

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Associated Aviation Underwriters, Chubb & Son Inc. and Marine Office of America., U.S. District Court, S.D. New York, 1967 Trade Cases ¶72,260, (Jan. 12, 1967)**

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United States v. Associated Aviation Underwriters, Chubb & Son Inc. and Marine Office of America.

1967 Trade Cases ¶72,260. U.S. District Court, S.D. New York. 65 Civ. 2400. Entered December 1, 1967. Case No. 1868 in the Antitrust Division of the Department of Justice.

**Sherman Act**

**Trade Associations—Aviation Insurance Pool—Membership—Consent Decree.**—Under the terms of a final consent decree, an aviation insurance pool agreement was amended to permit other insurance companies to join the pool upon meeting prescribed qualifications, to permit present members to withdraw from the pool, and to permit the writing of reinsurance or excess insurance by individual members. The pool management also was prohibited from attempting to stop the formation of any new aviation insurance pools.

For the plaintiff: Donald F. Turner, Asst. Atty. General; Baddia J. Rashid, Allen A. Dobey, William D. Kilgore, Jr., Marshall C Gardner, Herbert, F. Peters, Attorneys, Dept. of Justice.

For the defendants: Davis Polk Wardwell Sunderland & Kiendl by Henry L. King, New York, N. Y. for Associated Aviation Underwriters and Chubb & Son Inc.; Kelley Drye Newhall Maginnes & Warren by Bud G. Holman, New York, N. Y. for Marine Office of America.

**Final Judgment**

SUGARMAN, D. J.: Plaintiff United States of America having filed its complaint herein August 5, 1965, and the plaintiff and the 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 on condition that neither such consent nor this Final Judgment shall be evidence or admission by any party in respect of 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 as aforesaid, it is hereby

Ordered, Adjudged and Decreed, as follows:

**I.**

[ *Jurisdiction* ]

The Court has jurisdiction of the subject matter hereof and the parties to this Final Judgment.

**II.**

[ *Effect of Judgment* ]

Nothing in this Final Judgment shall be deemed to determine any issue of fact or law, to constitute a waiver of any rights or immunities that defendants may have, or to impair the effect of any regulation of aviation insurance by any State agency or instrumentality, under the Act of Congress commonly known as the McCarran-Ferguson Act of 1945 (15 U. S. C. §§ 1011-1015). This provision shall not be construed as limiting the effect of this Final Judgment or any proceeding thereunder.

**III.**

[ *Applicability* ]

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The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors, agents, servants, employees, successors and assigns, and upon all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

#### IV.

##### [ Definitions]

As used in this Final Judgment:

- (A) "aviation insurance" means aircraft hull insurance and aircraft liability insurance;
- (B) "aircraft hull insurance" means insurance which covers loss or damage to the aircraft and aircraft equipment owned by the insured;
- (C) "aircraft liability insurance" means insurance which covers legal liability based on the ownership, maintenance or use of aircraft by an insured resulting in the death or injury of any person or the loss or damage to property of another;
- (D) "aviation insurance group" means a group of member companies writing aviation insurance jointly and any agent or manager acting on behalf of one or more of said member companies in connection therewith;
- (E) "member company" means an insurance company which is a member of an aviation insurance group;
- (F) "Associated" means defendant Associated Aviation. Underwriters and any successor entity;
- (G) "category of aviation insurance" means any of the following areas of aviation insurance: (i) aviation insurance for airlines, including trunk, local service and supplemental airlines; (ii) industrial aid aviation insurance; (iii) aviation insurance for commercial operators, including flying services, other than airlines; (iv) aviation insurance for individual pleasure or personal aircraft; (v) aviation insurance for manufacturers' ownership, operation and testing of aircraft, but excluding industrial aid and products liability; and (vi) legal liability of airports.

