LEON A. TASHOF TRADING AS NEW YORK JEWELRY COMPANY

Docket 8714. Order, Feb. 6, 1967

Order rejecting respondent's offer of consent settlement and remanding case to hearing examiner.

ORDER WAIVING RULE 2.4(d) AND REJECTING RESPONDENT'S OFFER OF CONSENT SETTLEMENT

The Commission having issued its complaint in this proceeding on September 29, 1966, charging respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent having subsequently filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) by the Commission to afford respondent opportunity to have the Commission

consider his offer of consent settlement based upon his proposed order as attached to said motion, and the hearing examiner having certified to the Commission the said motion, along with answer in opposition thereto by counsel supporting complaint; and

The Commission having, in its discretion, waived Rule 2.4(d) in order to consider, and now having considered, respondent's offer of consent settlement based upon his accompanying proposed order; and

The Commission having now determined that respondent's aforementioned offer of consent settlement is insufficient to protect the public interest; accordingly,

It is ordered, That respondent's offer of consent settlement be, and it hereby is, rejected.

It is further ordered, That this matter be, and it hereby is, remanded for expeditious conclusion of adjudicatory proceedings before the hearing examiner.

MODERN MARKETING SERVICE, INC., ET AL. C. H. ROBINSON COMPANY AND NASH-FINCH COMPANY

Dockets 3783, 4589. Order, Feb. 7, 1967

Order denying respondents' "Request to be Heard" and closing the investigation.

ORDER CLOSING INVESTIGATION

The Commission, on February 1, 1963 [62 F.T.C. 1486], ordered that public investigational hearings be conducted to determine whether C. H. Robinson Company and Nash-Finch Company have complied with the Commission's order to cease and desist in Docket No. 4589 [43 F.T.C. 297]. On June 2, 1965 [67 F.T.C. 1382], the Commission broadened the investigation and ordered that it include a determination of whether C. H. Robinson Company and Nash-Finch Company have complied with the Commission's order in Docket No. 3783 [37 F.T.C. 386]. The public investigational hearings were begun on July 21, 1965, and were concluded on April 20, 1966. Commission counsel have filed a pleading entitled "Proposed Report and Certification to the Commission of Record of Investigational Hearing." Counsel for C. H. Robinson Company and Nash-Finch Company have filed pleadings entitled "Respondent's Proposed Recommendations" and "Respondent's Reply to Commission Counsel's Proposed Report and Certification to the Commission of Record of Investigational Hearing." As instructed,

the hearing examiner made no findings of fact or conclusions of law and, on August 24, 1966, certified the transcript of the hearings to the Commission. Counsel for C. H. Robinson and Nash-Finch have filed a document entitled "Request to be Heard," which presumably is a request for oral argument before the Commission.

The Commission having concluded that the pleadings submitted by the parties adequately state their positions and, on the basis of a consideration of the transcript of the hearings as certified by the examiner and the pleadings submitted by the parties, having concluded that the investigation should be closed:

It is ordered, That the "Request to be Heard," as filed by counsel for C. H. Robinson Company and Nash-Finch Company, be, and it hereby is, denied.

It is further ordered, That the investigation be, and it hereby is, closed.

Commissioner MacIntyre not participating.

THE SEEBURG CORPORATION

Docket 8682. Order, Feb. 8, 1967

Order denying respondent's renewed motion for the production of certain Commission documents.

ORDER RULING ON HEARING EXAMINER'S CERTIFICATION OF RESPONDENT'S RENEWED MOTION FOR PRODUCTION

This matter is before the Commission on the examiner's certification of December 19, 1966, with the recommendation that it be denied, of respondent's renewed motion for production, filed December 15, 1966. Subsequently, on December 22, 1966, respondent Seeburg filed its memorandum concerning the examiner's certification, to which complaint counsel filed their answer on December 30. On review of the examiner's certification, respondent's memorandum and complaint counsel's answer, the Commission has determined that the renewed motion for production should be denied.

The Commission is of the view that, essentially, the same issues as those presented by the current certification were before it on the examiner's certification of Seeburg's original motion for production denied by the Commission's opinion and order of October 25, 1966 [70 F.T.C. 1809]. Seeburg's original motion for production, which requested documents from the Commission's confidential files, was treated as an application for the release of confidential information under § 1.134 of the Commission's Rules.

