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IN THE  
**Supreme Court of the United States**

October Term 1970

No. **45** Original

Supreme Court, U.S.  
FILED  
AUG 5 1970  
E. ROBERT SEAYER, CLERK

STATE OF WASHINGTON, STATE OF ILLINOIS,  
STATE OF ARIZONA, STATE OF COLORADO,  
STATE OF HAWAII, STATE OF IOWA,  
STATE OF KANSAS, STATE OF MAINE,  
COMMONWEALTH OF MASSACHUSETTS,  
STATE OF MINNESOTA, STATE OF MISSOURI,  
STATE OF OHIO, STATE OF RHODE ISLAND,  
STATE OF VERMONT, AND COMMONWEALTH OF VIRGINIA,  
*Plaintiffs,*

v.

GENERAL MOTORS CORPORATION,  
a Delaware corporation,  
FORD MOTOR COMPANY,  
a Delaware corporation,  
CHRYSLER CORPORATION,  
a Delaware corporation,  
AMERICAN MOTORS CORPORATION,  
a Maryland corporation, and  
AUTOMOBILE MANUFACTURERS ASSOCIATION,  
a New York corporation,  
*Defendants.*

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**MOTION FOR LEAVE TO FILE COMPLAINT  
AND COMPLAINT**

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AMERICAN MOTORS CORPORATION,  
a Maryland corporation, and  
AUTOMOBILE MANUFACTURERS ASSOCIATION,  
a New York corporation,  
*Defendants.*

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MOTION FOR LEAVE TO FILE COMPLAINT

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Each of the above-named Plaintiff States respectfully asks leave of this Court to file the Complaint which is submitted herewith.

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**COMMONWEALTH OF VIRGINIA**

**ANDREW P. MILLER, Attorney  
General**



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a New York corporation,  
*Defendants.*

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**COMPLAINT**

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**COUNT I**

**SHERMAN ACT VIOLATION**

**Jurisdiction**

1. The original jurisdiction of this Court is invoked under the authority of Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251(b)(3).

2. This action is brought under 15 U.S.C. §26 commonly referred to as Section 16 of the Clayton Act to restrain the defendants from violating 15 U.S.C. §1, commonly referred to as Section 1 of the Sherman Act, and to obtain mandatory injunctive relief designed to remedy the damage to the property, health, safety, comfort and welfare of the Plaintiff States and their citizens caused by defendants.

3. There is no other suitable forum than the original jurisdiction of the United States Supreme Court in which all Plaintiff States can bring this single action and obtain adequate and timely relief as sought herein or to which this action might be remitted in the interests of convenience, efficiency and justice.

### **Plaintiffs**

4. Each of the herein Plaintiffs is a sovereign state of the United States and has sustained damages as a result of the combination and conspiracy in violation of the anti-trust laws herein alleged.

5. Plaintiffs bring this action in their capacity as *parens patriae*, trustee, guardian, quasi-sovereign, representative and protector of the people of their respective states, and as proprietor of state lands, properties, and resources in that they have an obligation to maintain, promote and protect the health and welfare of their respective citizens and the integrity of their domain.

6. The wrong done to the people of the respective states named herein as Plaintiffs as a result of the combination and conspiracy alleged transcends the injury sustained by them individually, and adversely affects the economy and



prosperity of the Plaintiff States and the health and welfare of their citizens.

### Defendants

7. Automobile Manufacturers Association, Inc., a corporation organized and existing under the laws of the State of New York with its principal place of business in Detroit, Michigan, is made a defendant herein. Automobile Manufacturers Association, Inc. is a trade association whose membership consists mainly of firms engaged in the business of manufacturing and selling motor vehicles and component parts and accessories thereto in various states of the United States.

8. The corporations named below are made defendants herein. Each of said corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated. Within the period of time covered by this complaint said defendants have primarily engaged in the business of manufacturing and selling motor vehicles in various states of the United States, and also manufacture and sell component parts and accessories thereto.

<i>Defendant Corporation</i>	<i>State of Incorporation</i>	<i>Principal Place of Business</i>
General Motors Corporation	Delaware	Detroit, Michigan
Ford Motor Company	Delaware	Dearborn, Michigan
Chrysler Corporation	Delaware	Highland Park, Mich.
American Motors Corporation	Maryland	Detroit, Michigan

9. Whenever in this complaint reference is made to any act, deed or transaction of a corporate defendant, such

allegation shall be deemed to mean that said corporation engaged in said act, deed or transaction by or through its officers, directors, agents or employees while they were actively engaged in the management, direction or control of corporate business affairs.

### **Co-Conspirators**

10. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the offense charged in this complaint and have performed acts and made statements in furtherance thereof.

### **Definition**

11. As used herein, the term "motor vehicle air pollution control equipment" means equipment, or any part thereof, designed for installation on a motor vehicle or any system or engine modification on a motor vehicle which is designed to cause a reduction of pollutants emitted from the vehicle, including, but not limited to, any device for the control of emissions of pollutants from the exhaust system, the crankcase, the carburetor, or the fuel tank.

### **Trade and Commerce**

12. Automobiles for the most part are manufactured in the State of Michigan and are shipped therefrom to each of the fifty states of the United States. Some automobiles are assembled in various states of the United States from parts manufactured in the State of Michigan and other states. In 1966, 78,315,000 passenger cars and 15,864,000 trucks and buses, exclusive of off-the-road vehicles, were registered in the United States. In that year, 8,604,712

passenger cars valued at more than \$17.5 billion and 1,791,587 commercial vehicles valued at more than \$3.9 billion were produced in this country. Of the trucks produced, 96,560 were built with diesel motors.

13. Since at least 1952, it has been established that motor vehicles contribute to air pollution by the emission of hydrocarbons, carbon monoxide, oxides of nitrogen and other contaminants.

14. As a result of new and continuing demands that automotive vehicles be equipped with air pollution control devices, a large and growing market for the production and installation of such devices has developed. Motor vehicle air pollution control devices are shipped in interstate commerce, both as original component equipment attached to motor vehicles and as replacements for existing components, from assembly points in various states to the Plaintiff States.

### **Violations Alleged**

15. Beginning at least as early as 1953, and continuing thereafter up to and including the date of this complaint, the defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in motor vehicle air pollution control equipment.

16. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are:

(a) to eliminate all competition among themselves in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(b) to eliminate competition in the purchase of patents and patent rights from other parties covering motor vehicle air pollution control equipment.

17. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, the following:

(a) agreed that all industry efforts directed at the research, development, manufacture and installation of motor vehicle air pollution control equipment should be undertaken on a non-competitive basis;

(b) agreed to seek joint appraisal of patents and patent rights submitted to any of them by persons not parties to a cross-licensing agreement entered into on July 1, 1955, and amended and renewed periodically, and agreed to require "most-favored-purchaser" treatment of all parties to the cross-licensing agreement if any one were licensed by a person not a party to that agreement;

(c) agreed to install motor vehicle air pollution control equipment only upon a uniform date determined by agreement, and subsequently agreed on at least three separate occasions to attempt to delay the installation of motor vehicle air pollution control equipment;

(1) In 1961 the defendants agreed among themselves to delay installation of "positive crankcase ventilation" on vehicles for sale outside of California until the model year 1963, despite the fact that this antipollution device could have been installed nationally for the model year 1962 and that at least some automobile manufacturers expressed willingness to do so, in the absence of a contrary industry-wide agreement;

(2) In late 1962 and extending into 1963, the defendants agreed among themselves to delay installation of an improvement to the positive crank-

case ventilation device, an improvement which the California Motor Vehicle Pollution Control Board had indicated it would make mandatory; and

(d) agreed to restrict publicity relating to research and development efforts concerning the motor vehicle air pollution problem.

### **Effects of Conspiracy**

18. The aforesaid combination and conspiracy has had, among other, the following effects:

(a) Hindrance and delay in the research, development, and manufacture—both by the defendants and co-conspirators and by others not parties to the agreements alleged herein—and the installation of motor vehicle air pollution control equipment; and

(b) Restriction and suppression of competition among the defendants and co-conspirators in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(c) Restriction and suppression of competition in the purchase of patents and patent rights covering motor vehicle air pollution control equipment.

(d) The level of pollutants emitted into the ambient air by automobiles manufactured following the inception of the conspiracy was, and is, substantially greater than the level which would have been attained but for the aforementioned agreement, combination and conspiracy with the result that the citizens of the Plaintiff States live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have inflicted and continue to inflict upon very large numbers of such citizens great physical suffering, and actual physical injury induced or aggravated by such automotive pollutants.

