

**ORIGINAL**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**



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In the Matter of )  
)  
)

POM WONDERFUL LLC and )  
ROLL GLOBAL LLC, )  
as successor in interest to )  
Roll International Corporation, )  
companies, and )  
)

DOCKET NO. 9344

STEWART A. RESNICK, )  
LYNDA RAE RESNICK, and )  
MATTHEW TUPPER, individually and )  
as officers of the companies. )  
\_\_\_\_\_ )

**ORDER GRANTING CONSENT MOTION  
TO AMEND SCHEDULING ORDER**

On April 19, 2011, Respondents filed a Motion to Extend the Scheduling Order Deadlines for Submission of Motions *in Limine* Regarding Complaint Counsel's Rebuttal Expert Witnesses, pursuant to Commission Rule of Practice 3.21(c)(2). 16 C.F.R. § 3.21(c)(2). Specifically, Respondents seek to extend of the Scheduling Order deadline for filing any motions *in limine* regarding Complaint Counsel's rebuttal experts from April 20 to May 2, 2011, and to extend Complaint Counsel's deadline for filing any opposition to such motions *in limine* from May 2 to May 9, 2011.

Commission Rule of Practice 3.21(c)(2) states: "The Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing . . . In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, the complexity of the issues, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner." 16 C.F.R. § 3.21(c)(2).

Respondents assert that good cause exists for amending the Scheduling Order as requested because, pursuant to previous modifications of the Scheduling Order, depositions of Complaint Counsel's rebuttal experts will not be completed until April 28,

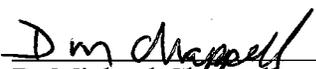
2011.<sup>1</sup> In addition, Respondents state, extending the deadline as requested will not delay any remaining deadlines under the Scheduling Order or delay the issuance of an initial decision in the matter. Finally, Respondents note that Complaint Counsel consents to the requested extensions.

Having considered the motion, Complaint Counsel's consent thereto, and the factors in Rule 3.21(c)(2), the deadlines will be extended as requested. The parties are reminded in this regard, however, that motions *in limine* should be used to eliminate evidence that is clearly inadmissible. *In re Daniel Chapter One*, 2009 FTC LEXIS 85, \*19-20 (April 20, 2009). Furthermore, in a bench trial, motions *in limine* to exclude expert testimony on the basis of the principles outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and the many cases applying *Daubert*, are disfavored. *The Ekotek Site PRP Committee v. Self*, 1 F. Supp. 2d 1282, 1296 n.5 (D. Utah 1998) (citing *Fierro v. Gomez*, 865 F. Supp. 1387, 1396 n.7 (N.D. Cal. 1994) (quoting *Daubert*, 509 U.S. at 596)). See also *Clark v. Richman*, 339 F. Supp. 2d 631, 648 (M.D. Pa. 2004) (stating that "[a]s this case will be a bench trial, the court's 'role as a gatekeeper pursuant to *Daubert* is arguably less essential") (citation omitted); *Albarado v. Chouest Offshore, LLC*, Civil Action No. 02-3504 Section "J"(4), 2003 U.S. Dist. LEXIS 16481, at \*2-3 (E.D. La. Sept. 5, 2003) (stating that "[g]iven that this case has been converted into a bench trial, and thus that the objectives of *Daubert* . . . are no longer implicated, the Court finds that defendant's motion should be denied at this time. Following the introduction of the alleged expert testimony at trial, the Court will either exclude it at that point, or give it whatever weight it deserves").

In accordance with the foregoing, Respondents' Motion to Extend the Scheduling Order Deadlines for Submission of Motions *in Limine* Regarding Complaint Counsel's Rebuttal Expert Witnesses is GRANTED, and it is hereby ORDERED that the deadline for Respondents to file any necessary motions *in limine* regarding Complaint Counsel's rebuttal experts shall be May 2, 2011, and Complaint Counsel's deadline for filing any opposition to such motions *in limine* shall be May 9, 2011.

Except as provided herein or under prior Orders issued in this case, all remaining dates and all additional provisions in the October 26, 2010 Scheduling Order are unchanged.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: April 20, 2011

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<sup>1</sup> See Order Granting Consent Motion to Allow Complaint Counsel to Designate an Additional Rebuttal Expert and to Amend Scheduling Order, April 5, 2011.