The same procedure is applicable in the case of the renewed motion for production under consideration at this time. The Commission agrees with the examiner that at this stage of the proceeding respondent's need for the documents in question has not been established and thus respondent has not shown good cause as required by § 1.134. In this connection, the Commission notes that respondent has apparently failed to take advantage of the procedures available under §§ 3.10 and 3.17 of the Rules of Practice to obtain the data sought directly from the third parties involved, in spite of the views expressed in the Commission's order and opinion of October 25, 1966, ruling on respondent's first motion for production. No showing has been made that the procedures made expressly available to respondent to secure the data which it desires are either ineffective or in any way inadequate. Further, the examiner still stands ready to make available to respondent the procedures under §§ 3.10 and 3.17 of the Rules, and he has expressly stated respondent is not foreclosed from making the showing of specific need prerequisite to production under § 1.134 of the Rules. In view of the foregoing, the Commission is confident that Seeburg's rights are fully protected and that it should adopt the examiner's recommendation that the renewed motion for production be denied. Accordingly,

It is ordered, That respondent's renewed motion for production, certified by the examiner, be, and it hereby is, denied.

Commissioner Elman dissenting.

THE CROWN CORK & SEAL COMPANY, INC.

Docket 8687. Order and Opinions, Feb. 8, 1967

Order remanding case to hearing examiner with direction that certain material which cannot be obtained from third parties be made available to respondent.

OPINION OF THE COMMISSION

BY REILLY, *Commissioner:*

This matter is before the Commission on certification, filed October 14, 1966, by the hearing examiner pursuant to Section 3.6 (a) of the Commission's Rules of Practice, of respondent's motion of August 15, 1966, seeking production of documents pursuant to Section 3.11 of the Commission's Rules.

The Commission on May 31, 1966, issued its complaint herein charging respondent The Crown Cork & Seal Company, Inc., with

violation of Section 7 of the amended Clayton Act by reason of its acquisition on November 13, 1963, of Mundet Cork Corporation. At the time of the alleged acquisition, both firms were engaged in the manufacture of metal crowns commonly used as closures on beer and soft drink bottles and cans.

Pursuant to the Commission's Rules and practice relating to pretrial disclosure of documents, respondent has been provided by complaint counsel with all documentary material and a list of witnesses comprising the case-in-chief. Respondent's motion, however, calls for documents, assertedly necessary to the preparation of its defense, which, if they exist, are in the confidential files of the Commission and can thus only be released as provided in Section 1.134 of the Commission's Rules.

The respondent's motion sought 24 categories of documents, 22 of which related to share of the market and line of commerce and 2 of which related to a proposed "failing company" defense.

The data required under the 22 categories is now being sought from third parties pursuant to subpoenas issued by the hearing examiner at the instance of respondent. Thus, as to these, the hearing examiner takes the position that the respondent's motion is moot, and respondent does not press its motion in this regard.

As to the "failing company" data, however, respondent has filed a memorandum brief supporting the examiner's certification recommending disclosure. Complaint counsel has filed a memorandum in opposition.

We can rule at the outset that this matter is properly before us. Respondent's motion filed under Section 3.11 of the Commission's Rules seeks disclosure of "* * * all documents submitted to Complaint Counsel or to the Commission * * *" falling within the specified categories. Such documents, if they exist, fall within the provisions of Section 1.133 of the Commission's Rules and request made during the course of hearings for their release is treated as an application under Section 1.134 for the release of confidential information which the hearing examiner should certify to the Commission with his recommendation. *The Sperry & Hutchinson Company,* Docket 8671, Interlocutory Opinion, April 15, 1966 [69 F.T.C. 1112]; *Viviano Macaroni Company,* Docket 8666, Interlocutory Opinion, March 9, 1966 [69 F.T.C. 1104]; *L. G. Balfour Company,* Docket 8435, Interlocutory Opinion, October 5, 1962 [61 F.T.C. 1491]. The hearing examiner has duly certified the motion with recommendation that the two categories of documents relating to the "failing company" defense be produced.

