In the Court of Appeal

Of the State of California

First Appellate District

Division 5

GENERAL NANOTECHNOLOGY LLC, METADIGM LLC and VICTOR B. KLEY

Plaintiffs and Appellants,

v.

LAWRENCE LIVERMORE NATIONAL SECURITY, REGENTS OF THE UNIVERSITY OF CALIFORNIA and ROBERT C. COOK

Defendants and Respondents.

A129016 & A129428
Consolidated

Alameda County Superior Court
Case No. VG08384523

APPELLANTS' PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to California Rules of Court, rule 8.268, plaintiffs and appellants General Nanotechnology LLC et al., hereby petition for a rehearing of the appeal in this matter on the ground that the Court's June 27, 2012 Opinion at pages 26-27 contains mistakes of material fact regarding the October 14, 2004 WBS timeline and the NDA.

The Court's finding that appellant Victor Kley's declaration "rests on an unreasonable reading" of the WBS timeline is contrary to evidence provided by the timeline's author, respondent Robert Cook.

Plaintiffs believe a rehearing is required because this erroneous finding formed the primary basis for the Court's decision to affirm summary adjudication of the misappropriation cause of action, and to affirm the sanctions award.

MISTAKE OF MATERIAL FACT

The WBS timeline, dated October 14, 2004, showed future time periods with the notations, "Develop diamond shells or examine other C-based technologies,"and "Determine whether diamond shells or any other C-based technology for shells is viable and offers advantages over CH/CD

(LLNL)." (AA 335, Exhibit H to Kley Dec., Attachment A to this Petition.)[1] Kley saw the WBS timeline on a November 2004 visit to General Atomics ("GA"), and learned that Cook had provided the document to GA. (AA 297, Kley Dec. ¶ 28, Attachment A.)

As the Court is well aware, Cook and Kley exchanged a series of emails on October 14-15, 2004 regarding LLNS's decision not to fund appellants' proposal to develop diamond ICF shells. (Opinion 17-19.) Cook testified that as of the date of the WBS timeline, October 14, 2004, he had no information that "someone in Lawrence Livermore National Laboratory was going to work on Diamond ICF shells." (AA 384, Cook Dep 106, Attachment B.) Cook also testified about a later iteration of the WBS document, explaining that when he stated in that October 25, 2004 document that "one company" had made a proposal to develop diamond ICF shells, "the one company that I'm talking about there is Vic's company, because that is the only one I knew about." (RT 1 154, Attachment C, referring to Ex. 232, Attachment D.) Cook further testified that as of October 25, 2004, he was still "certainly hoping they would reopen negotiations" with appellants. (RT 1 155, Attachment C.)

When Kley stated that the October 14, 2004 WBS timeline "was

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[1] For the convenience of Court and counsel, appellants have attached portions of the key documents to this Petition.

LLNL's timeline planner to show when we could begin producing diamond ICF shells" (AA 297, Kley Dec. ¶ 29, Attachment A), his reading of the document was therefore not only reasonable, but correct. The WBS timeline did not provide notice that LLNS "had disclosed the diamond shell concept and was continuing to pursue the concept for its own purposes" (Opinion 27), either alone, with Fraunhofer Institute, or with anyone else. Since the timeline referred only to appellants' proposal and had only been provided to "LLNS's partner GA" (Opinion 26), Kley's determination that the disclosure did not constitute a breach of the NDA was also reasonable. (AA 297, Kley Dec. ¶ 30, Attachment A.)[2]

A REHEARING IS NECESSARY TO ADDRESS RELIANCE ON WBS TIMELINE IN AFFIRMING SUMMARY ADJUDICATION OF MISAPPROPRIATION CAUSE OF ACTION

