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October 27, 2009

BY ECF

Hon. Judge Thomas C. Platt
United States District Judge
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11772-4449

Re: Brinn v. Syosset Public Library, et. al.
09-1151

Hon. Judge Platt:

I represent the plaintiff in the above matter. This letter is in opposition to defendant Utica National Insurance Company's ("Utica") motion to file a 20 page reply brief in the above matter.

Your Honor's rules contemplate that the movant will be able to submit two briefs, for a total of 35 pages, and the non-moving party will be able to submit one brief, totaling 25 pages. The moving party receives a one brief, 10 page advantage with any motion. Utica now wants a 20 page advantage over plaintiff by submitting up to 45 pages, while plaintiff restricted his brief to 25 pages, or less. As set forth below, there is no reason for Utica to obtain any advantage beyond that contemplated by Your Honor's rules.

First, the parties discussed an extension of defendant Utica's time to submit a reply brief. Plaintiff consented to an extension of time. At no time did Utica mention the topic of submitting an enlarged reply brief. Utica has now filed a motion with Your Honor before seeking to confer with plaintiff, in good faith. For this reason, Utica's motion should be denied.

Second, Utica claims that plaintiff submitted additional facts by way of an "affidavit, with attachments" and in plaintiff's brief. Plaintiff submitted a Declaration consisting of 4 paragraphs. The Declaration was limited to a discussion of a Release which defendant Utica forwarded to Morris Duffy (plaintiff's employer) for plaintiff's signature. The Exhibit to the Declaration (a portion of the release) was the precise release that defendant Utica sent to defendant Morris Duffy. Defendant Utica can hardly

claim surprise since it possessed the release in question and actually faxed it to Morris Duffy on April 8, 2008. Further, this release is referred to in paragraphs 32, 33, and 34 of the Complaint. The actual release, which Utica had, and which was referred to in plaintiff's complaint, should have been anticipated as part of this motion, especially since Utica argued that documents referred to in the Complaint could be made part of the motion to dismiss. Thus, there is no basis for Utica to submit an enlarged reply brief based on facts and documents it was aware of through its own file and the complaint.

Third, the Release itself does not interject any new facts into the dispute. The two paragraphs of plaintiff's Declaration, which refer to the circumstances of the release being presented to him are terse and do not merit any additional response beyond the existing 10 page limitation. This is especially true where plaintiff has withdrawn two of his six causes of action and narrowed the issues in dispute. Accordingly, the 10 page limitation should suffice for Utica's reply brief; any increase in this page limitation prejudices plaintiff.

WHEREFORE, plaintiff requests that this Court deny defendant Utica's application to submit an enlarged reply brief.

Thank you for consideration and cooperation.

Respectfully submitted,

Raymond Nardo

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RN:rn

cc: Sherri N. Pavloff, Esq.
Thomas Catalano, Esq.
Peter L. Contini, Esq.
Joshua Brinn, Esq.