(e) The people of the Plaintiff States have been compelled to expend large but undeterminable sums of monies, in order to control the damaging effects of said air pollution which has caused substantial and

permanent damage to both real and personal property of the Plaintiff States and its citizens.

(f) The aforementioned hindrance and delays due to the restriction and suppression of competition in the research, development, manufacture and installation of pollution control devices have resulted in the continuous introduction of inadequate air pollution control devices as original and replacement equipment on motor vehicles purchased and used within the boundaries of the Plaintiff States and throughout the United States, despite the existence of technical capacity and knowledge sufficient to develop and produce effective air pollution control devices.

(g) The Plaintiff States and the people thereof have been compelled to expend large sums of monies for the purpose of curtailing the effects of pollution and for enforcement of anti-pollution control statutes and ordinances.

(h) All, or substantially all, of the people of the Plaintiff States have been harmed by the defendants as a result of the conspiracy herein described in that they have been subjected to live in an unhealthy environment contaminated by unnatural atmospheric pollutants emitted by motor vehicles manufactured by the defendants.

(i) The full and complete utilization of the wealth of the States has been adversely affected.

(j) Measures taken by the Plaintiff States to promote the general progress and welfare of its people have been frustrated.

(k) Injury and financial damage to the economy and prosperity of the Plaintiff States in, among others, the following ways:

(1) The natural resources of the Plaintiff States including, among others, plant life such as agronomic, forest, watershed and ornamental varieties have been and continue to be significantly damaged, injured and depleted, causing great damage to the ecology of the Plaintiff States.

(2) The citizens of the Plaintiff States have been compelled to live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have caused and continue to cause serious, cumulative and permanent impairment to the general health, comfort and welfare of such citizens, to the detriment of the economy and prosperity of the Plaintiff States.

(3) The quality of the air within the States has been and continues to be significantly deteriorated to the detriment of the general economy and prosperity.

(1) The harm and damage done to the Plaintiff States and to their individual citizens cannot be accurately measured or adequately compensated in monetary terms, nor is there any practicable way in which the Plaintiff States could determine the individual money damages suffered by each of their citizens as a result of the above alleged acts of the defendants. Accordingly, Plaintiff States have no adequate remedy at law through a suit for treble damages. The only adequate remedy available to Plaintiff States and to their citizens is through the granting of injunctive relief as prayed for in this complaint.

### **Fraudulent Concealment**

19. Plaintiffs had no knowledge of the aforesaid combination and conspiracy, or of any fact which might have led to the discovery thereof prior to the instituting of proceedings by the United States of America against the defendants herein on January 10, 1969. Plaintiffs could not have discovered the alleged combination and conspiracy at an earlier date by the exercise of due diligence since the combination and conspiracy set forth herein had been fraudulently concealed by defendants by various means and methods used to avoid the detection thereof.

20. By virtue of this fraudulent concealment, Plaintiffs

assert the tolling of any applicable statute or period of limitation affecting Plaintiffs' right of action herein.

## **COUNT II**

### **COMMON LAW CONSPIRACY**

1. Plaintiffs reallege paragraph 1 of Count I as paragraph 1 of this Count.

2. This Count is brought under this Court's general equitable powers granted by Article III, Section 2, of the United States Constitution, independent of the Sherman and Clayton Acts, to eliminate and remedy conspiracies in restraint of trade by the defendants, as recognized at common law, and to obtain mandatory injunctive relief designed to remedy the damage to the property, health, safety, comfort and welfare of the Plaintiff States and their citizens caused by the defendants.

3. There is no other suitable forum than the original jurisdiction of the United States Supreme Court in which all Plaintiff States can bring this single action and obtain adequate and timely relief as sought herein or to which this action might be remitted in the interests of convenience, efficiency and justice.

4. Each of the herein Plaintiffs is a sovereign state of the United States and has sustained damages as a result of the combination and conspiracy in restraint of trade prohibited by the common law as herein alleged.

5. Plaintiffs reallege paragraphs 5 through 20 of Count I as paragraphs 5 through 20 of this Count.



**COUNT III**  
**PUBLIC NUISANCE**

1-2. Plaintiffs reallege paragraphs 1 and 3 of Count I as paragraphs 1 and 2 of this Count.