The Court's determination that there was only one "reasonable

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[2] Contrary to the Court's statement that the "trial court properly disregarded Kley's implicit self-serving description of the two documents" (Opinion 27), the trial court stated that it was not basing its ruling "on the evidence regarding Plaintiff's contention in discovery that the disclosure of information to General Atomics ('GA') was an instance of misappropriation," did not otherwise address Kley's description of the NDA, and disregarded Kley's description of the WBS only "to the extent there is any conflict between that description and the contents of the document[]." (AA 529.) As discussed above, there was no conflict between Kley's description of the WBS and the contents of the document itself.

inference" from Kley's receipt of the WBS timeline led it to conclude that "appellants had notice of their misappropriation cause of action no later than November 2004." (Opinion 27.) The Court's conclusion on this issue is not only contrary to the evidence provided by Cook and Kley, but also contrary to the law governing review of motions for summary adjudication, which requires appellate courts to liberally construe the evidence in favor of the party opposing the motion, while strictly construing the moving party's evidence. (*Saelzer v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-768.)

The Court's determination that there was only one reasonable interpretation of the evidence also led it to reject appellants' contention that, under *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, the statute of limitations did not start to run in October-November 2004 because a reasonable investigation would not have disclosed a factual basis for a misappropriation claim. (Opinion 27, see Appellants' Opening Brief ("AOB") 53-61.) The Court stated that its:

> analysis explicitly considers what a reasonable investigation would have uncovered in November 2004. Simply put, the undisputed facts showed that a reasonable reading of the documents available to Kley in November 2004 revealed a factual basis for appellants' misappropriation cause of action. (See *Fox, supra*, 35 Cal. 4th at p. 803.)

(Opinion 27.)

As discussed above, Kley's correct reading of the WBS timeline revealed only that LLNS had provided its partner with a document that referred to appellants' proposal to develop diamond ICF shells, and the WBS timeline only referred to diamond ICF shells as one potential alternvative. No reasonable attorney would have filed a misappropriation claim based on such evidence.

Requiring the filing of such a suit in the hope that an undisclosed factual basis would materialize is contrary to public policy, as the Supreme Court made clear in *Fox*, 35 Cal.4th at 815. The Court's focus on the WBS timeline, and the absence of any other evidence of misappropriation prior to LLNS's publication in May-June 2005, actually reinforces appellants' contention that they had no means of conducting any further investigation that would have disclosed a factual basis for filing the misappropriation claim. (See AOB 58-61.)

The Court also relied on its interpretation of the WBS timeline to dismiss appellants' contention that the fraudulent concealment doctrine prevented the statute of limitations from running on the misappropriation claim. (Opinion 28-29; see AOB 62-67.) Acknowledging that "a triable issue of material fact may have existed about whether Kley reasonably relied on Cook's representations before November 2004" (Opinion 28), the Court held that appellants could not reasonably rely on LLNS's

misrepresentations after the WBS timeline put them on notice of LLNS's disclosure and continued pursuit of diamond ICF shells. (Opinion 28-29.) As discussed above, Kley's discovery of the WBS timeline did not put appellants on notice that LLNS had made misrepresentations regarding its misappropriation, because LLNS could properly disclose the document to its partner, GA, and the document simply referred to appellant's own diamond ICF shell proposal.

The Court should grant a rehearing on the issue of whether summary adjudication of the misappropriation claim should have been affirmed based on Kley's receipt of the WBS timeline.

A REHEARING IS NECESSARY TO ADDRESS RELIANCE ON WBS TIMELINE IN AFFIRMING SANCTIONS AWARD

Finally, the Court affirmed sanctions of almost $190,000 against General Nanotechnology, LLC and Metadigm, LLC because:

> While the technology underlying this case may be complex, whether the misappropriation claim is time-barred has been complicated only by appellants' attempt to play cat and mouse with the issue. As we noted previously, appellants clearly had reason to suspect, by November 2004, a cause of action for misappropriation of their trade secrets.

(Opinion 34.)

While the Court does not specifically refer to the paragraphs of Kley's declaration regarding the WBS timeline, presumably they are the most

important part of the "cat and mouse" tactics that the Court relies on in affirming the sanctions award, and the WBS timeline is apparently the only basis for the Court's rejection of the reasonable investigation argument, which the Court does specifically cite. (Opinion 34.)

