

LEXSEE 1977 U.S. DIST. LEXIS 16178

**Federal Trade Commission (on relation of Kaiser Aluminum & Chemical Corp.)
v. Dresser Industries, Inc.**

Misc. No. 77-44.

United States District Court for the District of Columbia.

1977 U.S. Dist. LEXIS 16178 · 1977-1 Trade Cas. (CCH) P61,400

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff Federal Trade Commission (FTC) filed a petition for enforcement of a

subpoena served upon it critical to the aluminum company's defense. Thus, the court held that the burden imposed by the subpoena was not an unreasonable one so as to warrant quashing or further limiting the subpoena.

unless there appears some compelling reason for a fuller procedure.

Administrative Law > Separation & Delegation of Power > Subpoenas

[HN3] *Fed. R. Civ. P. 81(a)(3)* provides: These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings.

Administrative Law > Separation & Delegation of

Commission's (FTC) longstanding interpretation of *16 C.F.R. § 3.34(b)(2)* is that it only requires a general showing of relevance. In the absence of a clear error, the FTC's reading of its own regulation is entitled to great deference from this court.

Administrative Law > Separation & Delegation of Power > Subpoenas

[HN7] The Court of Appeals for the District of Columbia Circuit recently defined the showing of burden that would be necessary in order successfully to oppose an agency subpoena: the question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary

International Minerals and Chemical Corporation. The [redacted] fails to meet the standards of relevance prescribed by the [redacted]

refractories, which are non-metallic insulating materials. Although Kaiser raised a number of defenses, those defenses generally contended that the acquired division had ceased to be a significant competitor in the industry and that the acquisition actually increased [redacted]

would be too burdensome, and that the subpoenaed material would not be adequately safeguarded from disclosure of confidential information. Dresser further urges that, if the subpoena is found to be valid and enforceable, the court issue a protective order designed [redacted]

against it; (2) the fact that Kaiser has settled with other parties subpoenaed but not with Dresser; (3) the Commission's alleged abuse of its subpoena power; (4) the Commission's alleged failure to protect Dresser's rights as a non-party to the adjudicative proceeding; and (5) the Commission's alleged failure to follow its own rules in the issuance of the subpoena. Some of these issues appear to require no discovery as they involve purely legal issues, such as whether the Commission has in fact failed to follow its rules of procedure. Others appear not to be genuine issues at all. For example, counsel for Kaiser revealed at the hearing that Dresser had been offered essentially the same terms for compliance with the subpoena as the other companies,

L. Ed. 401, 70 S. Ct. 357 (1950), where the Supreme Court said:

[HN4] [It] is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.

In view of this standard and the "strictly limited" role of the court, see *Federal Trade Commission v. Texaco, Inc.*, supra at 16, one who opposes an agency's subpoena necessarily must bear a heavy burden. [*9] That burden is essentially the same even if the subpoena is directed to a third party not involved in the adjudicative or other proceedings out of which the subpoena arose, *Federal Trade Commission v. Tuttle*,

[*7] companies had accepted them. In light of that fact, which was not contradicted by Dresser, it is difficult to

1 L. Ed. 2d 1436, 77 S. Ct. 1379; Federal Trade Commission v. Dresser, 140 F. Supp. 214 (D.C. Ill.)

exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

Dresser apparently views the language [*11] of "constitute or contain evidence" found in § 3.34(b)(2) as requiring a determination, prior to issuance of a subpoena, that subpoenaed material would be admissible in evidence. Such an interpretation is clearly inconsistent with the statement in the same rule to the

expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. Broadness alone is not sufficient justification to refuse enforcement of a subpoena. Thus courts have refused to modify investigative subpoenas unless

sufficient to safeguard the confidentiality of Dresser's secrets. Dresser's primary fear appears to be that the protective order does not bind the Commission itself. It

The court believes that the subpoena, as modified by order of the administrative law judge, should be enforced, and an appropriate order to that effect

regard, but in any event there are other barriers to dissemination by the Commission. First, such material is exempt from disclosure requirements under the Freedom of Information Act, 5 U.S.C. § 552(b)(1). Second, it

unmindful of the tremendous impact which compliance with such subpoenas can have upon companies which appear to be innocent bystanders. The cost of effective economic regulation, however, is one which must be