UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, Plaintiff, v. ARMCO STEEL CORPORATION; BETHLEHEM STEEL CORPORATION; BORDER STEEL ROLLING MILLS, INC.; THE CECO CORPORATION; LACLEDE STEEL COMPANY; SCHINDLER BROTHERS STEEL; STRUCTURAL METALS, INC.; TEXAS STEEL COMPANY; and UNITED STATES STEEL CORPORATION, Defendants.	)	Civil Action No. 73-H-1427 Filed: April 30, 1974

AMENDED COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein, and complains and alleges as follows:

FIRST CAUSE OF ACTION

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is 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 the violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act, (First Cause of Action); and the United States of America, in its capacity as purchaser and user of re-bar materials, proceeds herein

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under Section 4A of the Clayton Act (15 U.S.C. §15a), to recover actual damages sustained by it (Second Cause of Action).

2. Each of the defendants transacts business within the Southern District of Texas.

II

DEFINITIONS

3. As used herein, the term:

(a) "re-bar materials" means reinforcing steel bar materials, including but not limited to 1/4" to 1-1/2" round and deformed reinforcing steel bars, steel wire mesh in varying gauges, and steel bar supports and accessories, used in reinforced concrete construction;

(b) "mill" means a person engaged in the production and sale of steel bars and in the fabrication or sale of re-bar materials;

(c) "independent fabricator" means a person not affiliated with a mill who is engaged in the purchase of steel bars and in the fabrication and sale of re-bar materials;

(d) "Houston area" means the city of Houston, Texas, and environs, including the counties of Harris, Galveston, Liberty, Chambers, Brazoria, Fort Bend, Montgomery, and Waller in Texas; and

(e) "Dallas-Fort Worth area" means the cities of Dallas and Fort Worth, Texas, and environs, including the counties of Dallas, Tarrant, Johnson, Ellis, Kaufman, Hunt, Collin, Denton, Wise, Parker and Hood in Texas.

III

DEFENDANTS

4. Armco Steel Corporation (hereinafter referred to as "Armco") is made a defendant herein. Armco was organized and exists under the laws of the State of Ohio and has its principal place of business in Middletown, Ohio. During the period covered by this complaint, Armco, a mill, fabricated re-bar materials at Houston, Texas, and sold re-bar materials in the State of Texas.

5. Bethlehem Steel Corporation (hereinafter referred to as "Bethlehem") is made a defendant herein. Bethlehem was organized and exists under the laws of the State of Delaware and has its principal place of business in Bethlehem, Pennsylvania. During the period covered by this complaint, Bethlehem, a mill, fabricated re-bar materials at Houston, Texas, and sold re-bar materials in the State of Texas.

6. Border Steel Rolling Mills, Inc. (hereinafter referred to as "Border") is made a defendant herein. Border was organized and exists under the laws of the State of Texas and has its principal place of business in El Paso, Texas. During the period covered by this complaint, Border, a mill, fabricated re-bar materials at El Paso, Texas, and sold re-bar materials in the State of Texas.

7. The Ceco Corporation (hereinafter referred to as "Ceco") is made a defendant herein. Ceco was organized and exists under the laws of the State of Delaware and has its principal place of business in Chicago, Illinois. During the period covered by this complaint, Ceco, a mill, fabricated re-bar materials at Houston, Texas, and sold re-bar materials in the State of Texas.

8. Laclede Steel Company (hereinafter referred to as "Laclede") is made a defendant herein. Laclede was organized and exists under the laws of the State of Delaware and has its principal place of business in St. Louis, Missouri. Prior to September 29, 1972, Laclede, a mill, operated in the State of Texas through its wholly owned subsidiary, Southern States Steel Corporation. It fabricated re-bar materials at Beaumont and Houston, Texas, and sold re-bar materials in the State of Texas. After September 29, 1972, said defendant fabricated and sold re-bar materials in the State of Texas as Laclede Steel Company.

9. Schindler Brothers Steel (hereinafter referred to as "Schindler") is made a defendant herein. Schindler is organized as a partnership under the laws of the State of Texas and has its principal place of business in Sealy, Texas. During all or part of the period covered by this complaint, Schindler, a mill, sold re-bar materials in the State of Texas fabricated by one or more fabricators doing business in the State of Texas.

10. Structural Metals, Inc., (hereinafter referred to as "SMI") is made a defendant herein. SMI was organized and exists under the laws of the State of Texas and has its principal place of business in San Antonio, Texas. During the period covered by this complaint, SMI, a mill, fabricated and sold re-bar materials through company owned or affiliated fabricators in the State of Texas.

