

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,	.	
	.	
Plaintiff,	.	CA No. 18-0414 (TSC)
	.	
v.	.	
	.	
WILHELM WILHELMSSEN, et al.,	.	Washington, D.C.
	.	Wednesday, March 7, 2018
Defendants.	.	10:10 a.m.
.	

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff:	THOMAS J. DILLICKRATH, ESQ. CHRISTOPHER J. CAPUTO, ESQ. JAMES E. RHILINGER, III, ESQ. AMY DOBRZYNSKI, ESQ. JOSHUA M. GOODMAN, ESQ. LLEWELLYN DAVIS, ESQ. U.S. Federal Trade Commission Bureau of Competition 400 Seventh Street, SW Washington, DC 20024 (202) 326-3286
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For Defendants Wilhelmsen:	COREY W. ROUSH, ESQ. CATHERINE FAIRLY SPILLMAN, ESQ. CATHERINE O'CONNOR, ESQ. GEORGE L. WOLFE, ESQ. Akin Gump Strauss Hauer & Feld LLP 1333 New Hampshire Avenue, NW Washington, DC 20036 (202) 887-4000
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For Defendants Drew Marine, Resolute Fund:	MARK W. RYAN, ESQ. ORAL D. POTTINGER, ESQ. MICHAEL E. LACKEY, JR., ESQ. Mayer Brown LLP 1999 K Street, NW Washington, DC 20006 (202) 263-3000
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1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Your Honor, we have Civil Action
3 18-414, Federal Trade Commission versus Wilhelm Wilhelmsen
4 Holdings, et al. I would ask that lead counsel from each side
5 please approach the lectern, identify yourself and those at your
6 respective tables. Thank you.

7 MR. DILLICKRATH: Good morning, Your Honor.

8 My name is Tom Dillickrath. I'm the deputy chief trial
9 counsel for the Federal Trade Commission. I'm joined here at
10 the counsel table by my colleagues, James Rhilinger, Llewellyn
11 Davis, Amy Dobrzynski, Josh Goodman, and Chris Caputo.

12 THE COURT: Good morning.

13 MR. DILLICKRATH: Thank you, Your Honor.

14 THE COURT: Good morning.

15 MR. ROUSH: Good morning, Your Honor. I'm Corey Roush
16 from Akin Gump representing the defendants Wilhelm Wilhelmsen
17 Holding ASA. With me from the Akin Gump team is Fairley
18 Spillman, George Wolfe, and Catherine O'Connor.

19 THE COURT: Good morning, everyone.

20 MR. ROUSH: Thank you, Your Honor.

21 MR. RYAN: Good morning, Your Honor. I'm Mark Ryan
22 from the Mayer Brown law firm, and we represent the Drew Marine
23 defendants, and that includes the Resolute Fund party there.

24 THE COURT: Okay.

25 MR. RYAN: And with me is Oral Pottinger from Mayer

1 Brown.

2 THE COURT: Good morning.

3 MR. POTTINGER: Good morning.

4 MR. RYAN: And Mike Lackey from Mayer Brown.

5 THE COURT: Good morning.

6 MR. RYAN: Thank you, Your Honor.

7 THE COURT: Good morning, everyone.

8 All right. So this matter is captioned on my calendar as a
9 scheduling conference, but it appears that it's more of a status
10 conference. I haven't set our briefing schedule, I don't have a
11 response to the preliminary injunction, so it appears maybe the
12 parties have more to tell me than I have to tell them.

13 Why don't you go ahead, Mr. Dillickrath.

14 MR. DILLICKRATH: Thank you, and thank you for taking
15 the time to meet with us here today.

16 THE COURT: Sure. And I apologize for the delay.
17 I have a deliberating jury, and I had to deal with some matters
18 with them.

