

ETHEL LOVENE BURNHAM and
MATTHEW BURNHAM, THOMAS
EARLE BROWNLEE and SANDRA
CROOK BROWNLEE, and MARGARET
EUNICE LEWIS, Individually and
as Personal Representative of the
Heirs and Estate of WILBORN VAN
LEWIS, Deceased

Plaintiffs,

v.

KEENE CORPORATION, et al.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

250TH JUDICIAL DISTRICT

**DEFENDANT WESTINGHOUSE ELECTRIC CORPORATION'S RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL AND SUPPLEMENTAL RESPONSE AND
OBJECTIONS TO PLAINTIFFS' INTERROGATORIES**

TO: Plaintiffs, by and through their attorney of record, Russell W. Budd, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

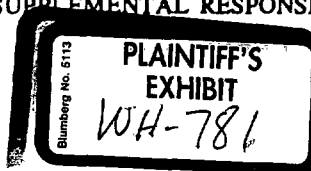
COMES NOW, Westinghouse Electric Corporation ("Westinghouse") and files this its response to Plaintiffs' Motion to Compel along with its Supplemental Response and Objections to Plaintiffs' Interrogatories served on or about November 23, 1993, and would show the Court the following:

I. BACKGROUND

Plaintiffs propounded interrogatories to Westinghouse relating to the authenticity and admissibility of 11 documents on or about November 23, 1993. These interrogatories were

RESPONSE TO PLAINTIFFS' MOTION TO COMPEL AND SUPPLEMENTAL RESPONSE AND OBJECTIONS
TO PLAINTIFFS' INTERROGATORIES

Page 1



served in conjunction with similar interrogatories relating to approximately 30 additional documents in three other cases pending before this court.¹

Plaintiffs seek responses regarding these documents notwithstanding their past similar discovery regarding over 100 other documents in other cases pending either in Dallas or Travis County. Plaintiffs are apparently trying to authenticate all documents, approximately 800 in number, listed as exhibits against Westinghouse. Many of these exhibits are patently irrelevant to these cases and are inadmissible. Westinghouse has reasonably attempted to cooperate with Plaintiffs' counsel, Baron & Budd, while appropriately objecting to the burdensome nature of these requests. Westinghouse again objects to these requests in their entirety but provides further reasonable responses.

II. OBJECTIONS TO INTERROGATORIES

Some of the documents in issue in these interrogatories presumably were produced previously by Westinghouse to Plaintiffs along with literally thousands of other documents. However, all of these documents were not prepared by Westinghouse and Westinghouse cannot attest to their authenticity. Likewise, the origin of many documents cannot be confirmed because Plaintiffs have supplied incomplete or illegible copies or copies which contain extraneous information.

Westinghouse also objects to these interrogatories as burdensome in that they require an unreasonable amount of investigation and attempt to force Westinghouse to do Plaintiffs

¹ *Clippard, et al. v. Keene Corporation, et al.*, Cause No. 93-03155, 331st District Court, Travis County, Texas; *Swinson, et al. v. Keene Corporation, et al.*, Cause No. 92-16996, 201st District Court, Travis County, Texas; *Perkins et al. v. Keene Corporation, et al.*, 353rd District Court, Travis County, Texas.

investigative work. As noted above, some of the documents were neither generated nor produced by Westinghouse. Others were produced by Westinghouse, but it would require unreasonable efforts to track down the original source of the document and the circumstances of its creation and retention. Westinghouse is a multinational corporation that has been in existence for over 100 years in dozens of locations and has employed hundreds of thousands of employees. Finally, some of the documents have been the subject of extensive deposition questioning of their authors, recipients, or others with knowledge of them. However, instead of requesting information regarding authenticity from the author or source of the document or reviewing these depositions, Plaintiffs instead attempt to shift the burden of investigation to Westinghouse.

Westinghouse also objects these interrogatories by requiring more than 30 responses. Combined, the interrogatories require, for a variety of documents, that Westinghouse investigate and respond whether: a) they were generated or kept by Westinghouse, b) in the regular course of business, c) by an employee or representative of Westinghouse, d) with knowledge of the act, event, condition or opinion recorded, e) found in files so as to create no suspicion of authenticity, f) copies attached are true and correct copies of original documents and g) the authenticity has ever been stipulated to in any court in any case. Pursuant to the Tex. R. Civ. P. Rule 168, these voluminous interrogatories are improper.

