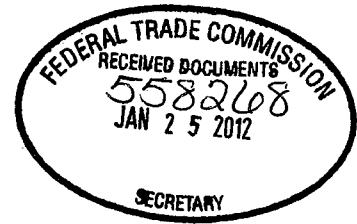


ORIGINAL

**UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION**



In the Matter of)
)
)
POM WONDERFUL LLC and)
ROLL GLOBAL, as successor in interest)
to Roll International, companies, and)
)
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)
_____)

Docket No. 9344

Public Document

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION
REGARDING SCHEDULING OF CLOSING ARGUMENT**

On January 25, 2012, Respondents filed a motion to move the date of closing arguments in this matter to, at earliest, March 5, 2012. Complaint Counsel requests that the Court deny Respondents' motion, because Respondents have not shown good cause to delay closing arguments until March.

Commission Rule of Practice 3.41(b)(6) states that "[e]ach side shall be permitted to make a closing argument no later than 5 days after the last filed proposed findings." Under Rule 4.3(b), the Court may extend the deadline of a time limit prescribed by the Rules for "good cause." The record in this matter closed on November 18, 2011, at which time the Court set post-trial briefing deadlines, making the last proposed findings due February 7, 2012. *Order on Post-Trial Briefs*, Dkt. 9344 (Nov. 18, 2011). Thus, as of November, the expected date of closing arguments was no later than February 14, 2012. Rule 3.41(b)(6). On January 20, 2012,

the Court confirmed that the date of closing arguments would be February 14, 2012. *Email from from D. Gross to Complaint Counsel and Respondents* (Jan. 20, 2012). Mr. Fields' jury trial in U.S. District Court for the Southern District of Florida (Hon. William M. Hoeverler) commenced on January 23, 2012 (Resp't Mot. at 1), three days after receiving notification from this Court as to the date of closing arguments.

Respondents have known for two months that closing arguments in this matter would be on or about February 14, 2012. Respondents correctly note that granting their motion will not delay issuance of the Initial Decision. *See* Rule 3.51 (stating the ALJ "shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact"). However, given the limited time under the Rules for the Court to issue a decision, the Court may prefer to have the parties frame the issues and answer any questions at the outset on February 14th, rather than wait 27 days or more into the 70-day period to hold closing arguments. Complaint Counsel submits there is ample time for Respondents to prepare a one-hour closing argument, given the thorough post-trial briefing that has taken place in this matter.

Although unclear, it does not appear from the declaration submitted with Respondents' motion that Mr. Fields attempted to: 1) notify Judge Hoeverler of a potential scheduling conflict after the record in this matter closed in November; or 2) seek leave from Judge Hoeverler for a one-day recess to conduct closing arguments in this matter. Judge Hoeverler is quite familiar with FTC matters, having many years presided over *U.S. Oil & Gas* and associated litigation. *See, e.g., FTC v. U.S. Oil & Gas Corporation, et al.*, Case No. 83-1702-CIV-Hoeverler, 1987 U.S. Dist. LEXIS 16137 (S.D. Fla. July 10, 1987). Complaint Counsel believes Judge Hoeverler

may be understanding of the time constraints placed on this Court. If the Court would prefer to hear closing arguments on February 14, Complaint Counsel is willing to assist Mr. Fields in a request to Judge Hoeveler for a one-day recess in the Florida case.

If the Court is willing to wait until the Florida trial is completed, Mr. Fields indicates in his declaration that the outside last day of the Florida trial would occur on February 21, 2012. Fields Decl. ¶ 6. Based on this representation, Complaint Counsel would prefer that this Court hear closing arguments early in the week of February 27, 2012.

Dated: January 26, 2012

Respectfully submitted,

/s/ Mary L. Johnson

Mary L. Johnson

Heather Hipsley

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CERTIFICATE OF SERVICE

I certify that on January 26, 2012, I caused the filing and service of Complaint Counsel's Opposition to Respondents' Motion Regarding Scheduling of Closing Argument as set forth below:

One electronic copy via the FTC E-Filing System to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580

One paper copy via hand delivery and one electronic copy via email to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy via email to:

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/s/ Mary L. Johnson
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