Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION	MDL No. 05-1717-JJF
ADVANCED MICRO DEVICES, INC. and AMD INTERNATIONAL SALES & SERVICE, LTD., Plaintiffs, vs. INTEL CORPORATION and INTEL KABUSHIKI KAISHA, Defendants.	C. A. No. 05-441-JJF DM No. ___
PHIL PAUL, on behalf of himself and all others similarly situated, Plaintiffs, vs. INTEL CORPORATION, Defendant.	C. A. No. 05-485-JJF

DECLARATION OF ROBERT E. POSTAWKO IN SUPPORT OF ADVANCED MICRO DEVICES, INC.'S AND AMD INTERNATIONAL SALES & SERVICE, LTD.'S MOTION TO COMPEL THE PRODUCTION OF HEWLETT-PACKARD'S EVIDENCE SUBMITTED TO THE EUROPEAN COMMISSION

I, Robert E. Postawko, hereby declare as follows:

1. I am a counsel at the law firm of O'Melveny & Myers LLP, and an attorney licensed to practice before all courts of the State of California. O'Melveny & Myers LLP is the attorney of record for plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. (collectively, "AMD"). I provide this declaration in support of AMD's Motion to Compel the Production of Hewlett-Packard's Evidence Submitted to the European Commission.

I have personal knowledge of the matters recited herein and, if called to do so, could and would competently testify thereto.

2. On December 16, 2008, I accessed the website http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/314&format=HTML&aged=0&language=EN&guiLanguage=en and printed a copy of the European Commission memo entitled "Competition: Commission confirms sending of Statement of Objections to Intel," dated July 27, 2007. A true and correct copy of the memo is attached hereto as Exhibit A.

3. On December 16, 2008, I accessed the website http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/517&format=HTML&aged=0&language=EN&guiLanguage=en and printed a copy of the European Commission memo entitled "Antitrust: Commission confirms supplementary Statement of Objections sent to Intel," dated July 18, 2008. A true and correct copy of the memo is attached hereto as Exhibit B.

4. A true and correct copy of the document production subpoena served on Hewlett-Packard Company by AMD on October 4, 2005 is attached hereto as Exhibit C.

5. On September 3, 2008, I wrote to Amanda Bruno, counsel for third party Hewlett-Packard Company ("HP"), via e-mail to inquire whether HP was able to represent that its production to AMD, the first phase of which was nearing completion, would include the evidence that HP submitted to the European Commission ("E.C.") in connection with the E.C.'s investigation of Intel's anti-competitive acts in Europe. On September 10, 2008, Paul Weller, representing HP, responded to my e-mail on Ms. Bruno's behalf and reasserted HP's contention, reflected in a letter dated August 2, 2007 from John Schultz on behalf of HP, that the production of the evidence that HP produced to the E.C. would run afoul of the E.C.'s investigative privilege. I followed up on September 12, 2008 and September 23, 2008 with e-mail requests to

Mr. Weller for HP to provide some authority for its assertion of an investigative privilege, but did not receive any response. A true and correct copy of those e-mail exchanges is attached hereto as Exhibit D.

6. Following the completion of HP's production and our review of the same, Michael McGuinness, a partner at O'Melveny & Myers, and I spoke with Mr. Weller and Ms. Bruno on November 3, 2008, November 5, 2008 and November 11, 2008 about several issues relating to HP's production, including AMD's contention that it was entitled to the evidence HP produced to the E.C.

7. Including two supplementary productions in the month of December 2008, HP produced approximately 20,856 files for use in this litigation. Several Tier One and Tier Two OEMs have produced substantially more documents than HP. Dell and Rackable each produced upwards of 450,000 files. Gateway and Egenera each produced approximately 230,000 files. Acer produced approximately 176,000 files from just four custodians.

8. On December 19, 2008, I accessed the website http://www.morganlewis.com/pubs/41FDE12F-F372-4516-808A7A6B3C1C3517_Publication.pdf and printed a copy of the article by Eric Kraeutler and Paul Weller, "Losing Privileges by Cooperating With the Government: The Westinghouse Electric Decision,"dated June 1992. A true and correct copy of the article is attached hereto as Exhibit E.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 19th day of December, 2008, in Los Angeles, California.

Robert E. Postawko

EXHIBIT A

Competition: Commission confirms sending of Statement of Objections to Intel

Reference: MEMO/07/314 Date: 27/07/2007

HTML: EN
PDF: EN
DOC: EN

MEMO/07/314

Brussels, 27 July 2007

Competition: Commission confirms sending of Statement of Objections to Intel

The European Commission can confirm that it has sent a Statement of Objections (SO) to Intel on 26th July 2007. The SO outlines the Commission's preliminary view that Intel has infringed the EC Treaty rules on abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Computer Processing Units (CPU) market.

In the SO, the Commission outlines its preliminary conclusion that Intel has engaged in three types of abuse of a dominant market

position. First, Intel has provided substantial rebates to various Original Equipment Manufacturers (OEMs) conditional on them obtaining all or the great majority of their CPU requirements from Intel. Secondly, in a number of instances, Intel made payments in order to induce an OEM to either delay or cancel the launch of a product line incorporating an AMD-based CPU. Thirdly, in the context of bids against AMD-based products for strategic customers in the server segment of the market, Intel has offered CPUs on average below cost.

