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July 14, 2006

VIA Electronic Mail

John R. Elrod, Esq.
Conner & Winters
211 E. Dickson Street
Fayetteville, Arkansas 72701

Re: Your letter of July 7, 2006 regarding discovery request of Simmons Foods, Inc. in *State of Oklahoma v. Tyson Foods, et al.*

Dear John:

I am writing to respond to your letter in the above captioned matter, be advised, however, that the State does not believe that this satisfies your duty to meet and confer with the State. The Northern District local rule LCv.37.1 states,

> "With respect to all motions or objections relating to discovery pursuant to Fed. R. Civ. P. 26 through 37 and 45, this Court shall refuse to hear any such motion or objection unless counsel for movant first advises the Court in writing that the counsel personally have met and conferred in good faith and, after a sincere attempt to resolve differences, have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that movant's counsel has conferred with opposing counsel by telephone and (1) the motion or objection arises from failure to timely make a discovery response, or (2) distance between counsels' offices renders a personal conference infeasible. When the locations of counsels' offices, which will be stated with particularity by movant, are in the same city or within thirty (30) of each other, a personal conference is always deemed feasible as to distance."

Pursuant to the above cited rule, we are asking to meet and confer with you regarding this matter at your earliest convenience in order to resolve these issues. Please contact Liza Ward at Motley Rice at (843) 216-9280 by the close of business Tuesday, July 18, 2006.

Privilege log issues

The "short privilege log" you refer to supplements the log originally produced by the State by continuing the original numbering of items. The State's privilege log is a work in progress. It contains all documents the State has identified to date for which it claims a privilege or protection up through the filing date of this action, as required by Northern District LcvR 26.4(a). If the State identifies additional documents for which it claims privilege or protection, it will add them to the privilege log in the future.

The State is unaware of any requirement that it designate to which of your client's interrogatories items are responsive. If you have any law imposing such a requirement, please provide it and we will consider it. The privileges and protections asserted in the State's privilege log are based upon the document's status as work product, attorney client communication or work of retained expert consultants under Rule 26(a) and (b), rather than upon the questions your client has asked. We believe the privilege log complies with the local rules and is adequate.

June 30 Document index and F.R.Civ.P. 33(d) Business Records

Documents on the June 30 index contain information about Phosporus and Nitrogen loading to Lake Tenkiller. Some of that information attributes loading to application of poultry litter, which is responsive to your client's Interrogatories 1, 2 and 4, and the Request for Production.

The index refers you to specific documents available on the internet and to Bates ranges within the State's initial production. This meets the requirements of Rule 33(d) in that you can locate and identify the requested information as readily as can the State.

Privilege and work product claims

The State has claimed privilege or protection for its sampling and research undertaken by expert consultants retained or specially employed by the State or its counsel in anticipation of litigation or preparation for trial. You will be provided with responsive information, and any Simmons specific information from this source, when the Court orders disclosure of testifying experts and reports pursuant to Rule 26(a)(2), or during any subsequent deposition of the State's testifying experts.

You are improperly trying to disregard the orderly process set forth in the Rules. Rule 26(a)(2) permits you to discover the underlying data developed or used by experts designated

as witnesses at trial at times and in the sequence ordered by the Court. The State has neither determined which of its consultants it will designate as witnesses, nor has the Court established the timing and sequence of such discovery. Further, you have offered no basis for discovery of the information you seek from non-testifying expert consultants as required under Rule 26(b)(3) or (4). Therefore, information developed by the State's consultants, while available to you in the proper time and fashion, is not presently available to you.

Concerns regarding specific Interrogatories

Interrogatory No. 1, 2 and 4 and Request for Production No. 1

The foregoing comments, including the information contained in the State's responses and in the documents referenced in the June 30 index, responds to your concerns. The State has not "refused to answer," but has provided substantial information and will provide more in its continuing Rule 26 disclosures, and in the time and sequence provided for in the Rules and by later order than the Court.

Interrogatory No. 3

The State has claimed privilege or protection for its sampling and research undertaken by expert consultants retained or specially employed by the State or its counsel in anticipation of litigation or preparation for trial. You will be provided with any Simmons specific information from testifying experts when the Court orders disclosure of testifying experts and reports pursuant to Rule 26(a)(2), or during any subsequent deposition of the State"s testifying experts. Without waiving any objection stated in the State's response to your interrogatories, the State has not identified to date, any publically available studies, reports or data demonstrating Phosphorus and Nitrogen loading attributable to Simmons growers and not subject to the State"s claim of privilege or protection. However, should the State locate any Simmons specific studies, reports or data which is publicly available and not subject to the State"s claim of privilege or protection, the State will supplement its answer to the interrogatory.

Interrogatory No. 5

At the present time, the State has not identified the identity of any person who has suffered adverse health effects as a result of water contact in the IRW caused by the land application of poultry litter. Should the state develop such evidence through its retained consultants or otherwise, it will be provided in the time and manner required by the Rules and any order of the Court.

We believe the foregoing comments satisfactorily respond to the concerns in your letter of June 30, 2006. Please be advised that the exchange of this correspondence does not discharge your obligations to meet and confer pursuant to the Court's LCvR 37.1.

Sincerely,

Robert A. Nance /JMB

Robert A. Nance
FOR THE FIRM

cc: Assistant Attorney General Kelly Burch