

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Steamship Co. and Oswego Shipping Corp., U.S. District Court, W.D. New York, 1970 Trade Cases ¶73,233, (Jul. 29, 1970)

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United States v. American Steamship Co. and Oswego Shipping Corp.

1970 Trade Cases ¶73,233. U.S. District Court, W.D. New York. Civil No. 1970-283. Entered July 29, 1970. Case No. 2110 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Steamship Companies—Divestiture—Merger Ban—Consent Decree.—A steamship company and its controlling corporation, alleged to have violated the Clayton Act by acquiring two competing steamship companies operating on the Great Lakes, was required by a consent decree to divest themselves of the largest of the two acquired companies within two years. The decree also enjoined the defendants for a period of five years from acquiring any interest in any self-propelled dry bulk cargo ship then or theretofore operated between U. S. Great Lakes ports, or from acquiring the stock of any company owning any such ship, without prior approval of the government or the court.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen.; Baddia J. Rashid, Joseph J. Saunders, William D. Kilgore, Jr., Keith I. Clearwaters, Harry N. Burgess and Matthew Miller, Attys., Dept. of Justice; Kenneth Schroeder, Jr., U. S. Atty.

For the defendants: George Reycraft.

Final Judgment

CURTIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 22, 1970, and the defendants having appeared, and 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 or admission by any party hereto 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 without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the parties aforementioned, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter hereof and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. 18), commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;
- (B) "Oswego" shall mean Oswego Shipping Corporation, and any of its subsidiaries;
- (C) "American" shall mean American Steamship Company, and any of its subsidiaries;

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(D) "Reiss" shall mean The Reiss Steamship Company, and any of its subsidiaries.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant and shall not thereby be bound by the terms hereof.

IV

[*Divestiture*]

Defendants Oswego and American are ordered and directed as follows:

1. Within two years from the date of entry of this Final Judgment to divest themselves of all of their interest in Reiss as a going, viable concern engaged in the transportation of bulk commodities on the Great Lakes coupled with such improvements, betterments, replacements and all other assets which have been added by Reiss and defendants since such acquisition up to the date of the divestiture.
2. The divestiture required by the foregoing paragraph 1 shall be absolute and unconditional.
3. This divestiture shall be accomplished by offering to sell all of the assets or stock of Reiss owned by defendants, provided that, with the prior approval of the plaintiff or the court as set forth in Section VIII hereof, Reiss may dispose of any ship or ships and defendants may comply with the requirement that they dispose of the Reiss fleet by the sale by American of the substantial equivalent in type and tonnage of the ships owned by Reiss.

V

[*Maintenance of Acquired Finn*]

Defendants shall use their best efforts to maintain Reiss until the time of divestiture thereof, as a going, viable concern, at standards of operating performance, including personnel, applicable to Reiss at the time of entry of this Final Judgment.

VI

[*Terms of Sale*]

Neither sale of the assets nor sale of stock under Section IV thereof shall be made knowingly, directly or indirectly, to any person who is at the time of divestiture (a) an officer, director, employee, or agent of defendants, or (b) who beneficially owns, or has power to vote, or controls, or has rights to own or control, more than one (1) percent of the outstanding share of common stock of defendants, or (c) in whom defendants have a financial interest whether by any equity interest or otherwise.

VII

[*Periodic Reports*]

Defendants are ordered and directed to file with the plaintiff periodic reports each six months after the effective date of this Final Judgment setting forth in reasonable detail the steps then taken by them to comply with this Final Judgment.

VIII

[*Notification of Sale*]

(A) Upon defendants proceeding with divestiture in whole or in part under Section IV of this Final Judgment, not less than forty-five (45) days prior to the closing date designated in any contract for the sale of the assets or stock of Reiss, defendants shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale, and such other information concerning the transaction as plaintiff may request within fifteen (15) days from the receipt of the aforesaid advice. At the same time, defendants shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer in writing, or expressed a desire, to purchase such assets or stock together with the terms and conditions thereof.

(B) Not more than twenty-one (21) days after the receipt of the information required by this Section VIII, plaintiff shall advise defendants in writing whether it objects to the proposed sale. If plaintiff does not object to the proposed sale, it may be consummated, but if objection is made, then the proposed sale shall not be consummated until defendants obtain approval by the Court, or unless plaintiff's objection is withdrawn.

The time period set forth in Section IV shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed sale which delays the consummation of the divestiture transaction proposed by defendants.

IX

[*Future Acquisitions*]

For a period of five (5) years following the effective date of this Final Judgment, defendants are enjoined and restrained from acquiring any interest in any self-propelled dry bulk cargo ship then or theretofore operated between United States Great Lakes ports, or from acquiring the stock of any company owning any such ship, without the prior approval of the plaintiff or this Court. Plaintiff will notify defendants of its approval or disapproval in writing within thirty days of written notice by defendants.

X

[*Compliance and Inspection*]

For the purpose of securing or determining compliance with this Final Judgment, and not for any other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendants made to their principal offices, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendants, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding any such matters.

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

(C) No information obtained by the means provided for in this Section X 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 plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

Jurisdiction of this cause 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 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.