

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYKES BROS. STEAMSHIP CO., INC.,

Defendant.

Civil Action No.:

95-1839
FILED

DEC 20 1995

Clerk, U.S. District Court
District of Columbia

Entered: December 20, 1995

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on September 26, 1995. United States of America and Lykes Bros. Steamship Co., Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which

relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "automatic rate differential clause" means any provision in a contract that requires the defendant, as an ocean common carrier, to maintain a differential in rates, whether expressed as a percentage or as a specific amount, between rates charged by defendant to the shipper under the contract and rates charged by defendant to any other similarly situated shippers of the same commodities for lesser volumes.

(B) "contract" means any contract for the provision of ocean liner transportation services, including a service contract. "Contract" does not include any contract for charter services or for ocean common carriage provided at a tariff rate filed pursuant to 46 U.S.C. App. § 1707.

(C) "conference" means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff in accordance with 46 U.S.C. App. § 1701, et seq.

(D) "conference contract" means a contract between a conference and a shipper.

(E) "defendant" means Lykes Brothers Steamship Co., Inc., each of its predecessors, successors, divisions, and subsidiaries, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former employees, directors, officers, agents, consultants or other persons acting for or on behalf of any of them.

(F) "individual contract" means a contract between a shipper and defendant in its capacity as an individual ocean common carrier and not in its capacity as a conference member.

(G) "service contract" means any contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level.

(H) "shipper" means the owner of cargo transported or the person for whose account the ocean transportation of cargo is provided or the person to whom delivery of cargo is made; "shipper" also means any group of shippers, including a shippers' association.

(I) "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

III.

APPLICABILITY

(A) This Final Judgment applies to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, employees, and agents.

(B) Nothing contained herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV.

PROHIBITED CONDUCT

Defendant is restrained and enjoined from maintaining, adopting, agreeing to, abiding by, or enforcing an automatic rate differential clause in any individual contract.

V.

NULLIFICATION AND LIMITING CONDITIONS

(A) NULLIFICATION.

(1) Any automatic rate differential clause in any of defendant's individual contracts shall be null and void by virtue of this Final Judgment. Promptly upon entry of this Final Judgment, defendant shall notify in writing each shipper with whom defendant has an individual contract containing an automatic rate differential clause that this Final Judgment prohibits such clause.

(B) **LIMITING CONDITIONS.**

(1) Nothing in this Final Judgment shall affect any conference contracts to which defendant is a party pursuant to defendant's membership in a conference agreement.

(2) Nothing in this Final Judgment shall limit defendant's ability to participate in any conference contract that contains an automatic rate differential clause.

(3) Nothing in this Final Judgment shall prevent defendant from entering a contract to maintain, for any single voyage, a differential in rates between the rates charged by defendant to the shipper under the contract and the rates charged by defendant to another shipper that has contracted for a single shipment on the same voyage.

VI.

COMPLIANCE MEASURES

Defendant is ordered:

(A) to send, promptly upon entry of this Final Judgment, a copy of this Final Judgment to each shipper whose individual contract contains an automatic rate differential clause;

(B) to send a copy of this Final Judgment to each shipper that requests an automatic rate differential clause;

(C) to maintain an antitrust compliance program which shall include the following:

(1) Designating within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of defendant to ensure that it complies with this Final Judgment.

(2) The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(a) distributing copies of this Final Judgment in accordance with Sections VI(A) and VI(B) above; and

(b) distributing, upon entry of this Final Judgment, a copy of this Final Judgment to all officers and employees with responsibility for negotiating contracts with shippers, overseeing compliance with such contracts, or shipper relations.

(c) briefing annually defendant's Board of Directors, Executive Committee, officers, and non-clerical employees on this Final Judgment and the antitrust laws.

VII.

CERTIFICATION

(A) Within 75 days after the entry of this Final Judgment, the defendant shall certify to the plaintiff that it has complied with Sections V and VI(A) above, designated an Antitrust Compliance Officer, and distributed the Final Judgment in accordance with Sections VI(B) and VI(C) above.

(B) For each year of the term of this Final Judgment, the defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Sections V and VI above.

VIII.

PLAINTIFF ACCESS

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

- (1) access during the defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in

any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX.

FURTHER ELEMENTS OF THE FINAL JUDGMENT

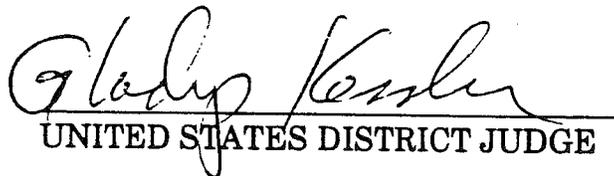
(A) This Final Judgment shall expire five years from the date of entry, provided that, before the expiration of this Final Judgment, plaintiff, after consultation with defendant, and in plaintiff's sole discretion, may extend the Final Judgment for an additional five years.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

DATED:

12/20/95


UNITED STATES DISTRICT JUDGE