

Westinghouse
Electric Corporation

Law Department

Westinghouse Building
Gateway Center
Pittsburgh, Pennsylvania 15222
Telephone (412) 842 4805

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

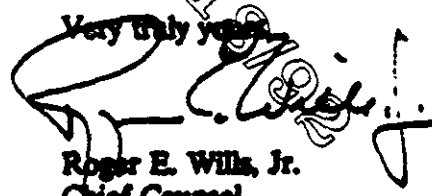
Dear Judge Salyers:

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 confirmed 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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Honorable Edwin G. Salyers
October 11, 1991
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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 2544
295 Plus Park Boulevard, Suite 202
Nashville, Tennessee 37217

DAVIDSON INVESTINGHOUSE
RAINIER V. TVA
PRODUCED BY INVESTINGHOUSE
ELECTRIC CORP. PRODUCED
3/18/92

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

SECRETARY OF LABOR,

Complainant,

OSHC DOCKET NO.

21-1874

REGION IV

WESTINGHOUSE ELECTRIC CORPORATION,

Respondent.

ANSWER TO COMPLAINT

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

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

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

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.

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

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)(1). 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.

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

D. Respondent denies the allegations of Paragraph VIII D except that employees were engaged in maintenance and repair work on the turbine units 1, 2 and 3 referred to above.

E. Respondent denies the allegation of "cited conditions, circumstances, practices, or operations" and admits the remainder of the allegations of Paragraph VIII E.

F. Respondent denies the allegations of Paragraph VIII F.

G. Respondent denies the allegations of Paragraph VIII G.

H. Respondent denies the allegations of Paragraph VIII H.

DEFENSE TO PARAGRAPH VII OF THE COMPLAINT

A. Respondent alleges that through the data in its possession prior to the encapsulation it was not required to monitor the air. This data consisted of:

1. Its knowledge of the design of the Westinghouse turbines and the fact that the fixed cloth insulation was "non-friable;"

2. That the fixed cloth insulation at the relevant times was non-friable and did not present a risk of exposure of asbestos fibers to the employees; and

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.

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XI.

A. Respondent denies the allegations contained of Paragraph IX A.

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.

C. Respondent denies the allegations in Paragraph IX C of the complaint.

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

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

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

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

XII.

DEFENSES TO PARAGRAPH IX OF THE COMPLAINT

A. The Respondent maintained an office in a mobile trailer that was within 60 feet of the workplace. There were also trailers used for change rooms. The workplace was generally subject to the weather and climatic conditions since the walls and roofs over the turbines were generally removed before work began.

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 cabins and the projects;
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.

RELIEF REQUESTED

Respondent respectfully requests that the Commission dismiss the complaint and vacate the citation.

[Handwritten signature]
Roger E. Wills, Jr.
Attorney for
Westinghouse Electric Corporation
Room 3130
Westinghouse Building
11 Stanwix Street
Pittsburgh, PA 15222
(412) 523-6815

DALLAS DOCUMENTS
PRODUCED BY WESTINGHOUSE
ELECTRIC CORP. PRODUCED
CASES 3/18/92

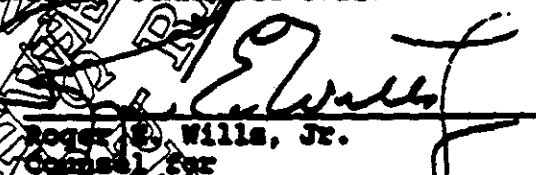
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing answer with attachments, thereto, including the Notice of Appearance, were mailed this 11th day of October, 1991, postage prepaid, certified mail, return receipt requested, to the following:

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

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


Roger D. Wills, Jr.
Counsel for
Watts Electric Corporation

U.S. Department of Labor

Office of the Solicitor
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, 1991

Title: Chief Counsel Signature: [Signature]

Employer/Organization: Westinghouse Electric Corporation

Nature of Organization: Manufacturing

Address: Westinghouse Building, Room 2100

11 Stanvix Street

Pittsburgh, PA 15222

Phone: (412) 642-3013

DESIGNATION 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. Peters Date: October 11, 1991

Title: Assistant Secretary Signature: [Signature]

Employer/Organization: Westinghouse Electric Corporation

Nature of Organization: Manufacturing

Address: Westinghouse Building, Room 1728

11 Stanvix Street, Pittsburgh, PA 15222

Phone: (412) 642-3079

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