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Defendant's Motion for Leave to File Supplemental Motion and Brief with Documentary Exhibits Upon Conclusion of Discovery

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Mason, William D. and Cassidy, Marilyn B., "Defendant's Motion for Leave to File Supplemental Motion and Brief with Documentary Exhibits Upon Conclusion of Discovery" (1999). *1995-2002 Court Filings*. 6.
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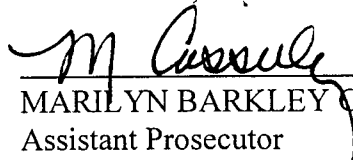
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN DAVIS, EXECUTOR)	CASE NO. 312322
Plaintiff,)	JUDGE RONALD SUSTER
vs.)	<u>DEFENDANT'S MOTION FOR LEAVE</u>
		<u>TO FILE SUPPLEMENTAL MOTION AND</u>
		<u>BRIEF WITH DOCUMENTARY EXHIBITS</u>
STATE OF OHIO)	<u>UPON CONCLUSION OF DISCOVERY</u>
Defendant.)	

Defendant, State of Ohio, by and through counsel, William D. Mason, Prosecuting Attorney for the State of Ohio, and Marilyn Barkley Cassidy, Assistant Prosecuting Attorney, respectfully moves the court for leave to file supplemental papers and argument in support of its motion for summary judgment. The grounds for this motion are set forth fully in the memorandum attached hereto and incorporated expressly herein by reference.

Respectfully submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY


MARILYN BARKLEY CASSIDY (0014647)
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ATTORNEYS FOR STATE OF OHIO

MEMORANDUM IN SUPPORT

The court initially assigned the parties to a litigation schedule. Additionally, the court did not assign a discovery cut-off date, but allowed the parties to conduct discovery up until the date of trial. The State has consistently pointed out that such a schedule complicates the preparation and timely filing of a dispositive motion. However, at the last pretrial, the State indicated that it could have a motion for summary judgment prepared by approximately two months prior to the trial date, October 18, 1999.

Since that time, the State has filed a motion for continuance of trial. However, in a good faith effort to meet the currently scheduled trial date, the State seeks to file its motion for summary judgment in part. The arguments presented are generally legal in nature. However, some additional documentary evidence is outstanding. Defendant has attempted to acquire the documentary evidence timely, but has been unsuccessful (see affidavit of Dean Boland). Finally, defendant reminds the court that plaintiff's expert reports were received at the last pretrial hearing, not on May 1st as directed by the court's case management order. This in turn, has delayed the state's ability to provide information to defense experts. Hence, additional definitive evidence may become available to the State after the filing of this motion.

The State of Ohio asserts that its position is prejudiced by having to file a dispositive motion prior to the close of discovery unless some compromise is achieved. Accordingly, the

State respectfully requests that this leave to file supplemental briefing, affidavits, and/or other documentary evidence be granted. submitted.



MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum in Support, was served upon Terry H. Gilbert and upon George H. Carr, 1700 Standard Building, 1370 Ontario, Cleveland, Ohio 44113, this 24 day of August, 1999, by ordinary U.S. mail postage prepaid.



MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney