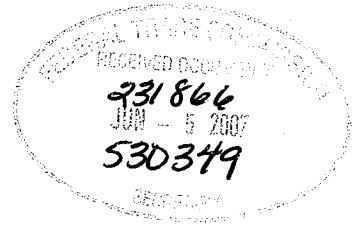


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

PAUL L. FOSTER,
an individual,

WESTERN REFINING, INC.,
a corporation,

and

GIANT INDUSTRIES, INC.,
a corporation.

PUBLIC

Docket No.: 9323

**RESPONDENTS' MOTION TO THE COMMISSION FOR
WITHDRAWAL OF THE MATTER FROM ADJUDICATION**

Respondents Paul L. Foster, Western Refining, Inc. ("Western"), and Giant Industries, Inc. ("Giant"), hereby move, pursuant to Rule 3.26(c) of the Commission's Rules of Practice, 16 C.F.R. § 3.26(c), for withdrawal of the above-captioned matter from adjudication.

On April 12, 2007, the FTC filed a complaint in the United States District Court for the District of New Mexico under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) to enjoin the proposed merger of Western and Giant. The Commission initiated these administrative proceedings on May 3 under the authority of the FTC Act and pursuant to the provisions in Part 3 of the Commission's Rules of Practice. On May 29, the District Court denied preliminary injunctive relief. The Tenth Circuit Court of Appeals did not grant an injunction pending appeal and the parties consummated the transaction on May 31. Withdrawal from adjudication at this time will allow the Commission to assess the public interest in further litigation, and allow the

parties and Complaint Counsel the flexibility to discuss the matter with each other, within the agency and with the Commission in that context.

Under Rule 3.26(c), the “Secretary shall issue an order withdrawing the matter from adjudication two days” after a motion for withdrawal is filed by respondents unless Complaint Counsel files an objection. Rule 3.26(c). Respondents have been informed that Complaint Counsel will not file an objection to Respondents’ motion and that Complaint Counsel intends to separately file a statement of non-objection to that effect.

For the foregoing reasons, Respondents’ motion for withdrawal of this matter from adjudication should be granted.

Dated: June 5, 2007

Respectfully submitted,

HELLER EHRMAN LLP

By: 

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Washington, DC 20036
(202) 912-2000

Attorneys for Respondents

CERTIFICATE OF SERVICE AND COMPLIANCE

I, Nara Neves, hereby certify that on June 5, 2007 copies of the foregoing **RESPONDENTS' MOTION TO THE COMMISSION FOR WITHDRAWAL OF THE MATTER FROM ADJUDICATION** were served as indicated:

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Chief Administrative Law Judge
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(Via hand delivery)


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I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.



Nara Neves
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