

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

NAVAJO FREIGHT LINES, INC.,  
UNITED TRANSPORTATION  
INVESTMENT CO., NAVAJO  
TERMINALS, INC., GARRETT  
FREIGHTLINES, INC., F. J.  
ARSENAULT, and L. F.  
MATTINGLY,

Defendants.

Civil Action No. C 2468

Filed: August 3, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. Section 25), commonly known as the Clayton Act, in order to prevent and restrain the continuing violations by the defendants, as hereinafter alleged, of Sections 7 and 8 of said Act (15 U.S.C. Sections 18 and 19).

2. The corporate defendants Navajo Freight Lines, Inc., Navajo Terminals, Inc. and Garrett Freightlines, Inc., transact business and are found within the District

of Colorado, and the individual defendants F. J. Arsenault and L. F. Mattingly reside within said district.

## II

### DEFENDANTS

3. Navajo Freight Lines, Inc. (hereinafter referred to as "Navajo"), is hereby made a defendant herein. Navajo is a corporation organized and existing under the laws of the State of New Mexico and has its principal place of business in Denver, Colorado.

4. United Transportation Investment Co. (hereinafter referred to as "Investment"), is hereby made a defendant herein. Investment is a corporation organized and existing under the laws of the State of Delaware. Said defendant owns approximately 90 percent of the outstanding common stock of Navajo.

5. Navajo Terminals, Inc. (hereinafter referred to as "Terminals"), is hereby made a defendant herein. Terminals is a corporation organized and existing under the laws of the State of Indiana. Terminals is a wholly-owned subsidiary of Navajo.

6. Garrett Freightlines, Inc. (hereinafter referred to as "Garrett"), is hereby made a defendant herein. Garrett is a corporation organized and existing under the laws of the State of Idaho, and has its principal place of business in Pocatello, Idaho.

7. F. J. Arsenault is hereby made a defendant herein. Since at least 1964, said defendant has been

and is an officer and director of Navajo and, since 1968, has been and is a director of Garrett.

8. L. F. Mattingly is hereby made a defendant herein. Since at least 1969, said defendant has been and is an officer and director of Navajo and, since on or about June 19, 1970, has been and is a director of Garrett.

### III

#### DEFINITIONS

9. As used in this complaint:

(a) "Motor carrier" shall mean any inter-city common carrier of property by motor vehicle in interstate commerce which has been certificated by the Interstate Commerce Commission to transport general freight.

(b) "General freight" shall mean that class of commodities designated by the Interstate Commerce Commission as commodities transported by common carriers generally, except such commodities as require special equipment and service.

(c) "Bay Area" shall mean the San Francisco-Oakland, California metropolitan area and the cities of San Jose, Sacramento and Modesto, California.

(d) "Transcontinental routes" shall mean those routes over which motor carriers operate between the Rocky Mountain Region (Colorado, Idaho, Montana, New Mexico, Utah, Wyoming) or the Pacific Region (Arizona, California, Nevada, Oregon, Washington) of the country, on the one

hand, and points on, or east of, the Mississippi River, on the other hand.

(e) "Navajo group" shall mean Navajo, Investment and Terminals.

(f) "Eastern Carriers" shall mean those motor carriers, other than Navajo, which interchange at Denver, Colorado and operate between Denver and points east of Denver over any of the same routes and between any of the same points as Navajo.

(g) "Northern Carriers" shall mean those motor carriers, other than Navajo, which interchange at St. Paul, Minnesota and operate between St. Paul and points east of St. Paul over any of the same routes and between any of the same points as Navajo.

#### IV

#### TRADE AND COMMERCE

10. Shipment by motor vehicle common carriers is an important method of transporting freight in interstate commerce. A substantial amount of interstate shipment by common carrier motor vehicles involves transportation of general freight.

11. Navajo operates as a motor carrier, transporting commodities in interstate commerce over approximately 22,571 miles of regular routes in 14 states between the East and West Coasts of the United States. In 1968, Navajo had gross operating revenues from the transportation of commodities of about \$40,007,724.

12. Garrett operates as a motor carrier, transporting commodities in interstate commerce over

approximately 16,420 miles of regular routes in 12 states from the Middle West to the West Coast of the United States. In 1968, Garrett had gross operating revenues from the transportation of commodities of about \$51,066,980.

