

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

**COMMISSIONERS:**         **Deborah Platt Majoras, Chairman**  
   **Pamela Jones Harbour**  
   **Jonathan Leibowitz**  
   **William E. Kovacic**  
   **J. Thomas Rosch**

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| <p style="text-align: center;"><b>In the Matter of</b></p> <p><b>SOUTH CAROLINA STATE</b></p> <p><b>BOARD OF DENTISTRY</b></p> <p style="border-top: 1px dashed black;"> </p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p style="text-align: center;"><b>Docket No. 9311</b></p> |
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**ORDER GRANTING MOTION FOR  
STAY PENDING PETITION FOR CERTIORARI**

On July 28, 2004, the Commission issued an Order Denying Respondent South Carolina State Board of Dentistry’s Motion to Dismiss on State Action Grounds, Holding in Abeyance Motion to Dismiss on Mootness Grounds, Retaining Jurisdiction, and Referring Mootness Issues to an Administrative Law Judge. On August 9, 2004, Chief Administrative Law Judge Stephen J. McGuire issued an Order Setting Discovery Deadlines and Briefing Schedule on the mootness issues raised in Respondent’s Motion to Dismiss.

On August 10, 2004, Respondent filed a Petition for Review of the Commission’s Order with the United States Court of Appeals for the Fourth Circuit. On August 17, 2004, the Commission granted Respondent’s Unopposed Motion to Stay Discovery Pending Judicial Review “solely as a matter of discretion” until the Fourth Circuit issued “an Order disposing of Respondent’s Petition for Review.” On May 1, 2006, the Fourth Circuit dismissed Respondent’s interlocutory petition for lack of jurisdiction concluding that the antitrust state action doctrine does not constitute an immunity from suit and that therefore the Commission’s denial of state action protection was not an immediately reviewable “collateral order.” *South Carolina State Board of Dentistry v. Federal Trade Commission*, No. 04-2006, 2006 WL 1134136 (4<sup>th</sup> Cir. May 1, 2006), *rehearing and rehearing en banc denied* (4<sup>th</sup> Cir. June 27, 2006).

Respondent has filed the instant Motion for Stay Pending Petition for Certiorari in this proceeding asserting that it intends to file a petition for a writ of certiorari of the Fourth Circuit’s May 1 decision in the Supreme Court no later than September 25, 2006. While Complaint Counsel asserts that it “is prepared to move forward with this litigation,” it “take[s] no position on the Board’s motion for a stay,” and acknowledges that “[i]f [Respondent] were correct that state action [is] an immunity from suit, a stay of the proceedings pending an appeal of the Commission’s denial of state action would be appropriate.” Complaint Counsel also does not

contest Respondent's argument – and the Commission has thus far seen no evidence to the contrary – that it is not currently engaging in any conduct similar to that challenged in the complaint that might prejudice or harm the public interest.

For these reasons, and without considering the merits of Respondent's arguments or statements in the instant motion, the Commission again exercises its discretion and grants the instant motion, staying discovery in this proceeding until the Supreme Court finally disposes of this matter. Accordingly,

**IT IS ORDERED THAT** all discovery and other proceedings before the Chief Administrative Law Judge in this matter be, and they hereby are, stayed until the Supreme Court finally disposes of this matter pursuant to a petition for a writ of certiorari to be filed by Respondent. If Respondent fails to file a petition for a writ of certiorari by September 25, 2006, this stay will automatically expire on that date without further action by the Commission.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: August 9, 2006