

The Burger Court Opinion Writing Database

United States v. Armour & Co.
402 U.S. 673 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



BD JY

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

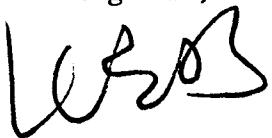
January 15, 1971

Re: No. 759 - U. S. v. Armour & Co.

Dear Thurgood:

Please join me in your dissent.

Regards,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 28, 1971

Re: No. 759 - U. S. v. Armour & Co.

Dear Thurgood:

If I haven't already sent you word, please
join me in the above.

Regards,

WB

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 28, 1970

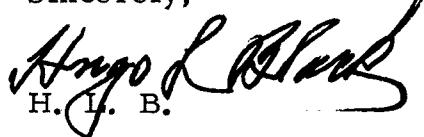
Dear Bill,

Re: No. 759 - United States v.
Armour & Co. - Per Curiam

Will you please note at the
foot of your opinion that:

"MR. JUSTICE BLACK took
no part in the consideration of or decision
in this case."

Sincerely,


H. L. B.

Mr. Justice Douglas

WJD

file
Cir 12/22/70

1

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
hound Corporation. } Illinois.

[January —, 1971]

PER CURIAM.

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the business of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

Armour, one of the parties to the decree, is now the second largest meatpacker in the United States with total assets of almost \$700 million and total sales in 1967

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SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
 hound Corporation. Illinois.

[January —, 1971]

PER CURIAM.

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RE
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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

related:

1/12/71

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
hound Corporation. } Illinois.

[January —, 1971]

PER CURIAM.

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

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Rec'd

new public policy, with
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SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, v. On Appeal from the United States District Court for the Northern District of Illinois.
Armour & Co. and Greyhound Corporation.

[January 7, 1971]

PER CURIAM.

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

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SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
hound Corporation. } Illinois.

[January —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE concur, dissenting.

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
hound Corporation. Illinois.

[January —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE concur, dissenting.

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Armour, one of the parties to the decree, is now the second largest meatpacker in the United States with total assets of almost \$700 million and total sales in 1967

WM

May 18, 1971

Dear Bill:

I have been wondering if you would mind writing the dissent in No. 759 - U. S. v. Armour & Company.

I think that you and Byron and I were the only dissenters. Or maybe I am wrong -- maybe Byron is out. I know it was a seven-man Court.

The reason I thought you might do it is that I have spoken my mind several times on the subject in the past. Looking back over what I have said, it strikes me as being a little tired and I am sure you could do a much better job.

William O. Douglas

Mr. Justice Brennan

WD

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6th DRAFT

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Recd

5/21/71

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, *v.* On Appeal from the United States District Court for the Northern District of Illinois.

Armour & Co. and Greyhound Corporation.

[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

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quarrel
white

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

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W D

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

THE CONCESSION

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

7th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 759.—OCTOBER TERM, 1970

Circulated:

United States, Appellant,) On Appeal from the United States District Court for: 5/26/21
v.)
Armour & Co. and Grey-) the Northern District of
hound Corporation.) Illinois.

[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE concur, dissenting.

The antitrust decree before us last Term in *United States v. Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

Armour, one of the parties to the decree, is now the second largest meatpacker in the United States with total assets of almost \$700 million and total sales in 1967

January 5, 1970

Re: No. 759 - U.S. v. Arnow

Dear Bill:

Like Brother Stewart, I shall not be able to join your per curiam, having joined Brother Marshall's unpublished opinion on the merits last Term. Since, as I see it, that opinion would also serve to dispose of the present case against the Government's position, I shall wait to see what Brother Marshall writes.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Conference

35 QM
✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

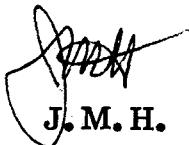
January 15, 1971

Re: No. 759 - United States v. Armour

Dear Thurgood:

Please join me in your opinion.

