

Telephone: (702) 385-4202

BRADLEY & MERRELL
c/o Jones, Jones, Close & Brown, Chartered
700 Bank of America Plaza
300 South Fourth Street, Seventh Floor
Las Vegas, Nevada 89101-6026

Fax: (702) 385-1655

July 14, 1993

VIA FAX

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

David Kiernan
Williams & Connolly
725 12th Street, N.W.
Washington, D. C. 20005

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

Dear Messrs. Caiteaux and Kiernan:

Attached please find the Table of Contents and certain documents corresponding to the Table which are not in your possession but which will be discussed during today's telephonic conference with Judge Leavitt at 4:00 p.m. (Las Vegas time.)

Sincerely,

BRADLEY & MERRELL

LYNDA S. GARFINKLE
Office Manager

LSG:bms
Attachments

TABLE OF CONTENTS

**Documents for July 14, 1993 Hearing on
Plaintiff Nevada Power Company's July 8, 1993
Motion to Compel Entry upon Westinghouse's Headquarters
for Purposes of Inspection, Copying, and Depositions**

**Telephonic Conference
4:00 p.m.**

- 1. Outline of Issues**
- 2. Magistrate Lawrence R. Leavitt's April 5, 1993 denial of Westinghouse's Motion for Protective Order**
- 3. Plaintiff Nevada Power Company's March 12, 1993 Notice of Taking Depositions (of C.W. Bickerstaff, Jeffrey Bair and person identified as "you" in Exhibit 1212)**
- 4. Plaintiff Nevada Power Company's April 13, 1993 Re-Notice of Depositions and Request for Permission to Enter Upon Land for Purposes of Inspection, Copying and Depositions (of C.W. Bickerstaff, Jeffrey Bair and person identified as "you" in Exhibit 1212)**
- 5. Plaintiff Nevada Power Company's May 14, 1993 Request for Permission to Enter Upon Land for Purposes of Inspection and Copying**
- 6. Plaintiff Nevada Power's Second May 14, 1993 Request for Permission to Enter Upon Land for Purposes of Inspection and Copying to Defendant Westinghouse**
- 7. Excerpt from Westinghouse Electric Corporation's Response to Nevada Power's Motion for Entry of Default (Westinghouse Industrial Hygiene had PCB-related documents in 1986 and waiver of privilege)**
- 8. Waivers**
- 9. Plaintiff Nevada Power Company's July 8, 1993 Motion to Compel Entry upon Westinghouse's Headquarters for Purposes of Inspection, Copying, and Depositions**
 - a. April 13, 1993 letter of Paul E. Merrell, attorney for Nevada Power Company, accompanying their request to inspect property**
- 10. Motion to Compel Discovery Relevant to Alleged Destruction of Documents by Westinghouse**
- 11. Motion for Hearing on Plaintiff's Planned Depositions of Certain Westinghouse Employees**
- 12. Subpoena Duces Tecum and Plaintiff Nevada Power Company's March 12, 1993 Notice of Taking Deposition of Defendant Westinghouse Electric Corporation Pursuant to FRCP 30(b)(6)**

HEARING OUTLINE

I. PENDING MOTIONS AND SUGGESTED DISPOSITION:

A. NPC motion to compel discovery:

1. Contention is that subject of WEC retention/destruction of documents from Industrial Hygiene Dept. is not privileged.

a. Need stipulations/judicial determination on:

- (1) Proper scope of privilege objections during depositions. RECOMMENDED DISPOSITION: Parties instructed to continue conferring, set hearing date to reduce issues prior to depositions.

(a) issues primarily involve application of principles of work product and attorney client privileges, waiver thereof, and crime/fraud exception thereto.

- (2) Production of purportedly privileged documents appended to Bair 22-page memorandum, approximately 10 documents. RECOMMENDED DISPOSITION: Expedited ruling of waiver by incorporation into no-longer privileged document or by waiver of subject matter. Alternative, expedited submission for in camera review.

(a) Parties have conferred. If in camera inspection, parties should discuss before Court reviews, to determine possible further compromise.

B. NPC motion to compel inspection of property

1. Contention is that NPC should be allowed to depose witnesses in presence of records at issue. RECOMMENDED DISPOSITION: expedited ruling. Briefing should not be necessary.

C. NPC motion for discovery hearing. RECOMMENDED DISPOSITION: no separate action needed; subsumed in above suggestions for hearing.

II. ISSUES TO BE SCHEDULED

- A. Request to inspect records gathered in 1986 company-wide sweep for PCB records. RECOMMENDED DISPOSITION: Establish briefing schedule; consider potential need to take relevant portion of Rule 30(b)(6) related deposition after fact deposition cut-off date.
- B. Redefinition of subpoena duces tecum to redefine request and privilege claims. RECOMMENDED DISPOSITION: Set expedited hearing date; WEC to provide privilege log if contested; decision and production to occur prior to relevant Rule 30(b)(6) deposition.
 - 1. Intimately related to Rule 30(b)(6) deposition -- needs expedited decision
 - 2. Contains privilege claims for which there has been no privilege log. Parties have conferred, but need at least one further conference since Court's opinion received.

