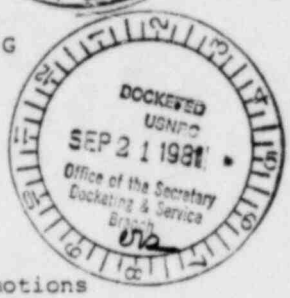
IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GREENSBORO DIVISION

NORTH CAROLINA ELECTRIC MEMBERSHIP CORP., et al,	)	
Plaintiffs,	)	
v.	)	C-77-396-G
CAROLINA POWER & LIGHT CO., and SOUTH CAROLINA ELECTRIC & GAS CO.,	)	
Defendants.	)	



MEMORANDUM ORDER

Presently pending in this antitrust lawsuit are motions pertaining to the discovery aspect of the action. This Memorandum Order will deal with those motions only. The pending motion for summary judgment and motions relating to that issue will be reserved for a later ruling.

I.

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER (April 1, 1980)

On April 1, 1980, plaintiffs moved for an order regulating discovery and essentially requiring both defendants to conduct discovery on the same schedule. (See Pleading Nos. 187, 188, 189, 192 and 195.*) The argument is that defendants seek essentially the same documentary and testimonial discovery from plaintiffs, but that they have chosen "to pursue uncoordinated courses of discovery which will subject plaintiffs to oppression, harassment, annoyance, embarassment and undue burden and expense. . . ."

In response, SCE&G argues that its discovery process has been delayed because plaintiffs have been intransigent about complying with discovery requests and because the complaint is vague. More importantly, SCE&G argues that "the defense strategies of SCE&G and CP&L (including the information to be obtained from plaintiffs, the proper time for gathering this information, and the most effective time and method for using this information) are necessarily different." Therefore, SCE&G argues, the Court should not constrain it to follow the discovery schedule and method to which CP&L has agreed.

The Court expects counsel to resolve matters of this nature within the spirit of Rule 1, Federal Rules of Civil Procedure. However, for the purpose of ruling on this motion SCE&G has the better position. As plaintiffs, the movant parties knew this lawsuit was dangerous when they filed it. They chose to make both CP&L and SCE&G parties defendant, and they therefore exposed themselves to accommodating the discovery strategies of two defendants, rather than one. That is not to suggest that SCE&G is permitted to violate any of the Rules of Civil Procedure regarding discovery merely because it is a defendant. However, the Court will not infer an invidious motive to a party when it offers a perfectly reasonable explanation for the conduct which its adversary finds inconvenient. By arguing the need for a different form of discovery, SCE&G has satisfied that standard, and plaintiff's motion is therefore DENIED.

II.

SCE&G'S MOTION IN LIMINE

Defendant SCE&G moved on July 11, 1980, to prohibit Earl J. Ross, General Manager of Piedmont Electrical Membership Corp., from testifying about matters with respect to which he claims a lack memory or knowledge during his deposition, taken March 3-6, 1980. (See Pleading Nos. 211, 212, 218 and 226.*) Supporting the motion, SCE&G argues that in his deposition, "Ross gave evasive, incomplete and argumentative answers to even the simplest questions." By prohibiting Ross from testifying later about matters he could not remember at the deposition, SCE&G argues, the Court can deter uncooperative attitudes on the part of other deponents.

Plaintiffs' response to the motion disputes SCE&G's characterization of Ross's testimony and accurately points out that no case authority has been cited in which a court bound a witness by his previous testimony in a deposition. Plaintiffs argue that granting such an order would be a "miscarriage of justice."

The order which SCE&G seeks is not justified. While the portions of the Ross transcript offered to the Court by SCE&G

do reflect a wrangling sort of exchange between Ross and his questioners, the Court will not infer that Ross was intentionally evasive and uncooperative. On the contrary, heated discussions are to be expected from time to time in the course of litigation. Moreover, the judge who hears this case at trial will be far better equipped to evaluate SCE&G's objections to further testimony by Ross than is this Court.

SCE&G is adequately protected by the very rule it cites as authority for the order it seeks. Rule 104(a), Federal Rules of Evidence, permits the trial judge to rule on admissibility of evidence after he ascertains whether it is competent. Both in challenging the competency of further testimony by Ross and in arguing against his credibility to a jury, SCE&G may use his deposition against him. Rule 32(a)(1), (2); see 4A Moore's Federal Practice ¶¶ 32.03, 32.04. Therefore, the Rules of Civil Procedure provide adequate protection against any improper testimony elicited by plaintiffs at trial. There is no need for the extreme and apparently unprecedented order which SCE&G seeks.

