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Chuck McCrea, Esquire
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700 Valley Bank Plaza
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VIA TELEFAX

Re: Nevada Power v. Monsanto, et al

Dear Chuck:

After arriving home and reviewing the draft, I think it would be a waste of time to do further editing before we finish the draft. It looks like we're going to be substantially over-length and are either going to have to do some substantial compressing or to get the court's permission for an over-length brief. (I favor the former, if we can do it).

In any event, I recommend that we stop editing until we see how long we are with all of the arguments and assess whether we might get within the limits by rewrite. I'm aiming to fax the rest of the remaining text to you Sunday night.

I am now worried about space limitations. The fraudulent concealment section is not finished nor is the "nexus or relationship among parties" subsection. We have yet to write the section on selection of the proper statute of limitations for indemnity actions and the section discussing when the accrual dates should have been (both should be fairly short). We also have several minor points that still need discussion within existing sections.

I think we can meet the page limitations, but we may need to do a total rewrite that is far more terse. It's still worth completing this draft, however, because that gives us the research, the points, and the arguments to work from. If it's done, a new draft should be fairly quick and simple to write.

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A few things your office might take care of in the meantime:

(i) we lost all of our paragraph indentations on the last draft;

(ii) page margins need to be reset so that we use all the vertical space we're entitled to, one-inch margins top and bottom, not counting page numbers;

(iii) reallocating the top and bottom margins so they're equal (i.e., right now, we have far more space at the top than at the bottom);

(iv) resetting right and left margins so they total 2 inches, with 3/4" on right and 1-1/4" on left to allow for binding;

(v) inset quotes need to be indented on pp. 13 and 21;

(vi) page numbers are garbled and not centered; and,

(vii) citation missing at pg. 8 line 7.

On the latter, I forgot to copy the citation and bring it home with me. The Nevada case is indexed in the update supplement for 54 C.J.S. Limitations of Actions, the rule cited immediately preceding where the citation needs to go on page 8.

On the editorial end, I realize that the form appears somewhat unusual in that we first cite a rule from CJS followed by a decision that applied it in Nevada. I did that because I think we should focus attention on the CJS rule which is broad enough to encompass our situation rather than on the Nevada decision that applied it. In the Nevada decision, the plaintiff had annually updated its investigation, which we certainly didn't do. We shouldn't leave the impression that we believe we come within the facts of that case, only that we are within the scope of the rule. Citing the Nevada case is only important to

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emphasize that we are diligently trying to predict Nevada law.

When we get to the rewrite stage, I already see two areas for major cuts and/or compression. The 2-1/2 page summary is obvious, since it's all repeated later. Section II(A) is another. The first three subsections under that section now address the "linkage" problem separately for each of the legal theories. An alternative way of organizing the section would be to first rely on Oak Grove as standing for the broad proposition that the discovery rule is the same in Nevada for each of the three claims for relief, followed by a short discussion with key citations explaining what that means for this case. I don't think we need three subsections that are largely repetitive, and that should allow us to dramatically compress that section.

Another method of compression might be to take more of a catalogue approach: (i) for each point, a section number and a couple of key words in bold face giving the subject matter; (ii) very briefly summarize and reference the defendants' point; and (iii) far more briefly discuss our response, referencing where it was discussed in the opening brief, and giving a fairly minimal discussion of any new points and authorities.

Under this approach, the table of contents in the reply brief becomes the appellate index of relevant material for the entire record (the only one out there), which would probably make it the primary research and writing tool for the court.

I'll be here all afternoon and evening, writing away. Call if you want to talk.

Sincerely,



PAUL E. MERRELL

PEM: pem