

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Arrow Overall Supply Co., Cadillac Overall Supply Co., Central-Quality Services Corp., and Work Wear Corp., U.S. District Court, E.D. Michigan, 1978-2 Trade Cases ¶62,275, (Sept. 26, 1978)**

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United States v. Arrow Overall Supply Co., Cadillac Overall Supply Co., Central-Quality Services Corp., and Work Wear Corp.

1978-2 Trade Cases ¶62,275. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 571167, Entered September 26, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 21062).

Case No. 2459, Antitrust Division, Department of Justice.

### **Sherman Act**

**Price Fixing: Exchanges of Information: Industrial Launderers: Limits on Terms of Customer Contracts: Consent Decree.**— Industrial launderers were prohibited by a consent decree from agreeing on prices, allocating customers, and exchanging price information. Additionally, the firms were barred from entering into customer agreements calling for automatic renewal, liquidated or other formula damages in unreasonable amounts, long-term periods (subject to exceptions), and restrictions on the customer's right to terminate for uncured failure of performance. The decree, however, permitted employee- and sale-of-business-noncompetition covenants, steps to prevent interference with contracts, and joint labor agreements.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, Robert M. Dixon, Jerome C. Finefrock, Susan B. Cyphert, and Deborah Lewis Hiller, Attys., Antitrust Div., Dept. of Justice, Cleveland, Ohio, James K. Robinson, U. S. Atty. **For defendants:** Alan R. Miller, of August, Thompson, Sherr & Miller, Birmingham, Mich., for Arrow Overall Supply Co.; Patrick B. McCauley, of Nederlander, Dodge & McCauley, Detroit, Mich., for Cadillac Overall Supply Co.; Allen Zemmol, of Dingell, Hylton & Zemmol, Detroit, Mich., for Central-Quality Services Corp.; Arnold Lerman, of Wilmer, Cutler & Pickering, Washington, D. C., for Mechanics Laundry Co. of Detroit, Inc., and Aratex Services, Inc.

### **Final Judgment**

Keith, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 19, 1975, and the defendants having appeared and filed their answers to the complaint, and the 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 any admission by any party with respect to any issue of fact or law herein;

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:

I.

#### **[ Jurisdiction]**

This Court has jurisdiction over 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 Act of Congress of July 2, 1890, as amended (15 U. S. C. §1), commonly known as the Sherman Act.

II.

### **[ Definitions]**

As used in this Final Judgment:

- (A) "Industrial garment" shall mean any item of work clothing, including but not limited to work pants, work shirts, coveralls, overalls, jackets, coats, uniforms and any other such products, including but not limited to shop towels and dust control materials;
- (B) "Industrial laundry business" shall mean the business of renting and/or servicing industrial garments in the lower peninsula;
- (C) "Person" shall mean any individual, corporation, partnership, firm, association, or business or legal entity;
- (D) "Operator" shall mean any person engaged in the industrial laundry business;
- (E) "Lower peninsula" shall mean the geographic area of the State of Michigan south of the Straits of Mackinac;
- (F) A corporation "under common control" with a defendant shall mean any corporation (i) which is a subsidiary, directly or indirectly, of a parent corporation of a defendant or (ii) 50% or more of whose stock is owned or controlled by a person who also owns or controls 50% or more of the stock of a defendant.

### **III.**

### **[ Applicability]**

The provisions of this Final Judgment are applicable to all defendants and to their subsidiaries, officers, directors, agents, employees, 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.

### **IV.**

### **[ Prices; Markets; Servicing]**

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination, or conspiracy with respect to the industrial laundry business with any operator to:

- (A) Fix, raise, stabilize, establish or maintain any price, markup, discount or other term or condition or contract provision for the rental and/or servicing of any industrial garment.
- (B) Divide, allocate or apportion any market territory, customer or potential customer for the rental and/or servicing of any industrial garment.
- (C) Refrain from soliciting the business of any customer or potential customer for the rental and/or servicing of any industrial garment.
- (D) Refrain from renting and/or servicing any industrial garment to and/or for any customer or potential customer.
- (E) Eliminate or prevent any person from engaging in the industrial laundry business.

The provisions of subsections (C), (D), and (E) of this Section IV shall not apply to lawful covenants not to compete which are a part of (i) an employment contract, or (ii) a contract of sale of an industrial laundry or interest therein entered into in good faith and on a non-reciprocal basis between a defendant and another person.

### **V.**

### **[ Information]**

Each defendant is enjoined and restrained from directly or indirectly furnishing to or requesting or accepting from any operator

- (i) prices or charges, or
- (ii) terms of bids or offers, or
- (iii) the identity of customers,

for the rental and/or servicing of any industrial garment in the lower peninsula.