These three types of conduct are aimed at excluding AMD, Intel's main rival, from the market. Each of them is provisionally considered to constitute an abuse of a dominant position in its own right. However, the Commission also considers at this stage of its analysis that the three types of conduct reinforce each other and are part of a single overall anti-competitive strategy.

Intel has 10 weeks to reply to the SO, and will then have the right to be heard in an Oral Hearing. If the preliminary views expressed in the SO are confirmed, the Commission may require Intel to cease the abuse and may impose a fine.

Background

A Statement of Objections is a formal step in Commission antitrust investigations in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can reply in writing to the Statement of Objections, setting out all facts known to it which are relevant to its defence against the objections raised by the Commission. The party may also request an oral hearing to present its comments on the case.

The Commission may then take a decision on whether conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. Sending a Statement of Objections does not prejudge the final outcome of the procedure.

MEMO/07/314

Brussels, 27 July 2007

Competition: Commission confirms sending of Statement of Objections to Intel

The European Commission can confirm that it has sent a Statement of Objections (SO) to Intel on 26th July 2007. The SO outlines the Commission's preliminary view that Intel has infringed the EC Treaty rules on abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Computer Processing Units (CPU) market.

In the SO, the Commission outlines its preliminary conclusion that Intel has engaged in three types of abuse of a dominant market position. First, Intel has provided substantial rebates to various Original Equipment Manufacturers (OEMs) conditional on them obtaining all or the great majority of their CPU requirements from Intel. Secondly, in a number of instances, Intel made payments in order to induce an OEM to either delay or cancel the launch of a product line incorporating an AMD-based CPU. Thirdly, in the context of bids against AMD-based products for strategic customers in the server segment of the market, Intel has offered CPUs on average below cost.

These three types of conduct are aimed at excluding AMD, Intel's main rival, from the market. Each of them is provisionally considered to constitute an abuse of a dominant position in its own right. However, the Commission also considers at this stage of its analysis that the three types of conduct reinforce each other and are part of a single overall anti-competitive strategy.

Intel has 10 weeks to reply to the SO, and will then have the right to be heard in an Oral Hearing. If the preliminary views expressed in the SO are confirmed, the Commission may require Intel to cease the abuse and may impose a fine.

Background

A Statement of Objections is a formal step in Commission antitrust investigations in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can reply in writing to the Statement of Objections, setting out all facts known to it which are relevant to its defence against the objections raised by the Commission. The party may also request an oral hearing to present its comments on the case.

The Commission may then take a decision on whether conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. Sending a Statement of Objections does not prejudge the final outcome of the procedure.

EXHIBIT B

Antitrust: Commission confirms supplementary Statement of Objections sent to Intel

Reference: MEMO/08/517 Date: 17/07/2008

HTML: EN
PDF: EN
DOC: EN

MEMO/08/517

Brussels, 17th July 2008

Antitrust: Commission confirms supplementary Statement of Objections sent to Intel

The European Commission can confirm that it has sent a supplementary Statement of Objections (SSO) to Intel on 17th July. The SSO reinforces the Commission's preliminary view outlined in a Statement of Objections of 26 July 2007 (see MEMO/07/314) that Intel has infringed EC Treaty rules on abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Central Processing Units (CPU) market.

In the SSO, the Commission outlines its

preliminary conclusion that Intel has engaged in three additional elements of abusive conduct. First, Intel has provided substantial rebates to a leading European personal computer (PC) retailer conditional on it selling only Intel-based PCs. Secondly, Intel made payments in order to induce a leading Original Equipment Manufacturer (OEM) to delay the planned launch of a product line incorporating an AMD-based CPU. Thirdly, in a subsequent period, Intel has provided substantial rebates to that same OEM conditional on it obtaining all of its laptop CPU requirements from Intel. In addition, the Commission has included in the SSO additional factual elements relating to a number of the objections outlined in the 26 July 2007 Statement of Objections.

Each of the conducts outlined in the 26 July 2007 Statement of Objections and the SSO is provisionally considered to constitute an abuse of a dominant position in its own right. However, the Commission also considers at this stage of its analysis that all the types of conduct reinforce each other and are part of a single overall anti-competitive strategy aimed at excluding AMD or limiting its access to the market.

Intel has eight weeks to reply to the SSO, and will then have the right to be heard in an Oral Hearing. If the Commission's preliminary views expressed in the SSO are confirmed, the Commission may decide to require Intel to cease the abuse and may impose a fine.

Background

A Statement of Objections is a formal step in Commission antitrust investigations in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can reply in writing to the Statement of Objections, setting out all facts known to it which are relevant to its defence against the objections raised by the Commission. The party may also request an oral hearing to present its comments on the case.

The Commission may then take a decision on whether conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. Sending a Statement of Objections does not prejudge the final outcome of the procedure.

MEMO/08/517

Brussels, 17th July 2008

Antitrust: Commission confirms supplementary Statement of Objections sent to Intel

The European Commission can confirm that it has sent a supplementary Statement of Objections (SSO) to Intel on 17th July. The SSO reinforces the Commission's preliminary view outlined in a Statement of Objections of 26 July 2007 (see MEMO/07/314) that Intel has infringed EC Treaty rules on abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Central Processing Units (CPU) market.

In the SSO, the Commission outlines its preliminary conclusion that Intel has engaged in three additional elements of abusive conduct. First, Intel has provided substantial rebates to a leading European personal computer (PC) retailer conditional on it selling only Intel-based PCs. Secondly, Intel made payments in order to induce a leading Original Equipment Manufacturer (OEM) to delay the planned launch of a product line incorporating an AMD-based CPU. Thirdly, in a subsequent period, Intel has provided substantial rebates to that same OEM conditional on it obtaining all of its laptop CPU requirements from Intel. In addition, the Commission has included in the SSO additional factual elements relating to a number of the objections outlined in the 26 July 2007 Statement of Objections.

