

IN THE MATTER OF

JIM WALTER CORPORATION, ET AL.

Docket 8986. Interlocutory Order, March 13, 1981

Reopening proceedings on remand of the United States Court of Appeals.

ORDER

On September 12, 1980, the United States Court of Appeals for the Fifth Circuit vacated the Commission's Final Order in this matter and remanded the case for reconsideration in light of its findings. Upon expiration of the time for filing petitions for rehearing and for a writ of certiorari, the matter has returned to the jurisdiction of the Commission.

It is therefore ordered, That the proceeding be, and hereby is, reopened;

It is further ordered, That complaint counsel and respondent file briefs presenting their views as to further disposition of this matter.* The parties should address all issues relevant to the question whether further evidentiary hearings are warranted, including, but not limited to, the facts to be established in any future evidentiary hearings, the current market shares of the respondent and the other firms in this relevant product market, any relevant post-acquisition experience of respondent and other firms in this relevant product market, the court's findings with respect to the relevant geographic market, the public interest in further evidentiary hearings and the likelihood of effective relief.

Complaint counsel shall submit their brief within thirty days of the date of this Order, and respondent shall submit its brief within thirty days of the date of service of complaint counsel's brief. No other brief will be permitted without leave of the Commission. All briefs shall follow the form and page limitations set forth in Section 3.52(b), (c) and (e) of the Commission's Rules of Practice.

Commissioner Pertschuk not participating.

* The briefs should be filed *in camera* initially. The Commission will thereafter request appropriate views of the parties, and determine which material should remain *in camera* in accordance with the standards in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961), *Bristol-Myers Company*, 90 F.T.C. 455 (1977) and *General Foods Corp.*, Docket No. 9085, Order of March 10, 1980.

Interlocutory Order

97 F.T.C.

IN THE MATTER OF

INTERNATIONAL TELEPHONE & TELEGRAPH
CORPORATION, ET AL.*Docket 9000. Interlocutory Order, March 13, 1981*

ORDER DENYING REQUEST FOR REIMBURSEMENT OF EXPENSES

By a brief filed with the Commission on September 29, 1980, Interstate Brands Corporation ("Interstate") seeks to appeal the denial by Administrative Law Judge Brown of its motion of July 24, 1980, for payment of costs incurred in the production of documents in response to a subpoena *duces tecum*. The subpoena, issued on September 19, 1979, at respondents' request as part of their deferred discovery of nonparties, called for the production of certain documents in Interstate's possession for inspection and copying by respondents. On October 4, 1979, Interstate filed a motion to quash the subpoena on several grounds. Limiting the subpoena somewhat, the ALJ otherwise denied the motion to quash on October 17, 1979. Interstate thereafter complied fully with the subpoena. On August 26, 1980, the ALJ denied Interstate's request for reimbursement of its costs of compliance, stating that "in [his] opinion, the Administrative Law Judge does not have authority to issue an enforceable order granting a money judgment against a respondent on behalf of a nonparty."*

Although Judge Brown's language is ambiguous, his order appears to state that while the Commission may exercise such authority in its discretion, the ALJ may not. If this holding was intended, then Interstate's motion of July 24 should have been certified under Section 3.22(a) of the Commission's Rules of Practice.¹ See *Crush International Limited*, 80 F.T.C. 1023, 1024 (1972). In view of the ambiguity, and in order to provide guidance to ALJs on the appropriate treatment of such reimbursement requests, the Commission will treat the present motion as having been certified.²

An ALJ does have the authority, in proper cases, to condition issuance of a subpoena upon an agreement to reimburse expenses of

* Order Denying Motion of Interstate Brands Corporation for Compensation for the Production of Documents Subpoenaed as Part of Respondents Discovery, at 2.

¹ Rules of Practice Section 3.22(a) provides, in pertinent part:

"Any motion upon which the Administrative Law Judge has no authority to rule shall be certified by him to the Commission with his recommendation where he deems it appropriate."

² In their response to the present motion, respondents correctly point out that Interstate has not requested or obtained certification of this question by the ALJ, a prerequisite to interlocutory Commission review of the ALJ's August 26, 1980, order under Rule 3.23(b) of the Commission's Rules of Practice. However, as discussed above, we shall treat the matter as properly before us under Rule 3.22(a).