Appellants contend that the statute of limitations issue is not as simple as the Court suggests, particularly in light of this Court's Opinion. The trial court granted summary adjudication based on evidence regarding October 2004, specifically did not rely on the November 2004 evidence (AA 527-530), and awarded sanctions after determining that in opposing the motion appellants had raised objectively specious grounds in subjective bad faith. (AA 992.)

In affirming that summary adjudication, this Court focused on November 2004 after assuming, "as appellants suggest, that, in October 2004, Kley could have only suspected LLNS might use his diamond ICF shell technology *in the future* without compensation." (Opinion 25 (emphasis in original.) While the Court did not conclude that appellants' suggestion was correct as a matter of law, presumably the Court did not make an assumption that it considered to be objectively specious or advanced in subjective bad faith. *FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1275.) The Court did later agree that "a triable issue of material fact may have existed about whether Kley reasonably relied on

Cook's representations before November 2004." (Opinion 28.)

While this Court is not bound by the trial court's reasons in affirming summary adjudication (Opinion 17), the Court's determination that appellants may have had two separate, meritorious grounds for opposing summary adjudication strongly suggests that the trial court abused its discretion in finding that appellants' opposition to summary adjudication as to October 2004 was objectively specious and in bad faith.

As the Court itself explains, bad faith is dependent upon pursuing a claim after "the specific shortcomings" of the case have been identified and cannot be answered. (Opinion 35.) If this Court agrees with two of appellants' main contentions – even for the sake of argument – it cannot determine that those contentions were objectively specious, or that appellants were acting in bad faith in even raising them. At the same time, how can the Court determine that appellants' *successful* contentions before the trial court regarding the November 2004 evidence were objectively specious, and that appellants were raising them in bad faith? (Opinion 35.) The WBS timeline did not constitute such clear evidence that the statue began to run in November 2004 that any contentions to the contrary were objectively specious and raised in bad faith.

Parties who raise arguments that are accepted by the courts should not be subject to ruinous sanctions awards, even if the courts do not agree

on which of those arguments have merit. Appellants did not act in subjective bad faith in refusing to dismiss their most valuable claims after receipt of the July 2009 letter from respondents' counsel. According to this Court, appellants could not only reasonably but possibly successfully argue that the statute did not begin to run in October 2004. (Opinion 25, 28.)

The Court should grant a rehearing on the issue of whether the sanctions award was an abuse of the trial court's discretion.

CONCLUSION

Appellants respectfully request this Court to grant a rehearing to consider the affirmance of summary adjudication on the misappropriation claim, and of the sanctions award.

DATED: July 11, 2012 LAW OFFICES OF PAUL KLEVEN

By: 
PAUL KLEVEN

CERTIFICATE OF COUNSEL

I certify that this Petition for Rehearing contains 1,880 words, as calculated by my WordPerfect x5 word processing program.

PAUL KLEVEN

ORIGINAL

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FILED
ALAMEDA COUNTY
OCT 06 2009
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

GENERAL NANOTECHNOLOGY LLC, METADIGM, LLC and VICTOR B. KLEY

Plaintiffs,

vs.

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC dba LAWRENCE LIVERMORE NATIONAL LABORATORY, / REGENTS OF THE UNIVERSITY OF CALIFORNIA dba LAWRENCE LIVERMORE NATIONAL LABORATORY, and ROBERT COOK

Defendants.

Case No.: VG 08384523

DECLARATION OF VICTOR B. KLEY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO PLAINTIFFS' CAUSES OF ACTION FOR 1) FRAUD; 2) MISAPPROPRIATION OF TRADE SECRETS; AND 3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Date: October 20, 2009
Time: 3:00 p.m.
Place: Dept. 512
Judge Honorable John M. True III

1. Inertial confinement fusion ("ICF") shells are the fuel for the National Ignition Facility ("NIF") program at Lawrence Livermore National Laboratory ("LLNL"), which is located in Livermore, California. The NIF program attempts to use lasers to heat ICF shells to a temperature above that of the interior of the sun, igniting a fusion reaction in a controlled environment. This technology has the potential to create an abundance of clean, affordable energy.

