

¶ 70,562 UNITED STATES V. GREATER NEW YORK..., Trade Cases P 70562...

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**Trade Cases P 70562 (C.C.H.), 1962 WL 145508**

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Trade Regulation Reporter - Trade Cases (1932 - 1992)Case-Law

U.S. District Court, S.D. New York | October 29, 1962  
62 Cr 513, 1962 Trade cases ¶ 70,562

¶ 70,562 UNITED STATES V. GREATER NEW YORK ROLL BAKERS ASSN., INC.; FIELD'S BAKING CORPORATION; **FINK BAKING** CORPORATION; GOTTFRIED BAKING COMPANY, INC.; MILLER BAKERIES CORP.; OLYMPIA PROVISION & BAKING CO., INC.; SABRETT FOOD PRODUCTS CORP.; SABRETT FOOD PRODUCTS OF PA., INC.; VIRNELSON'S BAKERY, INC.; MORRIS HORN; LOUIS FIELD; JOSEPH ZWECKER; RICHARD PRINCE; SIDNEY B. WEXLER; CHARLES ZISIMOS; SAMUEL OGUS; JULIUS FRANKEL; MAURICE B. KATZ AND FRANK S. VIRNELSON.

United States v. Greater New York Roll Bakers Assn., Inc.; Field's Baking Corporation; **Fink Baking** Corporation; Gottfried Baking Company, Inc.; Miller Bakeries Corp.; Olympia Provision & Baking Co., Inc.; Sabrett Food Products Corp.; Sabrett Food Products of Pa., Inc.; Virnelson's Bakery, Inc.; Morris Horn; Louis Field; Joseph Zwecker; Richard Prince; Sidney B. Wexler; Charles Zisimos; Samuel Ogus; Julius Frankel; Maurice B. Katz and Frank S. Virnelson.

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United States v. Greater New York Roll Bakers Assn., Inc.; Field's Baking Corporation; **Fink Baking** Corporation; Gottfried Baking Company, Inc.; Miller Bakeries Corp.; Olympia Provision & Baking Co., Inc.; Sabrett Food Products Corp.; Sabrett Food Products of Pa., Inc.; Virnelson's Bakery, Inc.; Morris Horn; Louis Field; Joseph Zwecker; Richard Prince; Sidney B. Wexler; Charles Zisimos; Samuel Ogus; Julius Frankel; Maurice B. Katz and Frank S. Virnelson.

1962 Trade cases ¶ 70,562 1962 Trade cases ¶ 70,562. U.S. District Court, S.D. New York. 62 Cr 513, Dated October 29, 1962. Case No. 1662 in the Antitrust Division of the Department of Justice.

## Memorandum

### [ *Bill of Particulars* ]

Levet, District Judge [ *In full text* ]: Defendants have moved for an extensive bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, 18 USC, in a Sherman Act prosecution. The indicted defendants include an incorporated trade association, eight other corporations and ten individuals who are alleged to be executives of one or another of the corporate defendants. Most of the corporate defendants are engaged in the production of frankfurter rolls and hamburger rolls.

### [ *Indictment* ]

The first count of this indictment charges a combination and conspiracy, in violation of Section 1 of the Sherman Act, to restrain trade in the production, sale and distribution of frankfurter rolls and hamburger rolls. The second count charges a combination and conspiracy, in violation of Section 2 of the Sherman Act, to monopolize trade in such rolls.

The government agrees to furnish particulars of certain items but objects to others. The government also offered, subject to terms and conditions to be fixed by the court, to permit each defendant, "or preferably, a representative of or a committee for the defendants collectively, to inspect all of the documents obtained by the government through seizure or process." At points in the government's opposition memorandum, it urges, in effect, that this opportunity may possibly eliminate some of defendants' demands.

I am persuaded that this argument is without pertinence. As Judge Dimock said in *United States v. J. M. Huber Corp.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,592 ], 179 F. Supp. 570, 573:

"It must never be forgotten that what is sought by a bill of particulars is not what actually happened but what the opponent claims happened."

Reputedly, the government has numerous books, records and documents, but in spite of that defendants are entitled to know in certain respects at least what the government claims. Questions relative to the examination and copying of documents, etc. will, therefore, be determined subsequently.

