

APR 10 1973

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1972
No. 60 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff
vs.

STATE OF NEW YORK, STATE OF KANSAS, COMMON-
WEALTH OF MASSACHUSETTS, STATE OF NEW
MEXICO, STATE OF SOUTH CAROLINA, STATE OF
GEORGIA, STATE OF NEW JERSEY, STATE OF OKLA-
HOMA, STATE OF ALABAMA, STATE OF IDAHO, STATE
OF IOWA, STATE OF MAINE, STATE OF MICHIGAN,
STATE OF MISSISSIPPI, STATE OF MONTANA, STATE
OF NEW HAMPSHIRE, STATE OF NORTH CAROLINA,
STATE OF OHIO, STATE OF OREGON, STATE OF UTAH,
STATE OF VERMONT, COMMONWEALTH OF VIR-
GINIA, STATE OF WASHINGTON, STATE OF WEST
VIRGINIA, and STATE OF WYOMING,
Defendants

PETITION FOR REHEARING

ISRAEL PACKEL
Attorney General
LAWRENCE SILVER
Deputy Attorney General
Department of Justice
Capitol Annex
Harrisburg, Pennsylvania 17120
(717) 787-7113

**Attorneys for Plaintiff, Com-
monwealth of Pennsylvania**

Of Counsel:
ALEXANDER J. JAFFURS
Assistant Attorney General

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PETITION FOR REHEARING

Plaintiff, Commonwealth of Pennsylvania, hereby petitions for rehearing of the order of this Court dated March 19, 1973 denying it leave to file a bill of complaint, because it failed to bring clearly to the attention of the Court in its original pleading that *it has been unable to bargain for and secure price discounts solely because of the Liquor Affirmation Policy.*

Contrary to the assertions in the briefs of the defendant states, Pennsylvania has made a bona fide effort to bargain for and receive discounts including quantity and prompt payment discounts.¹ Pennsylvania attaches Exhibits "A" through "D" which shows that liquor distillers refuse to negotiate with Pennsylvania because of the Affirmation policy.

Pennsylvania, in its Complaint sought an injunction against the Affirmation Policy or in the alterna-

¹ Since it is cheaper for distillers to do business in Pennsylvania because it is a control state, the prophecy of the major distillers in the Nation has come true:

"Thus one of the actual major economic effects of the . . . [Liquor Affirmation Policy] may well be the imposition of artificially higher prices in other states at rates which will enable each of the distillers and wholesalers to continue to do business in New York State." *Joseph E. Seagram & Sons, Inc. v. Hostetter*, Transcript of Records, Jurisdictional Statement, page 21.

Petition for Rehearing

tive a declaratory judgment that it could bargain for discounts in spite of the Affirmation Policy.

Plaintiff, respectfully requests, in the light of the new averments clearly set forth in this Petition, that the court rehear plaintiff's Motion for Leave To File a Bill of Complaint.

Respectfully submitted,

ISRAEL PACKEL

Attorney General

LAWRENCE SILVER

Deputy Attorney General

Of Counsel:

ALEXANDER J. JAFFURS

Assistant Attorney General

EXHIBIT "A"

NATIONAL DISTILLERS PRODUCTS
COMPANY

Division of National Distillers and Chemical
Corporation

(Company Seal)

Executive Office—99 Park Avenue
New York, N. Y. 10016

John D. McElroy
Vice President and Counsel

May 17, 1972

Mr. Richard E. Childs,
Purchasing Director,
Pennsylvania Liquor Control Board,
Northwest Office Building,
Harrisburg, Pennsylvania 17164

Dear Mr. Childs:

Mr. Harold Kinder, our Control States Manager, has discussed with me his recent conversation with you in which you requested that we waive the recent price increases on certain of our imported products, and sell to the State of Pennsylvania at prices quoted prior to the May 1, 1972 increases.

The new prices quoted to the State of Pennsylvania effective May 1, 1972 are the same prices quoted to other Control States and in the "affirmation" states.

I have advised Mr. Kinder that in my opinion any sales to the State of Pennsylvania at prices below those currently quoted to other Control States and in the "affirmation" states, would be a violation of the affirmation laws in several states as well as a violation of the agreements with the other Control States.

Accordingly, I have advised Mr. Kinder as well as the other divisions and subsidiaries of this company, that their prices to the State of Pennsylvania should be in line with our standard f.o.b. prices to the other Control States and to wholesalers in the Open States.

