

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
c/o Department of Justice
Antitrust Division
Washington, D.C. 20530

Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY
515 South Flower Street
Los Angeles, California 90071

ARCO CHEMICAL COMPANY
3801 West Chester Pike
Newtown Square, Pennsylvania 19073

UNION CARBIDE CORPORATION
39 Old Ridgebury Road
Danbury, Connecticut 06817-7001

UNION CARBIDE CHEMICALS AND PLASTICS
COMPANY INC.
39 Old Ridgebury Road
Danbury, Connecticut 06817-7001,

Defendants.

REVERCOMB, J. GHR

91 0205

Civil Action No.

Filed: 1/30/91

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF PREMERGER
REPORTING REQUIREMENTS OF HART-SCOTT-RODINO ACT

The United States of America, plaintiff, by its attorneys,
acting under the direction of the Attorney General of the
United States and at the request of the Federal Trade
Commission, brings this civil action to obtain monetary relief
in the form of civil penalties, against the defendants named
herein, and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act"), to recover civil penalties for violations of the Hart-Scott-Rodino Act.

2. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g)(1), and 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Venue in this District is proper by virtue of defendants' consent, in the Stipulation relating hereto, to the maintenance of this action and the entry of Final Judgment in this District.

II.

THE DEFENDANTS

4. Defendant Atlantic Richfield Company is a corporation organized and existing under the laws of Delaware, with its principal office and place of business at 515 South Flower Street, Los Angeles, California 90071. Atlantic Richfield Company holds a majority of the voting securities of defendant ARCO Chemical Company.

5. Defendant ARCO Chemical Company ("ARCO Chemical") is a corporation organized and existing under the laws of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073.

6. Defendant Union Carbide Corporation is a corporation organized and existing under the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187.

7. Defendant Union Carbide Chemicals and Plastics Company Inc. ("Union Carbide Chemicals") is a corporation organized and existing under the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187. Union Carbide Chemicals is a wholly-owned subsidiary of defendant Union Carbide Corporation.

III.

VIOLATION ALLEGED

8. The Hart-Scott-Rodino Act, 15 U.S.C. § 18a, prohibits certain acquisitions of voting securities or assets until a notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired.

9. Each defendant at all times pertinent to this proceeding was engaged in commerce, or in activities affecting commerce, within the meaning of section 1 of the Clayton Act, 15 U.S.C. § 12.

10. Defendants Atlantic Richfield Company and Union Carbide Corporation at all times pertinent to this proceeding had annual net sales or total assets above the thresholds established by section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a); Atlantic Richfield Company had annual net sales or total assets in excess of \$100 million, and Union Carbide Corporation had annual net sales or total assets in excess of \$10 million.

11. On September 27, 1989, ARCO Chemical and Union Carbide Chemicals entered into a contract ("acquisition agreement") pursuant to which ARCO Chemical agreed to purchase assets of Union Carbide Chemicals used in the manufacture and sale of urethane polyether polyols and propylene glycol ("Union Carbide assets") for a price of approximately \$220 million.

12. On September 27, 1989, ARCO Chemical paid Union Carbide Chemicals in full for the Union Carbide assets, which payment, according to the terms of the acquisition agreement, was non-refundable, even if ARCO Chemical were later blocked from taking title to the Union Carbide assets as a result of the subsequent Hart-Scott-Rodino antitrust review.

13. Under the terms of the acquisition agreement, prior to consummation of the sale of the Union Carbide assets, Union Carbide Chemicals was required to operate the business in the ordinary course and in accordance with its existing business plan.

14. Under the terms of the acquisition agreement, ARCO Chemical was required to cover liabilities from the continued operation of the Union Carbide assets after September 27, 1989, including environmental liabilities.

15. Under the terms of the acquisition agreement, if ARCO Chemical were prevented, as a result of the Hart-Scott-Rodino antitrust review, from taking title to the Union Carbide assets, a trustee would be required to sell the Union Carbide assets with the proceeds of the sale paid to ARCO Chemical.

16. By an adjustment mechanism in the acquisition agreement, the purchase price would be increased at closing if Union Carbide Chemicals incurred a negative net cash flow from the Union Carbide assets, and would be decreased if Union Carbide Chemicals realized a positive cash flow.

17. The acquisition agreement described in paragraphs 11-16 above had the effect, upon execution, of transferring beneficial ownership of the Union Carbide assets to ARCO Chemical so that ARCO Chemical and its parent, Atlantic Richfield Company, acquired those assets on September 27, 1989. As a result of that acquisition, defendants ARCO Chemical and Atlantic Richfield Company held an aggregate total amount of assets of Union Carbide Chemicals and Union Carbide Corporation in excess of \$15,000,000.

18. The transaction described in paragraphs 11-17 was subject to the Hart-Scott-Rodino Act and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq. ["HSR Act and Rules"]. The HSR Act and Rules required Atlantic Richfield Company, as the ultimate parent entity of ARCO Chemical, or ARCO Chemical, as an entity included within Atlantic Richfield Company and authorized to file on its behalf, to file notification and observe a waiting period before acquiring an aggregate total amount of assets of Union Carbide Chemicals in excess of \$15 million. The HSR Act and Rules also required Union Carbide Corporation, as the ultimate parent entity, or Union Carbide Chemicals, as an entity included within Union Carbide Corporation and authorized to file on its behalf, to file notification and observe a waiting period before such acquisition.

19. Defendants did not comply with the notification and waiting period requirements of the Hart-Scott-Rodino Act before undertaking the acquisition described in paragraphs 11-17 above.

20. Atlantic Richfield Company, on October 13, 1989, and Union Carbide Corporation, on October 11, 1989, submitted their premerger notification filings to the Federal Trade Commission and the Department of Justice. The Hart-Scott-Rodino Act statutory waiting period relating to those filings expired on February 26, 1990.

21. Defendants were continuously in violation of the Hart-Scott-Rodino Act during the period from September 27, 1989, through February 26, 1990.

22. Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants violated the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that defendants were in violation of the Act on each day of the period from September 27, 1989, through February 26, 1990;

2. That defendants be ordered to pay to the United States Treasury an appropriate civil penalty as provided by section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1);

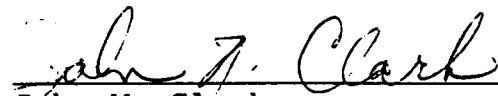
3. That plaintiff have such other and further relief as the Court may deem just and proper; and


4. That the Court award plaintiff its costs of this suit.

DATED: January 30, 1991

FOR THE PLAINTIFF UNITED STATES
OF AMERICA


James F. Rill
Assistant Attorney General

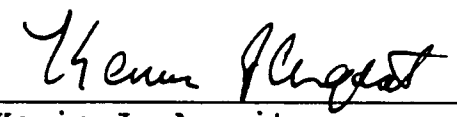

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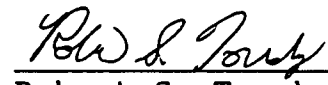
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