Under these two categories respondent seeks the following:

9. With respect to the allegation of paragraph 14 of the Complaint that prior to Respondent's acquisition of Mundet, Mundet was "a substantial and effective competitor in the market," all documents submitted to Complaint Counsel, or to the Commission, whether in response to subpoena or not, which contain information concerning or related to:

(a) the effectiveness, competence, loyalty or ability of Mundet's Board of Directors and/or officers prior to November 13, 1963;

(b) the quality, attractiveness, or obsolescence of the "metal crowns" produced by Mundet prior to November 13, 1963;

(c) the condition, state of repair, and state of obsolescence of Mundet's equipment and machinery for the production of "metal crowns" prior to November 13, 1963;

(d) the profitability of Mundet's operations (i) generally and (ii) in its production and sale of "metal crowns," prior to November 13, 1963;

(e) the financial condition of Mundet prior to November 13, 1963;

(f) Mundet's attempts to obtain credit from banks and other financial institutions and its relationships with such institutions prior to November 13, 1963;

(g) the prospects for the future of Mundet and for its continued operation in the lines of endeavor in which it was engaged prior to November 13, 1963;

(h) the possible liquidation of the assets of Mundet;

(i) the sale of the stock or assets of Mundet to [13 named individuals and corporations and] any other prospective buyer.

23. All documents containing information related to any of the allegations of the Complaint, including the allegation of paragraph 8 that Mundet was an "effective" competitor prior to November 13, 1963, submitted to Complaint Counsel, or to the Commission, whether in response to subpoena or not, by any of the following [55 listed] persons, firms, and corporations.

It is respondent's contention that although the complaint alleges that Mundet was an effective competitor, in fact the company was a "failing company" due *inter alia* to inept management, obsolescence of machinery, dissension among the board of directors, disloyalty on the part of officers, unsound financial condition, etc., and that, accordingly, data in the hands of the Commission should be made available since a showing of failing condition is a defense to an alleged violation of Section 7 under the rule in *International Shoe Company* v. *F.T.C.*, 280 U.S. 291, 302.

The examiner has recommended that the respondent's motion be granted because of his conviction that "* * * there might possibly be in existence and in the files of the Commission documents relating to the financial position of Mundet which may not be available to [respondent] by subpoena."

In our opinion the examiner's recommendation must be followed with some modification.

In matters of this sort, the examiner's recommendation, because he is closer to the issues involved in the proceeding, is entitled to considerable weight. *L. G. Balfour Company, supra.* Nevertheless, the Commission cannot substitute his judgment for its own par-

ticularly where, in the opinion of the Commission, he is not wholly correct. The responsibility for release of confidential material is confided under the Rules to the Commission itself.

Although complaint counsel has suggested that he can identify some documents of the categories described because he was going to use them to surprise respondent's witnesses, a tactic, parenthetically, we find objectionable, the identification of the material provided in respondent's motion is characterized by a notable lack of specificity, suggesting that the request is merely a dragnet operation conducted in the hope that something would be produced having residual evidentiary value.

Section 1.134 requires a showing of good cause sufficient to outweigh the public interest in the integrity of the Commission's investigative procedures preserving the confidentiality of documents entrusted to the Commission by their owners. Good cause in such a case has two aspects: (1) a requirement that the respondent demonstrate a need for the documents, *L. G. Balfour, supra, Viviano Macaroni, supra,* and (2) a requirement that the party requesting disclosure specify what it is that he needs. *Sperry & Hutchinson, supra.*

A mere averment of need is not enough nor is it sufficient that respondent is demonstrably in a position where he must of necessity defend himself against charges contained in the complaint. This latter is true of every respondent and hardly justifies a demand for virtually unrestricted access to the Commission's confidential files.

It seems anomalous that in the present instance respondent is saying in effect "I bought a company which may have been in a failing condition when I bought it. I did not know then nor do I know now whether in fact it was failing. At least I do not have the necessary proof but I suspect it was failing and I propose to prove it with the help of whatever documents the Commission may have in its files on the subject."

