

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff,

v.

MOTOR CARRIERS TARIFF BUREAU,
INC.

Defendant.

Civil Action No.
77-1973

Filed: June 29, 1978

Entered: October 24, 1978


STIPULATION

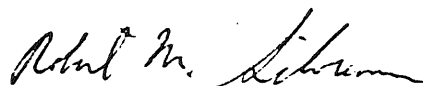
It is stipulated by and between the undersigned parties by their respective attorneys, that:

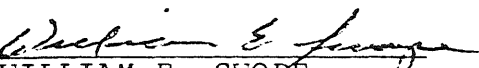
1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. §16), and without further notice to either party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court.

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall

be without prejudice to Plaintiff and Defendant in
this and any other proceeding.

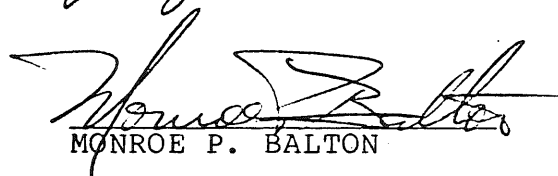

JOHN H. SHENEFIELD
Assistant Attorney General

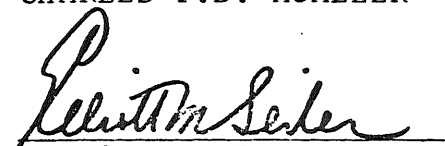

ROBERT M. SILVERMAN

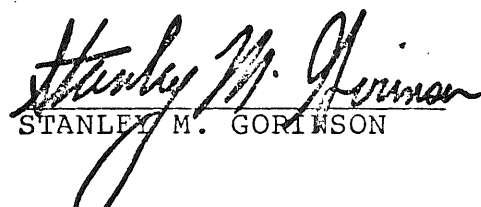

WILLIAM E. SWOPE


JUDY L. GOLDSTEIN


CHARLES F.B. MCALEER

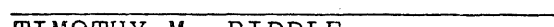

MONROE P. BALTON


ELLIOTT M. SEIDEN


STANLEY M. GORINSON

Attorneys, Antitrust Division
U.S. Department of Justice

FOR DEFENDANT:

By: 
TIMOTHY M. BIDDLE
Jones, Day, Reavis & Pogue

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOTOR CARRIERS TARIFF
BUREAU, INC.

Defendant.

Civil Action No.
77-1973

FINAL JUDGMENT

Filed: June 29, 1978

Entered: October 24, 1978

Plaintiff, United States of America, having filed its Complaint herein on November 16, 1977, and the Plaintiff and the Defendant, Motor Carriers Tariff Bureau, Inc., by their respective attorneys, having consented to the entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or any admission by any party with respect to any issue of fact or law herein:

NOW, THEREFORE, prior to the taking of any testimony, 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 over the subject matter herein and 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.

As used in this Final Judgment:

(a) "ICC" means the Interstate Commerce Commission.

(b) "Tariff" means a publication containing one or more rates, charges, classification ratings, rules, regulations, or other provisions or any combination thereof, of one or more common carriers together with supplements or looseleaf page amendments thereto, if any.

(c) "Rate" means a charge, payment or price fixed according to a ratio, scale or standard for direct or indirect transportation service.

(d) "Carrier" means a common carrier of property by motor vehicle.

(e) "Standing Rate Committee" means any group of Defendant's employees, agents and other representatives which formally or informally meets or otherwise communicates, to vote and recommend to carriers party to a tariff, whether a proposed change or changes in a rate or rates in such tariff should be filed with the ICC.

(f) "Docket" means a bulletin published to inform and facilitate discussion between competing carriers with respect to the filing of rates for the interstate for-hire transportation of property.

(g) "Tariff Publishing Agent" means a person duly authorized by a carrier, via a power of attorney on file with the ICC, to publish and file rates and provisions for that carrier's account in tariffs published in the name of the agent.

(h) "Tariff Watching Service" is a service provided by a tariff publishing agent whereby the agent notifies carriers subscribing to its service of competing carrier

and rate bureau changes in their existing tariffs and rates which have been filed with the ICC.

(i) "Person" means any natural person, firm, partnership, association, corporation, or any other business or legal entity.

(j) "Interstate for-hire transportation" means for-hire transportation of property across state boundaries by carriers authorized to engage in such transportation by the ICC and to serve the general public on a common carrier basis.

(k) "Property" includes all items described in the following tariffs issued by Defendant:

Tariff 35, Tariff 35.2, Tariff 35.3, Tariff 36, Tariff 36.1, Tariff 37.2, Tariff 27.3, Tariff 37.5, Tariff 39, Tariff 39.2, Tariff 39.3, Tariff 46, Tariff 48, Tariff 64, Tariff 65, Tariff 65.1, Tariff 67, Tariff 69, Tariff 71, Tariff 73, Tariff 74, Tariff 75, Tariff 76, Tariff 77, Tariff 78, Tariff 79, Tariff 83, Tariff 84, Tariff 86, Tariff 88, Tariff 89, Tariff 90, Tariff 91, Tariff 92, Tariff 93, Tariff 94; all respective supplements thereto and all predecessor tariffs of the aforesaid tariffs.

III.

