

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
THOMASVILLE DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No.:  
 )  
 ENGELHARD CORPORATION, ) Filed:  
 FLORIDIN COMPANY, )  
 U.S. BORAX INC., and )  
 U.S. SILICA COMPANY, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

FINAL PRE-TRIAL ORDER - NON-JURY CASE

The following constitutes a pre-trial order entered in the above-styled case after conference with counsel for the parties:

(1) The name, address, and telephone number of the attorneys who will conduct the trial are as follows:

Plaintiff: Angela L. Hughes, Lead Attorney  
Nina B. Hale  
John R. Read  
Mark F. Sheridan  
John S. Sciortino  
William J. Hughes  
Alexander Y. Thomas  
Michele B. Felasco

Trial Attorneys  
U.S. Department of Justice, Antitrust Division  
555 Fourth Street, N.W., Room 9810  
Washington, D.C. 20001  
(202) 307-6351

Defendant: Attorneys for Defendant  
Engelhard Corporation:

William T. Lifland  
Dean Ringel  
Howard G. Sloane  
Scott Martin  
Christopher Nelson  
Cahill Gordon & Reindel  
80 Pine Street  
New York, New York 10005  
(212) 701-3000

H. Jerome Strickland  
Jones, Cork & Miller  
Post Office Box 6437  
435 Second Street, 5th Floor  
Macon, Georgia 31201  
(912) 745-2821

Attorneys for Defendant  
Floridin Company, U.S. Silica  
Company and U.S. Borax Inc.

George Chester  
Robert A. Long  
William J. Shieber  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044  
(202) 662-6000

Robert Gunn  
Michael Smith  
Martin, Snow, Grant & Napier  
240 Third Street  
Post Office Box 1606  
Macon, Georgia 31202  
(912) 743-7051

It is understood that only counsel who personally appear at the pretrial  
conference will be allowed to participate in the trial.

(2) (a) Companion cases pending in this and other Federal or State courts are: None.

(b) Possible derivative claims not now the subject of pending litigation: None.

(c) The estimated time required for trial is: two weeks.

(3) (a) The parties agree that the court has jurisdiction of the parties and the subject matter pursuant to 15 U.S.C. §§ 1331 and 1337.

(b) There are no motions pending for consideration by the court except as follows: Plaintiff's Motion to Strike Defendants' Efficiencies Affirmative Defense, Plaintiff's Motion in Limine to Exclude Testimony by Defendants' Executives Respecting Customers' Opinions About the Transaction, and Plaintiff's Motion in Limine to Exclude Evidence Relating to Engelhard's Threat to Exit the Business if the Transaction is Enjoined. There may be other issues relating to the admissibility of exhibits or deposition testimony that are pending as of the time of the pretrial conference.

(4) Proposed findings of fact and conclusions of law with citations to the record where the evidence may be found or to the statute or case from which the law is derived will be filed with the court 21 days after the end of the trial, accompanied by post-trial briefs. Reply briefs are due ten days thereafter.

(5) (a) All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown.

(b) Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

(6) The plaintiff's outline of the case and contentions are contained in the Trial Brief of the United States filed with this Court on July 14, 1995.

(7) The defendants' outline of the case and contentions are contained in the Defendants' Pretrial Memorandum filed with this Court on July 14, 1995.

(8) The issues for determination by the court as set forth by the plaintiff are as follows:

(A) Whether the United States has carried its burden of proving that Engelhard's proposed acquisition of Floridin's assets may substantially lessen competition in the relevant product and geographic markets in violation of Section 7 of the Clayton Act.

1. Whether the relevant product market is the mining, processing, and sale of gellant-quality attapulgitic clay ("gel clay").

2. Whether the relevant geographic market is the United States.

3. (a) Whether the proposed acquisition is presumptively illegal because it will substantially increase concentration in a highly concentrated market; or

(b) If defendants successfully rebut the presumption of illegality based on market concentration, whether there is

evidence of anticompetitive effects of the proposed acquisition, that is:

- i. Whether the proposed acquisition will result in a reduction in competition in the mining of gel clay.
- ii. Whether the proposed acquisition will result in a reduction in competition in processing of gel clay.
- iii. Whether the proposed acquisition will result in a reduction in competition in gel clay product quality and innovation.
- iv. Whether the proposed acquisition will result in a reduction in gel clay price competition.

