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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

CONSENT JUDGMENT FILED IN TICKET MANUFACTURER'S ANTITRUST CASE

January 9, 1969: A proposed consent judgment has been filed in U.S. District Court in Philadelphia in a federal antitrust suit which would forbid nine ticket manufacturers from restraining competition.

The judgment concludes a civil case filed by the Department of Justice last January 24 charging the nine firms with conspiring to fix prices, rig bids, and allocate customers among themselves in violation of the Sherman Antitrust Act. The judgment prohibits the defendants from continuing their restrictive practices. The firms are the Globe Ticket Company of Philadelphia; American Ticket Corporation of Chicago; Ansell-Simplex Ticket Company of Chicago; Arcus Ticket Company of Chicago; Arcus-Simplex-Brown, Inc., of New York City; Elliott Ticket Company, Inc., of New York City; International Ticket Co. of Newark, New Jersey; National Ticket Co. of Shamokin, Pennsylvania; and Rand McNally and Co. of Skokie, Illinois.

DEPARTMENT FILES RECORD NUMBER OF ANTI-MERGER SUITS IN 1968

January 9, 1969: The Department of Justice filed more anti-merger suits in 1968 than during any previous year in history, Attorney General Ramsey Clark announced in a year-end review of antitrust activity by the Department of Justice. Mr. Clark said 24 suits challenging business mergers were brought last year by the Department's Antitrust Division. The total compared with 10 in 1967. The previous high was 17 in 1964. Several other proposed mergers were cancelled in the face of threatened challenges by the Department. The Attorney General said anti-merger enforcement was enhanced in 1968 by issuance of Department guidelines setting forth present federal standards for determining whether to oppose mergers.

Fifty-five antitrust cases of all types were brought during the year, compared with 54 the previous year, 45 in 1966 and 40 in 1965. Damages recovered by the Department from defendants in antitrust cases more than tripled during the year, rising from $635,412 in 1967 to $2,120,743. Fines imposed on antitrust defendants totaled $1,339,000, up from $900,500 the previous year. Ten cases were filed during 1968 against proposed bank mergers and three of the mergers have since been cancelled.

DEPARTMENT FILES FIRST EMPLOYMENT DISCRIMINATION SUIT AGAINST A PUBLIC UTILITY

January 10, 1969: The Department of Justice has filed the first employment discrimination suit against a public utility, charging the Georgia Power Company with employment discrimination against Negroes. Also named defendants were local unions of the International Brotherhood of Electrical Workers in Athens, Atlanta, Augusta, Columbus, Macon, Rome and Valdosta, Georgia, which assertedly have a discriminatory collective bargaining agreement with Georgia Power.

Georgia Power, which employs some 6,300 white persons and about 450 Negroes, maintains a racially segregated, dual system of jobs and lines of progression, the Department alleged. It said the company considers only white persons for jobs with the highest pay and greatest opportunity for advancement and training. The Department also said the company has racially segregated facilities for employees. Mr. Clark said the matter was referred to the Department by the Equal Employment Opportunity Commission.

PRESIDENT JOHNSON SENDS JUDGESHIP NOMINATIONS TO SENATE

January 9, 1969: President Johnson has resubmitted the names of five nominees for federal judgeships: Harold Barefoot Sanders, Jr. of Texas - formerly a United States Attorney, Assistant Deputy Attorney General and Assistant Attorney General, now the President's Legislative Assistant - to be U.S. Circuit Judge for the District of Columbia Circuit; David G. Bress, United States Attorney for the District of Columbia, to be U.S. District Judge for the District of Columbia; William M. Byrne, Jr., United States Attorney for Central California, to be U.S. District Judge for the Central District of California; Cecil F. Poole, United States Attorney for Northern California, to be U.S. District Judge for the Northern District of California; James P. Alger, United States Attorney for Guam, to be Judge of the District Court of Guam for the term of eight years.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Director John K. Van de Kamp

APPOINTMENTS

UNITED STATES ATTORNEYS

NORTH DAKOTA - Assistant United States Attorney Eugene Anthony has replaced John Garaas as United States Attorney by court appointment. Mr. Garaas resigned December 28, 1968 to go into private practice. Mr. Anthony received his B.A. and LL.B. degrees from the University of North Dakota. From 1953 to 1967 he was in private practice in North Dakota, during which period he served at various times as State Attorney and as a Juvenile Commissioner. He became an Assistant United States Attorney in December, 1967.

WISCONSIN, EASTERN - Assistant United States Attorney Robert J. Lerner has replaced Jim Brennan as United States Attorney by court appointment. Mr. Brennan resigned December 30, 1968 to run for a judgeship for the Circuit Court of Milwaukee County. Mr. Lerner is 27, and received his B.S. and LL.B. degrees from the University of Wisconsin. He became an Assistant United States Attorney on November 2, 1964. He recently received a Special Service Award for his successful prosecution in regard to the Market Men's Mutual Insurance Company case.