"As Judge Dimock stated: "\* \* \* precedents furnish little help since each case must be judged by its special factual situation." <sup>1</sup> Nevertheless, there are certain basic considerations:

(1) "A motion for a bill of particulars addressed to indictments under the antitrust laws is sui generis because the crime involved must be differentiated not only from the generality of crimes but even from other conspiracies which require the allegation and proof of overt acts. *United States v. General Petroleum Corp.*, D. C., 33 F. Supp. 95; *United States v. General Electric Co.*, D. C. S. D. N. Y. 1941, 40 F. Supp. 627, Leibell, J." *United States v. Aluminum Co. of America*, D. C. S. D. N. Y. 1941, 41 F. Supp. 347, 348.

See also *United States v. J. M. Huber Corp.* [ 1959 Trade Cases ¶ 69,592 ] *United States v. J. M. Huber Corp.* [ 1959 Trade Cases ¶ 69,592 ], D. C. S. D. N. Y. 1959, 179 F. Supp. 570, 573; *United States v. General Petroleum Corp.*, D. C. S. D. Cal., Central Division 1940, 33 F. Supp. 95, 97.

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(2) It is no “answer to a motion for a bill of particulars for the government to say: ‘The defendant knows what he did, and, therefore, has all the information necessary.’ This argument could be valid only if the defendant be *presumed to be guilty*. For only if he is presumed guilty could he know the facts and details of the crime. Instead of being presumed guilty, he is presumed to be innocent. Being presumed to be innocent, it must be assumed ‘that he is ignorant of the facts on which the pleader founds his charges’.” *Fontana v. U. S.*, 8 Cir., 262 F. 283, 286; *U. S. v. Allied Chemical & Dye Corp.*, D. C., 42 F. Supp. 425. This conclusion seems to me to be elementary, fundamental and inescapable.” Whittaker, D. J., in *United States v. Smith*, D. C. W. D. Mo. W. D. 1954, 16 F. R. D. 372, 375.

The items sought and the disposition of each follow.

*Item 1.* “State (a) the date of formation of defendant Greater New York Roll Bakers Assn., Inc., (b) the name and address of each member thereof since its formation, (c) the date when each member became a member thereof, (d) the date when each former member ceased to be a member thereof, (e) the name of each officer thereof since its formation and the title of such office and (f) the period during which such officer held such office.”

Disposition: Granted upon consent.

*Item 2.* “(a) State the name of each person, other than the defendants, who it is claimed participated as co-conspirators in the combination and conspiracy alleged in Count One of the indictment.

“(b) State the name of each person, other than the defendants, who it is claimed participated as co-conspirators in the combination and conspiracy alleged in Count Two of the indictment.”

Disposition: Granted.

See *United States v. Chas. Pfizer & Co., Inc.*, D. C. S. D. N. Y., 61 Cr. 772, order dated July 17, 1957; *United States v. General Petroleum Corp.*, D. C. S. D. Cal. 1940, 33 F. Supp. 95, 101; *United States v. Allegheny County Retail Druggists' Assn.* [ 1952-1953 Trade Cases ¶ 67,274], D. C. W. D. Pa. 1952, 12 F. R. D. 249.

*Item 3.* “(a) Identify each officer, director, agent or employee through whom, the act or acts by which, and where and when, each defendant and co-conspirator entered into the combination and conspiracy alleged in Count One of the indictment and the period or periods during which it is claimed that each defendant and co-conspirator remained therein, stating the earliest date of documentary proofs connecting each defendant with the conspiracy.

“(b) Identify each officer, director, agent or employee through whom, the act or acts by which, and where and when, each defendant and co-conspirator entered into the combination and conspiracy alleged in Count Two of the indictment and the period or periods during which it is claimed that each defendant and co-conspirator remained therein, stating the earliest date of documentary proofs connecting each defendant with the conspiracy.”

Disposition: Granted to this extent:

(a) Let the government supply the identity of the person, who acted for each defendant, and the approximate period of each defendant's and each co-conspirator's participation in the combination and conspiracy alleged in Count One of the indictment, together with the earliest dates of documents connecting each defendant with such alleged conspiracy.

(b) Let the government supply the identity of the person, who acted for each defendant, and the approximate period of each defendant's and each co-conspirator's participation in the combination and conspiracy alleged in Count Two of the indictment, together with the earliest dates of documents connecting each defendant with such alleged conspiracy.

