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No. 82-914

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ALEXANDER L. STEVAS,
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In The
Supreme Court of the United States

October Term, 1982

MONSANTO COMPANY,

Petitioner,

vs.

SPRAY-RITE SERVICE CORPORATION,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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Dated: May 14, 1983

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PETITION FOR CERTIORARI FILED DECEMBER 7, 1982.
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JOINT APPENDIX

INDEX

	PAGE
Chronological List of Relevant Docket Entries in the Courts Below	A-1
Amended Complaint, filed December 4, 1975	A-3
Answer of Monsanto Company to the Amended Complaint, filed January 27, 1976	A-13
Excerpts from District Court's Jury Instructions, February 20, 1980	A-18
Jury's Answers to Special Interrogatories, February 21, 1980	A-27
Trial Exhibits	
PX 19.....	A-29
PX 20.....	A-31
PX 42.....	A-35
PX 134, pp. 4, 26-27	A-38
PX 136, pp. 3, 15-17	A-42
PX 137, pp. 3-4, 7-8	A-46
PX 139, pp. 1, 4, 28-31, 33, 41, & 44	A-50
PX 196.....	A-59
PX 202, pp. 1-3	A-62
PX 233.....	A-65
PX 279.....	A-70
PX 309.....	A-73
PX 325.....	A-76
PX 344.....	A-78
PX 348, pp. 1, 3-4, 5-9.....	A-79
DX 38, pp. 1-8	A-88
DX 190, pp. 1 & 5	A-95
DX 272	A-98
DX 465	A-100
DX 466	A-102
DX 467a	A-109
DX 467b	A-110

	PAGE
DX 467c.....	A-111
DX 500	A-112
DX 501	A-113
DX 502	A-114
DX 503	A-115

NOTE: The appendix filed in support of the petition for certiorari contains the following materials, which are omitted from this Joint Appendix:

App. A: Seventh Circuit Opinion, June 28, 1982.

App. B: Seventh Circuit Order affirming judgment against Monsanto Company, June 28, 1982.

App. C: District Court Judgment, February 22, 1980.

App. D: Transcript of District Court denial of Monsanto's motion for directed verdict at the close of testimony, February 19, 1980.

App. E: Seventh Circuit Order denying petition for rehearing and suggestion for rehearing *en banc*, September 8, 1982.

In The

United States District Court

For The

*Northern District of Illinois,
Western Division*

SPRAY-RITE SERVICE CORPORATION,
an Iowa corporation,

Plaintiff,

vs.

MONSANTO COMPANY,
a Delaware corporation,

Defendant.

NO. 72 C 12
JURY DEMANDED

AMENDED COMPLAINT

Plaintiff, Spray-Rite Service Corporation ("Spray-Rite") by its attorneys, complains of defendant, Monsanto Company ("Monsanto") as follows:

COUNT I

JURISDICTION AND VENUE

1. This action arises under the antitrust laws of the United States, more particularly Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Sections 2, 4 and 16 of the Clayton Antitrust Act as amended by the Robinson-Patman Act (15 U.S.C. §§ 13, 15 and 26). Plaintiff brings this action to recover damages.

2. Monsanto transacts business and is found within the Northern District of Illinois and has during the period of the violations alleged herein transacted business and was found within the Northern District of Illinois. Many of the unlawful acts alleged herein or done pursuant to the combination and conspiracy alleged herein, have been performed

within the Northern District of Illinois, and the commerce described hereinafter is carried on in part within this District.

PARTIES

3. Plaintiff, Spray-Rite, is an Iowa corporation, having its principal place of business in the State of Illinois. Spray-Rite sold agricultural pesticides, primarily in the Corn Belt of the United States until approximately 1972, when, because of the unlawful acts alleged herein, Spray-Rite was forced to terminate its business.