Therefore, SCE&G's Motion in Limine of July 11, 1980, is hereby DENIED.

III

SCE&G'S MOTION TO COMPEL (July 14, 1980)

SCE&G served a second set of interrogatories on plaintiff Halifax Electric Membership Corp. (Halifax) on February 8, 1980; Halifax filed its answers and objections on March 11, 1980. Disputing the adequacy of Halifax's answers to interrogatories 156, 203(b), 203(c), 204(b), 204(c), 210-212 and 245-302, SCE&G moved on July 14, 1980, to compel answers, pursuant to Rule 34, Federal Rules of Civil Procedure. (See Pleading Nos. 168, 177, 213, 214, 233 and 238.*)

A fair ruling on this motion unfortunately requires the Court to examine each question and the accompanying answer or objection. Question 156 to Halifax was "Did you authorize plaintiff NCEMC to bring this suit on your behalf? If so, identify. . . ." Halifax's answer was:

> We have brought the litigation on our own behalf. NCEMC, however, has been authorized to manage the litigation on our behalf. Halifax objects to answering further on the grounds of Noerr-Pennington and attorney-client.

The answer is not responsive to the question, nor is the subject of the question shielded from discovery. The Noerr-Pennington privilege explained in Judge Gordon's order of April 30, 1980, only protects from discovery documents concerning federal or state legislation, proposed drafts of such legislation, publicity materials connected with legislation, and discussions concerning legislation. It has nothing to do with relationships among parties plaintiff. Nor does the attorney-client privilege prevent a defendant from learning the connection between his adversaries. See Palma v. Lake Waukonis Development Co., 48 F.R.D. 366, 368 (W.D.Mo. 1970); Broadway & 19th Street Realty Co. v. Loew's, Inc., 21 F.R.D. 347, 358 (S.D.N.Y. 1958). Therefore, plaintiff Halifax is ORDERED to answer interrogatory 156.

Interrogatories 203 and 204 ask Halifax to state its gross and net revenues from 1965 to date, giving also its contentions as to revenue it would have earned but for the alleged monopoly practices of defendants and explaining and identifying the bases for the latter two figures. Halifax supplied records to answer the (a) portions of both questions, and then objected to the questions about lost profits "on the grounds of work product."

The "work product" privilege, embodied in Rule 26(b)(3), pertains only to the disclosure of materials prepared in anticipation of litigation and protects against disclosing any such materials which contain a lawyer's "mental impressions, conclusions, opinions, or legal theories." But efforts to obtain "work product" through other means are protected by an older doctrine embodied in Hickman v. Taylor, 329 U.S. 495 (1947). 4 Moore's Federal Practice, ¶ 26.64, at 26-451. In any case, the work product doctrine only shields a lawyer's strategy and reflections from his adversary. Applied here, it does not shield his contentions as to revenue lost, nor does it cloak the means by which a party reaches its

substantive claim. In its opposition to the motion, filed August 4, 1980, Halifax revised its response to the questions, arguing that they asked for "facts known and opinions held by experts," and are thus covered by Rule 26(b)(4), Federal Rules of Civil Procedure. SCE&G's failure to make its inquiry in the exact form prescribed by that rule exempts plaintiff from responding, Halifax contends.

Apart from the fact that this argument is raised in an untimely fashion, it is technically passable. See Falk v. United States, 53 F.R.D. 113, 115 (D.Conn. 1971). However, the intent of the question is clear, and denying the motion as to this question would only require SCE&G to rephrase its inquiry to obtain information to which it is obviously entitled. SCE&G wants to know how much money Halifax claims to have lost as actual damages--an important factual issue in this case. If the study which Halifax intends to use at trial is incomplete, it may defer answering until the study is complete. 4 Moore's Federal Practice, ¶ 26.66[3]. If the only study it presently has will not be used at trial, it may rely on Rule 26(b)(4)(B) to shield its response, but it must answer substantively the question propounded. A picayune reliance on the literal details of the rules in transparent evasion of a fair question is improper. Plaintiff Halifax is therefore ORDERED to respond in substantive terms to interrogatories 203(b) and (c) and 204(b) and (c).