See *United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213, 225; *United States v. Glen Alden Coal Company*, D. C. S. D. N. Y. 1943, 4 F. R. D. 211; *United States v. Allegheny*

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*County Retail Druggists' Ass'n*, D. C. W. D. Pa. 1952 [ 1952-1953 Trade Cases ¶ 67,274], 12 F. R. D. 249; *United States of America v. Consolidated Laundries Corporation*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787]; *United States of America v. Consolidated Laundries Corporation*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787], Cr. No. 152-79, order of Judge Palmieri dated July 17, 1957.

*Item 4.* ‘(a) State each act performed by each defendant and each act performed by each co-conspirator in furtherance of the offense charged in Count One of the indictment and, with respect to each such act, state its date and place, the defendant or co-conspirator who performed such act and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor. With respect to each such act, state whether it is claimed to have been authorized, ordered or done by a particular individual and if so when and where and by what means he is claimed to have done so and, to the extent that it is alleged to have been authorized, ordered or done in writing, identify all such documents and, to the extent orally, state by whom and to whom spoken and the date and place of each conversation. With respect to each such act by each individual defendant, state whether it is claimed to have been done in an individual or in a representative capacity and, if in a representative capacity, on behalf of whom.

“(b) State each act performed by each defendant and each act performed by each co-conspirator in furtherance of the offense charged in Count Two of the indictment and, with respect to each such act, state its date and place, the defendant or co-conspirator who performed such act and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor. With respect to each such act, state whether it is claimed to have been authorized, ordered or done by a particular individual and if so when and where and by what means he is claimed to have done so and, to the extent that it is alleged to have been authorized, ordered or done in writing, identify all such documents and, to the extent orally, state by whom and to whom spoken and the date and place of each conversation. With respect to each such act by each individual defendant, state whether it is claimed to have been done in an individual or in a representative capacity and, if in a representative capacity, on behalf of whom.

*Item 5.* “(a) State in what manner, other than by acts identified in response to item 4(a) hereof, each defendant and each co-conspirator participated in the offense charged in Count One of the indictment, and identify each other participation and, with respect to each such other participation, state its date and place, the defendant or co-conspirator participating therein and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor. With respect to each such other participation, state whether it is claimed to have been authorized, ordered or done by a particular individual and if so when and where and by what means he is claimed to have done so and, to the extent that it is alleged to have been authorized, ordered or done in writing, identify all such documents, and to the extent orally, state by whom and to whom spoken and the date and place of each conversation.

“(b) State in what manner, other than by acts identified in response to item 4(b) hereof, each defendant and each co-conspirator participated in the offense charged in Count Two of the indictment, and identify each other participation, and with respect to each such other participation, state its date and place, the defendant or co-conspirator participating therein and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor. With respect to each other participation, state whether it is claimed to have been authorized, ordered or done by a particular individual and if so when and where and by what means he is claimed to have done so and, to the extent that it is alleged to have been authorized, ordered or done in writing, identify all such documents and, to the extent orally, state by whom and to whom spoken and the date and place of each conversation.

*Item 6.* “(a) If it is claimed that any statements were made by any defendant or co-conspirator in furtherance of the offense charged in Count One of the indictment, state whether each such statement was written or oral; if written, state the date thereof, the defendant or co-conspirator making such statement and the person to whom made; if oral, state the date, place and substance thereof, the defendant or co-conspirator making such statement and, in the case of a firm, association or corporation, the person acting therefor.

*Item 6.”* (b) If it is claimed that any statements were made by any defendant or co-conspirator in furtherance of the offense charged in Count Two of the indictment, state whether each such statement was written or oral; if written, state the date thereof, the defendant or co-conspirator making such statement and the person to whom made; if oral, state the date, place and substance thereof, the defendant or co-conspirator making such statement and, in the case of a firm, association or corporation, the person acting therefor.”

Disposition: Items 4, 5 and 6 are denied.

These requests demand particulars as to the formation and conduct of the conspiracy in excruciating detail and with great specificity. This is not, in my opinion, required. As Judge Weinfeld of this court stated:

“As is well know, the existence of a conspiracy and a defendant's participation therein is usually established by circumstantial evidence based upon independent proof of each alleged co-conspirator's acts, conduct and statements and the totality of conduct of all the participants and the reasonable inferences to be drawn therefrom. Particulars as to the formation of the conspiracy have almost uniformly been denied. To grant the numerous and specific particulars sought on this subject would unduly restrict the Government's proof. [Footnotes omitted.]” *United States v. Simon*, D. C. S. D. N. Y. 1962, 30 F. R. D. 53, 54.