**Plaintiffs**

3. Each of the Plaintiff States brings this action in their quasi-sovereign capacity as proprietor of state lands, properties and resources, and as *parens patriae* to assert a claim independent of and beyond the interests of their individual citizens; each of the Plaintiff States has sovereignty within its borders and as such has dominion over all resources including the air that lies within their domain; concurrent with this power Plaintiff States have an obligation to take such action as may become necessary to assure the protection of such resources, including the air, the contamination of which would interfere with the rights of their respective citizens to live in and enjoy a healthy pollution-free environment.

**Defendants**

4-5. Plaintiffs reallege paragraphs 8 and 9 of Count I as paragraphs 4 and 5 of this Count.

**Offense Charged**

6. Motor vehicles manufactured by the defendants have in the past been and presently are so designed that noxious wastes and gases are released into the atmosphere in the course of ordinary operation of said motor vehicles.

7. Motor vehicles manufactured by the defendants and operated on the highways of the United States are responsible for the emission into the atmosphere of the fol-

lowing contaminants: carbon monoxide, oxides of nitrogen, hydro-carbons, lead compounds and other toxic particles.

8. The emissions of contaminants as described above pollute the air and thereby constitute a danger to human health and welfare, in that a direct relationship has been established between the contaminants contained in motor vehicle emissions and chronic respiratory disease, carcinogens, liver and kidney disorders, and a wide variety of tumors.

9. Contaminants emitted by vehicles such as are manufactured by the defendants directly cause severe damage to the flora and fauna of Plaintiff States.

10. The aforesaid emissions which pollute the air as described above have resulted from the design and engineering of the motor vehicles manufactured by defendants and which said defendants have caused to be distributed throughout the United States.

11. The continued manufacture and distribution of motor vehicles as presently engineered and designed which cause the aforesaid unhealthy and dangerous emissions constitute a public nuisance contrary to the public policy of the Plaintiff States, as well as the federal government.  
42 U.S.C., §1857(4)(8)

12. The aforesaid injurious, unhealthy and dangerous discharges and emissions are continuing and remain unabated thereby causing irreparable and indeterminate damages to the Plaintiff States and their citizens; thus, the only adequate remedies available to the people of the Plaintiff States for the protection of their health, safety and welfare are those remedies solely existing in a court of equity.

13. There is presently existing or being developed adequate technology to alleviate or avoid the dangers alleged herein.

**Prayer for Relief in Respect to All Courts**

WHEREFORE, plaintiffs pray:

1. That the Court adjudge and decree that the aforesaid combination and conspiracy, and the acts done in pursuance thereof, were and are in unlawful restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act and in violation of the common law and that the acts alleged in Count III constitute a public nuisance;

2. That a mandatory injunction be issued by this Court requiring the defendants and each of them to adopt and pursue an accelerated program of spending, research and development designed to produce a fully effective pollution control device or devices and/or pollution free engine at the earliest feasible date as shown by the evidence, specifically, if applicable on the evidence, that date by which such device or devices or such pollution free engine would have been developed but for the conspiracy alleged herein;

3. That a mandatory injunction be issued by this Court requiring the defendants to cause to be installed, at defendants' expense, as standard equipment in all new motor vehicles sold, or delivered in the United States such effective anti-pollution control devices as could have been installed in said motor vehicles but for the conspiracy alleged herein;

4. That a mandatory injunction be issued by this Court

requiring the defendants to cause to be installed, at defendants' expense such effective anti-pollution control devices, as the Court deems reasonable and proper, on all motor vehicles owned or possessed by anyone in the United States, manufactured by the defendants during or following the period of the conspiracy alleged herein;

5. That the defendants be enjoined from continuing the combination and conspiracy and nuisance herein alleged, and from entering into any combination, conspiracy, agreement, understanding or concert of action having similar purposes or effects;

6. That the Plaintiffs have such other, further and different relief as the nature of the case may require or to the Court shall seem justified; and

7. That the Plaintiffs respectively recover from the defendants the cost of this suit, together with reasonable attorneys fees as is provided in the federal antitrust laws.

DATED: August 5, 1970.

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