

TELEPHONE CONVERSATION BETWEEN CHARLES H. McCREA
AND TOM KOTOSKE OF JUNE 30, 1989

KOTOSKE During the week of the 19th but you didn't tell me when they met then I don't care, just the three of them and they will not, and I repeat, they will not make an offer on this case, they want us to sue them.

McCREA They won't make an offer to IU.?

KOTOSKE Oh no, we settled IU.

McCREA Oh, you settled IU? Okay. So they won't make an offer to us?

KOTOSKE They will not make an offer. He said it kind of strange. I will try to repeat it. What I think is once we file suit I think they are going to contest the complaint on a motion to dismiss and if they lose I think they will probably cave in, that is going to be the key battle. Now he did not say that. He said we would like to test your theory before we pay you any money. How do you interpret that?

McCREA I don't know how you test a theory unless you move to dismiss.

KOTOSKE So the last part is my inference drawn from what he said. I don't know how else to read that to tell you the truth.

*NU Power 11427.2
Convergence File
w/ Counsel*

McCREA No, I don't either. Tom, do you want to work this around and put a Rico claim in there?

KOTOSKE No.

McCREA No, you don't?

KOTOSKE I'll tell you why. We just handled a multi--a piece of multi--up in Federal Court before Judge Charlie Legg, a fairly massive piece, multi-district securities fraud litigation. We were not the only plaintiffs, for a minute we had Pillsbury, Madison and Sutro, that is a firm out here.

McCREA I know who they are.

KOTOSKE And people of that ^{ilk,} ~~gilt~~ and I sat around the strategy tables early on and we had two plaintiffs and they had a couple and so forth, and we went through this and you know I used to lecture on Rico when it first came out when John Dowd and I did the very first ones. He did the first one in the country. And we knew then it was not designed for every type of civil case. I lost the argument and we went through a great big _____, we had this big, old Rico claim in there, you know for the mail fraud counts and so forth. Well, Judge Legg just went through the roof. As you know that statute is very controversial now because of its use and misabuse on the civil side.

McCREA Right, the Supreme Court just this week though
came down with another one supporting it.

KOTOSKE You're right, they did, but what are we going to
seize, GE? Are we going to ^{run} ~~ruin~~ it?

McCREA That's a hell of a threat, isn't it? I am a gas
man myself. I don't know what the hell I would do
with that electric company.

KOTOSKE Anyway, I think its nice and tidy. I think your
allegations of putting in the property damage are
neatly tucked in and I believe that to be were to
tear down buildings and stuff like that.

McCREA Yes. Well, I'll tell you where I came to that.
The trust indentures under which a utility secures
its property typically describe transformers,
capacitors, poles, insulators, a whole paragraph
of junk and it is all improvements to real
property, so it is real property, and I can
support that.

KOTOSKE Okay. Good. I would like to file the thing. Is
Monday too soon?

McCREA I don't know that we have anybody working Monday,
but we can sure file it next week.

KOTOSKE Okay. And I think we will meet the statutes in
fine shape, don't you?

McCREA I think so, yes.

KOTOSKE I can't, in my mind, I believe, and I may be wrong, but I don't think we met with those folks before the 4th of July, did we?

McCREA No, we met with them later in July last year. In fact we met with them in September. You and David and the group came out sometime in May or June and then I met with Nevada Power in July, I believe, and we met with the GE people in September.

KOTOSKE Right. Well, okay, I think we should file it.

McCREA All right, we will do it.

KOTOSKE File it as it stands though. You are right in the bull's eye on the thing and we will let him test our theory.

McCREA Okay. We've got seven of them to test there so we will see where we come out. You want to file it but not serve?

KOTOSKE Well, it is not going to do us any good. Well, let's wait a month but let's don't wait--because the statute is 120 days statute.

McCREA Right. So you want to file it and then ^[you] send them a copy with the file stamp on it and say we haven't served this yet but what do you want to do now?

KOTOSKE Yes. Let's do it that way.

McCREA All right. I will send you a file-stamped copy then.

KOTOSKE Yes, let's do it that way and then I will have
some specific theories to shoot at.

McCREA We will go, sir.

KOTOSKE Good Chuck, it looks good.

McCREA All right, have a nice weekend.

KOTOSKE You too. Have a nice holiday.

McCREA Okay, I'll do it.

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