

IVAN D. SMITH
COUNSELLOR AT LAW



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F A X T R A N S M I S S I O N

DATE:

9/27

TO:

IRENE BUENO

COMPANY:

W.H.

TELEPHONE:

456-6558

FAX:

456-5581

FROM:

TERRY KIEPNER

TELEPHONE:

530-4842

FAX:

530-4800

NO. OF PAGES:

2 including cover page

COMMENTS:

IT WAS NICE TO SEE YOU ON
SATURDAY. THE ATTACHED IS FOR
YOUR READING ENJOYMENT.

TERRY

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**Department of Energy**

Washington, DC 20585

September 16, 1999

Mr. Ivan D. Smith
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway
New York, N.Y. 10036

Dear Mr. Smith:

Thank you for your letter of August 5, 1999, to Secretary Richardson concerning the lawsuit filed by your clients against the Department of Energy's Savannah River Site contractors. The letter has been referred to me for response.

I can assure you that the Department is fully aware both of the allegations that the plaintiffs have advanced in the litigation, and of the actual record regarding the matters at issue. If you wish to schedule a meeting with me to discuss these matters, however, you can do so by calling Judith Quinn at 202-586-5281.

Sincerely,

A handwritten signature in cursive script that reads "Mary Anne Sullivan".

Mary Anne Sullivan
General Counsel



Printed with soy ink on recycled paper

9/27 - Jerry called + has not heard back since Bob Alvarez left
Called Esther but no answer
Called Goody + Ann?
40 min. waited
Speaking to Janet M.

Su. Lawsuit - 8/4

A - Westinghouse ^{Subcontractors = Seemlen organization} Bechtel, British Nuclear Fuel, Babcock
DO property - promotion ^{Babcock}
Salary demoted ^{& will cost}
^{nuclear waste}
base based back - white collar - Blue dig
Training - off-site training
higher risk of exposure

15k - ~~100~~ 1970 As. Am

71% management

30% non-management, blue collar, ~~not~~

45% H + jobs

54% out of project

As. Am have more edue

WRSC - Owned by DOE + paying for this lawsuit of all 4 cos.

Legal cost measuring - DOE is paying by reimbursement
until there is a finding

In discovery 8/31

Sum. Jury 9/15

Trial?

Plan out motion

2 Firms up. As

June Day. Lush

Nelson - local crew

DOE will not pay.
If A lose, then escrow money would be set aside

Current
situation

- Incredible deposition schedule - 4/Day
- As have spent \$7 million

Settlement - ~~the~~ ^{TT} ~~DOE~~ offered to settle but A said no b/c DOE not giving \$ - A willing to go to mediation.
- Discovery delayed by 1 year
- 4th Cir. - As only
- No judge to look at offer

DOE

- FOIA request on affirm action - b DOE at the site 5/97 - 5/99 but redacted w/ AF Act.
- Security files - were pulled + used ~~conf~~ info in their depo. therein. DOE allowed this. - used to intimidate ~~the~~ this actually inspired other ~~to~~ to join lawsuit.

DOE ~~are~~ - are considering to file for other sites.

Exposure - are incredible + there is some ^{press} interest.
to Radiation

mtg w/ DOE - Paying the bill

- Settlement

Under k - no oversight (on website)

DOE ~~can~~ decide if appropriate cost - management of the site

- Insurance - like (about \$)
- Other Fed k
- Increasing interest by exec,

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F A X T R A N S M I S S I O N

DATE: 8/9
TO: IRENE BUENO
COMPANY: WHITE HOUSE
TELEPHONE: 456-6558
FAX: 456-5581
FROM: ~~FERRY KIEDNER~~
TELEPHONE: 530 4842
FAX: 530 4800
NO. OF PAGES: 4 including cover page

COMMENTS:

LETTER TO RICHARDSON

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IVAN D. SMITH



WRITER'S DIRECT DIAL

603-7335

August 5, 1999

**Hon. Bill Richardson
Secretary
United States Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585**

Dear Secretary Richardson:

I write to bring to your attention a serious matter involving four Department of Energy contractors operating the Savannah River Site nuclear fuels processing plant in Aiken, S.C., who are systematically exposing their African American employees to a disproportionate risk of exposure to radiation.

This firm represents 99 African American employees of the Savannah River Site ("SRS") in a race discrimination lawsuit they have brought against Westinghouse Savannah River Company ("WSRC") and three other companies that operate the Savannah River Site for the Department of Energy.¹ These 99 named plaintiffs represent a class of approximately 3,000 African American current and former SRS employees who charge that WSRC and the other contractors have discriminated against African American employees in pay rates, promotions, demotions, access to training programs, and by exposing Black employees disproportionately to radiation at the Site.

The defendant contractors have discriminated against Black employees by placing them in lower-level positions in which they are more likely to be exposed to radiation, and by keeping them in those positions for longer periods of time than White employees. For example, a disproportionate number of Black employees have been assigned to specific positions, including Operator and Radiation Control Inspector, which involve working with radioactive

¹ The four defendants are the Westinghouse Savannah River Company, Inc.; Bechtel Savannah River, Inc.; The Babcock & Wilcox Savannah River Company, Inc.; and British Nuclear Fuels Ltd. Savannah River Corp.,

Hon. Bill Richardson
August 5, 1999
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materials and require use of protective clothing and equipment. Defendants' practice of assigning Black employees to those positions in disproportionate numbers, and denying them transfer or promotion out of those positions, has resulted in a higher rate of radiation exposure and related illnesses for Black employees than for White employees.

