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PAUL E. MERRELL
Lawyer
7493 East Five Rivers Road
Tidewater, Oregon 97390
Telephone: (503) 528-7151 Telefax: Via Voicemail

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Chuck McCrea, Esquire
Jones, Jones, Close
& Brown, Chartered
700 Valley Bank Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026

VIA TELEFAX

Re: Nevada Power v. Monsanto, et al

Dear Chuck:

I agree with your changes on page 1. I suggest changing your new lead slightly, as follows:

Nevada Power seeks indemnification from defendants as well as relief for fraudulent misrepresentation and failure to warn. The latter two claims are collectively described in this brief as "fraud" claims, since they have similar essential elements involving defendants' guilty knowledge and are subject to the same "diligent discovery rule" for statute of limitations purposes. See elements of claims in opening brief, pp. 39, 42.

The record in this case shows beyond dispute that defendants (i) are guilty of fraud during the sale of their defective PCB-laden equipment etc.

I realize this adds to the length somewhat, but I think it will let us cut later separate references to the failure to warn claim, as well as some other language that was more verbose than need be simply to accomodate both concepts. If not, I'll find other material to cut. I think the change plays in nicely to the quote from their brief in the middle of the existing first paragraph ("assertions concerning the Defendants' knowledge are true"). I'd suggest pulling the word "assuming" that's now in the parenthetical quotation.

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I think the case referenced in the supplement to C.J.S. that I was wanting you to find is Allen v. Webb, 485, P.2d 677. In the draft I sent you yesterday, bottom of pg. 12, I have characterized Webb as having adopted 54 C.J.S. Limitations of Actions (193, pg. 198. Would you please check to see if that's accurate. If it's not, does Webb cite another related C.J.S. rule that we cited elsewhere?

If we can find room, I'd like to add a short footnote to a key C.J.S. rule that we cite without supporting Nevada authority that reads something like the following:

As is apparent in this brief, the Nevada Court frequently relies upon Corpus Juris Secundus rules on limitations of actions. Counsel have found no Nevada case in which a rule from that source was rejected. It is therefore reasonable to predict that Nevada would adopt such rules.

(Have I properly spelled "Juris?").

I'm continuing to work on my draft, locating cuts and filling in the cross-references.

-- Paul