Interrogatories 210 through 212 also concern cost data. Question 210 asks the basis and available evidence for the plaintiff's contention that the defendants raised bulk power supply costs; 211 asks whether plaintiff contends it could have generated power more cheaply than defendants and what evidence supports that position; 212 generally asks plaintiff to identify "the increased cost you suffered due to defendants' alleged violations," and the evidence supporting those claims. In answer to all three questions, plaintiff cited the opinion and an ongoing study by bulk power supply engineer David Springs. Halifax also promised to supplement its response

according to Rule 26(b)(4)(A)(i). It further objected to the questions' provisions which seem to ask for more than the experts' summaries of Rule 26(b)(4)(A)(i), on the grounds that they are attorney work product, they may be documents prepared in anticipation of litigation (Rule 26(b)(3)), and the requests are generally vague.

Plaintiff Halifax properly adverted to its expert's study and is only obligated to supply the details listed in Rule 26(b)(4)(A)(i), insofar as its contentions at trial will rely solely on that study. If it has other documents not prepared in anticipation of litigation or it knows any other facts supporting the contentions which are the concerns of interrogatories 210 through 212, it must identify those things to defendant SCE&G. As best the Court can tell by the response and the briefs filed on these questions, Halifax has observed those duties, and there is therefore no need to order compliance with respect to those questions.

Questions 246 through 302 cover a broad range of information. Halifax has objected to all of them in its general objection 4, joining general objection 5 for several others. SCE&G has responded in kind, characterizing the questions in a single sentence as inquiries about contended markets and the facts upon which the contentions are based. Unhappily, the Court finds that it cannot rule intelligently on the motion to compel without a more detailed discussion of individual questions.

As SCE&G notes, a number of the inquiries concern the relevant geographic market which plaintiff alleges the defendants attempted to monopolize. In each case the question merely asks what plaintiff will contend at trial. A defendant is clearly entitled to answers in his attempt to fill out plaintiff's major factual contentions. B&S Drilling Co. v. Halliburton Oil Well Cementing Co., 24 F.R.D. 1, 3 (S.D. Tex. 1959). Since relevant geographic market is a crucial issue in an antitrust lawsuit, see United States v. Marine Bancorporation, Inc., 418 U.S. 602, 618 (1974), plaintiff must answer questions 246(a), 250(a), 254(a), 263(b), 267(b), 271(b), 282(a), 286(a), 290(a), and 301.

A number of other questions also ask merely for the plaintiff to state its factual contentions. For example, question 279 asks the details of any alleged conspiracy which plaintiff may claim. Question 280 asks what overt acts by SCE&G were evidence of its involvement. Questions 298, 299 and 300 very simply ask plaintiff if it contends a variety of particular facts. A plaintiff cannot conceal the detailed factual contentions of his case from discovery. Interborough News Co. v. Curtis Publishing Co., 14 F.R.D. 408, 410 (S.D.N.Y. 1953). Therefore, plaintiff must answer those questions.

Halifax's main objection to questions 246-302 is general objection 4. That objection states that the questions would "require the opinions of an expert economist," and are inconsistent with Rules 26(b)(3) and 26(b)(4). The questions are also objectionable under Federal Rules of Evidence 701 "and undue burden." With respect to questions on relevant market, Halifax also pleads general objection 5, "on the grounds of relevancy and undue burden."

"Relevancy and undue burden" are insufficient objections to questions about relevant geographic market. As already noted, that issue is more than relevant to this case; it is crucial. Plaintiff Halifax has not explained its plea of "undue burden," and it will therefore be disregarded. The objections raised to the entire set of questions by general objection 4 are likewise mistaken. If Halifax does not have the elaborate market share information sought, for example, in question 247, it may so state; it is not required to commission a special study for the benefit of SCE&G. However, if it already has that information, regardless of the source of the information, it must disclose the information. "Rule 26(b)(3)" protects only documents and tangible things and . . . it does not bar discovery of facts a party may have learned from documents that are not themselves discoverable." Wright & Miller, Federal Practice & Procedure: Civil § 2024; see B&S Drilling Co., Inc. v. Halliburton Oil Well Cementing Co., supra at 5. "Obviously, facts given by the party to the expert can no more be protected by that fact than facts given to counsel by a party can be brought

within the attorney-client privilege. The same should be true of facts known to a party through the expert." 4 Moore's Federal Practice, ¶ 26.66[2], at 26-481. If Halifax knows the facts sought by the contested questions, it must disclose them, regardless of the source of its knowledge.