4. Defendant, Monsanto, is a Delaware corporation, having its principal place of business in the State of Missouri. Monsanto manufactures and sells a widely diversified line of chemical products to many different industries throughout the United States and the world. It operates over 60 domestic plants and research facilities, and many foreign facilities. During 1974, Monsanto enjoyed sales of about \$3.50 billion. Monsanto markets its chemical products through product groups, one group of which deals in chemical products for agriculture, including agricultural pesticides. The agricultural chemical products group accounted for 8.4%, 8.9%, 10.0% and 11.7% of all sales by Monsanto and its subsidiaries in calendar years 1968, 1969, 1970 and 1974, respectively. Monsanto is one of the largest manufacturers of pesticides in the United States. Spray-Rite had a contract with Monsanto to distribute certain of Monsanto's pesticides in the Corn Belt until the events of 1968 as hereinafter described.

DEFINITIONS

5. As used in this complaint, "pesticides" means chemicals and chemical compounds used in agriculture to destroy or control one or more types of harmful plants, insects or fungi; "herbicides" means a pesticide used to destroy or control harmful plants; "Corn Belt" means the upper and

central midwestern United States; "contract distributor" means a distributor who has entered into a contract with Monsanto to distribute its pesticides and "co-conspirators" means Monsanto's subsidiaries and agents, all contract distributors of Monsanto pesticides on and after 1968, including but not limited to Associated Producers, Inc., Brayton Chemical Co., Hopkins Agricultural Chemical Co., Lavery Sprayers, Inc., Mid-State Chemical Co., Midwest Agricultural Warehouse Co. and Van Diest Supply Co. and dealers of Monsanto pesticides in the Corn Belt and throughout the United States.

TRADE AND COMMERCE

6. The pesticides which are the subject of this complaint move regularly in interstate commerce. The unlawful acts and practices alleged in this complaint operate directly on such products in connection with their manufacture, sale and interstate shipment and thereby directly restrain and adversely affect interstate commerce.

7. Monsanto conducts its business in interstate commerce and the unlawful acts and practices complained of herein occurred in the flow of such commerce.

8. Spray-Rite has sold pesticides in the Corn Belt since 1956. From its inception, Spray-Rite has been a pioneer and innovator in the application of pesticides as that technology has developed since World War II, and was instrumental in improving the sales distribution of pesticides in the Corn Belt. Spray-Rite continued thereafter to offer superior technical and marketing services to its customers by concentrating on and specializing in the distribution of pesticides. Spray-Rite has sought to sell to customers in large lots, early in the season and on a cash basis whenever possible. Consequently, Spray-Rite has had a negligible bad debt experience. For these reasons and because of its otherwise efficient methods of operation, Spray-Rite had been able to operate successfully by offering competitive prices to its customers.

9. Since about 1957 and continuing until October 28, 1968, Spray-Rite was a contract distributor of Monsanto herbicides. From time to time during that period, Monsanto and Spray-Rite executed agreements entitled Formulated Pesticide Products Distributor Agreements, but Spray-Rite's distributorship and course of dealing with Monsanto was continuous during that period of time regardless of the existence, or lack of existence, of such executed Agreements. While a Monsanto contract distributor, Spray-Rite promptly paid its invoices to Monsanto, participated in Monsanto advertising and promotional programs and otherwise performed satisfactorily as a distributor of Monsanto herbicides in all lawful and material respects. During the years 1966, 1967 and 1968, Spray-Rite purchased approximately \$312,231.00, \$642,498.00 and \$496,875.00, respectively, of Monsanto herbicides from Monsanto. By 1967, Spray-Rite was one of Monsanto's largest volume distributors of Monsanto herbicides in the Corn Belt. Spray-Rite anticipated substantial increases during future years in its purchases of Monsanto herbicides because the demand for such herbicides in the Corn Belt was expanding rapidly and substantially, in part due to the efforts of Spray-Rite. In reliance on continuing and growing as a Monsanto distributor, Spray-Rite invested substantial capital and labor in its business. As a result, Spray-Rite has the modern warehouse capacity to carry substantial pesticide inventories and has vehicles suitable for efficient delivery of such pesticides. Spray-Rite also developed, at great expense, valuable and unique lists of pesticide customers and potential customers for its growing business.