19 MR. DILLICKRATH: Thank you, Your Honor.

20 The FTC has been working very hard and very cooperatively
21 with our colleagues on the defense side.

22 THE COURT: Oh, good.

23 MR. DILLICKRATH: And we have been working on putting
24 together a proposed case-management and scheduling order, subject,
25 of course, to Your Honor's preferences. We have reached

1 agreement on many, many issues. There are a few that we
2 continue to discuss, but we have a draft CMSO that we would be
3 prepared to provide to Your Honor as soon as today.

4 THE COURT: All right.

5 MR. DILLICKRATH: And that captures not only some
6 proposed scheduling dates subject to Your Honor's schedule, but
7 it would also take care of a lot of the ministerial, interim
8 deadlines.

9 THE COURT: Good.

10 MR. DILLICKRATH: We've spent a lot of time and gone
11 into a lot of detail, and again I thank my colleagues on the
12 defense side for working very hard and very collegially with us
13 on this.

14 THE COURT: I am glad to hear that. You certainly
15 have enough manpower. But I'm glad to hear that. So, yes.
16 If you'll get that to me, I'll take a look at it; and especially
17 with regard to the ministerial duties, when we have a complex
18 case with parties, and the Drew is two entities, the more you
19 all can agree on ahead of time, the better it is for me. So I
20 appreciate that.

21 MR. DILLICKRATH: I think one issue perhaps to
22 flag for Your Honor at the outset is we have discussed with
23 defendants our agreement to try to proceed along with a
24 relatively short date for an evidentiary hearing. We have
25 agreed with defendants, subject to the Court's schedule and

1 availability, to seek a hearing either in late May or in early
2 June.

3 THE COURT: How long do you think that hearing will
4 take?

5 MR. DILLICKRATH: Your Honor, we've discussed this
6 amongst ourselves, and again, of course, subject to the Court's
7 views, we think that we would need eight days for evidence and
8 about a half a day on both opening and closing arguments.

9 THE COURT: Okay.

10 MR. DILLICKRATH: This is, again, a complex case.
11 We've thought about shorter and longer timelines and have come
12 to the collective view that eight days would probably suffice.

13 THE COURT: Well, better safe than sorry.

14 Mr. Bradley, do I have a full week in -- let's say 10 full
15 days in -- you said late May, early June?

16 MR. DILLICKRATH: Yes, Your Honor.

17 THE DEPUTY CLERK: You have the last two weeks in June.

18 THE COURT: Nothing in late May? If I have small
19 matters during the day, that's okay. Just no trials.

20 THE DEPUTY CLERK: You have no trials.

21 (Deputy clerk conferring with the Court.)

22 MR. DILLICKRATH: Your Honor, I'm sorry. Mr. Roush
23 just reminded me, we've prepared and I'll be happy to pass up to
24 Your Honor, if it's helpful, a proposed schedule that's premised
25 on starting on either May 29 or June 4.

1 THE COURT: Okay.

2 MR. DILLICKRATH: Would that be helpful to the Court?

3 THE COURT: That looks like it might work.

4 THE DEPUTY CLERK: We can't do the week of June 4th.
5 You have a Judicial Conference.

6 THE COURT: Oh, yes. I'm going to be out of town on a
7 Judicial Committee. Is that June 4?

8 THE DEPUTY CLERK: That week, yes. That entire week.

9 THE COURT: Yeah.

10 THE DEPUTY CLERK: And you have a trial the following
11 week.

12 THE COURT: So you were hoping for argument June 4th?

13 MR. DILLICKRATH: We were hoping to start the hearing
14 on the day after Memorial Day, which would be May 29, and that
15 would put us on a closing date of June 8.

16 THE COURT: That June -- yeah. That's not going to be
17 doable because I have a Judicial Committee meeting. In June
18 it's usually out of town. I have one in June and one in
19 December. The December one is usually here. The June one I
20 think is in Pittsburgh this year where the Chief Judge of the
21 Third Circuit sits, so that's not really anything I could miss.

22 (Court conferring with the Deputy Clerk.)

