

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:) Byproduct Material License
ADVANCED MEDICAL SYSTEMS, INC.) No. 34-19089-01
) Docket No. 30-16055-SP
) EA-86-155
) ASLBP No. 87-545-01-SP
) (Suspension Order)
)
) Date: October 27, 1989

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

On August 28-29, 1989 Attorneys for Advanced Medical Systems Inc., (AMS) attempted to perform a review of documents previously promised to them. Prior to those dates, Attorneys for the NRC had represented that all documents relating to the suspension order matter, the decontamination matter, and the reactivated fine of \$6,250.00 would be available to AMS in Rockville, Maryland. Upon arrival, Colleen Woodhead, Attorney for the NRC, indicated that she had sent documents back to Region III and that AMS' Attorneys would be required to view them there at additional expense to AMS.

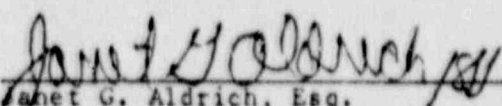
On September 18-19, 1989 Attorneys for AMS then attempted in good faith to conduct this discovery at Region III. At that time, they were informed that Attorney Woodhead had decided, without prior notification and without proper basis, that full discovery would be denied. In addition, following AMS' limited review of requested documents, NRC Attorneys arbitrarily edited AMS' requests and refused to send AMS copies of previously promised documents. Attorney Woodhead was informed by letter dated September 19, 1989 (attached) that her actions were not acceptable. As such, the September 18-19, 1989 trip was wasted. Advanced Medical Systems Inc., incurred costs of \$1,233.85

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and Attorneys' fees of \$4,200.00, in attempting to conduct this promised document review in Chicago. Because this effort was thwarted due to the intentional actions of the NRC, additional discovery must be performed at an additional cost to AMS.

The NRC has demonstrated in the past and continues to demonstrate a pattern and practice of its attorneys changing the rules after an agreement has been reached, harrassment, or inability to follow its own regulations, either through inadvertance or lack of knowledge. NRC continues to refuse an amicable resolution of matters related to the instant action. Therefore, since documents had previously been promised to AMS and since the NRC has intentionally thwarted AMS' discovery without prior warning to AMS, it is respectfully requested that the NRC be ordered to reimburse AMS for these unnecessary expenses incurred in their attorneys' wasted trip to NRC, Region III.

Respectfully submitted:


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ATTORNEYS FOR ADVANCED MEDICAL SYSTEMS INC.

Sherry Jane Stein

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September 19, 1989

VIA FAX #(301) 492-0260

Dictated But Not Read

Colleen P. Woodhead, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, DC 20555

RE: In the Matter of: Advanced Medical Systems, Inc.; Byproduct Material
License No. 34-19089-01; Docket No. 30-16055-SP; EA-86-155; ASLBP No.
87-545-01-SP (Suspension Order)

Dear Ms. Woodhead:

Ms. Aldrich and I were extremely distressed to learn that, once again, you have taken an unwarranted, litigious stand. We were extremely disappointed to learn that after the documents have been provided to us and we have reviewed them, marked the pages we wanted, and were expecting to get copies, you changed your mind. We do not find your new position that you are now entitled to review the documents we have requested and decide whether or not we may have them proper. If you had an objection to relevancy, you should have made it prior to our review of the documents. Further, none of the documents reviewed were on your Vaughn list. Again, if you had an objection, pursuant to 10 CFR 2.744, it should have been made before we reviewed the documents, not after we had already been promised them. We realize that would have required more effort on your part; however, it is standard discovery procedure. We will, therefore, be forced to file a Motion to Compel and for sanctions for any documents you arbitrarily hold back.

Secondly, with respect to your current refusal to provide copies of relevant Atom Mechanical Company documents, your response to Interrogatory 11 of the third set of interrogatories propounded by AMS represented that Atom Mechanical documents would be available in Rockville, Maryland. They were not. Again, if you had an objection, you should have made it then. You should have made it in your response. Since you did not, we again invoke the requirements of 10 CFR 2.744 and will take appropriate action as deemed necessary.

Sincerely,

Sherry J. Stein /mz

SHERRY J. STEIN
Director of Regulatory Affairs

SJS/mz

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Robert M. Lazo, Chairman
Harry F. Foreman
Ernest E. Hill

In The Matter Of:)
ADVANCED MEDICAL SYSTEMS, INC.) BY PRODUCT MATERIAL
) License No. 34-19089-01
) Docket No. 30-16055-SP
)
) EA 86-155
) ASLEP No. 87-545-01-SP
)
) (Suspension Order)
)

ORDER

This cause was presented by motion of Advanced Medical Systems Inc., (AMS) for Attorneys' fees and costs associated with production of documents at the Nuclear Regulatory Commission (NRC) Region III on September 18-19, 1989. This Panel, upon careful examination of all pleadings and facts, finds that this motion is warranted and that AMS is entitled to said Attorneys' fees and costs.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, this _____ day of _____, 1989, that the NRC will reimburse AMS the sum of _____ with legal interest accruing from the date of this order.

For the Atomic Safety and Licensing
Board

Robert M. Lazo, Chairman
Administrative Judge

Dated at _____ this _____ day of _____, 1989.

CERTIFICATE OF SERVICE

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I hereby certify that Advanced Medical Systems Inc.'s Motion for Attorneys fees has been served on the following by deposit in the United States Mail, first class on this 27th Day of October, 1989.

Administrative Judge
Dr. Robert M. Lazo, Chairman
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Assistant General Counsel
for Enforcement
U. S. Nuclear Regulatory
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Washington, DC 20555

Administrative Judge
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Administrative Judge
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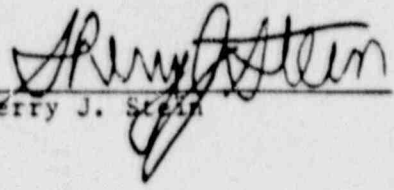
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