Sincerely,



J. M. H.

Mr. Justice Marshall

CC: The Conference



CHAMBERS OF
JUSTICE JOHN M. HARLAN

Supreme Court of the United States
Washington, D. C. 20543

May 18, 1971

Re: No. 759 - United States v. Armour

Dear Thurgood:

I agree with your opinion, and am glad
to join.

Sincerely,



J. M. H.

Mr. Justice Marshall

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 23, 1970

RE: No. 759 - United States v. Armour & Co.
and Greyhound Corporation

Dear Bill:

I agree with the Per Curiam you have
prepared in the above case.

Sincerely,


W.J. B. Jr.

Mr. Justice Douglas

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 19, 1971

RE: No. 759 - United States v. Armour

Dear Bill:

You are much too modest. I've reviewed both last year's file before General Host was superseded by Greyhound. Byron and I joined your dissent last year. I think your revision of it for the present case is even better. I must tell you in all candor that I can't suggest another basis nor express it half so well. I mislaid your circulation somewhere and borrowed another from your office this morning. I wish you would join me in it and file it.

Sincerely,

Brennan

Mr. Justice Douglas

WD

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 23, 1970

759 - U. S. v. Armour & Co.

Dear Bill,

I joined Thurgood's unpublished opinion for the Court last Term in No. 103, United States v. Armour & Co., and continue to hold the views there expressed. It follows, of course, that I cannot join your Per Curiam. I suppose Thurgood will circulate a dissent incorporating the substance of his opinion of last Term, and if he does so, I shall join it.

Sincerely yours,

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

5P ✓ J.P.M
CHAMBERS OF
JUSTICE POTTER STEWART

January 12, 1971

No. 759 - United States v. Armour & Co.

Dear Thurgood,

I am glad to join your dissenting
opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

P. S.
CHAMBERS OF
JUSTICE POTTER STEWART

Supreme Court of the United States
Washington, D. C. 20543

May 17, 1971

No. 759 - U.S. v. Armour & Co.

Dear Thurgood,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

RM
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 4, 1971

Re: No. 759 - United States v. Armour & Co.
and Greyhound Corporation

Dear Bill:

Please join me in your per curiam opinion
in this case.

Byron
B.R.W.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

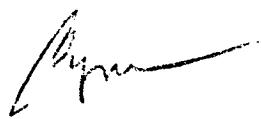
May 25, 1971

Re: No. 759 - U.S. v. Armour & Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, | On Appeal from the United
v. | States District Court for
Armour & Co. and Grey- | the Northern District of
hound Corporation. | Illinois.

[January —, 1971]

MR. JUSTICE MARSHALL, dissenting.

This case does not involve the question whether the acquisition of a majority of Armour stock by Greyhound is illegal under the antitrust laws. If the Government had wished to test that proposition, it could have brought an action to enjoin the acquisition under § 7 of the Clayton Act, 15 U. S. C. § 18. Alternatively, if the Government believed that changed conditions warranted further relief against the kind of action proposed here, it could have sought modification of the Meat Packers Decree itself.¹ It took neither of those steps, but rather sought to enjoin the acquisition under the decree as originally written. Thus the case presents only the narrow question whether ownership of a majority of stock in Armour by a company which engages in business forbidden to Armour by the decree, in itself and without any evidentiary showing as to its consequences, violates the prohibition against Armour “directly or indirectly . . . engaging in or carrying on” that forbidden business.

ref.

On February 27, 1920, the United States filed a bill in equity against the Nation’s five largest meatpackers, including Armour, and against their subsidiary corporations and controlling stockholders, charging conspiratorial and individual attempts to monopolize a substan-

¹ See *Chrysler Corporation v. United States*, 316 U. S. 556 (1952); and see generally Note, *Flexibility and Finality in Antitrust Consent Decrees*, 80 Harv. L. Rev. 1303 (1967).

