

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9950
FAX: 202-434-9949

July 7, 2023

In the Matter of

LEACHCO, INC.,

CPSC Docket No. 22-1

Respondent.

**ORDER DEFERRING RULING ON LEACHCO, INC.'S MOTION FOR SANCTIONS &
ORDER THAT CERTAIN REQUESTS FOR ADMISSION BE DEEMED ADMITTED**

ORDER REQUIRING PARTIES TO CONFER AND STIPULATE FACTS

This matter has been set for hearing beginning August 7, 2023. There is a motion pending before the Court to sanction Complaint Counsel for its failure to forthrightly admit or deny requests for admission served by Respondent. *See* Leachco, Inc.'s Mot. for Sanctions & Order That Certain Requests for Admission Be Deemed Admitted (June 6, 2023). Discovery has closed in this matter.

Requests for admission are essentially an invitation to stipulation. Early during fiercely contested litigation, parties are often unwilling to concede or admit facts and may seek to doom an opponent by gaining admission of so many facts, through genuine admission or a failure to respond, that a case or defense is effectively foreclosed. *See generally* Colin E. Flora, *It's a Trap! The Ethical Dark Side of Requests for Admissions*, 8 ST. MARY'S J. ON LEGAL MALPRACTICE AND ETHICS 1 (2018).

As I have noted, my philosophy of discovery tracks precisely the purpose of the Federal Rules of Civil Procedure: The "just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Discovery is not a tool to help the parties; it is an invaluable aid that, properly employed, should ensure that I have before me all the facts I need to reach a just conclusion.

My impression is that the parties have made great progress in realizing this goal, and I anticipate this case to be well-prepared for trial, providing me with all the relevant, admissible evidence I will need. Nonetheless, there is a motion pending before me, and it is important that the efficiency promoted by the prudent use of requests for admission is not lost, so that we do not find ourselves wasting precious hearing time establishing facts that are not genuinely in dispute.

Therefore, the parties are **ORDERED** to confer on the requests for admission within Respondent's motion and shall inform the Court not later than July 18 as follows:

1. The parties shall agree to stipulate to those facts that are not in dispute and will identify for the Court the requests for admission resolved by those stipulations.
2. Respondent shall withdraw and identify for the Court any other requests for admission that are either rendered moot by the stipulations reached, or that Respondent agrees are duplicative, oppressive, irrelevant, or unnecessary to the issues that will be tried.
3. Complaint Counsel shall identify forthrightly any triable issues of fact that it disputes, and that Respondent has agreed to accept as denied pending resolution at hearing.
4. The parties will identify any remaining RFAs and responses in dispute.

This order will be discussed at the July 11, 2023, final prehearing conference. At that time, the Court will attempt to resolve the disputes and answer any questions.

After receipt of the parties' submissions on or before July 11, the Court will either rule on any remaining contested RFAs and responses or defer ruling until such time as the facts presented at trial present an opportunity for a renewed objection.

If the Court finds that either party has not participated in good faith in the resolution of the matters in dispute, the evidentiary matters at issue may be excluded from hearing, deemed admitted, or otherwise addressed by an appropriate sanction.

I therefore **DEFER** ruling on Respondent's motion until the parties have completed the ordered action and it becomes necessary to dispose of remaining disputes.



Michael G. Young
Administrative Law Judge

Distribution:

Brett Ruff, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, bruff@cpsc.gov

Rosalee Thomas, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, rbthomas@cpsc.gov

Caitlin O'Donnell, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, codonnell@cpsc.gov

Michael J. Rogal, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, mrogal@cpsc.gov

Gregory Reyes, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, greyes@cpsc.gov

Frank Perilla, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, FPerilla@cpsc.gov

Oliver J. Dunford, Pacific Legal Foundation, 4440 PGA Blvd., Suite 307, Palm Beach Gardens, FL 33410, ODunford@pacificlegal.org

John F. Kerkhoff, Pacific Legal Foundation, 3100 Clarendon Boulevard, Suite 610, Arlington, VA 22201, JKerkhoff@pacificlegal.org

Frank Garrison, Pacific Legal Foundation, 3100 Clarendon Boulevard, Suite 610, Arlington, VA 22201, FGarrison@pacificlegal.org

Jessica L. Thompson, Pacific Legal Foundation, 3100 Clarendon Boulevard, Suite 610, Arlington, VA 22201, JLThompson@pacificlegal.org

Alberta E. Mills, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, amills@cpsc.gov