

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	Civil Action No. 90-229
)	
Plaintiff)	
)	
v.)	
)	
ROBERT BRACE,)	
ROBERT BRACE FARMS, INC., and)	
ROBERT BRACE and SONS, INC.)	
)	
Defendants)	

**DEFENDANTS’ RESPONSE TO UNITED STATES’ MOTION FOR
LEAVE TO FILE REPLY BRIEF**

The United States is attempting to litigate dispositive issues through protective limitations in discovery. Despite this Court’s previous order, in the face of nearly identical arguments, that the Defendants were permitted to engage in discovery, the United States is trying again to thwart that discovery by filing dispositive motions in the guise of a protective order. This Court properly granted the Defendants the right to discovery, and Defendants have been engaging in normal and appropriate discovery activities, including written discovery, party depositions and, now, some third party depositions. In an effort to be efficient, the Defendants have been conducting single depositions covering issues in both this action, and the related 2017 enforcement action.

The United States is now attempting, again, to prevent this reasonable discovery by making arguments regarding several of the fundamental and dispositive issues in this matter. The ambiguities in the Consent Decree, the property status which the Consent Decree was intended to achieve, and the scope of the previous district court decisions, as well as other issues fully addressed in previous briefing, are squarely at issue in this action. Rather than allow

discovery on these issues to progress, and the parties to present an organized and fully developed record to the Court in dispositive motions or a hearing, the United States has chosen to truncate discovery by arguing these dispositive issues in the guise of the motion for a protective order.

This effort has resulted in far more briefing than should be necessary in a discovery motion. This is because both parties are attempting to address fundamental issues without the benefit of a developed and closed record. These are not simple issues, and wrestling with them through an undeveloped record was one of the principal reasons why the Defendants sought the very reasonable discovery the Court ultimately granted.

Now, the United States seeks to file yet another brief on these issues. While Defendants are aware of the Court's general allowance of reply briefs, Defendants believe the United States' current effort presents the exception to that general rule. Further briefing on this issue will accomplish nothing more than further analysis of dispositive issues that are more appropriately addressed after discovery and in dispositive proceedings (be it a hearing or motion practice).

As a result, the Defendants respectfully request that the Court Deny the United States' Motion for Leave to File Reply Brief (Doc. 183).

Respectfully submitted,

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Respectfully submitted,

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