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Filing date: **07/19/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91190642
Party	Defendant ASV Wines, Inc.
Correspondence Address	ANNE HIARING HOCKING HIARING + SMITH 101 LUCAS VALLEY ROAD, SUITE 300 SAN RAFAEL, CA 94903 UNITED STATES info@hiaringsmith.com
Submission	Other Motions/Papers
Filer's Name	Anne Hiarling Hocking
Filer's e-mail	anne@hiaringsmith.com, info@hiaringsmith.com, meghan@hiaringsmith.com
Signature	/ANNE HIARING HOCKING/
Date	07/19/2010
Attachments	ASV Req for Clarification of Stip on Timing of Depos.pdf ( 17 pages )(1390996 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Constellation Wines U.S., Inc.,	)	Opposition No. 91190642
	)	Serial No.: 77/630,676
	)	
	)	<b>APPLICANT ASV WINES, INC.'S</b>
vs.	)	<b>REQUEST FOR CLARIFICATION</b>
	)	<b>OF STIPULATION ON TIMING</b>
ASV Wines, Inc.,	)	<b>OF TAKING OF DEPOSITIONS</b>
	)	<b>NOTICED BY APPLICANT</b>
	)	
Applicant.	)	
	)	

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**APPLICANT'S ASV's WINES, INC.'S REQUEST FOR CLARIFICATION OF  
STIPULATION ON TIMING OF TAKING DEPOSITIONS NOTICED BY APPLICANT**

On Friday, July 9, the Board, via a telephone conference with the Interlocutory Attorney, heard the motion of Opposer, Constellation Wines U.S. Inc.'s ("Opposer") motion to appear at Applicant ASV Wines Inc.'s ("Applicant's") noticed depositions of Opposer's witnesses by telephone. Applicant opposed and counter-moved for suspension of the discovery period to allow for the orderly taking of the noticed depositions. Opposer opposed the motion to suspend, but offered to stipulate that the noticed depositions could be taken after the close of the discovery period, which ends one week from today, Monday, July 26. Applicant agreed to this stipulation.

The Board denied Applicant's motion to extend the discovery period, which is set to close in one week, or by July 26, 2010.

Opposer thereafter drafted a stipulation for both parties to sign effectuating the agreement on the extension of the dates for the taking of depositions. That form of stipulation is attached as Exhibit A. This form of stipulation contains extraneous matter, including the right of Opposer to

notice its own Rule 30(b)(6) witness of Applicant and other extraneous matter.

Applicant objected to the form of stipulation and redacted the objectionable portions. That form of stipulation is attached as Exhibit B.

Last Friday, July 16 at 4:57 ( Pacific time) counsel for Opposer unequivocally rejected the revised stipulation and refused to enter into any stipulation other than the one it had drafted, which is objectionable.

Opposer also advised, unilaterally, without consulting with counsel for Applicant about dates or times of mutual convenience that noticed witnesses would be available tomorrow, July 20, and Thursday July 22<sup>nd</sup>. Additionally on Friday, Opposer identified for the first time, an additional witness, John Maxwell, as most knowledgeable on certain subjects that Applicant has identified, and made that witness available on July 22<sup>nd</sup>.

Applicant wishes to co-ordinate the taking of these depositions in an orderly manner with opposing counsel, and at the convenience of the witnesses. All of the witnesses appear to be in Northern California, within 50 miles of Applicant's counsel's office.

In addition, Applicant prefers to take these depositions after the receipt of documents requested in its First and Second Requests for Production of Documents and in its Rule30(b)(6) notice of deposition. Response to the first set is delinquent – only 8 documents have been produced. Response to the Second set is due July 30. Documents may be produced by a witness in connection with a deposition after 30 days. Rule 34. Applicant wishes the 30(b)(6) witnesses to appear with documents, if not produced sooner, in compliance with the Rules of Civil Procedure if the depositions take place on or after 30 days after the notice of these depositions.

