

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Pullman Company, Pullman-Standard Car Manufacturing Company, Pullman Incorporated, Pullman Car & Manufacturing Corporation of Alabama, David A. Crawford, George A. Kelly, Lowell M. Greenlaw, Charles A. Liddle, Ellis W. Test, William J. Peters, E. Eugene Adams, Sewell L. Avery, James F. Bell, Arthur O. Choate, J. Frank Drake, Donald R. McLennan, Richard K. Mellon, J. Pierpont Morgan, John R. Morron, Alan M. Scaife, Alfred P. Sloane, Jr., Henry S. Sturgis, Harold S. Vanderbilt, George Whitney, Louis S. Taylor, W. N. Barker, H. H. Gilbert, J. A. Knowlton, H. M. Dudley, Wm. Bierman, R. L. Gordon, P. G. Jenks, R. S. Euler, H. S. Morgan, and C. W. Seabury., U.S. District Court, E.D. Pennsylvania, 1944-1945 Trade Cases ¶57,242, (May 8, 1944)**

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United States v. The Pullman Company, Pullman-Standard Car Manufacturing Company, Pullman Incorporated, Pullman Car & Manufacturing Corporation of Alabama, David A. Crawford, George A. Kelly, Lowell M. Greenlaw, Charles A. Liddle, Ellis W. Test, William J. Peters, E. Eugene Adams, Sewell L. Avery, James F. Bell, Arthur O. Choate, J. Frank Drake, Donald R. McLennan, Richard K. Mellon, J. Pierpont Morgan, John R. Morron, Alan M. Scaife, Alfred P. Sloane, Jr., Henry S. Sturgis, Harold S. Vanderbilt, George Whitney, Louis S. Taylor, W. N. Barker, H. H. Gilbert, J. A. Knowlton, H. M. Dudley, Wm. Bierman, R. L. Gordon, P. G. Jenks, R. S. Euler, H. S. Morgan, and C. W. Seabury.

1944-1945 Trade Cases ¶57,242. U.S. District Court, E.D. Pennsylvania. Civil Action No. 994, June Term, 1940. Opinion filed and judgment entered May 8, 1944.

**In a proceeding for violation of Sections 1 and 2 of the Sherman Anti-Trust Act, Pullman Incorporated is ordered to file with the Court its election to dispose of either its interest in the sleeping car business or of its interest in the manufacturing business, and to submit a plan to effectuate complete separation of the two businesses. No corporation owning or controlling either business, and no principal officer or director of such corporation, shall own or control corporate securities of any corporation owning or controlling the other business. Pullman and Standard shall not enter into any understanding whereby the exclusive course of dealing under which Pullman bought sleeping cars only from Standard and Standard sold sleeping cars only to Pullman, is continued or revived. Pullman shall not insert in any contract any "exclusive right" clause, which shall give to Pullman the exclusive right to furnish or service all of the sleeping cars on any railroad. Pullman and Standard shall not acquire any ownership or control over persons or corporations engaged in furnishing, servicing, manufacturing or selling sleeping cars, except with the approval of this Court.**

For plaintiff: Robert H. Jackson, Attorney General; Thurman Arnold, Assistant Attorney General; Gerald A. Gleeson, U. S. Attorney; Fowler Hamilton, Frank Coleman, Wm. L. McGovern, and Wilber Stammmer, Special Assistants to the Attorney General; Joseph McDowell and Paul Fitting, Special Attorneys.

For defendants: Ralph M. Shaw, Chicago, ill.; George Wharton Pepper, Philadelphia, Pa.; Seth W. Richardson, Washington, D. C.; Walter H. Jacobs, Chicago, ill.; Lowell M. Greenlaw, Chicago, ill.; Guy A. Gladson, Chicago, ill.; Adrien F. Busick, Washington, D. C.; Winston Strawn & Shaw, Chicago, ill.; Davies, Richberg, Beebe, Busick & Richardson, Washington, D. C.; and Pepper, Bodine, Stokes & Schoch, Philadelphia, Pa.