10. An additional factor contributing to Spray-Rite's record of growth was its ability to hold itself out to its customers and potential customers as carrying a "full line" of pesticides for application in the Corn Belt. It has been the practice in the Corn Belt for distributors of pesticides to carry such a "full line" because purchasers of pesticides usually purchase all their requirements from a single source of supply. In 1968 and in other years, it was essential for a

full line pesticide distributor in the Corn Belt to carry the popular patented pesticides manufactured by Monsanto and by Ciba-Geigy Corporation (formerly Geigy Corp.). Such pesticides included Radox, Ramrod and Lasso manufactured by Monsanto, and Atrazine (Aatrax) and Diazinon manufactured by Ciba-Geigy Corporation. Spray-Rite was a distributor of such Monsanto and Ciba-Geigy Corporation pesticides in 1968. A distributor of pesticides in the Corn Belt who did not carry all or substantially all such pesticides (or their currently popular equivalents) was and is at a competitive disadvantage with other distributors who do, because of the aforescribed practice of pesticide purchasers to purchase from a single source of supply.

THE VIOLATIONS

11. Beginning in or about 1967 and continuing to the present time, Monsanto and the co-conspirators have combined, conspired and agreed with one another to eliminate and have eliminated Spray-Rite as a competitor in the sale of Monsanto herbicides and other pesticides in the Corn Belt and to restrain trade in the sale of Monsanto herbicides and other pesticides in the Corn Belt. Such combinations, conspiracies and agreements include the following unlawful acts and practices:

- a. Monsanto and the co-conspirators have determined, fixed and maintained prices at which distributors of Monsanto herbicides may resell such herbicides;
- b. Monsanto and the co-conspirators have restricted the territory in which distributors of Monsanto herbicides may resell such herbicides;
- c. Monsanto and the co-conspirators have restricted the type of customer to whom distributors of Monsanto herbicides may resell such herbicides;
- d. Monsanto, in combination, conspiracy and agreement with its co-conspirators, terminated Spray-Rite

and other contract distributors of Monsanto herbicides to punish and coerce distributors to comply with Monsanto and its co-conspirators' policies and practices of fixing and maintaining prices and restricting territory and types of customers;

e. Monsanto and the co-conspirators have reported among themselves the names of distributors who have failed to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers in order to coerce compliance with such policies;

f. Monsanto and the co-conspirators have manipulated the price and terms of sale of Monsanto herbicides and the availability of Monsanto herbicides to Monsanto distributors in order to punish and coerce distributors to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

g. Monsanto and the co-conspirators boycotted Spray-Rite in order to eliminate Spray-Rite as a competitor and to coerce distributors of Monsanto herbicides to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

h. Monsanto and the co-conspirators have invoked and enforced a restrictive herbicide shipping program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

i. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor and dealer compensation program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

j. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor early take program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

k. In the mid 1960's through and including 1969, Monsanto established approximately 155 Monsanto Agricultural Centers ("MAC centers") most of which were located in the Corn Belt. The MAC centers were, for the most part, Monsanto-owned sales outlets which offered and sold Monsanto pesticides and other agricultural products to customers and potential customers of Spray-Rite. The MAC centers offered and sold to such customers and potential customers, Monsanto herbicides in combination with other agricultural products at "package" prices and at generally lower prices than distributors of Monsanto herbicides were offering. Monsanto, through its MAC centers, sold Monsanto herbicides to customers and potential customers of Spray-Rite at prices lower than the prices at which Monsanto sold Monsanto herbicides of like grade and quality to Spray-Rite. Monsanto utilized the sales of herbicides through its MAC centers to destroy the business of Spray-Rite.

l. Monsanto has sold and continues to sell herbicides of like grade and quality at discriminatory prices and in connection with discriminations in services and facilities, by means of devices, acts and practices such as indirect price and service concessions, commissions, rebates and advertising and other allowances.