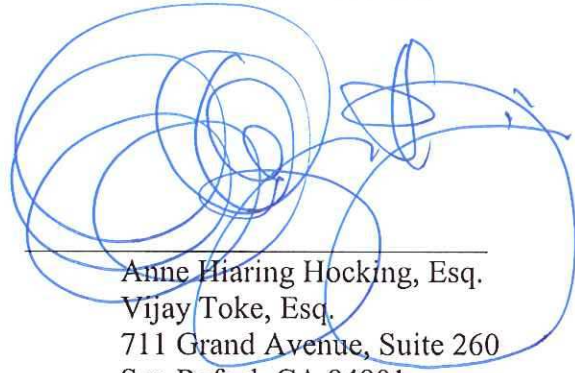
Emails between counsel on the subject of production of documents are attached as Exhibit C.

Applicant requests the Board to issue an order allowing for the taking of depositions after

the close of discovery, or after July 26, 2010, at a mutually convenient date and time for the witnesses, Opposer's counsel and Applicant's counsel and after the production of documents.

Respectfully submitted,

HIARING+SMITH LLC



Dated: July 19, 2010

---

Anne Haring Hocking, Esq.  
Vijay Toke, Esq.  
711 Grand Avenue, Suite 260  
San Rafael, CA 94901  
Tel: (415) 457-2040  
Fax: (415) 457-2822  
Attorneys for Applicant

**CERTIFICATE OF SERVICE BY EMAIL ; FOLLOW UP COPY BY FIRST  
CLASS MAIL**

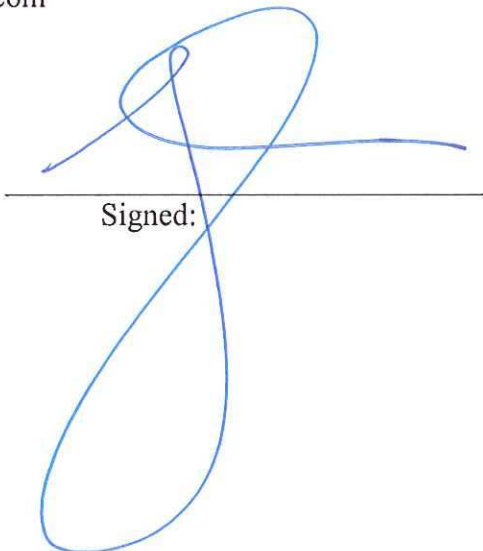
This is to certify that one copy of the foregoing  
**APPLICANT'S ASV's WINES, INC.'S REQUEST FOR CLARIFICATION OF  
STIPULATION ON TIMING OF TAKING DEPOSITIONS NOTICED BY  
APPLICANT**

Was emailed , to Opposer's counsel, with follow up copy deposited this day by first class mail,  
postage prepaid, to;

Stephen J. Baker, Esq.  
Moirra J. Selenka, Esq.  
Baker and Rannells, PA  
575 Route 28, Suite 102  
Raritan, NJ 08869  
Tel: (908) 722-5640  
Fax: (908) 725-7088  
Email: m.selinka@br-tmlaw.com

Attorneys for Opposer

Dated: July 19, 2010

Signed: 

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

---

CONSTELLATION WINES U.S., INC.

Opposition No. 91190642

Opposer,

Mark: PAINTED HORSE & Design

v.

Serial No. 77/630,676

ASV WINES, INC.

Applicant.

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**STIPULATION REGARDING DEPOSITIONS**

**WHEREAS** discovery is set to close in Opposition Number 91190642 on July 26, 2010;

**WHEREAS** on July 2, 2010 Applicant served the following notices of deposition on attorneys for Opposer:

1. Kenneth Volk – July 14, 2010 in San Luis Obispo, California– 3<sup>rd</sup> party predecessor in interest to Opposer
2. Ken Minami – July 16, 2010 in Raritan, New Jersey – general counsel to Opposer
3. Christine Lilienthal - July 20, 2010 in San Rafael, California
4. Shayne Kline - July 21, 2010 in San Luis Obispo, California
5. Jeremy Philips July 21, 2010 in San Luis Obispo, California
6. Peak Wines International, Inc. (no individual designated July 22 in San Rafael, California
7. 30(b)(6) witness of Opposer – undated

**WHEREAS** the demands for the production of documents included in the Exhibits attached to said notices of deposition were improper as untimely as the notices of deposition provided depositions dates less than the thirty (30) days in advance as required by Fed. R. Civ. P. 34; and