(B) Whether defendants have carried their burden of proving new entry or expansion in the relevant market is likely to offset the anticompetitive effects of the proposed acquisition.

1. Whether there are substantial barriers to entry into the United States gel clay market.
2. Whether Oil-Dri, who previously entered the market unsuccessfully and exited the market in 1992, is likely to re-enter the United States gel clay market.
3. Whether foreign gel clay is likely to enter the United States gel clay market.

(C) Whether defendants have carried their burden of proving that their alleged efficiencies have a legal and factual basis, and if so, that they outweigh the anticompetitive harm of the proposed acquisition.

(D) Whether the Engelhard/ITC Supply Contract will be adequate and effective relief to restore the competition that would be lost as a result of Engelhard's acquisition of the Floridin assets, and if so, the extent to which the Court must supervise performance of the Supply Contract and retain jurisdiction to protect gel clay customers and the public.

(9) The issues for determination by the court as set forth by the defendants are as follows:

(A) Whether the United States has carried its burden of proving that the transaction as proposed, including the agreement of March 22, 1995 between Engelhard and ITC, will probably substantially lessen competition in relevant product and geographic markets in violation of Section 7 of the Clayton Act.

(B) Whether new entry or expansion in the relevant market is likely to offset any anticompetitive effects of the transaction as are proved.

(C) Whether defendants have presented sufficient evidence to rebut a prima facie case, if established by the plaintiff, by showing that the transaction as proposed will create significant efficiencies in the relevant market that will ultimately benefit competition and, hence, consumers.

(D) Whether any prima facie case, if established by the plaintiff, has been rebutted by evidence indicating that Engelhard will withdraw from the attapulgate business if the transaction as proposed is enjoined.

(10) The parties have stipulated and agreed that:

(A) this Court has jurisdiction over this action and the parties;

(B) venue is proper in this District; and

(C) the defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce.

The parties are still discussing proposed stipulations and will present any other stipulations to which they have agreed to the Court on Monday, July 24 at 8:00 am.

(11) The list of documentary and physical evidence that will be tendered at the trial by the plaintiff is attached as Exhibit A.

(12) The list of documentary and physical evidence that will be tendered at the trial by the defendants is attached as Exhibit B.

(13) The plaintiff's final witness list is attached as Exhibit C.

(14) The defendants' final witness list is attached as Exhibit D.

As to any will call witnesses, opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means. Only those witnesses listed in the pre-trial order will be allowed to testify and only in the manner listed.

(15) Set down on non-jury calendar for: July 24, 1995

(16) Other matters: None.

Dated:

Submitted by:

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Angela L. Hughes  
Lead Attorney for the Plaintiff  
United States Department of Justice  
Antitrust Division  
555 Fourth Street, N.W., Room 9401  
Washington, D.C. 20001

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George Chester  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044  
Telephone: (202) 662-6000  
Facsimile: (202) 662-6291

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Dean Ringel  
Cahill Gordon & Reindel  
80 Pine Street  
New York, New York 10005  
Telephone: (212) 701-3000  
Facsimile: (212) 5420

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Robert Gunn  
Martin, Snow, Grant & Napier  
240 Third Street  
Post Office Box 1606  
Macon, Georgia 31202  
Telephone: (912) 743-7051  
Facsimile: (912) 743- 4204

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H. Jerome Strickland  
Jones, Cork & Miller  
Post Office Box 6437  
435 Second Street, 5th Floor  
Macon, Georgia 31201  
Telephone: (912) 745-2821  
Facsimile: (912) 743-9609

Attorneys for Defendants  
Floridin Company, U.S. Borax Inc. and  
U.S. Silica Company

Attorneys for Defendant  
Engelhard Corporation

It is hereby ORDERED that the foregoing, including the attachments thereto, constitutes the pre-trial order in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This \_\_\_\_\_ day of \_\_\_\_\_, 1995.

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W. LOUIS SANDS  
UNITED STATES DISTRICT JUDGE  
MIDDLE DISTRICT OF GEORGIA