Before Biggs, Maris and Goodrich, Circuit Judges.

## Opinion Sur Judgment

PER CURIAM : The court has given full consideration to the relief to be accorded in this case, and the views of its members upon certain of the questions arising in this connection have been expressed heretofore. 53 F. Supp. 908. A majority of the court have reached the conclusion that appropriate relief will be accorded by the provisions of the judgment entered today. In joining in the entry of this judgment, Judge Biggs, none the less, adheres to the views expressed by him in his opinion heretofore filed, dissenting in part, but concludes that the judgment is appropriate to carry out the decision of the court as expressed by the majority.

## Final Judgment

This cause came on to be heard upon the amended complaint and the amended answer thereto, and upon proofs duly taken, and was fully argued by counsel. The Court having thereafter rendered and filed its opinion and having made and entered findings of fact and conclusions of law,

Now, upon motion of plaintiff, by Wendell Berge, Assistant Attorney General, Frank Coleman, Special Assistant to the Attorney General, and Paul Fitting, Special Attorney, for relief in accordance with the prayer of the amended complaint; and the defendants having severally appeared by counsel, it is ordered, adjudged and decreed as follows:

### A. General Provisions

1. Whenever any one of the following italicized terms or expressions is used in this judgment, it shall be deemed to have the meaning attached to it in this paragraph.

(a) *Furnishing, sleeping cars*; the supplying of sleeping cars, but not the service in the cars nor the transportation of the cars. This shall not include any transactions that are primarily sales of sleeping cars.

(b) *Servicing sleeping cars*; the supplying of service in sleeping cars, but not the supplying of the sleeping cars in which the service is per formed, nor the transportation of the cars.

(c) *Bleeping car*; a railroad car in which accommodations for night-time sleeping in a berth or other horizontal bed are present, as distinguished from cars having only reclining chairs.

(d) *Successors*; corporations which, by a process of merger, consolidation or duly authorized legal succession have become invested with the rights and have assumed the liabilities of a prior corporation, as distinguished from corporations which have acquired title to the assets of the prior corporation by purchase.

(e) *Pullman*; The Pullman Company and its successors.

(f) *Standard*; Pullman-Standard Car Manufacturing Company, Pullman Car & Manufacturing Corporation of Alabama, and such of their subsidiary companies as are engaged in the car manufacturing business, and their successors.

(g) *Sleeping Car Business*; the business presently carried on by The Pullman Company.

(h) *Manufacturing Business*; the business of manufacturing cars presently carried on by Pullman-Standard Car Manufacturing Company, Pullman Car & Manufacturing Corporation of Alabama and their respective subsidiaries.

2. The Court has jurisdiction of the parties to, and the subject matter of, this suit; and the complaint states grounds for relief against the defendants under the Act of Congress of July 2, 1890, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," known as the Sherman Anti-trust Act (26 Stat 209, as amended, 50 Stat. 693, 15 U. S. C, Sec. 1-7, 15).

3. The defendants The Pullman Company, Pullman-Standard Car Manufacturing Company, Pullman Incorporated, and Pullman Car & Manufacturing Corporation of Alabama (hereinafter collectively referred to as the Corporate Defendants), and the individual defendants, and each of them have contracted, combined, and

conspired to restrain trade and commerce in violation of Section 1 of the Sherman Antitrust Act with respect to the furnishing and servicing, and manufacturing and selling, of sleeping cars.

4. The Corporate Defendants, the individual defendants, and each of them, have combined and conspired to monopolize, have attempted to monopolize and have monopolized, trade and commerce in violation of Section 2 of the Sherman Antitrust Act with respect to the furnishing and servicing, and manufacturing and selling, of sleeping cars.

5. The Corporate Defendants, their respective successors, officers, directors, agents, and employees, and all persons and corporations acting under, through, or for them, and each of them, are enjoined hereby from doing the acts prohibited by this decree, and are directed hereby to do the acts required by this decree.

