

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSOCIATION OF SHIP BROKERS AND
AGENTS (U.S.A.), INC., AND
WORLDSCALE ASSOCIATION (NYC), INC.,

Defendants.

80 Civ. 5520 (LWP)

Filed: June 22, 1981

Entered: October 13, 1981

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 30, 1980, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, 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 hereto, it is hereby,

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. §1).

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation or other entity.

(B) "Tanker" means an oceangoing ship designed and used , for the carriage of liquids, including petroleum and petroleum products.

(C) "Tanker owner" means any person who owns or otherwise controls a tanker.

(D) "Charterer" means a person who enters into an agreement for the use of a tanker for a specified voyage or a specified period of time.

(E) "Fixture" means an agreement between a tanker owner and a prospective charterer for the chartering of a tanker for a specified period of time, or for a specified voyage. Fixtures for specified voyages are said to be "spot market" fixtures.

(F) "Oil tanker broker" or "broker" means a person regularly engaged in arranging and negotiating fixtures on behalf of tanker owners or prospective charterers.

(G) "Oil tanker broker services" means the provision of services by oil tanker brokers to tanker owners or potential tanker charterers in the negotiations concerning spot market fixtures, and associated services.

III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For purposes of this Section III, a member of defendant Association of Ship Brokers and Agents (U.S.A.), Inc. shall not be deemed to be in active concert or participation solely by virtue of his, her, or its membership.

IV

Defendant Worldscale Association (NYC), Inc. (hereinafter Worldscale Association) shall require, as a condition of the

sale or other disposition of all, or substantially all, of the assets used by it in creating, maintaining, and distributing the Worldwide Tanker Nominal Freight Scale (WORLDSCALE), that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

V

Defendants, whether acting unilaterally or in concert or agreement with any other person, are enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan, or program to fix, maintain, or stabilize the fees or commissions charged by oil tanker brokers for rendering oil tanker broker services.

VI

Defendant Association of Ship Brokers and Agents (U.S.A.), Inc. (hereinafter ASBA) is enjoined and restrained from adopting, maintaining, publishing or distributing any code of ethics or other document defining standards of conduct for its members or for oil tanker brokers that makes any recommendation, proposal, or suggestion with respect to the fees charged or to be charged by oil tanker brokers or by its oil tanker broker members.

VII

Defendant ASBA is ordered and directed, within sixty (60) days of the entry of this Final Judgment, to amend its Code of Ethics by deleting Canon 7, which states "Unless otherwise agreed in advance, a member's compensation shall not exceed that which is customary for the services rendered."

VIII

Defendant Worldscale Association is enjoined and restrained from issuing, creating, maintaining, publishing, or perpetuating any scale or system of calculation of values or costs of

tanker voyages (including, but not limited to, the Worldwide Tanker Nominal Freight Scale, or WORLDSCALE) that includes as a component a fee or commission for oil tanker broker services.

IX

Defendant Worldscale Association is ordered and directed, beginning with the publication of its January 1, 1982 edition, to amend its method of calculation of the Worldwide Tanker Nominal Freight Scale, or WORLDSCALE, in a manner necessary to comply with Paragraph VIII of this Final Judgment and to eliminate any component or element of the calculation that is contrary to or inconsistent with any provision of this Final Judgment.

X

Defendant ASBA is ordered and directed to:

(A) Furnish, within thirty (30) days from the date of entry of this Final Judgment, a copy of this Final Judgment to each of its officers and members; and

(B) Furnish a copy of this Final Judgment to each person who becomes a member of defendant ASBA.

XI

Defendant Worldscale Association is ordered and directed to:

(A) Furnish, within thirty days of the entry of this Final Judgment, a copy of this Final Judgment and a letter identical in text to that contained in Appendix A, to all persons in the United States who, for the years 1979, 1980, or 1981, have subscribed to the Worldwide Tanker Nominal Freight Scale (WORLDSCALE); and

(B) Circulate a letter, identical in text to that contained in Appendix A, with each edition of WORLDSCALE that is sent to a person in the United States, for a period of three years beginning with the January 1, 1982 edition.

XII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

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

No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice 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.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such 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 said 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 such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XIII

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XIV

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XV

Entry of this Final Judgment is in the public interest.

Dated: October 13, 1981

/s/ Judge Lawrence W. Pierce
UNITED STATES DISTRICT JUDGE

APPENDIX A

Dear Subscriber:

On September 30, 1980, the United States Department of Justice filed a lawsuit against Worldscale Association (NYC) Inc. and the Association of Ship Brokers and Agents (U.S.A.), Inc. (ASBA). That lawsuit challenged the inclusion of a brokerage fee element in the calculation of the Worldwide Tanker Nominal Freight Scale ("WORLDSCALE") as a violation of the antitrust laws of the United States.

That lawsuit has now been settled by a consent decree among the Government, Worldscale Association (NYC) Inc., and ASBA. That decree does not in any way constitute an admission or finding of violation of law by Worldscale Association (NYC) Inc.

As part of that settlement, Worldscale Association (NYC) Inc. agreed to send this notification to its subscribers for the years 1979 through 1981 and to all persons who purchase a publication of Worldscale Association (NYC) Inc. through January 1, 1985.

This notification is to inform you of the following:

1. Commissions or fees for oil tanker brokerage are freely negotiable between or among the parties to a transaction.
2. Worldscale Association (NYC) Inc. takes no position as to what constitutes an appropriate brokerage commission.
3. Worldscale Association (NYC) Inc. takes no position with respect to whether brokerage commissions should be paid on differentials, demurrage, or other portions of the freight charges in any transaction.

Sincerely yours,