Each of the conducts outlined in the 26 July 2007 Statement of Objections and the SSO is provisionally considered to constitute an abuse of a dominant position in its own right. However, the Commission also considers at this stage of its analysis that all the types of conduct reinforce each other and are part of a single overall anti-competitive strategy aimed at excluding AMD or limiting its access to the market.

Intel has eight weeks to reply to the SSO, and will then have the right to be heard in an Oral Hearing. If the Commission's preliminary views expressed in the SSO are confirmed, the Commission may decide to require Intel to cease the abuse and may impose a fine.

Background

A Statement of Objections is a formal step in Commission antitrust investigations in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can reply in writing to the Statement of Objections, setting out all facts known to it which are relevant to its defence against the objections raised by the Commission. The party may also request an oral hearing to present its comments on the case.

The Commission may then take a decision on whether conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. Sending a Statement of Objections does not prejudge the final outcome of the procedure.

EXHIBIT C

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

Advanced Micro Devices, Inc., and
AMD International Sales & Services, Ltd.

v.

Intel Corporation and Intel Kabushiki Kaisha

SUBPOENA IN A CIVIL CASE

Case Number:[1] 05-441-JJF

TO: Hewlett-Packard Company
c/o Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attached Schedule A

PLACE	DATE AND TIME
Richards, Layton & Finger, PA One Rodney Square, P.O. Box 551 Wilmington, Delaware 19899	November 1, 2005 5 p m. (Eastern Standard Time)

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Attorney For Plaintiffs	October 4, 2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Charles P. Diamond
O'Melveny & Myers LLP
1999 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
(310) 553-6700

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

[1] If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim

Schedule A

Definitions

1. For purposes of this document request, "DOCUMENT" includes, without limitation, any hard copy writings and documents as well as electronically stored data-files including email, instant messaging, shared network files, and databases created, accessed, modified or dated on or after January 1, 2000.

2. With respect to electronically stored data, "DOCUMENT" also includes, without limitation, any data on magnetic or optical storage media (*e.g.*, servers, storage area networks, hard drives, backup tapes, CDs, DVDs, thumb/flash drives, floppy disks, or any other type of portable storage device, etc.) stored as an "active" or backup file, in its native format.

3. For purposes of this document request, "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (e.g., Sempron, Athlon, Turion, Opteron, Celeron, Pentium, and Xeon).

4. For purposes of this document request, "FINANCIAL INDUCEMENT" means any payment, subsidy, rebate, discount (on MICROPROCESSORS or on any other INTEL product), Intel Inside funds, E-CAP (exceptions to corporate approved pricing), MDF, "meeting competition" or "meet comp" payments, "depo" payments, program monies, or any advertising or pricing support.

5. For purposes of this document request, "COMPANY" refers to Hewlett-Packard Company and any of its controlled present or former subsidiaries, joint-ventures, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "INTEL" refers to Intel Corporation, Intel Kabushiki Kaisha, and any of their present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "AMD" refers to Advanced Micro Devices, Inc., AMD International Sales and Service Ltd., and any of their present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof.

6. For purposes of this document request, "MDF" refers to market development funds.

Instructions

1. The time period, unless otherwise specified, covered by each request set forth below is from January 1, 2000 up to and including the present.

2. In responding to each request set forth below, please set forth each request in full before each response.

3. If any DOCUMENT covered by these requests is withheld by reason of a claim of privilege, please furnish a list at the time the DOCUMENTS are produced identifying any such DOCUMENT for which the privilege is claimed, together with the following information with respect to any such DOCUMENT withheld: author; recipient; sender; indicated or blind copies;

date; general subject matter; basis upon which privilege is claimed and the paragraph of these requests to which such DOCUMENT relates. For each DOCUMENT withheld under a claim that it constitutes or contains attorney work product, also state whether COMPANY asserts that the DOCUMENT was prepared in anticipation of litigation or for trial.

4. If COMPANY objects to a request in part, please state specifically which part of the request COMPANY objects to and produce all DOCUMENTS responsive to all other parts of the request.

5. With respect to any DOCUMENT maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data, including all metadata.

6. Please produce all DOCUMENTS maintained or stored electronically in native, electronic format with all relevant metadata intact and in an appropriate and useable manner (e.g., by copying such data onto a USB 2.0 external hard drive). Encrypted or password-protected DOCUMENTS should be produced in a form permitting them to be reviewed.

7. Please organize electronic DOCUMENTS produced for inspection in the same manner that the COMPANY stores them (e.g., if maintained by a custodian, such as email residing on an email server, please organize DOCUMENTS for production by custodian; if maintained in a subfolder of "My Documents" on a custodian's hard drive, please organize DOCUMENTS for production by custodian with path information preserved, etc.).

8. To the extent responsive DOCUMENTS reside on databases and other such systems and files, COMPANY shall either produce the relevant database in useable form and/or shall permit access for inspection, review, and extraction of responsive information.

9. At COMPANY'S election, DOCUMENTS maintained or stored in paper, hard-copy form can be produced as searchable .PDF (i.e., portable document format files with embedded text) and in an appropriate and useable manner (e.g., by copying such data onto a USB 2.0 external hard drive).