11. Texas Steel Company (hereinafter referred to as "Texas Steel") is made a defendant herein. Texas Steel was organized and exists under the laws of the State of Texas and has its principal place of business in Fort Worth, Texas. During the period covered by this

complaint, Texas Steel, a mill, fabricated re-bar materials at Fort Worth, Texas, and sold re-bar materials in the State of Texas.

12. United States Steel Corporation (hereinafter referred to as "U.S. Steel") is made a defendant herein. U.S. Steel was organized and exists under the laws of the State of Delaware and has its principal place of business in Pittsburgh, Pennsylvania. During the period covered by this complaint, U.S. Steel, a mill, fabricated re-bar materials at Houston, Texas, and sold re-bar materials in the State of Texas.

IV

CO-CONSPIRATORS

13. Various individuals and companies, not made defendants herein, have participated as co-conspirators in the violations alleged herein and have performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

14. Re-bar materials provide the strength, rigidity and reinforcement to concrete foundations, pillars, floorings and paved surfaces essential to the construction of highways, bridges, buildings and other structures. Re-bar materials are fabricated to conform to plans and specifications and engineering requirements of specific construction projects.

15. During the period covered by this complaint, the defendants have been engaged in the production and sale of steel bars at rolling mills located in various states throughout the country. Such steel bars have been used by the defendants and sold to independent fabricators for the fabrication of re-bar materials for sale to

general contractors, subcontractors, public procurement officers and others in the State of Texas. Independent fabricators in the State of Texas rely to a substantial degree upon the defendants for their supply of steel bars.

16. In most cases, sales of re-bar materials to contractors, builders, governmental agencies and other customers are made on the basis of written or oral price quotations. Said customers use re-bar materials in the construction, repair, alteration, and improvement of highways and governmental, institutional, industrial, commercial and residential structures.

17. A substantial part of the steel used in the fabrication of re-bar materials in the State of Texas is derived from sources located outside that State. This steel is formed into steel bars at rolling mills in Texas and other states and supplies of steel bars are thereafter shipped to the Texas fabricating facilities of the defendants and independent fabricators on the basis of existing orders and anticipated demand for re-bar materials. The defendants and the independent fabricators therefore act as conduits through which steel flows in a continuous uninterrupted stream in interstate commerce from the states in which it originates, to the rolling mills where it is formed into steel bars, to the fabricating facilities maintained by the defendants and independent fabricators in the State of Texas where it is fabricated into re-bar materials and from there delivered to job sites.

18. The annual sales of re-bar materials in the State of Texas are substantial. In 1971, those sales alone of re-bar materials made by the defendants, pursuant to the unlawful allocation arrangement alleged in paragraph 21(d), exceeded 175,000 tons and had a value of over $20,000,000.

A substantial percentage of annual sales of re-bar materials in the State of Texas was made by defendants. For example, in the year 1971, the Texas Highway Department purchased approximately 127,000 tons of re-bar materials of which approximately 86,000 tons, or 68% of the total purchased, were supplied by the defendants.

19. Substantial amounts of re-bar materials fabricated and sold by the defendants are used in the construction of buildings, structures and highways which are funded in whole or in part by the United States.

VI

VIOLATIONS ALLEGED

20. Beginning in or about mid-1969 and continuing thereafter until at least the latter part of 1972, the exact dates being unknown to the plaintiff, the defendants and co-conspirators entered into and engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

21. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were that:

(a) prices of reinforcing steel bars be raised and stabilized in the State of Texas;

(b) independent fabricators in the Houston area be required to limit their price quotations and bid submissions for the supply of re-bar materials to construction projects requiring no more than a specified tonnage of reinforcing steel bars, said volume limit being established initially at 200 tons and subsequently raised to 300 tons;

(c) independent fabricators in the Dallas-Fort Worth area be required to limit their price quotations and bid submissions for the supply of re-bar materials to construction projects requiring no more than a specified tonnage of reinforcing steel bars, said volume limit being established initially at 200 tons and subsequently raised to 300 tons; and

(d) the relative percentage share of the market for re-bar materials in the State of Texas held by each defendant be established and construction contracts requiring the use of quantities of reinforcing steel bars in excess of 200, and later 300, tons be allocated among defendants in accordance with such established percentage shares.

22. Beginning in or about mid-1969 and continuing thereafter until at least the latter part of 1972, the exact dates being unknown to the plaintiff, the defendants and co-conspirators engaged in a combination and conspiracy to monopolize the aforesaid interstate trade and commerce in violation of Section 2 of the Sherman Act, as amended (15 U.S.C. §2). Said combination and conspiracy to monopolize consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to exclude or limit the competition of independent fabricators of re-bar materials in the Houston and Dallas-Fort Worth areas.

