



U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., Room 7107
Washington, D.C. 20530
Telephone: (202) 514-5108

ES:EWhite:rct
DJ# 145-16-5606

August 4, 2004

Via E-Mail and U.S. Mail

Reed D. Rubinstein
Mark E. Solomons
Greenberg Traurig, LLP
800 Connecticut Avenue, N.W.
Washington, D.C. 20006

Re: Salt Institute, et al. v. Thompson, No. 04-CV-359 GBL

Dear Reed and Mark:

After receiving Reed's letter (enclosed) yesterday and my phone conversation with Mark yesterday afternoon, I wanted to clarify our position regarding the hearing on our Motion to Dismiss, which is currently scheduled for August 13, 2004.

As discussed in my phone conversation with Reed on Monday, August 2, we do not believe that the attachment of the medical article and the Geller Declaration to our reply brief converts our Motion to Dismiss to a summary judgment motion. Fourth Circuit precedent indicates that motions to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may include evidence outside of the pleadings without converting the motion to dismiss to one for summary judgment. Nevertheless, in order to accommodate both your wish to respond to the attachments and Reed's vacation plans, we offered to consent to a short continuance of the August 13th hearing and to your filing of a short surreply limited to your response to our mootness argument and the related attachments. I suggested that the surreply be limited to five pages and would be due on August 20 and that we reschedule the hearing on our Motion to Dismiss for August 27. Reed indicated that he would consider this proposal but needed to discuss these issues with your clients.

I now understand from my conversation with Mark that you intend to seek a longer continuance of the hearing date on our Motion to Dismiss in order to be able to file your own motion for partial summary judgment, to request conversion of our Motion to Dismiss into one for summary judgment, and to have one consolidated hearing on all motions. As I've indicated to both of you, we would object to these motions.

I want to reiterate that our initial offer to consent to a short continuance of the August 13th hearing was based on the premise that you would file only a short surreply and the rescheduled hearing would involve only our Motion to Dismiss. We remain open to a short continuance under these conditions. For the time being, however, we plan to proceed with the August 13th hearing on our Motion to Dismiss as scheduled.

If you do file your own motion for a longer continuance, please indicate that we object and plan to file an opposition brief.

Please feel free to contact me to discuss these matters further.

Kindest regards,

A handwritten signature in black ink, appearing to read "Ed White", with a long horizontal flourish extending to the right.

Edward H. White
Trial Attorney

Enclosure

Greenberg Traurig

Reed D. Rubinstein
(202) 533-2314
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August 3, 2004

BY EMAIL

Edward White
Department of Justice
Civil Division, Federal Program Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530

Re: Salt Institute v. Thompson/Argument Rescheduling


Dear Ned:

I hope all is well.

Sorry I missed you today. This is to confirm that the argument scheduled for Friday, August 13, will be postponed. I will call you early next week to firm up a briefing schedule and reset the argument.

Best regards.

Sincerely,



Reed D. Rubinstein

RDR:jmj

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