6. The Corporate Defendants, their successors and their respective officers, directors, agents, and employees, and each of them, and all persons and corporations acting or claiming to act on behalf of them or any of them, shall not enter into, participate in, or perform, any contracts, agreements, arrangements, or understandings, with each other, with any railroads, or with any manufacturers or owners of railroad rolling stock, or with any of them, for the furnishing, servicing, manufacturing, or selling, of rail road sleeping cars, the individual or collective effect of which will be unreasonably to lessen competition between the Corporate Defendants and their successors, the railroads, and manufacturers or owners of railroad rolling stock, or any of them, or to create a monopoly, in the furnishing, servicing, manufacturing, or selling, of railroad sleeping cars.

*B. Separation of the Business of Manufacturing and the Business of Operating Sleeping Cars*

7. It is a purpose of this judgment to separate completely and perpetually the Sleeping Car Business from the Manufacturing Business and to separate completely and perpetually the ownership and control of each Business from the ownership and control of the other, irrespective of who owns or controls such Businesses.

8. No corporation owning or controlling either Business, its officers, directors, agents, or employees, or any of them, or any persons, firms, or corporations, having notice of this judgment, shall attempt by holdings of stock or other securities, by proxy holdings, by fictitious holdings, assignments, or transfers of stock, or by any other means, to evade, impair, or destroy the effectiveness of the separation specified in paragraph 7.

9. Pullman Incorporated shall within ninety days after the effective date of this judgment file with the Court its election to make such disposition either (a) of all its interest in the Sleeping Car Business and the properties used in connection therewith, or (b) of all of its interest in the Manufacturing Business and the properties used in connection therewith, as will result in a complete separation of such Businesses and the ownership and control thereof. At the same time Pullman Incorporated shall also submit to the Court for hearings and approval a plan to effectuate such separation.

10. The Court hereby reserves jurisdiction to determine to what extent, if any, it will require any persons or corporations that acquire the business or properties to be disposed of hereunder to be bound by the provisions of this judgment or amendments or additions thereto, including among other things, provisions, if any, deemed appropriate to prevent future unification of control by stock ownership.

11. Pullman Incorporated shall, within one year after the approval by the Court of a plan of separation, carry out such plan and shall promptly thereafter make a report to this Court, in reasonable detail, of the execution of said plan, including in such report a full list of the persons, firms or corporations that shall have acquired its interests in the business, properties, stock, or other securities, of which it has disposed. In the event such plan has not been carried out within one year after its approval the Court will take such steps relative to the disposition of the Business specified in the election made by Pullman Incorporated under paragraph 7 as may be necessary to carry out the provisions of this judgment.

12. The Corporate Defendants, their officers, directors, agents, employees, and each of them, shall not, in carrying out the separation of the Sleeping Car Business from the Manufacturing Business, transfer the properties or issue or transfer any of the capital stock, bonds, or other evidences of indebtedness of the Business disposed of to:

- (1) Officers, directors, agents or employees of the Business retained; or
- (2) Any one who owns or controls, directly or indirectly or through agents, trustees, representatives or nominees, any of the issued and outstanding capital stock, bonds, or other evidences of indebtedness of the Business retained; provided that this paragraph shall not apply, during the process of separation, to marketing groups, syndicates, and stock market or broker age firms.
- (3) Any one acting for or on behalf of one falling within the prohibitions of subparagraph (2) above; or
- (4) Any one acting alone or in concert, agreement or understanding, with any other persons, firms, or corporations, to establish a community of ownership or control of both Businesses.

13. The Corporate Defendants, their officers, directors, agents, and employees acting in good faith, may rely upon an affidavit that affiant does not fall within any of the prohibited classes set forth in paragraph 12 above.

14. From and after the separation of the Sleeping Car Business from the Manufacturing Business, no corporation owning or controlling either Business, and no principal officer or director of such corporation shall own or control, directly or indirectly, any of the issued and outstanding capital stock, bonds or other corporate securities of any corporation owning or controlling the other Business. This prohibition shall not be construed to prevent normal credit relationships between the two Businesses, including equipment trusts, conditional sales, and other similar evidences of indebtedness,

15. No corporation owning or controlling either Business shall elect, employ, or re tail in office, as an officer, director, agent, or employee, any person who is also an officer, director, agent or employee of any corporation owning or controlling the other Business, except that such corporations shall have the right to employ a common stock transfer agent or registrar.