DOCUMENTS TO BE PRODUCED

Purchase Terms

1. All DOCUMENTS constituting or reflecting communications with INTEL concerning actual or proposed terms and conditions of the sale of MICROPROCESSORS, including without limitation pricing, quantities, discounts, rebates, Intel Inside funds, E-CAP and MDF.

2. All DOCUMENTS constituting or reflecting internal discussions or other communications within COMPANY concerning actual or proposed terms and conditions of sale of INTEL or AMD MICROPROCESSORS.

3. All DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL related to the exclusive purchase of INTEL MICROPROCESSORS,

or the purchase of a minimum volume of INTEL MICROPROCESSORS, or the purchase of a minimum percentage of INTEL MICROPROCESSORS, whether of COMPANY's total MICROPROCESSOR requirements or requirements for certain processor types or end uses.

4. All DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL related to COMPANY's representation or agreement that it will use only INTEL MICROPROCESSORS, or a defined number or percentage of INTEL MICROPROCESSORS, in a particular computer platform, computer model or computer type.

5. All DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL related to COMPANY's representation or agreement that it will use only INTEL MICROPROCESSORS, or a defined number or percentage of INTEL MICROPROCESSORS, in computers sold in a particular geographic region.

6. All DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings pertaining to INTEL's pricing of MICROPROCESSORS including without limitation any FINANCIAL INDUCEMENT.

7. All DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL related to any restriction or limitation of COMPANY's purchases or promotion of AMD MICROPROCESSORS or related to any restriction or limitation of the sale of products containing AMD MICROPROCESSORS.

8. All DOCUMENTS constituting, reflecting, or discussing any suggestion by INTEL that it will or might withdraw or withhold a FINANCIAL INDUCEMENT as a result of COMPANY's sale of products containing AMD MICROPROCESSORS, its purchases of AMD MICROPROCESSORS, or its plan to develop, release or promote a product containing an AMD MICROPROCESSOR.

9. All DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to provide discounted or free chipsets, motherboards, or other components in connection with the purchase of, or as part of a package or bundle with, INTEL MICROPROCESSORS.

10. All DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to discount or subsidize or provide marketing support in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

11. All DOCUMENTS constituting, reflecting, or discussing any communications with retailers concerning any FINANCIAL INDUCEMENT provided by INTEL to COMPANY or to retailers in connection with the purchase or resale of computer systems containing INTEL MICROPROCESSORS.

12. All DOCUMENTS constituting, reflecting, or discussing any non-financial inducement, including without limitation any allocation preference, access to technical or roadmap information, personnel support (engineering/technical/training) or any other non-cash benefit, perquisite or other consideration offered by INTEL related to the purchase of INTEL MICROPROCESSORS, or any suggestion by INTEL that it will or might withdraw or withhold

any non-financial inducement as a result of COMPANY's purchase, sale or plans to develop, release or promote AMD MICROPROCESSORS or products containing AMD MICROPROCESSORS.

Purchase History

13. DOCUMENTS sufficient to show:

a) the prices paid by COMPANY to INTEL for all MICROPROCESSORS since January 1, 2000.

b) the aggregate amount by quarter of any payment, subsidy, rebate, discount, Intel Inside funds, E-CAP, MDF, "meeting competition" payments, or any advertising or pricing support provided to COMPANY in connection with its purchase of MICROPROCESSORS (by quarter) since January 2000.

c) Historical MICROPROCESSOR purchase volumes (by quarter) from INTEL and AMD since January 1, 2000.

d) Product road maps for product lines and MICROPROCESSORS (by quarter or cycle) since January 1, 2000.

e) Expected and realized revenue, cost, and profitability of product lines (by quarter) since January 1, 2000.

f) The use or disposition of any discount, subsidy, or marketing support provided by INTEL in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

Comparisons of INTEL and AMD MICROPROCESSORS

14. All DOCUMENTS constituting or reflecting analyses, summaries, reports or studies prepared in connection with the consideration of the purchase or use of AMD and/or INTEL MICROPROCESSORS.

15. All DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings prepared comparing INTEL and AMD MICROPROCESSORS whether from a price, quality or other standpoint.

Miscellaneous

16. All DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning COMPANY's participation in or support of any AMD product launch or promotion.

17. All DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning the allocation of microprocessors or other INTEL components.

18. All DOCUMENTS constituting or reflecting discussions within COMPANY about unfair or discriminatory allocations of INTEL products or the fear of such unfair or discriminatory allocations.

19. All DOCUMENTS constituting or reflecting consumer or customer feedback regarding (a) COMPANY's selection of AMD or INTEL MICROPROCESSORS or products containing AMD or INTEL MICROPROCESSORS, or (b) COMPANY's advertising, marketing, promotion, or sale of products containing AMD and/or INTEL MICROPROCESSORS.

20. All DOCUMENTS constituting, reflecting, or discussing the destruction or disposal of documents related to INTEL, AMD, or MICROPROCESSOR procurement.

21. All DOCUMENTS sufficient to show the steps taken by COMPANY to preserve documents with respect to this litigation or related litigation or proceedings including, without limitation, all DOCUMENTS that constitute, reflect or discuss the COMPANY'S DOCUMENT retention policy or policies from January 1, 2000, to the present.

