

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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JOHN AND BRENDA FRANKS,

Plaintiffs,

vs.

No. 1:09-cv-01189

BALFOUR BEATY CONSTRUCTION,  
INC., BARING INDUSTRIES, INC.,  
BARING INDUSTRIES OF ELECTROLUX  
PROFESSIONAL, INC., ELECTROLUX  
PROFESSIONAL, INC., SYSTEMS  
DESIGN INTERNATIONAL, INC.,  
and LAVATEC WASCHEREI  
MASCHINEN GMBH,

Defendants.

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**ORDER DIRECTING SERVED PARTIES TO ADVISE THE COURT OF POSITION AS  
TO RULING ON PENDING DISPOSITIVE MOTION**

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On July 27, 2009, the Plaintiffs, John and Brenda Franks, filed a complaint against the Defendants in Madison County, Tennessee Circuit Court. Defendant Electrolux Professional, Inc. removed the case to this Court on August 31, 2009. The Plaintiffs have advised the Court that Defendant Lavatec Wascherei Maschinen GMBH (“Lavatec”), a German company that Plaintiffs have named in their complaint but have not yet served, purportedly has filed for bankruptcy protection under German law. (Docket Entry (“D.E.”) No. 23, Response to Show-Cause Order, p. 2.)<sup>1</sup> Plaintiffs claim that they are attempting to obtain permission from the bankruptcy court to proceed against Lavatec. (*Id.* at p. 3.) On September 8, 2009, Defendants

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<sup>1</sup> Lavatec’s subsidiary, Lavatec Inc., also has filed a bankruptcy petition in the District of Connecticut. Lavatec, Inc. is a named and served party in a companion case, *Franks v. Lavatec Inc. et al.*, No. 1:08-cv-1080 (W.D. Tenn.).

Baring Industries, Inc., Baring Industries of Electrolux Professional, Inc., and Electrolux Professional, Inc. filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Plaintiffs have not responded to this motion.

As Lavatec is not presently a party joined to this litigation, all served parties in this matter are directed, within FOURTEEN (14) days of the entry of this Order, to submit their positions, with supporting legal authority, as to whether the Court may proceed to rule on the outstanding dispositive motion.<sup>2</sup>

**IT IS SO ORDERED** this, the 19th day of May, 2010

s/ J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> The Plaintiffs are directed to confirm for the Court within FOURTEEN (14) days from the date of this Order that Lavatec has, in fact, filed for bankruptcy protection under German law.