Finally, Westinghouse objects to these interrogatories as burdensome based upon the number of documents in issue. As noted above, Plaintiffs have already sought authentication of over 100 documents and have designated 779 exhibits against Westinghouse in this or other litigation. The purported authentication of these 779 exhibits is no less burdensome merely because Plaintiffs served these interrogatories on a piece-by-piece basis. The interrogatories go

beyond the scope of proper discovery and are an abuse of the discovery process. Therefore, Westinghouse objects to Plaintiffs interrogatories in their entirety.

III. RESPONSE

Subject to the foregoing objections, Westinghouse has reasonably attempted to provide further responses. However, these responses are made without in any way waiving: 1) the right to object, on the grounds of competency, relevancy, materiality, hearsay, or any other proper grounds, to the use of any such information for any purpose, in whole or in part, in any subsequent stage or proceeding in this action or any other action; or 2) the right to object on any and all grounds, at any time, to any other discovery procedure relating to the subject matter of these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1:

For each document listed below, please answer whether such document was kept and/or generated in the regular course of a regularly conducted business activity of any Westinghouse Entity by an employee or representative of any Westinghouse Entity with knowledge of the act, event, condition or opinion recorded.

WH-579 Photographs of insulation blankets being applied to turbines. Bates Nos. 28012071, 28012072, 28012074, 28012076, and 28012086.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Furthermore, Westinghouse cannot state whether this "document" was kept in the regular course of business because this Exhibit is a photograph and not a document. Westinghouse objects to this improper attempt to authenticate a photograph. Furthermore, Westinghouse objects to this interrogatory as vague and ambiguous because the photograph is unclear and indistinct and because the photographer of same is unknown.

WH-580 Westinghouse Electric Corporation letter dated October 21, 1975 from Ronald G. Ingham to Wayne Brooks.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-715 Westinghouse Flexible Insulating Materials booklet.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this appears to be a Westinghouse generated document. However, due to its complex nature, it is unlikely to have been created by one person. Accordingly, Westinghouse can provide little information regarding its origin or authenticity.

WH-722 Article titled "These Tailors make 'Topcoats' for Turbines", The Westinghouse News, May 30, 1950.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-723 Westinghouse memorandum dated January 31, 1956 from W.C. Hood to D.E. Baldwin; subject: Progress Report on C.O.D. D-8-56 - Fireproof Bulkheads to be Used on New Ships - Moore McCormack, with attachment.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-724 Memorandum dated February 22, 1956 from D.E. Baldwin to G.F. Sutton; re: Moore-McCormick Negotiations, C.O.D. 8-56, Project 659-10.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Subject to these objections, this document appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-725 Letter dated April 29, 1957 from W.H. Leland to R.H. Dement; subject: Underwriter's Approval of Asbestos MICARTA.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Furthermore, this document contains extraneous markings, the origin of which is unknown. However, this document, excluding the extraneous information, appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-726

Westinghouse memo dated May 10, 1957 from W.C. Woods to D.E. Baldwin; subject: Discoloration of Inks on Moore McCormick Samples. ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Furthermore, this document contains extraneous markings, the origin of which is unknown. However, this document, excluding the extraneous information, appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-727

Marine Turbine Drawings, issued June 25, 1957.

ANSWER: Westinghouse objects to this interrogatory as multifaceted. Furthermore, Westinghouse objects to Plaintiffs' characterization and description of these documents as "marine turbine drawings, issued June 25, 1957" as this does not accurately describe the drawings in issue. However, these drawings appear to be documents produced by Westinghouse in asbestos litigation pending in Mississippi. Such drawings do not generally have a single author or custodian. Instead, these drawings are a composite of information and requirements sent to Westinghouse by the ships' architects, the purchasers or others. Accordingly, Westinghouse objects to the burdensome nature of this interrogatory in tracing the origins of these documents. Finally, Westinghouse objects to this interrogatory as seeking information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as these drawings have not been shown to depict any item in issue in this litigation. Subject to these objections Westinghouse refers Plaintiffs to the testimony of James Gates provided in the Abrams case in the Circuit Court of Jackson, Mississippi on June 29 and 30, 1993, when Mr. Gates was questioned extensively regarding these drawings. Upon information and belief, a copy of this transcript of testimony is already in Plaintiffs' counsel's possession.