This plea has little to recommend it except candor but we think its candor saves it. If respondent's suspicions are correct and the company was in fact failing, it is important that that fact be brought to light in the trial of this matter because it bears vitally upon the central issue of Section 7 violation, *International Shoe Company* v. *F.T.C., supra.*

Breaching the confidential character of the Commission's files would not be warranted, as we have said, upon a mere averment of need but here the character of the information sought and statements made in the course of the prehearing conference suggest the existence of circumstances in the operation of Mundet

bearing upon the viability of the firm. More importantly, the fact that respondent is prepared to make its request, considering the anomaly of its seeking data from the Commission to prove a fact which it should itself have apprehended in advance of purchase, argues mutely in favor of the existence of real need.

Conceding a need therefore, the question arises can the Commission satisfy the need; and this in turn raises the question precisely what documents in the Commission's files are being sought. It is not sufficient to aver that respondents need documents generally and would like to rummage through the Commission's files in hope of finding them. This would clearly warrant summary rejection of respondent's motion on authority of *L. G. Balfour, supra.*

Respondent does not specify with any precision what documents it wants because indeed it does not know the identity of the documents. It is acting on the probability that the Commission having conducted an extensive investigation has in its files material which may be of assistance. Its assumption in this regard is buttressed by the statement of complaint counsel that he has some material which he planned on using to "keep them honest."

As to Paragraph 9 of respondent's motion, the material is described in broad category but not otherwise identified. This hardly satisfies the requirement that the material be identified with some particularity both to assist in extracting it from the Commission's records and to facilitate a determination of need.

As to Paragraph 23 no attempt to describe the material is made except a general reference to the complaint, however, some clue is provided in a list of firms and individuals from whom the Commission presumptively has secured data in the course of its investigation.

Thus, while both Paragraphs 9 and 23 are each inadequate standing alone, it is possible that combining the two will diminish the dragnet character of each standing alone and provide adequate basis for identification of the material, that is, material falling within the categories set out in Paragraph 9 received from the firms and individuals specified in Paragraph 23.

We are of the opinion however that crucial to a showing of good cause is a demonstration that the material is not available directly to respondent from the same third parties from whom the Commission received it, through compulsory process available to respondent. We are not satisfied that this condition has been met. Respondent avers merely that the documents cannot practicably be obtained from third parties because many of them are unfriendly

to respondent owing to alleged past disputes among Mundet management and directors.

We are not aware that friendliness and a spirit of cooperation is a necessary precondition to the effectiveness of compulsory process. We feel that respondent must make a more persuasive demonstration on this point, particularly with regard to those firms and individuals listed in Paragraph 23 who have not been involved in Mundet management or upon its board.

Finally, we note that nothing in this opinion or the accompanying order should be taken as limiting in any way respondent's right of access under The Jencks Act, 18 U.S.C. Section 3800 (1958) to prior statements of persons called by complaint counsel as witnesses.

An appropriate order will issue directing the hearing examiner to order production of such documents described in Paragraph 9 received by the Commission from the sources listed in Paragraph 23, which respondent is able to demonstrate, cannot be secured from third parties.

Commissioner Elman dissented, and has filed a dissenting statement.

DISSENTING OPINION

BY ELMAN, *Commissioner:*

I see no need for a remand to the hearing examiner. It seems clear to me that respondent has shown "good cause," under Section 3.11 of the Rules of Practice, for production of the documents described in Paragraphs 9 and 23 of its motion. The requested documents are "nonprivileged"; they are plainly material to the "failing company" issue; they are identified with sufficient specificity; they are readily available and in the possession of complaint counsel, who intend to use them in cross-examining respondent's witnesses. What more is required to show "good cause" under Section 3.11?

The Commission insists that respondent must also demonstrate that the requested "material is not available directly to respondent from the same third parties from whom the Commission received it, through compulsory process available to respondent." (Opinion, p. 1638.) This seems to me to be inconsistent with the basic purpose of prehearing discovery. When the Commission amended its Rules in 1961 by permitting discovery in adjudicative proceedings, it made a sharp break with the past:

> Prior to amendment of the Rules, hearings in adjudicative proceedings were held at uncertain intervals and in different locales. Under this type of practice

there was little need to afford respondents the right to pretrial discovery for they were customarily afforded an ample interval to prepare their defenses subsequent to the close of the case in chief. But the revised rules now require that, insofar as it is possible and practical, the hearings must be held in one place and continue without interval until all evidence in support of and in opposition to the complaint has been received. Thus respondents must now be prepared to offer their evidence immediately after the close of the case in chief and, accordingly, must be afforded all of the rights necessary for them to prepare before trial. (*L. G. Balfour Company,* Docket 8435, May, 10, 1963, pp. 2–3 [62 F.T.C. 1541, 1543].)