EFFECTS OF VIOLATIONS

12. The aforesaid unlawful acts and practices have caused, among other things, the following unlawful effects:

a. The resale prices of Monsanto herbicides have been fixed and maintained at arbitrary and non-competitive levels;

b. The territory in which distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

c. The type of customer to whom distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

d. The number of distributors of Monsanto herbicides and other pesticides has been reduced with the result that competition in the sale of Monsanto herbicides and other pesticides in the Corn Belt has been restricted;

e. The price at which Spray-Rite could purchase Monsanto herbicides, after being terminated by Monsanto as a contract distributor, has been fixed and maintained at arbitrary and non-competitive levels;

f. The supply of Monsanto herbicides available to Spray-Rite has been restricted;

g. Distributors of Monsanto herbicides and other pesticides in the Corn Belt have been coerced into complying with the policies of Monsanto and its co-conspirators of fixing and maintaining prices, restricting territories and types of customers through policing, boycotting, terminating non-complying contract distributors, selectively compensating distributors, selectively shipping herbicides and manipulating the terms of sale and the supply of Monsanto herbicides;

h. Purchasers of Monsanto herbicides and other pesticides have been substantially hindered from choosing other distributors and from purchasing at competitive prices.

i. Spray-Rite has been eliminated as a competitor in the sale of Monsanto herbicides and other pesticides. It has experienced net operating losses of \$37,067.00, \$11,513.00, \$61,763.00 and \$65,469.00, respectively, in 1969, 1970, 1971 and 1972, its volume of business and its

potential for acquiring new business was damaged and ultimately its business was destroyed.

13. As a direct and proximate result of the unlawful combinations, conspiracies, agreements, acts and practices alleged against Monsanto and the co-conspirators herein, Spray-Rite has been irreparably injured in its business and property and its business and property have been destroyed. Spray-Rite is entitled to have judgment against Monsanto in treble the amount of its damages which are at least \$1,825,000.00.

14. The foregoing combinations, conspiracies and agreements and the acts and practices pursuant thereto of Monsanto and the co-conspirators were and are in restraint of trade or commerce among the several states in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

COUNT II

1-14 Paragraphs 1-14 of Count 1 are realleged as paragraphs 1-14 of Count II.

15. The foregoing acts and practices of Monsanto alleged in subparagraphs 11(k) and 11(l) are in violation of Section 2(a), (c), (d) and (e) of the Robinson-Patman Act (15 U.S.C. § 13(a), (c), (d) and (e)).

RELIEF REQUESTED

WHEREFORE, plaintiff, Spray-Rite prays:

1. That this Court adjudge and decree that the combinations, conspiracies, agreements, acts and practices charged against Monsanto herein were and are in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Section 2(a), (c), (d) and (e) of the Clayton Act (15 U.S.C. § 13(a), (c), (d) and (e)).

2. That this Court enter judgment in favor of Spray-Rite against Monsanto in the amount of at least \$5,475,000.00.

3. That Spray-Rite recover from Monsanto its costs in this suit including its reasonable attorneys' fees incurred herein, as provided by Section 4 of the Clayton Act (15 U.S.C. § 15).

4. That Spray-Rite have such other additional and different relief as the nature of the case may require or as the Court shall deem just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

/s/ RICHARD F. VITKUS

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In The

United States District Court

*For The
Northern District of Illinois,
Western Division*

SPRAY-RITE SERVICE CORPORATION, an Iowa Corporation,	} Plaintiff,	NO. 72 C 12 W
vs.		
MONSANTO COMPANY, a Delaware corporation,	} Defendant.	

Transcript of Proceedings
February 20, 1980
Volume XXIII

[Excerpts from Jury Instructions]

* * *

[4348]

This antitrust lawsuit is brought by the plaintiff under Section 1 of the Sherman Antitrust Act, which deals with restraints of trade and provides that:

“Every contract, combination...or conspiracy,
in restraint of trade or commerce...is...
illegal....”

All business contracts restrain trade to some degree, but the Sherman Act does not prohibit all contracts. By prohibiting restraints of trade, the antitrust laws mean that unreasonable restraints of trade are prohibited; reasonable restraints of trade are not prohibited by the antitrust laws.

[4349]

In order to recover under Section 1 of the Sherman Act, the plaintiff has the burden of proving each of the following propositions:

1. That there was an agreement, conspiracy or combination between the defendant and one or more non-defendant co-conspirators to accomplish one or more of the alleged violations of Section 1 of the Sherman Act;
2. That one or more of these alleged antitrust violations by the defendant was a direct and material cause of injury to the plaintiff's business and property;
3. That the plaintiff thereby sustained damages in an amount capable of reasonable ascertainment.

If you find from your consideration of all the evidence that each of these propositions have been proved, your verdict should be for the plaintiff, but on the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved, your verdict should be for the defendant.