For example, defendants kept one of the named plaintiffs, Jimmy Walker, in a high-exposure position even after he had received what DOE terms a "lifetime dose" of radiation. In contrast, White employees have been removed from the hot areas of the Site after they received similar levels of exposure. WSRC did not even notify Mr. Walker of his lifetime dose until several years later, although it notified White employees promptly when they received such high levels of radiation. Mr. Walker is now disabled because of the effects of his massive exposure to radiation.

The 99 named plaintiffs are among the approximately 13,500 employees at the Savannah River Site, of which approximately 2,600 employees (19.3%) are Black. Defendants' discriminatory practices at SRS have resulted in racial disparities in the composition of the SRS workforce. Most of the Black employees are still concentrated in the lower level jobs at the Site, despite the fact that Black employees at the Site have education levels that are equal to or greater than those of the White employees, and Black employees have, on average, longer Site experience than White employees. For example, only 1% of senior staff and senior management positions is occupied by Black employees, and Blacks constitute only 6.77% of a broader category of upper management, compared to 19.3% of the workforce as a whole.

The contractors' system for evaluating the performance of Site employees has been used to perpetuate racial disparities in pay rates and in promotions. The performance ratings, which range from a low of one to a high of five, are directly tied to pay increases and promotional opportunities and have been distributed in a racially discriminatory manner. For example, while 8% of White employees get "five" ratings, only 3% of Black employees do; while 40% of White employees get "four" ratings, only 28% of Black employees do; and while 52% of White employees get "three" ratings, 69% of Black employees do. These differences are statistically significant and highly probative of discrimination on the basis of race. The contractors have repeatedly acknowledged these disparities in the Affirmative Action Plans they file with DOE, but have failed to take action to correct the discrimination.

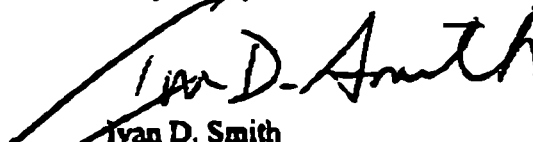
What compounds these problems is that these contractors are not even paying for the defense of their actions; the United States taxpayers are footing the bill for literally millions of dollars in legal fees to date.

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We would appreciate the opportunity to discuss this situation with you. We are working with Jerry Klepner of Black, Kelly, Scrugg & Healey. Mr. Klepner will be calling your office to arrange for a mutually convenient time for a meeting.

Thanking you in advance, I am

Very truly yours,



Ivan D. Smith

IDS:jde

133353

Lott et al. v. Westinghouse Savannah River Company et al.

Lott v. Westinghouse Savannah River Co. is a class action race discrimination lawsuit brought by ninety-nine Black named class representatives, representing over 3,000 current and former employees, against Westinghouse Savannah River Co. ("WSRC") and three other government contractors. WSRC and the other contractors operate the Savannah River Site, which is a nuclear fuels processing plant in Aiken, South Carolina, for the United States Department of Energy ("DOE"). The ninety-nine plaintiffs in Lott allege that WSRC and the other contractors have discriminated against Black employees of the Site in pay rates, promotions, demotions, access to training programs, and by exposing Black employees disproportionately to radiation at the Site.

Defendants have discriminated against Black employees by placing them in lower-level positions in which they are more likely to be exposed to radiation, and by keeping them in those positions for longer periods of time than White employees. For example, a disproportionate number of Black employees have been assigned to specific positions, including Operator and Radiation Control Inspector, which involve working with radioactive materials and require use of protective clothing and equipment. Defendants' practice of assigning Black employees to these positions in disproportionate numbers, and denying them transfer or promotion out of those positions, has resulted in a higher rate of radiation exposure and related illnesses for Black employees than for White employees.

For example, defendants kept one of the named plaintiffs, Jimmy Walker, in a high-exposure position even after he had received what DOE terms a "lifetime dose" of radiation.

131415

WSRC did not notify Mr. Walker of his lifetime dose, although it notified White employees when they received that level of radiation and removed them from the hot areas of the Site. Mr. Walker is now disabled because of the effects of his massive exposure to radiation.

The ninety-nine named plaintiffs are among the approximately 13,500 employees at the Savannah River Site, of which approximately 2,600 employees (19.3%) are Black. Defendants' racially discriminatory practices at SRS have resulted in racial disparities in the composition of the SRS workforce. Most of the Black employees are still concentrated in the lower level jobs at the Site, despite the fact that Black employees at the Site have education levels that are equal to or greater than those of the White employees, and Black employees have, on average, longer Site experience than White employees. For example, only 1% of senior staff and senior management positions is occupied by Black employees, and Blacks constituted 6.77% of a broader category of upper management, compared to 19.3% of the workforce as a whole.

Defendants' system for evaluating the performance of Site employees has been used to perpetuate racial disparities in pay rates and in promotions. The performance ratings, which range from a low of one to a high of five, are directly tied to pay increases and promotional opportunities and have been distributed in a racially discriminatory manner. For example, while 8% of White employees get "five" ratings, only 3% of Black employees do; while 40% of White employees get "four" ratings, only 28% of Black employees do; and while 52% of White employees get "three" ratings, 69% of Black employees do. These differences are statistically significant and highly probative of discrimination on the basis of race.