

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Expressways, Inc., Flanigan Brothers Storage Co., Nystrom's Moving and Storage, Inc., Vanways, Inc., and Dobson Cartage and Storage Co., U.S. District Court, W.D. Michigan, 1979-2 Trade Cases ¶62,914, (Jul. 13, 1979)

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United States v. Expressways, Inc., Flanigan Brothers Storage Co., Nystrom's Moving and Storage, Inc., Vanways, Inc., and Dobson Cartage and Storage Co.

1979-2 Trade Cases ¶62,914. U.S. District Court, W.D. Michigan, Northern Division, Civil No. M 75-41, Entered July 13, 1979, (Competitive impact statement and other matters filed with settlement: 44 *Federal Register* 21085).

Case No. 2454, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Bid Rigging: Allocation of Markets: Exchange of Information: Storage Business: Consent Decree.— Five Michigan storage companies were barred by a consent decree, for a period of five years, from fixing prices, rigging bids, allocating markets or exchanging information in connection with the contracting for non-temporary storage of household goods of military personnel. Provisions of the decree did not apply to transactions or communications between commonly controlled companies.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, James S. Brady, U. S. Atty., David F. Hils, Dept. of Justice, Antitrust Div., Cleveland, Ohio. **For defendants:** Fred L. Woodworth, for Expressways, Inc. and Vanways, Inc.; J. Terry Moran, for Nystrom's Moving & Storage, Inc.; Marvin L. Heitman, for Flanigan Brothers Storage Co.; Jon G. March, for Dobson Cartage and Storage Co.

Final Judgment

Miles, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 20, 1975, and plaintiff and defendants, by their respective attorneys, having each 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 evidence or 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

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states claims upon which relief may be granted against the defendants under [Section 1 of the Sherman Act](#), 15 U. S. C. §1.

II

[Definitions]

As used in this Final Judgment:

- (A) "Nontemp storage" means the non-temporary storage of household goods of military personnel;
- (B) "TMO" means the Transportation Management Office;
- (C) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(D) "Control" means at least a 50 percent direct or indirect ownership interest in the controlled person by the controlling person.

III

[Applicability]

The provisions of this Final Judgment are applicable to each defendant herein and shall apply also to each of such defendant's subsidiaries, successors, assigns, directors, officers, agents, servants and employees, 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.

IV

[Damage Settlement]

Count Two of the plaintiff's complaint herein, pursuant to the settlement stipulation of all parties, has been finally disposed of under the Court's accompanying Consent Judgment dated [July 13, 1979; ¶62,915].

V

[Price Fixing; Bidding]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, enforcing, or claiming any rights under any contract, agreement, arrangement understanding, plan, program, combination, or conspiracy with any other person, directly or indirectly to:

- (A) Fix, raise, stabilize or maintain the prices or other terms or conditions for nontemp storage;
- (B) Allocate or rotate customers, territories or markets for nontemp storage;
- (C) Submit noncompetitive, collusive, or rigged bids or quotations for nontemp storage;
- (D) Refrain from bidding for nontemp storage.

VI

[Price Information]

Each of the defendants is enjoined and restrained from communicating to or exchanging with any other person who furnishes nontemp storage any information concerning prices of nontemp storage.

VII

[Certification]

Each defendant shall accompany each of its bids for nontemp storage with a certified written statement, by one of its officers, that the bid was arrived at independently and was not the result of any agreement or understanding with any other person who furnishes nontemp storage.

VIII

[Controlled Companies]

This Final Judgment shall not apply to transactions, dealings, or communications solely between a defendant and a parent or subsidiary of, or corporation under common control with, such defendant, or solely between defendant Vanways, Inc. and Stevens Van Lines or its subsidiary, Stevens Forwarders, as long as control of these three companies remains in one or more of the following: Archie H. Stevens, Sr., and his sons, Archie H. Stevens, Jr., James Stevens, Morrison Stevens, and John Stevens.

IX

[Acquiring Parties]

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its nontemp storage business, or all, or substantially all, of the assets of its nontemp storage business serving K. I. Sawyer Air Force Base, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

X

[Compliance]

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall file with this Court and with plaintiff, on the anniversary date of this Final Judgment, a sworn statement by a responsible officer, designated by that defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

Within sixty (60) days of the entry of this Final Judgment, each such defendant shall take affirmative steps (including, but not limited to, written directives setting forth corporate compliance policies, distribution of this Final Judgment, and meetings to review its terms and the obligations it imposes) to advise each of its officers, directors, agents, and employees engaged or involved in the nontemp storage business of the company's and their obligations under this Final Judgment and the antitrust laws, and of the criminal penalties for violation of the provisions of this Final Judgment and the antitrust laws.

XI

[Notice]

Each defendant is ordered and directed to:

- (A) furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers and directors, and to each of its employees and agents who has responsibility for or authority over the establishment of prices or bids for nontemp storage;
- (B) furnish a copy of this Final Judgment to each successor to those officers, directors, employees or agents described in Paragraph (A) of this Section, within thirty (30) days after such successor is employed by or becomes associated with such defendant;
- (C) furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to the TMO of K. I. Sawyer Air Force Base;
- (D) file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraphs (A) and (C) of this Section.

XII

[Inspection]

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the 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 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, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section 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.

If at any 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 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 ten (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 the defendant is not a party.

XIII

[Retention of Jurisdiction]

Jurisdiction is retained 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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

[Public Interest]

Entry of this Final Judgment is in the public interest.