Yours very truly,

(s) JOHN D. McELROY
JOHN D. McELROY

Received: May 19, 1972, Bureau of Liquor Purchases.

JDM:HM

EXHIBIT "B"

BROWN-FORMAN DISTILLERS CORPORATION
Louisville, Kentucky

Benjamin H. Morris
Vice-President and
Resident Counsel

May 18, 1972

Mr. Richard E. Childs
Purchasing Director
Pennsylvania Liquor Control Board
Northwest Office Building
Harrisburg, Pennsylvania 17124

Dear Mr. Childs:

This is in reference to the telephone conversation you had with our Mr. Carl J. Varga on May 16 concerning the price increases announced by our Jos. Garneau Co. division which covered sales to the Pennsylvania Liquor Control Board of several of our imported products effective May 1, 1972.

This is to advise that these increases were necessary due to increased prices charged to us by our foreign suppliers, primarily as a result of the devaluation of the U. S. dollar. These increases are national in scope as they affected all of our customers. They became effective throughout the United States on or before May 1, 1972.

Due to the pricing warranties, laws and regulations of other states, these increased prices cannot be re-

duced for one customer without making like reductions to other customers.

Should you have any further questions concerning this, please do not hesitate to let us know.

Sincerely,

(s) BENJAMIN H. MORRIS
BENJAMIN H. MORRIS

Received: May 22, 1972, Bureau of Liquor Purchases.

EXHIBIT "C"

SCHENLEY AFFILIATED BRANDS CORP.

888 Seventh Avenue, New York, N. Y. 10019

Telephone 212 957-2200

May 17, 1972

Mr. Richard E. Childs
Director of Liquor Purchases
Pennsylvania Liquor Control Board
Northwest Office Building
Harrisburg, Pennsylvania 17124

Dear Mr. Childs:

Confirming our telephone conversation of May 16th, this is to inform you that it is not possible for us to accept any orders at any price lower than those that the following Schenley Affiliated Brands selling companies have on file with the Pennsylvania Liquor Control Board:

Schenley Distillers Co.
I. W. Harper-Dickel Distillers Co.
Old Charter-Dant Distillers Co.
Schenley Imports Co.
Dreyfus-Ashby & Co.
World T. & I. Co.

In addition thereto, it is not legally possible for Schenley Affiliated Brands to amend any previous orders in order to ship to the Pennsylvania Liquor Control Board at a price other than that which is on file.

Having a plant in Pennsylvania, we appreciate your business and regret that we are unable to accede to your request.

Cordially,

(s) CHARLES B. BUSCHER
CHARLES B. BUSCHER
Executive Vice President

CBB:rl

Received: May 19, 1972, Bureau of Liquor Purchases.

All orders and deliveries are subject to the terms and conditions appearing on our standard order forms and invoices. All contracts must be in Writing and signed by an Executive Officer of the company at its home office, and only such an officer is authorized to modify or waive the provisions of any contract.

EXHIBIT "D"

572-7000

Area Code 212

JOSEPH E. SEAGRAM & SONS, INC.

Executive Offices

375 Park Avenue—New York, N. Y. 10022
Distillers Since 1857

May 16, 1972

Mr. Richard E. Childs
Director, Liquor Purchases
Liquor Control Board
Harrisburg, Pennsylvania 17124

Dear Mr. Childs:

This will confirm our telephone conversation of today wherein I stated that it is not possible for us to withdraw previously announced price increases that took effect on May 1, 1972. All of our increases reflect dollar devaluation increases or world-wide price increases from foreign suppliers or increases that have been considered and approved by the federal Price Commission.

Since these increases have already been implemented in other jurisdictions, we cannot legally continue to sell at the old prices after May 1, 1972. I might add that the total increases we have sought to date do not even come close to recouping the additional costs we have incurred during the economic stabilization base period.

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,

JOSEPH E. SEAGRAM & SONS,
INC.

(s) E. VINCENT O'BRIEN
E. VINCENT O'BRIEN, Esq.
General Counsel

EVO/mmc

Received: May 19, 1972, Bureau of Liquor
Purchases.

CERTIFICATE OF COUNSEL

Lawrence Silver, a member of the Bar of this Court, certifies that this petition is filed, not for the purpose of delay, but to bring facts to the attention of the Court not previously presented.

LAWRENCE SILVER