Therefore, IT IS ORDERED that Halifax answer interrogatories 156, 203(b) and (c), 204(b) and (c), and 246 through 302.

The discovery rules, as a general proposition, should be liberally interpreted to accomplish their purpose of adequately informing the litigants in civil trials. Schlagenhauf v. Holder, 379 U.S. 104 (1964); Hickman v. Taylor, 329 U.S. 495 (1947). Nevertheless, there have been repeated expressions of concern about uncontrolled and burdensome discovery. See Herbert v. Lando, 441 U.S. 153, 176-177 (1979); Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 740-741 (1975). See also, the dissent of Justice Powell from the order adopting the 1980 amendments to the Federal Rules of Civil Procedure, 85 F.R.D. 521 (1980). The control of the discovery process is a matter entirely within the discretion of the trial court. See ACF Industries, Inc. v. EEOC, 439 U.S. 1081, 1088 (1979) (Powell, Stewart, and Rehnquist, JJ., dissenting from denial of certiorari); Pettway v. American Cast Iron Pipe, Co., 576 F.2d 1157 (5th Cir. 1978), cert. denied, 439 U.S. 1115 (1978). The Court in Herbert v. Lando, supra at 177, noted that "the discovery provisions . . . are subject to the injunction of Rule 1 that they 'be construed to secure the just, speedy, and inexpensive determination of every action. (Emphasis added).'"

There is a growing trend among lower courts to curtail the excessive use of interrogatories. See Krantz v. United States, 56 F.R.D. 555 (1972); Dolgow v. Anderson, 53 F.R.D. 661 (1971). The Court in Boyden v. Troken, 60 F.R.D. 625, 626 (1973), after striking 209 interrogatories served by the plaintiff, noted that "[m]uch of what is apparently sought is information which is more readily and usually obtained through the use of oral depositions." That same observation is appropriate in this case.

Therefore, IT IS HEREBY ORDERED that no party to this action shall serve any further interrogatories except for the limited purposes of ascertaining the existence of documents or identity of witnesses. Such interrogatories shall not exceed 50 in number, including subparts. Requests for admission, if any, will not exceed 20 in number.

IV.

SCE&G'S MOTION FOR A PROTECTIVE ORDER (August 13, 1980)
(See Pleading Nos. 227, 228, 237, 241, 247.*)

On August 13, 1980, defendant SCE&G filed a motion seeking a court order prohibiting plaintiffs and others acting for plaintiffs "from using the discovery obtained in this lawsuit from SCE&G in any other proceeding." In support of the motion, SCE&G presents evidence that counsel for plaintiffs, who is also counsel for Central Electric Power Cooperative, Inc. (Central), of South Carolina, intends to use information garnered in this lawsuit as part of Central's case in a proceeding before the Nuclear Regulatory Commission. SCE&G accurately argues that courts will not countenance abuse of the discovery process to obtain information for other proceedings. See, e.g., 4 Moore's Federal Practice, ¶ 26.54; Wu v. Keeney, 384 F. Supp. 1161, 1167 (D.D.C. 1974), affirmed, 527 F.2d 854 (D.C.Cir. 1975); Shinto Shipping Co. Ltd. v. Fibrex & Shipping Co., 425 F. Supp. 1088, 1092 (N.D.Calif. 1976), affirmed, 573 F.2d 1328 (9th Cir. 1978).

SCE&G cites authority to the effect that a court should not order discovery when the moving party seeks discovery for use in a collateral proceeding. Beard v. New York Central Railroad Co., 20 F.R.D. 607, 610 (N.D.Ohio 1957). If plaintiffs were seeking to compel production of information for use outside this suit, the Court could--and probably should--refuse to order such production or place that discovery under a protective order such as SCE&G urges. But that is not the posture of this case. Plaintiff already has the material about which SCE&G complains. SCE&G is asking the Court to restrain plaintiffs from sharing that information with another party. "A prohibition on what plaintiffs may say about information once they have obtained it, however, directly implicates the First Amendment. Landmark Communications, Inc. v.

Virginia, 435 U.S. 829, 837-38 . . . (1978)." In re Halkin, 598 F.2d 176, 190 (D.C.Cir. 1979).

