

THOMAS E. KOTOSKE

A PROFESSIONAL LAW CORPORATION

540 UNIVERSITY AVENUE

THIRD FLOOR

PALO ALTO, CALIFORNIA 94301

TELEPHONE (415) 326-5575

OF COUNSEL:

WILLIAM N. WOODSON, III

November 27, 1989

John L. Thorndal, Esq.
Peggy A. Leen,
Thorndal, Backus, Maupin
& Armstrong
1100 East Bridger Avenue
P.O. Drawer 2070
Las Vegas, NV 89125-2070

Re: Nevada Power v. Westinghouse

Dear Mr. Thorndal:

I have reviewed your response to plaintiff's interrogatories and plaintiff's request for admissions, both dated November 17, 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 documents ["Westinghouse documents"] which are the subject of plaintiff's interrogatories and request to admit, go directly to the statute of limitations issue. The Westinghouse 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 Westinghouse. These facts draw a marked distinction between this case and Electric Bound 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 weight. That term is well-defined in federal case law.

Third, your objection to our interrogatories that you will not respond until plaintiff, "--- identifies 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.

REQUEST TO ADMIT GENUINENESS OF FACTS

Quite remarkably Westinghouse denies that the following documents, most of which are documents that Westinghouse, itself, created and authored, are not genuine:

<u>Page No.</u>	<u>Description</u>
2-10:	The actual material safety data sheets for Westinghouse's own trademarked brand of PCBs called Inerteen, as well as, Capacitor 21, all of which types of PCBs Westinghouse used for years. Monsanto has sworn to these facts in the case of <u>Brown v. Monsanto</u> .
66-68:	This is <u>Westinghouse's own</u> engineering data letter No. 1219 - A dated October 15, 1946, approved by Westinghouse's manger of transformer engineering.
75:	This is <u>Westinghouse's own</u> letter dated July 16, 1956, signed by Westinghouse's industrial hygienist, H.W. Speicher, and sent to Monsanto concerning Inerteen.
77-78:	This is another letter dated July 19, 1956, authored by Westinghouse's administrator of industrial hygiene, Mr. H.W. Speicher.
96-99:	This is <u>Westinghouse's own</u> instruction manual for handling Inerteen, dated September 1968.

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- 133-135: These are memoranda prepared by Westinghouse's own personnel at its capacitor manufacturing plant in Bloomington, Indiana.
- 136: This is Westinghouse's own memorandum dated March 2, 1972 and authored by Westinghouse employee, R. McMullen.
- 137-139: These documents are Westinghouse's own memoranda, authored by its own employees.
- 142-143: This is Westinghouse's own memorandum, dated June 22, 1972 and authored by Westinghouse's own employee, Mr. J.B. Brittain, engineering manager.
- 145: This is Westinghouse's own memorandum dated July 17, 1972, and authored by Westinghouse employee, R. McMullen.
- 147-154: These documents are memos and correspondence sent and reviewed by Westinghouse concerning hold harmless agreements that Westinghouse was entering into during 1972, related to its sales and/or use of Inerteen.
- 163: This is a letter dated February 26, 1975, received by Westinghouse from Monsanto.
- 178-180: This document is the text of a speech given by Westinghouse's own vice-president, D.M. Sauter, on January 14, 1976.
- 181-183: This document is Westinghouse's own instruction manual concerning the handling Inerteen.

I point out that any reasonable investigation of these documents - most of which were created by Westinghouse - would confirm that the documents were genuine. Also, whether or not Westinghouse presently has these documents in its files is completely irrelevant to your duty under the rules to properly respond to requests for admissions of genuineness of documents.

INTERROGATORIES

You attempt to avoid your obligation to respond to interrogatory number one by the contrived notion that you do not understand what it means for someone "to produce records from its files." That contention, quite frankly, borders on the absurd.

I will point out to you that these very type of documents were presented to Westinghouse in the case of Adams v. Kentucky Power. In that case, Westinghouse responded to this same interrogatory as follows:

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

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 Westinghouse may rely in this case.

Additionally, if this matter must be prosecuted through a motion to compel, we will ask the 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 Westinghouse personnel as to authenticity of the Monsanto documents that are the subject of this dispute.

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

Sincerely,

Thomas E. Kotoske

THOMAS E. KOTOSKE

TEK:rry

cc: J. Bruce Alverson
Bruce A. Featherstone
Jeffrey S. Klein
J. Randall Jones