

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ELIZABETH DUTTON SWEET and)
FREDERICK H. GREIN, JR., in their)
capacities as Executors under the will of)
William H. Sweet, M.D.,)

and)

MASSACHUSETTS INSTITUTE)
OF TECHNOLOGY,)

and)

MASSACHUSETTS GENERAL)
HOSPITAL,)

Plaintiffs,)

v.)

THE UNITED STATES,)

Defendant.)

Nos. 00-274C, 00-292C, 01-434C
(Judge Firestone)

DEFENDANT'S UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME

Defendant respectfully requests an enlargement of time of 21 days, to and including October 29, 2001, within which to file our reply to plaintiff Massachusetts General Hospital's opposition to our motion to dismiss, in part, and motion for partial summary judgment. Pursuant to the Court's Order dated August 13, 2001, our reply brief is due to be filed on October 8, 2001. This is defendant's first request for an enlargement of time for this purpose. Defendant's counsel has discussed the requested motion for an enlargement of time with counsel for plaintiff Massachusetts Institute of Technology ("MIT"), counsel for plaintiffs Elizabeth Dutton Sweet and Frederick H. Grein, Jr., and counsel for plaintiff Massachusetts General Hospital, each of whom have stated that the plaintiffs do not oppose the requested motion for an enlargement of

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time. The grounds for the requested enlargement of time are explained below.

This case involves the alleged breach of an "indemnity agreement" executed between MIT and the United States Atomic Energy Commission ("AEC") pursuant to the Price-Anderson Act, 42 U.S.C. § 2210, as amended, as well as a second indemnity agreement believed to exist between the AEC and Associated Universities, Inc. ("AUI"). See, e.g., Sweet Compl. ¶ 2. Since the late 1950s, MIT has owned and operated a nuclear research reactor licensed by the AEC and its successor agency, the Nuclear Regulatory Commission. Further, from 1947 to 1998, AUI served as the contract operator of Brookhaven National Laboratory ("Brookhaven"), a nonprofit educational and research institution in Upton, New York. See, e.g., Sweet Compl. ¶¶ 7, 12. Plaintiffs allege that the United States breached the above-referenced indemnity agreements by failing to provide indemnification with respect to the claims asserted in Heinrich v. Sweet et al., No. CIV. A. 97-12134-WGY (D. Mass.) (filed September 21, 1995) (the "Heinrich suit"), a class action suit brought by surviving family members of patients treated at MIT and Brookhaven in the 1950s and 1960s. The Heinrich plaintiffs alleged that plaintiffs and other medical professionals at MIT and Brookhaven administered to their decedents "boron neutron capture therapy" ("BNCT") – an experimental treatment for certain forms of brain cancer -- and that this therapy caused those decedents "various radiation-related injury and death." See, e.g., Sweet Compl. ¶¶ 15-16.

We have sought diligently to prepare our motion by the present due date, and in fact have completed a draft brief. We have been unable to complete the motion, however, because defendant's counsel of record suffered a death in his immediate family on October 4, 2001, and has been out of the office since that date. Defendant's counsel expects to remain out of the office

through October 14, 2001, for this reason. Defendant's counsel estimates that, given his obligations in other cases, he will be unable to complete preparation of defendant's reply brief before October 29, 2001.

For the foregoing reasons, defendant respectfully requests that the Court grant our motion for an enlargement of time of 21 days, to and including October 29, 2001, within which to file our reply to plaintiff Massachusetts General Hospital's opposition to our motion to dismiss, in part, and motion for partial summary judgment.

Respectfully submitted,

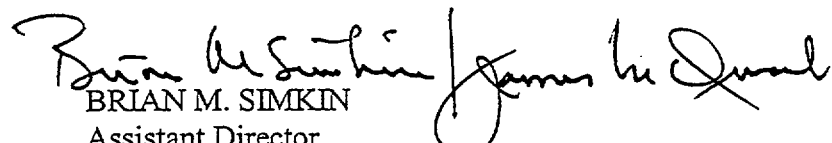
ROBERT D. McCALLUM, JR.
Assistant Attorney General


DAVID M. COHEN
Director

OF COUNSEL:

John F. Cordes, Jr.
Marjorie S. Nordlinger
E. Leo Slaggie
Office of the General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Edward C. Jiran
Office of the General Counsel
Department of Energy
Washington, D.C. 20585


BRIAN M. SIMKIN
Assistant Director
Commercial Litigation Branch
Civil Division
Department of Justice
Attn: Classification Unit
8th Floor
1100 L Street, N.W.
Washington, D.C. 20530
Tele: (202) 307-6289

Attorneys for Defendant

October 5, 2001

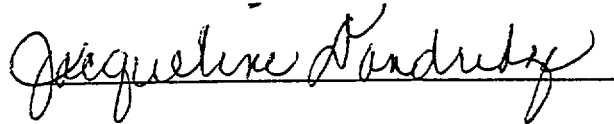
CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 5th day of October, 2001, I caused to be sent by United States mail (postage prepaid) a copy of "DEFENDANT'S UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME" addressed as follows:

Thomas P. Billings, Esq.
Sally & Fitch
225 Franklin Street
Boston, Massachusetts 02110

Owen Gallagher, Esq.
→ Gallagher & Gallagher, P.C.
120 2nd Avenue
Boston, Massachusetts 02129

Joseph L. Doherty, Jr., Esq.
Christopher J. Maley, Esq.
Martin, Magnuson, McCarthy & Kenney
101 Merrimac Street
Boston, Massachusetts 02114-4716



The image shows a handwritten signature in cursive script, which appears to read "Jacqueline Handberg". The signature is written in black ink and is positioned above a solid horizontal line.