

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE

- -05 19 2016

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COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

PUBLIC NOTICE

JOINT PETITION FOR CONTINUANCE OF ADMINISTRATIVE HEARING

Complaint Counsel and Respondents, Docket No. 14-1-1010-1

[Redacted content]

schedule on May 12, 2016, nearly contemporaneously with the Commission's May 12 Order and

therefore was not before the Commission when it issued that Order.

Under Rule 3.26 of the Commission's Rules of Practice, Respondents intend to move the

[REDACTED]

[REDACTED]

from adjudication.

BACKGROUND

An evaluation of this motion requires a brief summary of the status of the judicial proceedings brought by the FTC and the status of the Part 3 proceedings now pending before the

[REDACTED]

merger pending the completion of these proceedings was *sub judice* at the United States District Court for the Middle District of Pennsylvania

[REDACTED]

May 27, 2016.

ARGUMENT

[REDACTED]

administrative trial due to the exigency of the briefing schedule established by the Third Circuit on the Commission's emergency motion for an injunction pending appeal.

When the Commission rescheduled the hearing to commence on June 1, 2016, it contemplated that this two-week extension would be sufficient "to allow the parties time to determine how to proceed and to make any motions before the Commission." May 12 Order at

[REDACTED]

non-parties will incur the out-of-pocket expenses necessary to appear as witnesses. The non-parties will need to schedule a trip to Washington and adjust their schedules accordingly. In addition, many of these non-parties will incur their own legal fees to prepare to testify at trial.

Moreover, the parties obtained discovery from 53 non-parties who would incur the expense of

[REDACTED]

reviewing their materials that the parties have designated as exhibits, identifying the confidential information in these materials, and filing *in camera* motions and briefs with the Chief Administrative Law Judge to protect the confidentiality of these materials.²

In short, absent a continuance of the commencement of the administrative hearing, there would be a tremendous waste of party and non-party resources in preparing for trial if the Third Circuit ultimately denies the Commission's emergency motion.³

If the Third Circuit grants the Commission's emergency motion, on the other hand, the parties would be willing and able to make a recommendation about how to proceed, as previously requested by the Commission. Given that the Court of Appeals' decision on the ETC's motion, the duration of any injunction created, and the schedule for the appeal will not be

any recommendation until that time. Granting a further three-week continuance of the administrative hearing will give both Complaint Counsel and the merging parties sufficient time to weigh the various considerations and make a suitable recommendation to the Commission prior to investing significant resources into preparing for an administrative trial.⁴

CONCLUSION

For the foregoing reasons, Complaint Counsel and Respondents jointly move the Commission for an order granting a continuance of the commencement of the administrative hearing until June 21, 2016, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also

request an extension of all interlocutory decisions until October 1, 2016.

[REDACTED]

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EXHIBIT A

Case 1:15-cv-00000-JES Document 1-1 Filed 01/21/16 Page 1 of 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION

and

COMMONWEALTH OF
PENNSYLVANIA,

Plaintiffs,

vs.

PENN STATE HERSHEY
MEDICAL CENTER

and

PINNACLEHEALTH SYSTEM,

Defendants.

Civil Action No.: 1:15-cv-02362

Hon. John E. Jones III

Case 1:15-cv-00000-JES Document 1-1 Filed 01/21/16 Page 1 of 1

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Plaintiff's Motion for Preliminary Injunction, filed on May 9, 2016. (Doc. 131). The Plaintiffs note that, pursuant to the December 9, 2015 Stipulated Temporary Restraining Order ("TRO") (Doc. 14), the Defendants may consummate their proposed merger three business days following the Court's ruling on Plaintiffs'

[REDACTED]

Motion for Preliminary Injunction, or at 12:01 a.m. on Friday, May 13, 2016. (Doc. 14, ¶1).

On today's date, Defendants filed an Opposition to Plaintiffs' Motion for an Injunction Pending Appeal. (Doc. 137). Within the brief, the Defendants outline the possibility of a recent agreement with the Plaintiffs under which the Defendants

EXHIBIT B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 16-2365

Federal Trade Commission v. Penn State Hershey Medical Center

ORDER

The emergency motion filed by Appellants on May 12, 2016 seeks to expedite the appeal. The motion, however, does not include a proposed briefing schedule for the appeal as required under 3d Cir. L.A.R. 4.1. On or before 3:00 p.m. on Friday, May 13, 2016, Appellants must file a supplement to the motion outlining the proposed briefing schedule.

Appellees' response to the emergency motion for an injunction pending appeal and to expedite appeal must be filed on or before 3:00 p.m. on Wednesday, May 18, 2016. Any reply by Appellants must be filed on or before 3:00 p.m. on Thursday, May 19, 2016.

For the Court,

s/ Marcia M. Waldron
Clerk

Dated: May 12, 2016
PDB/cc: All Counsel of Record

PUBLIC

[REDACTED]

I hereby certify that on May 19, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary

Federal Trade Commission

[REDACTED]

600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

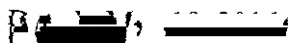
I also certify that I delivered via electronic mail a copy of the foregoing document to:

Adrian Wager-Zito
Toby Singer
Kenneth W. Field
Julia E. McEvoy
Christopher N. Thatch
William D. Coglianesse
Jones Day
51 Louisiana Ave., NW

PUBLIC

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.



By: s/ Gerald A. Stein