Cases discussing similar situations hold with near uniformity that courts should rarely limit the use of information in the hands of a litigant. The Seventh Circuit, for example, struck down such an order after deciding that one is not justified absent "a serious and imminent threat to the administration of justice." Chase v. Robson, 435 F.2d 1059, 1061 (7th Cir. 1970). The Sixth Circuit requires a showing of "serious and imminent threats to the fairness and integrity of the trial" to justify such an order. CBS, Inc. v. Young, 522 F.2d 234, 240 (6th Cir. 1975). While the Court of Appeals for this circuit apparently has not yet considered such a case, it has ruled on the Virginia rules governing lawyer comment on pending cases. That decision shows the same careful regard for free speech; the Court struck down all rules which it felt were "not essential to the preservation of a fair trial." Hirschkop v. Snead, 594 F.2d 356, 364 (4th Cir. 1979).

By far the most comprehensive discussion of the First Amendment interests implicated by a protective order following discovery is In re Halkin, supra. There Judge Bazelon, writing for the majority, proposed a test measuring the constitutional soundness of an anti-dissemination order: first, the court must "determine whether a particular protective order in fact restrains expression and the nature of that restraint." Id. at 191. The order sought by SCE&G in this case certainly would restrain the dissemination of information, although the information involved would not likely be "political speech" or especially newsworthy. In Re Halkin further says:

> The court must then evaluate such a restriction on three criteria: the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn and precise; and there must be no alternative means of protecting the public interest which intrudes less directly on expression.

Id. (footnotes omitted). See Note: Protective Orders Prohibiting Dissemination of Discovery Information: The First Amendment and Good Cause, 1980 Duke L.J. 766.

The harm which SCE&G alleges is that Central will use some information gathered in this suit as part of its case before the

Nuclear Regulatory Commission. That "would be to circumvent the NRC order denying Central the right to discover those same documents," SCE&G argues. Assuming (without deciding) that the alleged harm is "substantial and serious," and that the Court could fashion a protective order sufficiently narrow and precise to withstand appellate scrutiny, SCE&G's case for such an order falls when tested against the third criterion in Judge Bazelon's list. There is another means to protect SCE&G from the use of information gained in this suit, and that means is to seek to bar the information before the NRC. If, as SCE&G contends, there is a meaningful public policy against the sharing of information, then the NRC tribunal is surely able to enforce that policy without this Court's assistance. Since this alternative means of accomplishing SCE&G's stated goal exists, the Court should not tread upon the treacherous ground of prior restraint. In re Halkin, supra. The reasoning of the Court for the Eastern District of Michigan fits this case:

> [I]t is inappropriate for this court to limit the means by which litigants in cases not before it may obtain information which is not otherwise under a protective order. If [defendant] requires protection in other forums, then it should apply to the courts before which those cases are pending. FTC v. Anderson, 442 F. Supp. 1118, 1124 (D.D.C. 1977); Unita Oil Refining Co. v. Continental Oil Co., 36 F.R.D. 176, 182 (D.Utah 1964).

In re Upjohn Co. Antibiotic Cleocin Products Liability Litigation, 81 F.R.D. 486, 484 (E.D.Mich. 1979).

Since the Nuclear Regulatory Commission is best equipped to resolve this dispute regarding the use of discovery material, SCE&G's motion for a protective order is hereby DENIED.

V.

SCE&G'S MOTION TO COMPEL (October 17, 1980) AND PLAINTIFFS' MOTION TO DEFER (November 7, 1980)

On October 17, 1980, SCE&G moved pursuant to Rule 37(a), Federal Rules of Civil Procedure, to compel plaintiffs to produce (a) a list of all documents withheld on the basis of the attorney-client privilege; (b) minutes of NCEMC's board of directors' meetings from 1965 to the present; and (c) copies of all reports presented at those meetings from 1965 to the present. The motion, which did not indicate that any conference on the issues raised had

preceded it, argued that plaintiffs had defaulted on an agreement to simultaneously exchange with SCE&G lists of documents withheld under the attorney-client privilege. It also suggested that plaintiffs had improperly withheld minutes of NCEMC's meetings and the reports presented at those meetings.

As plaintiffs accurately note in their response, the motion does not make the certification required by Local Rule 21(k). That rule is explicit in its requirements, and counsel should follow it literally. Since SCE&G has not done so here, the motion should be disregarded.