16. From and after the separation of the Sleeping Car Business from the Manufacturing Business, Pullman shall neither build new sleeping cars, nor engage in the business of manufacturing railroad passenger rolling stock; and Standard shall not engage in the business of furnishing, servicing, or furnishing and servicing, sleeping cars.

17. Pullman and Standard shall not enter into any actual or tacit contract, agreement, or understanding, whereby the exclusive course of dealing under which The Pull man Company bought sleeping cars only from Pullman-Standard Car Manufacturing Company, and Pullman-Standard Car Manufacturing Company manufactured and sold sleeping cars only to The Pullman Company, is continued or revived at any time or in any form between Pullman and Standard,

18. Any orders, contracts, arrangements, or understandings in existence on the effective date of this judgment between Pullman and Standard for the building or furnishing by Standard of sleeping cars to Pullman now or in the future are hereby declared to be and are unlawful, void, and of no effect, except as to cars on which Standard has actually begun construction or has made commitments for material specifically for use in such building or furnishing.

19. For a period beginning with the effective date of this judgment and running until the separation of the Sleeping Car Business from the Manufacturing Business, Pullman shall acquire new sleeping cars for use in the business of furnishing, or furnishing and servicing, sleeping cars only pursuant to competitive bidding, whether such acquisitions are outright purchases, leases, or in some other form; provided, however, that this section shall not apply in cases of the lease to Pullman of railroad owned cars for use in supplying sleeping car service on such railroad, nor in cases of short-term rental arrangements. Pullman shall invite bids by causing complete information on the numbers and specifications of the equipment desired to come to the attention of all car builders through advertising or other means in sufficient time to permit the adequate preparation of bids. Bid specifications shall give reasonable and appropriate options with reference to structural design and the use of various structural materials, provided they meet the safety standards provided for in "AAR specifications for the construction of new passenger equipment cars" adopted by the Association of American Railroads on March 31, 1939, in any subsequent revisions of those specifications, or in any subsequent safety standards which receive similar general acceptance as the standard for the industry. Award of the contract to build the cars shall be made to the lowest responsible bidder. Other bidders shall not have the privilege of participating in the contract

by the device of equalizing bids or meeting the low bid unless the successful bidder so agrees, except upon a showing that the successful bidder has inadequate plant capacity, or is otherwise unable to build all of the cars within a reasonable time. Pullman shall have the right to reject all bids and request the submission of new ones. A statement showing the total amount of each of the bids, and the number and type of cars involved, shall be available for inspection by all bidders, and by all the railroads with which Pullman has operating contracts.

20. Any orders, contracts, arrangements or understandings, existing on the effective date of this judgment, between Standard and any railroad, whereby Standard is to build for such railroad, now or in the future, passenger rolling stock for use in any train in which Pullman is to operate sleeping cars, shall be subject to cancellation at the option of such railroad within sixty days after the effective date of this judgment, except as to the particular cars on which Standard has actually begun construction or has made expenditures or binding commitments for materials, parts, specialties, pigs, dies, tem plates, formers, patterns, or tools specifically for use in the construction thereof.

*C. Railroad Purchases of Used Sleeping Cars.*

21. From and after the approval by the Court of a plan for the separation of the Sleeping Car Business from the Manufacturing Business as provided in paragraphs 9 and 11 above, Pullman shall sell to any rail road that has an operating contract with Pullman for the furnishing, or furnishing and servicing, of sleeping cars, and any such railroad shall have the right to purchase from Pullman, used sleeping cars on such terms as shall be set forth in the order of the Court approving the plan of separation. The railroad shall exercise this right to purchase within six months of the expiration or other termination of the contract. Pullman shall not, without the prior consent of this Court, sell any used sleeping car to any purchaser prior to the approval by this Court of the plan of separation provided for in paragraphs 9 and 11 above.

