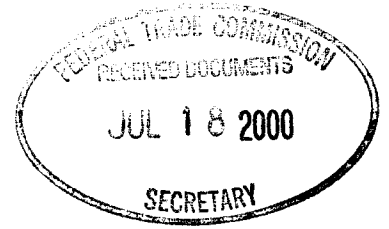


**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**



---

In the matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

Docket No. 9293

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

---

**NON-PARTY PROSKAUER ROSE LLP'S MEMORANDUM  
IN OPPOSITION TO RESPONDENT ANDRX CORPORATION'S  
MOTION FOR CLARIFICATION OR RECONSIDERATION OF  
THE JULY 5 ORDER ENTERED IN THIS CASE**

By order entered July 5, 2000, the motion of non-party Proskauer Rose LLP ("Proskauer") to quash a subpoena served upon it by Respondent Andrx Corporation ("Andrx") was granted. For the reasons set forth below, Andrx's motion for reconsideration of that order should be denied.

In its motion for reconsideration, Andrx has not brought to the court's attention any facts that the court misunderstood or overlooked. It is undisputed that Andrx failed to timely oppose the Proskauer motion to quash the subpoena served by Andrx. The order quashing the subpoena was therefore proper.

JUL 17 2000 15:25 FR PROSKAUER ROSE LLP 10 \*2405\*14123002\*7 P.05/08

Andrx's claim that Proskauer did not move to quash the subpoena in toto is belied by the motion itself. The relief sought was to quash the subpoena, and demonstrably was not to enforce the subpoena subject to resolution of Proskauer's confidentiality issues, the relief Andrx now asks the court to grant. The over 450,000 pieces of paper Proskauer's client Biovail Corporation ("Biovail") produced in related litigation (the "New Jersey Action") have long-since been produced to Andrx. To the extent Andrx seeks additional Biovail documents, it has sought to subpoena them directly from Biovail. Counsel for Andrx and Biovail have engaged in substantial discussions regarding that request and Biovail has consistently maintained that it is not attempting to block such document discovery but rather is seeking to ensure the agreement to *mutual* discovery obligations on both Andrx and Biovail.

Contrary to Andrx's suggestion, Biovail has substantial concerns regarding the breadth of the Andrx document requests. Andrx and Biovail, however, are attempting to resolve these disputes through a negotiated agreement which would, if agreement is reached, provide a mechanism for resolution of these disputes. As stated in support of the Proskauer motion to quash, the non-privileged documents in Proskauer's possession responsive to the subpoena consist of the documents produced by Biovail in the New Jersey Action, which Andrx already has. Almost without exception, the balance of the responsive documents in Proskauer's possession would be protected by either the work product or attorney-client privilege.

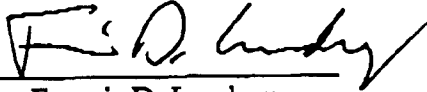
As the court noted in recently denying Andrx's cross-motion to preclude testimony at trial from Biovail witnesses, the parties should be able to develop an appropriate discovery schedule. Biovail remains prepared to attempt to do so.

The motion to quash the subpoena served on Proskauer, properly having been granted, should not be disturbed.

Dated: July 17, 2000

Respectfully submitted,


PROSKAUER ROSE LLP

By:   
Francis D. Landrey

1585 Broadway  
New York, NY 10036-8299  
(212) 969-3505  
Pro Se

JUL 17 2000 15:28 FR PROSRADIK ROSE LL  
10 \*2485\*14720002\*1 1.00700

Peter O. Safir, Esq.  
Kleinfeld, Kaplan & Becker  
1140 19th Street, NW  
Washington, DC 20036-6601



Francis D. Landrey