**WHEREAS** in a telephone conference with the Interlocutory Attorney assigned to this matter on July 9, 2010, the parties agreed to stipulate that the noticed depositions could be taken

Ex A

on dates that occur after the close of discovery with the proviso that the rules as would have been applied on July 9, 2010 will be applied to the noticed depositions, making the demand for documents untimely;

In consideration of the above, Opposer, Constellation Wines U.S., Inc. ("Opposer") and Applicant, ASV Wines, Inc., ("Applicant") hereby stipulate to the noticing of discovery depositions outside the discovery period, limited to the witnesses already noticed by Applicant and allowing Opposer to notice one 30(b)(6) witness deposition. Opposer and Applicant also stipulate that the Federal Rules regarding depositions are in effect as of the date of execution of this stipulation including the resulting effect of Applicant's failure to provide for at least thirty (30) days time for document production by the noticed witnesses for any depositions noticed after the discovery period ends.

Date: July\_\_, 2010

---

Stephen L. Baker  
Baker & Rannells, P.A.  
575 Route 28, Suite 102  
Raritan, New Jersey 08869  
Attorneys for Opposer

Date: July\_\_, 2010

---

Anne Hiaring Hocking, Esq.  
Hiaring & Smith  
711 Grand Avenue, Suite 260  
San Rafael, CA 94901  
Attorneys for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter Of Application Serial No. 77/630,676  
Mark: PAINTED HORSE & Cave Design  
Publication Date: April 14, 2009

CONSTELLATION WINES U.S., Inc.,

Opposer,

v.

ASV WINES, INC.,

Applicant.

**OPPOSITION NO. 91190642**

**STIPULATION REGARDING  
DEPOSITIONS**

**STIPULATION REGARDING DEPOSITIONS**

**WHEREAS** discovery is set to close in Opposition Number 91190642 on July 26, 2010;

**WHEREAS** on July 1, 2010 Applicant ASV Wines, Inc. ("Applicant") served the following notices of deposition on attorneys for Opposer Constellation Wines U.S., Inc. ("Opposer"):

1. Ken Minami – July 16, 2010 in Raritan, New Jersey – general counsel to Opposer;
2. Christine Lilienthal – July 20, 2010 in San Rafael, California;
3. Shayne Kline – July 21, 2010 in San Luis Obispo, California;
4. Jeremy Philips – July 21, 2010 in San Luis Obispo, California; and
5. 30(b)(6) witness of Opposer – undated;

**WHEREAS** on July 1 and 2, 2010 Applicant served the following notices of deposition subpoenas on attorneys for Opposer:

*Ex B*



1. Kenneth Volk – July 14, 2010 in San Luis Obispo, California - 3<sup>rd</sup> party predecessor in interest to Opposer;
2. Peak Wines International, Inc. (no individual designated) - July 22, 2010 in San Rafael, California; and
3. Christine Lilienthal – July 20, 2010 in San Rafael, California;

**WHEREAS** on July 6, 2010 Applicant served on attorneys for Opposer an Amended Notice of Deposition of Person Most Knowledgeable Pursuant to FRCP 30(b)(6) for July 16, 2010 in Raritan, New Jersey;

**WHEREAS** in a telephone conference with the Interlocutory Attorney assigned to this matter on July 9, 2010, Opposer asked for and Applicant agreed that the the noticed depositions, with the exception of the Volk deposition, could be taken after the close of discovery., with mutual cooperation on the location and timing of the depositions.

In consideration of the above, Opposer and Applicant hereby stipulate to the taking of discovery depositions outside the discovery period, limited to the witnesses already noticed by Applicant.

This stipulation does not relieve Opposer of its obligations to respond to outstanding discovery served by Applicant, nor to comply with the terms of the noticed depositions, including production of documents, provided the depositions are taken on or after thirty(30) days of their notice.

BAKER & RANNELLS, P.A.

HIARING + SMITH, LLP

By:

\_\_\_\_\_  
Stephen L. Baker, Esq  
Moira J Selinka, Esq

By:

\_\_\_\_\_  
Anne Hiaring Hocking, Esq  
Carol L. Smith, Esq.