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

IN RE: ASBESTOS PERSONAL INJURY CASES, CONSOLIDATED

TRANSCRIPT OF THE PROCEEDINGS HAD UPON MOTIONS IN THE ABOVE
REFERENCED CAUSE BEFORE THE HONORABLE KATHY KING JACKSON,
CIRCUIT JUDGE, ON THE 18TH AND 19TH DAY OF FEBRUARY, 1993.

MARY ABRAMS, ET AL	PLAINTIFF
VERSUS	NO. 88-5422
GAF CORPORATION, ET AL	DEFENDANT
LOUIS BELL, ET AL	PLAINTIFF
VERSUS	NO. 89-5121
ARMSTRONG WORLD INDUSTRIES, INC., ET AL	DEFENDANT
H. KLEAMON BILBO, ET AL	PLAINTIFF
VERSUS	NO. 89-5088
ARMSTRONG WORLD INDUSTRIES, INC., ET AL	DEFENDANT
WILLIE E. BARNES, ET AL	PLAINTIFF
VERSUS	NO. 90-5247
EAGLE-PICHER INDUSTRIES, ET AL	DEFENDANT

13

1

COURT REPORTER'S CERTIFICATE

2

STATE OF MISSISSIPPI

3

COUNTY OF JACKSON

4

I, Joy T. Young, Official Court Reporter for the

5

Nineteenth Judicial Circuit Court District of the State of

6

Mississippi, do hereby certify that to the best of my skill

7

and ability I have reported the proceedings had and done or

8

motions in the Abrams group of consolidated asbestos cases

9

on the 18th and 19th day of February, 1993, before Honorab

10

Kathy King Jackson, Circuit Judge for the Nineteenth

11

Judicial Circuit Court District of the State of Mississippi

12

and that the above and foregoing pages contain a true, full

13

and correct transcript of my stenographic notes and tape

14

taken in said proceedings.

15

I do further certify that my certificate annexed here

16

applies only to the original and certified transcript. Th

17

undersigned assumes no responsibility for the accuracy of

18

any reproduced copies not made under my control or

19

direction.

20

This the 22nd day of February, 1993.

21

22

23

24

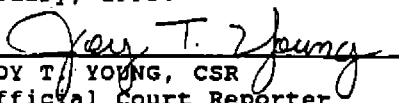
25

26

27

28

29


JOY T. YOUNG, CSR
Official Court Reporter
Post Office Box 998
Pascagoula, MS 39568-0998

10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Your Honor.

BY THE COURT: We met earlier. Hello.

BY MR. WILLIAMS: Bud Shill. And Mr. Johr Stump is here behind us.

BY THE COURT: Good morning. Welcome.

BY MR. WILLIAMS: And, with that, I would ask for Mr. King to address the Court.

BY MR. KING: Thank you, Your Honor. Your Honor, is certainly aware that on January the 12th before this Court a motion was filed by Westinghouse asking the Court for temporary relieve for certain production of -- inadvertent production of documents. And that is the subject of the matter that I'd like to take up with the Court now. Your Honor, Westinghouse hereby withdraws its claim of privilege with respect to this draft twenty-two page memorandum, which I will call the draft memorandum for the purposes of our discussion today. And that is the one that was the subject of this motion that we filed on January the 12th, this was written by Westinghouse's in house counsel, Jeffrey J. Bayer. Westinghouse does -- and takes this action on the ground that the document is now in the public domain. Westinghouse also wishes to inform the Court that there are additional privileged documents that concern the subject matter of the draft memo, which was the proposal of a document retention policy for Westinghouse

10

1 industrial hygiene department, which I'll call
2 the industrial hygiene. Westinghouse believes
3 that any waiver of privilege with respect to the
4 draft memorandum does not waive the privilege
5 with respect to these other privileged documents.
6 However, in the interest of making all
7 information relating to the document retention
8 program for the industrial hygiene department
9 fully available to the Court and to the
10 plaintiffs, Westinghouse hereby agrees to waive
11 its claim of privilege with respect to all
12 documents related to the formulation of this
13 proposal. Those documents are being located and
14 will currently -- excuse me -- and will shortly
15 be available to plaintiffs' counsel. You should
16 be aware, Your Honor, and the record should be
17 clear that Westinghouse's waiver of privilege is
18 expressly limited to these other privileged
19 documents only and is not a waiver with respect
20 to other privileged documents whether such
21 documents are related to the industrial hygiene
22 matters, document retention in general, or any
23 other matters. In waiving its privilege with
24 respect to these documents, Your Honor,
25 Westinghouse in no way concedes the relevance of
26 these documents to any proceeding, including
27 these actions in which Westinghouse is a party.
28 To the contrary, Westinghouse believes that the
29 industrial hygiene document retention proposal

