

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 04 June 2009**

**CASE NUMBER: 2009-SOX-00014**

**IN THE MATTER OF**

**B. BAKER FORE,**  
**Complainant**

**v.**

**MICHELIN NORTH AMERICA, INC.,**  
**Respondent**

**ORDER DISMISSING CLAIM WITH PREJUDICE**

On October 16, 2008, Complainant, Dr. B. Baker Fore (hereafter, "Complainant"), filed a complaint alleging violations under the whistleblower protection provision of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. § 1514A (West Supp. 2003)(herein "the Act"), against Michelin North America, Inc., (hereafter "Respondent"). On March 19, 2009, Respondent filed a Motion for Summary Judgment along with a Memorandum in Support and an Affidavit of Calvin Perry McClain, Jr., contending that the undersigned does not have jurisdiction over this matter, as Respondent is not subject to the restrictions imposed under the Act.

In its Motion, Respondent argues that as a foreign parent company, its stock is not regularly traded on the public markets of the United States. Further, Respondent contends that it adheres to certain yearly requirements to exempt itself from reporting requirements of the Securities Exchange Act of 1934. As such, Respondent is not bound by the requirements of Section 12 of Section 15 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l and §78o, and as such, is not a company that falls under the jurisdiction of the whistleblower provisions of the Act. A response to the Motion for Summary Judgment has not been filed by Complainant.

On March 31, 2009, a status conference was held by telephone to discuss Respondent's Motion for Summary Judgment. Complainant did not participate in this status conference, nor did any representative. A hearing in this matter was conducted April 6, 2009, in Dallas, Texas. Complainant did not attend this hearing and did not send any representatives on his behalf to this hearing. The undersigned has further been made aware of the unsuccessful attempts by Counsel for Respondent to contact Complainant or his representatives. Complainant failed to provide any cause for his failing to appear at the hearing.

On April 30, 2009, the undersigned issued an Order to Show Cause, giving Complainant ten days from the mailing of the Order to show cause why an order for dismissal for abandonment, or in the alternative, an order granting Respondent's Motion for Summary Judgment should not be issued in this matter. The undersigned received certified mail confirmation of delivery and acceptance on May 4, 2009. At present, the undersigned has not received Complainant's reply to the undersigned's Order to Show Cause.

Section 18 of Title 29 of the Code of Federal Regulations covers the rules of practice and procedure for hearings before an administrative law judge. Under 29 C.F.R. § 18.39, a party shall be deemed to have abandoned a request for a hearing if neither the party, nor his or her representative, appears at the time and place fixed for the hearing and fails to provide the undersigned with good cause why he or she cannot or failed to appear at the hearing. A party must provide this showing of good cause either prior to the hearing or ten days after the mailing of an order to show cause by the undersigned. As Complainant has failed to appear for status conferences and a hearing after the numerous attempts of contact and Complainant has further failed to provide any response to the undersigned's Order to Show Cause, the undersigned finds that a dismissal of the above claim is necessary based on abandonment.

Considering the foregoing, the undersigned hereby dismiss this claim with prejudice based on abandonment of the above matter by Complainant.

**A**

**CLEMENT J. KENNINGTON**  
**Administrative Law Judge**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and

the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor,  
Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).