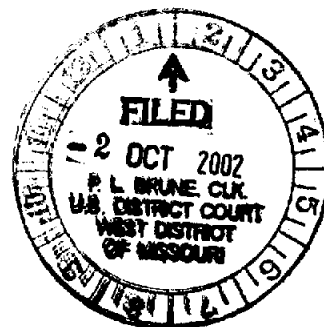


IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION



STATE ex rel.)
JEREMIAH W. (JAY) NIXON,)
)
)
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 Plaintiff,)
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 vs.)
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)
)
 Conoco Inc.,)
 a Delaware corporation)
)
)
 and)
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)
)
 Phillips Petroleum Company,)
 a Delaware corporation)
)
)
 Defendants.)

Case No: 02-4190-CV-W-NKC

**CONSENT FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND OTHER RELIEF**

Plaintiff, the Attorney General of the State of Missouri ("Plaintiff"), has filed his Complaint for Permanent Injunction and Other Relief pursuant to and alleging violations of the Clayton Act § 7, as amended, 15 U.S.C. § 18, and the Missouri Antitrust Law, Mo. Rev. Stat. § 416.011, *et seq.*

Plaintiff and Defendants Conoco Inc. ("Conoco") and Phillips Petroleum Company ("Phillips") [collectively herein "Defendants"] have agreed to the entry of this Consent Final Judgment and Order for Permanent Injunction and Other Relief ("Judgment") by this Court to resolve all matters of dispute between them in this action. This Judgment does not constitute an admission by Defendants that the law has been violated as alleged in the

Complaint For Permanent Injunction and Other Relief (the "Complaint"), or that the facts as alleged in the Complaint, other than jurisdictional facts and the fact that Conoco and Phillips have agreed to merge, are true.

NOW, THEREFORE, Plaintiff and Defendants having requested the Court to enter this Order:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto. This Court has jurisdiction over each of the parties and this action pursuant to 28 U.S.C. §§ 1331 and 1337(a) and Clayton Act §§ 15 and 16, as amended, 15 U.S.C. §§ 25 and 26. This Court has jurisdiction of the pendent state claims pursuant to 28 U.S.C. § 1367(a). Venue is proper in this Court under Section 12 of the Clayton Act, 15 U.S.C. § 22 and under 28 U.S.C. § 1391(b).
2. This Court has personal jurisdiction over Defendants.
3. Defendants have acknowledged service and waived any claim of insufficiency of process or service of process.
4. The Complaint asserts allegations against Phillips and Conoco under Clayton Act § 7, as amended, 15 U.S.C. § 18, and the Missouri Antitrust Law, Mo. Rev. Stat. § 416.011, *et seq.*
5. As of the date this Judgment becomes final, Defendants have, by signature of their counsel hereto, waived any right to appeal, petition for certiorari, or move to reargue or rehear this Judgment.
6. Entry of this Judgment is in the public interest.

INJUNCTIVE RELIEF

I.

DEFINITIONS

A. "Conoco" means Conoco Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Conoco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Conoco does not include Phillips.

B. "Phillips" means Phillips Petroleum Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Phillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Limitations on the definition of "Phillips" found in the attached FTC Decision and Order apply to this Judgment.

C. "ConocoPhillips" means the entity resulting from the merger involving Conoco and Phillips, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by ConocoPhillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Limitations on the definition of "ConocoPhillips" found in the attached FTC Decision and Order apply to this Judgment.

D. "Conoco Branded Seller" means any Person (other than Conoco) that has, by virtue of contract or agreement in effect as of November 18, 2001, the right to sell Motor Fuels using any trademark, trade name, or logo owned by or licensed to Conoco, or to resell Motor Fuels to any such Person. "Conoco Branded Seller" includes marketers, distributors, jobbers, contract dealers, and open dealers.

E. "Defendants" means Conoco and Phillips, individually and collectively, and, after the Merger, ConocoPhillips.

F. "FTC Decision and Order" means the Decision and Order contained in the Agreement Containing Consent Orders executed by Defendants and the Federal Trade Commission staff on August 2, 2002.