*D. Servicing Railroad Owned Cars.*

22. Pullman, as long as it continues in the sleeping car business, at the request of any railroad shall offer upon reasonable and non-discriminatory terms to service, and, if a contract providing therefore is made with such railroad, shall service any sleeping car owned by such railroad while it is on the lines of such railroad and on any of the through lines in which such railroad participates, provided that Pullman shall be required to service only railroad owned sleeping cars, the structures of which meet the safety standards provided for in "AAR specifications for the construction of new passenger equipment cars" adopted by the Association of American\* Railroads on March 31, 1939, in any subsequent revisions of those specifications, or in any subsequent safety standards that receive similar general acceptance as the standard for the industry. For the purposes of this paragraph, any sleeping car of which a railroad has the possession and use for the purpose of offering sleeping accommodations to the public, irrespective of whether the title to such car is vested in such railroad, or in some one else, shall be considered a railroad owned sleeping car.

*E. Partial Operation.*

23. Pullman, as long as it continues in the sleeping car business, shall offer upon reasonable and non-discriminatory terms to service, or furnish and service, and, if a contract providing therefore is made with such railroad, shall service, or furnish and service, sleeping cars on any line of any railroad at the request of such railroad, to the extent that cars are available, even though sleeping cars are about to be or are being furnished, serviced, or furnished and serviced, on other lines of the same railroad by the railroad itself or by some third party.

24. If any railroad shall so request, Pull man, as long as it continues in the sleeping car business, shall offer upon reasonable and non-discriminatory terms to furnish and service and, if a contract providing therefore is made with such railroad, shall furnish and service cars from the pool of sleeping cars owned and operated by Pullman, to the extent that cars are available, for the purpose of meeting all or a part of the peak or seasonable demands for sleeping car accommodations on the lines of such railroad, irrespective of whether or not such railroad has a contract or agreement with Pullman whereby Pullman is to furnish, service, or furnish and service, sleeping cars to meet all or a part of the normal requirements of such railroad.

*F. Through Line Operation.*

25. If any railroad is or becomes a party to any arrangement for a joint through sleeping car line with any other railroad or railroads, Pullman, as long as it continues in the sleeping car business, shall upon request of such railroad offer and agree upon reasonable and non-discriminatory terms to furnish and service out of its then available equipment such railroad's quota under the through line arrangement of sleeping cars required for such joint through sleeping car line.

*G. Exclusive Right Clause,*

26. Pullman shall not agree upon, insert in any contract, or enforce any so-called "Exclusive Right" clause, or any similar provision, which shall give or purport to give to Pullman the exclusive right to furnish, service, or furnish and service, all of the sleeping cars on any railroad, or all of the sleeping car service of any particular type on any railroad, or which shall require that the railroad deal only with Pullman in the matter of furnishing, servicing, or furnishing and servicing, sleeping cars. Any clause in any existing contract between Pullman and any railroad which purports to grant such exclusive or similar right to Pullman is hereby declared to be and is henceforth unlawful, void and of no effect.

*H. Acquisition of Competitors.*

27. Pullman and Standard shall not merge, consolidate, or otherwise combine with, and shall not acquire any ownership or control, direct or indirect or through agents, trustees, representatives, or nominees, in or over the assets, properties, business, capital stock, bonds, or other evidence of indebtedness of, any person, associations, or corporations engaged in the business of furnishing, servicing, manufacturing, or selling, sleeping cars, except with the approval of this Court, granted after a showing by Pullman or Standard that such acquisition, merger, consolidation, or other combination, does not and is not intended to have the effect of unreasonably restraining trade or of creating a monopoly in the furnishing, servicing, manufacturing, or selling, of sleeping cars. Due notice of any application for such approval shall be given the Attorney General. This paragraph shall not be construed to forbid the purchase or other acquisition by either Pullman or Standard of goods and materials in the ordinary course of its business, or to prevent the merger, consolidation, or other reorganization of any or all of the companies composing either Pullman or Standard.