WH-729

Letter dated February 2, 1959 from D. E. Baldwin to R. H. Dement.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Furthermore, this document contains extraneous markings, the origin of which is unknown. However, this document, excluding the extraneous information, appears to have been generated by or for Westinghouse and maintained in the regular course of business.

WH-730

Underwriters' Laboratory, Inc. letter dated February 13, 1959, from A.A. Briber to W.C. Hood.

ANSWER: See general objections. Westinghouse further objects to this interrogatory as multifaceted. Because this document is not a Westinghouse generated document, Westinghouse can provide little information regarding its origin or authenticity. Instead, this document appears to be one of many produced by Westinghouse to Plaintiffs.

INTERROGATORY NO. 2:

For each document listed below, please answer whether such document was found in your files in such a condition as to create no suspicion concerning its authenticity.

- WH-579 Photographs of insulation blankets being applied to turbines. Bates Nos. 28012071, 28012072, 28012074, 28012076, and 28012086.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these photographs appear to be copies of photographs previously provided by Westinghouse to Plaintiffs.
- WH-580 Westinghouse Electric Corporation letter dated October 21, 1975 from Ronald G. Ingham to Wayne Brooks.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.
- WH-715 Westinghouse Flexible Insulating Materials booklet.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.
- WH-722 Article titled "These Tailors make 'Topcoats' for Turbines", The Westinghouse News, May 30, 1950.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.
- WH-723 Westinghouse memorandum dated January 31, 1956 from W.C. Hood to D.E. Baldwin; subject: Progress Report on C.O.D. D-8-56 - Fireproof Bulkheads to be Used on New Ships - Moore McCormack, with attachment.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.
- WH-724 Memorandum dated February 22, 1956 from D.E. Baldwin to G.F. Sutton; re: Moore-McCormick Negotiations, C.O.D. 8-56, Project 659-10.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear

in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.

- WH-725 Letter dated April 29, 1957 from W.H. Leland to R.H. Dement; subject: Underwriter's Approval of Asbestos MICARTA.
ANSWER: See general objections and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files, and except for the unidentified extraneous information contained on some of these documents, in a condition as to create no suspicion concerning their authenticity.
- WH-726 Westinghouse memo dated May 10, 1957 from W.C. Woods to D.E. Baldwin; subject: Discoloration of Inks on Moore McCormick Samples.
ANSWER: See general objections and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files, and except for the unidentified extraneous information contained on some of these documents, in a condition as to create no suspicion concerning their authenticity.
- WH-727 Marine Turbine Drawings, issued June 25, 1957.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files and in a condition as to create no suspicion concerning their authenticity.
- WH-729 Letter dated February 2, 1959 from D. E. Baldwin to R. H. Dement.
ANSWER: See general objections and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in the condition as found in Westinghouse files, and except for the unidentified extraneous information contained on some of these documents, in a condition as to create no suspicion concerning their authenticity.
- WH-730 Underwriters' Laboratory, Inc. letter dated February 13, 1959, from A.A. Briber to W.C. Hood.
ANSWER: See general objection and objection and response to Interrogatory No. 1. Subject to these objections, these documents appear in a condition as found in Westinghouse files. However, since this document was not generated by Westinghouse, Westinghouse can provide little information regarding its authenticity.

INTERROGATORY NO. 3:

Has Westinghouse stipulated or agreed to the authenticity of any of the documents referenced in Interrogatory No. 1 with any person prior to the date of these Interrogatories?

ANSWER: See general objections and objections and response to Interrogatory Nos. 1 and 2 above. Westinghouse is not aware of any stipulation to the authenticity of any of these documents except to the extent Westinghouse may have stated that the documents were provided by Westinghouse via document production in various cases.

Respectfully submitted,

VIAL, HAMILTON, KOCH & KNOX
1717 Main Street, Suite 4400
Dallas, Texas 75201-4605
(214) 712-4400
FAX (214) 712-4402

By:

MARK A. HENDRIX
State Bar No. 09460500

ROBERT E. THACKSTON
State Bar No. 00785487

ATTORNEYS FOR DEFENDANT
WESTINGHOUSE ELECTRIC
CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing instrument has been served on counsel for Plaintiffs via hand delivery and to all other counsel of record via regular mail on this the _____ day of January, 1994.

ROBERT E. THACKSTON

J:\LITC\H\DISC\229399.1