

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Suburban Gas., U.S. District Court, S.D. California, 1962 Trade Cases ¶70,439, (Sept. 17, 1962)

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United States v. Suburban Gas.

1962 Trade Cases ¶70,439. U.S. District Court, S.D. California, Central Division. Civil No. 885-61-S. Entered September 17, 1962. Case No. 1617 in the Antitrust Division of the Department of Justice.

## Clayton Act

**Acquisition of Competitors—Liquefied Petroleum Gas—Divestiture—Consent Judgment.**—A distributor of liquified petroleum gas was required by a consent judgment to divest itself of shares of stock or assets of four companies within a reasonable time and with court approval, and prohibited, for a period of three years following such divestiture, from acquiring the stock or assets of any company engaged in the retail sale of LPG in Washington, Oregon, or Arizona, except upon a showing that the acquisition will not violate the anti-merger law, if the government objects to the acquisition.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Stanley E. Disney, and Maxwell M. Blecher, Attorneys, Department of Justice.

For the defendant: O'Melveny & Myers, Homer I. Mitchell, Richard E. Sherwood, and Roland R. Speers.

## Final Judgment

STEPHENS, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on July 11, 1961, and defendant, Suburban Gas, having appeared and filed its answer to the complaint on September 22, 1961, denying the substantive allegations thereof, and plaintiff and defendant having consented to the entry of this Final Judgment without prior trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any such issue,

Now, therefore, before any testimony has been taken 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 as follows:

I

### [ Clayton Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act To Supplement Existing Laws Against Unlawful Restraints and Monopolies And For Other Purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

### [ Definitions]

As used in this Final Judgment:

(A) "Suburban Gas" shall mean defendant Suburban Gas, a corporation organized and existing under the laws of the State of California.

(B) "Calor" shall mean Calor Gas Co., a corporation organized under the laws of the State of California and dissolved April 21, 1961.

(C) "Suburban Gas of Springfield" shall mean Suburban Gas of Springfield, Inc., a corporation organized and existing under the laws of the State of Oregon.

(D) "Suburban Gas of Vancouver" shall mean Suburban Gas of Vancouver, Inc., a corporation organized and existing under the laws of the State of Washington.

(E) "Suburban Gas of Longview" shall mean Suburban Gas of Longview, Inc., a corporation organized and existing under the laws of the State of Washington.

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

### III

#### **[ Applicability ]**

The provisions of this Final Judgment shall apply to Suburban Gas and to its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with Suburban Gas who receive actual notice of this Final Judgment by personal service or otherwise.

None of the provisions of this Final Judgment shall apply to any person who acquires the shares of stock or assets of Calor, Suburban Gas of Springfield, Suburban Gas of Vancouver, or Suburban Gas of Longview if the acquisition by such person is approved by the Court after a hearing.

### IV

#### **[ Acquisitions Prohibited ]**

(A) Until such time as the divestiture ordered by Paragraph V herein has been fully accomplished, defendant is enjoined and restrained from acquiring, directly or indirectly, any shares of stock or assets of any person engaged in the retail sale of LPG in the States of Washington, Oregon or Arizona.

(B) For a period of three (3) years following the divestiture ordered by Paragraph V herein, defendant is further enjoined and restrained from acquiring, directly or indirectly, any shares of stock or assets of any person engaged in the retail sale of LPG in the States of Washington, Oregon or Arizona, except upon thirty (30) days notice to the plaintiff. If the plaintiff shall not object to such a proposed acquisition within said 30 day period, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event the plaintiff shall object, defendant may apply to this Court for permission to make such acquisition, which may be granted upon a showing by defendant to the satisfaction of this Court that the effect of such acquisition will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country within the meaning of those words as used in [Section 7 of the Clayton Act](#).

### V

#### **[ Divestiture ]**

Within a reasonable time after the date of this Final Judgment defendant shall, subject to the terms of this Final Judgment, divest itself of the following:

(A) All of the business and assets acquired from Calor Gas Co. in the States of

Washington and Oregon which it now owns (and in addition a comparable truck to replace the acquired truck which has been sold), provided, however (1) that it shall not be required to divest itself of the transportation facilities in such States acquired from Calor Gas Co. (including the aforesaid replacement truck) unless such assets are desired by the purchaser upon such divestiture, and (2) that it shall not be required to divest itself of the 18,000 gallon tank installed on the premises of Natron Plywood Company unless such tank is desired by the purchaser upon such divestiture.

(B) All of the shares of stock or assets of Suburban Gas of Springfield.

- (C) All of the shares of stock or assets of Suburban Gas of Vancouver.
- (D) All of the shares of stock or assets of Suburban Gas of Longview.

## VI

### **[ Reports ]**

(A) The divestiture ordered by Paragraph V of this Final Judgment shall be made in good faith and shall be absolute and unqualified. Such divestitures shall require the prior approval of this Court on notice to counsel for plaintiff. Within ninety (90) days from the date of entry of this Final Judgment defendant shall report to the Court, under seal, with a copy served on plaintiff, its efforts to carry into effect the aforementioned divestiture. Further reports, under seal, shall be made to this Court, with a copy to plaintiff every ninety (90) days thereafter and on such other dates as this Court may order. If at any time plaintiff is dissatisfied with the progress being made in the aforementioned divestitures, it may file a petition with this Court for such further orders and directions as may be necessary to effect such divestitures by defendant.

(B) Defendant shall continue to operate the business and assets acquired from Calor Gas Company in the States of Washington and Oregon which it now owns and the business and assets of Suburban Gas of Springfield, Suburban Gas of Vancouver, and Suburban Gas of Longview until the time of divestiture of the shares of stock or assets thereof, such operations to be conducted in substantially the same manner as they were conducted at the time of the entry of this Final Judgment.

## VII

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

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to defendant, at its principal office, be permitted:

- (a) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of 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 it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters.

Defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VII 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 plaintiff, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## VIII

### **[ Jurisdiction Retained ]**

Jurisdiction is retained for the purpose of enabling any party 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 thereof, and for the enforcement of compliance therewith and punishment of violations thereof.