

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
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March 6, 2023

In the Matter of

LEACHCO, INC.,

CPSC Docket No. 22-1

Respondent.

**ORDER GRANTING IN PART COMPLAINT COUNSEL'S OPPOSITION TO
LEACHCO, INC.'S NOTICES OF DEPOSITION OF CELESTINE KISH AND
CONSUMER PRODUCT SAFETY COMMISSION**

ORDER SCHEDULING CONFERENCE

Complaint Counsel filed an opposition to Respondent's February 27, 2023, notices of deposition for Celestine Kish and the Commission—the former scheduled for March 7, 2023—on Friday, March 3, 2023. Respondent responded on Monday, March 6, 2023, in which it also requested immediate hearing.

Respondent listed those it intended to call for depositions on January 25, 2023. *See* Opp'n to Leachco, Inc.'s Notices of Deposition of Celestine Kish and Consumer Prod. Safety Comm'n, at 3 n.2 (Mar. 3, 2023); Leachco, Inc.'s Resp. to the Comm'n's Objs. to Certain Depos. and Req. for an Immediate Hr'g, at 2 (Mar. 6, 2023). Respondent informed Complaint Counsel of its decision to depose on February 22, 2023. Opp'n at 3; Resp. at 2–3. Complaint Counsel responded with proposed dates for four deponents, and objected to deposition of Ms. Kish and the Commission, on February 24, 2023. Opp'n at 3; Resp. at 3. Respondent served the notices of deposition on February 27, 2023. Opp'n at 4; Resp. at 3.

Respondent asserts it did not fail to provide the required notice because it advised Complaint Counsel of its intended deposition of those listed “over a month ago,” and confirmed and asked for dates on February 22, 2023. Resp. at 2–3. Neither action, however, is official notice that requires service on all parties and the Presiding Officer 10 days before the noticed date. *See* 16 C.F.R. § 1025.35(b)(1). Whether Complaint Counsel failed to propose or agree on dates for Ms. Kish prior to February 27, 2023, does not affect the required notice requirement and the party's ability to oppose such notice within five days, *see id.* § 1025.35(b)(3).

I therefore **GRANT** in part Complaint Counsel's opposition to the notice of deposition of Ms. Kish on the noticed date. I **DEFER** ruling on the remaining issues—scope of deposition testimony, and availability of the CPSC as a witness and the associated sufficiency of Respondent's provided topics—and **ORDER** a conference be held to discuss.

A conference shall be held as follows:

Date: Friday, March 10, 2023

Time: 10:00 a.m. Eastern Time

Means: Zoom [link provided to those listed in Distribution]

I direct that notice of the conference be posted on the docket.



Michael G. Young
Administrative Law Judge

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