See also *United States v. Bentwena*, D. C. S. D. N. Y. 1960, 193 F. Supp. 485, 499; *United States v. J. M. Huber Corp.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,592], 179 F. Supp. 570, 574.

*Item 7.* “(a) If it is claimed that any meetings were held in furtherance of the offense charged in Count One of the indictment, state the date and place of each such meeting, the defendants and co-conspirators attending each, who attended each on behalf of each such defendant and co-conspirator and the substance of what transpired at each such meeting.

“(b) If it is claimed that any meetings were held in furtherance of the offense charged in Count Two of the indictment, state the date and place of each such meeting, the defendants and co-conspirators attending each, who attended each on behalf of each such defendant and co-conspirator and the substance of what transpired at each such meeting.”

Disposition: Granted to this extent:

(a) The government will furnish the place and the approximate date of each meeting, the defendants present, and the name of the officer or agent representing each, so far as it is known.

(b) The government will furnish the place and the approximate date of each meeting, the defendants present, and the name of the officer or agent representing each, so far as it is known.

To require more would demand disclosure of detailed evidence and would be contrary to the principles enunciated above in Nos. 4, 5 and 6.

*Item 8.* “(a) For each year from 1956 to date, state the name and address of each producer and each distributor to whom reference is made in paragraph 7 of the indictment and as to each such producer and each such distributor, state the States from which and to which he sells, ships and distributes and with respect to each State from which he sells, ships and distributes in interstate commerce, set forth the dollar volume, at wholesale, of (i) frankfurter rolls and (ii) hamburger rolls sold, shipped and distributed in interstate commerce as alleged in paragraph 7 of the indictment and with respect to each State into which such sales, shipments and distributions are made, set forth the dollar volume at wholesale of (i) frankfurter rolls and (ii) hamburger rolls so sold, shipped and distributed.

“(b) For each year from 1956 to date, state the name and address of each producer and distributor to whom reference is made in paragraph 7 as realleged in paragraph 14 of the indictment and as to each such producer and each such distributor, state the States from which and to which he sells, ships and distributes and with respect to each State from which he sells, ships and distributes in interstate commerce, set forth the dollar volume, at wholesale, of (i) frankfurter rolls and (ii) hamburger rolls sold, shipped and distributed in interstate commerce as alleged in paragraph 7 and re-alleged in paragraph 14 of the indictment and with respect to each State into which such sales, shipments and distributions are made, set forth the dollar volume at wholesale of (i) frankfurter rolls and (ii) hamburger rolls so sold, shipped and distributed.”

Disposition: Granted as far as known.

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*United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,737] *United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,737], Cr. No. 152-79, order of Judge Palmieri dated July 17, 1957.

*Item 9.* “(a) For each year from 1956 to date, state the name and address of each producer and each distributor of rolls whose volume of business is included in the \$12 million referred to in paragraph 8 of the indictment and state the total volume of business, at wholesale value, done by each in (i) New York, (ii) New Jersey, (iii) Philadelphia, Pennsylvania and (iv) an area within a 30-mile radius of each thereof and state the volume of business, at wholesale value, done by each such producer and each such distributor in interstate commerce between (i) New York and New Jersey, (ii) New York and Pennsylvania, and (iii) New Jersey and Pennsylvania.

“(b) For each year from 1956 to date, state the name and address of each producer and each distributor of rolls whose volume of business is included in the \$12 million referred to in paragraph 8 and re-alleged in paragraph 14 of the indictment and state the total volume of business, at wholesale value, done by each in (i) New York, (ii) New Jersey, (iii) Philadelphia, Pennsylvania and (iv) an area within a 30-mile radius of any thereof and state the volume of business, at wholesale value, done by each such producer and each such distributor in the interstate commerce between (i) New York and New Jersey, (ii) New York and Pennsylvania, and (iii) New Jersey and Pennsylvania.”

Disposition: Granted as far as known except as to (iv) in 9(a) and 9(b).

