

Wilson, Nicole

From: Wilson, Nicole
Sent: Wednesday, October 27, 2004 4:25 PM
To: 'Daniel Haude'
Cc: tcannon@csalawgroup.com; Robert.Hanna@TuckerEllis.com
Subject: RE: Malkamaki (10/27/04)

If tomorrow and Friday will not work, what about either Saturday or Monday morning?

Nicole

-----Original Message-----

From: Daniel Haude [mailto:dhaude@reminger.com]
Sent: Wednesday, October 27, 2004 4:03 PM
To: Wilson, Nicole
Cc: tcannon@csalawgroup.com; Robert.Hanna@TuckerEllis.com
Subject: RE: Malkamaki (10/27/04)

Nicole, Mr. Maltickek has previous family engagements that would make his appearance unduly burdensome. Also, Ohio Cat's lawyer, Mark Porter, also asked that his deposition be changed to next week because he could not attend this week. Please know that I am not trying to be difficult but unfortunately it seems to be our only option. Again, I will allow you to supplement your motion based upon this deposition.

>>> "Wilson, Nicole" <Nicole.Wilson@thompsonhine.com> 10/27/04 >>>
Dan:

We disagree with your very generous reading of Rule 56(f). The Rule simply provides that, in appropriate instances (after the filing of an affidavit), the Court may order a continuance to permit affidavits to be obtained or discovery to be had. A continuance is not automatic, and the decision to allow more time is not yours to make.

Please reconsider your decision to postpone Mr. Maltickek's deposition until after the deadline for summary judgment motions, and let us know your decision by tomorrow (Thursday) at noon.

Nicole

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-----Original Message-----

From: Daniel Haude [mailto:dhaude@reminger.com
<mailto:dhaude@reminger.com>]
Sent: Wednesday, October 27, 2004 2:15 PM
To: Wilson, Nicole; Robert.Hanna@TuckerEllis.com
Cc: tcannon@csalawgroup.com; mporter@mhbh.com
Subject: Malkamaki (10/27/04)

Nicole, I received your fax this afternoon regarding Nick Maltickek's deposition. While it is certainly my desire to cooperate with everyone to schedule this deposition, you have no basis to object to the deposition occurring next week. First, the Court order dated 9/23/04 specifically states that "discovery is ongoing." Second, pursuant to Civ.R. 56(f), we would have the right to take Mr. Maltickek's deposition after you file your dispositive motion anyway.

So, Mr. Maltickek's deposition will take place on 10/3/04 at 10:00 a.m. here at Reminger. The witness, Rob Hanna, a Tackla court reporter and the witness will be here and we hope to see you as well. The witness has agreed to appear without the necessity of another subpoena.

Thanks.