

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSOCIATION OF SHIP BROKERS AND
AGENTS (U.S.A.), INC.;
BOYD, WEIR & SEWELL, INC.;
KERR STEAMSHIP COMPANY, INC; and
NORTON, LILLY & CO., INC.,

Defendants.

COMPLAINT

15 U.S.C. § 1

Conspiracy in
Pestraint of
Trade

Civil No.: H-84-1939

Filed: May 10, 1984

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

1. This complaint is filed and this action is instituted against the defendants by the United States of America under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to

prevent and restrain violations, as hereinafter alleged, by the defendants of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

II.

DEFINITIONS

2. As used herein, the term:

(a) "port agent services" means the services performed for the benefit of an owner or charterer of a cargo ship while the ship is in port, including, among other things: supervising the loading and unloading of cargo; arranging for berths, pilots and tugs; securing the necessary documentation; outfitting and repairing the ship; and attending to the needs of the crew;

(b) "port agent" means a person or company that, for a fee or commission, provides port agent services;

(c) "port agent defendants" means Boyd, Weir & Sewell, Inc.; Kerr Steamship Company, Inc; and Norton, Lilly & Co., Inc.;

(d) "tramp vessel" means a cargo ship that moves without being governed by a schedule of regular port calls, and does not include a liner vessel which regularly travels between specified ports according to a schedule; and

(e) "the port of New York" means the The New York - New Jersey Port District, which encompasses parts of the States of New York and New Jersey within an approximate twenty-five mile radius of the Statue of Liberty.

III.

DEFENDANTS

3. Association of Ship Brokers and Agents (U.S.A.), Inc. (hereinafter "ASEA") is made a defendant herein. ASEA is a corporation organized and existing under the laws of the State of New York, with offices in the Borough of Manhattan in New York City. During the period covered by this complaint, ASEA was a trade association whose members included companies that provided port agent services. The business address of ASBA is 305 Broadway, Room EC4, New York, New York 10005.

4. Boyd, Weir & Sewell, Inc. is made a defendant herein. Boyd, Weir & Sewell, Inc. is a corporation organized and existing under the laws of the State of New York, with offices in the Borough of Manhattan in New York City. During the period covered by this complaint, Boyd, Weir & Sewell, Inc. engaged in the business of providing port agent services and was a member of ASEA. The business address of Boyd, Weir & Sewell, Inc. is 17 Battery Place, New York, New York 10004.

5. Kerr Steamship Company, Inc. is made a defendant herein. Kerr Steamship Company, Inc. is a corporation organized and existing under the laws of the State of New York,

with offices in the Borough of Manhattan in New York City. During the period covered by this complaint, Kerr Steamship Company, Inc. engaged in the business of providing port agent services and was a member of ASBA. The business address of Kerr Steamship Company, Inc. is Two World Trade Center, New York, New York 10048.

6. Norton, Lilly & Co., Inc. is made a defendant herein. Norton, Lilly & Co., Inc. is a corporation organized and existing under the laws of the State of Delaware, with offices in the Borough of Manhattan in New York City. During the period covered by this complaint, Norton, Lilly & Co., Inc. engaged in the business of providing port agent services and was a member of ASBA. The business address of Norton, Lilly & Co., Inc. is 2 Rector Street, New York, New York 10006.

IV.

CC-CONSPIRATORS

7. Various firms and individuals, not made defendants herein, participated as co-conspirators in the violation alleged herein and performed acts and made statements in furtherance thereof.

V.

TRADE AND COMMERCE

8. Port agents are hired by the owners or the charterers of tramp vessels or liner vessels to provide port agent

services while such vessels are in a particular port. During the period covered by this complaint, the port agent defendants were among the principal companies engaged in the business of providing port agent services to tramp vessels in the port of New York. In 1980, the port agent defendants generated revenues of more than \$400,000 from servicing over 400 tramp vessels in the port of New York.

9. During the period covered by this complaint, tramp vessels serviced by port agents in the port of New York, including the tramp vessels serviced by the port agent defendants, moved and carried cargo from one state to another or between the United States and foreign countries. During the period covered by this complaint, these vessels moved and carried cargo in a continuous and uninterrupted flow of interstate and foreign commerce.

10. The activities of the defendants and co-conspirators, which are the subject of this complaint, were within the flow of, and substantially affected, interstate and foreign commerce.

VI.

VIOLATION ALLEGED

11. Beginning at least as early as 1976 and continuing until at least 1981, the exact dates being unknown to the United States, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the

aforesaid interstate and foreign trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to raise, fix and maintain the prices charged for port agent services provided to tramp vessels in the port of New York.

13. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, the following:

(a) agreeing on, preparing, and revising schedules of fees for port agent services provided to tramp vessels in the port of New York;

(b) publishing and disseminating the aforementioned fee schedules; and

(c) using the aforementioned fee schedules as a substantial part of the pricing structure in determining the amounts to be charged for port agent services provided to tramp vessels in the port of New York.

VII.

EFFECTS

14. The aforesaid combination and conspiracy has had the following effects, among others:

(a) fees for port agent services provided to tramp vessels in the port of New York were raised, fixed and maintained at artificial and noncompetitive levels;

(b) competition for port agent services provided to tramp vessels in the port of New York was restrained and suppressed; and

(c) the public was denied the benefits of free and open competition for port agent services provided to tramp vessels in the port of New York.

PRAYER

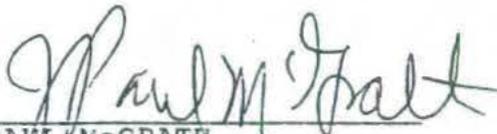
WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that each defendant has engaged in the alleged combination and conspiracy in unreasonable restraint of the aforesaid interstate and foreign trade and commerce, in violation of Section 1 of the Sherman Act;

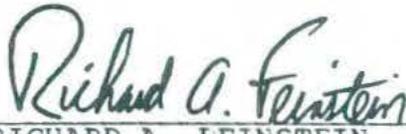
2. That each defendant, its successors, assignees, and transferees, and its officers, directors, agents and employees, and all persons acting in concert therewith, be enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combination and conspiracy hereinbefore alleged or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect;

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

4. That the plaintiff recover the cost of this action.



J. PAUL McGRATH
Assistant Attorney General



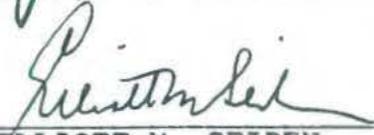
RICHARD A. FEINSTEIN



JOSEPH H. WIDMAR



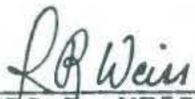
MICHAEL H. SIMON



ELLIOTT M. SEIDEN



ALAN D. MANESS



JAMES R. WEISS
Attorneys
U.S. Department of Justice

Attorneys
U.S. Department of Justice
P.O. Box 481
Washington, D.C. 20044
(202) 633-4772

J. FREDERICK MOTZ
United States Attorney
District of Maryland

JACK C. TRANTER
Assistant United States Attorney
District of Maryland