

# HUNTON & WILLIAMS

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FILE NO: 27120.002012

June 25, 2003

**VIA FACSIMILE 202-307-2784 and U.S. Mail**

Nina B. Hale, Esq.  
United States Department of Justice  
Antitrust Division  
Liberty Place Building  
325 Seventh Street, NW  
Washington, DC 20530

## **United States v. Smithfield Foods, Inc.**

Dear Ms. Hale:

We have carefully reviewed your letter dated June 24, 2003, stating your concerns regarding the discovery responses of defendant Smithfield Foods, Inc. ("SFD"), and of its affiliates Gwaltney of Smithfield, Ltd. ("Gwaltney") and The Smithfield Packing Company, Incorporated ("Packing") which were subpoenaed as third parties.

We were puzzled by the detail of your letter which largely reiterated the parties' well established differences regarding the proper scope of jurisdictional discovery. As you know, we have discussed those differences in several lengthy telephone conferences, clearly articulated our respective positions, and sought to narrow our disagreements. We have each forwarded citations to the authorities on which we rely. At the end of the most recent call on June 12, 2003, you and your colleagues confirmed that our conversation constituted the required meet and confer to predicate a motion to compel, if you wished to pursue one.

We believe our differences are very straightforward. As a result, we do not think it is necessary to repeat defendant's position discovery request by discovery request. Instead, we have repeated below the core positions we have adhered to since the outset:

1. You requested documents from January 1, 1997 to the present. You alleged in the complaint that the first cause of action accrued on June 28, 1998 and that SFD was in violation from June 26, 1998 through October 1, 1998. You alleged that a second cause of action

# HUNTON & WILLIAMS

Nina B. Hale, Esq.  
June 25, 2003  
Page 2

accrued on December 8, 1999 and that SFD was in violation from December 8, 1999 to January 12, 2001. The complaint was filed February 28, 2003. As set forth in our briefs, SFD contends that the appropriate time for determining jurisdiction is the time the cause of action accrued, not the date the complaint was filed, and certainly not the present time. Accordingly, SFD has allowed discovery from the start of the period requested by you on January 1, 1997, through the accrual of the second cause of action on January 12, 2001, to the end of that month on January 31, 2001, giving you a margin of time both before and after the accrual of the cause of action. SFD objects to discovery beyond that period. This objection is clearly stated in General Objection No. 1 and SFD relied on it throughout. Accordingly, we cannot agree with the assertion on page 4 of your letter that evidence of “how SFD deals with its subsidiaries is relevant, without regard to its date.” We do not agree that the Court “has already spoken on this issue” merely by allowing you to supplement your opposition, nor do we agree that the Court addressed this issue by omission when it granted your motion for jurisdictional discovery without imposing a time period.

2. You alleged in your briefing papers that Packing and Gwaltney are doing business in the District of Columbia. No assertions have been made as to other SFD subsidiaries, except The Smithfield Companies, Inc. (“Companies”), which is addressed in paragraph 3 below. Accordingly, SFD objects to discovery from other subsidiaries. This objection is stated in General Objection No. 2 and SFD relied on it throughout.

3. You alleged that Companies is doing business in the District of Columbia, but SFD objects to discovery regarding that subsidiary because it was acquired by SFD on July 31, 2002, after the alleged causes of action accrued and after the period you allege SFD was in violation. This objection is stated in General Objection No. 2 and SFD relied on it throughout.

4. Similarly, SFD objected to Request Nos. 14, 15 and 17 because the roles of Messrs. Mansour Zadeh, Joseph W. Luter IV and Robert A. Slavik, on which you sought discovery, post dated the relevant time period when the causes of action accrued.

5. SFD also relied on General Objections 3, 4, 5, 7, 9 and 10 throughout the responses. SFD relied on General Objection 11 only where the words “concerns” or “relates to” were used in the request.

6. SFD produced all responsive documents not subject to its objections, with one exception we overlooked. As you will recall, we agreed during the CID production to “carve out” the period from mid-November 2000 to early January 2001. As a result, we discovered that we did not produce the SFD board minutes for a meeting on December 29, 2000. A copy of those minutes is enclosed as SFDJ 006073-6080.

# HUNTON & WILLIAMS

Nina B. Hale, Esq.

June 25, 2003

Page 3

7. Contrary to your argument on pages 10 and 11 of your letter, we do not agree that services, if any, provided by one subsidiary to another are relevant to the question of whether SFD controls, or does business through its subsidiaries, sufficient to pierce the corporate veil.

To the extent you raised questions of interpretation of our responses or sought additional information, we provide the following:

1. We intended to limit SFD's response to the time period set forth above. To the extent our production included documents outside that period, the production was inadvertent.

2. We intended to limit SFD's response to SFD, Gwaltney and Packing. To the extent there are documents referencing other subsidiaries, those documents were also responsive as to SFD, Gwaltney or Packing, or the production was inadvertent.

3. We intended to limit SFD's response to the time periods set forth above. The particular tense of any verb in our response should not be construed otherwise. The use of the present tense was intended to apply to the time period for which SFD responded.

4. We did not withhold any documents under the protective order.

5. Any documents withheld as privileged were listed on the privilege log.

6. We produced all minutes of the boards of Gwaltney and Packing and the Management Board during the time period for which SFD responded.

7. We will produce the leases described in the response to Interrogatory No. 13.

8. We already provided a list of the key employees at Gwaltney, Packing and Companies, as attachments to the Declaration of Timothy A. Seely and Lewis R. Little attached to Defendant's Reply Memorandum of Points and Authorities, filed April 17, 2003. This included the sales and marketing personnel requested in Interrogatory No.17.

9. We did not intend to imply that John Morrell was doing business in the District of Columbia. As you know, we previously indicated that no such implication was to be drawn from the submission of the John Morrell declaration. *See*, Footnote 3 of Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Leave to Conduct Discovery Limited to the Issue of Personal Jurisdiction, filed on May 8, 2003.

Nina B. Hale, Esq.

**HUNTON &  
WILLIAMS**

June 25, 2003  
Page 4

Instead, the declaration of John Morrell's president was submitted as further evidence of the manner in which SFD encourages its subsidiaries to operate autonomously.

We trust that this letter provides a complete response to your letter.

Sincerely,

"/s/"

Thomas G. Slater, Jr.

tgs/cls  
Enclosure