The plaintiff in this case seeks damages for injury to his business and property claimed to have been suffered or sustained as a result of alleged violations by the defendant of the antitrust laws of the United States.

Specifically, the plaintiff claims:

[4350]

1. That defendant and one or more of its distributors conspired or combined to fix, set or stabilize the resale price of defendant's product;
2. That pursuant to and as a part of, this resale price maintenance plan the defendant has imposed, and the non-defendant co-conspirators have acquiesced in, certain customer and territorial restrictions regarding the distribution of defendant's product;

3. That plaintiff was terminated as a contract distributor by defendant as a result of said conspiracy or combination;

4. That after plaintiff's termination defendant and one or more of its distributors conspired or combined to restrict plaintiff's access to defendant's products.

The defendant Monsanto denies these claims. Monsanto contends that it made the decision not to renew plaintiff, Spray-Rite's contract independent and unilaterally for its own business reasons and that plaintiff's business was affected by normal competitive forces and not by any conspiracy.

* * *

[4351]

A conspiracy is a combination of two or more persons, by concerted action or by coercion resulting in acquiescence to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of partnership, in which each member becomes the agent of every other member. The essence of a conspiracy is a combination or agreement to violate or to disregard the law.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interest, does not necessarily establish proof of the existence of a conspiracy. However, such business behavior is circumstantial evidence which you may consider with all the other evidence in the case in arriving at your verdict.

The evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by word spoken or in writing, stated

[4352]

between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What a preponderance of the evidence in the case might show, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not show that all the means or methods set forth in the plaintiff's complaint were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all persons alleged to have been members of the claimed conspiracy were such. What a preponderance of the evidence in the case must show is that the alleged conspiracy was formed; and that one or more of the means or methods described in the complaint was agreed upon to be used in an effort to effect or accomplish some object or purpose of the conspiracy alleged in the plaintiff's complaint; and that two or more persons, including the defendant, were knowingly members of the conspiracy alleged in the complaint.

A conspiracy requires proof that there be a single plan and purpose, the nature and general scope of which is known to each person who is claimed to be a member

[4353]

of the conspiracy. Unless the individuals involved understood from something that was said or done that they were in fact committed to the purposes of the conspiracy, there is no violation. There is no such thing as an unknowing or unwitting conspirator.

There cannot be a conspiracy unless there is a commitment between two or more persons working for different companies. To prove a conspiracy here, plaintiff must prove by a preponderance of the evidence that Monsanto employees conspired with persons who did not work for Monsanto.

[4354]

The fact that distributors complain about prices or anything else does not in itself mean that a conspiracy existed. Even if you find that Monsanto acted in exactly the way that complainants would have wished, that does not prove the existence of a conspiracy; it would, however, be evidence that you can take into consideration in deciding whether or not a conspiracy existed.

In your consideration of the evidence in the case as to the conspiracy charged, you should first determine whether or not the conspiracy existed, as alleged in the complaint. If you conclude that the conspiracy did exist, you should next determine whether or not the defendant, or one or more of its distributors were knowingly members of the conspiracy.

If it appears from a preponderance of the evidence in the case that the conspiracy alleged in the plaintiff's complaint was knowingly formed, and that the defendant or one or more of its distributors, normally became members of the conspiracy, either at the inception or beginning of the plan, or afterwards, then the success or failure of the conspiracy to accomplish the common object or purpose is immaterial, so long as the plaintiff sustained some damage as a result of the conspiracy.

* * *

[4355]

Under Section 1 of the Sherman Act, there are agreements, conspiracies and combinations whose nature and effect on competition are conclusively presumed to be unreasonable and therefore illegal, without any inquiry as to the harm they have caused or the business excuse for their use—they are "illegal per se."

Among the practices which the courts have declared to be per se illegal, and therefore unlawful in and of themselves, are price-fixing or resale price maintenance and concerted refusals to deal. If you find that the defendant participated in any agreement, conspiracy or combination to fix or stabilize resale prices or to refuse to deal with the plaintiff,

then the defendant has violated Section 1 of the Sherman Act. Once the existence of such an agreement, conspiracy or combination has been established, no evidence of actual public injury is required, and no evidence of reasonableness can be considered in justification. Such actions violate the anti-trust laws.

