

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

Docket 9072. Interlocutory Order, Dec. 27, 1977

Order denying respondents' motion to dismiss complaint. Only in extraordinary circumstances, not shown in the instant case, will the Commission review a determination of public interest after a complaint has issued.

ORDER DENYING MOTION TO DISMISS

Respondents Chrysler Corporation and Chrysler Credit Corporation have moved to dismiss the complaint herein on the ground that the theory on which it rests should have been pursued by rulemaking rather than adjudication. Movants requested that, to the extent the Administrative Law Judge lacked authority to rule on this motion, it be certified to the Commission. By order of September 7, 1977,¹ Administrative Law Judge Parker certified a portion of the motion and denied the remainder.

As it comes to us,² the ground urged for dismissal is supported by two arguments: 1) that a rule would have industrywide application and would thus be more equitable and more effective; and 2) that adjudication is not the appropriate forum for the determination of preemption issues (to the extent they are presented). The resolution of the present motion, however, is controlled by our decision on the very similar motion in the companion *Ford Motor Co.* case.³ There, the Commission noted that "[o]nly in the most extraordinary circumstances, not shown here, will the Commission review [the determination that a particular adjudicative proceeding is in the public interest] once a complaint has issued." Nothing presented here distinguishes the present motion from that in *Ford* in any way relevant to that standard. Accordingly,

It is ordered, That the motion to dismiss be, and it hereby is, denied.

¹ Due to an unfortunate clerical lapse, this order was not transmitted to the Commissioner responsible until November 23.

² Insofar as the motion is based upon the argument that the complaint should be dismissed because it assertedly conflicts with state and federal statutes, the Administrative Law Judge correctly determined that he had authority to rule upon it, and did so. This argument, as such, is not before us.

³ *Ford Motor Co., et al.*, Dkt. 9073, Order Denying Motion to Dismiss Complaint, issued May 25, 1976. See also our July 7, 1976 order, identically titled, in the third companion case, *General Motors Corporation et al.*, Dkt. 9074.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Dec. 28, 1977

Order denying application for review of administrative law judge's order denying request for certification of proceeding under Section 3.23(b) of the Commission's Rules of Practice. The Commission finds no basis for a finding of abuse of discretion and no basis for extraordinary review.

ORDER DENYING APPLICATION FOR REVIEW

Once again in this proceeding,¹ the Commission has before it an application for review of a ruling by the Administrative Law Judge filed in spite of his denial of requested certification under Rule Section 3.23(b). American Home Products Corporation ("AHP") urges that we find a clear abuse of discretion which will result in irreparable injury in Judge Hyun's orders of May 26 and September 20, 1977, respecting pre-trial exchanges of proposed exhibits, insofar as they require pre-trial disclosure of respondent's "proposed exhibits which contain data taken directly from the complaint counsel's exhibits but which may be used in or serve as the basis of cross-examination of opposing expert witnesses."²

At the threshold, we note that AHP rather exaggerates the scope of Judge Hyun's order, which explicitly does not extend to "documents or tabulations which respondents intend to use solely for the purpose of cross-examination in impeaching complaint counsel's witnesses without offering them as respondents' exhibits in support of their cases."³ In any event, we find no basis in AHP's application for a finding of clear abuse of discretion in the Administrative Law Judge's rulings, and no basis for exercising extraordinary review thereof. Accordingly,

It is ordered, That the application be, and it hereby is, denied.

¹ See the Commission's orders of August 18, 1977, and September 10, 1974, similarly denying applications for review made over the Administrative Law Judge's refusal to certify under Rule Section 3.23(b).

² AHP's application, at page 3.

³ Order Denying Respondent's Application for a Determination Permitting Interlocutory Review, issued October 6, 1977.