Section 3.11 of the Commission's present Rules of Practice was taken from, and is in terms substantially identical with, Rule 34 of the Federal Rules of Civil Procedure. The essential objective of pretrial discovery, in agency as well as court proceedings, is—by providing for advance disclosure and exchange of relevant facts between the parties—to expedite trials, avoid surprise and unfairness, and thus promote efficient and just adjudication. As the Supreme Court stated in *United States* v. *Procter & Gamble Co.,* 356 U.S. 677, 682 (1958), "Modern instruments of discovery serve a useful purpose, as we noted in *Hickman* v. *Taylor,* 329 U.S. 495. They together with pretrial procedures make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." In *Hickman* v. *Taylor,* 329 U.S. 495, 507, the Court stated that "the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise."

The government as a litigant is subject to the rules of discovery like any other party. *United States* v. *Procter & Gamble Co.,* 356 U.S. 677, 681. To be sure, documents in the possession of a government agency may be privileged from disclosure for reasons not ordinarily applicable to documents held by a private party. For example, disclosure of government documents may be barred in order to protect national defense or the so-called informer's privilege. *United States* v. *Reynolds,* 345 U.S. 1; *Roviaro* v. *United States,* 353 U.S. 53. But documents which are "confidential" solely because they are in the possession of a government agency are not thereby privileged from disclosure in litigation. In regard to

documents relating to the acts or transactions involved in the litigation and which might be material and helpful to the defense, "mutual knowledge" by both parties is, as the Supreme Court has held, "essential to proper litigation." Where the government is the moving party, "the prosecution necessarily ends any confidential character the documents may possess; it must be conducted in the open, and will lay bare their subject matter. The government must choose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully." *United States* v. *Andolschek*, 142 F. 2d 503, 506 (2d Cir. 1944).

It is important to distinguish between documents which are privileged from disclosure and those which are "confidential." Under the Commission's Rules (Sec. 1.133), everything in our files is "confidential." But not every letter or other document in the files is "privileged" in the sense of Rule 34 of the Federal Rules of Civil Procedure and Section 3.11 of the Commission's Rules. The discovery rules refer to privilege "as that term is understood in the law of evidence." *United States* v. *Reynolds*, 345 U.S. 1, 6.

> There is a vast difference between confidential and privileged. Almost any communication, even an ordinary letter, may be confidential. Such a document may not relate to any matter of high public concern. But privileged means that the contents are of such character that the law as a matter of public policy protects them against disclosure. * * * So, too, with Government documents. Some are privileged, such, for example, as the President's advices in the conduct of foreign affairs and some papers relating to the internal security of the nation. *Communist Party of U.S.* v. *Subversive Activities Control Board*, 254 F. 2d 314, 321 (D.C. Cir. 1958).

The documents involved here are "confidential," not privileged. There is no assertion of any privilege "as that term is understood in the law of evidence." There is no suggestion that disclosure of these documents would impair the national security, violate any informer's privilege, or reveal trade secrets. Nor is there any claim that these documents were obtained under a pledge that they would be kept secret. If complaint counsel wish to introduce the documents into evidence, no prior authorization by the Commission would be required. (Section 1.133 of the Commission's Rules of Practice.) And, as already indicated, complaint counsel have expressed their intention to make full use of the documents at the hearing "to contradict assertions of fact by defense witnesses." Complaint counsel argue for nondisclosure of these documents to respondent on the ground that "it is necessary that respondent's witnesses testify with a full awareness that any deviation from the truth will bring to bear stern tests of their credibility. The documents which we seek to withhold from respondent's pretrial ex-

amination contain the essential elements of this test." (Brief in Opposition, p. 10.) In short, complaint counsel frankly seek a return to the pre-1961 Commission procedures "conducted under the 'sporting theory' of litigation where the goal is to surprise and confound your opponent." *L. G. Balfour Company, supra.*

