

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

February 17, 2009

UNITED TACONITE, LLC,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. LAKE 2008-93-RM
	:	Citation No. 6154850; 11/20/2007
v.	:	
	:	Docket No. LAKE 2008-94-RM
SECRETARY OF LABOR,	:	Citation No. 6154851; 11/20/2007
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	United Mine
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2008-501-M
Petitioner	:	A.C. No. 21-003403-154315
v.	:	
	:	
UNITED TACONITE, LLC,	:	United Mine
Respondent	:	

DISCOVERY ORDER

These consolidated contest and civil penalty matters concern citations related to an April 18, 2007, fatal drilling accident at the United Mine operated by United Taconite, LLC (“United Taconite”). The accident occurred when the drill, that was positioned on a slope, tipped on its side killing the operator. Atlas Copco Drilling Solutions, LLC (“Atlas Copco”), and its related companies, manufactured and provided to United Taconite, by lease and sale, the drill that is the subject of these proceedings. Atlas Copco is not a party in these proceedings.

As a result of the accident, United Taconite was cited for an alleged violation of section 56.14205, 30 C.F.R. §56.14205, of the Secretary’s mandatory safety standards. This mandatory standard provides that:

Machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to persons.

United Taconite was also cited for an alleged violation of the Secretary’s training regulations in section 48.27(a)(3), 30 C.F.R. § 48.27(a)(3). United Taconite has reported that Atlas Copco provided certain training to United Taconite employees.

Commission Rule 56 governs the scope of discovery. 29 C.F.R. § 2700.56. This rule

states:

Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to the discovery of admissible evidence.

There is a personal injury action pending in the District Court, Sixth Judicial District, County of St. Louis, State of Minnesota, No. 69 VI-CV-08-145, which involves Atlas Copco, United Taconite and others. United Taconite's counsel in the personal injury action is separate from counsel in these proceedings.

United Taconite and Atlas Copco have entered into a confidentiality agreement in the personal injury civil action concerning, *inter alia*, Atlas Copco's financial statements and other non-public or proprietary information including but not limited to, trade secrets, design specifications, product testing information and manufacturing processes and techniques. On December 17, 2008, United Taconite filed a motion requesting that I issue a confidentiality order incorporating the terms of its confidentiality agreement with Atlas Copco. As Atlas Copco is not a party in this matter, United Taconite's motion **IS DENIED**.

With respect to the scope of discovery, **IT IS ORDERED** that United Taconite, during the course of deposition and written discovery, provide to the Secretary all relevant evidence that may be admitted in this proceeding, or that is likely to lead to the discovery of admissible evidence. In this regard, all relevant deposition testimony and evidence concerning the issues of training, and the design capacity and intended use of the drill in issue, whether or not considered subject to the confidentiality agreement in the civil proceeding, shall be provided to the Secretary. The Secretary should utilize the information obtained through discovery for trial preparation only, and this information should not be routinely disseminated. Only evidence that is admitted in the evidentiary hearing may be publically disclosed.

IT IS FURTHER ORDERED that all deposition and written discovery shall be completed **on or before April 17, 2008**. The parties should initiate a telephone conference, **on or before March 13, 2009**, to select a mutually satisfactory hearing date and location.

Jerold Feldman
Administrative Law Judge

Distribution:

Suzzane Dunne, Esq., Office of the Solicitor, U.S. Department of Labor, 230 S. Dearborn Street,
Chicago, IL 60604

R. Henry Moore, Esq., Jackson Kelly, PLLC, Three Gateway Center, Suite 1340,
401 Liberty Avenue, Pittsburgh, PA 15222

R. Brian Hendrix, Esq., Patton Boggs LLP, 2250 M Street, NW, Washington, DC 20037

/rps