Linda Kurth, Esq  
575 Route 28, Suite 102  
Raritan, New Jersey 08869

Attorneys for Opposer

Dated: \_\_\_\_\_, 2010

Vijay K. Toke, Esq  
Kristin Newman de la Vega, Esq.  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903

Attorneys for Applicant

Dated: \_\_\_\_\_, 2010

Meghan Auerswald

---

**From:** Moira Selinka [m.selinka@br-tmlaw.com]  
**Sent:** Friday, July 16, 2010 2:26 PM  
**To:** Anne Haring Hocking; Vijay Toke; Kristin de la Vega  
**Cc:** s.baker@br-tmlaw.com; n.friedman@br-tmlaw.com  
**Subject:** FW: Stipulation Per Interlocutory Conference on July 9

Dear Anne:

Further to our email below, following is the last known address of Jeremy Philips: 3916 Lantana Ln., Napa, CA 94558.

Sincerely,  
Moira Selinka

**From:** Moira Selinka [mailto:m.selinka@br-tmlaw.com]  
**Sent:** Friday, July 16, 2010 4:57 PM  
**To:** 'Anne Haring Hocking'  
**Cc:** 'Vijay Toke'; 'Kristin de la Vega'; 's.baker@br-tmlaw.com'; 'n.friedman@br-tmlaw.com'  
**Subject:** RE: Stipulation Per Interlocutory Conference on July 9

Dear Anne:

We reject the form of stipulation you have attached (see Steve Baker's explanation to you of yesterday evening) and we expect that the depositions will be completed before the close of discovery unless you agree to sign the stipulation we first proposed (with the correction to the dates the notices of deps were served as we previously discussed).

Please be advised that our client has informed us that Jeremy Philips is no longer employed with Wild Horse. We understand that he now works for Foley Family Wines in Sonoma, CA. We have asked our client for his last known address. If you intend to subpoena him, please inform us.

Ken Minami will be available on Thursday, July 22<sup>nd</sup> at 1:00 p.m. Pacific time. We will notify you as soon as we have a date and time when our 30(b)(6) witness will be available.

Although July 20<sup>th</sup> complicates her schedule, Christine Lilienthal will make herself available for the deposition at 9:00 a.m. Pacific time.

Also—as you have asked us to do—please address all of your future emails to both Steve Baker and I, not just some to him and some to me. Thank you.

Sincerely,  
Moira Selinka

**From:** Anne Haring Hocking [mailto:Anne@HaringSmith.com]  
**Sent:** Thursday, July 15, 2010 3:05 PM  
**To:** Moira Selinka  
**Cc:** Vijay Toke; Anne Haring Hocking; Kristin de la Vega  
**Subject:** Stipulation Per Interlocutory Conference on July 9

Dear Moira: we attach a form of stipulation without redlines. It is short enough to review we think. The stipulation revises the form of stipulation that your office agreed to draft after the agreement, during the July 9 interlocutory conference, to hold the noticed depositions outside the discovery period, or after July 26, 2010. This request to hold the depositions outside the discovery period was made by Steve Baker during the conference in response to ASV's request

Exc

to extend the discovery period for 30 days. As the Interlocutory Attorney favored this approach, ASV readily agreed. Please sign and date the stipulation and send it to me for signature. I will return it to you for filing with the Board. We look forward to hearing alternate dates and times. As stated, we wish to begin with Ken Minami, who appears to have an office in San Francisco, per the records of the State Bar of California. We propose to hold the deposition in our offices. Please advise the dates and times of Mr. Minami's availability. Thanks very much. Anne

**WE'VE MOVED!**

*Please note our new mailing address:*

101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903

Anne Haring Hocking  
Partner  
tel: 415.457.2040 ext 101  
fax: 415.457.2822  
mobile: 415.342.0406  
[anne@haring-smith.com](mailto:anne@haring-smith.com)

Haring + Smith, LLP  
attorneys at law  
101 Lucas Valley Rd, Suite 300  
San Rafael, CA 94903

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**From:** s.baker@br-tmlaw.com  
**Sent:** Thursday, July 15, 2010 4:12 PM  
**To:** Anne Hiaring Hocking; Moria Selinka  
**Cc:** Vijay Toke; Kristin de la Vega  
**Subject:** Re: Depositions of Constellation Witnesses with Requests for Production of Documents PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You have a bad habit of mischaracterizing took place. I refused to extent discovery. I did say we would allow for deposition after the close of discovery, but only we came to an agreed stipulation, which has not happened. Review Moria's stip and correspondence as the same accurately reflects what took place.

