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NEWS NOTES

ANTITRUST SUIT FILED AGAINST BARDAHL

June 30, 1969: The Justice Department has filed an antitrust suit charging a group of oil companies with conspiring to fix prices and allocate sales territories in the sale of motor oils, greases and lubricants sold under the trade name "Bardahl".

Attorney General John N. Mitchell said the suit, charging violation of the Sherman Act, was filed in U.S. District Court in Seattle, Washington, along with a proposed consent judgment which would conclude the litigation.

Named as defendants were the Bardahl Manufacturing Corporation, of Seattle, Washington; Bardahl International Corporation, also of Seattle; the Bardahl Oil Company, St. Louis, Missouri; Bardahl Lubricants, Inc., Norwood, Massachusetts; and Bermil, Inc., Los Angeles, California.

The consent judgment, which would become final in 30 days, would enjoin the defendants from entering into or maintaining any price fixing plan or sales territory allocation program in the sale of Bardahl products.

The decree also would require the defendants to terminate within 90 days any provision of any contract that is inconsistent with the judgment, and notify distributors and subdistributors that Bardahl products may be resold without territorial restriction and at prices individually determined by each distributor.

The suit said that the conspiracy began as early as 1949 and has continued to the present.

CONSENT JUDGMENT PROPOSED IN BAKING CO. CONSPIRACY

June 30, 1969: The Department of Justice has filed a proposed consent judgment forbidding four major baking companies from conspiring to fix the prices of bread, buns and rolls. Attorney General John N. Mitchell said the decree, to become final in 30 days, was filed in the U.S. District Court in Grand Rapids, Michigan. The decree would end a civil antitrust suit filed on December 11, 1967, which charged that 13 baking companies and a trade group had conspired to raise, fix, maintain, and stabilize prices, terms and conditions of sale of bread, buns and other baked goods in Michigan in violation of Section 1 of the Sherman Act.

On June 10, 1969, a proposed judgment was filed in the same court against Dutch Treat Bakers, Inc.; Gase Baking Co.; Grocers Baking Co.; Koeplingers Bakery, Inc.; Michigan Bakeries, Inc.; Roskam Baking Co.; Schafer Bakeries, Inc.; Silvercup Bakers, Inc.; and Way Baking Co.

The judgment covers the remaining defendants, American Bakeries Co., Continental Baking Co., Rainbo Bread Co. of Saginaw and Ward Foods, Inc. The trade group, Michigan Bakers Association, was voluntarily dismissed because it was disbanded on May 7, 1968.

Under the terms of the judgment, the consenting defendants are forbidden to enter into any agreement, understanding, plan or program to fix prices, submit collusive bids to purchasers of bakery products, or to communicate or exchange price or other sales information with any other seller of bakery products before such information is known to the trade.

In addition, the judgment sets limitations on the communication of price information between the consenting defendants and other sellers of bakery products.

The defendants are also required for a period of five years to certify that each stated bid or quotation for the sale of bakery products in the State of Michigan was not the result of collusive action.

FOUR PUBLIC ACCOMMODATIONS CIVIL SUITS FILED

June 30, 1969: The Justice Department filed four civil suits today to halt alleged discrimination against Negroes in places of public accommodation in the South.

Attorney General John N. Mitchell said the complaints were filed against two restaurants in Alabama, a restaurant in Florida, and a motion picture theater in Louisiana.

The suits were brought under Title II of the Civil Rights Act of 1964 for court orders to require the operators of the public places to admit and serve Negroes on the same basis as they do white patrons.

CONSENT JUDGMENT FILED IN BEMIS CO. CASE

July 1, 1969: The Department of Justice filed a consent judgment to end a civil antitrust suit against the Bemis Co., Inc.

Attorney General John N. Mitchell said the judgment, filed in U.S. District Court in Alexandria, Virginia, concluded a civil antitrust case filed against the Minneapolis-based firm last November 4. The other defendant in the case, Union Camp Corporation, also entered into a consent decree which was effective February 24, 1969.

