

Message

---

**From:** Elliott, Don [DElliott@cov.com]  
**Sent:** 7/28/2017 3:06:14 PM  
**To:** Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]  
**Subject:** FW: MGP - Diageo Motion to Dismiss - Summary of Prior Studies of Effect on Product Quality  
**Attachments:** Diageo Motion to Dismiss.18-1.pdf; 2000 OAR Letter.pdf; Elliott Letter to Tennenbaum.5 25 17.pdf

Justin -

Here is my latest communication to Phillip Brooks, with Bill Wherum's *Diageo* motion listing the numerous prior experiments to control "angel's share" emissions of alcohol during whiskey aging attached. The email is also worth reading, as I ask Phill to confirm that Gallo is telling the Region 5 engineer the same thing they are telling us, namely, that there WAS an adverse effect on their product in the latest experiment (the 13th by my count). I have not heard back from Phil on that.

For convenience, I also include the 2000 OAR letter from headquarters, which Region 5 claims doesn't bind them because they staked out their own contrary position in 1996, contradicting Region IV's position which goes back to 1994.

I also include my prior letter from May 26 to the Region, which goes over this history, including the 1978 EPA study, so you will have it readily at hand.

Do let me know if you have any questions or want any more info on this.

Don

---

**From:** Elliott, Don  
**Sent:** Wednesday, July 19, 2017 12:53 PM  
**To:** Brooks.Phillip@epa.gov  
**Subject:** MGP - Diageo Motion to Dismiss - Summary of Prior Studies of Effect on Product Quality

*Settlement Communication*

Phill,

As discussed, the attached Diageo motion to dismiss (written by Bill Wehrum) provides a good summary of prior studies of the effect on product quality of controls on whiskey aging warehouse on pages 5-11. As you'll see, controls on whiskey aging warehouses have been tried many times for roughly 30 years, and they have always resulted in significant adverse effects on product quality. I have all the individual studies cited as exhibits to the motion if you want any of them. It is also my understanding that Chris Savage of Gallo told Marie St. Peter of Region 5 recently, as they have been telling us all along, that their experiment on brandy also *did* have an adverse effect on product quality. (Please do let me know whether that was also her understanding of the conversation, as it will be helpful if we can come to a joint understanding of the facts.)

Tony and I both appreciated your attempts to find a possible compromise approach involving the existing emergency ventilation systems on our call on Monday. I am not yet in a position to advise you of the company's position on that because the key guy (Dave Rindom, MGP's Chief Administrative Officer) is out of the country on business and I won't be able to speak with him until July 31. But just speaking for myself, I want you to understand what a hard lift it would be for the company to consider such an approach. As I have tried to express from the very beginning of our conversations, the company is very reluctant to be perceived by its customers in the rest of the industry as conducting a test or setting a precedent that would adversely affect others.

I also need to correct one inadvertent misstatement I made on the call. I stated incorrectly based on the information that I had at the time that MGP had its own product in those basement areas. That is true as far as it goes, but it also turns out on further inquiry that they are also aging product in some of the basement areas that is destined for others. I am told that the total value of the product that would be at risk in the three basements is approximately \$48 million, as there are 16,000 barrels in each of the three basements or 48,000 barrels in total. I am also told that MGP's customers are "voting with their feet" and thereby revealing their very sincere concern about adverse effects on product quality by threatening to remove their product from MGP if we agree to anything like what we have been discussing.

I am not saying any of these issues are necessarily insuperable. I won't know that until after July 31 when I have a chance to discuss all of this with the company, but I did want to share these issues with you as things we need to be thinking about as we'd have to deal with them somehow.

Best,

Don

**E. Donald Elliott**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956

**Ex. 6** | [delliott@cov.com](mailto:delliott@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**