

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**STYRENE INFORMATION AND )  
RESEARCH CENTER, INC., *et al.*, )**

**Plaintiffs, )**

**v. )**

**Civil Action No. 1:11-cv-01079-RBW**

**KATHLEEN SEBELIUS, *et al.*, )**

**Defendants. )**

**PLAINTIFFS’ MOTION TO STAY THE BRIEFING SCHEDULE PENDING  
RESOLUTION OF PLAINTIFFS’ MOTION  
TO COMPLETE THE ADMINISTRATIVE RECORD**

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, Plaintiffs Styrene Information and Research Center, Inc., and Dart Container Corporation, by their undersigned counsel, move this Court for an order staying the current summary judgment briefing schedule in this case (Doc. No. 26) until the Court rules on Plaintiffs’ Motion to Complete the Administrative Record (Doc No. 27).

**BACKGROUND**

On August 31, 2011, the Court issued a scheduling order (Doc. No. 25) requiring Defendants’ summary judgment brief to be filed by October 7, 2011. *Id.* at 1. The order also set a deadline for Plaintiffs’ summary judgment brief of November 14, 2011. *Id.*

On September 26, 2011, the Court amended the scheduling order by reversing the filing deadlines (Doc. No. 26). That is, it ordered Plaintiffs to file for summary judgment by October 7 and Defendants to file by November 14. *Id.* at 1. Due to this apparent clerical error, Plaintiffs “lost” 27 days—from August 31 to September 26—in which they reasonably believed their summary judgment motion to be due on November 14.

Also on September 26, 2011, Plaintiffs filed a Motion to Complete the Administrative Record (“Motion to Complete”) (Doc. No 27), in which they brought to the Court’s attention several examples of the incompleteness of the Administrative Record (“Record”) (Doc. No. 24). The Motion to Complete seeks an order requiring Defendants to complete the Record by providing Plaintiffs with the missing documents. Under the operative local and federal rules, Defendants’ opposition to the Motion to Complete is due on October 13, after which Plaintiffs have until October 21 to file their reply. *See* LCvR 7; Fed. R. Civ. P. 6.

### **ARGUMENT**

Because the Administrative Record may be incomplete, the filing of summary judgment motions should not go forward at this time because such motions are based on the Record. Furthermore, the delay sought by Plaintiffs will not prejudice Defendants. The 12th Report on Carcinogens has been issued and is currently in full force in the public domain. It would conserve judicial and other resources and would permit a full and fair exploration of the issues in the lawsuit to postpone the briefing of summary judgment until the Record is determined to be complete. The Court therefore should stay the current briefing schedule pending a ruling on the Motion to Complete. Once the completeness of the Record is determined, a new briefing schedule can be established.

If the Court is not inclined to stay the briefing of summary judgment, the Court should modify the current briefing schedule to provide Plaintiffs additional time to brief summary judgment in view of the time “lost” due to the scheduling order error and to provide time in which the Court might rule on the Motion to Complete.

Through communications with defense counsel in an attempt to resolve this scheduling matter, Plaintiffs have learned that defense counsel is unavailable between December 25, 2011, and January 22, 2012. To accommodate defense counsel's schedule, and working backward from it, Plaintiffs propose the following briefing schedule if a stay is not granted:

- November 11, 2011 – Plaintiffs file their motion for summary judgment;
- December 23, 2011 – Defendants file their opposition to Plaintiffs' motion for summary judgment and their cross-motion for summary judgment;
- January 20, 2012 – Plaintiffs file their reply to Defendants' opposition to Plaintiffs' motion for summary judgment and their opposition to Defendants' cross-motion for summary judgment;
- February 10, 2012 – Defendants file their reply to Plaintiffs' opposition to Defendants' motion for summary judgment.<sup>1</sup>

This schedule would provide the parties with time to brief the Motion to Complete, would provide the Court time to consider and rule on the Motion to Complete, and would provide Plaintiffs the additional time to brief summary judgment that they "lost" during September. Moreover, the schedule would not prejudice Defendants since it was crafted expressly in view of defense counsel's unavailability during January 2012.

---

<sup>1</sup> Defendants rejected Plaintiffs' proposal and offered the following counter-proposal, which would unduly jam Plaintiffs during the holiday period in drafting their reply and opposition briefs and which would leave an unnecessary fallow period during January because of defense counsel's unavailability:

- October 28 - Plaintiffs file their motion for summary judgment;
- December 5 - Defendants oppose Plaintiffs' motion and file their cross-motion for summary judgment;
- December 27 – Plaintiffs reply to Defendants' opposition and oppose Defendants' cross-motion; and,
- February 7 - Defendants file their reply to Plaintiffs' opposition.

Under Defendants' counter-proposal, Defendants' reply brief—and thus all briefing on summary judgment—would not be due until February 7, which is nearly identical to when the briefing would end under Plaintiffs' proposal.

Pursuant to LCvR 7(m), Plaintiffs represent that they have conferred with opposing counsel on this motion, and Defendants oppose the motion.

For the foregoing reasons, Plaintiffs respectfully request that the Court stay the briefing schedule in this matter pending resolution of Plaintiffs' Motion to Complete the Record.

Alternatively, Plaintiffs seek an order entering Plaintiffs' proposed modified briefing schedule, set out above.

Dated: October 4, 2011

Respectfully submitted,

/s/ Douglas J. Behr

Douglas J. Behr (Bar No. 163998)

behr@khlaw.com

Peter L. de la Cruz (Bar No. 362358)

delacruz@khlaw.com

Robert A. Sheffield (Bar No. 500464)

sheffield@khlaw.com

KELLER AND HECKMAN LLP

1001 G Street, N.W.

Suite 500 West

Washington, D.C. 20001

Tel.: 202-434-4181

Fax: 202-434-4646

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2011, a copy of the foregoing was filed with the Court's CM/ECF software and served via the same on Defendants' counsel of record.

/s/ Robert A. Sheffield  
Robert A. Sheffield