

No. 05-1097

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

SALT INSTITUTE and THE CHAMBER OF
COMMERCE OF THE UNITED STATES,

Appellants/Plaintiffs,

v.

MICHAEL O. LEAVITT, Secretary,
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Appellee/Defendant.

ON APPEAL FROM A FINAL DECISION OF
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

FILED
APR 13 2005
U.S. Court of Appeals
Fourth Circuit

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DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION

Only one form need be completed for a party even if the party is represented by more than one attorney. Disclosures must be filed on behalf of individual parties as well as corporate parties. Disclosures are required from amicus curiae only if amicus is a corporation. Counsel has a continuing duty to update this information. Please file an original and three copies of this form.

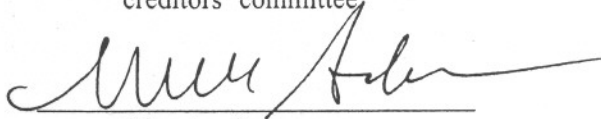
No. _____ Caption: SALT INSTITUTE, et al. v. TOMMY G. THOMPSON

Pursuant to FRAP 26.1 and Local Rule 26.1,

SALT INSTITUTE who is Appellant,
(name of party/amicus) (appellant/appellee/amicus)

makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
 YES NO
2. Does party/amicus have any parent corporations?
 YES NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
 YES NO
If yes, identify all such owners:
4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?
 YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association?
 YES NO
If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:
6. If case arises out of a bankruptcy proceeding, identify any trustee and the members of any creditors' committee:


(signature)

January 24, 2005
(date)

SALT INSTITUTE MEMBERS

The Canadian Salt Company Ltd.
Cargill Salt
Exportadora de Sal, S.A. de C.V.
Lyons Salt Company
Morton Salt Division (division of Rohm and Haas)
North American Salt (division of Compass Minerals Group)
Sifto Canada, Inc.
United Salt Corporation
Akzo Nobel Salt B.V.
British Salt Limited
Cheetham Salt Limited
China National Salt Industry Corporation
Cleveland Potash Limited
Compania Minera de Punta de Lobos, S.A.
Grupo CYDSA, S.A. de C.V.
Dead Sea Works Ltd.
European Salt company GmbH & Co. KG
HUB-PAK Salt Refinery
Industrias Quimicas y Mineras Timbo, S.A.
Industria Salinera de Yucatan SA de CV
International Salt Company
Italkali-Societa Italiana Sali Alcalini SPA
Kayway Industries Inc.
NSC Minerals, Inc.
Onslow Salt
Quimpac S.A.
Revinaria Nacional de Sal, S.A.
Salina Diamante Branco
Salinor (Salinas do Nordeste S/A)
Salins du Midi
Salt Union Limited
Shark Bay Resources Pty. Ltd.
Tata Chemicals Limited
United Swiss Saltworks on Rhine Ltd. Co. (Schweizer Rheinsalinen)
Ginko International, Inc.

DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION

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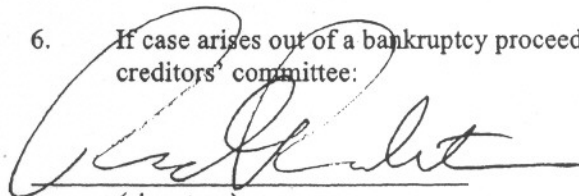
No. 05-1097 Caption: Salt Institute and United States Chamber of Commerce v. Tommy G. Thompson

Pursuant to FRAP 26.1 and Local Rule 26.1,

U.S. Chamber of Commerce who is Appellant,
(name of party/amicus) (appellant/appellee/amicus)

makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
 YES NO
2. Does party/amicus have any parent corporations?
 YES NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
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(signature)

2/4/05
(date)

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5 U.S.C. § 559	33
5 U.S.C. § 701	32
5 U.S.C. § 704	31
5 U.S.C. § 706	35
5 U.S.C. §§ 701-706	1
48 U.S.C. § 1320	23
Pub. L. No. 105-277, 112 Stat. 2681 (1998)	12
64 Fed. Reg. 54526 (Oct. 8, 1999)	13
67 Fed. Reg. 8452 (Feb. 22, 2002)	passim

Other Authorities

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G.A. Bray et al., A Further Subgroup Analysis of the Effects of the DASH Diet and Three Dietary Sodium Levels on Blood Pressure: The Result of the DASH-Sodium Trial, 94 J. Cardiology 222 (July 15, 2004).....27

James W. Conrad, The Information Quality Act - Antiregulatory Costs of Mythic Proportions?, 12 Kan. J.L. & Pub. Pol'y, 521, 526 (2003)..... 16

Ernest Gelhorn, Adverse Publicity by Administrative Agencies, 86 Harv. L. Rev. 1380 (1973) 15

Sen. Richard Shelby, Accountability and Transparency: Public Access to Federally Funded Research Data, 37 Harv. J. on Legis., 369 (2000)..... 16

Richard B. Stewart and Cass R. Sunstein, Informational Regulation and Informational Standing: Akins and Beyond, 147 U. PA. L. Rev. 613 24

Richard B. Stewart & Cass R. Sunstern, Public Programs and Private Rights, 95 Harv. L. Rev. 1193 (1982)..... 15

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ABA House of Delegates 2001 Annual Meeting, Daily J. of the Am. Bar Assoc., Report No. 107c (Aug. 6-7,2001) 16

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