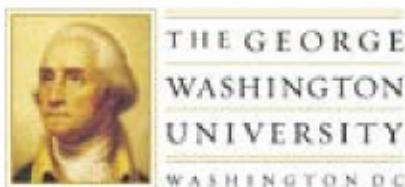


The Burger Court Opinion Writing Database

Greyhound Corp. v. Mt. Hood Stages, Inc.
437 U.S. 322 (1978)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1978

Dear Harry:

Re: 77-598 Greyhound Corp. v. Mt. Hood Stages, Inc.

Your Note 21 opens the way for me to join you.
I will send around today a Wang-concurrence highlighting the
Note 21 matter.

This should allow the opinion to come down by
Tuesday.

Regards,

WEB
jc.

Mr. Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JUN 8 1978

Unpublished: _____

Re: 77-598 - Greyhound Corp. v. Mount Hood Stages

MR. CHIEF JUSTICE BURGER, concurring.

I concur in the Court's opinion, but with great reluctance; in my view respondent is entitled to the award of treble damages ordered by the District Court. Given the Court's analysis of the legal issues involved here, the opinion today does not describe Greyhound's destructive, outrageous behavior toward respondent -- aimed at total destruction of a competitor. In the present case the jury found Greyhound not only to be in violation of the Sherman Act, but that it had fraudulently concealed its antitrust violations for more than a decade. Moreover, the Interstate Commerce Commission, after attentive consideration, found that petitioner's actions were "inspired by a desire to stifle competition," in particular an intent to "injure or destroy" respondent, Mount Hood Stages. Mount Hood Stages, Inc., 104 M.C.C. 449, 461 (1968). Beyond its flagrantly unlawful conduct, Greyhound took the added step

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

CHAMBERS OF
THE CHIEF JUSTICE

June 14, 1978


Re: 77-598 - Greyhound Corp. v. Mount Hood Stages

Dear Harry:

Your observations persuade me it is more appropriate to avoid expressing a view on the merits. I now concur largely to focus attention on your Note 21.

A print draft will be around shortly with the change described above.

Regards,



Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice
Mr. Justice

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

No. 77-598

Circulated: _____

Recirculated: JUN 15 '78

The Greyhound Corporation,
et al., Petitioners,
v.
Mt. Hood Stages, Inc., Etc.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[June —, 1978]

MR. CHIEF JUSTICE BURGER, concurring.

I concur fully in the Court's opinion, but with great reluctance; in my view respondent is entitled to the award of treble damages ordered by the District Court. Given the Court's analysis of the legal issues involved here, the opinion today has no occasion to focus on Greyhound's egregious behavior toward Mt. Hood Stages—aimed at total destruction of a competitor. In the present case the jury found Greyhound not only to be in violation of the Sherman Act, but that it had fraudulently concealed its antitrust violations for more than a decade. Moreover, the Interstate Commerce Commission, found that petitioner's actions were "inspired by a desire to stifle competition," in particular an intent to "injure or destroy" respondent. *Mount Hood Stages, Inc.*, 104 M. C. C. 449, 461 (1968). Beyond its unlawful conduct, Greyhound took the added step of willfully disobeying the enforcement order of the United States District Court. In assessing criminal fines of \$600,000 against Greyhound, the District Court, in a careful and detailed opinion, observed that petitioner had "displayed a contemptuous reluctance to even commence compliance" with the court's order. *United States v. Greyhound Corp.*, 370 F. Supp. 881, 884 (ND Ill. 1974). The District Court went on to note:

"In determining the extent of Greyhound's willful defiance of the order, the court recognizes Greyhound's record of purposeful non-action, protracted resistance, and emas-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 5, 1978

RE: No. 77-598 Greyhound Corporation v. Mt. Hood
Stages

Dear Harry:

This will confirm that although I was the other way at conference I am happy to join your opinion provided you do not adopt Bill Rehnquist's suggestion to drop footnote 20.