*United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213, 228.

*Item 10.* “(a) State whether the terms ‘continuing agreement’, ‘understanding’ and ‘concert of action’ used in paragraph 10 of the indictment are intended to have the same meaning. If not, state what is intended by ‘understanding’ and ‘concert of action’ and the respects in which each is different from ‘continuing agreement.’

“(b) State whether the terms ‘constinuing agreement’, ‘understanding’ and ‘concert of action’ used in paragraph 10 as realleged in paragraph 16 of the indictment are intended to have the same meaning. If not, state what is intended by ‘understanding’ and ‘concert of action’ and the respects in which each is different from ‘continuing agreement.’ “

Disposition: Granted by consent.

*Item 11.* “(a) State whether the continuing agreement alleged in paragraph 10 of the indictment was express, implied or partly express and partly implied. To the extent that it was express, state whether it was written or oral; if written, identify by date and parties thereto the documents constituting such express written agreement or any part thereof; if oral, state the date, place and substance thereof, the parties thereto and, in the case of a firm, association or corporation, the person acting therefor. To the extent that it was implied, state the substance thereof and identify each act, document, occurrence, or circumstance which is claimed to support the inference of agreement.

*Item 11.* “(b) State whether the continuing agreement alleged in paragraph 10 as realleged in paragraph 16 of the indictment was express, implied or partly express and partly implied. To the extent that it was express, state whether it was written or oral; if written, identify by date and parties thereto the documents constituting such express written agreement or any part thereof; if oral, state the date, place and substance thereof, the parties thereto and, in the case of a firm, association or corporation, the person acting therefor. To the extent that it was implied, state the substance thereof and identify each act, document, occurrence, or circumstance which is claimed to support the inference of agreement.”

Disposition: Granted to the following extent:



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(a) State whether the continuing agreement alleged in paragraph 10 of the indictment was express, implied or partly express and partly implied. To the extent that it was express, state whether it was written or oral; if written, identify by date and parties thereto the documents constituting such express written agreement or any part thereof.

(b) Granted to a like extent.

*United States v. Chas. Pfizer & Co., Inc.*, D. C. S. D. N. Y. 1962, Cr. No. 61-772, order of Judge Ryan dated July 11, 1962; *United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787] *United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787], Cr. No. 152-79, order of Judge Palmieri dated July 17, 1957; *United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213.

*Item 12.* “(a) In the event that the term ‘understanding’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 of the indictment, state with respect to ‘understanding’ the same particulars as are requested in item 11 (a) hereof with respect to ‘continuing agreement.’

“(b) In the event that the term ‘understanding’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 and realleged in paragraph 16 of the indictment, state with respect to ‘understanding’ the same particulars as requested in item 11 (b) hereof with respect to ‘continuing agreement.’”

Disposition: Granted upon consent.

*Item 13.* “(a) In the event that the term ‘concert of action’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 of the indictment, state with respect to ‘concert of action’ the same particulars as are requested in item 11 (a) hereof with respect to ‘continuing agreement.’

“(b) In the event that the term ‘concert of action’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 and realleged in paragraph 16 of the indictment, state with respect to ‘concert of action’ the same particulars as requested in item 11 (b) hereof with respect to ‘continuing agreement.’”

Disposition: Granted upon consent.

*Item 14.* “(a) State for each defendant and each co-conspirator the prices, terms and conditions of sale of (i) frankfurter rolls and (ii) hamburger rolls fixed and maintained pursuant to the combination and conspiracy as alleged in paragraph 11 of the indictment and the dates during which each of such prices, terms and conditions of sale were so fixed and maintained by such defendant and co-conspirator.

“(b) State for each defendant and each co-conspirator the prices, terms and conditions of sale of (i) frankfurter rolls and (ii) hamburger rolls fixed and maintained pursuant to the combination and conspiracy as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and the dates during which each of such prices, terms and conditions of sale were so fixed and maintained by such defendant and co-conspirator.”

Disposition: Granted as to 14(a) and 14(b) except as to “terms and conditions of sale.”