The provisions of this Final Judgment are applicable to Defendant herein and shall also apply to each of the Defendant's officers, directors, agents, employees, subsidiaries, successors, and assigns and to all other persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from:

(a) Entering into, adhering to, maintaining, or claiming any rights under, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize or maintain collective rates charged by competing carriers for the interstate for-hire transportation of property;

(b) Holding itself out as an ICC-approved rate-making conference or bureau;

(c) Maintaining a Standing Rate Committee;

(d) Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of Defendant prior to the time of notification to tariff subscribers required by the ICC;

(e) Inviting, coordinating or providing a forum, including publication of a docket, for any discussion or agreement between competing carriers with respect to collective rates for the interstate for-hire transportation of property;

(f) Knowingly publishing or causing to be published any docket, tariff or tariff supplement which was the result of any discussion or agreement between competing carriers with respect to collective rates for the interstate for-hire transportation of property; or

(g) Filing changes or supplements to a carrier's tariffs except upon specific instructions from that carrier.

Provided, however, that this Section IV shall not apply to any act by Defendant authorized by any order of the

ICC permitting Defendant to take such act, in accordance with §5a of the Interstate Commerce Act (49 U.S.C. §5b).

V.

Defendant is ordered and directed within six (6) months following the date of the entry of this Final Judgment:

(a) To cease using the name Motor Carriers Tariff Bureau, Inc.;

(b) To cancel all existing tariffs (and any effective supplements thereto) and rates contained therein;

(c) To terminate all powers of attorney and rate and tariff service agreements previously executed between Defendant and any carrier utilizing the publishing services of the Defendant;

(d) To cancel any provisions of its articles of incorporation, by-laws, contracts, rules or written statements which have the purpose or effect of permitting, announcing, stating, explaining or agreeing to any business practice enjoined by the terms of this Final Judgment.

VI.

(a) For those carriers who were or are members of Defendant or have participated in Defendant's collective tariffs, and who wish to continue to use its services as a tariff publishing agent, Defendant must offer an "open season" for a period of six months from the date of the entry of this Final Judgment to facilitate the filing of rates independently arrived at by each such carrier. During the "open season," Defendant must obtain from each carrier using Defendant's services as a tariff publishing agent an affidavit which affirms that the new rates filed on

behalf of that carrier were arrived at unilaterally by the independent action of that carrier during the "open season" and were not collectively established.

(b) Defendant must not take any steps or adopt any procedures which would have the effect of discouraging any carrier from acting independently in establishing its rates in the future.

(c) If Defendant initiates a tariff watching service, that service cannot be offered to the former participants in Defendant's canceled tariffs. No agreement between Defendant and a carrier for said watching service may include a provision for instituting automatic changes to rates on file for said carrier.

VII.

Defendant is further ordered and directed:

(a) To take reasonable steps for dissemination of, education as to, and the compliance with this Final Judgment, involving its officers, directors, employees and agents having any responsibility in connection with analyzing or publishing tariffs or changes to rates contained in tariffs published by Defendant advising such persons of their obligations under this Final Judgment. At a minimum Defendant must provide each such officer, director, employee and agent within ten days (10) of the entry of this Final Judgment with a copy of this Final Judgment, a statement of the Defendant's compliance policy under the Final Judgment in the form of an appropriate company manual or memorandum and shall obtain a written statement from each such officer, director, agent, or employee evidencing the receipt of

these documents, such statements to be retained in the files of the Defendant.

(b) For a period of ten (10) years from the entry of this Final Judgment, Defendant must provide each new officer, director, agent and employee of Defendant with a copy of this Final Judgment and a statement of the Defendant's compliance policy under the Final Judgment in the form of an appropriate company manual or memorandum and must provide any carrier desiring to utilize Defendant's services as a Tariff Publishing Agent with a copy of this Final Judgment. Defendant must obtain a written statement from each officer, director, employee, agent, and carrier evidencing receipt of the applicable documents, such statement to be retained in the files of Defendant.

(c) Within one hundred and eighty days (180) after the date of the entry of this Final Judgment, Defendant shall file an Affidavit of Compliance with the Court, and serve a copy thereof to Plaintiff, reciting the steps taken to comply with this Final Judgment.

VIII.

For the purpose of determining or securing compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division or his agent, subject to any legally recognized privilege:

(a) On reasonable notice to the Defendant made to its principal office duly authorized representatives of the Department of Justice shall be permitted:

1. Access, during office hours of the Defendant, to inspect and copy all books, ledgers, accounts,

correspondence, memoranda and other records and documents in the possession or under the control of the Defendant 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, directors, employees or agents of the Defendant, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(b) The Defendant shall submit such reports in writing, under oath if requested, with respect to matters contained in this Final Judgment as may from time to time be so requested.

No information or documents obtained by the means permitted in this Section VIII 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 Plaintiff, 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.

If at any 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 of a type described in 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 the Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

IX.

Jurisdiction is retained by the 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 and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X.

This Final Judgment shall remain in effect for a period of ten (10) years from the date upon which it is entered by the Court.

XI.

Entry of this Final Judgment is in the public interest.

10/24/78

Date

/s/ GERHARD A. GESELL

UNITED STATES DISTRICT JUDGE