2. I was first introduced to ICF shells online from UC Berkeley in late 2003.

Attachment A

GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER
ATTORNEYS AT LAW
A Professional Corporation
P.O. Box 2079, Oakland, CA 94604-2079

24. Following the breakdown of the contract negotiations with LLNL, DiaMEMS then sought to find a new company to fund the development of diamond ICF shells.

25. DiaMEMS began discussions with General Atomics ("GA") to engage in a potential business relationship. The persons we met with at GA included Joe Kilkenny, Mike Campbell, and Abbas Nikroo. The proposal was that DiaMEMS would license my methods for producing diamond ICF shells to GA, and they would produce the shells.

26. The representative of GA stated that GA had a close relationship with LLNL and knew how they worked. He further stated that he may be able to obtain funding from LLNL to resume making diamond ICF shells for LLNL.

27. On November 12, 2004, Jeff Renaud, CEO of DiaMEMS, and I met with representatives of GA and entered into an NDA between GA and DiaMEMS. Attached hereto as **Exhibit G** is a true and correct copy of the NDA referenced in this paragraph.

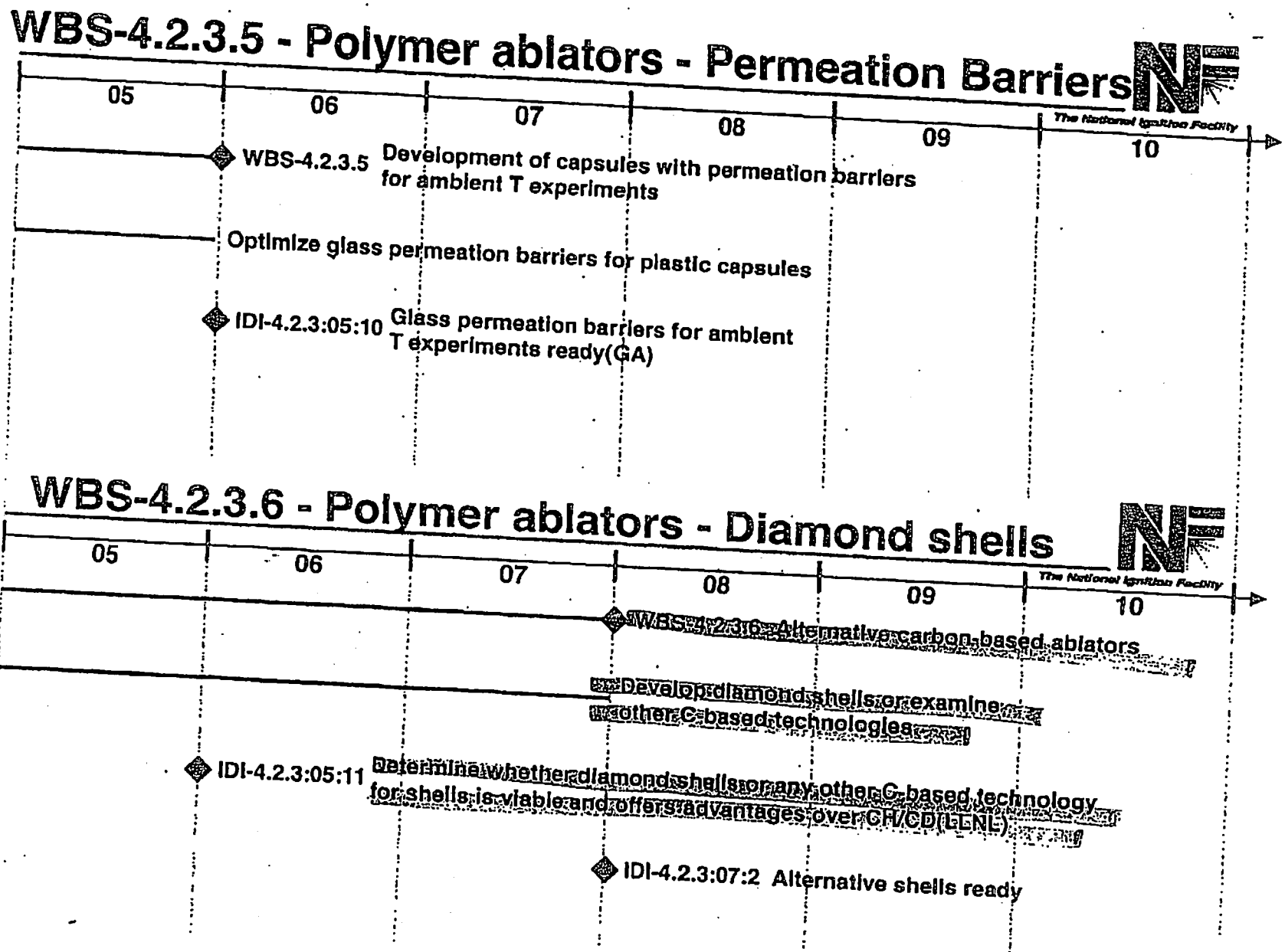
28. On the same day, Mr. Renaud and I were given a document by GA referencing diamond ICF shells. We were told by Mike Campbell of GA that Dr. Cook had provided the document to GA.