Any conspiracy or combination formed for the purpose and with the effect of raising, depressing, fixing,

[4356]

rigging or stabilizing the price of any commodity in interstate commerce is illegal per se.

Where a manufacturer undertakes to distribute its goods through a chain of independent dealers, the consumers' ability to purchase at a free market price will be enhanced by the retailer's unrestricted ability to set his retail price at the level he feels most commensurate with local demand.

If you find that the defendant conspired or combined with one or more of its distributors to raise, depress, fix, peg or stabilize the resale price of defendant's products, then the defendant violated Section 1 of the Sherman Act.

It is also per se illegal for a manufacturer to utilize customer or territorial restrictions pursuant to or as a part of, a comprehensive price-fixing plan or an agreed refusal to deal. Therefore, if you find that the defendant conspired or combined with one or more of its distributors to utilize the defendant's customer or territorial restraints in order to effectuate price stabilization or resale price maintenance, or to detect and prevent resale price-cutting, or to effectuate any restriction on plaintiff's access to defendant's products, then the defendant has violated Section 1 of the Sherman Act.

It is also unlawful for a manufacturer to

[4357]

terminate or threaten to terminate one of its distributors for the reason that the distributor objected to, or departed from either the manufacturer's price-fixing or stabilization plan or

any customer or territorial restraints which are part of that plan. Therefore, if you find that termination or threat of termination was utilized by the defendant as a coercive tool against the plaintiff or any other distributor or defendant to force adherence to any aspect of a resale price maintenance plan, such termination or threat of termination is unlawful. It does not matter whether the defendant initiated the coercion, or whether it was done in response to pressure or complaints from one or more of its distributors.

A termination or threat of termination to compel adherence to any aspect of a resale price maintenance plan is unlawful, whether or not there was any reasonable justification.

* * *

[4363]

The law recognizes a limited right in the manufacturer to select its distributors, but that right is neither absolute nor exempt from regulation. If the manufacturer's selection is accompanied by unlawful purpose, conduct or agreement, it violates the Sherman Act.

A manufacturer may announce suggested resale prices and refuse to sell to a distributor which refuses to abide by those suggested prices. However, the manufacturer's conduct must be totally independent. In deciding whether the manufacturer's conduct was completely independent and unilateral, you should look to what the participants did, rather than the words they used.

Therefore, the defendant's limited right to choose its distributors does not include the right to, in any way, conspire or combine with one or more of its distributors to fix or stabilize resale prices, or to refuse to deal, or to commit any other act which has been described in these instructions as a per se violation of the antitrust laws.

A manufacturer has the right to print suggested prices on its products, to advertise those prices, to issue lists of suggested resale prices, and to send those price lists to its distributors or other customers. A manufacturer may also ask its customers to follow such suggested prices. However, a manufacturer may not conspire

[4364]

or combine with its distributors so that the distributors are required to sell at the suggested prices or to raise, fix or stabilize the prices charged by the distributors to their customers.

The fact that a program may have an effect on prices, even raising them, does not mean that it is part of a price-fixing plan. Imposing normal competitive requirements on a distributor, such as encouraging a distributor to advertise, may affect the distributor's costs, thereby indirectly affecting the price at which the distributor will sell the product. That does not necessarily mean that those requirements are part of a price-fixing conspiracy or combination, although you may find that they are part of a conspiracy or combination.

Defendant has the right to assign distributors to areas of primary responsibility and to assign points where distributors can pick up products or take delivery, so long as the decision to do these things is independent and not because of a price-fixing conspiracy or combination.

The defendant has a right to select distributors that it thinks will do the best job for it provided that in doing so the defendant's decision not to renew the plaintiff's contract was not made pursuant to a price-fixing conspiracy or combination.

Once plaintiff was not renewed as a Monsanto

[4365]

distributor, defendant had no obligation to sell to it on the same terms that it offered to its distributors who had contracts, unless its decision not to sell to Spray-Rite was a part of a conspiracy or combination to refuse to deal with Spray-Rite. The fact that some of Monsanto's policies may have affected the price paid by all non-contract sellers, including plaintiff, does not necessarily establish a conspiracy, but may be evidence which you can consider along with all the other evidence in the case in deciding whether a conspiracy existed.