EXHIBIT D

Postawko, Robert

From: Postawko, Robert
Sent: Tuesday, September 23, 2008 1:38 PM
To: 'Paul D. Weller'
Cc: 'Amanda M. Bruno'; 'JZahid@zelle.com'; 'OstoyichJ@howrey.com'
Subject: RE: HP Production

Hi Paul:

I know Amanda is on vacation this week, so this is just a tickler to remind you that I genuinely would appreciate it if you could point me to some authority for HP's assertion of an investigative privilege. We've taken a look at both EC and US law and are not finding anything that would provide the protection from disclosure that HP appears to be claiming. If you could point us to the authority for HP's objection, perhaps we could then discuss and not have to go down the path of motion practice.

Much obliged.

Bob

From: Postawko, Robert
Sent: Friday, September 12, 2008 1:42 PM
To: 'Paul D. Weller'
Cc: Amanda M. Bruno; JZahid@zelle.com; OstoyichJ@howrey.com
Subject: RE: HP Production

Hi Paul:

I'm a little unclear on the scope of and authority for HP's assertion of a so-called investigative privilege. Is HP claiming that the privilege applies to all documents it produced to the European Commission, including both written submissions and documents generated in the ordinary course of business, or just to the documents that HP produced to the EC that have not been produced to the parties in this case? In the interest of avoiding motion practice, if you could point us to the authority (either EC or US or both) that HP is relying on for the assertion of the privilege, we'll be glad to take a look at it.

Thanks much.

Bob

From: Paul D. Weller [mailto:pweller@morganlewis.com]
Sent: Wednesday, September 10, 2008 6:04 PM
To: Postawko, Robert
Cc: Amanda M. Bruno; JZahid@zelle.com; OstoyichJ@howrey.com; Paul D. Weller
Subject: RE: HP Production

Bob:

I am responding to your email to Ms. Bruno.

In response to your first question, HP is not producing wholesale documents produced to the EC, as set forth in the August 2, 2007 letter from John Schultz. In that letter, HP objected to the production of such documents on the grounds, *inter alia*, that the production would run afoul of the

EC's investigative privilege.

In response to your second question, HP's fifth production is the final production, with one exception. The production does not include the transactional data that the parties have been discussing.

If you have any further questions, please let us know.
-----"Postawko, Robert" <RPostawko@OMM.com> wrote: -----

To: "Amanda M. Bruno" <abruno@morganlewis.com>
From: "Postawko, Robert" <RPostawko@OMM.com>
Date: 09/10/2008 06:43PM
cc: JZahid@zelle.com, OstoyichJ@howrey.com, "Paul D. Weller" <pweller@morganlewis.com>
Subject: RE: HP Production

Hi Amanda,
It's difficult for me to tell from your response whether HP is refusing to produce these documents or whether your office simply doesn't have the information at hand to provide a response. As you can well imagine, it is very important for my client to review the documents that HP produced to the European Commission. Additionally, the parties in this litigation certainly have a right to know if they have received those key documents, which are in your client's possession and control and by its own admission relevant, even if your firm may not have coordinated that production. Please confirm that you will coordinate with your client to ensure that HP's production in this litigation includes those documents, or at least let me know who you would like us to contact to get that confirmation.
Also, is this fifth production the last for these initial 32 custodians or do you anticipate additional rolling productions?
Thanks,
Bob

From: Amanda M. Bruno [mailto:abruno@morganlewis.com]
Sent: Tuesday, September 09, 2008 5:50 AM
To: Postawko, Robert
Cc: JZahid@zelle.com; OstoyichJ@howrey.com; Paul D. Weller
Subject: Re: HP Production

Bob,

There will be approximately 4500 documents in this production.

Morgan Lewis did not handle the production of documents to the European Commission so we are not able to confirm whether all of the documents produced include all of the documents in the production to the EC.

Please let me know if you have any questions.

Best,
Amanda

Amanda M. Bruno
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Direct: 215.963.5240

Fax: 877.432.9652
abruno@morganlewis.com

"Postawko, Robert" <RPostawko@OMM.com>

09/03/2008 12:57 PM

To "Amanda M. Bruno" <abruno@morganlewis.com>

cc OstoyichJ@howrey.com, JZahid@zelle.com

Subject HP Production

Hi Amanda:

As HP gears up for its production on September 10, I was wondering if you could give me an estimate of the size of the production so that I can make sure at my end that we're properly staffed.

Also, will HP be able to represent with this next wave of production that it has produced all of the documents that were included in its production to the European Commission?

Thanks much.

Bob

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EXHIBIT E

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COUNSELORS AT LAW

PHILADELPHIA
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WASHINGTON
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TOKYO

LOSING PRIVILEGES BY COOPERATING WITH THE GOVERNMENT: THE WESTINGHOUSE ELECTRIC DECISION

June 1992

SUMMARY PAGE

White Paper -
"Losing Privileges By Cooperating With The Government:
The Westinghouse Electric Decision"

This White Paper discusses how a corporation may waive the attorney-client privilege and work product doctrine by voluntarily cooperating with a government investigation, and the December 19, 1991 decision of the United States Court of Appeals for the Third Circuit in Westinghouse Electric Corp. v. The Republic of the Philippines, 951 F.2d 1414 (3d Cir. 1991). The Westinghouse Electric decision holds that a corporation will waive the protection afforded by the attorney-client privilege and the work product doctrine for information which is voluntarily disclosed to the government in connection with a government investigation.