29. The document was LLNL's timeline planner to show when we could begin producing diamond ICF shells. Attached hereto as **Exhibit H** is a true and correct copy of the document referenced in this paragraph.

30. When I was presented with the document, I initially was concerned that it might be a violation of the NDA. However, when I reviewed the NDA, I realized that LLNL had the right to provide this document to GA, and it was not a violation of the NDA.

31. In December 2005, Ms. Fowler, the LLNL contract administrator, called me and said she was going to return all of GN's proprietary information. However, we never received anything. I told her that LLNL was not and would not be released from its obligations under the NDA.

H


WBS-4.2.3.5 - Polymer ablators - Permeation Barriers
05
06
07
08
09
10
The National Ignition Facility
WBS-4.2.3.5
Development of capsules with permeation barriers for ambient T experiments
Optimize glass permeation barriers for plastic capsules
IDI-4.2.3:05:10
Glass permeation barriers for ambient T experiments ready(GA)
WBS-4.2.3.6 - Polymer ablators - Diamond shells
05
06
07
08
09
10
The National Ignition Facility
WBS-4.2.3.6 Alternative carbon-based ablators
Develop diamond shells or examine other C-based technologies
IDI-4.2.3:05:11
Determine whether diamond shells or any other C-based technology for shells is viable and offers advantages over CH/CD (LLNL)
IDI-4.2.3:07:2 Alternative shells ready
P001872
VG-16 10/14/04

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

--ooOoo--

GENERAL NANOTECHNOLOGY LLC, METADIGM, LLC and VICTOR B. KLEY,

Plaintiffs,

vs.

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC dba LAWRENCE LIVERMORE NATIONAL LABORATORY REGENTS OF THE UNIVERSITY OF CALIFORNIA dba LAWRENCE LIVERMORE NATIONAL LABORATORY and ROBERT C. COOK,

Defendants.

CERTIFIED COPY

No. VG 08384523

Deposition of
ROBERT COOK
TUESDAY, AUGUST 19, 2008

THE SOUZA GROUP
Certified Shorthand Reporters
4615 First Street, Suite 200
Pleasanton, California 94566

Reported by:
DIANA NOBRIGA, CSR, CRR
LICENSE NO. 7071

Attachment B

the time that you met Mr. Kley have any outside company or entity make ICF shells for it?

MS. NORRIS: Objection; lacks foundation, calls for speculation.

THE WITNESS: Clarify the question a little bit.