*United States v. Metropolitan Leather & Findings Ass'n*, D. C. S. D. N. Y. 1949 [ 1948-1949 Trade Cases ¶ 62,367], 82 F. Supp. 449, 454; *United States v. Chas. Pfizer & Co., Inc.*, D. C. S. D. N. Y. 1962, Cr. No. 61-772, order of Judge Ryan dated July 11, 1962; *United States v. Allegheny County Retail Druggists' Ass'n*, D. C. W. D. Pa. 1952 [ 1952-1953 Trade Cases ¶ 67,274], 12 F. R. D. 249, 250.

*Item 15.* “(a) Specify the name and address of each customer who, and each territory which, was allocated, as alleged in paragraph 11 of the indictment and state, as to each such customer and territory, the defendant or co-conspirator to whom allocated, the

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means used to accomplish such allocation, the date or dates of such allocation and in each case whether the rolls involved were frankfurter, hamburger or both.

“(b) Specify the name and address of each customer who, and each territory which, was allocated, as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and state, as to each such customer and territory, the defendant or co-conspirator to whom allocated, the means used to accomplish such allocation, and the date or dates of such allocation and in each case whether the rolls involved were frankfurter, hamburger or both.”

Disposition: Granted as to 15(a) and 15(b) except as to “the means used to accomplish such allocation.”

See *United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213, 228.

*Item 16.* “(a) State the name and address of each person among whom the production, sale and distribution of rolls was restricted as alleged in paragraph 11 of the indictment and as to each such person state whether the restriction was of frankfurter or hamburger rolls, the period of time of such restriction and the dollar volume, at wholesale, of the restriction in interstate commerce.

“(b) State the name and address of each person among whom the production, sale and distribution of rolls was restricted as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and as to each such person state whether the restriction was of frankfurter or hamburger rolls, the period of time of such restriction and the dollar volume, at wholesale, of the restriction in interstate commerce.”

Disposition: Granted as to 16(a) and 16(b) except as to “the dollar volume, at wholesale, of the restriction in interstate commerce.”

See *United States v. Chas. Pfizer & Co., Inc.*, D. C. S. D. N. Y. 1962, Cr. No. 61-772, order of Judge Ryan dated July 11, 1962; *United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213, 227.

*Item 17.* “(a) State the name and address of each person who failed to abide by or adhere to any of the terms of said combination and conspiracy, as alleged in paragraph 11 of the indictment.

“(b) State the name and address of each person referred to in paragraph 11 of the indictment who was eliminated from the business of producing, selling or distributing rolls, as alleged in paragraph 11 of the indictment and, as to each, state whether frankfurter or hamburger rolls were involved, the date and place of such elimination, the means whereby such elimination was accomplished, each defendant and each co-conspirator instrumental therein and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor.

“(c) State the name and address of each person referred to in paragraph 11 of the indictment who was punished other than by elimination from the business of producing, selling or distributing rolls as alleged in paragraph 11 of the indictment and as to each, state whether frankfurter or hamburger rolls were involved, the date, place and nature of such punishment, each defendant and co-conspirator inflicting such punishment and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor.”

Disposition: 17(a), denied; 17(b), granted; 17(c), granted.

*United States v. Greater Blouse, etc., Contractors' Ass'n, Inc.*, D. C. S. D. N. Y. 1959 [ 1959 Trade Cases ¶ 69,454], 177 F. Supp. 213, 227; *United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787]; *United States v. Consolidated Laundries Corp.*, D. C. S. D. N. Y. 1957 [ 1957 Trade Cases ¶ 68,787], Cr. No. 152-79, order of Judge Palmieri dated July 17, 1957.



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*Item 18.* “(a) State the name and address of each person who failed to abide by or adhere to any of the terms of said combination and conspiracy, as alleged in paragraph 11 and realleged in paragraph 16 of the indictment.

“(b) State the name and address of each person referred to in paragraph 11 of the indictment as realleged in paragraph 16 of the indictment who was eliminated from the business of producing, selling or distributing rolls, as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and, as to each state whether frankfurter or hamburger rolls were involved, the date and place of such elimination, the means whereby such elimination was accomplished, each defendant and co-conspirator instrumental therein and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor.

“(c) State the name and address of each person referred to in paragraph 11 as realleged in paragraph 16 of the indictment who was punished, other than by elimination from the business of producing, selling or distributing rolls as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and, as to each state whether frankfurter or hamburger rolls were involved, the date, place and nature of such punishment, each defendant and co-conspirator inflicting such punishment and, if the defendant or co-conspirator was a firm, association or corporation, the person acting therefor.”

