

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1047

HOWARD B. GARBER,

Plaintiff-Appellant,

v.

CHICAGO MERCANTILE EXCHANGE
and CHICAGO BOARD OF TRADE,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of
Illinois in 04-CV-3238, Judge Ruben Castillo.

ON MOTION

Before PROST, Circuit Judge.

ORDER

Howard B. Garber moves for an extension of time to file his opening brief and submits a "request for directions." The appellees' move for clarification that their brief is due February 17, 2009.

Garber states that in addition to this appeal seeking review by this court, he also filed a notice of appeal seeking review by the United States Court of Appeals for the Seventh Circuit. Counsel "seeks this court's guidance on whether he should file his brief with the court under the current schedule, or alternatively await ruling from the Seventh Circuit, which may retain the case." We note that Garber filed his brief with this court on January 5, 2009. Absent a motion requesting that this appeal be stayed, the briefing schedule continues.

Accordingly,

IT IS ORDERED THAT:

- (1) The motions are granted. The appellees' brief is due February 17, 2009.
- (2) The request for directions is denied as moot.
- (3) The revised official caption is reflected above.

FOR THE COURT

FEB 2 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

cc: Stephen Scallan, Esq.
Jerrold E. Salzman, Esq.

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JAN HORBALY
CLERK