MR. WALLACE: Q. Did Lawrence Livermore Labs at the time that you worked there and at the time that you met Mr. Kley engage any outside entity, any entity other than Lawrence Livermore Labs, to make ICF shells?

MS. NORRIS: Same objections. Plus it assumes that he knows everything that's happening at Lawrence Livermore National Labs.

THE WITNESS: Define engage.

MR. WALLACE: Q. Make an arrangement with the other entity whereby the other entity would supply Lawrence Livermore Labs with one or more ICF shells.

A. Does -- well, this is silly.

General Atomics is paid by the Department of Energy, I think it is the Department of Energy. They are a coworker. And they are now and I think at that point were engaged in making shells that were used in all of the National Labs. So that is the reason, that is why I'm saying engaged, we didn't pay them, because they were not employees of Lawrence Livermore Lab. They

certainly not the chemical sciences division."

Who is the chemical sciences division?

A. I mentioned them before. The chemical department, chemistry department.

Q. That included this group NSCL, didn't it, at that time?

MS. NORRIS: I object. There is no basis for NSCL.

MR. WALLACE: Q. Are you familiar with the group called NSCL?

A. Yes, I am now. I was not then.

Q. And that group, NSCL, are they part of, now, of the chemical sciences division?

A. I believe so.

Q. Okay. So why are you saying, "Certainly not for the chemical sciences division"?

A. Well, because in his e-mail to me he specifically calls out the chemical division. And so I was answering his e-mail to me.

Q. At the time you wrote this e-mail, did you have any reason to believe that someone in Lawrence Livermore National Laboratory was going to work on diamond ICF shells?

A. I had no information at that time.

Q. So when you state, "Further, I can say that no

CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT

GENERAL NANOTECHNOLOGY, LLC, et al,

PLAINTIFFS/APPELLANTS,

vs.

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC, et al,

DEFENDANTS/RESPONDENTS.

Appellate No.

Alameda Co. VG08384523

REPORTER'S TRANSCRIPT ON APPEAL

FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

HONORABLE JOHN M. TRUE, III, JUDGE

Hearing Date
March 22 and 23, 2010

Volume 1
(Pages 1-261)

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C.S.R. No. 12913

Attachment C

Talking about mandrels.

MR. GWILLIAM: May I show this document, your Honor?

THE COURT: I don't know. You haven't identified it. I have no idea.

MR. MOREHOUS: Highly confidential document.

THE COURT: Hear from the defendants.

MR. MOREHOUS: It's a highly confidential document, your Honor.

THE COURT: Can you give a number so the record will be clear what we're talking about here?

MR. GWILLIAM: Exhibit 232.

MR. MOREHOUS: It's designated, your Honor.

THE COURT: All right. How do you want to deal with that?

MR. MOREHOUS: Pardon me?

THE COURT: How do you wish to deal with it?

MR. MOREHOUS: Well, we had an agreement about this before. These kinds of documents that were going to be showed to the witnesses.

MR. GWILLIAM: Well, I believe I can lay a foundation that they have not under the code --

THE COURT: All right. I want you back in the hallway very briefly and deal with it off the record.

(Discussion off the record.)

THE COURT: All right. Go back on the record. The witness is being examined on a document identified for the record as Exhibit 232, which is one of the documents, it

falls under this highly confidential classification I talked about yesterday, members of the jury. Highly confidential litigation attorney's eyes only. And so that you know what is going on. I am concerned that this trial be conducted in a way that does respect the confidentiality of these documents but at the same time avoids the necessity of having to clear the courtroom of those not permitted to see the document. And I've instructed counsel to deal with this issue going forward. They have indicated there will be likely other incidents of this kind and we'll have to deal with them.

I've asked them to come up with a way to do so that doesn't interfere with the flow of the trial, doesn't distract the members of jury and doesn't result in awkward moments when we have to make people leave the courtroom.

