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to: Stanley A. Bass

re: Spano v. NRC, No. 07-0324-ag/ adjournment of schedule

date: March 5, 2007

pages: 3 pages, including cover

From the deck of...

Grace H. Kim
Attorney
U.S. Nuclear Regulatory Commission
Office of the General Counsel - O-15 D 21
Washington, DC 20555

301-415-3605
Fax: 301-415-3200
Internet:ghk@nrc.gov



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 5, 2007

Stanley A. Bass
U.S. Court of Appeals
Staff Counsel's Office
Woolworth Building
233 Broadway, 6th Floor
New York, NY 10279

By Facsimile

RE: Spano v. U.S. Nuclear Regulatory Commission, No. 07-0324-ag

Dear Mr. Bass:

Katherine of your office suggested that I fax this letter to you to confirm the status of the above-referenced case. By Court order dated February 12, 2007 and styled "Telephonic Pre-argument Conference Notice and Order," a telephonic pre-argument conference date of February 26, 2007 and associated briefing schedule dates were established. On February 23rd, I spoke to you about adjourning these dates as premature, to which you agreed. Per your instructions I faxed a letter to your attention requesting an adjournment. However, your office staff informed me that as of this morning no order had been issued adjourning the dates established in the February 12th order. As explained further below, I wish to confirm that the schedule for pre-argument conference and briefing has been or will be adjourned until such time that the Third Circuit case is transferred to this circuit.

To refresh your recollection, a petition for review on the identical NRC decision being appealed in the above-referenced case was also filed in the Court of Appeals for the Third Circuit. The Third Circuit proceeding was instituted one day later than the Second Circuit proceeding. 28 U.S.C. § 2112(a)(1) provides that in cases "in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency...concerned shall file the record in the court in which proceedings with respect to the order were first instituted." 28 U.S.C. § 2112(a)(5) provides that "[a]ll courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to [§2122(a)(1)] shall transfer those proceedings to the court in which the record is so filed." In accordance with these provisions, the NRC's certified index of the record must be filed in the Second Circuit the above docket, and the Third Circuit must thereafter transfer its NRC proceeding to the Second Circuit. You agreed that, under these circumstances a pre-argument

conference and associated briefing schedule would be premature at this time, and that these dates should be adjourned pending transfer of the Third Circuit case to this circuit after the NRC has filed its certified index of the record. We intend to file the certified index of the record in this case in accordance with FRAP Rule 17, which requires the record to be filed within 40 days after a proceeding is instituted.

Per your instructions, following my conversation with you on February 23, 2007 I faxed a short letter to your attention requesting that the pre-argument conference order be adjourned and representing that counsel for petitioner had no objection to the adjournment. I would very much appreciate confirmation that the schedule has been or will be adjourned.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Respectfully submitted,



Grace H. Kim
Senior Attorney

cc: Kenneth B. Weckstein, Esq.
Epstein Becker & Green, P.C.
1227 25th Street, N.W.
Suite 700
Washington, D.C. 20037-1156