G. "Effective Date" means that date defined as such in Section XIII. herein.

H. "Merger" means the proposed merger of Conoco and Phillips.

I. "Merger Date" means the date on which the Merger is consummated.

J. "Phillips Branded Seller" means any Person (other than Phillips) that has, by virtue of contract or agreement in effect as of November 18, 2001, the right to sell Motor Fuels using any trademark, trade name, or logo owned by or licensed to Phillips, or to resell Motor Fuels to any such Person. "Phillips Branded Seller" includes marketers, distributors, jobbers, contract dealers, and open dealers.

K. "Switching Costs" means, for each Gasoline Outlet, any and all sums of money that, as of November 18, 2001, a Phillips Branded Seller or Conoco Branded Seller

is contractually obligated to reimburse to Defendants in the event that either (1) the Gasoline Outlet ceases to be branded Conoco or Phillips, or (2) the branded marketer sales contract relating to that Gasoline Outlet is terminated. "Switching Costs" shall be calculated on a Gasoline Outlet-by-Gasoline Outlet basis as of November 18, 2001.

L. "Switching Costs" do not include (a) any loans extended or sums of money advanced by Defendants or incurred by Phillips Branded Sellers or Conoco Branded Sellers after November 18, 2001; or (b) any sums of money owed to Defendants for goods or merchandise sold and delivered in the ordinary course of business by Defendants to any Phillips Branded Seller or Conoco Branded Seller.

M. "Conversion Costs" means (1) the costs and expenses required to be incurred by a Conoco or Phillips dealer (or branded marketer) to remove, package, crate, and return to Defendants signs, trademarked materials, trade dress materials, canopy materials bearing a Conoco or Phillips trademark or trade dress, and all other materials bearing the trademarks or trade dress of Defendants installed at a Gasoline Outlet, and also including any costs and expenses to dismantle or discontinue use of any proprietary software used in the operation of any Conoco or Phillips credit card processing system; and (2) the costs and expenses required to be incurred by a Conoco or Phillips dealer (or branded marketer) to purchase and install signs, trademarked materials, trade dress materials, canopy materials bearing another Conoco or Phillips trademark or trade dress, and all other materials bearing the trademarks or trade dress of Defendants to be installed at a Gasoline Outlet, and

including any costs and expenses to install and make operational any proprietary software used in the operation of any Conoco or Phillips credit card processing system.

N. "Specified Areas" means the Missouri counties in the Kansas City Metropolitan Statistical Area (Jackson, Cass, Clay, Clinton, Lafayette, Platte, and Ray), the Springfield Metropolitan Statistical Area (Greene, Christian, and Webster) and the Joplin Metropolitan Statistical Area (Jasper and Newton), and the counties of Barry, Stone, and Taney.

O. "Person" means any individual, partnership, association, company or corporation.

P. "Gasoline Outlet" means a business establishment from which Motor Fuels are sold to the general public.

Q. "Motor Fuels" means gasoline or diesel fuel (including kerosene sold at Gasoline Outlets, such as kerosene typically used for blending with on-road diesel). "Motor Fuels" does not include aviation gasoline or jet fuel.

II.

APPLICABILITY

The provisions of this Judgment shall apply to Defendants, and their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, representatives, employees and all other persons in active concert or participation with any of them who receive actual notice of this Judgment by personal service or otherwise.

III.

Defendants shall comply with the requirements pertaining to propane found in Paragraph IV. of the FTC Decision and Order, a copy of which is attached hereto as Appendix A, and incorporated herein by reference. All notices required to be given to the Federal Trade Commission pursuant to Paragraph IV. of the FTC Decision and Order shall be given to Plaintiff at the same time. Copies of Defendants' communications with the Federal Trade Commission relating to divestiture of "Propane Terminal Assets" or "Propane Alternate Assets," as those terms are defined in the FTC Decision and Order, shall also be provided contemporaneously to Plaintiff.

