

THOMAS E. KOTOSKE

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OF COUNSEL:

WILLIAM N. WOODSON, III

November 21, 1989

J. Bruce Alverson
Alverson, Taylor, Mortensen & Gould
600 South Eighth Street
Las Vegas, NV 89101

Re: Nevada Power v. GE

Dear Mr. Alverson:

I have reviewed your response to plaintiff's interrogatories and plaintiff's request for admissions, both dated November 16, 1989. Your responses are totally inadequate. The purpose of this letter is an attempt to resolve this discovery dispute so as to avert a motion to compel with an accompanying request for sanctions.

I make a few preliminary points here. Your objections, both to our interrogatories and request to admit, that our discovery, "--- is beyond the scope of discovery limited to the issue of statute of limitations ---" simply misses the whole point.

The document ["GE documents"] which are the subject of plaintiff's interrogatories and request to admit, go directly to the statute of limitations issue. The GE documents establish, in part, the fraudulent concealment of key facts that plaintiff was never aware of and which facts were fraudulently concealed from plaintiff by GE. These facts draw a marked distinction between this case and Electric Power Board v. Monsanto, 879 F.2d 1368 (6th Cir. 1989). As I am sure you are aware, fraudulent concealment is an exception to the application of the statute of limitations in this case.

Second, your contention that the term "genuine", as used in our request to admit facts, is vague and incomprehensive is simply make way. That term is well-defined in federal case law.

Third, your objection to our interrogatories that you will not respond until plaintiff, "--- identify the source from which it obtained these documents," is likewise unacceptable. There is absolutely no requirement that any party has to identify the sources of information inquired about in interrogatories. Your efforts to refuse to cooperate in discovery based on this type of objection is simply frivolous and without substantial justification.

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REQUEST TO ADMIT GENUINENESS OF DOCUMENTS

Your response to our request to admit the genuineness of the GE documents is inadequate.

With respect to the material safety data sheet (pp.1-2;3-14), these documents are the manufacturing specifications of GE's own brand of PCB. That GE trademarked brand of PCB is Pyranol. Your client is fully aware of the genuineness of these documents.

With respect to pages 48-58, this is GE's own publication on its transformers. Your response that you don't know whether or not your client's own publications are not genuine is simply interposed for harassment and delay.

Your objection to pages 62-72 of the GE documents is totally without basis. This document was authored by GE's own industrial hygienist, I. Matelsky.

Your objection to pages 80-86, are totally without basis of any kind. This document is a report prepared by GE in December 1970. To suggest that GE does not know if the reports it prepare are genuine or not approaches the absurd.

Pages 106-107 are the written contents of a speech delivered on January 14, 1976, by GE's vice-president, John F. Welch. Surely, GE does not now contend that its own vice-president's remarks are not genuine.

THE INTERROGATORIES

Interrogatory No. 1 seeks to authenticate the GE documents as business records kept by GE in the regular course of business. These are simple straight forward questions.

Your refusal to respond to these questions is without any basis in fact or law.

To demonstrate how disingenuous your responses are to this interrogatory, I point out to you that in another PCB case pending in Kentucky wherein GE is also a defendant, this same interrogatory, involving virtually the same type of documents was presented to GE. Here's what GE's response to this same interrogatory was in that case:

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- a) The documents are true and accurate copies of documents within the possession and /or control of GE;
- b) The documents are the type of documents that GE would maintain in the regular course of its business; and,
- c) The documents have been produced from files and records of GE.

Interrogatory No. 2 seeks the identity of the person most knowledgeable about these documents. Your answer is simply evasive and contrived.

CONCLUSION

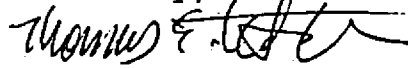
I find it remarkable that simple straight forward discovery requests would be met with such an uncooperative attitude.

Regrettably, because of time constraints, if we have not received appropriate responses to our discovery requests by December 4, 1989, we will be left with no option but to prosecute a motion to compel with an accompanying request for sanctions and an appropriate order limiting the categories of evidence upon which GE may rely in this case.

Additionally, if this matter must be prosecuted through a motion to compel, we will ask for Court to set aside the discovery order and briefing schedule in this case so that discovery can be re-opened to allow plaintiff to depose GE personnel as to authenticity of the GE documents that are the subject of this dispute.

If you have questions concerning this letter, please contact me as I have been assigned all matters concerning this dispute.

Sincerely,


THOMAS E. KOTOSKE

TEK:rry

cc: Bruce A. Featherstone
John L. Thorndal
Jeffrey S. Klein
J. Randall Jones