Defendant has the right to implement incentive programs in order to encourage its distributors to perform certain marketing functions unless those programs are part of a price-fixing conspiracy or combination.

* * *

A-27

In The

United States District Court

For The

*Northern District of Illinois,
Western Division*

SPRAY-RITE SERVICE CORPORATION,

an Iowa Corporation,

Plaintiff,

vs.

MONSANTO COMPANY,
a Delaware corporation,

Defendant.

NO. 72 C 12 W

Transcript of Proceedings
February 21, 1980

[Jury's Answers to Special Interrogatories]

* * *

[2]

Question No. 1:

“Was the decision by Monsanto not to offer a new contract to plaintiff for 1969 made by Monsanto pursuant to a conspiracy or combination with one or more of its distributors to fix, maintain or

[3]

stabilize resale prices on Monsanto herbicides?”

The answer is: “Yes.”

Question No. 2:

“Were the compensation programs and/or areas of primary responsibility and/or shipping policy created by Monsanto pursuant to a conspiracy or

combination with one or more of its distributors to fix, maintain or stabilize resale prices of Monsanto herbicides?"

That answer is: "Yes."

Question No. 3:

"Did Monsanto conspire or combine with one or more of its distributors so that one or more of those distributors would limit plaintiff's access to Monsanto's herbicides after 1968?"

The answer is: "Yes."

JS
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82-914

No.

FILED

DEC 7 1982

ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

MONSANTO COMPANY,

Petitioner,

vs.

SPRAY-RITE SERVICE CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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DATED: December 7, 1982

APPENDIX C

C-1

APPENDIX C

IN THE
United States District Court
For the Northern District of Illinois,
Western Division

SPRAY-RITE SERVICE CORPORATION,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Civil Action File No. 72-C-12

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Stanley J. Roszkowski, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that judgment is hereby entered against the defendant, Monsanto Company, and in favor of plaintiff, Spray-Rite Service Corporation, and assesses damages in the amount of \$10,500,000.00 plus interest at the legal rate.

H. STUART CUNNINGHAM
Clerk of Court

Dated: February 25, 1980

By: C. M. SAUNDERS,
Deputy Clerk

APPENDIX D

IN THE
United States District Court
For the Northern District of Illinois,
Western Division

SPRAY-RITE SERVICE CORPORATION,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Cause No. 72-C-12
Stanley J. Roszkowski,
United States District Judge
February 19, 1980.

TRANSCRIPT OF RULING ON MONSANTO COMPANY'S
MOTION FOR DIRECTED VERDICT
AT THE CLOSE OF TESTIMONY

THE COURT: All right, with all due respect, Mr. Bartlit, I think that there is some evidence that I think would allow that to go to the jury on the question of whether or not there was such a conspiracy.

MR. BARTLIT: You see, my point—excuse me.

THE COURT: And I think there was also some evidence whether there were certain customer and territorial restrictions regarding the distribution of defendant's products. It may be true that there may not be as much evidence on that point as I'm sure the plaintiff would like, but I think that is a factual question.

It seems to me that there is some evidence on that—at least the way I have heard the case. I think that you've got—the argument that you're making now may be a very good argument to make to the jury and I think—

MR. BARTLIT: Well, I guess I don't think so, your Honor.

THE COURT: Okay.

MR. BARTLIT: I just don't think—I don't think the jury is in a case like this capable of understanding these kinds of distinctions.

THE COURT: Well, you know, if they aren't, we ought not try any of these cases—I suppose we ought to agree with Justice Burger and not try any of these cases before a jury because they've got to understand these things, or at least we have to assume they understand them, and you pointed out to me the other day that they decided a case that you recently tried on the grounds that the plaintiff was guilty of contributory negligence.

MR. BARTLIT: Yes, sir, and that's what scares me.

THE COURT: That might scare you. But, I understand your position. I just think that it probably—I'm going to let it—at least at this point, I will let it go to the jury.

MR. BARTLIT: I understand.

THE COURT: Yes.

APPENDIX E