Even if SCE&G had followed the requirement of Rule 21(k), the Court is poorly disposed toward its motion. It represents that plaintiffs had agreed to a simultaneous exchange of lists of documents withheld under the attorney-client privilege. However, the September 26, 1979, letter from plaintiffs' counsel attached to SCE&G's memorandum in support of the motion shows just the contrary; in it counsel for plaintiff promises, "we will provide lists of documents withheld at the time SCE&G does so long as our lists have been completed." Plaintiffs obviously reserved to themselves the time necessary to complete the compilation of those lists. Therefore, the Court should not compel production of this information, which plaintiffs seem to be supplying voluntarily as it is compiled.

The motion to compel also asks for production of "all minutes of NCEMC board of directors meetings and copies of non-legal reports presented at these meetings previously withheld." The procedural posture of this part of the motion is unclear. SCE&G does not state when or how it requested the minutes and reports which it now seeks to compel. A request for documents between the parties is a textual prerequisite to a motion under Rule 37(a)(2). If SCE&G has requested these documents, it should inform the Court of the date on which it made the request, how the request was made, and what, if any, compliance or objections it received from plaintiffs. Without such notice, the Court cannot intelligently

rule on a motion to compel. The confusion occasioned by this omission is apparent as the Court reviews plaintiff's response to the motion, filed November 7, 1981. That response says that much of the documentary discovery sought in the motion to compel is withheld on the basis of Judge Gordon's Noerr-Pennington ruling of April 30, 1980. If such is the case, the Court may wish to reserve ruling on the motion until the Court of Appeals finally resolves the controversy generated by that ruling. Therefore, since the motion does not adequately inform the Court of the factual and procedural background preceding it, the Court must deny it.

Therefore, SCE&G's motion to compel discovery filed on October 17, 1980, is hereby DENIED. This ruling obviates any need for ruling on plaintiffs' motion to defer consideration filed November 7, 1980.

VI.

PLAINTIFFS' MOTION TO COMPEL SCE&G TO RESPOND TO REQUESTS FOR ADMISSIONS (November 24, 1980)

Citing Judge Gordon's Noerr-Pennington ruling, SCE&G has refused to respond to requests that it admit the authenticity of twenty-two documents which it produced for plaintiffs' inspection and copying. Plaintiffs therefore filed a motion to compel a response under Rule 36(a), Federal Rules of Civil Procedure, on November 24, 1980. The memorandum in support of the motion raises issues such as the scope of the Noerr-Pennington ruling (Is it a privilege or a relevancy ruling?) and the general validity of the rule (notwithstanding plaintiffs' expressed intention to avoid relitigating the issue). Noting that the very same issues are before the Court of Appeals for the Fourth Circuit on interlocutory appeal, SCE&G responded, requesting that this Court defer ruling on plaintiffs' motion.

Plaintiffs urge in their reply that the Court not defer, for two reasons. First, some of the disputed documents would be helpful for plaintiff in resisting SCE&G's motion for partial summary judgment. In considering a motion under Rule 56, the Court is obligated to construe factual disputes in favor of the party resisting summary judgment. See 6 Moore's Federal Practice ¶ 56.15[3]

at 56-469; United States v. Hangar One, Inc., 563 F.2d 1155, 1157 (4th Cir. 1977). Therefore, plaintiffs may use the disputed documents in their effort to prevent summary judgment, and, while the Court defers ruling at SCE&G's motion, it will assume the authenticity of the documents for purposes of the summary judgment motion.

Secondly, plaintiffs argue that the Court should not abstain from ruling on their motion, because such deferral might delay some deposition discovery. However, delay in some discovery is inevitably the result of an interlocutory appeal dealing with discovery matters. Plaintiffs knew delay was inevitable when they took the appeal from the Court's action, and this further delay is a direct consequence of the appeal. They simply must live with it.

Because a decision from the Court of Appeals would substantially clarify and might obviate altogether this pending motion, a ruling thereon is hereby DEFERRED pending the Court of Appeals' decision on the Noerr-Pennington ruling.

United States Magistrate

3 September 1981

* Counsel should ignore reference to Pleading Nos. They are for court administrative purposes only.

A True Copy
Teste:
Carmen J. Stuart, Clerk

By: Deputy Clerk