IV.

A. For a period of three (3) years from the Effective Date of this Judgment, Defendants shall waive those Switching Costs in excess of \$75,000 per Gasoline Outlet for each Gasoline Outlet in the Specified Areas that switches from the Conoco or Phillips brand to another brand not owned by or licensed to ConocoPhillips or de-brands.

B. For a period of three (3) years from the Effective Date of this Judgment, in the event that ConocoPhillips ceases state-wide to market Motor Fuels under a brand owned by or licensed to ConocoPhillips that was in use in the State of Missouri as of November 18, 2001, (1) Defendants shall pay any Conversion Costs associated with switching Gasoline Outlets from the terminated brand to another ConocoPhillips brand, and (2) Defendants shall waive those Switching Costs in excess of \$100,000 per Gasoline

Outlet for each Gasoline Outlet in the State of Missouri that switches from the Conoco or Phillips brand to another brand not owned by or licensed to ConocoPhillips or de-brands. The restrictions in this Subsection B apply to all Gasoline Outlets in the State of Missouri. This restriction does not apply to temporary shortages of branded supplies. In the event that ConocoPhillips ceases state-wide to market Motor Fuels under a brand owned by or licensed to ConocoPhillips, this Paragraph IV.B. does not entitle dealers or Gasoline Outlets operating under the terminated brand to switch to another ConocoPhillips brand.

V.

NOTIFICATION OF CERTAIN ACQUISITIONS

For a period of ten (10) years from the date this Judgment becomes final, Defendants shall not, without thirty (30) days prior written notification to Plaintiff, directly or indirectly, through subsidiaries, partnerships or otherwise:

A. Acquire any ownership, leasehold or other interest, controlling or otherwise, in the assets to be divested under Section III, above, after their divestiture pursuant to this Order; or

B. Acquire any stock, share capital, equity, or other interest in any Person engaged in, or in any assets used in, Propane Terminaling (as defined in the attached FTC Decision and Order) within the State of Missouri at any time within three (3) years preceding the acquisition. Provided, however, that this paragraph shall not apply to the acquisition of any interest in any Person that is not at the time of the acquisition engaged in

Propane Terminaling within the State of Missouri due to the sale within the preceding two years of all assets used for Propane Terminaling within the State of Missouri to another party who intended to operate said assets for Propane Terminaling within the State of Missouri.

VI

COMPLIANCE REPORTS

A. Within sixty (60) days from the date the FTC Decision and Order becomes final and every sixty (60) days thereafter until Defendants have fully complied with the provisions of Section III of this Judgment, Defendants shall submit to Plaintiff a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Section III of this Judgment. Defendants shall include in their compliance reports, among other things, a full description of the efforts being made to comply with this Section, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Defendants shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date the FTC Decision and Order becomes final, and annually for the next nine (9) years on the anniversary of the date the FTC Decision and Order becomes final, Defendants shall file a verified written report with Plaintiff, setting

forth in detail the manner and form in which Defendants have complied and are complying with each provision of this Judgment.

C. Notwithstanding Paragraphs VI.A. and VI.B. above, to comply with the provisions of this Section VI, the Defendants may, on the same dates as required under the FTC Decision and Order, submit the portions of their compliance reports required under Paragraph XI of the FTC Decision and Order that relate to Defendants' compliance with Paragraph IV of the FTC Decision and Order.

VII

CORPORATE STRUCTURE CHANGE

Defendants shall notify Plaintiff at least thirty (30) days prior to any proposed change in the corporate Defendants, such as bankruptcy, liquidation, dissolution, assignment, merger or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Judgment.

VIII

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Judgment, and subject to any legally recognized privilege, and upon written request with reasonable notice to Defendants, Defendants shall permit any duly authorized representative of Plaintiff:

A. Access, during office hours of Defendants and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of each Defendant relating to any matters contained in this Judgment; and

B. Upon five (5) days notice to each Defendant and without restraint or interference from it, to interview officers, directors, or employees of Defendant, who may have counsel present, regarding any such matters.

IX.

ATTORNEYS' FEES AND INVESTIGATIVE COSTS

Within ten (10) business days of the entry of this Judgment, Defendants shall pay the sum of \$56,801.00 to the Missouri Antitrust Revolving Fund for the payment of investigative costs and attorneys' fees of Plaintiff.

X.

STATE-FEDERAL CONSULTATION

Plaintiff shall consult with the Federal Trade Commission on all decisions relating to the divestiture of assets under Section III of this Judgment and will exercise best efforts to resolve any inconsistent enforcement positions between Plaintiff and the Federal Trade Commission relating to Section III.

XI.

MISCELLANEOUS

A. When final, this Judgment shall have the same force and effect as and may be altered, modified or set aside in the same manner and within the same time provided by applicable rules for other judgments. Defendants may be liable for civil penalties in the amount provided by law for each violation of this Judgment after it becomes final.

B. By signing this Judgment, Defendants represent and warrant that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Judgment are parties to the Judgment and are bound thereby as if they had signed this Judgment and were made parties to this proceeding and to the Judgment.

C. In response to Plaintiff's request pursuant to Mo. Rev. Stat. § 416.091, Phillips provided to Plaintiff a list of Phillips-branded Gasoline Outlets within the scope of the restrictions found in Paragraphs IV.A. and IV.B. of this Judgment, with a cover letter dated August 8, 2002, and identified by numbers P-SC-1 through P-SC-7. In response to Plaintiff's request pursuant to Mo. Rev. Stat. § 416.091, Conoco provided to Plaintiff a list of Conoco-branded Gasoline Outlets within the scope of the restrictions found in Paragraphs IV.A. and IV.B. of this Judgment, with a cover letter dated August 14, 2002, and identified by numbers C-SC-1 through C-SC-2. Phillips and Conoco each represent that their respective lists are complete lists of Gasoline Outlets in the Specified Areas that had Switching Costs in excess of \$75,000, and throughout the rest of the State of Missouri in excess of \$100,000, as of

November 18, 2001. Any Gasoline Outlet not included on such lists but which should have been included based on these criteria shall receive the benefit of the restrictions described herein. The Attorney General has relied on the accuracy of the information described in the August 8 and 14 letters in asking the Court to enter this Consent Judgment. The confidentiality afforded such documents under Section 416.091 remains in place after the entry of this Judgment.

XII.

NOTICES

Any notices required by the Judgment shall be delivered to the parties at the following addresses:

- A. For Conoco Inc.:
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Attn: George S. Cary, Esq.
- B. For Phillips Petroleum Company:
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attn: Ilene Knable Gotts, Esq.
- C. For ConocoPhillips:
ConocoPhillips
Office of the General Counsel
600 North Dairy Ashford
Houston, Texas 77079-1175
Attn: R.A. Harrington, Esq.
- D. For the State of Missouri:

Erwin O. Switzer
Special Chief Counsel
Office of the Missouri Attorney General
111 North Seventh Street, Suite 204
St. Louis, MO 63101
Attn: Consumer Protection Division/Conoco/Phillips

XIII.

EFFECTIVE DATE AND TERMINATION

This Judgment shall become effective upon the later of (a) the Merger Date; or (b) the date this Judgment is finally entered by the Court ("Effective Date"). This Judgment shall become final in accordance with applicable rules. This Judgment will expire and terminate ten (10) years from the date of its entry.

XIV.

RETENTION OF JURISDICTION

The Court shall retain jurisdiction over the parties for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation,

enforcement, or modification of any of the provisions in this Judgment, and for the punishment of any violations of this Judgment.

XV.

COMPLIANCE WITH LAW

This Order shall not exempt Defendants from complying with all federal, state, or local laws, regulations, ordinances, or codes.

SO ORDERED, this 2nd day of October 2002.

Manette Laughrey
Honorable
United States District Judge