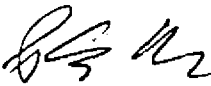


MEMORANDUM

TO: John Kim
FROM: Paul Merrell 
RE: Nevada Power v. Monsanto, et al.
DATE: August 4, 1993

Regarding the Jeff Bair deposition, here is the suggested deposition strategy you requested:

Begin by getting down the official line. This can be done by using the newspaper clippings, prior affidavits, and Westinghouse briefs to get the official version. This sets you up to impeach the official version through your subsequent questioning.

After obtaining the official version, go back to day one and question Bair based on his own notes from the relevant time periods to learn when he first heard of the risk notification legislation pending in Congress and then work forward obtaining a history of all of his relevant actions. In this way, all of your questions should have a foundation for the later questions, and make it more difficult to deny key questions toward the end of the deposition.

Particularly important admissions to obtain are: (1) Bair has no personal knowledge of whether the documents were in fact destroyed; (2) there was a nine-day period between the issuance of the order to destroy the records and the countermanding instruction to halt the destruction of the records because of the insurance litigation; (3) Bair was never disciplined and in fact was promoted despite what he had done; (4) if you think you can get it, an admission that the documents would have been destroyed but for the

countermanding order involving the insurance litigation; (5) to Bair's knowledge no written order countermanding the order to begin the destroying evidence was ever issued; (6) developing document retention policies is not the normal function of the tort litigation unit of the Westinghouse legal department.

It is critically important to authenticate Exhibit 1212. David Schalk allowed himself to be deflected and never did obtain authentication. To accomplish this, I suggest that you make the Rule 30(b)(6) notice an exhibit to the deposition, obtain an admission that Bair is the person designated to testify regarding section 1 of the notice which is the origin of the program of document retention described in Exhibit 1212, and then press him on whether he was prepared to testify regarding the authenticity of Exhibit 1212. If he says that he is not, insist that Arvin Maskin provide a witness who is prepared to testify regarding the authenticity of Exhibit 1212.

Included among the documents you have been provided with should be typewritten versions of Bair's notes and his inventory of the industrial hygiene files. Mr. Bair has been ordered by the Court to be prepared at the beginning of his next deposition to provide a copy of the typewritten version with his corrections on it. The Court has reserved a ruling on whether the typewritten version will be admissible, but has ruled that we are entitled to a corrected version so that we know what Mr. Bair's notes say (they are very hard to read). Defendant Westinghouse has already defied this order once, resulting in a new order from the Court making it

emphatic that we are entitled to that corrected version before Mr. Bair's deposition is taken again.

Also, included in the documents appended to the affidavit of Francis Gary is a clean copy of the document we have designated as Exhibit 1212. This is a copy from Westinghouse's own files, and attaches apparently what is the original tabbed appendices. Conspicuously absent from the official Westinghouse copy is what is referred to in Exhibit 1212 as dioxin/furan worker health guidelines. The absence of this document from the official copy, to me, is our best shot at creating an appearance that Westinghouse actually destroyed evidence. On all other PCB or dioxin/furan documents referred to in Exhibit 1212 or in Bair's notes, defendants have been able to produce copies. On the dioxin/furan worker health guidelines, they managed to find at another location a copy or what they claim to be a copy. Bair needs to be shown the document Westinghouse is now claiming to be that guideline, and to be asked questions along the line of why it wasn't still a part of the file copy. I would suggest leading into that by having Bair describe the dioxin/furan worker health guideline document as closely as possible before showing him the document Westinghouse now claims is it. That way he may give you the information that would allow you to demonstrate that the document that was produced is not the original one.

Overall, I think you also need to keep a running tally of what other witnesses say about Jeff Bair. and stick to the idea of

Memorandum
August 5, 1993
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taking him last. That way, he may be inclined to disagree with what other people have said about him.

I will be following this memo up with another that is referenced to specific documents. I hope that this preliminary assay will allow you to begin preparing for the Bair depo.

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**BRADLEY & MERRELL
JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202**

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DATE: Aug. 5, 1993

TO: John H. Kim, Esq.

FAX #: (713) 654-5070

PHONE #: (713) 654-4433

FROM: Paul E. Merrell

CLIENT/MATTER: Nevada Power v. Monsanto

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BRADLEY & MERRELL
JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-8026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1855

DATE: Aug. 5, 1993

TO: John H. Kim, Esq.

FAX #: (713) 654-5070

PHONE #: (713) 654-4433

FROM: Paul E. Merrell

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