

February 20, 1979

To Our Clients

Takeovers

Occidental Petroleum dropped its proposed exchange offer prior to a decision in the antitrust suit Mead brought to enjoin the offer. Mead then made a motion in the anti-trust suit for substantial attorneys' fees and costs on the ground that it "substantially prevailed" and that Section 16 of the Clayton Act authorizes such fees and costs to a party who "substantially prevails" in an antitrust suit. The court denied the motion holding that since Occidental dropped before the court reached a decision, Mead had not "substantially prevailed". The court said:

"An examination of the proceedings in this matter indicates that plaintiff has not substantially prevailed and so far as the record of this case is concerned, may not have prevailed at all. This matter was tried to the Court on a preliminary injunction. Plaintiff asserted that should a proposed stock acquisition by defendant occur, there would be violation of antitrust laws. After presentation of evidence and prior to this Court's decision defendant Occidental Petroleum Corporation withdrew its offer, making it thus unnecessary for the Court to decide this question of preliminary injunction. The state of the record in this matter is such that it is not clear which party might have prevailed on the only question presented to the Court."

Mead Corp. v. Occidental Petroleum Corp., Civil No. C-3-78-241/242 (S.D. Ohio, Feb. 13, 1979).

M. Lipton