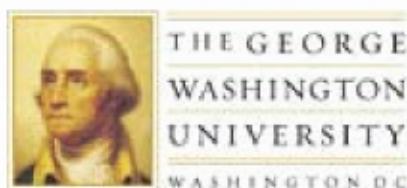


The Burger Court Opinion Writing Database

United States v. Greater Buffalo Press, Inc
402 U.S. 549 (1971)

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



Supreme Court of the United States
Washington, D. C. 20543
May 21, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 821 - United States v. Greater Buffalo Press

MEMORANDUM TO THE CONFERENCE:

I concur generally in Justice Douglas' opinion for
the Court and join in Justice White's concurring opinion.

W. B.
Regards,

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

May 25, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 821 - United States v. Greater Buffalo Press, Inc., et al.

MEMORANDUM TO THE CONFERENCE:

My memo of May 21, 1971 may have been confusing. What I intended was to join Justice White's opinion. Actually it seems to me that the two opinions are converging. Perhaps by Thursday they will have come together!

Regards,

WJM

RP
WJ
Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
THE CHIEF JUSTICE

May 27, 1971

Re: No. 821 - U. S. v. Greater Buffalo Press

Dear Bill:

I am pleased to join your circulation of
today's date in the above.

Regards,

WB

Mr. Justice Douglas

cc: The Conference

B

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 13, 1971

Dear Bill,

Re: No. 821 - United States v. Greater
Buffalo Press, Inc., et al.

I agree -- strongly.

Sincerely,


Hugo

Mr. Justice Douglas

cc: Members of the Conference

WJ

B

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 27, 1971

Dear Bill,

re: No. 821- U. S. v. Greater Buffalo Press.

I am still with you.

Sincezely,


Hugo

Mr. Justice Douglas

WJ

3P
no replies
Please give me
TM to Reverse
HFB joined w/OP

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

1st DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES: S-10

No. 821.—OCTOBER TERM, 1970 Recirculated: 1st

United States, Appellant, v. On Appeal From the United States District Court for the Western District of New York.
Greater Buffalo Press, Inc., et al.

[May —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

¹ Section 7 provides:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

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

From: Douglas, J.

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Circulated: *S-12*

No. 821.—OCTOBER TERM, 1970

United States, Appellant, On Appeal From the United
v. States District Court for
Greater Buffalo Press, the Western District of
Inc., et al. New York.

[May —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

¹ Section 7 provides in part:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

WB

7/19/71
Recd
5/19/71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

United States, Appellant, *v.* On Appeal From the United States District Court for the Western District of New York.
Greater Buffalo Press, Inc., et al.

[May —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

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WV

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 22, 1971

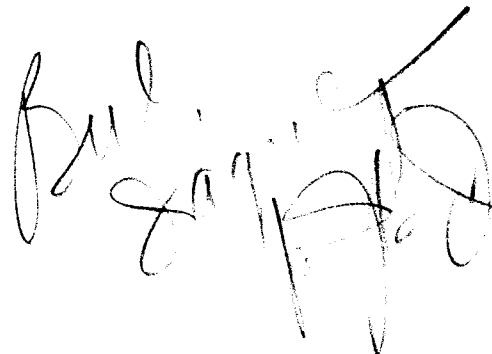
Dear Bill:

In No. 821 - United States
v. Greater Buffalo Press, I received
returns only from you, Hugo, and Thurgood.
Today the Chief Justice circulated saying
while he concurred generally in my opinion,
he joined Byron's separate opinion. That
means, I gather, that there are five who
favor taking no position on the issue of
divestiture.

Accordingly, I have made some
changes on page 7 of this opinion. If you
agree, I thought I would send it down for
a new print and recirculate.

WW
William O. Douglas

Mr. Justice Brennan



WD

BP 7
7
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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

J.

5/24/71

United States, Appellant, } On Appeal From the United
v. } States District Court for
Greater Buffalo Press, } the Western District of
Inc., et al. } New York.

[June —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

¹ Section 7 provides in part:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

file
Recd

5/27/71

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal From the United
v. } States District Court for
Greater Buffalo Press, } the Western District of
Inc., et al. } New York.

[June —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

¹ Section 7 provides in part:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

WD

May 20, 1971

Re: No. 821 - United States v. Greater Toledo
Press

Dear Byron:

Will you please join me in your continuing
opinion.

Sincerely,

J. M. H.

Mr. Justice Thurgood

CG: The Conference

May 26, 1971

Re: No. 821 - U.S. v. Greater Buffalo
Press, Inc.

Dear Bill:

Confirming my telephone conversation, I
am glad to join your opinion as revised.