LOSING PRIVILEGES BY COOPERATING WITH THE GOVERNMENT: THE WESTINGHOUSE ELECTRIC DECISION

In recent years, corporations have increasingly relied upon internal investigations to respond to government investigations, prosecutions and other enforcement actions. Internal investigations have proven to be an invaluable tool, enabling corporations to ascertain promptly the facts and circumstances of alleged corporate misconduct and, where necessary, to prepare an effective response to government accusations.

Generally, corporations utilize counsel to direct internal investigations because of the significant legal issues presented by government investigations, and the benefits afforded by the attorney-client privilege and the work product doctrine. Counsel is able to resolve these issues and craft an appropriate response only through its communications with corporate employees, including those employees whose conduct is called into question by the government investigation.

Although communications between counsel and corporate employees are subject to protection under the attorney-client privilege and the work product doctrine, the corporation in many instances will voluntarily disclose at least a portion of the privileged information to the government in an effort to head off a government enforcement action. The disclosure of the privileged communications, however, will waive the protection of the attorney-client privilege or work product doctrine if the particular jurisdiction does not adhere to the so-called "selective waiver" doctrine.

In Westinghouse Electric Corp. v. The Republic of the Philippines, 951 F.2d 1414 (3d Cir. 1991), the United States Court of Appeals for the Third Circuit firmly rejected the selective waiver doctrine and held that a corporation will waive the protections of the attorney-client privilege and the work product doctrine for information which is voluntarily disclosed to the government in connection with a government investigation of the corporation. This White Paper contains an overview of the attorney-client privilege, the work product doctrine and the selective waiver doctrine, a summary of the Westinghouse Electric Corp. decision, and a discussion of the potential impact and practical implications of that decision.

The Attorney-Client Privilege, The Work Product Doctrine And Selective Waiver

The Attorney-Client Privilege

The essential elements of the attorney-client privilege are (1) the communication of information between a client and its attorney; (2) the seeking of legal advice by the client as the purpose for the communication; and (3) the existence of circumstances which would reasonably lead one to believe that the communication was made in confidence. See 8 J. Wigmore, Evidence in Trials at Common Law § 2292 (McNaughton rev. ed. 1961). This definition of the attorney-client privilege repeatedly has been accepted by federal and state courts. See, e.g., United States v. White, 950 F.2d 426, 430 (7th Cir. 1991); United States v. Rockwell Int'l, 897 F.2d 1255, 1264 (3d Cir. 1990); Bierman v. Marcus, 122 F. Supp. 250, 251 (D.N.J. 1954); Tobacco and Allied Stocks, Inc. v. Transamerica Corp., 16 F.R.D. 534, 536 (D. Del. 1954); Marian Bank v. Lawrence Voluck Assoc., 26 D. & C.3d 48, 51 (Phila. Co. 1982).

The purpose of the attorney-client privilege is to promote full disclosure between counsel and the client. Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 348 (1985). The protections of the privilege are conditioned only upon the client's expectation that its communications to counsel are and will be maintained confidential. See United States v. United Shoe Mach. Corp., 89 F. Supp. 357, 358 (D. Mass. 1950) (citations omitted).

In the corporate context, communications between counsel and a corporate client's employees made for the purpose of obtaining information relevant to legal advice will be subject to the attorney-client privilege. Upjohn Co. v. United States, 449 U.S. 383 (1981). The communications between outside or in-house counsel, and corporate employees are equally protected under the attorney-client privilege. United Shoe Mach. Corp., 89 F. Supp. at 360.[1/]

1/ From a practical viewpoint, the establishment of the attorney-client privilege for communications between in-house counsel and corporate employees may be more difficult. In-house counsel frequently communicates to corporate employees in the capacity as a business advisor, and not as an attorney rendering legal advice. Moreover, the privileged communications by in-house counsel are in many instances shared with corporate employees not involved in the response to a government enforcement action. Accordingly, the government frequently will claim that the attorney-client privilege does not apply, or that the corporation waived the privilege by disclosing the communications to individuals outside of the defense team. See,

(continued...)

Limited exceptions exist to permit disclosure of communications protected by the attorney-client privilege. One exception arises in the context of a derivative action when shareholders of a corporation seek to discover privileged communications between corporate management and counsel. See, e.g., Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970), cert. denied, 401 U.S. 974 (1971). That exception has been extended to privileged communications involving other fiduciaries such as trustees. See, e.g., Washington-Baltimore Newspaper Guild, Local 35 v. Washington Star Co., 543 F. Supp. 906 (D.D.C. 1982). A second exception permits the disclosure of privileged communications if those communications were made in furtherance of a crime, fraud or other misconduct. In re Sealed Case, 754 F.2d 395 (D.C. Cir. 1985). Another exception enables counsel to disclose privileged communications in order to defend against charges of misconduct relating to the representation of a client or to recover fees from a client. See, e.g., Cannon v. U.S. Acoustics Corp., 532 F.2d 1118 (7th Cir. 1976).

The Work Product Doctrine

The work product doctrine is broader but less protective than the attorney-client privilege. The work product doctrine will protect from disclosure (1) documents or tangible things (2) prepared in anticipation of litigation or for trial (3) by or for the party claiming the privilege or by or for that party's representative. See 8 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2024, at 196-97 (1970 ed. & Supp. 1992).

The purpose underlying the work product doctrine is to permit the proper preparation of a party's case for trial. See Hickman v. Taylor, 329 U.S. 495, 510-11 (1947). Without the protection provided by the work product doctrine, a party would be reluctant to prepare its case in writing for fear that an opponent would discover its trial strategy. Id. at 511.