ASSISTANT UNITED STATES ATTORNEYS

California, Southern - FREDERICK B. HOLOBOFF: University of Southern California; UCLA Law School, LL.B. Formerly in private practice.

Colorado - DAVID ALAN FOGEL: University of Colorado, B.A.; University of Denver Law School, J.D.

Florida, Southern - JOSE E. MARTINEZ: University of Miami, BBA; University of Miami School of Law, J.D. Formerly a law clerk.

Hawaii - MICHAEL R. SHERWOOD: Yale University, B.A.; Stanford School of Law, LL.B. Formerly with Legal Aid Society.

Maryland - JEAN G. ROBERS (MRS.): Agnes Scott College; University of Maryland School of Law, LL.B. Formerly Assistant County Solicitor for municipal government of Baltimore.

New York, Western - GEORGE P. DOYLE: Canisius College; State University of New York at Buffalo, LL.B. Formerly in private practice and Assistant District Attorney, Erie County, Buffalo, New York.

RESIGNATIONS

ASSISTANT UNITED STATES ATTORNEYS

District of Columbia - ARTHUR BURNETT: To become Legal Advisor to Metropolitan Police Department, Washington, D.C.

Massachusetts - ALBERT F. CULLEN, JR.: To become Special Counsel for town of Brookline, Massachusetts.

Michigan, Western - JACK E. FROST: To become First Assistant Prosecuting Attorney, Bay County, Michigan.

Oklahoma, Northern - JAMES E. RITCHIE: To transfer to Organized Crime and Racketeering Section, Department of Justice.

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ANTITRUST DIVISION
Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

SHERMAN ACT

FLOORING COMPANY CHARGED WITH VIOLATING SECTION 1 OF ACT.

United States v. Circle Floor Co., Inc., et al. (E.D. N.Y., 68 CR 440; December 12, 1968; D.J. 60-160-117)

On December 12, 1968, a federal grand jury in the Eastern District of New York returned an indictment accusing four corporations and four individuals of conspiring, from December 1960 to at least May 1965, to allocate maple flooring jobs and submit collusive bids on such jobs in violation of Section 1 of the Sherman Act.

The geographic area involved in the conspiracy consists of the five boroughs of New York City, the Counties of Nassau, Suffolk, Westchester and Rockland in the State of New York and the northern portions of the State of New Jersey. Maple flooring jobs are performed primarily in the gymnasiums, workshops and auditorium stages of newly constructed schools by specialized subcontractors known as maple flooring installers. The defendants are the leading installers in this area; their gross revenues from the performance of maple flooring jobs during the period covered by the indictment were about $8 million.

The indictment charges that in carrying out the conspiracy the defendants, among other things, formulated and used a unit price schedule for computing initial bids to general contractors; held meetings at which specific jobs were allocated to specific defendants; and refrained from competing for jobs which had been allocated to other defendants.

As a result, according to the indictment, general contractors and public authorities have paid artificial and noncompetitive prices for maple flooring jobs.

Named as defendants are: Circle Floor Co., Inc.; Haywood-Berk Floor Co., Inc.; The Erickson Flooring Co., Inc.; Storm Flooring Co., Inc.; Otto Berk, Jr. - President of Haywood-Berk Floor Co., Inc.; James P. Smith - Vice President of Circle Floor Co., Inc.; Dudley F.

Coughlin - d/b/a Coughlin Flooring Co.; and John Hasbrouck - d/b/a John Hasbrouck Company.

Arraignment and pleading are scheduled for January 9, 1969.

Staff: Norman H. Seidler, Ralph T. Giordano and Philip F. Cody (Antitrust Division)

DAIRIES CHARGED WITH VIOLATION OF THE SHERMAN ACT

United States v. Beatrice Foods Co., et al. (D. Utah, NCR 5168; December 18, 1968; D.J. 60-139-152)

On December 18, 1968, a federal grand jury in Ogden, Utah indicted three dairies and six of their executives on a charge of conspiring to fix wholesale and retail prices and to submit collusive and rigged bids on dairy products to federal, state and private institutions in Utah, southeastern Idaho and northwestern Colorado.

The corporate defendants are Beatrice Foods Co., Chicago; Federated Dairy Farms, Inc., Salt Lake City; and Hi-Land Dairyman's Association, Murray, Utah. Federated Dairy Farms, Inc. and Hi-Land Dairyman's Association are organized as agricultural cooperatives.

