

hearing examiner commence on such date. To the extent that any issues relating to the adequacy of compliance with subpoenas may be outstanding, the hearing examiner will make the necessary disposition with respect thereto at the hearings beginning January 12, 1970.

UNITED FRUIT COMPANY, ET AL.

Docket 8795. Order, Feb. 9, 1970

Order denying respondents' motions to dismiss, for permission to file interlocutory appeal, and to instruct the Secretary that complaint counsel's letter was not properly filed.

ORDER DENYING MOTION TO DISMISS

This matter is before the Commission upon the hearing examiner's certification, dated January 7, 1970, of respondents' motion to dismiss the complaint, and supplementary papers filed thereafter.¹ The examiner recommends that the relief requested be denied.

At the crux of the matter is document CXID 509, which complaint counsel intend to introduce into evidence during the course of the trial. Document CXID 509 is described by United as "an application for a complaint filed on March 23, 1967, with this Commission by United's Boston attorneys in a wholly unrelated matter." United contends that complaint counsel wrongfully divulged the document, to United's irreparable injury, warranting a dismissal of the complaint. We find United's claim that complaint counsel wrongfully divulged the document totally without merit.² As to the contention that complaint counsel's divulgence of the document is to United's irreparable injury, the Commission, on the basis of the record before it, is unable to evaluate that claim. Nor would it be appropriate for the Commission, at this juncture, to attempt to make that evaluation. The examiner is charged with the primary responsibility to conduct adjudicative proceedings and absent a showing of unusual circum-

¹ On January 8, 1970, the examiner supplemented his certification by certifying complaint counsel's request for an extension of time during which to file a brief in support of complaint counsel's answer in opposition to the motion to dismiss. By Commission order of January 9, 1970, that motion was partially granted. On January 14, 1970, the examiner filed a second supplement to the certification of the motion to dismiss. On January 15, 1970, the examiner, in a third supplement to the certification of the motion to dismiss, certified co-respondent Harbor Banana Distributors, Inc.'s objections to the examiner's order dealing with confidentiality of documents and to the certification of the motion to dismiss. On January 16, 1970, complaint counsel filed their brief in support of their opposition to respondent United's motion to dismiss the complaint. On January 19, 1970, complaint counsel filed their answer to United's request for certification relative to relief with respect to a filing with the Secretary.

² We note, however, that co-respondent Harbor's submission of January 14, 1970, on its face suggests the possibility of violation of an examiner's order, a matter the examiner may wish to consider pursuant to Section 3.42(d) of the Commission's Rules of Practice.