Disposition: 18(a), denied; 18(b), granted; 18(c), granted.

See cases cited in disposition to Item 17, *supra*.

*Item 19.* “(a) State whether it is claimed that the continuing agreement alleged in paragraph 10 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant or co-conspirator is a firm, association or corporation, the person acting therefor.

“(b) In the event that the term ‘understanding’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 of the indictment, state whether it is claimed that the ‘understanding’ alleged in paragraph 10 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant or co-conspirator is a firm, association or corporation, the person acting therefor.

“(c) In the event that the term ‘concert of action’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 of the indictment, state whether it is claimed that the ‘concert of action’ alleged in paragraph 10 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant or co-conspirator is a firm, association or corporation, the person acting therefor.”

Disposition: Granted upon consent.

*Item 20.* “(a) State whether it is claimed that the continuing agreement alleged in paragraph 10 as realleged in paragraph 16 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant, or co-conspirator is a firm, association or corporation, the person acting therefor.

“(b) In the event that the term ‘understanding’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 and realleged in paragraph 16 of the indictment, state whether it is claimed that the ‘understanding’ alleged in paragraph 10 and realleged in paragraph 16 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant or co-conspirator is a firm, association or corporation, the person acting therefor.

“(c) In the event that the term ‘concert of action’ is not intended to have the same meaning as ‘continuing agreement’ as used in paragraph 10 and realleged in paragraph 16 of the indictment, state whether it is claimed that the ‘concert of action’ alleged in paragraph 10 and realleged in paragraph 16 of the indictment had any terms other than those specified in subdivisions a, b, c and d of said paragraph and, if so, specify the substance of each such term and with respect to each state each act done in furtherance of its objective, the date thereof, each defendant and co-conspirator performing such act and if the defendant, or co-conspirator is a firm, association or corporation, the person acting therefor.’

Disposition: Granted upon consent.

*Item 21.* “(a) State whether it is claimed, with respect to Count One of the indictment, that the terms of any written agreement or any combination of written agreements are unlawful without reference to other facts and, if so, identify each such written agreement or combination of written agreements and the allegedly unlawful terms thereof.

“(b) State whether it is claimed with respect to Count Two of the indictment, that the terms of any written agreement or any combination of written agreements are unlawful without reference to other facts and, if so, identify each such written agreement or combination of written agreements and the allegedly unlawful terms thereof.”

Disposition: Denied.

*Item 22.* “(a) State each of the prices for (i) frankfurter rolls and (ii) hamburger rolls that was high, artificial and noncompetitive, as alleged in paragraph 12 of the indictment, and with respect to each such price state each defendant and co-conspirator by whom it was used and the period it was used by each, and the amount by which it was too high.

“(b) State each of the prices for (i) frankfurter rolls and (ii) hamburger rolls that was high, artificial and noncompetitive, as alleged in paragraph 12 and realleged in paragraph 16 of the indictment, and with respect to each such price state each defendant and co-conspirator by whom it was used and the period it was used by each, and the amount by which it was too high.”

Disposition: Denied.

*United States v. J. M. Huber Corp.* [ 1959 Trade Cases ¶ 69,592 *United States v. J. M. Huber Corp.* [ 1959 Trade Cases ¶ 69,592], D. C. S. D. N. Y. 1959, 179 F. Supp. 570, 575.

*Item 23.* “(a) Identify each person among and between whom competition was suppressed, curtailed and eliminated by the combination and conspiracy, as alleged in paragraph 12 of the indictment, and as to each such person state each instance in which competition was so suppressed, curtailed and eliminated and as to each instance whether it was a case of suppression, curtailment or elimination of competition, the dates when competition was so suppressed, curtailed and eliminated, the dollar volume, at wholesale, of the sales and shipments suppressed, curtailed or eliminated and the dollar volume, at wholesale, of such sales and shipments in interstate commerce suppressed, curtailed or eliminated, whether frankfurter or hamburger rolls were involved and each defendant and co-conspirator who acted in so suppressing, curtailing and eliminating competition.