The deps will have to take place before the close of discovery unless you agree to out terms. Its illogical to think we requested that the deps take place after the close given we can attend by phone. It is you that sought the extension, not us

Sent via BlackBerry from T-Mobile

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**From:** "Anne Hiaring Hocking" <Anne@Hiaringsmith.com>  
**Date:** Thu, 15 Jul 2010 15:35:22 -0700  
**To:** <s.baker@br-tmlaw.com>  
**Cc:** Vijay Toke<vijay@Hiaringsmith.com>; Anne Hiaring Hocking<Anne@Hiaringsmith.com>; Kristin de la Vega<kristin@Hiaringsmith.com>  
**Subject:** RE: Depositions of Constellation Witnesses with Requests for Production of Documents PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION

Steve: we do anticipate holding the depositions, barring settlement. Please provide the dates and times of availability of the noticed witnesses at your earliest opportunity. We did stipulate orally in the presence of the interlocutory attorney to the taking of depositions after the close of the discovery period – at your specific request. I am confident that ASV's view of the matter will be upheld by the Interlocutory Attorney and that depositions will properly go forward, as stipulated to, after July 26. Accordingly, dates and times of mutual convenience are needed to proceed.

Ex 1

Thank you very much for your thoughtful suggestions on how agreement may be reached. I will wait to hear back from you on Items 3 and 4 and the open question on process. With best personal regards, Anne

**WE'VE MOVED!**  
*Please note our new mailing address:*  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903

Anne Haring Hocking  
Partner  
tel: 415.457.2040 ext 101  
fax: 415.457.2822  
mobile: 415.342.0406  
[anne@haring-smith.com](mailto:anne@haring-smith.com)

Haring + Smith, LLP  
attorneys at law  
101 Lucas Valley Rd, Suite 300  
San Rafael, CA 94903

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---

**From:** Stephen L. Baker [mailto:[s.baker@br-tmlaw.com](mailto:s.baker@br-tmlaw.com)]  
**Sent:** Thursday, July 15, 2010 2:52 PM  
**To:** Anne Haring Hocking; Moira Selinka  
**Cc:** Anne Haring Hocking; Kristin de la Vega; Vijay Toke  
**Subject:** RE: Depositions of Constellation Witnesses with Requests for Production of Documents

FOR SETTLEMENT PURPOSES ONLY – FRCP Rule 408

Anne:

You are wrong on all counts. We only asked to attend depositions by phone. Our request was granted. You moved for an extension of discovery generally. Your request was denied. Our position is clearly set forth in the stipulation and correspondence sent to you by Moira.

Should the depositions go forward, we are prepared to attend by telephone in accordance with the Board's Order. If you unilaterally decide to cancel the depositions as noticed, that is your decision to make. Absent a stipulation, no deposition will be taken after the close of discovery. However, if your client will agree to the following changes to its label, it may avoid the considerable expense of going forward:

Regards,

Stephen L. Baker



Baker and Rannells, PA

575 Route 28, Suite 102

Raritan, NJ 08869

Telephone: (908) 722-5640

Facsimile: (908) 725-7088

E-mail: [s.baker@br-tmlaw.com](mailto:s.baker@br-tmlaw.com)

[www.tmlawworldwide.com](http://www.tmlawworldwide.com)

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

-----Original Message-----

**From:** Moira Selinka [<mailto:m.selinka@br-tmlaw.com>]

**Sent:** Thursday, July 15, 2010 12:37 PM

**To:** 'Anne Hiarling Hocking'; [s.baker@br-tmlaw.com](mailto:s.baker@br-tmlaw.com)

**Cc:** 'Vijay Toke'; 'Kristin de la Vega'; [anne@hiaringlaw.com](mailto:anne@hiaringlaw.com)

**Subject:** RE: Depositions of Constellation Witnesses with Requests for Production of Documents

Anne:

What do you mean by OFF CALENDAR?