10

1 in fact irrelevant for several reasons, including
2 that, so far as Westinghouse has been able to
3 determine, the proposal itself was never
4 implemented. At the appropriate time,
5 Westinghouse will fully brief and present
6 evidence demonstrating the lack of relevance of
7 the industrial hygiene document retention program
8 proposal and the documents related to it.
9 Consequently, Your Honor, we have then,
10 therefore, withdrawn the motion that was filed
11 before you on January 12th and I believe that
12 that issue is now moot before the Court. We will
13 comply with the statement that I've just made to
14 the Court in due course and will discuss that
15 with the plaintiffs' counsel to make sure that
16 that's done on an appropriate basis. I am here
17 to make that representation to the Court. In
18 addition to that, one of the issues that has been
19 before the Court this morning is the issue as it
20 relates to, or matters as they relate to the
21 ~~privilege~~ law. Mr. Shill, whom was just
22 introduced to Your Honor will speak to that in
23 more detail. But our position on that, Your
24 Honor, was outlined in a letter which was
25 delivered to plaintiffs' counsel yesterday,
26 yesterday evening I believe, in which we outlined
27 a number of matters regarding the privilege log
28 and this morning delivered, both to Your Honor
29 and to plaintiffs' counsel, a new privilege log

10

1

that was redrafted based on the old. And that document itself we believe more fully clarifies the nature of the privilege discussions within each of those documents listed on those sheets. And because of its voluminous nature, we would suggest as a method for handling this that the plaintiffs undertake a review of that, given the broadened nature of the description of those documents, let us know exactly what they do want to have the Court take a look at, if that's what is involved, because we believe that a significant portion of those documents really have absolutely no relevance to these issues at all. And that if there are issues that we are not able to work out with plaintiffs' counsel with regard to matters on those privilege logs, then we would be glad to sit down, not only and work with them, but if they have to come before the court, we will make ourselves available. That shall will come back down if that's what's necessary. Whatever we have to do to reach a resolution on that, we are prepared to work with. Now, having made those statements to the Court, we would believe that the matters of substance that are before the Court this morning with regard to those two motions can be adequately addressed and have been before you, and issues that relate to them we should be able to work with Mr. Motley and his compatriots on the

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

11

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 14, 1993

TO: Konrad L. Cailteaux, Esq.

FAX #: (212) 310-8007 OR
(212) 735-4657

PHONE #: (212) 310-8000

FROM: Bradley & Merrell

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

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Letter, Table of Contents, documents re: today's conference call

NUMBER OF PAGES (including cover page): Eleven (11)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

**IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615**

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 14, 1993

TO: Konrad L. Caliteaux, Esq.

FAX #: (212) 310-8007 OR
(212) 735-4657

PHONE #: (212) 310-8000

FROM: Bradley & Merrell

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

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Letter, Table of Contents, documents re: today's conference call

NUMBER OF PAGES (including cover page): Eleven (11)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615

TRANSMISSION REPORT

THIS DOCUMENT WAS CONFIRMED
(REDUCED SAMPLE ABOVE - SEE DETAILS BELOW)

** COUNT **

TOTAL PAGES SCANNED : 11

TOTAL PAGES CONFIRMED : 11

*** SEND ***

No.	REMOTE STATION	START TIME	DURATION	#PAGES	MODE	RESULTS
1	ARVIN MASKIN	7-14-83 9:55AM	4'01"	11/ 11	EC	COMPLETED 9600

TOTAL 0:04'01" 11

NOTE:

No. : OPERATION NUMBER 48 : 4800BPS SELECTED EC : ERROR CORRECT G2 : G2 COMMUNICATION
PD : POLLED BY REMOTE SF : STORE & FORWARD RI : RELAY INITIATE RS : RELAY STATION
MB : SEND TO MAILBOX PG : POLLING A REMOTE MP : MULTI-POLLING RM : RECEIVE TO MEMORY

**BRADLEY & MERRELL
JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202**

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 14, 1993

**TO: David C. Kiernan, Esq.
c/o Sharon Price**

FAX #: (202) 434-5029

PHONE #: (202) 434-5843

FROM: Paul E. Merrell, Esq.

CLIENT/MATTER: Nevada Power v. Monsanto

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Letter, Table of Contents, documents re: today's conference call

NUMBER OF PAGES (including cover page): Eleven (11)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

**IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615**

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 14, 1993

TO: Konrad L. Cailteaux, Esq.

FAX #: (212) 310-8516

PHONE #: (212) 310-8904

FROM: Paul Merrell

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

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: revised Table of Contents
re: today's telephonic hearing

NUMBER OF PAGES (including cover page): Two Three (3)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Randy Andreini, Ext. 615