In the circumstances of this case, it seems clear that the documents involved are not only not "privileged" from disclosure; they have lost whatever "confidential" character they possessed because they are in the Commission's files. Respondent is in effect saying to complaint counsel: "You've got these documents; you know exactly what they are; you intend to use them against my witnesses; the documents aren't 'confidential' any longer; and they are plainly material to the 'failing company' defense. Could we please see these documents now?" I would order complaint counsel to turn them over to respondent now, without any further ado.

Under Section 3.11 of our Rules, both parties are on a parity with respect to discovery. Where complaint counsel request discovery of documents in a respondent's possession, they are not required to show that the "material is not available directly to [the Commission] from the same third parties from whom [the respondent] received it, through compulsory process available to [the Commission]." Why should such a requirement be imposed on a respondent? It will take months for respondent to go through the laborious process of subpoenaing third parties in an effort to secure copies of the documents in the possession of complaint counsel. And when the process is completed, how will respondent's counsel know that they have gotten everything that complaint counsel now have? Will there indeed be that "mutual knowledge of all the relevant facts gathered by both parties" which the Supreme Court in *Hickman* v. *Taylor* said "is essential to proper litigation"? And even if the answer could be yes, what discernible public interest is served by stretching out the prehearing process for this purpose? The advantage of discovery is that it avoids all the burdens and delays involved in obtaining from third persons documents which are readily available and possessed by the other party. It seems to me that the Commission fails to respect the spirit and letter of its own Rules of Practice by denying discovery here.

An unfortunate aspect of the Commission's action is that it introduces a double standard into the enforcement of the merger law. The Federal Trade Commission and the Department of Justice have concurrent authority to bring proceedings to enforce Section 7 of the Clayton Act. If this case had been brought by the Department of Justice in a federal district court, and if the documents

sought here were in the possession of the Antitrust Division or the United States Attorney, discovery would clearly be granted. Surely the rights of a party charged with violating the merger law should not be substantially diminished because the proceeding is brought by the Federal Trade Commission rather than the Department of Justice. Apart from other considerations favoring broad and liberal discovery, even-handed administration of justice should preclude the restrictive interpretation of Section 3.11 adopted in this case. Nowhere is the administrative process more vulnerable than in regard to the fairness of agency adjudication. Prehearing discovery is, as the Administrative Conference recognized, essential to fair as well as efficient adjudication. "Where executive, legislative, and judicial powers are blended in a single agency's activity, the resulting need for adherence to scrupulous standards of fairness is served by providing reasonable opportunity for discovery. Public acceptance of agency decisions is not unrelated to the giving of satisfaction in these regards." Selected Reports of the Administrative Conference of the United States, S. Doc. No. 24, 88th Cong., 1st Sess. (1963), p. 128.

ORDER RULING ON EXAMINER'S CERTIFICATION OF RESPONDENT'S MOTION FOR PRODUCTION OF DOCUMENTS AND REMANDING TO HEARING EXAMINER

The hearing examiner herein pursuant to Section 3.6(a) of the Commission's Rules of Practice having on October 14, 1966, certified to the Commission respondent's motion for production of documents filed August 15, 1966, and

The Commission for the reasons set forth in the accompanying Opinion being of the opinion that respondent has shown good cause under § 1.134 of the Commission's Rules for production of the documents specified in Paragraph 9 of its motion received from the parties listed in Paragraph 23 except that respondent has not made adequate showing why the material cannot be secured directly from the persons and firms listed in Paragraph 23 of its motion, and

The Commission being further of the opinion that a determination in this regard should be made by the hearing examiner,

It is ordered, That this matter be remanded to the hearing examiner with the direction that as much of the material described in Paragraph 9 of respondent's motion received from the parties listed in Paragraph 23 of said motion be made available to respondent as respondent is able to show cannot be secured directly from the parties listed in Paragraph 23.

Commissioner Elman dissented, and has filed a dissenting opinion.

L. G. BALFOUR COMPANY ET AL.