23. The substantial terms of the aforesaid combination and conspiracy to monopolize are set forth in paragraph 21 of this complaint, which paragraph is hereby re-alleged with the same force and effect as if that paragraph were here set forth in full.

24. For the purpose of effectuating the aforesaid combinations and conspiracies, the defendants have done those things which, as hereinbefore alleged, they combined and conspired to do.

25. The violations alleged herein may recur or continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

26. The violations alleged herein have had the following effects, among others:

(a) price competition in the sale of re-bar materials in the State of Texas has been eliminated;

(b) users of re-bar materials in the State of Texas have been deprived of the opportunity to purchase re-bar materials in an open and competitive market;

(c) prices of re-bar materials have been increased and the market stabilized in the State of Texas; and

(d) competition between the mills and independent fabricators in the Houston area and in the Dallas-Fort Worth area has been eliminated.

PRAYER

WHEREFORE, plaintiff prays:

(a) That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as alleged herein, in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

(b) That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as alleged herein, to monopolize the aforesaid interstate trade and commerce in violation of Section 2 of the Sherman Act.

(c) That each of the defendants, its successors, assignees, transferees, directors, officers, agents, employees, representatives, and all other persons or corporations acting or claiming to act for or in its behalf, be perpetually enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combinations and conspiracies hereinbefore alleged, and from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

(d) That each of the defendants, its successors, assignees, transferees, directors, officers, agents, employees, representatives, and all other persons or corporations acting or claiming to act for or on its behalf, be perpetually enjoined and restrained from combining and conspiring among themselves or with any other person or corporation to allocate customers for the sale of re-bar materials, or to monopolize the aforesaid interstate trade and commerce in re-bar materials.

(e) That the defendants be required to distribute to each of their customers a copy of any final judgment or decree within 60 days of the date of the entry by this Court of such judgment or decree.

(f) That it have such other and further relief as the Court may deem just and proper.

(g) That it recover the costs of this suit.

VIII

SECOND CAUSE OF ACTION

27. As a second claim, the United States of America, in its capacity as purchaser and user of re-bar materials, brings suit under Section 4A of the Clayton Act (15 U.S.C. §15a) to recover damages which it has sustained due to the violations by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §1 and §2), as hereinabove alleged in its First Cause of Action.

28. Plaintiff re-alleges as part of this claim each and all of the allegations of paragraphs 1 through 26 of its First Cause of Action, hereof, with the same force and effect as if herein fully repeated.

29. During the period of the conspiracy, the plaintiff contracted for and purchased buildings and structures which contained substantial quantities of re-bar materials which were fabricated by the defendants.

30. During the period of the conspiracy, the plaintiff provided funds to state and local governments and instrumentalities for the construction and purchase of buildings, structures and highways which contained substantial quantities of re-bar materials, which were fabricated by the defendants.

31. As a result of the illegal combinations and conspiracies alleged herein, plaintiff has been compelled to pay substantially higher prices for buildings and structures which contained re-bar materials than it would have paid but for the violations of the antitrust laws herein alleged.

32. As a result of the illegal combinations and conspiracies alleged herein, plaintiff has had to provide to state and local governments or instrumentalities greater funds which were used for the purchase of buildings, structures and highways which contained re-bar materials than it would have paid but for the violations of the antitrust laws herein alleged.

33. As a result of the illegal combinations and conspiracies alleged herein, plaintiff has been injured and financially damaged by defendants in an amount which is presently undetermined.

34. Plaintiff had no knowledge of the aforesaid combinations and conspiracies until sometime in 1973 when facts revealing their scope were ascertained during the course of grand jury proceedings which culminated in the return, on August 30, 1973, of the indictment in United States v. Armco Steel Corporation, et al., (S.D. Texas Criminal Action No. 73-H-336). Plaintiff could not have uncovered said violations at an earlier date by the exercise of due diligence because they had been fraudulently concealed by defendants.

PRAYER

WHEREFORE, plaintiff prays:

(a) That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as alleged herein, in unreasonable restraint of the aforesaid interstate trade and commerce in violation

of Section 1 of the Sherman Act.

(b) That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as alleged herein, to monopolize the aforesaid interstate trade and commerce in violation of Section 2 of the Sherman Act.

(c) That it have judgment against defendants for damages suffered by it due to the violation by the defendants of the antitrust laws as provided in Section 4A of the Clayton Act (15 U.S.C. §15a), together with such interest thereon as is permitted by law and the costs of this suit.

(d) That it recover such other amounts and have such other and further relief as the Court shall deem just and proper.

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