The individuals indicted are: E. A. Walker, Junior Vice-President, and Bill R. Terrill, District Manager, Beatrice Foods Co.; L. Glen Garrett, General Manager, and Winston J. Fillmore, General Sales Manager, Federated Dairy Farms, Inc.; and Louis R. Curtis, General Manager, and Byron C. Millet, Wholesale Sales Manager, Hi-Land Dairyman's Association.

The indictment charged that from sometime prior to 1957 to the date of the return of the indictment the defendants agreed to fix, raise, maintain and stabilize wholesale and retail list prices and discounts, and further agreed to submit collusive and rigged bids to agencies of the United States, institutions of the State of Utah, school districts in the State of Utah and various other institutions, including colleges and hospitals, and to allocate, rotate and divide the business of such institutions among themselves.

The three dairies named annually sell more than $30 million worth of dairy products. They account for nearly all wholesale sales and most home delivery sales in the State of Utah.

Staff: Robert J. Staal, Shirley Z. Johnson and James P. Kleinberg (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

SUPREME COURT

DEPARTMENT'S POSITION IN SELECTIVE SERVICE ACT LITIGATION

JUDICIAL REVIEW OF SELECTIVE SERVICE CLASSIFICATION LIMITED TO HABEAS CORPUS OR DEFENSE IN CRIMINAL PROSECUTION EXCEPT WHERE REGISTRANT HAS STATUTORY EXEMPTION. 50 U.S.C. App. 460(6)(3).

Clark v. Gabriel (Sup. Ct. No. 572, December 16, 1968; D.J. 25-11-4683)

Oestereich v. Local Board No. 16 (Sup. Ct. No. 46, December 16, 1968; D.J. 28-87-135)

In these two cases, the Supreme Court examined the validity and construction of 5 U.S.C. App. 460(6)(3), which limits judicial review of classifications by the Selective Service System. The Gabriel case upholds the constitutionality of the Act which provides for judicial review only by habeas corpus after induction or as a defense to a criminal prosecution after a registrant refused to submit to induction. Oestereich creates a limited exception to the statutory ban against pre-induction judicial review in favor of registrants admittedly exempt from service under other provisions of the Act. There are only four such exempt categories under the Act: ministers and divinity students, sole surviving sons, veterans, and reservists. Deferments, on the other hand, are not unconditionally granted by statute and are subject to the rules and regulations of the Selective Service System, 50 U.S.C. App. Sec. 456(h)(1), including the delinquency regulations. The Department's position, therefore, is that Sec. 460(6)(3) will continue to be raised as a defense to attempts to review Selective Service classifications by means other than habeas corpus or criminal defense except where the registrant has a conceded statutory exemption.

Staff: General Litigation Section (Civil Division)

COURT OF APPEALS

ADMIRALTY

SHIPOWNER MAY NOT RECOVER INDEMNITY FROM EMPLOYER OF INJURED PARTY WHERE THE WORK THE EMPLOYEE IS PER-

FORMING ON BOARD SHIP IS NOT BASED ON EITHER EXPRESS OR IMPLIED CONTRACT.

Robert J. Schwartz v. Compagnie General Transatlantique v. United States (C.A. 2, No. 32,648; December 11, 1968; D.J. 61-51-4786)

Plaintiff, an immigration inspector, was injured while aboard a passenger liner to clear arriving passengers and crew for admission into the United States. He recovered benefits under the Federal Employees Compensation Act, and then sued the shipowner in tort. The shipowner impleaded the United States, claiming indemnity based upon a breach of an alleged implied warranty of workmanlike service.

The district court granted the Government's motion for summary judgment, and ordered the third party complaint dismissed. The Court of Appeals for the Second Circuit affirmed.

The Court based its determination that the shipowner could not recover indemnity from the United States on the fact that the work being performed was a statutory function designed to protect the interests of the nation and not to further the business of the shipowner. The inspector had statutory authority to board ship and perform his duties without the consent of the owner. Therefore, since the relationship between the ship and the United States was non-contractual, the United States had no obligation to indemnify the shipowner for any damages the latter may be required to pay the immigration inspector. Moreover, the Court reasoned that the indemnity aspect of the implied warranty of workmanlike service was applicable only in circumstances where the shipowner could be sued by the injured employee under the unseaworthness doctrine. Since the immigration inspector was not performing any business service for the shipowner and was not performing duties traditionally assigned to a member of the ship's crew, he clearly could not recover damages based on the ship's unseaworthiness. Finally, the Court rejected the appellant's argument that the indemnity doctrine should be extended to allocate the "loss to the interests whose functions involve such risks", since the Court felt that imposition of liability on the shipowner in this case would not be inequitable. The Court noted that the doctrine of comparative negligence was available to the shipowner and would limit his liability to the damages actually caused by his own negligence.

Staff: Peter Martin Klein (Civil Division)

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