

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



CHAMBERS OF
THE CHIEF JUSTICE

Regards

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

AN ILLUSTRATION OF CONCRETE

307
LA f

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,

WJH

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSSEJNOC OF ADVANCE IN


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

CHAMBERS OF
THE CHIEF JUSTICE

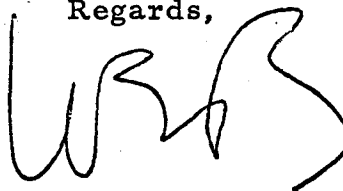
May 27, 1971

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,



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

3

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.

Sincerely,

Hugo
Hugo

Mr. Justice Douglas

BP

no replies
Please form me
TM To Reverse
H+B joined word

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. /st.

SUPREME COURT OF THE UNITED STATES: 5-10

No. 821.—OCTOBER TERM, 1970 Recirculated: _____

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:

"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: 5-12

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.

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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

File
Rec'd
5/19/71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

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

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

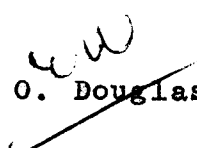
CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

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.


William O. Douglas

Mr. Justice Brennan





BP
47
Q

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 J.

No. 821.—OCTOBER TERM, 1970

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-

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SSSBCNOC OF ADVAD I N

*File
Rec'd
5/27/71*

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

United States, Appellant,	} On Appeal From the United
<i>v.</i>	
Greater Buffalo Press,	
Inc., et al.	
	States District Court for
	the Western District of
	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-

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May 20, 1971

Re: No. 831 - United States v. Greater Buffalo
Press

Dear Byron:

Will you please join me in your concurring
opinion.

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

Handwritten initials:
M
R
J

May 28, 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

Handwritten signature and initials.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

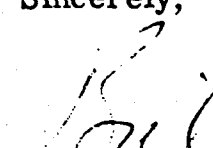
May 18, 1971

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECRET NO. 100 ADV. 100

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

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.S.

Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

No. 821.—OCTOBER TERM, 1970

Circulated: 5-20-71

Recirculated: _____

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 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.

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Handwritten initials and marks in the top left corner.

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 ^{Per curiam: 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.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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, 1971

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

Dear Bill:

Please join me in your latest
circulation in this case.

Sincerely,

B.N.W.

Mr. Justice Douglas

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

85
LMJ
R

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


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

BP
✓
✓
✓

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 Bryon 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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF CONGRESS