13. In 1968, seven motor carriers operating in both directions between the Bay Area and Las Vegas, Nevada carried substantially all of the general freight transported by motor carriers between such locations or approximately 8.7 million pounds. Four motor carriers, including Navajo and Garrett, carried about 80 percent of the general freight so transported. During the same year, Navajo, ranking second, accounted for at least 20 percent and Garrett, ranking third, carried at least 18 percent of the general freight transported by motor carriers between these two locations.

14. In 1968, seven motor carriers operating in both directions between Denver, Colorado and Las Vegas, Nevada carried substantially all of the general freight transported by motor carriers between such locations or approximately 7.9 million pounds. Four motor carriers, including Garrett and Navajo, carried about 75 percent of the general freight so transported. During the same year, Garrett, ranking first, accounted for at least 40 percent and Navajo, ranking fourth, carried at least 7 percent of the general freight transported by motor carriers between these two locations.

15. In 1968, ten motor carriers operating in both directions between the Bay Area and Denver, Colorado carried substantially all of the general freight transported by motor carriers between such locations or

approximately 264 million pounds. Four motor carriers, including Garrett, carried about 70 percent and eight motor carriers, including both Garrett and Navajo, carried approximately 90 percent of the general freight so transported. During the same year, Garrett, ranking second, accounted for at least 13 percent and Navajo, ranking sixth, carried at least 6 percent of the general freight transported by motor carriers between these two locations.

16. In 1968, ten motor carriers operating in both directions between Los Angeles, California and Denver, Colorado carried substantially all of the general freight transported by motor carriers between such locations or approximately 284 million pounds. Four motor carriers carried about 55 percent and eight motor carriers, including Garrett and Navajo, carried approximately 90 percent of the general freight so transported. During the same year, Garrett, ranking fifth, accounted for at least 8 percent and Navajo, ranking sixth, carried at least 7 percent of the general freight transported by motor carriers between these two locations.

17. Transportation of general freight by motor carriers over transcontinental routes is highly concentrated and has been increasing in concentration. In 1964, the four largest motor carriers, in terms of gross operating revenues, transporting general freight over transcontinental routes, accounted for about 45 percent of the total gross operating revenues of all motor carriers operating over such routes. The eight largest motor carriers accounted for approximately

68 percent of such revenues. By 1969, the four largest motor carriers accounted for about 58 percent of the gross operating revenues generated by all motor carriers transporting general freight over transcontinental routes and the eight largest motor carriers had increased their share of total gross operating revenues to approximately 80 percent of such revenues. Between 1964 and 1969, the total number of motor carriers operating over transcontinental routes decreased from 17 to 14.

18. In 1968, Garrett was the seventh largest motor carrier, in terms of gross operating revenues, transporting general freight over transcontinental routes, accounting for about 5 percent of the total gross operating revenues of all motor carriers operating over such routes. Navajo ranked eleventh and accounted for approximately 4.5 percent of such revenues. Garrett and Navajo combined would have ranked third in gross operating revenues.

19. In 1968, Garrett delivered in excess of 65 million pounds of general freight to Eastern Carriers at Denver, Colorado for transportation to points east of Denver. During the same year, Garrett received over 35 million pounds of general freight from Eastern Carriers at Denver for transportation to points west of Denver.

20. In 1968, Garrett delivered in excess of 15 million pounds of general freight to Northern Carriers at St. Paul, Minnesota for transportation to points east and south of St. Paul. During the same year, Garrett received over 5 million pounds of general freight from Northern Carriers at St. Paul for transportation to points west of St. Paul.

21. If the Navajo group were to obtain control of Garrett's operations, or the operations of Navajo and Garrett were to be combined, a substantial amount of the general

freight interchanged between Garrett and Eastern Carriers at Denver, Colorado and between Garrett and Northern Carriers at St. Paul, Minnesota would probably be diverted to Navajo.

22. For a number of years, Navajo and Garrett, by virtue of their business and location of operation, have been and now are direct competitors, so that the elimination of competition by agreement between them would have and would now constitute a violation of a provision of the antitrust laws.

