MAREMONT CORPORATION

Docket 8763. Order, Dec. 20, 1968

Order denying respondent's request to appeal from hearing examiner's order relative to the release of certain third-party documents.

ORDER DENYING REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission upon respondent's request for leave to file an interlocutory appeal from the hearing examiner's order filed November 21, 1968, granting in part and denying in part respondent's motion for the release of confidential documents.

On October 21, 1968, after a prehearing conference, the hearing examiner filed an order which prohibited the release of certain third-party documents in the possession of complaint counsel to persons other than independent counsel for respondents. The examiner provided for the granting of relief from this ruling upon a proper showing by respondent's counsel. On October 23, 1968, respondent filed a motion requesting permission to release the third-party documents to four of its named employees. The hearing examiner's order of November 21, 1968, amended his order of October 21, 1968, in certain respects, but denied that part of respondent's motion which requested permission to release third-party data disclosing sales figures for certain automotive parts to respondent's four employees. It is this order which is the subject of the present motion.

At the outset, it is important to note that the examiner's orders do not purport to deal with the question of whether the third-party documents should be accorded *in camera* treatment. In his October 21, 1968, order, the examiner expressly denied third-party motions insofar as they sought to confer *in camera* status on their documents when offered in evidence.

The third-party data in issue consists of confidential business information which the third parties would not customarily make public. In this preliminary stage, the examiner was faced with the question whether the need for respondent's four employees to know this sensitive information outweighed the third parties' need for protection. In making his determination, the examiner made it clear on the record that this was not a final ruling but was an interim decision. Specifically, he suggested to respondent's counsel that he consult with complaint counsel or the third parties to resolve any difficulties in the comprehension or interpretation of the data. If difficulties could not be resolved, the examiner's

order of October 21, 1968, provides for further relief upon such showing by respondent. As pointed out in the examiner's order of November 21, 1968, respondent has failed to show that any effort has been made to establish the need for access to the data by respondent's four employees.

The fact that the examiner's rulings were not intended to foreclose this matter is further illustrated by his November 21, 1968, ruling in which he expressly provided for the disclosure to the four named employees of respondent, of any data, information or documents supplied by complaint counsel which reflect the methodology used in compiling statistics as to sales or in making adjustments in reported sales figures by the third parties.

In our interlocutory opinion in the *Koppers* case,[1] we reiterated our position that the hearing examiner has authority to create protective provisions based on the facts and circumstances of each case. The fact that the examiner has denied the third parties' requests for *in camera* treatment and has, in fact, modified his original position on the third-party data, establishes that in this posture of the case, the examiner's rulings were on an interim basis in an attempt to reach an equitable decision, and that such rulings are subject to further modification.

Under these circumstances, we find that the examiner, who is in close proximity to this case, has not abused his decretion.[2] It is our conclusion that a determination of the correctness of the examiner's rulings at the present stage, particularly because they are of such a tentative nature, is not essential to serve the interests of justice.[3] Accordingly,

It is ordered, That respondent's request for permission to file an interlocutory appeal, filed December 3, 1968, be, and it hereby is, denied.

By the Commission, with Commissioner MacIntyre concurring in the result.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, Dec. 24, 1968

Order extending time for third party to comply with subpoena and denying motion to quash.

OPINION OF THE COMMISSION