28. From and after the separation of the Sleeping Car Business from the Manufacturing Business, Pullman shall not employ, or elect, or permit to continue in office, as an officer or director of Pullman, any person who is also an officer or director of any railroad company that offers sleeping car service to the public on any of its lines.

*I. Inconsistent Contract Provisions Void.*

29. Any contract, agreement, or understanding between Pullman and any railroad that is in force and effect during all or any part of the period of time beginning one year from the effective date of this judgment and ending one year after the formal termination of the present war shall be subject to cancellation by such railroad at any time, provided that such railroad shall give to Pullman six months' notice of such cancellation. Such cancellation shall void the contract obligation, if any, of such railroad to buy the new-type lightweight cars furnished by Pullman to such railroad at its request upon the cancellation or termination of the contract.

30. To the extent that the provisions of any existing contracts, agreements, arrangements, or understandings, between Pullman and any railroads are inconsistent with any specific provisions of this judgment, such provisions are hereby, declared to be and are henceforth unlawful, void and of no effect.

*J. Miscellaneous Provisions.*

31. Nothing in this judgment contained shall be construed as depriving the Interstate Commerce Commission of its jurisdiction over contracts between carriers under Section 5(1) or other provisions of the Interstate Commerce Act.

32. For the purpose of assisting the Attorney General to secure compliance with this judgment, and for no other purpose, Pullman, Standard, their respective officers, directors, agents and employees and each of them, on written request of the Attorney General, or of the Assistant Attorney General in charge of antitrust matters,

reasonably made to the principal office of such corporations, subject to any legally recognized privilege, (1) shall permit duly authorized representatives of the Department of Justice to have access, during the office hours of such corporations, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any of the corporations relating to any matters contained in this judgment; (2) shall permit duly authorized representatives of the Department of Justice subject to the reasonable convenience of such corporations, but without restraint or interference, to interview officers, directors, or employees of such corporations, who may have counsel present, regarding any matters contained in this judgment; (3) shall submit such reports in respect of any matters as may from time to time be reasonably necessary for the proper enforcement of this judgment. Information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party, or as is otherwise required by law.

33. Jurisdiction of this cause, and of the parties hereto, is retained by the Court for the purpose of enabling any of the parties to this judgment, or any other person or corporation that may hereafter become bound, in whole or in part, thereby, to apply to the Court at any time for such further orders, modifications, vacations or directions as may be necessary or appropriate:

- (a) For the construction or carrying out of this judgment,
- (b) For the enforcement of compliance there with and the punishment of violations thereof,
- (c) For the carrying out of any plan or plans of separation that may be approved by the Court,
- (d) For the separation of the Sleeping Car Business from the Manufacturing Business by the disposition of the Business not specified for disposition by Pullman Incorporated in its election made under paragraph 7, in case the Court finds it is impracticable to dispose in the manner provided for in paragraph 11 of the Business specified for disposition in the election,
- (e) Whenever by reason of changes of any facts, circumstances, conditions or law, the provisions of this judgment may have become in appropriate, improper, oppressive or no longer necessary to maintain conditions in harmony with the law, and
- (f) For any other reason that the Court may deem sufficient.

34. Within thirty days after the effective date of this judgment, defendant The Pullman Company shall send to each railroad over whose lines it furnishes, services, or furnishes and services, sleeping cars, and defendant Pullman-Standard Car Manufacturing Company shall send to every railroad with which it has any order, contract, arrangement or understanding for the manufacture of passenger rolling stock, a copy of this judgment. Within twenty days of the sending of such copies, such defendants shall file with this Court and with the Assistant Attorney General in charge of the Antitrust Division a list of the railroads to which such copies were sent.

35. This judgment shall take effect at the expiration of sixty days from the date of its entry unless within that time an appeal is taken, in which event it shall take effect on the day on which the mandate of the Supreme Court is filed in this Court.

36. The plaintiff shall recover from the Corporate Defendants herein jointly and severally all the costs of this suit.