

LAW OFFICES

JONES, JONES, CLOSE & BROWN
CHARTERED

A PROFESSIONAL CORPORATION

SEVENTH FLOOR - VALLEY BANK PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-6026

TELEPHONE
(702) 385-4202

TELECOPIER
(702) 384-2276
(702) 383-0086

OF COUNSEL
LYLE RIVERA

CLIFFORD A. JONES
HERBERT M. JONES
MELVIN D. CLOSE, JR.
JOSEPH W. BROWN
GARY R. GOODHEART
MICHAEL E. BUCKLEY
WILL KEMP

KIRK R. HARRISON
DOUGLAS G. CROSBY
RICHARD F. JOST
J. RANDALL JONES
CHARLES M. M-CREA, SR.
JANET L. CRUBB

DOUGLAS M. COHEN
WILLIAM L. COULTHARD
PATRICIA J. CURTIS
DEREK C. ENGE
JAMES W. EMBECK
JOHN W. FIELD
GARY T. FOREMASTER
ANTHONY C. GORDON
JAMES D. GREENE
RICHARD F. HOLLEY
DAVID G. JOHNSON

JOHN E. LEACH
PAUL A. LEMCKE
KARA B. LENHARD
MARK D. LERNER
RENEE R. REUTHER
STEPHEN M. RICE
MARY KAY SINICKI
NIK SHRINJARIC
JANE A. STECKBECK
KEVIN R. STOLWORTHY

February 5, 1991

John L. Thorndal, Esq.
Thorndal, Backus, Maupin & Armstrong
1100 E. Bridger Avenue
Las Vegas, Nevada 89125-2070

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

Dear John:

You may want to consider immediate settlement discussions in this matter, before Nevada Power's reply brief must be filed on February 11. The reason for this unusual suggestion is that defendants' brief leaves us with little choice but to suggest in our reply brief that the Ninth Circuit solicit amici curiae briefs from the insurance carriers for Monsanto and Westinghouse. Time is thus of the essence.

The problem we confront is defendants' position in their brief that the EPA-imposed expenses Nevada Power seeks to recover are beyond the scope of the "damages" recoverable in indemnity. See Defendants' brief at 37. This position conflicts directly with the position of Monsanto and Westinghouse in their litigation against their insurance carriers,¹ where they must prove that identical expenses suffered by these defendants impliedly fall within the meaning of "damages" in the insurance indemnification agreements. See e.g., Chesapeake Utilities Corp. v. American Home Assurance Co., 704 F. Supp. 551, 558-61 (D. Del. 1989)

Doubtless this inconsistency is unintentional, but the result necessarily is a bad faith posture in both cases which could result in a judicial estoppel ruling in both cases. See generally, R. Boyers, Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel, 80 Northwestern Univer. L. Rev. 1244 (1987) (estoppel from inconsistent statements in ongoing litigation); Parkland Hosiery Co. v. Shore, 439 U.S. 322 (1979) (offensive non-

¹. Westinghouse's case is cause No. L6935287, Superior Court of New Jersey, Union County, filed May 8, 1987. Monsanto's case is cause No. 88C-JA-118-1-CV, Superior Court of Delaware, New Castle County, filed January 20, 1988. The complaints in both cases appear in the record of this case as exhibits 29 and 30 to Nevada Power's opposition to defendants' motion for summary judgment below.

John L. Thorndal, Esq.
February 5, 1991
Page 3

We offer to meet at a mutually convenient location on Saturday, February 9, 1991 with counsel and key executives for all defendants to discuss immediate settlement of all issues.

We would of course appreciate an early indication of your likely response so that travel arrangements might be made, if necessary on a contingency basis.

Very truly yours,

JONES, JONES, CLOSE
& BROWN, CHARTERED

A handwritten signature in cursive script, reading "Charles H. McCrea, Sr.", written in dark ink.

Charles H. McCrea, Sr.