SUPREME COURT OF THE UNITED STATES

No. 759.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal from the United
v. } States District Court for
Armour & Co. and Grey- } the Northern District of
hound Corporation. } Illinois.

[January —, 1971]

MR. JUSTICE MARSHALL, dissenting.

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On February 27, 1920, the United States filed a bill in equity against the Nation's five largest meatpackers, including Armour, and against their subsidiary corporations and controlling stockholders, charging conspiratorial and individual attempts to monopolize a substan-

¹ See *Chrysler Corporation v. United States*, 316 U. S. 556 (1942); and see generally Note, Flexibility and Finality in Antitrust Consent Decrees, 80 Harv. L. Rev. 1303 (1967).

Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

3

SUPREME COURT OF THE UNITED STATES: Marshall, J.

No. 759.—OCTOBER TERM, 1970

Circulated:

Recirculated: JAN 18 1971

United States, Appellant, v. Armour & Co. and Greyhound Corporation. On Appeal from the United States District Court for the Northern District of Illinois.

[January —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Here as in *United States v. Armour & Co.*, 398 U. S. 268, we have been asked to determine if the Meat Packers Consent Decree of 1920, which prohibits Armour & Co. from dealing directly or indirectly in certain specified commodities, prohibits a corporation that may deal in some of those specified commodities from acquiring a controlling interest in Armour. When this decree was here last Term the Government was seeking to prevent General Host, a company engaged in the manufacture and sale of a variety of food products, from acquiring control of Armour. While that case was pending, General Host agreed to sell its interest in Armour to Greyhound, Corp., a regulated motor carrier. After the required approval was obtained the Interstate Commerce Commission, the transaction was consummated. This Court then dismissed the action against General Host as moot. 398 U. S. 268.

The Government then proceeded against Greyhound as it had against General Host and filed a petition in the District Court alleging that Greyhound's engagement in businesses forbidden to Armour or any firm in which Armour has a direct or indirect interest, and that Greyhound's ownership of Armour creates a relationship forbidden by the 1920 Consent Decree. The District Court,

WJD

To : The Chief Justice
 Mr. Justice Black
 Mr. Justice Douglas
 ✓ Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 759.—OCTOBER TERM, 1970

Circulated: MAY 17 1971

United States, Appellant, } On Appeal from the United States District Court for
 v. } the Northern District of Illinois.
 Armour & Co. and Grey-
 hound Corporation. }

Recirculated: _____

[May —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Here as in *United States v. Armour & Co.*, 398 U. S. 268, we have been asked to determine if the Meat Packers Consent Decree of 1920, which prohibits Armour & Co. from dealing directly or indirectly in certain specified commodities, prohibits a corporation that may deal in some of those specified commodities from acquiring a controlling interest in Armour. When this decree was here last Term the Government was seeking to prevent General Host, a company engaged in the manufacture and sale of a variety of food products, from acquiring control of Armour. While that case was pending, General Host agreed to sell its interest in Armour to Greyhound, Corp., a regulated motor carrier. After the required approval was obtained from the Interstate Commerce Commission, the transaction was consummated. This Court then dismissed the action against General Host as moot. 398 U. S. 268.

The Government then proceeded against Greyhound as it had against General Host and filed a petition in the District Court alleging that Greyhound's engagement in businesses¹ forbidden to Armour or any firm in which

¹ The Government claims that two of Greyhound's wholly owned subsidiaries are engaged in the retail food business. Prophet Foods Co., an industrial catering company, operates eating facilities in

(w)

January 11, 1971

No. 759 - United States v. Arneur and Co.
and Greyhound Corp.

Dear Bill:

At the end of your proposed opinion, will you please note that I take no part in the consideration or decision of this case.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

[Handwritten signature]

April 16, 1971

Dear Chief:

Please bear in mind that I am Out in

No. 759 - Armour & Co., et al., scheduled for
argument on April 19 (or 20).

Sincerely,

HAB

The Chief Justice