

Judge Bars Collection of \$37 Million From Xerox

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By ANDREW KREIG

A Hartford judge ruled Friday that the SCM Corp. cannot collect from the Xerox Corp. \$37 million in antitrust damages awarded by jurors who sat in the longest federal jury trial in recorded history.

U.S. District Judge Jon O. Newman, who could have tripled the August jury award, said there was no legal basis for any money damages.

SCM sued Xerox in 1973 on the grounds that Xerox had maintained an illegal monopoly in the market of office copying machines that use ordinary paper.

Newman's 102-page decision said, in essence, that Xerox should not have to pay money damages because its past conduct was being judged under new antitrust concepts.

He held out the possibility that

some sanctions against Xerox might be possible however.

He said he would consider non-monetary relief for SCM after appeals on other matters in the case are complete.

SCM has asked for court orders against the copying machine industry giant that include its breakup into several small units.

Yet there was little in Newman's

decision that could give SCM hope that relief is likely on this large a scale.

Newman issued his ruling on the law governing the case after studying the jury's finding of the facts involved.

SCM, a New York City conglomerate with annual revenues of more than \$1 billion, said it was appalled by Newman's decision, which it said "un-

dercuts the jury system and congressional policy expressed in the anti-trust laws." It said it will appeal.

Xerox said Newman's verdict cleared it from SCM challenges to "virtually every marketing and patent practice that Xerox has employed from the beginnings of xerography (Xerox's process)."

Xerox, with corporate headquarters in Stamford and annual revenues

four times higher than SCM's, created the first marketable dry copying machines.

Xerox from 1960 to 1970 marketed the only copies that use ordinary paper, a process generally preferred by customers over machines — such as those SCM sold — that use a specially coated paper.

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Xerox Trial Award Barred

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Because of the out-of-court settlement of an antitrust action brought by the Federal Trade Commission, other firms eventually obtained licenses from Xerox to sell plain paper copies.

The 14-month Hartford trial and Newman's decision were regarded by legal experts as imported efforts to accommodate the conflicting demands of patent and antitrust laws.

Newman wrote, "The antitrust laws condemn monopoly, and the very object of the patent laws is monopoly."

The judge said there was no legal precedent for SCM's claim for lost profits, stemming from Xerox's refusal to give SCM the right to use Xerox patents for a fee. The jury generally upheld that claim.

SCM sought \$1.5 billion under a special legal provision designed to punish antitrust violators severely. The amount was three times the \$500 million SCM claimed as real damages in the case.

Newman said, "Treble damage awards for a refusal to license would inject major uncertainty into research investment decisions. To impose such liability poses a threat to the progress of science."

The nine-member jury, which finished its work Aug. 16, awarded nearly all the \$37 million in damages, supporting SCM claims that it was excluded from success in the office copying industry through Xerox's "patent ticket."

The judge, saying that a 1956 agreement by Xerox to acquire patents from a research institute was a key to the jury's verdict, ruled that the jury's finding on facts would not legally apply to the existing case.

Only \$230,874 of the jury verdict was awarded on another jury finding involving a Xerox bulk marketing plan.

SCM argued that, as a result of the plan, customers were illegally induced by Xerox discounts into ordering Xerox machines that competed with SCM ones.

But Newman said there was no valid basis for the belief that SCM lost profits because of Xerox coercion. He said that customers increasingly canceled leases for three of the four low-

speed Xerox copiers that competed with SCM products after the controversial Xerox marketing plan was introduced.

The judge said a trial was illegally required in the case because of antitrust claims by SCM about Xerox's affiliations with the Rank Organisation of London and Fuji Photo Film of Tokyo to market copying machines worldwide.

He said he ordered a trial of the additional SCM legal claims — which he struck down Friday — because he has never thought they required much additional court time beyond what was necessary for the trial of the antitrust action involving the foreign firms. The jury threw out the SCM claims involving the international marketing agreements.

The Xerox statement by Chairman C. Peter McColough said Newman feared throughout the trial that if the U.S. Second Circuit Court of Appeals disagreed with one of his rulings there might be a new trial.

The Xerox chief executive said this was a proper concern of Newman's, that led the judge to submit all issues to the jury, "whether or not he agreed with the legal theories advanced by the parties."

SCM, which said it would appeal, said Newman's ruling as a practical matter leaves a monopolist "free to continue to behave illegally."

SCM said that as a practical matter under Newman's ruling, "No one could ever afford to challenge an illegal monopolist" because of the cost of litigation.

SCM, which has estimated it spent \$20 million on the case, cannot argue that it should recover attorneys' fees unless it wins some sort of legal victory over Xerox in the case. Newman's order ruled out a monetary judgment.

Xerox, estimated by legal observers to have spent far more than SCM on legal costs, cannot recover them through the court.

Newman, who prepared the decision in part at night after completion of his cases on other matters, withheld release of the ruling until after the close of the New York stock markets Friday.