

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
(Consolidated)
(Judge Firestone)

DEFENDANT'S UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME

Defendant respectfully requests an enlargement of time of 14 days, to and including December 19, 2003, within which to file defendant's response brief regarding outstanding issues of indemnification costs. Pursuant to the Court's October 22, 2003 Order, our brief is due to be filed on December 5, 2003. 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 plaintiffs Massachusetts Institute of Technology ("MIT"), Massachusetts General Hospital, and Elizabeth Dutton Sweet and Frederick H. Grein, Jr., in their capacities as Executors under the will of William H. Sweet, M.D., each

of whom have stated that the plaintiffs do not oppose the requested motion for an enlargement of 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. 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, a nonprofit educational and research institution in Upton, New York. 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." Sweet Compl. ¶¶ 15-16.

We have sought diligently to prepare our response brief by the present due date, and in fact have completed a draft brief. The time required to prepare our brief, however, has taken longer than anticipated, principally because of the number and complexity of the issues involved, as well as the intervening Thanksgiving holiday. Additionally, plaintiffs have each filed a separate brief in response to

the Court's October 22, 2003 Order. To streamline the issues and reduce the number of briefs presented to the Court, defendant is endeavoring to prepare and file a single consolidated response to plaintiffs' briefs. This process has required more time than filing a single response to a single brief. Defendant's counsel estimates that, given his obligations in other cases, he will be unable to complete preparation of defendant's brief before December 19, 2003.

For the foregoing reasons, defendant respectfully requests that the Court grant our motion for an enlargement of time of 14 days, to and including December 19, 2003, within which to file defendant's response brief regarding outstanding issues of indemnification costs.

Respectfully submitted,

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December 1, 2003

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 1st day of December, 2003, 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:

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