

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United States Aviation Underwriters, Inc. and United States Aircraft Insurance Group., U.S. District Court, S.D. New York, 1968 Trade Cases ¶72,571, (Oct. 17, 1968)

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United States v. United States Aviation Underwriters, Inc. and United States Aircraft Insurance Group.

1968 Trade Cases ¶72,571. U.S. District Court, S.D. New York. 1965 Civil Action No. 2401. Entered October 17, 1968. Case No. 1869 in the Antitrust Division of the Department of Justice.

Sherman Act

Conspiracy—Aviation Insurance—Underwriting Pool—Consent Decree.—A group of aviation insurers and their underwriting pool were required by a consent judgment to amend a pool agreement to permit the entry of new members according to specified standards, to allow members to elect to underwrite aviation insurance separately from the group, to permit members to write reinsurance or excess insurance individually, and prohibited from boycotting, coercing or intimidating any person to eliminate, suppress or prevent the formation of new insurance groups or to restrain and suppress competing underwriters or deprive such underwriters of reinsurance service through intimidation and threats against reinsurance.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen.; Baddia J. Rashid, Allen A. Dobey, William D. Kilgore, Jr., Marshall C. Gardner, Charles F. B. McAleer, and Herbert F. Peters, Jr., Attys., Dept. of Justice, Antitrust Division, Washington, D. C.

For the defendants: Sullivan & Cromwell, by William Piel, Jr., and Haight, Gardner, Poor & Havens, by Bernard D. Atwood, all of New York, N. Y.

Final Judgment

SUGARMAN, 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*]

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) “USAU” means defendant United States Aviation Underwriters, Inc., and any successor entity;
- (G) “USAIG” means defendant United States Aircraft Insurance Group and any successor entity.

V

[*Insurance Pool*]

(A) The Agreement entered into as of the 1st day of January, 1954, by and between the Member Fire Companies of United States Aircraft Insurance Group, the Member Fire Companies of Canadian Aircraft Insurance Group and United States Aviation Underwriters, Incorporated, and its wholly owned subsidiary, Canadian Aviation Insurance Managers, Ltd., as amended, and the Agreement entered into as of the 1st day of January, 1944, by and between the Member Casualty and Associate Member Casualty Companies of United States Aircraft Insurance Group, the Member Casualty Companies of Canadian Aircraft Insurance Group and United States Aviation Underwriters, Incorporated, and its wholly owned subsidiary, Canadian Aviation Insurance Managers, Ltd., as amended (hereinafter “the Hull and Casualty Agreements”) shall within one hundred twenty (120) days from the entry of this Final Judgment be amended to provide in substance:

- (1) that a company applying for membership in USAIG may become a member company upon approval by a majority of the member companies of USAIG and the subscription of the Hull and Casualty Agreements by the applying company;
- (2) that in determining whether and when to approve an applying company for membership, the member companies of USAIG shall be guided by the following considerations: (a) whether the company is duly licensed to accept any liability covered by the Hull and Casualty Agreements wherever USAIG operates and is willing to make a contribution to the capacity of USAIG available for writing aviation insurance for airlines of at least one percent of the total dollar amount of USAIG members' established maximum retention; (b) whether, in the judgment of the member companies of USAIG, the financial conditions of the company, including its record of earnings and surpluses, and its management and its method of conducting its business are and have been satisfactory; (c) whether, in their judgment, there exists or is foreseeable a need to increase the total dollar

amount of USAIG members' established maximum retention, and if such total dollar amount is increased by 25% or more from the established maximum retention in effect 90 days before the entry of this Final Judgment, as a result of amendment of the Hull and Casualty Agreements or otherwise (and again thereafter if the established maximum retention is further increased by 15% or more), then, preference will be given to meeting a fair and equitable portion of such increased total dollar amount by the admission of qualified applicants as new members;

(3) that in addition to any other provision allowing member companies at their option to underwrite aviation insurance separately from USAIG, any member company or applicant for admission may elect to underwrite separately from USAIG aviation insurance for any one or more of the following areas of aviation insurance;

- (a) aviation insurance for manufacturers' ownership, operation and testing of aircraft, but excluding industrial aid and products liability;
- (b) industrial aid aviation insurance;
- (c) aviation insurance for individual pleasure or personal aircraft;
- (d) aviation insurance for commercial operators, including flying services, other than airlines; and
- (e) aviation insurance for legal liability of airports;

that in the case of member companies any such election shall be effective at midnight on any 31st day of December, provided written notice thereof is delivered to USAU at least ninety (90) days prior thereto and in the case of companies applying for membership any such election shall be effective at the time of their admission provided such election is made at the time of application; that upon the effective date of such election, and unless and until such election is revoked and said company is readmitted to membership in USAIG for the business of USAIG within the area covered by such election, said company (a) shall continue, or become, as the case may be, a member company of USAIG for all of USAIG's business other than that in the area covered by such election, (b) shall have the right to underwrite directly, outside the terms and conditions of the Hull and Casualty Agreements, any aviation insurance in the area covered by such election without affecting such company's membership in USAIG for all of USAIG's other business, and (c) shall not have any interest in any future business of USAIG within the area covered by such election, provided that said company shall, with respect to the area covered by such election be subject to the terms of the Hull and Casualty Agreements relating to withdrawal of member companies from USAIG; and that in case of any such election by any member company (or applicant approved for membership by the member companies of USAIG) any other member company shall also have the right to make the same election, under the same terms and conditions, effective at the same time by delivering written notice of such election to USAU within thirty days after being notified of the first company's election; and

(4) that no member company of USAIG shall be prohibited from writing or participating in reinsurance or excess insurance with respect to any aviation insurance risk, unless such writing or participating is in effect the same as writing or participating in the primary insurance coverage of the risk.

(B) The amendment of the Hull and Casualty Agreements as provided in paragraph (A) of this Section V shall be included in substance in any amended, supplemental or successor agreement between 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.

(B) Nothing contained in this Final Judgment shall prevent defendants from continuing or participating under the terms of the Hull and Casualty Agreements, 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:

(1) 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 either 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; and

(2) Either 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 from time to time be requested.

(B) 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 violation thereof.