

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLARK MECHANICAL CONTRACTORS, INC.;  
HUSSUNG MECHANICAL CONTRACTORS, INC.;  
PAUL JEANES, JR. PLUMBING, INC.;  
KOENIG CORPORATION;  
RAYMOND H. MEYER COMPANY, INC.;  
JAMES E. SMITH & SONS, INC.;  
COLEMAN L. WALTRIP CO., INC.; and  
WARD ENGINEERING COMPANY, INC.,

Defendants.

Civil No. 7264

Filed: May 22, 1972

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

2. Each of the defendants maintains an office and transacts business within the Western District of Kentucky.

## II

### DEFINITIONS

3. **As** used herein, the term:

- (a) "mechanical contracting services" means the contracting for and the installation of all phases of plumbing, pipe fitting, and sheet metal work in or at job sites for new construction or for renovation purposes;
- (b) "mechanical contracting supplies" means products, such as pipe, sanitary plumbing fixtures, valves, faucets, fittings, hangers, connectors, and heating and air conditioning units, sold and installed by companies rendering mechanical contracting services;
- (c) "mechanical contracting companies" means those companies engaged in the business of purchasing mechanical contracting supplies from wholesale outlets, manufacturers' representatives, or directly from manufacturers for resale to and installation at job sites of commercial, industrial, and governmental customers; and
- (d) "Louisville market" means the territory encompassed by the City of Louisville and Jefferson County in the State of Kentucky.

## III

### DEFENDANTS

4. Clark Mechanical Contractors, Inc.; Hussung Mechanical Contractors, Inc.; Paul Jeanes, Jr. Plumbing,

Inc.; Koenig Corporation; Raymond M. Meyer Company, Inc.; James E. Smith & Sons, Inc.; Coleman L. Waltrip Co., Inc.; and Ward Engineering Company, Inc. are named defendants herein. Each of these defendants is incorporated and exists under the laws of the State of Kentucky and has its principal place of business in Louisville, Kentucky. During the period of time covered by this complaint, each of these defendants has engaged in the business of providing mechanical contracting supplies and services in the Louisville market.

5. Whenever in this complaint reference is made to any act, deed, or transaction of any defendant, such allegation shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

#### IV

##### CO-CONSPIRATORS

6. Corporations and individuals engaged in the business of providing mechanical contracting supplies and services in the Louisville market, not made defendants in this complaint, participated as co-conspirators in the violation alleged herein and performed acts and made statements in furtherance thereof.

#### V

##### TRADE AND COMMERCE

7. The furnishing and installation of plumbing, heating, air conditioning and other plumbing and pipe fitting systems in new construction or for renovation

purposes is a specialized field of business which is engaged in by a limited group of companies that are equipped by technical training and experience to do this type of work, commonly referred to as mechanical contracting.

8. Mechanical contracting supplies and mechanical contracting services are purchased by customers either on a direct basis, through negotiations or through the solicitation of bids from mechanical contracting companies. The nature and extent of the project, as well as the time within which it must be completed, are often determinative factors influencing a customer in the means used in selecting a mechanical contracting company to provide the required mechanical contracting supplies and services.

9. The major customers for mechanical contracting supplies and services in the Louisville market are commercial and industrial concerns and governmental units, such as the Louisville Board of Education and the Jefferson County Board of Education.

10. During the period of time covered by this complaint, the defendants have been among the leading mechanical contracting companies serving commercial, industrial and governmental customers located in the Louisville market. Total 1970 revenues derived from the providing of mechanical contracting supplies and services by the defendants in this market exceeded \$20 million.

11. During the period of time covered by this complaint, the defendants have sold substantial quantities of mechanical contracting supplies to commercial, industrial and governmental customers located in the Louisville market.

Most of these supplies have been manufactured in states outside of Kentucky, purchased by the defendants, and shipped regularly and continuously in interstate commerce from such other states for sale and installation by the defendants in projects located in the Louisville market.

## VI

### VIOLATION ALLEGED

12. Beginning some time prior to 1967, the exact date being unknown to the plaintiff, and continuing thereafter up to and including the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Sherman Act. Said combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

13. 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:

- (a) to rig bids on the installation of mechanical contracting supplies and the rendering of mechanical contracting services to commercial, industrial, and governmental customers in the Louisville market; and
- (b) to allocate customers for mechanical contracting supplies and services in the Louisville market.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore alleged, they have combined and conspired to do, including, among other things:

- (a) discussing the submission of prospective bids on specific mechanical contracting projects;
- (b) designating the successful low bidder on specific mechanical contracting projects;
- (c) submitting intentionally high, or complementary, bids on specific mechanical contracting projects on which another defendant or co-conspirator had been designated as the successful low bidder; and
- (d) assigning specific mechanical contracting projects and customers to designated defendants and co-conspirators on the basis of historical customer patterns, chance, need, or division of work.

#### VII

#### EFFECTS

15. The combination and conspiracy alleged herein has had the following effects, among others:

- (a) price competition in the sale of mechanical contracting supplies and services in the Louisville market has been restrained and eliminated;

- (b) quotations and bids for mechanical contracting supplies and services in the Louisville market have been fixed and rigged at artificial and non-competitive levels; and
- (c) purchasers in the Louisville market have been deprived of the benefits of free and open competition in the sale of mechanical contracting supplies and services.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in violation of Section 1 of the Sherman Act.

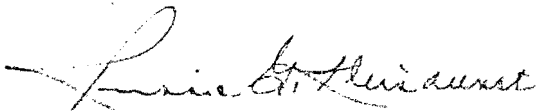
2. That each defendant, including any subsidiaries thereof, its officers, directors, employees and agents, its successors and all persons acting or claiming to act on behalf of each defendant, be perpetually enjoined and restrained from participating, either directly or indirectly, in any combination and conspiracy, agreement, understanding, plan or program to rig bids, allocate customers, or otherwise eliminate competition in the sale of mechanical contracting supplies and services in the Louisville market and elsewhere in the United States.

3. That, for a period of five years following the date of entry of such judgment, each of the defendants be required to affix to every sealed bid or quotation for the sale of mechanical contracting supplies and services a written certification, signed by an officer of the

corporation, that such bid or quotation was not in any way the result of any agreement, understanding, or communication between the defendant and any other mechanical contracting company.


4. That the plaintiff have such other and further relief as the nature of the case may require and as the Court may deem proper.

5. That the plaintiff recover the costs of this suit.



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