Bemis and Union Camp were charged in a civil complaint with conspiring to exclude competitors through the use of an allegedly invalid patent on mesh-covered window vegetable bags, in violation of Sections 1 and 2 of the Sherman Act.

The decree, which became final upon approval by the Court, prohibits Bemis from filing or further prosecuting any patent application and from enforcing or threatening to enforce any patent if Bemis has knowledge of facts which would lead the Patent Office or a court to conclude that the patent is invalid.

Also, the proposed judgment enjoins Bemis from affixing certain patent numbers on any product, and, in addition, restrains Bemis from asserting the validity of these patents in any action which Bemis may bring. Another provision prohibits Bemis from consulting with or seeking approval of its patent licensees as to whether or not to issue additional patent licenses.

The civil case against both companies was filed after they pleaded no contest to a criminal antitrust indictment involving the vegetable bag patents. Both companies were fined.

AUSA ARNIOTES, E.D. N.Y., COMMENDED IN BOMB HOAX CASE

On June 12, 1969, Mr. J. L. Schmit, Vice President of American Airlines, wrote the following in a letter to United States Attorney Vincent T. McCarthy: "...In view of the very serious implications of bomb hoaxes to the airline industry and the traveling public, I wish to offer my congratulations to you for the very capable manner in which this case was presented by Assistant U.S. Attorney Steve Arniotes of your office."

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POINTS TO REMEMBER

MILITARY SELECTIVE SERVICE ACT

United States Attorneys are urgently requested to forward District Court and Court of Appeals decisions involving the Military Selective Service Act of 1967 and in-service conscientious objector claims, whether favorable or adverse, to the Administrative Regulations Section, Criminal Division, for possible insertion in this Bulletin. Your own summary of the case would be appreciated but is not essential. Time, however, is of the essence, so please forward them as promptly as possible to assure rapid dissemination. Also, please identify the Assistants handling the case.

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ANTITRUST DIVISION
Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

COMPLAINT AND PROPOSED JUDGMENT FILED UNDER SECTIONS 1 AND 2 OF ACT.

United States v. United States Steel Corp. (Civ. 69-728, June 13, 1969; D.J. 60-138-146)

A complaint against United States Steel Corporation together with a proposed consent judgment were filed in the United States District Court for the Western District of Pennsylvania on June 13, 1969. The complaint charged combinations with suppliers in violation of Section 1 and an attempt to monopolize the requirements of actual and potential supplier customers for steel, steel products and other products including cement and chemicals in violation of Section 2 of the Sherman Act. The judgment contains the usual thirty day waiting period.

The complaint is based on the use of a systematic reciprocity program and does not involve a merger or a conspiracy charge. The company compiled purchase and sales data which it utilized in determining which suppliers it should prefer in buying its requirements of goods and services and in contacting suppliers in order to reach understandings to reciprocate purchases. The purchases/sales data, showing U.S. Steel's purchases from and its sales to its supplier customers, were circulated only among the top echelon of the company and were not seen by its regular purchasing or sales personnel.

The program was administered through a special section of the company known as the Commercial Relations Section (formerly called the Trade Relations Section). All of the reciprocity activities were centralized in the section. The director of the section served as the contact point with suppliers and customers on reciprocity matters and issued formal and periodic instructions to U.S. Steel's purchasing personnel identifying the suppliers from whom purchases were to be made and the portion of U.S. Steel's requirements that were to be purchased from each supplier.

The consent judgment, to be in effect for ten years, provides relief directed towards U.S. Steel's relationships with supplier customers as well as relief aimed at its internal operations. The defendant is prohibited from

purchasing or selling products on the condition or understanding that purchases will be reciprocated or communicating to suppliers or contractors that preference will be given to those who buy from the defendant. The judgment also prohibits comparison or exchange of statistical purchase/sales data with suppliers or contractors to further any reciprocal relationship or engaging in the practice of discussing the company's purchase/sales relationship with any supplier or contractor.

Internally, the defendant is enjoined from maintaining statistical compilations which compare purchases from any suppliers with sales by defendant to such supplier or from issuing lists which identify customers and their purchases to personnel with purchasing responsibilities or which specify that purchases be made from any of such customers.