23 THE COURT: Yes. If we start it on the 21st, does
24 that work for you all?

25 MR. DILLICKRATH: That may be a little tight for us,

1 Your Honor, given the amount of deadlines we have.

2 THE COURT: Unless you want to start around the 29th
3 or just before and then break, because I think I'm gone three
4 days for the judicial conference, and then return for argument.
5 Do you want to do it that way? I mean, I like to hear argument
6 right after the evidence, because, like everyone, it's freshest
7 in my mind. But three days probably -- and it would probably
8 give you all a chance to marshal your --

9 MR. DILLICKRATH: I think that would be fine with
10 the FTC, but I won't presume to speak for my colleagues on
11 the defense side. But that would be acceptable to us.

12 THE COURT: Or we'll be looking at, you know, the
13 second week in June if not, because that meeting I can't move.

14 MR. ROUSH: I appreciate that, Your Honor. I think we
15 would be amenable to having it split, not being in session when
16 you're not here.

17 THE COURT: Okay.

18 MR. ROUSH: One of the pressures on this is that our
19 clients have an agreement in place that has -- basically, the
20 deal won't go through if this goes past a certain date in July.
21 So we're trying to make it where --

22 THE COURT: Right. Right.

23 MR. ROUSH: -- you time to make a decision after we
24 present you all --

25 THE COURT: Okay. And that might give me an

1 opportunity also to review everything. Since I'm traveling,
2 I'll have lots of time.

3 So what I'm proposing, Mr. Bradley, is that we do the
4 evidentiary hearing that week starting around May twenty -- the
5 week after the trial is scheduled, what's the date there?

6 THE DEPUTY CLERK: The 21st is the Monday.

7 THE COURT: Right. If we start the 21st --

8 THE DEPUTY CLERK: We have a trial on that date.

9 THE COURT: Oh, okay. When do I leave for my...

10 THE DEPUTY CLERK: You leave on the 4th.

11 THE COURT: Of June.

12 THE DEPUTY CLERK: Of June.

13 THE COURT: And that's a Tuesday?

14 THE DEPUTY CLERK: That's a Monday. June 4th's a
15 Monday.

16 THE COURT: Okay. We can do it the week before that,
17 which is the week of the 29th -- I'm sorry. I can't get my
18 calendar up here.

19 THE DEPUTY CLERK: The 28th is a holiday, so we could
20 do the 29th, the 30th --

21 THE COURT: That won't give us 10 days. That won't
22 give us eight days. If we start on the 25th -- what if we start
23 on the 25th?

24 MR. ROUSH: If I may, Your Honor?

25 THE COURT: Yes.

1 MR. ROUSH: We just conferred. We would, both sides,
2 be amenable to starting on the 29th, day after Memorial Day,
3 going four days. You would then go to your conference, and then
4 we'd pick back up after that.

5 THE COURT: Okay. That's fine.

6 MR. ROUSH: Will that work?

7 THE COURT: That way you get your schedule, but it
8 just means it's stretched out.

9 Why won't it work? Oh, I have a trial?

10 THE DEPUTY CLERK: You have a trial on the 11th of June.

11 THE COURT: Oh.

12 MR. ROUSH: I know that case is in mediation right
13 now. Do you expect that that --

14 THE COURT: Oh, yeah. It is.

15 THE DEPUTY CLERK: How do you know that?

16 (Laughter)

17 MR. ROUSH: I can look at her public docket, know what
18 cases are out there.

19 (Laughter)

20 THE COURT: It is. And that's a short case. We could
21 push that a week. Why don't we go forward with this, and we can
22 push this case forward a -- let's plan on starting the 29th.

23 MR. ROUSH: Thank you, Your Honor.

24 THE COURT: We will take evidence till that Friday.
25 I will return -- might return on Thursday. I have to double-

1 check what flights I can get. Let's definitely plan on resuming
2 Friday if possible. I'll let the parties know if it's possible
3 to resume on Thursday. Thursday is pushing it because that's
4 probably a travel day anyway. So we should definitely be able
5 to resume on that Friday, and then we'll go straight through.