-Moira

**From:** Anne Hiarling Hocking [<mailto:Anne@Hiaringsmith.com>]

**Sent:** Thursday, July 15, 2010 12:23 PM

**To:** Moira Selinka

**Cc:** Vijay Toke; Kristin de la Vega; anne@hiaringlaw.com

**Subject:** RE: Depositions of Constellation Witnesses with Requests for Production of Documents

**Importance:** High

Dear Moira: The Board, in declining to extend the discovery deadline, relied on Constellations request for a stipulation to take the depositions after the close of discovery – which Constellation requested during the oral hearing, and which ASV agreed to. You mis-state the proceedings. Constellation specifically asked for and stipulated to, extension of the time to take the depositions outside the discovery deadline of July 26. Although not the formal moving papers, this issue was raised by Constellation, urged by the interlocutory attorney and stipulated to by ASV. The depositions are accordingly OFF CALENDAR. We await your promised cooperation on dates and times of availability Your courtesy is anticipated and appreciated. The goal is to hold the depositions in an orderly and mutually convenient manner. We wish to begin with Ken Minami.

Steve indicated for the first time during the hearing last Friday that Mr. Minami is in California. State Bar records reflect that his office is in San Francisco. Will you confirm this and his availability and we will set the deposition for our offices in San Rafael, just North of San Francisco. Thank you very much. Please work with Vijay and me on the exact dates and times. With best personal regards, Anne

**WE'VE MOVED!**

*Please note our new mailing address:*

101 Lucas Valley Road, Suite 300

San Rafael, CA 94903

Anne Haring Hocking  
tel: 415.457.2040 ext 101  
fax: 415.457.2822  
[anne@hiaringsmith.com](mailto:anne@hiaringsmith.com)

Haring + Smith, LLP  
attorneys at law  
101 Lucas Valley Rd, Suite  
300  
San Rafael, CA 94903

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---

**From:** Moira Selinka [mailto:m.selinka@br-tmlaw.com]

**Sent:** Thursday, July 15, 2010 8:10 AM

**To:** Anne Haring Hocking; s.baker@br-tmlaw.com

**Cc:** Vijay Toke; Kristin de la Vega

**Subject:** RE: Depositions of Constellation Witnesses with Requests for Production of Documents



Dear Anne:

You are incorrect as to your statements below. Constellation did not move the Board to have depositions taken after July 26<sup>th</sup>. As you are well aware, Constellation moved the Board for permission to participate in the discovery depositions by telephone, which was granted. As far as we are aware, the depositions remain scheduled for prior to the close of discovery. Based on availability, certain people may not be available on currently scheduled days, such as Ken Minami and Christine Lilienthal, but we will clarify this with you as soon as possible.

Sincerely,  
Moira

**From:** Anne Hiaring Hocking [mailto:Anne@Hiaringsmith.com]  
**Sent:** Wednesday, July 14, 2010 8:11 PM  
**To:** Moira Selinka; s.baker@br-tmlaw.com  
**Cc:** Vijay Toke; Anne Hiaring Hocking; Kristin de la Vega  
**Subject:** Depositions of Constellation Witnesses with Requests for Production of Documents  
**Importance:** High

Dear Moira and Steve: As you know, we have served notices of deposition that require the production of documents. The Constellation depositions were served on July 1. Constellation moved the Board asking that the depositions be taken after July 26, which the Board granted. If, as expected, the depositions are taken 30 days after service (on or after July 31), ASV expects that Constellation will comply with the document production requirements of Fed. R. Civ. P. 34(b), which allows a party 30 days in which to respond to a request for production of documents in connection with a deposition, and will produce documents at that time. Thanks very much. Anne

### **WE'VE MOVED!**

*Please note our new mailing address:*  
101 Lucas Valley Road, Suite 300  
San Rafael, CA 94903

Anne Hiaring Hocking  
Partner  
tel: 415.457.2040 ext 101  
fax: 415.457.2822  
mobile: 415.342.0406  
[anne@hiaringsmith.com](mailto:anne@hiaringsmith.com)

Hiaring + Smith, LLP  
attorneys at law  
101 Lucas Valley Rd, Suite 300  
San Rafael, CA 94903

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