Public within and for
5 the State of Missouri, duly commissioned, qualified and
6 authorized to administer oaths and to take and certify to
7 depositions, do hereby certify that pursuant to Notice in
8 the civil cause now pending and undetermined in the
9 District Court of the United States, within and for the
10 District of Nevada, entitled NEVADA POWER COMPANY,
11 Plaintiff, -vs- MONSANTO COMPANY, etc., et al., Defendants,
12 to be used in the trial of said cause in said Court, I was
13 attended at the law offices of Messrs. Husch & Eppenberger,
14 100 North Broadway, in the City of St. Louis, State of
15 Missouri, by Ralph A. Bradley, attorney for the Plaintiff;
16 by Scott Bauer, attorney for the Defendant, Monsanto,; by
17 Robert P. Morgan, attorney for the Defendant, Westinghouse;
18 and by GEORGE J. LEVINSKAS, the witness, in said office on
19 July 14, 1993.

20 The said witness, GEORGE J. LEVINSKAS, being of
21 sound mind and being by me first carefully examined and
22 duly cautioned and sworn to testify the truth, the whole
23 truth and nothing but the truth in the case aforesaid,
24 thereupon testified as is shown in the foregoing
25 transcript, said testimony being by me reported in
shorthand and caused to be transcribed into typewriting,

- 29 -

CONCANNON & JAEGER

1 and that the foregoing pages correctly set out the
2 testimony of the aforementioned witness, GEORGE J.
3 LEVINSKAS, together with the questions propounded by
4 counsel and the remarks and objections of counsel thereto,
5 and is in all respects a full, true and complete transcript
6 of the questions propounded to and the answers given by
7 said witness; and that said testimony, so transcribed, was
8 subscribed to by the witness on the _____ day of
9 _____, A. D., 1993.

10 I FURTHER CERTIFY that I am not of counsel nor
11 attorney for any of the parties to said suit, nor related,
12 nor interested in any of the parties or their attorneys.

13 I FURTHER CERTIFY that Plaintiff Deposition Exhibits
14 marked for identification are the identical exhibits
15 referred to and identified by the witness in the foregoing
16 deposition.

17 WITNESS MY HAND and Notarial Seal, given this 23rd
18 day of September, A. D., 1993, at St. Louis, Missouri.

19 MY COMMISSION EXPIRES SEPTEMBER 12, 1994
20
21

22 _____
23 JOHN T. CONCANNON,
24 Notary Public, within and
25 for the State of Missouri

September 24, 1993

Dr. George J. Levinskas
526 Fairways Circle
Creve Coeur, Missouri 63141

Re: Nevada Power -v-
Monsanto, et al.

Dear Dr. Levinskas:

This letter, incorporated as the last page of your 30(b)(6) deposition, taken on July 14, 1993, will serve as notice to you that your testimony is now ready for your reading and signing of same. You will recall your attorney, Mr. Bauer, indicated a preference for you reading your deposition, rather than waiving signature.

Mr. Bauer or his office will be in contact with you in the near future to read and sign your deposition. If you have any questions, please contact him at his office.

Thank you for your cooperation in this regard.

Sincerely,

JOHN T. CONCANNON
Shorthand Reporter

Concannon & Jaeger
General Court Reporters
705 Olive Street - Ste. 604
St. Louis, Missouri 63101

JTC:md