“(b) Identify each person among and between whom competition was suppressed, curtailed and eliminated by the combination and conspiracy, as alleged in paragraph 12 and realleged in paragraph 16 of the indictment and as to each such person state each instance in which competition was so suppressed, curtailed and eliminated and as to each instance whether it was a case of suppression, curtailment or elimination of competition, the dates when competition was so suppressed, curtailed and eliminated, the dollar volume, at wholesale, of the sales and shipments suppressed, curtailed or eliminated and the dollar volume, at wholesale, of such sales and shipments in interstate commerce suppressed, curtailed or eliminated, whether frankfurter or hamburger rolls were involved and each defendant and co-conspirator who acted in so suppressing, curtailing and eliminating competition.”

Disposition: Denied.

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See case cited in disposition of Item 22, *supra*.

*Item 24.* “(a) State each advantage and benefit of unfettered competition which was denied to producers, distributors, customers and consumers of rolls, as alleged in paragraph 12 of the indictment, and state, with respect to each such advantage and benefit, the name and address of each producer, distributor and customer of rolls to whom such advantage or benefit was denied, the dates when it was so denied, the name of each person by whom it was so denied and if the person was a firm, association or corporation, the person acting therefor and whether the advantage or benefit denied involved frankfurter or hamburger rolls.

“(b) State each advantage and benefit of unfettered competition which was denied to producers, distributors, customers and consumers of rolls, as alleged in paragraph 12 and realleged in paragraph 16 of the indictment, and state, with respect to each such advantage and benefit, the name and address of each producer, distributor and customer of rolls to whom such advantage or benefit was denied, the dates when it was so denied, the name of each person by whom it was so denied and if the person was a firm, association or corporation, the person acting therefor and whether the advantage or benefit denied involved frankfurter or hamburger rolls.”

Disposition: Denied.

See case cited in disposition of Item 22, *supra*.

*Item 25.* “(a) State whether any one or more of the defendants and co-conspirators is claimed to have or have had monopoly power with respect to (i) frankfurter rolls and (ii) hamburger rolls as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and if the answer is in the affirmative, identify each such defendant and co-conspirator who has or had such power with respect to each of said products and specify the period during which said defendants and co-conspirators had such power with respect to each of said products.

“(b) State whether any one or more of the defendants and co-conspirators is claimed to have or have had power to fix prices with respect to (i) frankfurter rolls and (ii) hamburger rolls as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and if the answer is in the affirmative, identify each such defendant and co-conspirator who has or had such power with respect to each of said products and specify the period during which said defendants and co-conspirators had such power with respect to each of said products.

“(c) State whether any one or more of the defendants and co-conspirators is claimed to have or have had power to exclude competitors with respect to (i) frankfurter rolls and (ii) hamburger rolls as alleged in paragraph 11 and realleged in paragraph 16 of the indictment and if the answer is in the affirmative, identify each such defendant and co-conspirator who has or had such power with respect to each of said products and specify the period during which said defendants and co-conspirators had such power with respect to each of said products.”

Disposition: Denied.

#### **Further Motions**

Any motion under Rule 16 shall be made within one week after the government supplies the Bill of Particulars required hereunder.

Settle order upon notice. Such order may direct that, as to any of said items of particulars concerning which the United States shall state in its Bill of Particulars that its knowledge or information is incomplete, the United States shall set forth in its Bill of Particulars whatever knowledge and information it may have and shall furnish further particulars within ten (10) days after it shall have obtained further knowledge or information.

#### **Sherman Act**

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**Indictment—Bill of Particulars—Availability of Documents—Knowledge of Facts.**—A government offer to permit defendants to inspect documents obtained through seizure or process, and assertion that the defendants know what they did and therefore have all the necessary information, will not defeat a motion for a bill of particulars. A bill of particulars seeks information as to what the government claims happened and not what actually happened, and since a defendant is not presumed to be guilty, it cannot be assumed that he knows the facts and details of the alleged crime. Defendants' motion was granted in part, and denied in part, in an action charging a combination and conspiracy to restrain and monopolize trade in the production and sale of frankfurter and hamburger rolls.

### Footnotes

- <sup>1</sup> *United States v. Greater Blouse, etc., Con tractors' Ass'n, Inc.* [ 1959 TRADE CASES ¶ 69,454] *United States v. Greater Blouse, etc., Con tractors' Ass'n, Inc.* [ 1959 TRADE CASES ¶ 69,454], D. C. S. D. N. Y. 1959, 177 F. Supp. 213, 225.

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