Unlike the attorney-client privilege, the protection afforded by the work product doctrine is expressly qualified. A party may compel the disclosure of work product which does not contain so-called "opinion" work product -- the "mental impressions, conclusions, opinions or legal theories" of counsel -- if the party can demonstrate a "substantial need of the materials" and "undue hardship to obtain the substantial equivalent of the materials by other means." Fed. R. Civ. P. 26(b)(3). Furthermore, the courts are split on whether the protection afforded opinion work product is absolute. Compare In re Grand Jury Proceedings, 473 F.2d 840, 848 (8th Cir. 1973) (no showing of necessity can

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1/(...continued)
e.g., In re Sealed Case, 737 F.2d 94 (D.C. Cir. 1984).

overcome protection of attorney's work product) with In re Grand Jury Investigation, 599 F.2d 1224, 1231 (3d Cir. 1979) (opinion work product will be discoverable in rare instances). However, the Supreme Court has recognized that any disclosure of opinion work product would require at least a "far stronger showing of necessity and unavailability." Upjohn Co., 449 U.S. at 401-02.

The Selective Waiver Doctrine

Generally, the protection of the attorney-client privilege and the work product doctrine exists only if the underlying documents are maintained as confidential. If a client breaches that confidentiality by disclosing the documents to a third party, the client will waive any protection furnished by the attorney-client privilege or the work product doctrine. See, e.g., S & A Painting Co. v. O.W.B. Corp., 103 F.R.D. 407, 409 (W.D. Pa. 1984).[2/] The selective waiver doctrine, however, holds that voluntary disclosure of privileged information to the government by a corporation in connection with a government investigation of the corporation will not waive the protection afforded by the attorney-client privilege or the work product doctrine. See Diversified Indus., Inc. v. Meredith, 572 F.2d 596, 611 (8th Cir. 1977).

While departing from the traditional waiver rule, the selective waiver doctrine advances two significant goals. First, the doctrine encourages a corporation to cooperate with a government investigation of alleged corporate wrongdoing. Id. Second, the doctrine motivates corporations to retain independent counsel to conduct internal investigations of the corporation, thereby protecting the interests of the shareholders and customers of the corporation. Id.

Nevertheless, a growing number of federal courts have rejected the selective waiver doctrine. See, e.g., In re Martin Marietta Corp., 856 F.2d 619 (4th Cir. 1988), cert. denied, 490 U.S. 1011 (1989); Permian Corp. v. United States, 665 F.2d 1214 (D.C. Cir. 1981). In Westinghouse Electric, the Third Circuit joins those courts by declining to permit a corporation's voluntary disclosure of privileged information to the government without waiver of the protection granted by the attorney-client privilege and the work product doctrine. In doing so, the Third Circuit implicitly warns corporations to assess carefully the possible ramifications of providing privileged information to the government.

2/ A client also may waive the protection afforded by the attorney-client privilege or the work product doctrine through other conduct. For example, if a client places the substance of otherwise protected communications at issue in litigation, the disclosure of those communications may be compelled. See, e.g., Western Nat'l Bank of Denver v. Employers Ins. of Wausau, 109 F.R.D. 55 (D. Colo. 1985).

The Westinghouse Electric Decision

In Westinghouse Electric, the Republic of the Philippines (the "Republic") sued Westinghouse Electric Corporation ("Westinghouse") for allegedly tortiously interfering with and conspiring to tortiously interfere with the fiduciary duties owed to the Philippine people and the Philippine government's National Power Corporation ("NPC") by then President Marcos. 951 F.2d at 1417. The Republic alleged that Westinghouse had obtained a large government contract by bribing a henchman of President Marcos. Id.

During discovery, the Republic sought certain privileged documents created pursuant to an internal investigation conducted by Westinghouse's outside counsel. Id. The Republic alleged that Westinghouse had waived the protection of the attorney-client privilege and work product doctrine by disclosing the documents to the government in connection with earlier government investigations of Westinghouse. Id.

Westinghouse had disclosed the privileged documents to the Securities and Exchange Commission ("SEC") in an effort to cooperate with an investigation conducted by the SEC into allegations that Westinghouse had obtained Republic government contracts through bribery of government officials. 951 F.2d at 1418. While disclosing the documents to the SEC, Westinghouse had relied upon the confidentiality regulations of the SEC as well as the selective waiver doctrine. Id.

Westinghouse later disclosed the same documents to the Department of Justice ("DOJ") in connection with an investigation conducted by the DOJ concerning the same allegations underlying the SEC investigation. Id. at 1419. Westinghouse had disclosed the documents to the DOJ pursuant to a confidentiality agreement with the DOJ which provided

> that the [DOJ] review at Westinghouse counsel's office (but not keep copies of) attorney-client privileged and work product protected materials in the [counsel's files] . . . , that the information contained therein would not be disclosed to anyone outside of the [DOJ], and that such review of the [counsel's] . . . documents would not constitute a waiver of Westinghouse's work product and attorney-client privileges.

Id.

If the Third Circuit had adopted the selective waiver doctrine, the Republic would not have been entitled to the disclosure of the privileged documents because Westinghouse had voluntarily disclosed the documents to the government in connection with

a government investigation of the corporation. The Third Circuit, however, flatly rejected the selective waiver doctrine in a unanimous opinion authored by Judge Becker.

