

EXHIBIT B



Marc Randazza <mjr@randazza.com>

Oppositions to your motions (meet and confer)

Marc Randazza <mjr@randazza.com>

Fri, Oct 24, 2014 at 10:56 AM

To: Steve Mastrantonio <mastrantonio@nwm-law.com>

Cc: "Victoria L. Serrani" <vserrani@bmdllc.com>, "rlglv@randazza.com" <rlglv@randazza.com>

Steve,

I would like to confer with you in an effort to avoid burdening the court with unnecessary motion practice.

Motion for Remand - Fees: I particularly find the request for fees to be poorly placed. Perhaps that was just placed there as a matter of habit, but I feel that I will need to fight the remand even harder, since you've placed that target on us. Are you willing to waive that, in order to permit me to shorten my opposition? In exchange, not only will I be able to file a shorter opposition, but to whatever extent I might have the right to seek fees, I will not raise it in my opposition, nor in a separate motion.

Motion for Remand - Substantively: I'm unsure if you've reviewed the case you primarily rely upon, but I believe that *Rose v. Giamatti* says the exact opposite of what you've raised it for.

The case says "waiver of the right to remove occurs only where the parties have fully litigated the merits of the dispute." (citing *Rothner v. City of Chicago*, 879 F.2d 1402 (7th Cir 1989).

It continues with this: "The decision is in accord with the majority of cases which have held that taking defensive action in the state court in any preliminary proceedings short of an adjudication on the merits of an action will not constitute a waiver of the statutory right of removal. *Bolivar Sand*, 631 F. Supp. at 173; *Bedell*, 522 F. Supp. at 738; *Universal Steel & Metal Co. (1975) Ltd. v. Railco, Inc.*, 465 F. Supp. 7, 10 (D. Vt. 1978); *Haun v. Retail Credit Co.*, 420 F. Supp. 859, 863 (W.D. Pa. 1976)."

There are a legion of cases that say that merely defending a preliminary injunction is insufficient. And, I can not imagine that you really wish to stake your motion on the fact that I sought to appear pro hac vice, and that we sent out a subpoena - which my local counsel was instructed to withdraw 6 days ago.

Motion for continuance: If I felt that the motion for remand was a fair question, I might feel differently about the continuance. But, it seems that the matter you have scheduled for the 29th is not immovable.

When I got Judge Adams' order scheduling the hearing for the 29th, I quickly called all relevant parties to my other matters and asked if they could be accommodating. When I explained that a federal judge had ordered a hearing on a TRO, nobody gave me a hard time about rescheduling. Had they done so, I would have sought to reschedule it immediately, not waiting until Friday afternoon before the hearing.

Further, I already purchased tickets and accommodations for the 27th. I then changed my flight and hotel when I got the date on the 29th. I realize that you informed me on Wednesday that I should not purchase flights, since you intended to move to continue -- on the 23rd. When the 23rd came and went with nothing filed, I presumed that you had abandoned the idea, and continued as if we would be meeting on the 29th, including getting my client on track to attend on the 29th. Now, on *Friday*, I get this?

I would imagine that your matter in Cuyahoga (which does not appear to have an opposing counsel) could be rescheduled. Further, while I do not wish to be anything less than reverent for the probate court or the state magistrate, it would be my presumption that the matter before it is far less pressing than a TRO in a federal matter, where significant constitutional and financial issues are in play.

I would also imagine that given the size of your firm, that someone else there could handle such a routine matter.

Finally, it would seem that we could do a few things here to assuage any concerns you have about the remand matter. And, I am willing to tolerate a bit of discomfort on my side, in order to spare the court added labor.

Here is what I'll offer you:

- 1) I will get my opposition brief filed by Monday at noon.
- 2) We can stipulate that the remand issue will be heard prior to the TRO on the 29th
- 3) My client (or I) will cover reasonable costs associated with rescheduling your matter on the 29th. (I presume there will be none, but let me know)

Alternatively,

4) We have discussed this with the court's clerk, and the court does have time to see us on the 28th at 11:30 AM. That does present a bit of a hardship for me, but I have discussed it with all of my time conflicts, and everyone is willing to yield to a federal court hearing a TRO.

I hate to put a short fuse on your reply, as I realize that you are busy. But, I feel that we must begin drafting as quickly as possible. Therefore, if I have not received a response from you by 4:00 PM your time, I will presume that your client has declined to authorize you to grant any accommodations, and I will proceed accordingly.

Regardless of the outcome, thank you for considering my proposals, my position, and the additional hardship that my client and I might face in this matter.

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