

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

v.) Civil Action No.74-1781 (TAF)

)

MORGAN DRIVE AWAY, INC.;)

NATIONAL TRAILER CONVOY, INC;)

and TRANSIT HOMES, INC.,)

)

Defendants.)

)

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys,
that:

1. Morgan Drive Away, Inc. (“Morgan”) has filed a motion requesting that the Court terminate the Final Judgment entered in this case. The United States tentatively has agreed to the termination of the Final Judgment, but as a matter of policy does not consent to the termination of judgments without public notice and an opportunity for public comments. Therefore, the parties have agreed to the following procedures for termination. Pursuant to this stipulation, Morgan will move to terminate the Final Judgment.

2. Morgan will publish at its expense a notice of the proposed termination, in the form attached as Exhibit A, in two consecutive issues of (a) The Wall Street Journal, and (b) Manufactured Home

Merchandiser; and an Order, in the form attached as Exhibit B, directing such publication, may be filed and entered by the Court without further notice to any party or any other proceedings.

3. The United States will publish in the Federal Register a notice announcing the defendant's motion and the Department's tentative consent to it, summarizing the Complaint, the Motion for Termination and the Final Judgment, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments. A proposed copy of this notice is attached as Exhibit C.

4. Within a reasonable time after the conclusion of the 60-day period for public comment, the United States will file with the Court copies of any comments that it receives and its response to those comments.

5. An Order to terminate the June 30, 1976 Final Judgment entered in this cause of action is attached as Exhibit D. The parties request that the Court refrain from ruling upon the motion to terminate for at least seventy (70) days after the date of the last publication of the notices required by paragraphs 2 and 3 of this Stipulation and at least ten (10) days after the close of the period for public comment. The United States reserves its right to withdraw its consent to the motion to terminate, which it may do at any time before the entry of an Order terminating the Final Judgment, by filing a notice of withdrawal of its consent with the Court and serving a copy of said notice upon the other party.

6. In the event that the United States withdraws its consent, or if the proposed Order terminating the Final Judgment is not entered pursuant to this Stipulation, then this Stipulation shall be of no effect whatsoever; the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and the Stipulation shall not thereafter be used in this or any other action or for any other purpose.

FOR PLAINTIFF
UNITED STATES OF AMERICA

“/s/”
JOEL I. KLEIN
Assistant Attorney General

“/s/”
JOHN M. NANNES
Deputy Assistant Attorney General

“/s/”
REBECCA P. DICK
Director of Civil Non-merger
Enforcement

“/s/”
ROGER W. FONES
Chief
Transportation, Energy and
Agriculture Section

“/s/”
DONNA N. KOOPERSTEIN
Assistant Chief
Transportation, Energy and
Agriculture Section

“/s/”
JOAN S. HUGGLER
Attorney
Transportation, Energy and
Agriculture Section
DC Bar # 927244

United States Department of Justice
Antitrust Division
325 7th Street, N.W., Suite 500
Washington, D.C. 20005
(202) 307-6456

Dated: November 12, 1999

FOR MORGAN DRIVE AWAY, INC.

“/s/”

John C. Christie, Jr.

D.C. Bar # 932483

Hale and Dorr LLP

1455 Pennsylvania Avenue, N.W.

Washington, D. C. 20004

(202)-942-8400

Dated: _____

Final Judgment entered by this Court in the captioned matter on June 30, 1976, has asked the Court to enter a judgment terminating the Final Judgment.

The United States has filed with the Court a memorandum setting forth the reasons it believes that termination of the Final Judgment would serve the public interest. Copies of the defendant's motion to terminate, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with the defendant's motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, 325 7th Street, N.W., Room 215 North, Liberty Place Building, Washington, D. C. 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D. C. 20530.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.) Civil Action No.74-1781(TAF)
)
 MORGAN DRIVE AWAY, INC.;)
 NATIONAL TRAILER CONVOY, INC;)
 and TRANSIT HOMES, INC.,)
)
 Defendants.)

