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OF COUNSEL
LYLE RIVERA

February 6, 1991

John L. Thorndal, Esq.
Thorndal, Backus, Maupin & Armstrong
1100 E. Bridger Avenue
Las Vegas, Nevada 89125

Re: Nevada Power v. Monsanto et al

Dear John:

The excerpt entitled "Damages vs. Liability" enclosed with yesterday's letter to you was not as well worded as it might have been. I am therefore enclosing today's draft, which I think is clearer.

Also relevant, and enclosed, are portions of BNA's Toxics Law Reporter, Volume III, numbers 31 and 46, which reference cases germane to the instant litigation.

Very truly yours,

JONES, JONES, CLOSE
& BROWN, CHARTERED



Charles H. McCrea, Sr.

CHM:jlg

chm\thornda2.1tr

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DATE: 2/6/91 CLIENT/MATTER: NV Jones 11927.2
TO: David M'Cuca
TELECOPY #: 812-332-2365 VERIFICATION #: _____
FROM: Charles M'Cuca, Sr
NUMBER OF PAGES (INCLUDING COVER PAGE): 2
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MESSAGE VIA PANAFAX
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TELECOPY #: 503-528-7151 VERIFICATION #: _____
FROM: Charles McCrea, Jr.
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THE BUREAU OF NATIONAL AFFAIRS, INC.

TOXICS LAW REPORTER

A WEEKLY REVIEW OF TOXIC TORTS,
HAZARDOUS WASTE,
AND INSURANCE LITIGATION



Volume 3, Number 31

January 4, 1989

HIGHLIGHTS

INSURERS FOR SHELL OIL CO. have no duty to indemnify the company for costs to clean up environmental contamination at the Rocky Mountain Arsenal superfund site in Colorado, a California jury decides. If the verdict becomes final, the companies will not have to indemnify Shell for an estimated \$2 billion in cleanup costs, but a Shell attorney says the company will appeal. In another development, Shell's lead liability insurer sues Shell and a Colorado law firm alleging fraud and misrepresentation in connection with the claim (p. 940).

MAJOR PROBLEMS FOR DEVELOPERS and banks relying on environmental audits to set up an innocent landowner defense could result from a superfund ruling by a federal district court in New Jersey, according to an environmental lawyer. The ruling finds a property owner and its lessee liable for lead cleanup at a warehouse, even though neither party introduced lead into the site and both commissioned environmental audits that gave the site a clean bill of health (p. 943).

MEDICAL MONITORING COSTS under the superfund law should be allowed, Pennsylvania residents living near a New Jersey hazardous waste landfill assert in a petition appealing a ruling disallowing the costs. The plaintiffs tell the U.S. Court of Appeals for the Third Circuit there is "no rational basis" for the ruling (p. 933).

A RULING IN A VACCINE CASE granting summary judgment to a drug manufacturer is reversed by the U.S. Court of Appeals for the Eleventh Circuit. The court finds sufficient evidence to allow a jury to conclude that the firm's diphtheria-pertussis-tetanus vaccine was administered to an infant who died several days later (p. 937).

A LABEL ON IMRON PAINT adequately warned firefighters that they were not sufficiently trained to handle the paint, a federal court of appeals holds, affirming a ruling exonerating the paint's manufacturer from liability (p. 937).

CANCER-FEAR CLAIMS are examined by attorney Henry Gluckstern in this week's Analysis and Perspective section. The author examines New Jersey decisions in the *Jackson Township* and *Mauro* cases and looks at the different ways in which cancer fear claims are being treated nationally (p. 947).

THE HARDAGE DEFENDANTS urge the U.S. Court of Appeals for the Tenth Circuit to deny a government petition for interlocutory appeal of a district court order rejecting record review of the government's remedy selection for the Hardage hazardous waste site in Criner, Okla. (p. 942).

A PRE-TRIAL ORDER in a groundwater contamination case brought against Martin Marietta Corp. and other defendants continues to be a source of dispute in the litigation. The plaintiffs ask the federal district court in Colorado to reject the company's motion for summary judgment, arguing that they have complied with an order that required them to present "evidence of the causal link between plaintiffs' claimed injuries and exposure" to toxic substances (p. 934).

A \$1.2 MILLION VERDICT in a dibromochloropropane case is affirmed by a federal appeals court. The court rules that medical causation testimony is not rendered inadmissible solely because it is offered by a toxicologist who lacks a medical degree. The jury found for the family of a contractor who died from exposure to DBCP at a Dow Chemical Co. plant (p. 935).

A PATIENT DOES NOT HAVE A DUTY to determine the appropriateness of proposed medical treatment, a Florida court rules. The court overrules a jury finding that the patient was comparatively negligent for failing to seek a second opinion after her doctor recommended a hysterectomy to stop prolonged menstrual bleeding. The plaintiff asserted that a drug, Depo-Provera, caused her bleeding (p. 938).