The judgment also requires that the defendant abolish its Commercial Relations Section, through which the reciprocity program was administered, and the position of Director of that Section and prohibits its officers and employees from belonging to or attending any meetings of the Trade Relations Association.

The judgment requires that within sixty days the defendant shall notify each of its officers and employees having sales or purchasing responsibilities that he is prohibited from purchasing or selling upon condition that defendant will make purchases or that bids for capital expenditures will be solicited or job placements awarded to any contractor or supplier upon the condition that purchases will be made by the defendant from such contractor or supplier.

The consent judgment requires that the defendant notify each of its suppliers from whom the defendant has purchased or to whom defendant has sold more than $50,000 of products in any of the last three years that the defendant has abolished its Commercial Relations Section; that all of its officers and employees are prohibited from purchasing or selling products conditioned upon reciprocal purchases; and are prohibited from soliciting bids for capital expenditures or awarding job placements to any contractor or supplier upon that basis. The defendant is also required to furnish a copy of the judgment to each of such suppliers and contractors.

Staff: Margaret H. Brass, Donald H. Mullins, S. Robert Mitchell, B. Barry Grossman and Charles F. B. McAleer (Antitrust Division)

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CRIMINAL DIVISION
Assistant Attorney General Will Wilson

COURT OF APPEALS

MILITARY SELECTIVE SERVICE ACT

LOCAL BOARD NOT REQUIRED TO STATE REASONS FOR DENIAL OF C. O. CLASSIFICATION.

United States v. William Francis Curry (C.A. 1, June 5, 1969; D.J. 25-36-1607)

In sustaining Curry's conviction for refusing to submit to induction, the Court found that the registrant's inability to respond firmly in the negative to his Local Board's hypothetical question as to whether he would fight if this country were attacked, provided a basis in fact for a determination that his concededly sincerely held religiously derived objection did not extend to participation in "war in any form". The Court expressed its regret that Curry's conviction, resulting from his "candid uncertainty", might lead less scrupulous registrants to assert absolute positions they do not hold. The Court rejected appellant's argument that the failure of the Local Board to state the reason for its decision prevented his taking an effective appeal, in the absence of a showing of prejudice, since the regulations do not require more than a record of the formal action taken, 32 C.F.R. 1604.58, Ayers v. U.S., 240 F.2d 802, 808 (9th Cir. 1956), cert. denied, 352 U.S. 1016 (1957). (Note, however: Owens v. U.S., 396 F.2d 540, 542-43 (10th Cir. 1968), cert. denied, 393 U.S. 934 (1968), stating the rule that where reasons are given, the Board will be bound by them.)

Staff: Former United States Attorney Paul F. Markham and Assistant United States Attorney Stanislaw Suchecki (D. Mass.)

DISTRICT COURTS

REBUTTAL OF EVIDENCE OF VIOLATION OF ORDER OF CALL.

1. United States v. Mark Weintraub (E.D. N.Y., March 31, 1969; D.J. 25-52-1909)

In this prosecution under 50 App. U.S.C. 462 for refusing induction the defendant established that he was fourteenth on a delivery list of fifteen registrants and that the Local Board's SSS Form 102 reflected eighteen registrants apparently higher in the order of call prescribed by 32 C.F.R. 1631.7

passed over in the selection for induction. The Court held that he had made out a prima facie violation of the order of call prescribed by 32 C.F.R. 1631.7, which required rebuttal by the Government, Sandbank v. United States (2d Cir. 1968). The Government introduced evidence from the files of the eighteen registrants which satisfied the Court that each was unavailable for induction. Twelve of them were unavailable because they had appeals pending, were "Kennedy bridegrooms", had not had their physical examinations and the like; six had been reclassified from I-Y as a result of a lowering in the mental standards in December, 1966. The Court held that the Director had authority and "good cause" under 32 C.F.R. 1632.2(a) to defer the induction of these six at the request of the Secretary of the Army to permit the gradual absorption of some 20,000 similarly reclassified persons into the Armed Forces.

The Court rejected defendant's argument that his refusal to execute the security from (DD 98) on the date initially scheduled for induction required his reclassification in I-Y with appeal rights in the event he was classified I-A, and approved the procedure whereby determination of his acceptability and induction were held in abeyance pending an Armed Forces security check. The Court also rejected the defense that a claim for conscientious objector status filed after issuance of the induction order warranted reopening where the claim on its face showed it had matured prior to issuance of the order and was political in nature, despite the fact that Board accepted and considered defendant's documents and interviewed him.

Staff: United States Attorney Vincent T. McCarthy and
Assistant United States Attorney Vincent J. Favorito
(E.D. N.Y.)

NON-COMBATANT ASSIGNMENT DOES NOT PRECLUDE SHIPMENT TO COMBAT ZONE.

2. United States ex rel. Harris Tobias v. Laird, et al. (E.D. Va., M-46-69-NN, D.J. 25-79-1358)

Petitioner brought this proceeding to review the Army's refusal to assign him to non-combatant duties in a theater of operations other than Viet Nam. This request was based on religious objection to combatant service. The court concluded that it had jurisdiction to entertain the petition but denied relief on the ground that there was basis in fact for the Army's decision. The court also noted that non-combatant assignment did not preclude shipment to a combat zone. The court denied a stay pending appeal to the Court of Appeals for the Fourth Circuit and the appellate court denied a stay as well. The Department does not concur in the view that the Court has jurisdiction to review assignments, Orloff v. Willoughby, 345 U.S. 83

(1953), but would call to your attention the district court's reasoning in denying the stay, namely, that petitioner was attempting to delay his shipment to Viet Nam to the point when he would have too little time to serve to permit his shipment under existing policies.

Staff: Former United States Attorney C. Vernon Spratley, Jr. and Assistant United States Attorney Roger T. Williams (E.D. Va.)

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TAX DIVISION

Assistant Attorney General Johnnie M. Walters

DISTRICT COURT

TAXES

SUIT BY ASSIGNEE OF CONTRACT PROCEEDS TO RECOVER MONIES PAID BY ASSIGNOR TO INTERNAL REVENUE SERVICE FROM CONTRACT PROCEEDS BARRED BY DOCTRINE OF SOVEREIGN IMMUNITY AND STATUTE OF LIMITATIONS.

Sol Nehf and Charles Brown, d/b/a Capitol Discount Co. v. United States & E. C. Coyle, Jr., District Director of Internal Revenue (N. D. Ill., No. 67 C 2092, April 25, 1969; D. J. 5-23-5891)

Plaintiffs filed an action to recover monies allegedly levied upon and seized by the District Director of Internal Revenue. An earlier action based on the same facts was dismissed without prejudice for lack of jurisdiction. 278 F. Supp. 444 (N. D. Ill., 1967). The plaintiffs initially claimed that monies were seized by the District Director pursuant to a levy served upon the Chicago Land Clearance Commission. The taxpayer had assigned the proceeds of a contract with the Commission to the plaintiffs. During the pendency of the action it became apparent that the taxpayer had received the proceeds of the contract and had voluntarily made two payments to the District Director. The plaintiffs then changed their theory, relying on Ill. Rev. Stat. Ch. 121 Sec. 221 (since repealed) as assignees to recover proceeds which the assignor received and spent with a third party (the Government).

The court held that it lacked jurisdiction over the suit by virtue of the doctrine of sovereign immunity, and that none of the statutes relied upon by the plaintiffs, 28 U.S.C. 1331, 1340, 1346(a)(2), 2410 and 2463, constituted a waiver of that immunity to the instant action.

The court further held that the action was barred by the statute of limitations, 28 U.S.C. 2401, since the complaint was filed more than six years after the payments were made to the District Director. The court rejected the contention that the filing of the second complaint related back to the date of the first complaint for purposes of avoiding the statute of limitations problem.

Staff: United States Attorney Thomas A. Foran; Assistant United States Attorney Lawrence Stanner (N. D. Ill.); and John Mullenholz (Tax Division)

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