

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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JAN 13 2009

IN THE MATTER OF :)
)
Trust No. 98-123, Genghiskhan)
Xiong, Hu Xiong, Chuhu Xiong,)
And Maivtshiab Xiong,)
)
Respondents.)

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY
Docket No. TSCA-05-2008-0010
Proceeding to Assess a Civil Penalty
under Section 16(a) of the Toxic
Substances Control Act

ATTORNEY DENNIS J. KELLOGG'S REPLY TO COMPLAINANT'S RESPONSE TO
RESPONDENTS' ATTORNEY'S MOTION TO WITHDRAW

NOW COMES Dennis J. Kellogg, attorney for Respondents, in reply to Complainant's Response to Respondents' Attorney's Motion to Withdraw and states as follows:

1. The Thirteenth Amendment of the United States Constitution provides that no person can be placed into involuntary servitude. U.S. Const. amend. XIII, § 1.
2. The effect of denying attorney Kellogg from withdrawing as Respondents' attorney would amount to involuntary servitude and thus be in violation of the United States Constitution.
3. When an attorney attempts to withdraw on the eve of trial, the Court has ample discretion whether to grant or deny the motion.
4. The Court considers such factors as whether the attorney gave his clients ample notice of withdraw thereby giving the client time to retain another attorney; whether the client would be prejudiced; and whether the attorney would or has suffered financial hardship.
5. First, attorney Kellogg provided written notice to the Respondents on December 19, 2008 of his intentions to withdraw. This is a full month prior to the *prehearing* exchange. Respondents were afforded ample opportunity to secure additional legal representation.

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6. Second, the Respondents will not be prejudiced by attorney Kellogg's withdrawal. The Respondents will have had a full month to secure additional legal representation. Arguably, a full month notice does not amount to attempting to withdraw on "the eve of trial." Moreover, in response to attorney Kellogg's notice of withdraw, Respondents forwarded the completed paperwork to him. Without waiving the pending Motion to Withdraw, attorney Kellogg forwarded the paperwork to the Complainant on January 8, 2009. In addition, if Respondents retain additional legal representation, the attorney would be able to quickly ascertain the procedural history and complaints against the Respondents.

7. Third, Respondents gave attorney Kellogg a thousand dollar (\$1000) retainer to cover initial costs of representation. Since the inception of the case, attorney Kellogg has well exhausted the retainer and has not received further payment from the Respondents. Furthermore, the Respondents are claiming financial hardship which prevents them from paying the penalties assessed against them and attorney Kellogg for his service if required to continue as attorney of record.

8. Lastly, the effect of attorney Kellogg's prior withdrawal and Respondents' attempt at Alternative Dispute Resolution should have no bearing on the pending Motion to Withdraw. Both the prior withdrawal and attempt at ADR were permissible and well founded steps in the instant action. Successful ADR is not a prerequisite for invoking ADR and should not prejudice attorney Kellogg. Furthermore, attorney Kellogg's prior cessation of legal representation of Respondents was in good faith and based upon similar grounds as the pending Motion to Withdraw; attorney Kellogg should not be prejudiced for his good faith continuance of legal representation to provide the Respondents with an additional opportunity to cooperate.

WHEREFORE attorney DENNIS J. KELLOGG respectfully requests that Complainants' objection to Respondents' Attorney's motion be overruled and Dennis J. Kellogg be permitted to withdraw as attorney of record for Respondents.

Respectfully submitted,



Dennis J. Kellogg

THE LAW OFFICE OF DENNIS J. KELLOGG
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NOTICE OF FILING

TO: Honorable Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L/Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

U.S. Environmental Protection Agency
Region 5
Regional Hearing Clerk (E-13J)
77 West Jackson Blvd.
Chicago, Illinois 60604

Luis Oviedo
Associate Regional Counsel
U.S. EPA Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

PLEASE TAKE NOTICE that I, Dennis J. Kellogg, have filed with the Regional Hearing Clerk Attorney Dennis J. Kellogg's Reply to Complainant's Response to Respondents' Attorney's Motion to Withdraw.

Dated: January 13, 2009



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PROCEEDING HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY
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CERTIFICATE OF SERVICE

I, DENNIS J. KELLOGG, certify that today I filed the original and one copy of **Attorney Kellogg's Reply to Complainant's Response to Respondents' Attorney's Motion to Withdraw and Notice of Filing** with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

I then promptly sent by United States Postal mail a true and accurate copy to:

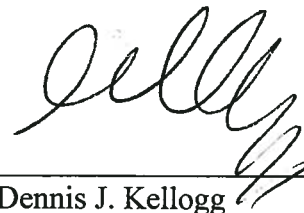
Honorable Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L/Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

U.S. Environmental Protection Agency
Region 5
Regional Hearing Clerk (E-13J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

I also mailed a true and accurate copy, by mail, to:

Luis Oviedo
Associate Regional Counsel
U.S. EPA Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dated: January 13, 2009



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