

ORVILLE H. SWINSON, et al.	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
KEENE CORPORATION, et al.,	§	
	§	
Defendants.	§	201ST JUDICIAL DISTRICT

**DEFENDANT WESTINGHOUSE ELECTRIC CORPORATION'S RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL AND SUPPLEMENTAL RESPONSE AND
OBJECTIONS TO PLAINTIFFS' INTERROGATORIES**

TO: Plaintiffs, by and through their attorney of record, Russell W. Budd, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219.

COMES NOW, Westinghouse Electric Corporation ("Westinghouse") and files this its response to Plaintiffs' Motion to Compel along with its Supplemental Response and Objections to Plaintiffs' Interrogatories served on or about November 23, 1993, and would show the Court the following:

**I.
BACKGROUND**

Plaintiffs propounded interrogatories to Westinghouse relating to the authenticity and admissibility of five documents on or about November 23, 1993. These interrogatories were served in conjunction with similar interrogatories relating to 32 additional documents in three other cases pending before this court.¹

¹ *Clippard, et al. v. Keene Corporation, et al.*, Cause No. 93-03155, 331st District Court, Travis County, Texas; *Burnham, et al. v. Keene Corporation, et al.*, Cause No. 93-01206, 250th District Court, Travis County, Texas; *Perkins et al. v. Keene Corporation, et al.*, 353rd District Court, Travis County, Texas.



Plaintiffs seek responses regarding these documents notwithstanding their past similar discovery regarding over 100 other documents in other cases pending either in Dallas or Travis County. Plaintiffs are apparently trying to authenticate all documents, approximately 800 in number, listed as exhibits against Westinghouse. Many of these exhibits are patently irrelevant to these cases and are inadmissible. Westinghouse has reasonably attempted to cooperate with Plaintiffs' counsel, Baron & Budd, while appropriately objecting to the burdensome nature of these requests. Westinghouse again objects to these requests in their entirety but provides further reasonable responses.

II. OBJECTIONS TO INTERROGATORIES

Some of the documents in issue in these interrogatories presumably were produced previously by Westinghouse to Plaintiffs along with literally thousands of other documents. However, many of these documents were not prepared by Westinghouse and Westinghouse cannot attest to their authenticity. Likewise, the origin of many documents cannot be confirmed because Plaintiffs have supplied incomplete or illegible copies or copies which contain extraneous information.

Westinghouse also objects to these interrogatories as burdensome in that they require an unreasonable amount of investigation and attempt to force Westinghouse to do Plaintiffs investigative work. As noted above, some of the documents were neither generated nor produced by Westinghouse. Others were produced by Westinghouse, but it would require unreasonable efforts to track down the original source of the document and the circumstances of its creation and retention. Westinghouse is a multinational corporation that has been in existence for over 100 years in dozens of locations and has employed hundreds of thousands of

employees. Finally, some of the documents have been the subject of extensive deposition questioning of their authors, recipients, or others with knowledge of them. However, instead of requesting information regarding authenticity from the author or source of the document or reviewing these depositions, Plaintiffs instead attempt to shift the burden of investigation to Westinghouse.

Westinghouse also objects these interrogatories by requiring more than 30 responses. Combined, the interrogatories require, for a variety of documents, that Westinghouse investigate and respond whether: a) they were generated or kept by Westinghouse, b) in the regular course of business, c) by an employee or representative of Westinghouse, d) with knowledge of the act, event, condition or opinion recorded, e) found in files so as to create no suspicion of authenticity, f) copies attached are true and correct copies of original documents and g) the authenticity has ever been stipulated to in any court in any case. Pursuant to the Tex. R. Civ. P. Rule 168, these voluminous interrogatories are improper.

Finally, Westinghouse objects to these interrogatories as burdensome based upon the number of documents in issue. Plaintiffs assertion in their Motion to Compel that they are seeking authentication of only five documents is misleading. As noted above, Plaintiffs have already served authentication interrogatories for over 100 other documents and have designated 779 exhibits against Westinghouse in this or other litigation. With 779 documents in issue and without court protection, Westinghouse can look forward to an endless supply of such requests.

The purported authentication of these 779 exhibits is no less burdensome merely because Plaintiffs served these interrogatories on a piece-by-piece basis. The interrogatories go beyond the scope of proper discovery and are an abuse of the discovery process. Therefore, Westinghouse objects to Plaintiffs interrogatories in their entirety.

III.
RESPONSE

Subject to the foregoing objections Westinghouse has reasonably attempted to provide further responses. However, these responses are made without in any way waiving: 1) the right to object, on the grounds of competency, relevancy, materiality, hearsay, or any other proper grounds, to the use of any such information for any purpose, in whole or in part, in any subsequent stage or proceeding in this action or any other action; or 2) the right to object on any and all grounds, at any time, to any other discovery procedure relating to the subject matter of these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1: For each document listed below, please answer whether such document was kept and/or generated in the regular course of a regularly conducted business activity of any Westinghouse Entity by an employee or representative of any Westinghouse Entity with knowledge of the act, event, condition or opinion recorded.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
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- | | |
|-----------|--|
| r) WH-763 | Westinghouse note dated March 3, 1988 from Jeffrey J. Bair (discard documents).
<u>ANSWER:</u> See general objection above. Westinghouse further objects to this question as multifarious, and therefore unanswerable. Furthermore, the deposition of Jeffrey J. Bair has been taken. Mr. Bair was questioned extensively regarding this document and other information referring to Westinghouse's document retention program. Accordingly, Westinghouse refers Plaintiffs to the deposition of Jeffrey J. Bair which, upon information and belief, is already in Plaintiffs' counsel's possession. |
| s) WH-764 | Letter dated March 8, 1988 from Jeffrey J. Bair to S. R. Pitts regarding discarding documents.
<u>ANSWER:</u> See general objection above. Westinghouse further objects to this interrogatory as multifarious, and therefore unanswerable. Furthermore, the depositions of Jeffrey J. Bair and S.R. Pitts have been taken and Mr. Bair and Mr. Pitts have been questioned extensively |