CHM:jlq

chm\thorndal.1t

LAW OFFICES
JONES, JONES, CLOSE & BROWN
CHARTERED

A PROFESSIONAL CORPORATION
SEVENTH FLOOR - VALLEY BANK PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-6086

CLIFFORD A. JONES
HERBERT W. JONES
WELYN J. CLOSE
JOSEPH A. BROWN
GARY B. GOODHART
MICHAEL E. BUCKLEY
MIL KEMP

ANDREW HARRISON
DOUGLAS D. DODSON
RICHARD F. JOSE
J. RANDALL JONES
WILLIAM A. MCLEANT
CHARLES W. MCCREA, SR.
JANET H. CHURCH

DOUGLAS W. COHEN
PATRICIA J. CLYDE
JAMES W. STEBECK
JOHN W. FELD
GARY F. FOREMASTER
ANTHONY C. SOROCK
RICHARD F. HOLLEY
BRIAN E. HOLTHUS
JOHN E. LEACH
PAUL A. JENSEN

LEON B. LENHARD
WARR D. LORNER
ROBERT D. MASTON
STEPHEN W. RICE
MARY KAY SANC
W. A. SAMPJACIC
JANE A. STECKBECK
KEVIN R. STOLWORTHY
MICHAEL C. VAN

TELEPHONE
702: 385-4202

TELETYPE
702: 384-2275
702: 383-0086

3125-100
JULY 1980
JULY 1980

MESSAGE VIA PANAFAX
UF-600 TELECOPIER:

DATE: 2/5/91 CLIENT/MATTER: NV Power
11927.2
TO: Paul Merrell
TELECOPY #: 1-503-528-7151 VERIFICATION #: Same
FROM: Charles McCrea Sr.
NUMBER OF PAGES (INCLUDING COVER PAGE): -10-
COMMENTS:

Merrell 2/5 AM draft w/CTM
Comments

If you do not receive all of the message, please call:

(702) 385-4202

TRANSMISSION COMPLETED: DATE: _____ TIME: _____

OPERATOR: _____

LAW OFFICES
JONES, JONES, CLOSE & BROWN
CHARTERED

A PROFESSIONAL CORPORATION
SEVENTH FLOOR - VALLEY BANK PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101-0026

DAVID A. JONES
KERRY M. JONES
WILLIAM D. CLOSE
JOSEPH W. BROWN
DARYL S. GOODHEART
MICHAEL E. BUCKLEY
PAUL KEMP

JOHN S. HARRISON
DOUGLAS E. SANCHEZ
RICHARD F. JOSE
RANDALL JONES
WILLIAM A. MCELROY
CHARLES W. MCELROY, SR.
JAMES L. CHURCH

DOUGLAS W. COHEN
PATRICIA J. SUTHERS
JAMES W. EISEN
JOHN W. FELD
DARYL W. FOREMASTER
ANTHONY C. GORDON
RICHARD F. HOLLEN
BRIAN E. HOLMES
JOHN E. LEACH
PAUL A. LEMKE

JOHN S. LEONARD
WARR D. LEONARD
ROBERT D. MASON
STEPHEN W. MICE
WALTER LAY, JR.
WILLIAM S. MASON
JANE A. STECHER
KEVIN S. STOLWORTZ
MICHAEL C. VAN

TELEPHONE
702 385-4202

TELECOPIER
702 384-2278
702 383-0086

30 COPIES
FILE NUMBER
100 E. MAIN

MESSAGE VIA PANAFAX
UF-600 TELECOPIER:

DATE: 2-5-91 CLIENT/MATTER: NV Power 11927.2

TO: Paul Merrell

TELECOPY #: 1-503-528-7151 VERIFICATION #: _____

FROM: Charles M. Cies Jr

NUMBER OF PAGES (INCLUDING COVER PAGE): 18

COMMENTS: _____

Merrell draft w/ CHM comments.

If you do not receive all of the message, please call:

(702) 385-4202

TRANSMISSION COMPLETED: DATE: _____ TIME: _____

OPERATOR: _____