

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

LAND O' LAKES, INC.)	
)	
Plaintiff,)	Case No. 5:15-cv-0683-R
)	
vs.)	JUDGE DAVID L. RUSSELL
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**AGREED MOTION OF PLAINTIFF FOR LEAVE TO TAKE DEPOSITION
UNDER FED. R. CIV. P. 26(d)(1)**

Plaintiff Land O'Lakes, Inc., in accordance with Local Rule 7.1, and pursuant to Fed. R. Civ. P. 26(d)(1), hereby moves for leave to take the oral video deposition of Forrest Fuqua.

Mr. Fuqua is 86 years of age and has extensive knowledge of the operations at the Cushing, Oklahoma refinery that is the subject of this case spanning at least the period of his continuous employment at the refinery from 1948 to 1996. He was the Refinery Manager from 1973 until the refinery closed in late 1982, and continued to supervise and manage the closed refinery site through 1996. During the period 1986-1994, he supervised site investigation and corrective action cleanup activities under work plans required by the Partial Consent Decree and Final Consent Decree in EPA's RCRA enforcement action, styled *United States of America, Plaintiff v. Hudson Refining Co., Inc. and Hudson Oil Co., Inc., Defendants, United States District Court for the Western District of Oklahoma, Civil*

Action No. 84-2027-A. This Court's consent decrees, and site activities conducted thereunder, and this Court's closure order in that RCRA enforcement action are the subject of this declaratory judgment lawsuit.

Mr. Fuqua has a heart condition arising from a heart attack suffered earlier this year, as well as family care circumstances for his spouse, which may limit his future availability to sit for deposition and to testify at trial.

A scheduling order has not been issued, and a Rule 26(f) discovery conference has not been held, in this case because of Defendant United States' pending motion to dismiss this case without prejudice. Thus, formal discovery in this case has not been authorized pursuant to Fed. R. Civ. P. 26(d)(1). Mr. Fuqua's testimony may be relevant to the adjudication of the claims in this case.

Mr. Fuqua's counsel, Charles Geister, has agreed to the deposition under conditions to be recommended by Mr. Fuqua's heart doctor as needed to preserve Mr. Fuqua's health. Mr. Fuqua currently is scheduled to meet with his heart doctor on January 8, 2016. Defendant's counsel, Scott Cernich, consented to this motion by e-mail on December 18, 2015. Counsel for Plaintiff, Defendant, and Mr. Fuqua have reached agreement on the scheduling and allocation of time (with time allocated equally between Plaintiff and Defendant) for Mr. Fuqua's deposition, subject to the recommendations of Mr. Fuqua's heart doctor expected in early January 2016.

The Court has not yet scheduled any pretrial deadlines, and the granting of this Motion will not affect any deadlines for this case. In August 2015, Mr. Fuqua's extensive affidavit covering the history of the refinery activities was filed by Land O' Lakes in the

administrative cost reimbursement proceeding involving the refinery site, which is currently pending before the U.S. EPA's Environmental Appeals Board. Land O' Lakes provided Defendant's counsel with Mr. Fuqua's affidavit and exhibits in August 2015. The tentative schedule for the proposed deposition is mid-February 2016. The parties have agreed that the use or admissibility of the proposed deposition in this or any subsequent court proceeding is governed by Fed. R. Civ. P. 32 and the Federal Rules of Evidence. The Parties reserve all rights to seek or object to additional discovery from Mr. Fuqua, other than the proposed deposition taken pursuant to this Motion, after discovery has commenced, including an additional deposition pursuant to Fed. R. Civ. P. 26 and 30.

A proposed Order is attached and is being submitted herewith pursuant to *ECF Policies & Procedures Manual*, § G.

Respectfully submitted,

/s/ Mark D. Coldiron

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Attorneys for Plaintiff Land O'Lakes, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing was served by electronic filing through PACER upon all counsel of record; and further, a copy was served on counsel for the deponent, Charles Geister, by mail at the address below, on December 21, 2015.

Charles E. Geister III
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/s/ Mark D. Coldiron

MARK D. COLDIRON

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ORDER

Upon consideration of Plaintiff's Agreed Motion for Leave to Take Deposition under Fed. R. Civ. P. 26(d)(1), to which Deponent's counsel and Defendant's counsel have agreed, it is hereby

ORDERED that Plaintiff's Agreed Motion for Leave to Take Deposition is GRANTED; and it is further

ORDERED that Plaintiff may notice a video deposition of Forrest Fuqua to occur beginning on or after February ___, 2016.

IT IS SO ORDERED this ___ day of December, 2015.

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE