

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner,

v.

SMITH INTERNATIONAL, INC., and
SCHLUMBERGER LTD.,

Respondents.

Supplemental to
Civil Action No. 93-2621 (SS)

Judge Stanley Sporkin

BENCH DECISION

Excerpted and Edited from Trial Transcript, December 9, 1999
Before the Honorable Stanley Sporkin
United States District Judge

THE COURT: This is painful, obviously, because I don't like to do this, but I am going to find both companies guilty. It's tough because these are good companies. They're managed by excellent people and what we need in this country are companies of that kind. They've been in business for a long time. As the Justice Department ultimately has found, there was nothing wrong with the proposed business transaction. It was a good transaction. It's in a field that is undergoing tremendous restructuring. It's in a highly competitive field. There's a great deal of difficulty in the oil industry now and hopefully this combination will do some good.

But having said that, it is clear that consent decrees issued by the Antitrust Division and signed by courts, must be followed.

There's no ambiguity in this decree. Any person who can read the English language can see that it does cover this transaction. And that being said, it had to be strictly complied with.

Now the process for waiver is that you have to go to the Antitrust Division and if the Antitrust Division does not agree, then, of course, you have the safety valve of going to court.

There can be no exception to that procedure, as far as I know. You can't go to the legislative history or anything else like that in this type of a case.

Therefore, I find that the decree is clear. I find that it was not adhered to, that it was violated, and I do find the necessary willfulness in the sense that is necessary for a criminal violation. This is because of the Nannes letter.¹ It was there and despite it the companies, right smack in its face, decided to go ahead with the transaction and to complete it. The message clearly is going to have to go out that is not the way to proceed.

I do think that the lawyers in this case were good. They gave good, sound advice. They saw all the issues. They might have been a little more--the counseling lawyers might have been a little more forceful in telling their clients of the grave consequences that could occur.

Now the gravest of the consequence, of course, was that the deal could have been undone or rescinded, and I take my hat off to the Antitrust Division because it has not asked for what I labeled the so-called death penalty in this case.

But having said that, in addition to the civil decree that will be entered in this case that should take any profit away from the transaction up until the point that the companies received the Antitrust Division approval and this court's approval, I do think that it's necessary to take the next step.

¹ July 13, 1999 letter from Deputy Assistant Attorney General John Nannes to counsel for Smith and Schlumberger.

Now while I would have no problem in penalizing each company a million dollars, which is what I understand the parties have agreed would be my ability to do so, I am going to take into account the very important fact as Mr. Oliver has indicated, which to me is extremely important, is the way that the company defended this lawsuit and the very excellent advice given by their lawyers, namely that they were going to turn over every document (including lawyer-client privileged documents) to the government. In my view, that's the way to go--maybe not in every case obviously, but clearly in a case like this.

This case was fought on an open basis. Everybody saw everybody else's documents. Therefore, it was up to me to decide. But I do believe that was a very important step to take. I believe it was a wrenching step to take because these documents obviously make the case for the government. The government could not have made its case as strongly as it did without those documents, as a result of which instead of fining each company a million dollars, I'm going to fine them \$750,000 each.

I want the word to go out that companies that do cooperate and do these kinds of things, that there's some consideration that ought to be given and I'm going to give them that consideration.

I'm also going to put in a probationary condition that is for at least the next five years, with respect to any transaction that has an impact on the antitrust laws, that there be an opinion from an outside counsel that it complies with the antitrust laws.

Now I realize that Smith was specifically covered by the law--by the decree--because it agreed to be covered and therefore, it's clear that it is in violation. But I also believe that Schlumberger, because it was aware of the decree and because it became involved in the decree

and because the transaction was to its advantage, that it also at least as aiders and abettors, is also guilty.

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Well, is there anything further? I want to thank again all counsel and the parties here and again this is not a pleasant—something pleasant for me to do, but I believe I've done it in the best way that I know how. I wasn't going to do this today. I don't know how—maybe you can find a way to get the message out, but I do believe that certainty is important and I think that you people should know where you stand as soon as possible.

You're going to have to get this package out and I think this is the last piece of the package. And thank you for your help and again thank you for a well tried case with tremendous candor.

Again, I want to congratulate the Antitrust Division and I hope that this will go a long way in having you people enforce these decrees, because they are important. Thank you.