

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

CIVIL ACTION NO. 99-92

GENERAL ELECTRIC COMPANY, et al.,

PLAINTIFFS

,

V.

ORDER

**LATIN AMERICAN IMPORTS, S.A., d/b/a
LATAM, et al.,**

DEFENDANTS

This matter is before the court upon the motion (Record No. 69) by the plaintiffs, General Electric Company, et al. ("GE"), to reconsider or in the alternative to certify for immediate appeal pursuant to 28 U.S.C. § 1292(b), and also upon the motions by GE to extend time in which to identify expert witnesses and provide copies of their written reports (Record No. 72), for partial stay of discovery (Record No. 73), and for leave to file reply memorandum out of time (Record No. 78). The court, having reviewed the record and being otherwise sufficiently advised, will grant the motion for leave to file reply memorandum out of time and will deny all other motions.

The motion to reconsider relates to this court's order of August 8, 2001, in which we denied in part GE's motion to dismiss LATAM's counterclaims, including its antitrust counterclaims (Counts 6 and 7). Specifically, GE requests this court to revisit its rulings declining to dismiss Counts 6 and 7 and finding that LATAM had, for purposes of the motion to dismiss, met the requirements of the Foreign Trade Antitrust Improvements Act ("FTAIA") by adequately alleging: (1) a direct, substantial and reasonably

foreseeable anticompetitive effect on U.S. export trade or export commerce; (2) that the alleged anticompetitive effect gives rise to LATAM's claim under the antitrust laws; and (3) antitrust injury. The court, having reviewed the relevant pleadings and concluding that GE has made no new arguments warranting reversal of its earlier rulings, will deny the motion for reconsideration.

The court will likewise deny GE's motion in the alternative to certify this issue for immediate appeal pursuant to 28 U.S.C. § 1292(b). Certification is an extraordinary procedure, to be used sparingly; it "was not intended merely to provide review of difficult rulings in hard cases." *U.S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966). The court finds that certification would not materially advance the ultimate termination of this litigation.

As to GE's motions for (1) extension of time in which to disclose expert witnesses and provide copies of their written reports and (2) partial stay of discovery, the court is uncertain as to the continued viability of these motions. In its memorandum in opposition to the latter motion, LATAM averred that it had already produced the materials in relation to which GE sought its own extension (thirty days after LATAM had produced the documents its experts relied on in forming their opinions). As the document in which LATAM stated its compliance (Record No. 76, at 2 n.2) was filed on November 16, 2001, GE should have by now disclosed its expert witnesses and provided copies of their written reports. To the extent GE has not done so, their motion for extension of time is denied, and GE shall produce the required documents within ten days of the date of this order. As to the motion for partial stay of discovery, GE's request for the stay "until [its] Motion for Partial Dismissal has been fully resolved" is in

error; this motion was fully resolved by this court's order of August 8, 2001. The Federal Rules do not authorize motions for reconsideration of interlocutory rulings, and though courts, including this court, entertain them, the mere filing of a motion for reconsideration is not an opportunity to suspend discovery as a matter of right. The court further notes that the motion for partial stay of discovery was not filed until nearly two months after the motion for reconsideration, which itself was filed nearly two months after the order sought to be revisited. The motion for partial stay of discovery is denied.

Finally, the court will grant GE's motion to file its reply memorandum (relating to its motion to reconsider) out of time, as that memorandum has been duly filed and considered.¹ Accordingly,

IT IS ORDERED that the plaintiffs' motion (Record No. 69) to reconsider or, in the alternative, to certify for immediate appeal is **DENIED**.

IT IS FURTHER ORDERED that the plaintiffs' motion (Record No. 72) to extend time in which to identify experts and provide copies of their written reports is **DENIED**; to the extent GE has not already complied with this obligation, they shall do so within **ten (10) days** of the date of entry of this order.

¹ Once again the parties have, by agreement or otherwise, protracted the briefing and progress of this case. With regard to the motion to reconsider, filed September 28, 2001, the response was not filed until October 30, 2001; the reply memorandum (stipulated by the parties to be due on November 22, 2001) was not filed until November 27, 2001. Such motion practice, in combination with the requests for extension of time in which to meet discovery obligations (already too numerous to count), flout the court's scheduling order and frustrate the progress of this case. The court has determined, however, to leave the parties to practice their case as they will; the resulting consequences will fall upon the attorneys and their clients, and will work no hardship on the court. The parties are reminded, however, that this case remains scheduled for pre-trial conference on March 18, 2002 and for jury trial on April 15, 2002.

IT IS FURTHER ORDERED that the plaintiffs' motion (Record No. 73) for partial stay of discovery is **DENIED**.

IT IS FURTHER ORDERED that the plaintiffs' motion (Record No. 78) for leave to file reply memorandum is **GRANTED**; said memorandum has been duly filed and considered.

This is the _____ day of _____, 2002.

Jennifer B. Coffman, Judge
United States District Court
Eastern District of Kentucky