## VI.

### **[ Contracts]**

Each defendant is enjoined and restrained, in any contract or agreement for the rental and/or servicing of industrial garments in the lower peninsula, from directly or indirectly entering into, enforcing, furthering, adhering to, maintaining or claiming any right pursuant to any provision:

- (A) For the automatic renewal of the contract or agreement;
- (B) For liquidated or other formula damages in such unreasonable amount as to constitute a penalty;
- (C) Of a contract or agreement which provides for a term longer than thirty months from the date of its execution or last renewal, whichever is later; except that contracts which are in existence on the effective date of this Section of the Final Judgment can continue for no longer than twenty-four months from that effective date; and provided that such a provision shall not be prohibited in a contract or agreement entered into after the sixth anniversary of the date of entry of this Final Judgment, if the defendant at the time of negotiation has furnished its customer clear and conspicuous written notice that the duration of the contract or agreement is subject to negotiation between the parties;
- (D) Prohibiting a customer's right to terminate its contract because of a defendant's material breach by substantial failure of performance which the defendant refuses to cure upon proper notice. This subsection (D) shall not apply to a failure of performance or cure outside the control of the defendant.

This Section VI shall become effective sixty days after the date of entry of this Final Judgment and shall remain in effect for a period of ten years from that date. The provisions of this Section VI shall not apply to any written agreement or specification prepared or submitted by a customer.

## VII.

### **[ Sale of Business]**

Each defendant shall require as a condition of the sale or other disposition of all or substantially all of its industrial laundry business in the lower peninsula that the acquiring party agree to be bound by the provisions of this Final Judgment. Any person acquiring all or substantially all of the industrial laundry business of a defendant shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment.

## VIII.

### **[ Interpretation]**

- (A) For purposes of Sections IV, V, and VI of this Final Judgment a defendant and its direct or indirect parent, or a defendant and a corporation under common control with it, shall be deemed to be one person.
- (B) This Final Judgment shall not be construed to prohibit a defendant: (i) acting upon the bona fide belief that one of its contracts is being interfered with by another person, from notifying that person of the existence of the contract; nor (ii) from pursuing in good faith its legal remedies or the resolution of legal claims with respect to tortious interference with a specific contractual relationship.
- (C) The provisions of Section IV and V shall not apply to a bona fide transaction between a defendant and an operator (i) for the purchase or sale of an industrial laundry or an interest therein; or (ii) for the purchase of

goods and services by a defendant, or the sale of goods and services by a defendant; or (iii) for the exchange of information between a defendant and another operator solely for and necessary to such transactions.

(D) The provisions of this Final Judgment shall not be construed to prohibit a defendant from engaging with other operators in joint negotiations, agreements or activity the sole purpose or effect of which is to deal with labor unions or labor disputes except that there shall be no exchange hereunder of prices or other terms of pending bids or offers.

## IX.

### **[ *Notice to Personnel*]**

Within sixty days of the entry of this Final Judgment, and annually thereafter for a period of ten years, each defendant shall take affirmative steps to advise each of its officers, directors and employees engaged in sales in the industrial laundry business, of its and their obligations under this Final Judgment and of the criminal penalties for violations of the Judgment and of the antitrust laws. In addition, each defendant shall, for so long as it remains in the industrial laundry business, cause a copy of this Final Judgment to be distributed annually to each of its officers.

## X.

### **[ *Reports*]**

For a period of ten years from the date of entry of this Final Judgment, each defendant shall file with plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the preceding year to discharge its obligations under Section IX above. 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.

## XI.

### **[ *Notice to Customers*]**

Within sixty days of the entry of this Final Judgment each defendant shall mail or deliver to each of its industrial laundry customers who pay rentals of less than three hundred fifty dollars per week either a copy of the Final Judgment or a notice of its entry, which notice shall set forth, in a form acceptable to the Department of Justice, a summary of the prohibitions of Section VI and an offer to make a copy of the Judgment available upon written request. Where a defendant has contracts with individuals in the same establishment, the copy or notice may be mailed or delivered to the person responsible for administering the contracts.

## XII.

### **[ *Inspection and Compliance*]**

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 any defendant made to its principal office, be permitted:

(1) Access during the 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, which may have counsel present, relating to any of the 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, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, the 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 obtained by the means provided in this Final Judgment 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 the time information or documents are furnished by a defendant to the United States, the 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 the 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 days' notice shall be given by the United States 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 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 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.

### XIV.

#### **[ *Public Interest* ]**

Entry of this Final Judgment is in the public interest.