Sincerely,

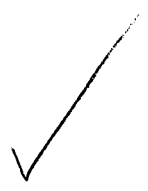


Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART



April 26, 1978

Re: No. 77-598 - Greyhound Corp. v. Mt. Hood Stages

Dear Chief,

After our Conference discussion, you asked me to assign the opinion in this case. John Stevens has agreed to undertake it. (This may partially reimburse him for the loss of the Southland Realty Co. opinion.)

Sincerely yours,

Handwritten initials, possibly "P.S.", with a checkmark-like flourish below them.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓

May 1, 1978

No. 77-598, Greyhound v. Mt. Hood Stages

Dear Chief,

I have reassigned the opinion in this
case to Harry Blackmun.

Sincerely yours,

PS
/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1978

Re: No. 77-598, The Greyhound Corporation v.
Mt. Hood Stages, Inc.

Dear Harry,

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

Sincerely yours,

PS.
/

Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

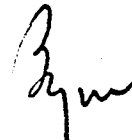
June 6, 1978

Re: 77-598 - The Greyhound Corporation
v. Mount Hood Stages, Inc.

Dear Harry,

I agree.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1978

Re: No. 77-598 - Greyhound Corp. v. Mt. Hood Stages

Dear Harry:

Please join me. I hope you will not drop
footnote 20.

Sincerely,

J.M.
T.M.

Mr. Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

L.A.S. will. I hope you will not drop footnote 2)

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: JUN 2 1978

Recirculated: _____

No. 77-598 - The Greyhound Corporation v. Mt. Hood Stages, Inc.

MR. JUSTICE BLACKMUN delivered the opinion of the
Court.

This case presents the issue whether § 5(i) of the Clayton
Act, as amended, 15 U.S.C. § 16(i) (1976 ed.), ^{1/} operates to toll
the running of the Act's statute of limitations ^{2/} from the date on
which the United States filed a petition for leave to intervene in an
Interstate Commerce Commission proceeding previously instituted
by the plaintiff.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

//
Section 5(i) provides:

"Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, however, That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued."

p. 9.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 6 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-598

The Greyhound Corporation et al., Petitioners, v. Mt. Hood Stages, Inc., Etc.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
--	--

[June —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether § 5 (i) of the Clayton Act, as amended, 15 U. S. C. § 16 (i) (1976 ed.),¹ operates to toll the running of the Act's statute of limitations² from the date on which the United States filed a petition for leave to intervene in an Interstate Commerce Commission proceeding previously instituted by the plaintiff.

¹ Section 5 (i) provides:

"Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued."

² Section 4B, 15 U. S. C. § 15b (1976 ed.). It provides:

"Any action to enforce any cause of action under sections 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act."

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 5, 1978

No. 77-598 Greyhound Corp. v. Mt. Hood Stages, Inc.

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

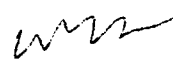
June 2, 1978

Re: No. 77-598 Greyhound Corporation v. Mt. Hood Stages

Dear Harry:

I will probably join your opinion in this case whether or not you make the following change. It does seem to me that footnote 20, as presently drafted, is a signal of some sort that the Court would very probably go the other way in the situation hypothesized in that footnote. I do not disagree with the statement in the footnote that "rational distinctions concerning the Government's participation in regulatory proceedings can be drawn", but I would prefer to see them drawn in the first instance by counsel in future cases before this Court. It seems to me that if you were to omit or at least modify the footnote, the question would be no less open, but the "signal" would be lacking. I would personally prefer to see it handled in this latter manner.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

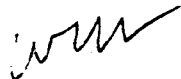
June 7, 1978

Re: No. 77-598 Greyhound Corp. v. Mt. Hood Stages

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1978

Re: 77-598 - The Greyhound Corporation v.
Mt. Hood Stages, Inc.

Dear Harry:

Please join me.

In the third sentence in footnote 13, I would be grateful if you would substitute the words "violations of the antitrust laws" for the words "anticompetitive actions, including an attempt to monopolize." My suggested change tracks the statutory language.

I also share Bill Rehnquist's concern about footnote 20.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS