

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

In re: )  
Titan Tire Corporation & Dico, Inc. )  
(Southern Iowa Mechanical Superfund Site) )

CERCLA § 106(b) Petition No. 10-300

CERCLA Administrative Order )  
No. CERCLA-07-2009-0006 )

**U.S. ENVIRONMENTAL PROTECTION AGENCY STATUS REPORT**

The Respondent, Region VII of the U.S. Environmental Protection Agency ("EPA"), by and through its Office of Regional Counsel, submits this supplemental status report pursuant to the Environmental Appeals Board's ("EAB") April 8, 2016 Order Requiring Revised Supplemental Status Report(s). In the April 8, 2016 Order, the EAB directed the parties to file a supplemental status report (jointly or separately) no later than Monday April 25, 2016. The supplemental report(s) must advise the Board as to the pending issues in the District Court case, the existence of any overlap with the pending-yet-stayed issues before the Board, the proposed or final litigation schedule in the District Court matter, and other relevant information.

Pending Issues Before the District Court. In its appeal, Dico argued material issues of fact precluded summary judgment on the issues of liability and damages for both "arranger" liability under CERCLA and liability for civil penalties and punitive damages for the EPA administrative order violation. The Appellate Court reversed the District Court's summary judgment order with respect to the intent component of "arranger" liability under CERCLA and punitive damages, but affirmed the summary judgment order as to the EPA administrative order violations and civil penalties for the violations. The Appellate Court decided that Dico's intent to arrange for the disposal of hazardous substances should not have been decided at summary judgment, and therefore the Appellate Court reversed and vacated the District Court's summary judgment order holding Dico "arranged" for disposal of hazardous materials as a matter of law. The only issue before the District Court will be whether the facts support the government's position that Dico intended to dispose of hazardous substances in its transaction Southern Iowa Mechanical (SIM) and is therefore liable under CERCLA Section 107(a)(3), 42 U.S.C. § 6907(a)(3).

Overlap With Issues Before the Board. The issue to be decided at the re-trial in District Court is directly related to the central issue before the Board; whether Dico intended to dispose of a hazardous substance and is therefore liable under CERCLA Section 107(a)(3) as an arranger for disposal. In its petition before the Board, Dico asserts it is not liable under CERCLA for the response actions it undertook at the SIM site pursuant to the unilateral administrative order issued by EPA.

Proposed or Final Litigation Schedule. By Order dated 3/04/16, the District Court scheduled the trial to begin Monday, September 19, 2016, with an estimated length of eight days. See attached scheduling and amended scheduling orders.

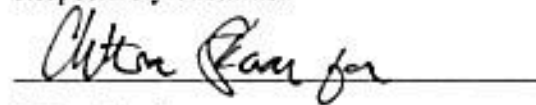
The EPA believes the overlap on the liability issue warrants the continuation of the stay of the EAB proceeding

Enclosures

Dated this 21<sup>ST</sup> day of April, 2016.

Respectively Submitted

By:



J. Scott Pemberton

Senior Assistant Regional Counsel

Office of Regional Counsel

U.S. EPA, Region 7

11201 Renner Boulevard

Lenexa, Kansas 66219

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

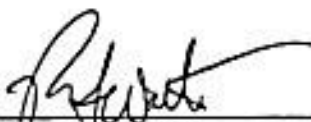
|                           |   |                          |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, | ) |                          |
|                           | ) | NO. 4:10-cv-00503-RP-RAW |
| Plaintiff,                | ) |                          |
|                           | ) |                          |
| vs.                       | ) |                          |
|                           | ) | ORDER SCHEDULING BENCH   |
| DICO, INC. and TITAN      | ) | TRIAL AND FINAL PRETRIAL |
| TIRE CORPORATION,         | ) | CONFERENCE               |
|                           | ) |                          |
| Defendants.               | ) |                          |

Based on counsel's emails, this case can be set for trial as follows:

1. Non-jury trial is set before Senior Judge Robert W. Pratt beginning at **9:00 AM on Monday, September 19, 2016**. Estimated length of trial is eight days.
2. Final pretrial conference with the undersigned is set for **11:00 AM on September 2, 2016**. The parties shall comply with the requirements for final pretrial conference separately ordered.
3. As previously ordered, proposed scheduling order for discovery, motion deadlines or supplementation of expert opinions prior to the trial date is due by **April 1, 2016**. In preparing their proposed scheduling order, the parties are reminded dispositive motions, if any, should be filed at least 120 days in advance of the trial date.

IT IS SO ORDERED.

Dated this 4th day of March, 2016.

  
\_\_\_\_\_  
ROSS A. WALTERS  
UNITED STATES MAGISTRATE JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

|                           |   |                          |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, | ) |                          |
|                           | ) |                          |
| Plaintiff,                | ) |                          |
|                           | ) | No. 4:10-cv-00503-RP-RAW |
| v.                        | ) | AMENDED                  |
|                           | ) | SCHEDULING ORDER         |
| DICO, INC. and            | ) |                          |
| TITAN TIRE CORPORATION,   | ) |                          |
|                           | ) |                          |
| Defendants.               | ) |                          |
| _____                     | ) |                          |

**AMENDED SCHEDULING ORDER**

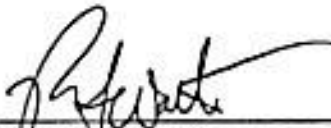
Pursuant to Fed. R. Civ. P. 16(b), the Court having set the final pre-trial conference in this matter for Friday, September 2, 2016, and upon good cause shown, IT IS ORDERED that the following deadlines shall apply:

1. The parties shall file dispositive motions, if any, not later than Monday, May 16, 2016.
2. The parties shall discuss discovery in this matter, including any additional discovery deemed necessary and the scope of that discovery, in order to identify any disputes among the parties. All discovery disputes shall be raised to the Court's attention not later than Wednesday, April 20, 2016. Prior to presenting a dispute to the Court, the parties shall, consistent with local rule 7(l), confer in good faith concerning the dispute to determine whether a motion or other filing is required.
3. The parties shall file all motions under Fed. R. Evid. 104, Fed. R. Evid. 702, and any motions in limine not later than Wednesday, August 10, 2016.
4. The plaintiff shall submit a draft pre-trial order to defendants not later than Thursday, August 11, 2016.

5. The defendant shall respond to the plaintiff's draft pre-trial order not later than Wednesday, August 17, 2016.
6. The parties may by mutual agreement, without leave of Court, further amend the deadlines set forth in paragraphs 4 and 5 hereof, provided the signed proposed pretrial order is submitted to the court at least 5 days before the date of the final pretrial conference. Specifically, the parties shall negotiate in good faith to finalize the pre-trial order, and plaintiff shall file the proposed final pre-trial order not later than Friday, August 26, 2016.
7. The parties shall file trial briefs not later than Wednesday, August 31, 2016.

IT IS SO ORDERED.

Dated this 1 day of April, 2016

  
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ROSS A. WALTERS  
UNITED STATES MAGISTRATE JUDGE