Message

From: Dertke, Daniel (ENRD) [Daniel.Dertke@usdoj.gov]
Sent: 12/1/2014 4:39:51 PM
To: Paul Spruhan [pspruhan@nndoj.org]; Smith, Ryan A. [RSmith@BHFS.com]; 'Flynn, Aaron M.' [flynna@hunton.com]; 'Pongrace, Don' [dpongrace@AKINGUMP.COM]; 'Wehrum, William L.' [wwehrum@hunton.com]; 'Ramaley Karilee S' [Karilee.Ramaley@srpnet.com]; 'Fichthorn, Norm' [nfichthorn@hunton.com]; 'Godfrey, Merrill C.' [MGodfrey@AKINGUMP.com]
CC: Anderson, Lea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8317edf62f74e67bcf42adbdf7785e9-LANDER03]; Lyons, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39ea390c390e41fd84511d6cdc266cee-ALYONS]
Subject: RE: Motion to Consolidate-NGS

Hey Paul – briefing was also suspended in the To Ani case, at those petitioners' request, to allow time to explore settlement. So no current schedule in 73100 (Yazzie) or 73101 (To Ani). But you are right, the order lists 73102 (NPCA), which as far as I know is not suspended. So I am not sure where things stand, either.

I think this is further support for just consolidating the four cases, and to answer Ryan's question the US will join that motion.

In terms of briefing schedule and format, because some petitioners have expressed an interest in talking with the government, to see if an agreement can be worked out, I proposed to petitioners that opening briefs be due 3/2/15 (instead of 1/16/15, as petitioners proposed), in order to allow time for those talks to occur. Petitioners proposed 28,000 words for Petitioners, to be split between Hopi in one brief and TNA/NPCA in a second brief, as they see fit, and 28,000 words for Respondents; I am ok with those word limits, with one caveat. The reason Petitioners have given for two briefs, both basically full length, is the presence of the Hopi as petitioners, so if the Hopi were to settle, then I think the remaining petitioners should join in a single brief of 15,400 words. If the Hopi remain in the case, EPA's brief would be due 5/22; if they drop out, EPA's brief would be due 5/1. EPA would get the same number of words as petitioners (either 28,000 or 15,400). I did not make a proposal for Intervenors' timing or word limit.

- Dan

From: Paul Spruhan [mailto:pspruhan@nndoj.org]
Sent: Monday, December 01, 2014 10:49 AM
To: Smith, Ryan A.; 'Flynn, Aaron M.'; 'Pongrace, Don'; 'Wehrum, William L.'; 'Ramaley Karilee S'; 'Fichthorn, Norm'; 'Godfrey, Merrill C.'; Dertke, Daniel (ENRD)
Subject: RE: Motion to Consolidate-NGS

All,
You most probably have seen the orders issued this morning- we're all intervenors in the 4 cases now. But, the court states that the briefing schedule in "the petitions" is "suspended." As I recall, the prior intervention order set a schedule for all the cases except Vincent Yazzie's case pending review of his in forma pauperis application. I'm again confused.

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Tuesday, November 25, 2014 12:50 PM
To: 'Flynn, Aaron M.'; 'Pongrace, Don'; 'Wehrum, William L.'; 'Ramaley Karilee S'; Paul Spruhan; 'Fichthorn, Norm'; 'Godfrey, Merrill C.'; daniel.dertke@usdoj.gov
Subject: Motion to Consolidate-NGS

All,

Aaron and I spoke this afternoon regarding the procedural posture of the four petitions. In light of the court's confusion concerning the four motions to intervene (as evidenced by its November 17th order) and the fact that the final rule at issue in all four petitions is identical, we thought it would make sense to jointly move to consolidate the petitions.

Therefore, please let me know if you would join in a motion to consolidate, which I intend to prepare shortly. I should have a draft to the group sometime early next week.

Dan, please also let us know whether DOJ/EPA would join in the motion.

Thanks and have a happy Thanksgiving.

Best,

Ryan

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