

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
FRM CHEM, INC.,) DOCKET NO. FIFRA-07-2008-0035
ADVANCED PRODUCTS TECHNOLOGY, INC.,) DOCKET NO. FIFRA-07-2008-0036
SYNISYS, INC.,) DOCKET NO. FIFRA-07-2009-0041
CUSTOM COMPOUNDERS, INC.,) DOCKET NO. FIFRA-07-2009-0042
)
RESPONDENTS.)

NOTICE TO ADMINISTRATIVE LAW JUDGE

COME NOW Respondents FRM Chem, Inc., Advanced Products Technology, Inc., Synisys, Inc. and Custom Compounders, Inc. ("Corporate Respondents") and hereby notify this Administrative Law Judge of a potential conflict on the hearing date of this action.

1. This Court by Order dated May 18, 2010, set the hearing of this case for Tuesday, September 28, 2010 at 9:30 a.m. continuing, if necessary, through October 1, 2010.
2. The Court's Order states, "If any party ... has good cause for not being able to attend the hearing as scheduled, it shall notify the undersigned at the earliest possible moment."
3. By Order dated July 27, 2010, the Honorable G. Patrick Murphy, U.S. District Court Judge for the Southern District of Illinois, set the case of *United Sates v. Horatio Watson, et al.* for trial on September 28, 2010 at 8:00 a.m.
4. This case will take at least four (4) days to try and there is virtually no chance of any disposition short of trial.

5. This Court granted Complainant's Motion to Amend its Complaint to add Keith G. Kastendieck and Karlan C. Kastendieck as individual respondents in this matter by Order dated May 27, 2010.

To the best of Corporate Respondents' information, knowledge and belief, Keith G. Kastendieck has been served with the Amended Complaint. He has not hired counsel and his time for answering the Complaint has not expired.¹

To the best of Corporate Respondents' information, knowledge and belief, Karlan C. Kastendieck has not been served with the Amended Complaint. Once he is served, he will need time to hire counsel and file a response and/or answer to the Complainant's Amended Complaint.²

6. This Court by Order dated May 27, 2010 granted, in part, Complainant's Motion to Amend Complaints and granted, in part, Complainant's Motion for Discovery. Corporate Respondents were given until July 12, 2010 to file their Amended Answers and comply with the discovery requests (45 days).

7. Undersigned counsel, during the latter part of this time period, experienced, and is experiencing a medical issue which has yet to be resolved. As a result, Complainant's Counsel

¹Undersigned counsel has spoken with individual respondent Keith G. Kastendieck. A potential conflict of interest needs to be resolved and/or waived if undersigned counsel is to represent Keith Kastendieck, individually.

²Undersigned counsel has not spoken with Karlan C. Kastendieck about any potential representation and/or discovery responses.

agreed by email dated July 21, 2010 to an extension until July 28, 2010 for these answers to be filed and discovery completed.^{3 4}

8. Undersigned counsel called Complainant's counsel today to request additional time to and including August 4, 2010 in which to file its Amended Answers and provide the balance of discovery. This request was after undersigned counsel's medical procedure this morning. Mr. Dudding responded that he had to file a motion today to protect his client's interest. Undersigned counsel assumes this will be a Motion to Compel and/or for Sanctions of some sort or an assertion that Complainant will be prejudiced in some fashion by the tardiness of discovery for approximately seven (7) days from counsel's prior agreed to date.⁵

9. Counsel intends to complete the ordered discovery and file the answers of the corporate respondents no later than Wednesday, August 4, 2010. However, the hearing date of September 28, 2010 appears to be in peril due to the new setting in the Southern District of Illinois.⁶

WHEREFORE, as ordered Corporate Respondents hereby notify the Administrative Law Judge that the September 28, 2010 hearing date may be in jeopardy.

³See email of C. Dudding to R. Jenkins dated July 21, 2010 attached hereto as Exhibit "A" and incorporated by reference herein.

⁴Corporate Respondents have provided in a timely manner certain corporate records, loan documents, check registers, check stubs, federal tax returns for Keith and Ann Kastendieck, etc. to Complainant in response to the May 27, 2010 Order.

Corporate tax returns and Financial Data Request Forms were previously provided to Complainant.

⁵Undersigned counsel understands Mr. Dudding's position and will respond to such a motion if it is necessary to do so.

⁶Linda McGovern, Courtroom Deputy to the Honorable G. Patrick Murphy is the contact person for Judge Murphy's trial schedule. Her phone number is 618-482-9309.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____

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Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
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Suite 350, Franklin Court
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Honorable Barbara A. Gunning
Office of Administrative Law Judges
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this 30th day of July, 2010.

Ron Jenkins

From: Dudding.Chris@epamail.epa.gov
Sent: Wednesday, July 21, 2010 4:01 PM
To: Ron Jenkins
Subject: RE: Discovery response in FRM, et al.

Ron,

Per our phone conversation today, I'll expect the remainder of the discovery materials pursuant to the order by a week from today, August 28, and I understand that you will also be filing answers to the amended complaints by that date.

Also, you said that you would talk with Keith Kastendieck and confirm for me whether he has accepted service of the Complaints in these matters. Since you are not representing him personally, you may suggest that he send me a written note stating that he has received the four amended Complaints in lieu of us sending a process server to serve him in person.

Best regards,

Chris R. Dudding
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EXHIBIT A