Supreme Court Lets Stand Rul

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The Supreme Court yesterday declined to review a ruling disqualifying a major law firm from representing Westinghouse Electric Corp. in a huge antitrust lawsuit accusing oil companies and other uranium producers of having conspired worldwide to rig prices and markets for the nuclear-reactor fuel.

The case arose from the simultaneous representation of Westinghouse by the Chicago headquarters office of Kirkland & Ellis and of the American Petroleum Institute by the firm's Washington office. The API's members include defendants in the Westinghouse suit.

The case had implications generally for large, multicity law firms that represent multibillion-dollar corporations. It raised the question whether "mechanical disqualification" of such law firms "for ethical transgressions is an appropriate remedy," said U.S. District Court Judge Prentice H. Marshall.

Westinghouse, a leading reactor maker, had made 20-year contracts with numerous utilities to supply uranium at specified prices. Over a two-year period ended in 1975, however, the price soared. Westinghouse then announced that the contract prices had become "commercially impracticable" and that it consequently was excused from the contracts.

The utilities responded with breach-of-contract suits seeking billions of dollars from Westinghouse.

Meanwhile, Westinghouse, a Kirkland & Ellis client since the early 1960s, retained the 130-lawyer Chicago office to investigate the price rise. The result was a Westinghouse suit accusing 29 domestic and foreign uranium producers of setting up and operating an international cartel.

In Washington, meanwhile, the oil companies' trade association, the API, had become disturbed by the possibility that Congress would enact a divestiture law compelling oil companies to get out of uranium and other alternative fuels.

To head off such a possibility, the API retained the 40-lawyer Washington office of Kirkland & Ellis, then headed by Frederick M. Rowe, to engage in what were called "lobbying-type functions." A principal result was a survey of API members for which they supplied confidential data.

By apparent coincidence, Kirkland & Ellis in Chicago filed its lawsuit accusing the uranium producers of anticompetitive practices on the same day, Oct. 29, 1976, that Kirkland, Ellis & Rowe in Washington filed a report telling the API that oil-company involvement in competing fuels promoted competition.

In January 1977, three oil company defendants in the Chicago case—Kerr-McGee Corp., Gulf Oil Corp. and Getty Oil Co.—filed a motion for disqualification of Kirkland & Ellis for alleged violation of the Code of Professional Responsibility of the American Bar Association.

The simultaneous representation of Westinghouse and the API created a substantial conflict of interest, a potential for disclosure of the confidential data, and "the appearance of impropriety," the companies alleged.

Judge Marshall denied the motion. Disqualification "is a drastic, unjustified and inequitable resolution of a minor ethic grievance," he said in a 51-page opinion.

The absence of an attorney-client

ing in Law Firm Conflict Case

relationship, which the oil companies never had with Kirkland & Ellis, "is typically the death-knell of a motion to disqualify," he said.

As for an ethical violation, Marshall found merely "some evidence" of the prohibition of the "appearance" of impropriety. But, he wrote, he was as reluctant to punish the firm with disqualification as he was "to exonerate Kirkland for what appears to be an error in professional judgment."

Last July, however, the appeals court reversed. The presumption must stand "that actual knowledge of one or more lawyers in a firm is imputed to each member of that firm," Circuit Judge Robert A. Sprecher said. "Here there exists a very reasonable possibility of improper professional conduct despite all efforts to segregate the two sizable groups of lawyers."

It was "Kirkland's duty to keep the oil companies advised of actual or potential conflicts of interest, not the oil companies' burden to divine those conflicts," he said.

After paying $2.5 million in legal fees to Kirkland, and after trial of the utilities' suit had been underway for several months, Westinghouse began a search for a new counsel. The search, made difficult because so many large firms represent oil companies, ended in late August with selection of Donovan, Leisure, Newton & Irvine. With 185 lawyers, it is New York City's fifth-largest firm.

The court took other actions:

"MAIL COVERS"

The court let stand a 2-to-1 ruling by the 9th U.S Circuit Court of Appeals that the constitutional prohibition of unreasonable searches and seizures isn't violated by warrantless mail covers, in which, at the request of law enforcement agencies, postal inspectors inspect and record information on the outside of envelopes sent through the mails.

MASS MURDER

On Eastern Sunday in 1975 in his mother's home in Hamilton, Ohio, James U. Ruppert, 41, a bachelor and heir to a $300,000 family estate, shot to death all 11 members of his family, including his brother's eight children.

Ruppert pleaded not guilty, and not guilty by reason of insanity. He waived his right to a jury trial in exchange for an assurance that he could be found guilty or innocent, and sane or insane oly by a uani mous three-judge panel.

But he was found guilty and sane by a 2 to 1 vote. he state's highest tribunal ruled that he was owned a new trial, and yesterday the Supreme Court let the ruling stand. Ruppert is in Lima State Hospital for the Criminally Insane.

Other Supreme Court actions are reported on page D9.