**ORDER ESTABLISHING NOTICE AND PUBLIC COMMENT
PROCEDURES FOR MOTION TO TERMINATE JUDGMENT**

Defendant Morgan Drive Away, Inc. (“Morgan”), having moved for an order terminating the Final Judgment entered by this Court on June 30, 1976, and Plaintiff, the United States of America, having tentatively consented to the motion, and Plaintiff having proposed, and Morgan having agreed, that the notice of motion and the United States’ tentative consent be published at the expense of Morgan, and that all interested persons be given an opportunity to submit comments concerning the proposed termination of the Final Judgment, and it appearing to the Court desirable to invite such comments, and in consideration of the Stipulation of the parties dated _____, it is:

ORDERED, Morgan shall publish at its own expense a notice in the form attached as Exhibit A to the Joint Motion to Establish Procedures For Termination of Final Judgment (“Joint Motion”) in two consecutive issues of (a) The Wall Street Journal and (b) Manufactured Home Merchandiser, and file proof of such publication with the Court; and it is:

FURTHER ORDERED, that copies of all comments received by the Plaintiff within sixty (60) days after the last publication of notices required by this Order and the Plaintiff’s response thereto shall be filed with this Court by Plaintiff within a reasonable period of time after the conclusion of the sixty (60) day comment period, and it is:

FURTHER ORDERED, that this Court will not rule upon the motion of Morgan until at least the seventieth (70th) day after the last publication of the notice required by this Order.

DONE, this 15th day of November, 1999.

“/s/”
UNITED STATES DISTRICT JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No.74-1781 (TAF)

MORGAN DRIVE AWAY, INC.;)

NATIONAL TRAILER CONVOY, INC;)

and TRANSIT HOMES, INC.,)

Defendants.)

U.S. v. Morgan Drive Away, Inc., et al., Civ. Action No. 74--1781 (TAF) (D.D.C. 1976)

Notice is hereby given that Morgan Drive Away, Inc. ("Morgan"), the only remaining defendant in the captioned matter, has moved to terminate the Final Judgment entered by the United States District Court for the District of Columbia on June 30, 1976. In a stipulation also filed with the

Court, the Department of Justice (“Department”) has tentatively consented to termination of the Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On December 5, 1974, the United States filed its complaint in this case. The complaint charged the defendants with conspiracy in restraint of trade, conspiracy to monopolize and monopolization of the for-hire transportation of mobile homes in the United States in violation of Sections 1 and 2 of the Sherman Act. Among the violations alleged in the complaint were that the defendants deprived applicants to state and federal regulatory agencies for mobile home transportation authority of meaningful access to and fair hearings before those agencies. This was done by various means including (1) protesting virtually all applications regardless of the merits, (2) inducing others to protest such applications, (3) jointly financing the protests and providing personnel to aid in the protests, (4) using tactics to deter, delay and increase the costs of the applications, and (5) providing, procuring, and relying on testimony in agency application proceedings that they knew to be false and misleading. The suit also charged that the companies conspired to coerce competitors to charge the same rates as they charged and to fix rates without authorization of federal or state law.

The Final Judgment, filed January 21, 1976 and entered by the Court on June 30, 1976 after a Tunney Act review, prohibited the defendants from using litigation before administrative agencies to exclude competition in the interstate transportation of mobile homes. The Judgment also enjoined the defendants from joint activities in connection with regulatory applications, from fixing interstate, intrastate, or military rates without proper legal authorization, from mutual stabilization of driver compensation, and from agreements to refrain from hiring one another’s personnel.

In the period between 1976 and 1999 substantial changes have been made in the regulation of motor carriers, including transporters of mobile homes, effectively eliminating the opportunity for firms to manipulate the regulatory process to exclude competitors, to limit their growth, or to fix rates.

The Department and Morgan have filed memoranda with the Court setting forth the reasons they believe termination of the Final Judgment would serve the public interest. Copies of Morgan’s motion to terminate, the stipulation containing the Department’s consent, the supporting memoranda, and all additional papers filed with the Court in connection with this motion will be available for

inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Room 215, North, Liberty Place Building, 325 Seventh Street, N.W., Washington, D.C. 20004, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee set out in Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination to the Department. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the Department. Comments should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. N.W., Suite 500, Washington, D. C. 20530, telephone: 202-307-6456.

“/s/”

Rebecca P. Dick

Director of Civil Non-Merger Enforcement

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No.74-1781 (TAF)
)
MORGAN DRIVE AWAY, INC.;)
NATIONAL TRAILER CONVOY, INC;)
and TRANSIT HOMES, INC.,)
)
Defendants.)

ORDER TERMINATING JUDGMENT

This matter comes before the Court on the motion of defendant Morgan Drive Away, Inc. (“Morgan”) to terminate the Final Judgment entered in this case on June 30, 1976. The United States has no objection to the motion. Notice of the motion has been published in The Wall Street Journal, Manufactured Home Merchandiser and the Federal Register. All interested parties have been given an

opportunity to submit comments concerning the proposed termination of the Judgment. Upon consideration of all the papers and comments filed in connection with this motion, and the entire record in this case, and the Court finding that it is in the public interest to terminate the Judgment it is, this

_____ day of _____, 2000,

ORDERED, that the Judgment entered June 30, 1976, is terminated.

Dated: _____

United States District Judge