UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60995-CIV-DIMITROULEAS

FLEXITEEK AMERICAS, INC., a Florida corporation; FLEXITEEK INTERNATIONAL AS, a foreign corporation,

Magistrate Judge Rosenbaum

Plaintiffs,

vs.

NUTEAK DECKING, INC., a Florida corporation, and TEK-DEK, LTD., a foreign corporation,

Defendants.
_____/

ORDER SETTING TRIAL DATE & DISCOVERY DEADLINES, REFERRING CASE TO MEDIATION & REFERRING DISCOVERY MOTIONS TO UNITED STATES MAGISTRATE JUDGE

THIS CAUSE is before the Court upon receipt of the parties' Joint Scheduling Report.

It is thereupon, **ORDERED AND ADJUDGED** as follows:

Trial Date & Location

1. This case is set for trial on the two-week calendar commencing Monday, January 18, 2010. Counsel for all parties shall appear at a calendar call commencing at 10:00 A.M. on Friday, January 15, 2010. Unless instructed otherwise by subsequent order, the trial and all other proceedings in this case shall be conducted in Courtroom 205B at the U.S. Courthouse, 299 E. Broward Boulevard, Fort Lauderdale, Florida.

Motion Practice

2. Every pretrial motion filed in this case shall be accompanied by a proposed order granting the motion. The order shall contain an up-to-date service list of all attorneys in the case. Proposed orders should be submitted by email to Dimitrouleas@flsd.uscourts.gov in

WordPerfect format. The email subject line and the name of the attachment should include the case number and a short description of the attachment.

Pretrial Schedule

3. Pretrial discovery shall be conducted in accordance with Local Rules 16.1 and 26.1 and the Federal Rules of Civil Procedure. No pretrial conference shall be held in this action, unless the Court determines, *sua sponte*, that a pretrial conference is necessary. In setting the following deadlines, the Court has considered the parties' suggested discovery schedule. Dates and other agreements between the parties not otherwise addressed herein shall be considered part of this Order. To the extent this Order conflicts with the Local Rules, this Order supercedes the Local Rules.

Motions To Amend Pleadings/Add Parties	– July 23, 2009
Discovery Cutoff	– October 23, 2009
Substantive Pretrial Motions	– November 6, 2009
Daubert Motions	– 60 days before calendar call
Mediation Cutoff	– 60 days before start of the trial's two-week calendar
Mandatory Pretrial Stipulation	– December 31, 2009
Motions in Limine	– December 31, 2009
Responses to Motions in Limine	– January 8, 2010
Jury Instructions ***or*** Proposed Findings & Conclusions	– January 8, 2010
Voir Dire Questions	– Calendar call

Exhibit List for Court – First day of Trial (impeachment excepted)

Witness List for Court – First day of Trial (impeachment excepted)

Mandatory Pretrial Stipulation

4. Counsel must meet at least one month prior to the beginning of the trial period to confer on the preparation of a Pretrial Stipulation in accordance with Local Rule 16.1E. A Pretrial Stipulation lacking substance will not be accepted. Any party causing a unilateral pretrial stipulation to be filed will be required to show cause why sanctions should not be imposed. Each attorney and each self-represented party is charged with the duty of complying with this Order. A motion for continuance shall not stay the requirement for the filing of the Pretrial Stipulation and, unless an emergency situation arises, a motion for continuance will not be considered unless it is filed at least twenty (20) days prior to the calendar call. Failure to comply with the time schedule may result in dismissal or other sanctions.

Consent Jurisdiction

5. In light of the benefits offered by a trial before a magistrate judge, e.g., trial on a date certain as opposed to placement on a trial calendar, the parties are urged to consider this option. Therefore, within twenty (20) days of the entry of this Order each attorney is ordered to meet with his/her client and discuss this option. Plaintiff's counsel shall monitor this process. If there is not unanimity in favor of magistrate jurisdiction, plaintiff's counsel need do nothing further. If, however, there is unanimity in favor of magistrate jurisdiction, plaintiff's counsel shall execute the form (available at http://www.flsd.uscourts.gov/default.asp?file=general/forms.asp) entitled "Notice of Right to Consent to Disposition of a Civil Case by a United States Magistrate

Judge," and forward the original, executed form to defendants' counsel. After completion by all defendants or their counsel, the original form should be forwarded to the Clerk of the Court, Fort Lauderdale Division.

Mediation

6. Pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.2, this case is referred to mediation as follows:

a. All parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days before the scheduled trial date.

b. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of this Court, but may select any other mediator. The parties shall agree upon a mediator within **fifteen (15) days** from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk in writing and the Clerk shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

c. A place, date, and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.

d. Pursuant to Local Rule 16.2.E, the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy

limits or the most recent demand, whichever is lower, shall attend.

e. All proceedings of the mediation shall be confidential and privileged.

f. At least ten (10) days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.

g. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

h. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five (45) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three (3) full business days in advance. Failure to do so will result in imposition of a fee for two hours.

i. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F., by the filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

j. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the mediator

declared an impasse.

k. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

Discovery Referred to Magistrate Judge

7. In accordance with 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, the above-captioned cause is referred to United States Magistrate Judge Robin Rosenbaum for appropriate disposition of all pretrial discovery motions, and all motions that relate directly to these motions, such as motions for extension of time, motions for reconsideration, motions for sanctions, and motions for mental or physical examinations. This Order does not refer any motion which requests a continuance or extension of the trial or pretrial scheduling dates.

Exhibits

8. Exhibits must be pre-marked and exchanged prior to execution of the Pretrial Stipulation. Each exhibit should be marked with a sticker identifying the case number, exhibit number, and party offering the exhibit.

Jury Instructions *or* Proposed Findings of Fact and Conclusions of Law

9. In cases tried before a jury, each party shall submit joint, stipulated proposed jury instructions and a joint, stipulated proposed verdict form in hard copy form and on 3.5" diskette **in WordPerfect format**. All requested instructions shall be typed on a separate page, and except for Eleventh Circuit Pattern instructions, must be supported by citations of authority. Any objections to the proposed instructions shall be stated clearly and concisely and also shall be supported by citations of authority.

Alternatively, in cases tried before the Court, each party shall file proposed Findings of Fact & Conclusions of Law in hard copy form and on 3.5" diskette **in WordPerfect format**. Proposed Conclusions of Law must be supported by citations of authority.

Settlement

10. If a case is settled, counsel are directed to inform the Court promptly at (954) 769-5650 and to submit an appropriate stipulation Order for Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1). Such an Order must be filed within ten (10) days of notification of the Court.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of January, 2009.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Magistrate Judge Rosenbaum
S. Tracy Long, Esq.
Gary C. Rosen, Esq.