regarding this correspondence and regarding Westinghouse's document retention policy. Accordingly, Westinghouse refers Plaintiffs to these depositions which, upon information and belief, are in Plaintiffs' counsel's possession.

t) WH-765

Westinghouse memo dated April 13, 1988 from R&D Center, C. W. Bickerstaff to Pres. Rahe.

ANSWER: See general objection. Westinghouse further objects to this interrogatory as multifarious. Furthermore, the deposition of C.W. Bickerstaff has been taken and Westinghouse refers Plaintiffs to this deposition, which upon information and belief, is in Plaintiffs' counsel's possession. However, based on the letterhead, this document appears to have been generated by Westinghouse in the regular course of Westinghouse's regular conducted business activity by a Westinghouse employee.

u) WH-766

Westinghouse letter dated August 3, 1988 from R. E. Lowder to Dr. J. W. Fisch with attachment.

ANSWER: See general objection. Westinghouse also objects to this interrogatory as multifarious. Subject to these objections, a portion of this document bearing Bates No. DNO800017 appears to be a Westinghouse generated document based upon the Westinghouse letterhead. However, there are other documents attached to Exhibit 766 which do not appear to have been generated by Westinghouse.

v) WH-767

Hazardous Materials Inventory dated June, 1989.

ANSWER: See general objection. Westinghouse also objects to this interrogatory as multifarious. Subject to these objections, this document appears to have been produced by Westinghouse in one of many document productions, but the source of the document is unknown. However, by review of the Bates Number, this document appears to have been produced by the Industrial Hygiene Department and may have been discussed in the deposition of Wayne Bickerstaff. Accordingly, Westinghouse refers Plaintiffs to this deposition, which upon information and belief, is in Plaintiffs' counsel's possession.

w) WH-770

deleted

x) WH-774

deleted

INTERROGATORY NO. 2: For each document listed below, please answer whether such document was found in your files in such a condition as to create no suspicion concerning its authenticity.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
r) WH-763	Westinghouse note dated March 3, 1988 from Jeffrey J. Bair (discard documents). <u>ANSWER:</u> Yes.
s) WH-764	Letter dated March 8, 1988 from Jeffrey J. Bair to S. R. Pitts regarding discarding documents. <u>ANSWER:</u> Yes.
t) WH-765	Westinghouse memo dated April 13, 1988 from R&D Center, C. W. Bickerstaff to Pres. Rahe. <u>ANSWER:</u> Yes.
u) WH-766	Westinghouse letter dated August 3, 1988 from R. E. Lowder to Dr. J. W. Fisch with attachment. <u>ANSWER:</u> Yes.
v) WH-767	Hazardous Materials Inventory dated June, 1989. <u>ANSWER:</u> Yes.
w) WH-770	deleted
x) WH-774	deleted

INTERROGATORY NO. 3: Has Westinghouse stipulated or agreed to the authenticity of any of the documents referenced in Interrogatory No. 1 with any person prior to the date of these Interrogatories?

r) WH-763	Westinghouse note dated March 3, 1988 from Jeffrey J. Bair (discard documents). <u>ANSWER:</u> See general objections and objections and response to Interrogatory No. 1 above.
s) WH-764	Letter dated March 8, 1988 from Jeffrey J. Bair to S. R. Pitts regarding discarding documents. <u>ANSWER:</u> See general objections and objections and responses to Interrogatory No. 1 above.
t) WH-765	Westinghouse memo dated April 13, 1988 from R&D Center, C. W. Bickerstaff to Pres. Rahe.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the documents were provided by Westinghouse via document production in various cases.

u) WH-766

Westinghouse letter dated August 3, 1988 from R. E. Lowder to Dr. J. W. Fisch with attachment.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the documents were provided by Westinghouse via document production in various cases.

v) WH-767

Hazardous Materials Inventory dated June, 1989.

ANSWER: Westinghouse is not aware of any stipulation to the authenticity of this document except to the extent Westinghouse may have stated that the documents were provided by Westinghouse via document production in various cases.

WHEREFORE, PREMISES CONSIDERED, Westinghouse prays that after notice and hearing this Court sustain these objections and issue an order protecting Westinghouse from answering these or any further interrogatories regarding authentication of Plaintiffs' exhibits designated against Westinghouse, and for such other and further relief to which Westinghouse may be entitled.

Respectfully submitted,

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By:

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing instrument has been served on counsel for Plaintiffs via hand delivery and to all other counsel of record via regular mail on this the _____ day of January, 1994.

ROBERT E. THACKSTON

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