



"requirements" of the Dendrite decision. As I stated in my

November 1, 2002 Memorandum Order:

Using these decisions as a guidepost, the Court concludes that the balance of the interests and equities in the case weigh in favor of allowing the subpoena to stand and denying the Motion To Quash (D.I. 42, p. 5) (Emphasis Added).

In considering the motion to quash, I applied a balancing of considerations utilized by courts that had analyzed similar applications. In my view, harm could or could not be relevant in the circumstances of a specific case, but I would not necessarily require a finding of harm, particularly in the early stages of a lawsuit. Certainly, there will be cases where a plaintiff should be permitted to develop evidence of the complete spectrum of injury it has or will suffer by the acts of an alleged wrongdoer.

However, if a finding of immediate harm were required as part of the proof a plaintiff must establish at the commencement of litigation when seeking discovery, I believe Equidyne has made a sufficient showing of harm as noted in its papers.

Additionally, I should note that I agree with Equidyne that the Rule 14a 2(b)(1) exemption is not applicable to Doe in the circumstances of this case. (see D.I. 45 para. 6 and 7).

NOW THEREFORE, FOR THE REASONS DISCUSSED, IT IS HEREBY ORDERED that the Motion For Reargument (D.I. 44) is DENIED.

2/12/03

DATE

Joseph J. Tanas  
UNITED STATES DISTRICT JUDGE

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