

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pennsalt Chemicals Corp. and S. S. White Co., U.S. District Court, E.D. Pennsylvania, 1967 Trade Cases ¶72,322, (Jan. 29, 1968)

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United States v. Pennsalt Chemicals Corp. and S. S. White Co.

1967 Trade Cases ¶72,322. U.S. District Court, E.D. Pennsylvania. Civil Action No. 41252. Entered January 29, 1968. Case No. 1917 in the Antitrust Division of the Department of Justice

Clayton Act

Acquiring Customers—Dental Supply Houses by Dental Products Manufacturer—Divestiture—Merger Ban—Consent Decree.—A dental products manufacturer was required by a consent judgment to sell, within two years, dental supply houses which in the aggregate accounted for at least \$4,423,000 of its total retail sales volume of dental products during 1966. If the aggregate sales of all such outlets decline below the 1966 level, the decrease shall be made up by divesting dental supply houses having sales necessary to reach the stated aggregate. The divestiture shall be accomplished, if possible, so as to result in the firm not retaining any dental supply house in any local market in which any divested outlet shall be located. Additionally, the decree bars the manufacturer from acquiring dental supply houses without prior approval for ten years.

For the plaintiff: Donald F. Turner, Asst. Atty. Gen.; Baddia J. Rashid; William D. Kilgore, Jr.; Charles D. Mahaffie, Jr.; John F. Graybeal; Roy E. Green; and Robert J. Ludwig, Attorneys, Department of Justice

For the defendant: H. Francis DeLone of Dechert, Price & Rhoads, Philadelphia, Pa.

Final Judgment

FULLMAN, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 30, 1966, and defendants having appeared and filed their answer to the said complaint denying the substantive allegations thereof 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 against or any admission by any party hereto with respect to any such issue of fact or law;

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties consenting 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 hereto. The complaint states a claim upon which relief may be granted against the 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) "Dental Supply House" means a retail store at or from which the business of selling primarily dental products is conducted;

(B) "Dental Products" means equipment and supplies used by dentists and dental laboratories; and

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(C) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to each defendant, its officers, directors, agents and employees, and to each defendant's subsidiaries, successors, and assigns and to each of their respective officers, directors, agents, and employees, and to all other persons in active concert or participation with each such defendant who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any person who acquires any dental supply house divested pursuant to Section IV of this Final Judgment or to any person who otherwise acquires one or more of the dental supply houses which a defendant owned on the date of this decree.

IV

[*Divestiture*]

(A) Within two (2) years from the date of entry of this Final Judgment defendant S. S. White shall divest on terms and conditions reasonable under the circumstances of this proceeding, dental supply houses which in the aggregate for the year 1966 accounted for at least \$4,423,000 of S. S. White's total retail sales volume of dental products. If the aggregate sales of all such dental supply houses divested shall, on the basis of sales made during the calendar year immediately preceding such divestiture,, have declined below their aggregate sales in 1966, such decrease shall be made up by divesting houses having sales necessary to reach the above-stated aggregate. For the purpose of computing the sales of a particular dental supply house made during the calendar year immediately preceding its divestiture, the calendar year prior to the time of the agreement of sale shall be controlling. Such divestiture shall be accomplished, if possible, so as to result in defendant's not retaining any dental supply house in any local market in which any dental supply house divested hereunder shall be located.

(B) Prior to the closing of any sale hereunder, S. S. White shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division complete details of the proposed transaction, including such further information concerning the transaction as may be requested by him within thirty (30) days of receipt of S. S. White's initial submission. If plaintiff objects to the proposed sale, it shall notify S. S. White in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to the last request for such information plaintiff made under the first sentence of this Section IV(B) or within thirty (30) days after the receipt of a statement from S. S. White, if applicable, that it does not have some or all of the requested supplementary information. If no request for supplementary information is made, said notice of objection shall be given within thirty (30) days of receipt of the originally submitted details concerning the transaction. In the event of such notice, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(C) Within thirty (30) days following the entry of this Judgment, defendants shall render a written report to the Assistant Attorney General in charge of the Antitrust Division describing their plan for compliance with Section IV(A) of this Judgment. Further reports describing defendants' efforts to comply with Section IV(A) of this Judgment shall be rendered every two (2) months thereafter. Whenever after a period of one (1) year there appears no reasonable prospect that defendants will be able to consummate their divestiture plan, they shall substantially alter their divestiture plan with respect to the identity of the dental supply houses covered by the plan.

(D) Nothing contained in Section IV of this Judgment shall prevent defendants from retaining a bona fide security interest in any property divested hereunder and nothing contained herein shall be construed to prohibit repossession pursuant to such security interest. Any property so repossessed shall be divested by defendants within two (2) years from the date of repossession thereof to the extent necessary to meet the requirements of Section IV of this Judgment and subject to the terms hereof.

V

[*Future Acquisition*]

Defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring directly or indirectly without the consent of the Assistant Attorney General in charge of the Antitrust Division any financial interest in, or any assets (except, in the ordinary course of business, inventory previously purchased from defendant and accounts receivable), business, good will, or capital stock of any dental supply house or any financial interest in or capital stock of any person operating any dental supply houses, except that nothing herein shall prevent defendants from acquiring in good faith notes or recourse on commercial paper or otherwise enforcing a bona fide obligation or lien. The provisions of this Section shall not apply to activities or operations outside of the United States.

VI

[*Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, 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 a defendant made to its principal office, be permitted (a) reasonable access, during the office hours of 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 of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of such defendant who may have counsel present, regarding any such matters.

(B) Defendant, upon written request of the Attorney General of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested for the enforcement of this Final Judgment. 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

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 carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.