#### V.

##### [ Insurance Pool]

(A) The Hull & Casualty Aviation Insurance Agreement between Chubb & Son Inc. and Marine Office of America, dated December 1, 1964, as amended (hereinafter "the Agreement"), shall within sixty (60) days from the entry of this Final Judgment be amended to provide in substance:

- (1) that additional companies may be added to either Group A or Group B under the Agreement upon the consent and approval in writing of the Director of the Group to which the company or companies are added and the subscription of the Agreement by the added company or companies;
- (2) that in determining whether and when to accept any additional company for membership, the Director of each Group shall be guided by the following considerations: (a) whether the company is duly licensed to accept any liability covered by the Agreement wherever Associated operates; (b) whether the financial condition of the company, including its record of earnings and surpluses, and its management and the conduct of its business are and have been satisfactory in the judgment of the Director; (c) whether there is in the judgment of the Director the need to increase the limits of gross liability specified in (a) and (b) of Article VIII of the Agreement, and if such limits are increased by 25% or more from the limits in effect 90 days before the entry of this Final Judgment, as a result of amendment of the Agreement or otherwise (and again thereafter if the gross liability is further increased by 15% or more), then, preference will be given to meeting a fair and equitable portion of such increased gross liability by the admission of qualified applicants as new members;
- (3) that in addition to any existing provision relating to withdrawal from the Agreement any member company may withdraw from any category of aviation insurance of Associated at midnight on any 30th day of November, provided written notice thereof is delivered to the Directors of Group A or Group B at least 90 days prior thereto;

that upon the effective date of any such withdrawal, and unless and until readmitted by the group as a member company with respect to such category, said member company (a) shall continue as a member company of Associated in all respects other than the category of aviation insurance of Associated as to which such member company has withdrawn, (b) shall have the right to underwrite directly, outside the terms and conditions of the Agreement, any insurance within the category of aviation insurance of Associated as to which such member company has withdrawn without affecting such company's membership under the Agreement in all other respects, and (c) shall not have any interest in any future aviation insurance of Associated within the category as to which said company has withdrawn, provided that said company shall, with respect to the category of aviation insurance from which said company has withdrawn, be subject to the terms of the Agreement relating to withdrawal of member companies from the Agreement; and that in case of any such withdrawal by any member company any other member company shall also have the right to withdraw from the same category of aviation insurance of Associated effective at midnight on the same 30th day of November by delivering written notice of such withdrawal to the Directors of Group A and Group B at least 60 days prior thereto and that upon the effective date of such withdrawal by any such other member company, unless and until any such other withdrawing member company is readmitted by the group as a member company with respect to such category, the terms and conditions set forth above in clauses (a), (b) and (c) shall apply to such other withdrawing member company; and

(4) that the Agreement shall not prohibit any member company of Associated from writing reinsurance or excess insurance with respect to any aviation insurance risk, unless the writing of such reinsurance or excess insurance is in effect the same as writing the primary insurance coverage.

(B) The amendment of the Agreement as provided in paragraph (A) of this Section V shall be included in substance in any amended, supplemental or successor agreement between any of the defendants relating to an aviation insurance group.

## VI.

### [ *Formation of Pools* ]

(A) Each defendant is enjoined from boycotting, coercing, or intimidating any person (1) to eliminate, suppress, or prevent the formation of, new aviation insurance groups or (2) to restrain and suppress competing aviation insurance underwriters or deprive such underwriters of reinsurance service through intimidation and threats against reinsurers abroad.

(B) Nothing contained in this Final Judgment shall prevent defendants from continuing or participating under the terms of the Agreement, as modified by this Final Judgment, if not inconsistent with any provision of this Final Judgment.

## VII.

### [ *Compliance—Inspection* ]

(A) For the purpose of determining and 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 the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted access during the office hours of such defendant to all contracts, 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, during which time counsel for such defendant may be present; and subject to the reasonable convenience of defendants, and without restraint or interference, to interview the officers and employees of defendants, who may have counsel present, regarding any such matters.

(B) Any defendant, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit within a reasonable time such reports in writing, under oath if requested, with

respect to any matters contained in this Final Judgment as may be reasonably necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in the course of legal proceedings to which the United States of America 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 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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.