

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-226

UNITED STATES DEPARTMENT OF
JUSTICE, and

U.S. ENERGY RESEARCH AND DEVEL-
OPMENT ADMINISTRATION,

Defendants
.....

MOTION TO POSTPONE CALENDAR CALL
AND STAY ALL FURTHER PROCEEDINGS

Plaintiff moves the Court for a postponement of the calendar call now set for June 20, 1975, and a stay of all further proceedings in court until at least ten days after: 1) counsel for the defendants provides plaintiff with a copy of the ERDA affidavit referred to during the May 21st calendar call (see attached pages of the May 21 transcript), and 2) the defendants provide plaintiff with these documents not yet given him which are specified in paragraphs 26-29 of the affidavit of Harold Weisberg which is attached to plaintiff's Motion to Strike the Affidavit of Special Agent John W. Kilty.

A Memorandum of points and Authorities is attached hereto.

Respectfully submitted,

JAMES HIRAM LESAR
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that I have this 11th day of June, 1975,
mailed a copy of the foregoing Motion to Postpone Calendar Call
And Stay All Further Proceedings to Assistant United States
Attorney Michael J. Ryan, United States Courthouse, Room 3421,
Washington, D. C. 20001.

JAMES HIRAM LESAR

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MEMORANDUM OF POINTS AND AUTHORITIES

At the May 21st calendar call counsel for the defendants repeatedly referred to an affidavit from ERDA which he said he had been trying very hard to obtain. After stating that ERDA had promised that its affidavit would be on his desk by the morning of May 21st, counsel for the defendants asserted:

And I expect that that affidavit from ERDA, Your Honor, which is the lone outstanding matter, would be in my office today or somebody will hear about it. [See page four of May 21st transcript attached hereto]

As of June 11, 1975, no copy of the ERDA affidavit has been provided plaintiff. Assuming that ERDA has been prevailed upon to execute such an affidavit, the delay in providing plaintiff with a copy of it is apparently part of a design to spring it on plaintiff at the last moment in court, thus denying plaintiff an adequate opportunity to study it and respond effectively. This is both unfair and unprofessional. Yet this is what was done with the affidavit of Special Agent John Kilty. There is no reason to

let this time-wasting, inconsiderate, and fruitless manner of proceeding occur again. Accordingly, plaintiff asks the Court to postpone the June 20 calendar call and to schedule no further calendar call until at least 10 days after plaintiff has been provided a copy of the ERDA affidavit. This will give counsel for plaintiff adequate time to consult with his out-of-town client and be properly prepared to respond to said affidavit in court.

At the May 2nd calendar call counsel for plaintiff specified a spectrographic testing which had not been provided him. As of June 11, 1975, the documents on this testing have still not been given plaintiff. Nor has plaintiff received other documents which he specified at the May 21st calendar call and again in the affidavit which he filed with the Court on June 3, 1975. Before any further calendar calls or hearings occur, these documents, too, ought to be given plaintiff, so that he may carefully study them to determine whether there has been full compliance with his request. Accordingly, plaintiff requests a stay of further in court proceedings until the defendants have given plaintiff these specified materials.

Respectfully submitted,

JAMES HIRSH LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

1 John F. Kennedy.

2 The interrogatories directed to the Energy Research
3 and Development Administration I am sorry to say have not yet
4 been returned to me. I have been after the agency for the
5 last several days in anticipation of this call to get me an
6 affidavit responding to those interrogatories, and I was
7 assured that it was on its way. In the latest discussion
8 with the agency yesterday afternoon they promised that it
9 would be here this morning. I don't have it yet, but, Your
10 Honor, my intention would be to attach the affidavit from the
11 FBI, as well as the affidavit from the Energy Research and
12 Development Administration, to a very brief motion to dismiss
13 on the grounds that the case is moot, and I believe the affi-
14 davits will reflect the sum total of the information requested
15 by the plaintiff has now been given to him and that defendants,
16 at least, are not aware of any other information which is
17 encompassed by his request.

18 At the calendar call which we last had before Your
19 Honor I believe that Your Honor's instructions to defendants
20 were to deal with the interrogatories in the affidavit. And
21 we have made a reference to the interrogatories in the affi-
22 davit indicating that no other tests were performed than those
23 which we have indicated, and that results and written reports,
24 insofar as we are aware of their existence, have been made
25 completely available to the plaintiff, and on that basis it

1 would be out intention to file a motion to dismiss the case
2 as moot, unless we can get together and plaintiff would be
3 satisfied that we have made everything available to him and
4 we could answer a praecipe dismissing the case.

5 And I expect that that affidavit from ERDA, Your
6 Honor, which is the lone outstanding matter, would be in my
7 office today or somebody will hear about it.

8 THE COURT: Thank you, Mr. Ryan.

9 Mr. Lesar.

10 MR. LESAR: Your Honor, I would like the record to
11 reflect that this affidavit was handed to me about two minutes
12 before I entered the courtroom. It is dated May 13, 1975.
13 I have not had a chance to go over it carefully.

14 However, it is clear that the affidavit is inade-
15 quate. It is not responsive to interrogatories five. It does
16 not appear to me to be made on personal knowledge with
17 respect to at least some of the statements that are contained
18 in it, including the very important statement that no other
19 tests were performed. This agent has no knowledge, other than
20 what has been told to him, as to what tests were performed.
21 Until we get under oath some answers as to what tests were
22 performed, we do not have an affidavit that suffices.

23 In addition, we do have reason and proof that other
24 tests were conducted, which have not been made available to
25 us, and I think the proper time to put that before the Court

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ORDER

Upon consideration of plaintiff's motion for a postponement of the June 20, 1975, calendar call and a stay of all further proceedings in court, it is by the Court this _____ day of June, 1975,

ORDERED, that the June 20, 1975, calendar call and all further proceedings in court be postponed until ten days after the defendants provide plaintiff with: 1) a copy of the ERDA affidavit referred to by counsel for the defendants during the May 21st calendar call, and 2) copies of all the documents not yet given him which are specified in paragraphs 26-29 of Harold Weisberg's June 2, 1975, affidavit.

UNITED STATES DISTRICT JUDGE