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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEW MEXICO
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12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15 CONTINENTAL OIL COMPANY,)
16 AMERICAN PETROFINA COMPANY)
17 OF TEXAS, SPENCER AND)
18 COMPANY, INC., and COSDEN)
19 OIL AND CHEMICAL COMPANY,)
20 Defendants.)

Civil No. 8026

FINAL JUDGMENT

Entered: January 20, 1971

21 The plaintiff, United States of America, having filed
22 its complaint herein on April 30, 1969; the defendants
23 having filed their respective answers denying the sub-
24 stantive allegations of the complaint and no testimony
25 having been taken, and the said plaintiff and defendants,
26 by their respective attorneys, having consented to the
27 making and entry of this Final Judgment without trial or
28 adjudication of any issue of fact or law herein; and
29 without any admission by any party hereto with respect
30 to any such issue; and the Court having considered the
31 matter and being duly advised, it is

32 ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of

1 this action and of the parties hereto. The complaint states
2 claims, upon which relief may be granted against the de-
3 fendants under Section 1 of the Act of Congress of July 2,
4 1890, entitled "An act to protect trade and commerce
5 against unlawful restraints and monopolies," commonly
6 known as the Sherman Act, as amended.

7 II

8 For the purposes of this Final Judgment:

9 (a) "Continental" shall mean Defendant
10 Continental Oil Company;

11 (b) "Petrofina" shall mean Defendant
12 American Petrofina Company of Texas;

13 (c) "Spencer" shall mean Defendant
14 Spencer and Company, Inc.;

15 (d) "Cosden" shall mean Defendant
16 Cosden Oil and Chemical Company;

17 (e) "Affiliated Companies" shall mean
18 Petrofina, Spencer and Cosden; wherever so used
19 the companies shall be treated as a single entity;

20 (f) "Person" shall mean any individual,
21 partnership, firm, corporation, association or
22 other business or legal entity;

23 (g) "Paving asphalt" shall mean an
24 asphaltic byproduct produced in refining crude
25 oil, limited to various types and grades of
26 such byproduct as are used for pavement, the
27 most common of which are asphalt cement, cut-
28 back asphalts, and asphalt emulsions;

29 (h) "Marketing agent" shall mean an
30 intermediary who sells or arranges the sale of
31 property acquired or to be acquired from a
32 third person, with or without title passing to

1 the intermediary, where the return to the
2 intermediary for the sale is fixed by agreement
3 between the intermediary and the third person;

4 (i) "Substantial quantities of paving
5 asphalt" shall mean more than four per cent of
6 the annual paving asphalt sales to the State of
7 New Mexico Highway Department, including sales by
8 highway construction contractors to said Department.

9 III

10 The provisions of this Final Judgment applicable to
11 any defendant shall apply to such defendant, and to each
12 of its subsidiaries, successors and assigns, and to each
13 of its directors, officers, agents, and employees, and to
14 all other persons in active concert or participation with
15 any of them who shall have received actual notice of this
16 Final Judgment by personal service or otherwise.

17 IV

18 Defendants Continental, Petrofina and Cosden, are each
19 hereby enjoined and restrained, in connection with the sale
20 of paving asphalt in New Mexico, from entering into any
21 contract, agreement, understanding, plan or program, whereby
22 Continental has a joint marketing agent with Cosden or
23 Petrofina, or whereby any of them has a joint marketing
24 agent with any third party, which third party sells sub-
25 stantial quantities of paving asphalt in New Mexico.

26 V

27 Defendant Spencer is enjoined and restrained:

28 (a) From acting as the marketing agent in
29 the sale of paving asphalt in New Mexico for
30 more than one person selling paving asphalt;

31 (b) During any period of time that any
32 defendant owns any direct or indirect interest

1 in Spencer, from acting as the marketing agent
2 in the sale of paving asphalt in New Mexico
3 for any other person not affiliated with the
4 owner of such interest;

5 (c) During any period of time when
6 Petrofina or Cosden, or any company affiliated
7 therewith, owns any interest in Spencer, from
8 acquiring from any person or persons other than
9 Petrofina or Cosden more than 33 1/3 per cent,
10 and in no event more than 100,000 barrels, of
11 its annual sales of paving asphalt in New Mexico:
12 any amount of paving asphalt which Petrofina or
13 Cosden shall acquire from any other producer of
14 paving asphalt to meet Spencer's commitments in
15 New Mexico shall be deemed to have been acquired
16 by Spencer for purposes of this subsection (c)
17 and Section VII.