Sincerely,

J. M. H.

Mr. Justice Douglas

cc: The Conference

JP

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 18, 1971

RE: No. 821 - United States v. Greater
Buffalo Press

Dear Bill:

I agree.

Sincerely,

W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 20, 1971

No. 821 - U. S. v. Greater Buffalo Press

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

3D
✓
CHAMBERS OF
JUSTICE POTTER STEWART

May 27, 1971

No. 821 - U. S. v. Greater Buffalo Press

Dear Bill,

I am glad to join your opinion for
the Court in this case, as recirculated today.

Sincerely yours,

P. B.

Mr. Justice Douglas

Copies to the Conference

for
J. M. joined work

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

White, J.

No. 821.—OCTOBER TERM, 1970

Circulated: 5-20-71

Recirculated:

United States, Appellant,
v.
Greater Buffalo Press,
Inc., et al. } On Appeal From the United
States District Court for
the Western District of
New York.

[May —, 1971]

MR. JUSTICE WHITE, concurring.

I concur in the judgment remanding the cause for further proceedings and in so much of the Court's opinion as holds that the District Judge erred in his assessment of the relevant market and in concluding that the merger was permissible under the failing company doctrine. However, I would not here reach the question of the appropriate remedy, for, as stated in *United States v. DuPont & Co.*, 366 U. S. 316, 323 (1961), "we assign to the District Courts the responsibility *initially* to fashion the remedy, but recognize that while we accord due regard and respect to the conclusion of the District Court, we have a duty ourselves to be sure that a decree is fashioned which will effectively redress proved violations of the antitrust laws." While I recognize that the District Judge has here indicated that he feels divestiture inappropriate 15 years after the illegal acquisition, the passage of time alone is not sufficient to render divestiture inappropriate. *United States v. DuPont*, 353 U. S. 586, 590 (1957). The Court repeats this rule today. Beyond that we would perform our duty best by remanding the case and leaving the question of remedy to the District Court in the first instance.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 821.—OCTOBER TERM, 1970

Circulated:

Recirculated: 5-25-71

United States, Appellant, } On Appeal From the United
v. } States District Court for
Greater Buffalo Press, } the Western District of
Inc., et al. } New York.

[June —, 1971]

MR. JUSTICE WHITE, concurring.

I concur in the judgment remanding the cause for further proceedings and in so much of the Court's opinion as holds that the District Judge erred in his assessment of the relevant market and in concluding that the merger was permissible under the failing company doctrine. However, I would not here reach the question of the appropriate remedy, for, as stated in *United States v. DuPont & Co.*, 366 U. S. 316, 323 (1961), "we assign to the District Courts the responsibility *initially* to fashion the remedy, but recognize that while we accord due regard and respect to the conclusion of the District Court, we have a duty ourselves to be sure that a decree is fashioned which will effectively redress proved violations of the antitrust laws." While I recognize that the District Judge has here indicated that he feels divestiture inappropriate 15 years after the illegal acquisition, the passage of time alone is not sufficient to render divestiture inappropriate. *United States v. DuPont & Co.*, 353 U. S. 586, 590 (1957); *United States v. DuPont & Co.*, 366 U. S. 316 (1961). The Court repeats this rule today. Beyond that I would simply remand this case and leave the question of remedy to the District Court in the first instance, without implying that failure to order divestiture would be error.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 26, 1971

Re: No. 821 - U.S. v. Greater
Buffalo Press, Inc.

Dear Bill:

You have cured my problems with the first paragraph on p. 7. I suggest also striking the word "divestiture" in the third paragraph and making the indicated substitution for the next to the last paragraph.

Thanks very much.

Sincerely,



Mr. Justice Douglas

WD

May 28, 1972

Re: No. 821 - U.S. v. Greater
Buffalo Press, Inc.

Dear Bill:

Please join me in your latest
elucidation in this case.

Sincerely,

B.M.W.

Mr. Justice Beards

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 17, 1971

Re: No. 821 - United States v. Greater Buffalo Press

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

May 21, 1971

Re: No. 821 - U. S. v. Greater Buffalo Press, Inc.

Dear Byron:

Will you please join me in your concurring
opinion for this case.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

AB
MS
1971
May 25, 1971

Re: No. 821 - U. S. v. Greater Buffalo Press, Inc.

Dear Byron:

I would now like to be joined in your recirculation of May 25.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

May 27, 1971

Re: No. 821 - U. S. v. Greater Buffalo Press, Inc.

Dear Bill:

I am content to join your recirculation of today. I wonder mildly about the inclusion of the first ten words of the second line on page 7. That is a detail, however, which I shall leave to you and Bryan White to work out. The presence of those words, of course, implies that some members do not share the stated view. The question is whether we want the division to be apparent.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference