

Discussion on whether to initiate a class action suit. Kotoske said the prospective defendants might like this, and it gets us into big money outlays.
TELEPHONE CONVERSATION BETWEEN CHARLES H. MCCREA, SR. AND TOM KOTOSKE OF JULY 5, 1989 *suit to certify the class.*

MCCREA: Can Defendants move to make an action against them a class action?

KOTOSKE They have, and I will give you an example where they did it and how they did it, they did it in the, I am going to say, do you remember Bendictine, the drug that caused terrible damage to new born children, not DES, the drug.

MCCREA Yes, wasn't it thalidomide.

KOTOSKE Not like that but with that effect. So what happened was the plaintiff's lawyer filed that case on behalf of his client and the company was being sued across the country and they were just expending a whole lot of dough and what they did was they moved to certify a class within a certain timeframe and everything else. Plaintiff's lawyer lost control of the case and it went to some jerk down in Alabama or some place, and that happens.

MCCREA So defendants can ask that the thing be certified as a class action?

KOTOSKE Oh sure. They may want to do it in a case like this in which they have to undertake to notify all those so that you can opt in or opt...

MCCREA [defendants] [i.e., members of the class]
So they have to notify them instead of us then.

KOTOSKE Oh yes, they would have to pick up all of that burden if they want to do that. So I think not. I definitely would say no. It would not be in the best interest of Nevada Power to do that.

MCCREA Yes. I am sure it would not be in the best interest of Nevada Power. I think what Randall was speculating on is whether someone else might file a case on behalf of another utility and then try to make a class action out of that, then in effect muscling us out of the business except for this client.

KOTOSKE Well, it could be but should that happen we would immediately go multi-district litigation. We can do that. I don't know if Nevada has such a statute but we could probably--I don't think Nevada does, do they?

McCREA I don't know. I am not familiar with the term, Tom, what happened with multi-district.

KOTOSKE I understand. First of all its design is Federal and what it has to do with is complex litigation involving a variety of districts, Florida, all over the country and they select--and our office, we just completed one of these after two and a half years and let me tell you it can be a hassle. It is not a class action. It brings together all lawsuits, first for the purpose of discovery in one place.

McCREA Oh all right, we did do this here in connection with the MGM litigation. Now I know what you are talking about now, I just didn't recognize the ~~monitor~~ *monitor. Monicker*.

KOTOSKE ~~Not~~ that is not a class action. It is multi-district--it's called complex ~~manual~~.

McCREA Right, I understand.

KOTOSKE And we have just gone through it. Its laborious but it does bring together a lot of cases. That way you never lose control of your case.

McCREA Yes. We are also representing some plaintiffs in the DuPont fire litigation in Puerto Rico, in fact my partner here is on the plaintiff's committee there.

KOTOSKE Hey Chuck I would like you to do me a favor as well as David in that would you put us as co-counsel for plaintiff on the complaint?

McCREA Yes, I will do that and one of the things we talked about was moving to have you admitted in Nevada, and I don't know whether we will put you down as co-counsel at the time that we file the complaint or file the motion afterwards but we will do it whichever way it is supposed to be done.

KOTOSKE Thank you. Think we can get it filed this week?

McCREA Oh absolutely.

KOTOSKE Now strategically, the first thing that I would expect to happen after we serve it is the removal to Federal Court. If we like, because of your elegant allegations as to doe defendants, we can remand it right back to state court under the recent Ninth Circuit decision that I mentioned, but we can get more into that. They may not do it, they may just answer up or whatever. I will make a pass at Neal in an attempt to settle the thing once I get a file-stamped copy.

McCREA Okay, but you want us to go ahead and serve.

KOTOSKE Yes, I think you should, I really do.

McCREA All right, we'll do it.

KOTOSKE Okay, we are going to be in state court, I like the complaint and add David and I under your guys, as you know, and we are ready to go.

McCREA All right, Sir.

KOTOSKE Okay, Chuck.

McCREA We'll get her rolling.

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