

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MILWAUKEE ELECTRIC TOOL CORPORATION,  
METCO BATTERY TECHNOLOGIES, LLC,  
AC (COMMERCIAL OFFSHORE DE MACAU)  
LIMITADA, and TECHTRONIC INDUSTRIES CO.  
LTD.,

Plaintiffs,

v.

Case No. 09-C-948

HITACHI KOKI CO., LTD., and HITACHI KOKI  
USA, LTD.,

Defendants.

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**ORDER**

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On June 29, 2010, this court entered an order suspending the scheduling order in this action to allow the parties to proceed with mediation. On August 24, 2010, the parties filed a status report with the court indicating that the mediation will be continuing until September 22, 2010. In the status report, the parties asked the court to continue the suspension of this court's scheduling order until the parties file another status report with the court following the September 22, 2010 mediation. The parties' request will be granted.

All of that having been said, the court notes that on January 22, 2010, the defendants filed a motion to dismiss in this action. The defendants' motion was fully briefed on March 1, 2010, and is still awaiting resolution. While the court appreciates and encourages the parties' efforts to resolve this case through mediation, the court is also aware of its obligation to resolve parties' motions in a timely manner as well as this court's obligation to properly manage the docket in this action. As a result, the court will deny the defendants' motion to dismiss without prejudice. In the event that the parties do not resolve this action through mediation, the defendants will be permitted to refile their motion to dismiss with the court but no further briefing on the defendants' motion will be permitted. In other

words, the defendants' motion will be decided by the court based upon the briefs already on file with the court.

**NOW THEREFORE IT IS HEREBY ORDERED** that the parties' request to further suspend this court's scheduling order until the parties file another status report with the court be and hereby is **GRANTED**;

**IT IS FURTHER ORDERED** that the defendants' motion to dismiss be and hereby is **DENIED WITHOUT PREJUDICE**.

**SO ORDERED** this 25th day of August 2010 at Milwaukee, Wisconsin.

**BY THE COURT:**

/s/ William E. Callahan, Jr.  
WILLIAM E. CALLAHAN, JR.  
United States Magistrate Judge