

The Burger Court Opinion Writing Database

Copperweld Corp. v. Independence Tube Corp.

467 U.S. 752 (1984)

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



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'84 APR 13 P 1:54

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

**COPPERWELD CORPORATION, ET AL., PETITIONERS
v. INDEPENDENCE TUBE CORPORATION**

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

[April —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether a parent corporation and its wholly-owned subsidiary are legally capable of conspiring with each other under § 1 of the Sherman Act.

I

A.

The predecessor to petitioner Regal Tube Company was established in Chicago in 1955 to manufacture structural steel tubing used in heavy equipment, cargo vehicles, and construction. From 1955 to 1968 it remained a wholly-owned subsidiary of C.E. Robinson Company. In 1968 Lear Siegler, Inc., purchased Regal Tube Company and operated it as an unincorporated division. David Grohne, who had previously served as vice-president and general manager of Regal, became president of the division after the acquisition.

In 1972 petitioner Copperweld Corporation purchased the Regal division from Lear Siegler; the sale agreement bound Lear Siegler and its subsidiaries not to compete with Regal in the United States for five years. Copperweld then transferred Regal's assets to a newly-formed, wholly-owned Pennsylvania corporation, petitioner Regal Tube Company. The new subsidiary continued to conduct its manufacturing opera-

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Justice White
Justice Marshall
Justice Blackmun
Justice Powell
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Justice Stevens
Justice O'Connor

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APR 27 1984

STYLISTIC CHANGES THROUGHOUT

CHANGES AS MARKED: pp. 12, 21

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

**COPPERWELD CORPORATION, ET AL., PETITIONERS
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1984

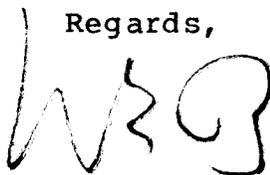
Re: 82-1260 Copperweld Corp. v. Independence Tube Corp

MEMORANDUM TO THE CONFERENCE:

Final review of this case and John's dissent leads me to changes noted in typescript on the enclosed draft.

If John - or indeed anyone - wishes more time on this, the announcement can go over to next week.

Regards,

A handwritten signature in dark ink, appearing to be the initials 'W B G' with a stylized flourish.

To: Justice Brandeis
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

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CHANGES pp. 7-9, 19-23

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

COPPERWELD CORPORATION, ET AL., PETITIONERS
v. INDEPENDENCE TUBE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 13, 1983

No. 82-1260

Copperweld Corporation
v. Independence Tube Corporation

Dear John,

I was to reverse and you were to vacate in the above. I don't think we are in full agreement. Perhaps it would be best if you say your piece and I'll see if I can't switch.

Sincerely,



Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 1, 1984

No. 82-1260

Copperweld Corporation, et al.
v. Independence Tube Corporation

Dear Chief,

I will await further writing in
this case.

Sincerely,

Bren

The Chief Justice

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AS:ON 1- YAM 88

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2112

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

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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 13, 1984

'84 JUN 13 10:14

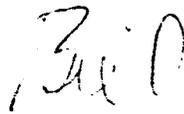
No. 82-1260

Copperweld Corporation, et al.
v. Independence Tube Corporation

Dear John,

Please join me.

Sincerely,



Justice Stevens

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 19, 1984

Re: 82-1260 - Copperweld Corporation v.
Independence Tube Corporation

Dear Chief,

Please note at the bottom of your opinion that I took no part in the consideration or decision in this case.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 14, 1984

Re: No. 82-1260-Copperweld Corp. v. Independence Corp.

Dear John:

Please join me in your dissenting opinion.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1984

Re: No. 82-1260 - Copperweld Corp. v. Independence Tube Corp.

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 19, 1984

82-1260 Copperweld Corp. v. Independence Tube

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1984

Re: No. 82-1260 Copperweld Corporation v. Independence
Tube Corporation

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 13, 1983

Re: 82-1260 - Copperweld Corp. v.
Independence Tube Corp.

Dear Bill:

I think perhaps I can write something that would be acceptable to you; at least I shall be happy to give it a try.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 30, 1984

Re: 82-1260 - Copperweld Corp. v.
Independence Tube Corp.

Dear Chief:

Although I must confess that I am not entirely at rest in this case, I do not believe I will be able to join your opinion. Instead of treating Affiliated Corporations as though they were a single entity and therefore entirely incapable of satisfying the conspiracy requirement in § 1, I believe I would deal with the problem by holding that agreements among such entities could seldom, if ever, constitute an unreasonable restraint of trade. I also think there is more merit to the position taken by the Attorney General's National Committee to Study the Antitrust Laws than is indicated by your footnote 22.

In all events, I will be writing separately and hope that I do not hold you up too long.

Respectfully,



The Chief Justice

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

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JUSTICE MARSHALL

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From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

**COPPERWELD CORPORATION ET AL., PETITIONERS
v. INDEPENDENCE TUBE CORPORATION**

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

[June —, 1984]

JUSTICE STEVENS, dissenting.

It is safe to assume that corporate affiliates do not vigorously compete with one another. A price fixing, or market allocation, agreement between two or more such corporate entities does not, therefore, eliminate any competition that would otherwise exist. It makes no difference whether such an agreement is labeled a "contract," a "conspiracy" or merely a policy decision, because it surely does not unreasonably restrain competition within the meaning of the Sherman Act. The Rule of Reason has always given the courts adequate latitude to examine the substance rather than the form of an arrangement when answering the question whether collective action has restrained competition within the meaning of § 1.

Today the Court announces a new per se rule: a wholly-owned subsidiary is incapable of conspiring with its parent under § 1 of the Sherman Act. Instead of redefining the word "conspiracy," the Court would be better advised to continue to rely on the Rule of Reason. Precisely because they do not eliminate competition that would otherwise exist but rather enhance the ability to compete, restraints which enable effective integration between a corporate parent and its subsidiary—the type of arrangement the Court is properly concerned with protecting—are not prohibited by § 1. Thus,

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

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JUSTICE MARSHALL

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

**COPPERWELD CORPORATION ET AL., PETITIONERS
v. INDEPENDENCE TUBE CORPORATION**

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

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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3rd
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1260

COPPERWELD CORPORATION ET AL., PETITIONERS
v. INDEPENDENCE TUBE CORPORATION

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

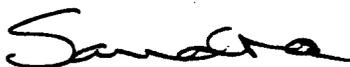
April 17, 1984

No. 82-1260 Copperweld Corporation v.
Independence Tube Corp.

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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