to quash, dated December 3, 1968, and for the reasons stated in the accompanying opinion,

It is ordered, That the appeal of the United States Pipe and Foundry Company from the hearing examiner's ruling be, and it hereby is, denied.

Commissioner MacIntyre concurring in the result.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, January 30, 1969

Order instructing hearing examiner to extend three weeks the time set for trial to commence.

OPINION OF THE COMMISSION

This matter is again before the Commission upon respondent's Application for Leave to File Interlocutory Appeal from Order of Hearing Examiner, filed January 2, 1969. The application was filed pursuant to Rule 3.23(a) of the Commission's Rules of Practice and seeks permission to appeal from the examiner's order, dated December 23, 1968, granting respondent's motion to cancel the trial date to the extent of rescheduling the same to commence January 28, 1969. Although not required to do so by the Rules, counsel supporting the complaint filed their opposition to this Application on January 14, 1969.

In its motion, respondent urges two principal grounds for seeking an appeal. First, respondent alleges that it has not yet had the benefit of the discovery to which it is entitled prior to trial in that United States Pipe and Foundry Company has not yet responded to the subpoena as modified by the examiner on December 3, 1968 and because officials of U.S. Pipe allegedly failed to respond to 80 percent of the questions asked of them at the depositions held on December 11, 1968. Second, respondent contends that an extension should be granted because its counsel is already obligated to try another case before a Commission hearing examiner on January 27, 1969. Respondent then urges that the Commission remand this matter to a new and different

examiner because of the present examiner's alleged refusal to follow the mandate of prior Commission orders with regard to respondent's rights.

In the order in question, the examiner granted the respondent's motion to cancel the trial date of January 13, 1969, to the extent of rescheduling the trial to commence on January 28, 1969, without prejudice to respondent's right to file a new motion to cancel the January 28th trial date in the event of actual commencement of formal hearings in the other case. At that time, the examiner was aware of U.S. Pipe's failure to respond to the subpoena and of respondent's allegations with respect to the depositions. Still it was his view that while some postponement was required, it did not follow that an indefinite postponement should be made. On the other hand, if respondent's counsel did proceed to trial in the other case on January 27th and if there had by that time been no decision by the Commission on the then pending matters before it and no order of enforcement of the subpoena, then further postponement would be necessary. Failing that, the examiner felt that the case should proceed to trial as ordered and that respondent was protected by the reservation that it may move for a delay for purposes of further discovery at the conclusion of complaint counsel's case.

At the time of this action by the examiner, he could not have been aware of the fact that on December 24, 1968 the Commission extended the return date on the subpoena until five business days following receipt by U.S. Pipe of the Commission's order and opinion on the appeal from the examiner's order modifying the subpoena and otherwise denying the motion to quash. He further, obviously, was not aware of the fact that on January 15, 1969, the Commission would issue its order denying the appeal, thus, under its previous order, leaving U.S. Pipe with five business days following receipt of the order within which to respond.

Upon its review of the entire record to date, including the contentions of all the parties, the Commission is of the opinion that no adequate grounds exist under the Rules for granting respondent's application for leave to file an appeal on the points now at issue. The Commission can see little to be gained by the time which would be consumed in the filing of extensive briefs and further consideration of matters which can be disposed of just as well at this time. Such a procedure can only result in further involving the Commission in the details of procedure which are better left to the discretion of the examiner, who, as

the Commission observed in its January 15th opinion, is carefully observing the instructions contained in prior Commission opinions and is attempting to conduct the proceedings in accordance therewith. Hence, the Commission does not regard as deserving of further consideration respondent's contention that this case should be remanded to a new and different examiner for the reasons advanced by respondent.

On the other hand, the Commission wishes to reiterate, for the benefit of the parties and the examiner, its firm policy against piecemeal hearings or hearings held at intervals. In almost all cases, the interests of fairness and speed in adjudication will be served by refining the issues and permitting full discovery in advance of hearings and then holding continuous hearings. Deviations from these general rules should be permitted only in rare and unusual circumstances and the need for such deviations should be fully set out in the record. At the same time, the examiner has available ample authority to see that the Commission's discovery procedures are not abused and to prevent their utilization solely for purposes of delay.

While denying respondent's application for leave to appeal, the Commission is also of the opinion that events outside the examiner's control, which are obvious to the Commission upon its review of the record, dictate the need for some extension of time before the hearings actually commence. Thus the Commission's opinion denying U.S. Pipe's motion to quash the subpoenas was not rendered until January 15, 1969, and actual service upon U.S. Pipe was not effected until a later date, following which the Company had five additional business days within which to respond. This fact plus the approaching trial date in the other case in question have resulted in a telescoping of events into a period too close to the trial date of January 28, 1969 set by the examiner. For this reason, the Commission is returning this matter to the examiner with instructions to grant an extension of three weeks from the date now set for the trial to commence, or such further time as he might within his discretion deem necessary in light of his own evaluation of all the factors involved.

Commissioner MacIntyre concurred in the result.

Order Denying Application for Leave to File Interlocutory Appeal

Upon consideration of respondent's Application For Leave To File Interlocutory Appeal, filed January 2, 1969, and for the reasons stated in the accompanying opinion,