The Third Circuit refused to apply the selective waiver doctrine to preserve Westinghouse's claims of attorney-client privilege. 951 F.2d at 1423-26. The court noted that, in general, voluntary disclosure of privileged documents to a third party will waive the attorney-client privilege unless the disclosure furthers the purpose underlying the attorney-client privilege. Id. at 1423-24. The attorney-client privilege is intended to promote the full and frank disclosure between attorney and client. Id. at 1423. The selective waiver doctrine, however, only encourages a corporation to cooperate with a government investigation, not to communicate with counsel. Id. at 1424. As such, the court refused to permit the selective waiver doctrine to alter the traditional waiver rule relating to the attorney-client privilege. Id. at 1425.

Moreover, the court noted that the rejection of the selective waiver doctrine would have very little impact on the cooperation of corporations with government investigations. 951 F.2d at 1426. Specifically, the court noted that Westinghouse had disclosed the documents to the government in the absence of an established exception to the general waiver rule; at the time of Westinghouse's disclosure, only one court had expressly recognized the selective waiver doctrine. Id.

The court of appeals refused to accept Westinghouse's contention that the confidentiality agreement with the DOJ or the confidentiality regulations of the SEC altered the traditional waiver rule. Id. at 1426-27. The court held that the voluntary disclosure to the DOJ waived its attorney-client privilege, notwithstanding the agreement with the DOJ preserving the privilege. Id. The court noted that the confidentiality agreement with the DOJ did not apply to the prior disclosure to the SEC by Westinghouse. Id. at 1427. Nor could the confidentiality regulations of the SEC justify any reasonable belief on the part of Westinghouse that the attorney-client privilege would be preserved after the disclosure of privileged materials to the SEC. Id.

The Third Circuit went on to repudiate any application of the selective waiver doctrine to the work product doctrine under the facts presented by Westinghouse Electric. 951 F.2d at 1427-31. The court acknowledged that the work product doctrine is intended to protect attorney work product from falling into the hands of an opponent. Id. at 1428. The court further recognized that most courts permit the waiver of work product protection only if the disclosure provides an adversary with access to the information. Id. In this case, however, Westinghouse had disclosed the privileged information directly to an adversary, the government, during government investigations of Westinghouse. Id. The court, therefore, held that Westinghouse had waived the protection of the work product doctrine as against all other adversaries, including the Republic. Id. at 1429.

Similar to its analysis of the attorney-client privilege, the Third Circuit refused to accept Westinghouse's contention that the confidentiality agreement with the DOJ or the confidentiality regulations of the SEC altered Westinghouse's waiver of the work product doctrine. 951 F.2d at 1430. The circumstances surrounding Westinghouse's disclosure to the government failed to reflect any reasonable expectation on the part of Westinghouse that an adversary would not obtain the privileged materials. Id. In particular, the court noted that, at the time of the disclosure, the government and Westinghouse were adversaries and not allies. Id. at 1431.

Practical Implications of the Westinghouse Electric Decision

If the decision is more widely accepted by other jurisdictions, Westinghouse Electric could change the manner in which corporations respond to criminal investigations.

A "target" corporation frequently discloses the results of internal investigations to the government in an effort to head off a government prosecution or other enforcement action. Under the selective waiver doctrine, a corporation discloses the privileged information with the knowledge that such disclosure will not prevent the corporation from asserting the protection of the attorney-client privilege or work product doctrine at a later date when confronted with a request to produce the same information to a different adversary.

In Westinghouse Electric, however, the Third Circuit rejected the selective waiver doctrine, notwithstanding an agreement between the government and the corporate defendant maintaining the protection of the attorney-client privilege and the work product doctrine. The Third Circuit held that a corporation which voluntarily discloses privileged information to the government in connection with a government investigation of the corporation waives any protection afforded by the attorney-client privilege and the work product doctrine without regard for the underlying purpose of the selective waiver doctrine.

The Westinghouse Electric decision runs afoul of the stated federal policy encouraging corporations to cooperate voluntarily with the government. Realizing their limited resources, federal agencies have repeatedly adopted programs endorsing corporate cooperation with the government. For example, in the mid 1970's, the SEC instituted a Voluntary Disclosure Program which encouraged corporations to conduct independent investigations of the corporations' practices. Similarly, in 1986, the Department of Defense ("DOD") initiated a Voluntary Disclosure Program which was designed to encourage defense contractors to disclose evidence of wrongdoing in the defense industry. Most recently, in 1991, the DOJ itself issued guidelines encouraging corporations to disclose environmental

violations. The Westinghouse Electric decision thus runs directly counter to the federal policy by encouraging corporations not to disclose any investigative information to the government, thereby impeding future government investigations.

In light of Westinghouse Electric, a corporation must carefully weigh the possible consequences of disclosing privileged information to the government in connection with a government investigation of the corporation. The corporation must predetermine whether the interests of the corporation will be better served through such disclosure.

If a target corporation decides to disclose privileged information to the government, under Westinghouse Electric the corporation will waive the protection of the attorney-client privilege and work product doctrine. The corporation then must anticipate the disclosure of the same privileged information to other adversaries in future proceedings. The consequences of such future disclosure may be severe, particularly with respect to future civil proceedings.

On the other hand, if a corporation is able to limit criminal culpability through its voluntary disclosure, the corporation may be significantly benefited, even though the disclosure complicates future civil litigation or chills employee cooperation. Voluntary disclosure demonstrates to the government that the corporation is cooperating with the investigation and, in some cases, may persuade the government not to prosecute the corporation, or to forego other types of enforcement actions.

Eric Kraeutler
Paul D. Weller