V

OFFENSES ALLEGED

Violation of Section 7 of the Clayton Act

23. Commencing in or about 1966, members of the Navajo group began acquiring the common stock of Garrett. The Navajo group now owns at least 26 percent of Garrett's outstanding common stock and certain share certificates in a voting trust controlling a large block of Garrett common stock. Representatives of the Navajo group have indicated to Garrett that the Navajo group intends to acquire additional shares of Garrett common stock. The effect of the Navajo group's acquisition of said stock and voting trust certificates may be substantially to lessen competition or tend to create a monopoly with respect to the above described trade and commerce, in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

- (a) actual competition between Navajo and Garrett in the transportation of general freight may be substantially lessened between the following points:



- (i) Bay Area and Las Vegas, Nevada;
- (ii) Denver, Colorado and Las Vegas, Nevada;
- (iii) Bay Area and Denver, Colorado;
- (iv) Los Angeles, California and Denver, Colorado;

(b) competition generally in the transportation of general freight by motor carriers may be substantially lessened and concentration increased between the following points:

- (i) Bay Area and Las Vegas, Nevada;
- (ii) Denver, Colorado and Las Vegas, Nevada;
- (iii) Bay Area and Denver, Colorado;
- (iv) Los Angeles, California and Denver, Colorado;

(c) actual competition between Navajo and Garrett in the transportation of general freight over transcontinental routes may be substantially lessened;

(d) competition generally in the transportation of general freight by motor carriers over transcontinental routes may be substantially lessened and concentration increased;

(e) Eastern Carriers may be foreclosed from transporting a substantial amount of general freight between Denver, Colorado and points east of Denver;

(f) Northern Carriers may be foreclosed from transporting a substantial amount of general freight between St. Paul, Minnesota and points east and south of St. Paul.

Violations of Section 8 of the Clayton Act

24. Since on or about June 28, 1968, defendant F. J. Arsenault has at the same time been both an officer and director of defendant Navajo and a director of defendant Garrett and is now both an officer and director of defendant Navajo and a director of defendant Garrett, in violation of Section 8 of the Clayton Act.

25. Since on or about June 28, 1968, defendant Navajo has permitted and is now permitting defendant F. J. Arsenault to be elected and serve as one of its officers and directors at the same time that defendant F. J. Arsenault has been and is a director of defendant Garrett, and defendant Garrett has permitted and is now permitting defendant F. J. Arsenault to be elected and serve as one of its directors at the same time that defendant F. J. Arsenault has been and is an officer and director of defendant Navajo, in violation of Section 8 of the Clayton Act.

26. Since on or about June 19, 1970, defendant L. F. Mattingly has at the same time been both an officer and director of defendant Navajo and a director of defendant Garrett and is now both an officer and director of defendant Navajo and a director of defendant Garrett, in violation of Section 8 of the Clayton Act.

27. Since on or about June 19, 1970, defendant Navajo has permitted and is now permitting defendant L. F. Mattingly to be elected and serve as one of its officers and directors at the same time that defendant L. F. Mattingly has been and is a director of defendant Garrett, and defendant Garrett has permitted and is now permitting defendant L. F. Mattingly to be elected and serve as one of its directors at the same time that defendant L. F. Mattingly has been and is an officer and director of defendant Navajo, in violation of Section 8 of the Clayton Act.

28. The defendants threaten to continue, and will continue, the aforesaid violations of Section 8 of the Clayton Act unless the relief prayed for herein is granted.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court, pursuant to Section 15 of the Clayton Act, order summons to issue to such of the defendants as may not be found within this district, commanding such defendants to appear and answer the allegations of this complaint and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the Navajo group's acquisitions of Garrett common stock and voting trust certificates be adjudged a violation of Section 7 of the Clayton Act.

3. That defendants Navajo, Investment and Terminals and all persons acting on their behalf be permanently enjoined from any further acquisition of Garrett stock or voting trust certificates, or from carrying out any plan, the effect of which would be to merge, consolidate, or in any way combine the businesses of Navajo and Garrett, which has not theretofore been approved by the Interstate Commerce Commission.

4. That defendants Navajo, Investment and Terminals and all persons acting on their behalf be ordered to divest themselves of all Garrett common stock and voting trust certificates.


5. That it be adjudged that defendants Navajo, Garrett, F. J. Arsenault and L. F. Mattingly have violated Section 8 of the Clayton Act.

6. That F. J. Arsenault and L. F. Mattingly be ordered and directed immediately to resign their directorships in Garrett and immediately to withdraw from participation in or control of the business of Garrett.

7. That Garrett be compelled to accept the resignations of F. J. Arsenault and L. F. Mattingly and be enjoined from permitting these defendants or any other director, officer or employee of the Navajo group to be elected as a director of Garrett or allowing any such person to serve as a director of Garrett in the future.

8. That the plaintiff have such other relief as the Court may deem just and proper.

9. That the plaintiff recover its taxable costs.

  
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