6 MR. DILLICKRATH: Thank you, Your Honor.

7 MR. ROUSH: Thank you.

8 THE COURT: All right. So let me just get that.
9 So we start on the 29th. Okay. And a briefing schedule? Are
10 you going to submit that to me?

11 MR. DILLICKRATH: We can send you a proposed briefing
12 schedule. We've worked out the timing collaboratively.

13 THE COURT: Excellent.

14 MR. DILLICKRATH: So I don't think there are any
15 issues on the schedule. Again, to the extent there is anything,
16 we continue to meet and confer on issues that don't necessarily
17 need to be included in the CMSO, and we'll certainly alert the
18 Court if we need any assistance. But we plan to keep working to
19 try to resolve everything amongst ourselves.

20 THE COURT: Very well. Thank you all. I appreciate
21 your spirit of cooperation. Yes, Mr. Roush?

22 MR. ROUSH: Under the current proposed schedule, we
23 have agreed to answer the complaint by this Friday. We'll do
24 that regardless of whether you've had a chance to review this
25 and do the order. In that we will also include a preliminary

1 statement on our position of the case. Given how quickly this
2 case is going to move, we want you to get a sense of both sides'
3 positions.

4 THE COURT: Yes. That will be fine.

5 MR. ROUSH: Thank you, Your Honor.

6 THE COURT: All right. And I'll tell you my practice
7 with regard to joint proposed orders is I'm usually pretty good
8 about -- if the parties agree on them, unless there's something
9 impossible in my schedule, I'm usually pretty good about turning
10 those around if they're joint.

11 So this is a little unusual. There's not going to be any
12 substantial discovery or issues like that, so I don't have to
13 tell you about my policies about that. Any pleadings you send
14 to me need to indicate whether they're opposed or unopposed.
15 That's basically it. Yes, you were going to say something?

16 MR. DILLICKRATH: Your Honor, while we don't
17 anticipate any discovery disputes, both sides have -- or they
18 have already served discovery; we'll be doing so imminently.
19 Hopefully, we won't have any disputes, but there will be a
20 certain amount of ongoing discovery.

21 THE COURT: All right. Well, let me tell you, my
22 practice and my policy is that no party may file a motion to
23 compel without leave of court, and the way you get leave of
24 court is, if there's a dispute that cannot be resolved by a
25 good-faith meeting and conferring between the parties, then the

1 parties need to communicate with the Court jointly.

2 I prefer e-mail, but a letter is also fine. I really would
3 rather not get a phone call, but an e-mail briefly -- I mean,
4 very briefly, couple sentences, couple paragraphs -- setting
5 forth the parties' positions on whatever the dispute is. Once I
6 get that, I will then contact the parties as quickly as possible
7 and set a hearing either by phone or in person.

8 All matters before me are on the record. I don't do
9 anything off the record, but I'm pretty flexible about whether
10 that takes place, with especially with this many people, by
11 phone or in person. If we can get everybody together in 24
12 hours, all the better, and we will try to resolve the problem.
13 I have found, in my brief period on the bench, that that takes
14 care of about 90 percent of all of the disputes.

15 If it's not something that can be easily resolved, then I
16 will grant leave to file a motion to compel and set a briefing
17 schedule on the matter. That's very, very unusual, but that's
18 how I handle them. So I try and not get a logjam.

19 So, if there is a problem, if there is a dispute, I really
20 would rather know about it early than to have a motion to extend
21 the schedule or saying we haven't been able to resolve this, so
22 everything's backed up. So I would really rather get to it
23 quickly, and I guess I'm pretty good about scheduling a hearing
24 by phone if necessary. Okay. Anything further?

25 MR. DILLICKRATH: Not from the FTC, Your Honor.

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MR. ROUSH: Nor from Wilhelmsen.

MR. RYAN: No, Your Honor.

THE COURT: Thank you all.

(Proceedings adjourned at 10:27 a.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Bryan A. Wayne
BRYAN A. WAYNE