So as to this document, Mr. Gwilliam is going to -- has identified it for the record as an exhibit. It will not be published to the jury or otherwise shown for the moment, but he has indicated he does have a couple of questions he's going to ask the witness with reference to the document without otherwise publishing it. Go ahead, Mr. Gwilliam.

Q. MR. GWILLIAM: Mr. Cook, again, this was a view graph, ultimately, you presented to your superiors at the lab to talk about funding proposals; is that, generally, correct?

A. It was a document that was prepared mostly by me, um, and I don't remember sending it. I may have. But it was prepared for my management, certainly.

Q. So it would have been given to Tom Bernat, Hamza, and

those people?
A. They certainly would have gotten -- they may have done the presentation. I don't really remember.
Q. Bruce Hammel would have definitely got this document?
A. He certainly saw it. Yes.
Q. It's dated October 25, '04, which is about ten days after your last correspondence with Vic Kley?
A. Uh-hum.
Q. I want to draw your attention to simply two pages on the second page. It's marked, Exhibit LLN, Exhibit No. 198858. At the very bottom of the first page is a quote as follows, diamond capsules dash fabrication and filling methods untested but may offer much better IR transmission develop under C&MSSI. Did I read that correctly?
A. Yes, you did.
Q. Now, the part where it says, develop under C&MS; isn't that the chemical department?
A. Chemistry and Material Science. Yes.
Q. That is Hamza's department; correct?
A. He is in that.
Q. And the SI refers to a strategic initiative Mr. Hamza was working on to develop diamond among other things?
A. SI stands for strategic initiative. Yes.
Q. So at the time you put this document out, you knew perfectly well that the chemistry department was interested in doing diamond capsules; correct?
A. That is what it says. Yes. I was told to put that there by either Bernat or Hamza or Hammel rather, probably,

Bernat but I don't know for sure.

Q. So Bernat told you to put that there.

A. This -- Particularly, this first page has to do with capsule critical path. I should note here that this is at the bottom, it's not on the critical path at all. Critical path is above that having to do with beryllium capsules and CH capsules. This is something added at the bottom.

Q. My question to you, Mr. Cook, is within ten days after cutting off your dealings with Vic Kley, were you not curious to know who else at the lab was working on diamond capsules over in chemistry?

A. Not particularly curious no. There were things to do, particularly, CH, and beryllium capsules.

Q. The last area. I'm done with the questioning. We'll refer to the next to the last page, it's Bates number -- or the number on here we call it 198872. And the only thing I want to draw your attention to is the second bullet point. And I would like to read this and then ask you a question only about this bullet point. All right. It says, quote, diamond shells, one company has a proposal to develop the fabrication processes for these. The cost would be 750K for FY '05 and 500K for FY '06 and FY '07. The FY being years, future years; correct?

A. Correct.

Q. All right. Goes on to say, quote, C&MS has independently looked at the fabrication problems and some effort is included in the proposed SI. Successful fabrication of diamond shells would allow significant IR

smoothing of ice layer thus allowing the use of D2 (phonetic) and potentially DT at lower temperatures and thus lower vapor pressure. Now, that was your words in your view graph on October 25, '04; correct?

A. That is one bullet on the page having to do with things that might happen; that is correct. Yes.

Q. And the company that you refer to was the Fraunhofer Company, was it not?

A. No. The figure, that dollar figures there were from Vic's original proposal. I have no way of knowing what chemistry material science was paying Fraunhofer.

Q. So the company that you were referring to, presumably, when you gave that presentation with your view graph up here, the company you are referring to was Vic's company?

A. One company has a proposal. They did have a proposal.

Q. But you had told them that you weren't going to work with him anymore ten days before?

A. That's right. I didn't deny they had a proposal. The point of this view graph, this page here, was to indicate items that the program, my program could pursue that would -- The title of the view graph has to do with risk reduction, words that were very popular at the time. Things that we could do to increase the chances of having a successful ICF program. Actually, ignitions in the future now. At this point, this was one of the things that we thought possibly could help. And the one company that I'm talking about there is Vic's company, because that is the only one I knew about, and the figures 750K and 500K were from, my remembrance at

that time, of what he was proposing to do.

