

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Goodpasture, Inc., U.S. District Court, S.D. Texas, 1977-1 Trade Cases ¶61,390, (Apr. 13, 1977)

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United States v. Goodpasture, Inc.

1977-1 Trade Cases ¶61,390. U.S. District Court, S.D. Texas, Houston Division, Civil Action No. 73-H-1765, Entered April 13, 1977, (Competitive impact statement and other matters filed with settlement: 41. *Federal Register* 52552).

Case No. 2360, Antitrust Division, Department of Justice.

Sherman Act

Trade Restraints: Terminal Facilities: Grain Elevators: Designation of Stevedoring Services: Consent Decree.— A grain exporting company was barred by a consent decree from illegally providing exclusive stevedoring services at its grain elevators. The practice of requiring all tramp vessel owners to agree to hire the stevedoring firm designated by the exporting company as a condition for using the elevators was prohibited.

For plaintiff: Donald I. Baker, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Joseph J. Saunders, Robert J. Rose, Donald L. Flexner, and David W. Brown, Attys., Dept. of Justice. **For defendant:** Charles Newton, of Vinson, Elkins, Searls, Connally & Smith, and I. J. Saccomanno, of Saccomanno, Clegg, Martin & Kipple.

Final Judgment

Hannay, D. J.: The complaint having been filed herein on December 28, 1973, the Plaintiff and the Defendant, 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 evidence or admission by any party with respect to any issue of fact or law herein

Now, Therefore, upon a determination by this Court that entry of this Judgment is in the public interest, and before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended, 15 U. S. C. §1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II.

[Definitions]

As used in this Final Judgment:

(A) "Elevator" shall mean any grain elevator owned or operated by the Defendant in the United States, including the one located in Galena Park, Texas;

(B) "Person" shall mean any individual, corporation, partnership, association, firm or other legal entity.

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III.

[Applicability]

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

IV.

[Exclusive Stevedoring Services]

After the date of entry of this Final Judgment, the Defendant is enjoined and restrained from:

- (A) Conditioning, directly or indirectly (except where the Defendant is the charterer or subcharterer or where the Defendant is bearing the cost of stevedoring services), the loading of grain by any person at any elevator upon any requirement, understanding or agreement that the stevedoring services of any particular person be utilized;
- (B) Entering into any contract, agreement or understanding (except where the Defendant is the charterer or subcharterer or where the Defendant is bearing the the cost of stevedoring services) with the owner or charterer of any vessel that the Defendant may or will select the person which will provide stevedoring services for the loading of grain on any vessel at any elevator; or
- (C) Denying or otherwise restricting any person access to and the use of the facilities at the terminal or dock of an elevator in order to provide stevedoring services for loading grain at the elevator;

Provided, however, that the provisions of this Section IV are not intended to cover the situation where the Defendant selects the stevedoring services at competitive rates because the buyer of the grain requires a condition in the grain sales contract that Defendant shall bear the financial detriment in the event of loading delays or suffer other economic penalties because of loading delays. Provided further that the provisions of this Section IV shall not prohibit the Defendant from establishing and enforcing regulations and charges for access to and use of the facilities at an elevator, and the conduct of the stevedoring operations thereat, provided that such regulations and charges are reasonable and are applied without discrimination to all persons seeking such access and use. In this connection the Defendant may require and enforce written agreements as a condition to such access so long as such agreements are consistent with the provisions of this Section IV.

V.

[Notice]

The Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to mail a copy of this Final Judgment to each of the stevedoring companies which Defendant knows or has reason to know is or might be interested in offering stevedoring services at any elevator, to each of the stevedoring companies operating in the vicinity of each elevator, and to each of the stevedoring companies maintaining an office in Houston, Texas, and, within the same period, to mail to the Department of Justice a list of the stevedoring companies to which a copy of the Final Judgment is sent.

VI.

[Inspection]

- (A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 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 with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VI 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.

VII.

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling any party consenting 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 carrying out of this Final Judgment, for the modification of any of the provisions herein, for the enforcement of compliance herewith and the punishment of the violation hereof

VIII.

[*Public Interest*]

Entry of this Final Judgment is in the public interest.