18 VI

19 Defendants Continental and Affiliated Companies are
20 each enjoined and restrained from:

21 (a) Entering into or adhering to any contract,
22 agreement, understanding, plan or program with
23 any person, directly or indirectly, in marketing
24 paving asphalt in New Mexico, to

25 (1) allocate or divide customers, markets
26 or territories for the sale of paving asphalt;

27 (2) fix, maintain or adhere to prices,
28 price differentials, discounts or other terms
29 or conditions for the sale of paving asphalt
30 to any third person;

31 (3) furnish or exchange information as
32 to prices, price differentials, discounts or

1 other terms or conditions regarding past,
2 present or future sales of paving asphalt
3 to identified customers in New Mexico;

4 (b) Communicating to any other person engaged,
5 directly or indirectly, in the marketing of paving
6 asphalt in New Mexico, information as to past,
7 present or future prices, price differentials,
8 discounts or other terms or conditions for the
9 sale of any paving asphalt in New Mexico except
10 for such information which has been released to
11 the public generally, and except in connection
12 with bona fide negotiations for the purchase or
13 sale of paving asphalt between the parties to such
14 communications.

15 VII

16 Commencing January 1, 1971 and continuing for a period
17 of five (5) years, defendant Spencer is ordered and directed
18 to provide annual reports on the first day of February of
19 each year to plaintiff setting forth the amount of paving
20 asphalt, by volume:

21 (a) sold in New Mexico on behalf of
22 Petrofina and Cosden by Spencer in the preceding
23 calendar year and

24 (b) acquired from each other source of
25 paving asphalt by Spencer and sold by Spencer
26 in New Mexico in the preceding calendar year.

27 VIII

28 For the period of five (5) years following the date
29 of entry of this Final Judgment, Spencer shall notify the
30 plaintiff thirty (30) days prior to any sale of any owner-
31 ship interest in it to any asphalt producer other than
32 Petrofina, which producer sells or has the potential to

1 sell paving asphalt in New Mexico.

2 IX

3 For the purpose of securing or determining compliance
4 with this Final Judgment, and subject to any legally
5 recognized privilege, duly authorized representatives
6 of the Department of Justice shall, upon written request
7 to the Attorney General or Assistant Attorney General in
8 charge of the Antitrust Division, and on reasonable
9 notice to any defendant, made to its principal office,
10 be permitted:

11 (a) Access, during the office hours of
12 such defendant, who may have counsel present
13 to all books, ledgers, accounts, correspondence,
14 memoranda, and other records and documents in the
15 possession or under the control of such defendant
16 relating to any of the matters contained in this
17 Final Judgment;

18 (b) To interview officers or employees of
19 such defendant, who may have counsel present, and
20 without interference or restraint from it, regarding
21 any such matters; and upon request, defendant shall
22 submit such reports in writing, under oath if so
23 requested, to the Department of Justice with respect
24 to any of the matters contained in this Final
25 Judgment, as from time to time may be requested.

26 No information obtained by the means permitted in this
27 Section IX shall be divulged by any representative of the
28 Department of Justice to any person other than a duly
29 authorized representative of the Executive Branch of
30 plaintiff, except in the course of legal proceedings in
31 which the United States is a party for the purpose of
32 securing or determining compliance with this Final

1 Judgment or as otherwise required by law.

2 X

3 Jurisdiction is retained by this Court for the
4 purpose of enabling any of the parties to this Final
5 Judgment to apply to this Court at any time for such
6 further orders and directions as may be necessary or
7 appropriate for the construction or carrying out of this
8 Final Judgment, or for the modification of any of the
9 provisions hereof, and for the enforcement of compliance
10 herewith and punishment of violations thereof.

11 Dated this 20th day of January 1971.

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13 /s/ H. VEARLE PAYNE
14 United States District Judge
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