Q. So, telling the leadership that they should be considering money for '05, and '06, and '07 for Vic, even though you ended negotiations with him; is that your testimony?

A. I was certainly hoping they would reopen negotiations. I thought his proposal was worth pursuing.

Q. The last question I want to ask you is the next sentence, it says, "C&MS has independently looked at." Now, that is the chemistry department, is it not?

A. Correct.

MR. GWILLIAM: That is all I have.

THE COURT: Thank you, Mr. Gwilliam. Mr. Morehous.

MR. MOREHOUS: Thank you, your Honor.

THE COURT: Can you indicate if you are taking Mr. Cook as your own witness, at this point?

MR. MOREHOUS: Yes.

THE COURT: Members of the jury, give you further instruction about the way the trial is going to go. As we discussed yesterday, the plaintiff called Mr. Cook as an adverse witness under the evidence code and was permitted to question him as you've seen over the past couple of days.

Now the defendant is going to question Mr. Cook and, of course, Mr. Cook is the defendant's witness and the defendant has a right to make a choice about whether to simply examine Mr. Cook within the scope of the questions that Mr. Gwilliam asked or to, in essence, call Mr. Cook out of order as part of defendant's case, which, technically, hasn't started yet

WBS4.2 - Ignition Capsule Fabrication

Bob Cook
LLNL

October 25, 2004

Attachment D

CRSR 2252

Capsule critical path

The National Ignition Facility

Mandrels √ → Sputtered Be capsules with graded Cu dopant √ Improved process control is needed → Polishing → Filling: a) Drill √ and seal b) Fill tubes

30 atm gas filled Be shells available at the end of FY05

Back-up: Machined, bonded, Be capsules with uniform Cu dopant (LANL) √
- may be stronger
- may polish differently

Characterization: X-ray opacity voids, microstructure strength, grain size

NIF Scale CH capsules
Surface finish √
Dopant grading √
IR transmissive √

→ Filling: a) Drilling and fill tubes b) Diffusion √

Diamond capsules - fabrication and filling methods untested, but may offer much better IR transmission. Develop under C&MS SI.

VG-2 10/25/04

Other risk reduction expenses at this point involve relatively large procurements

The National Ignition Facility

- A micro EDM - $300K, FY05. This will be needed for fill tube development. Currently we are trying to use an existing machine at LANL, along with LANL machinists. If this doesn't work out then failure to buy a machine will significantly impact our ability to develop fill tube technology.

- Diamond shells. One company has a proposal to develop the fabrication processes for these. The cost would be $750K for FY05 and $500K for FY06 and FY07. C&MS has independently looked at the fabrication problems and some effort is included in a proposed SI. Successful fabrication of diamond shells would allow *significant* IR smoothing of the ice layer, thus allowing the use of D_2 AND potentially DT at lower temperatures and thus lower vapor pressures.

- Bringing up another Be coater in B298 - $350K, FY05. The cost here is primarily for building modifications. Our plan is to work with the 2 coaters we have.

- Sealing laser - $75K, FY05. The current plan has laser sealing development taking place at GA and LANL.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am a citizen of the United States. My business address is 1604 Solano Avenue, Berkeley, CA. 94707. I am employed in the County of Alameda, where this mailing occurs. I am over the age of 18 years, and not a party to the within cause. On the date set forth below, I served the foregoing document(s) described as:

APPELLANTS' PETITION FOR REHEARING

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Patrick Thomas Michael
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94101
Attorneys for Respondents Lawrence Livermore National Security LLC, et al

Clerk
Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

Appellants
Address known to Attorney

[✔] (BY MAIL) I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on July 11, 2012, following ordinary business practices.

Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

[✔] (ELECTRONICALLY) I caused such document to be served electronically by sending a PDF copy this date to the Supreme Court's electronic notification address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 11, 2012 at Berkeley, California.

Kathy Yam
KATHY YAM