

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2004 AUG -5 P 4: 36

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA *MS*

SALT INSTITUTE, *et al.*,)
Plaintiffs,)
v.)
TOMMY THOMPSON,)
Secretary, Department of Health)
and Human Services)
Defendant.)

CIVIL ACTION NO. 04-359 GBL

**EMERGENCY MOTION FOR CONTINUANCE
AND LEAVE TO FILE SUR-RESPONSE**

Plaintiffs, through their counsel, file this emergency motion for leave to file a sur-response and for a continuance.

1. This case concerns the justiciability of Plaintiffs' rights under the Information Quality Act and the Shelby Amendment.

2. Defendant has filed a motion to dismiss. In his reply brief, he appended a newly published medical journal article, and an affidavit stating that as the result of the publication of this article, Plaintiffs' case for information disclosure is moot.

3. Based on discussions between counsel, it appears there would be no objection by Defendant to an order granting Plaintiffs leave to file a brief (five page) sur-response and counter-affidavit on or before August 20, 2004, with the argument on the motion to dismiss being continued until August 27, 2004.

4. However, Plaintiffs believe the case can be most efficiently administered if the continuance is extended to allow Plaintiffs to file their motion for summary judgment, thereby placing substantially all of the issues in the case before the Court at once. Plaintiffs propose that the hearing on all pending motions be continued from August 13, 2004 to October 15, 2004; that

Plaintiffs' file their motion for summary judgment and sur-response by August 27, 2004; that Defendant's response be filed by September 24, 2004 and a reply be filed by October 1, 2004.

5. Pursuant to Local Civil Rule 7 (F) there is good cause for this requested continuance and request for leave to file a sur-response, as set forth in the attached Memorandum of Law.

6. Pursuant to Local Rule 7(J), Plaintiffs request that the Court rule upon this motion without an oral hearing.

7. Plaintiffs are informed that Defendant objects to the additional relief sought by Plaintiffs. Pursuant to the Local Rules, Plaintiffs hereby certify that Plaintiffs made a good faith effort to resolve this issue before filing the instant motion.

WHEREFORE, Plaintiffs therefore request the following relief:

A. An order granting a continuance of the hearing date to October 15, 2004 at 2 pm, before which time Plaintiffs' shall have leave to file their sur-response (which shall not exceed five pages) and supporting affidavit, and their motion for summary judgment by August 27, 2004. Defendant shall have until September 24, 2004 to file a response to Plaintiffs' motion, and Plaintiffs' shall have seven days to file a reply. All other provisions of Local Rule 7(F) shall apply.

B. Alternatively, an order granting Plaintiffs leave to file their sur-reply (which shall not exceed five pages) and supporting affidavit on or before **August 27, 2004**. The motion to dismiss will be placed on the argument calendar for **Friday, September 3, 2004, at 2:00 pm**.

Respectfully submitted,
SALT INSTITUTE
THE CHAMBER OF COMMERCE
OF THE UNITED STATES



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TOMMY THOMPSON,)	CIVIL ACTION NO. 04-359 GBL
Secretary, Department of Health)	
and Human Services)	
)	
Defendant.)	

[proposed] ORDER

UPON CONSIDERATION of Plaintiff's Emergency Motion for Continuance and Leave to File Sur-Response, it is hereby:

ORDERED, that the hearing on Defendant's previously filed Motion to Dismiss is hereby adjourned from August 13, 2004 until October 15, 2004 at 2:00 p.m.

It is further **ORDERED** that Plaintiff is hereby granted leave to file a sur-response (not to exceed five (5) pages) along with any counter affidavit not later than August 27, 2004 in further reply to Defendant's Reply Brief and Affidavit;

It is further **ORDERED** that Plaintiff file any Motion for Summary Judgment and supporting materials under Fed. R. Civ. P. 56 not later than August 27, 2004 and that Defendant shall file its response thereto not later than September 24, 2004. Plaintiffs will file their reply not later than October 1, 2004.

[Alternatively]

It is **ORDERED** that Plaintiff is hereby granted leave to file a Sur-Response (not to exceed five (5) pages) along with any counter affidavit in further reply to Defendant's Reply

Brief and Affidavit not later than August 27, 2004 and that the argument on Defendant's Motion to Dismiss is hereby adjourned from August 13, 2004 until September 3, 2004:

Entered this _____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE
