UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LUDOWICI-CELADON COMPANY, JAMES M. WILLIAMS, R. E. STURTEVANT, A.N. SORENSON, HORACE WHITE, J.W. STEPHENS, ARTHUR W. APPLEWHITE and GEORGE J. LAWLER, d/b/a APPLEWHITE & LAWLER COMPANY, GEORGE T. STAFFORD, F.W. HOLCOMB, A.B. BYRNES, A.B. SANDOZ, GEORGE S. MEARS, R.T. COLE, H.F. BEYER, ALFRED LO CASCIO, and B.A. CAMPBELL, Defendants.	Civil Action No. 05-C-6134 Filed: November 7, 2005 Judge: Milton I. Shadur

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO MOTION OF DEFENDANT LUDOWICI ROOF TILE, INC. TO TERMINATE FINAL DECREE

Ludowici Roof Tile, Inc. ("Ludowici"), successor in interest to defendant Ludowici-Celadon Company ("Ludowici-Celadon"), has moved to terminate the Final Decree entered by the Court in this matter on March 18, 1929 (the "Decree"). The United States files this memorandum in support of its tentative consent to terminate the Decree. Because the Decree is no longer necessary to sustain a competitive market, the United States tentatively consents to

termination of the Decree subject to public notice and an opportunity for comment.[1]

BACKGROUND

On March 12, 1929, the United States initiated this antitrust action by filing a Petition against Ludowici-Celadon and sixteen individuals. A copy of the Petition is attached hereto as Exhibit A. Those individuals were Ludowici-Celadon's exclusive sales agents, "preferred roofers," officers, directors, or employees. Petition § IV. The Petition alleged that the defendants conspired to restrain interstate trade and commerce in the manufacture and sale of clay roofing tile[2] and to monopolize and to attempt to monopolize such trade and commerce in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2. Petition §§ II & IV. On March 18, 1929, the Decree was entered in this matter. A copy of the Decree is attached hereto as Exhibit B.

A. The Allegations in the Petition

According to the Petition, Ludowici-Celadon acquired various roofing-tile businesses and assets with the purpose and effect of eliminating competition in the manufacture and sale of clay roofing tile and obtaining a dominant position in the market. Petition § VI.1. The Petition alleged that, as a result of these acquisitions, Ludowici-Celadon controlled roughly 90% of the clay roofing-tile market. Id. The Petition further alleged that in furtherance of the conspiracy, Ludowici-Celadon entered into agreements with its preferred roofers through which Ludowici-

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[1] It is likely that the individual defendants in this matter have passed away. However, in the event that any individual defendant is still alive, the United States believes that termination of the Decree should be effective as to all defendants.

[2] "Roofing tile" is defined in the Decree as "tile produced from shale or clay and used as a covering for pitched roofs, cornices and other exposed surfaces of buildings and structures." Decree at p. 2.

Celadon provided special discounts to them in order to exclude competitors of the preferred roofers and prevent competition with Ludowici-Celadon. Petition § VI.2. Additionally, the Petition alleged that Ludowici-Celadon, through certain of its officers, directors, and employees, performed other acts in furtherance of the conspiracy including, but not limited to: (1) inducing customers of its competitors to breach contracts with those competitors by reducing bids or making false or unfair statements regarding its competitors' products; (2) requiring exclusive use of its roofing tile as a condition of sale or use of that roofing tile; (3) inducing others to refuse to buy or sell roofing tile manufactured by its competitors; (4) and granting preferences to its preferred roofers. Id.

B. The Final Decree

The Decree perpetually enjoined the defendants from continuing the conspiracy or entering into any combination similar thereto. Decree ¶ 2. In addition, the Decree enjoined Ludowici-Celadon from acquiring ownership or control of any additional plants engaged in the manufacture and sale of roofing tile. Decree ¶ 4. It also enjoined Ludowici-Celadon, and anyone acting on its behalf, from engaging in the following behavior:

- inducing, or attempting to induce, purchasers of its competitors' roofing tile to breach their contracts with such competitors by reducing bids below prices originally offered by Ludowici-Celadon or by making false or unfair statements regarding the quality, durability, or workmanship of its competitors' roofing tile;
- preventing, or attempting to prevent, the sale of its competitors' roofing tile by using false or unfair statements regarding the quality, durability, or workmanship of that roofing tile;

- requiring persons engaged in buying, selling, or installing roofing tile to exclusively purchase, use, or install Ludowici-Celadon's roofing tile as a condition of the sale, use, or installation of Ludowici-Celadon's roofing tile;
- inducing, or attempting to induce, persons engaged in buying, selling, or installing roofing tile to refuse to sell or install roofing tile manufactured by Ludowici-Celadon's competitors;
- inducing, or attempting to induce, selling agents of its competitors to agree to sell Ludowici-Celadon's roofing tile while remaining selling agents for its competitors though not intending to sell its competitors' roofing tile;
- adopting a policy of inducing, or attempting to induce, sales employees or agents of its competitors to discontinue employment or representation with such competitors and become employees or agents of Ludowici-Celadon;
- adopting a policy of selling, or offering for sale, roofing tile at unfair or discriminatory prices, terms, or conditions; and
- giving preferences, priorities, rebates, or any other discrimination in favor of Ludowici-Celadon's preferred purchasers, sellers, or installers.

Decree ¶ 3. The provisions of the Decree are applicable to "the successors in interest of any and/or all of the defendants . . . , and to any and all [persons] . . . who may acquire the ownership or control . . . of [Ludowici-Celadon]." Decree ¶ 5.

C. The Current Clay Roofing-Tile Market

The clay roofing-tile market has changed dramatically since the Decree was entered.[3] First, Ludowici-Celadon closed its Peru, Kansas facility in the 1930s and liquidated its Coffeyville, Kansas facility in 1958. Ludowici currently owns and operates only one roofing-tile plant—its facility located in New Lexington, Ohio.

Second, in the past thirty years, at least seven roofing-tile manufacturers began selling clay roofing tile in the United States. These companies include: (1) U.S. Tile, located in Corona, California; (2) Maruhachi Ceramics of America, located in Corona, California; (3) Deleo Clay Tile Company, located in Lake Elsinore, California; (4) Redland Clay Tile, located in Mexico; (5) Altusa Roof Tiles, located in Venezuela; (6) Santa Fe Roof Tiles, located in Colombia; and (7) Boston Valley Terra Cotta, located in Orchard Park, New York. In addition, clay roofing tile from a number of other manufacturers located in Europe, South America, and Central America is imported into the United States. As a result of such entry, Ludowici's market share has decreased from 90% in 1929 to less than 5% today, based on sales volume.

As a successor in interest to Ludowici-Celadon, Ludowici is bound by the terms of the Decree. Ludowici asserts that it has complied with the terms of the Decree and has not otherwise engaged in anticompetitive behavior in the more than seventy-five years since the Decree was entered. In addition, the market for clay roofing tile has changed in such a way that

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[3] At the time the Decree was entered, Ludowici-Celadon owned and operated at least three roofing-tile plants, located in Coffeyville and Peru, Kansas and New Lexington, Ohio. Ludowici-Celadon's Alfred, New York and Chicago Heights, Illinois plants were destroyed by fire in 1909. Its Georgia facility was closed in 1914. It is unclear whether Ludowici continued to own or operate its Ottawa, Illinois plant in 1929; it appears not to have operated that facility since, at least, the early 1930s.

the Decree is no longer necessary to protect competition in that market. Accordingly, the United States tentatively consents to the termination of the Decree, subject to notice of Ludowici's motion and the opportunity for public comment.

THE LEGAL STANDARD APPLICABLE TO THE TERMINATION OF AN ANTITRUST DECREE WITH THE CONSENT OF THE UNITED STATES

This Court has jurisdiction to terminate the Decree pursuant to Paragraph XII of the Decree, Rule 60(b)(5) of the Federal Rules of Civil Procedure, and "principles inherent in the jurisdiction of the chancery." United States v. Swift & Co., 286 U.S. 106, 114 (1932); In re Grand Jury Proceedings, 827 F.2d 868, 873 (2d Cir. 1987). Where, as here, the United States has tentatively consented to a proposed termination of a decree, the issue before the Court is whether termination is in the public interest. E.g., United States v. W. Elec. Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993); United States v. W. Elec. Co., 900 F.2d 283, 305 (D.C. Cir. 1990) ("W. Elec. I"); United States v. Loew's, Inc., 783 F. Supp. 211, 213 (S.D.N.Y. 1992); United States v. Columbia Artists Mgmt., Inc., 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987) (citing United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,702-03, 65,706 (N.D. Ill. 1975)); cf. United States v. Am. Cyanamid Co., 556 F. Supp. 361, 367 (S.D.N.Y.), rev'd on other grounds, 719 F.2d 558 (2d Cir. 1983).

A district court applies the same public interest standard in terminating a consent decree as it does in reviewing the entry of an initial consent decree in a government antitrust case. See 15 U.S.C. § 16(e); W. Elec. I, 900 F.2d at 295; United States v. AT&T, 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 406 U.S. 1001 (1983); United States v. Radio Corp. of Am., 46 F. Supp. 654, 656 (D. Del. 1942). It has long been recognized that the United States has broad discretion in settling antitrust litigation on terms that will best

serve the public interest in competition. E.g., Sam Fox Publ'g Co. v. United States, 366 U.S. 683, 689 (1961). In determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse of discretion by the United States, the Court is not to substitute its own opinion, but to assess whether the United States' explanation is well reasoned. United States v. Microsoft Corp., 56 F.3d 1448, 1461-62 (D.C. Cir. 1995); United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981) (citing United States v. NBC, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978)); United States v. Med. Mut. of Ohio, 1999-1 Trade Cas. (CCH) ¶ 72, 465 at 84,271 (N.D. Ohio 1999); United States v. Mid-Am. Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508 at 71,980 (W.D. Mo. 1977). The Court should conduct a limited review to "insur[e] that the government has not breached its duty to the public in consenting to the decree" through malfeasance or by acting irrationally. Bechtel, 648 F.2d at 666; see also Microsoft, 56 F.3d at 1461 (examining whether "the remedies [obtained in the decree] were not so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Thus, where the United States has offered a reasonable explanation of why the termination of a consent decree vindicates the public interest in preserving free and unfettered competition and there is no showing of abuse of discretion or corruption affecting the United States' recommendation, the Court should accept the United States' conclusion concerning the appropriateness of termination.

THE UNITED STATES TENTATIVELY CONSENTS TO THE TERMINATION OF THE DECREE BECAUSE IT IS NO LONGER NECESSARY

TO PROTECT COMPETITION IN THE CLAY ROOFING-TILE MARKET

Under United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968), an antitrust consent decree termination is appropriate where the defendants demonstrate that the basic purposes of the decree have been achieved. Id. at 248. The Second Circuit in United States v. Eastman Kodak Co., 63 F.3d 95 (2d Cir. 1995), recognized that significant changes in the factual or legal climate may justify a consent decree termination even where the United Shoe standard for decree terminations has not been satisfied. Id. at 102. In this case, termination of the Decree is justified both because the basic purposes of the Decree have been achieved and because the competitive climate of the roofing-tile industry has changed significantly.

The Decree is no longer necessary to protect competition in the clay roofing-tile market. The purpose of the Decree was to end the alleged conspiracy, prevent its likely recurrence, and prevent the defendants from monopolizing or attempting to monopolize the clay roofing-tile market. The Decree sought to and did accomplish these objectives by prohibiting the defendants from continuing the conspiracy, preventing future acquisitions by Ludowici, and proscribing those acts that enabled Ludowici to monopolize or attempt to monopolize the clay roofing-tile market.

Since the Decree was entered, the clay roofing-tile market has become significantly more competitive. In 1929, Ludowici was the largest manufacturer of clay roofing tile in the United States. As a result of domestic entry and imports in the past thirty years, Ludowici currently holds only a small share of the market. Unlike in 1929, customers today enjoy the benefits of competition and can choose from clay roofing tile manufactured by numerous companies.

Because of Ludowici's reduced market share and the presence of at least seven

significant competitors, Ludowici is unlikely to successfully engage in exclusionary conduct, including conduct proscribed by the Decree. And, to the extent that Ludowici engages in or attempts to engage in exclusionary or anticompetitive conduct, Ludowici is subject to laws of general application. In addition, by continuing to perpetually ban Ludowici from acquiring any facility that is engaged in the manufacture of clay roofing tile, the Decree may prohibit acquisitions that could have a neutral or procompetitive effect.

In light of the fulfillment of the purpose of the Decree, changes in the roofing-tile industry, and the simple passage of time, the Decree is no longer required to sustain a competitive environment in the roofing-tile industry. Accordingly, the United States tentatively concludes that termination of the Decree is in the public interest.[4]

PROPOSED PROCEDURES FOR PUBLIC NOTICE OF THE PENDING MOTION AND INVITING COMMENT THEREON

The court in Swift & Co. articulated a court's responsibility to implement procedures that will give nonparties notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification.

Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,703.

[4] While the United States tentatively consents to the termination of the Decree, it does not agree with or join in Ludowici's analysis regarding the changes in the antitrust laws since 1929. Because the United States' consent is based upon the changes in the clay roofing-tile market in the past 30 years, and not upon changes in the applicable law, it need not address any asserted changes in the law in this Memorandum. The United States' tentative consent to termination should not be construed as agreement with Ludowici's legal analysis.

It is the policy of the United States to consent to motions to terminate decrees in antitrust actions only on the conditions that an appropriate effort be made to notify potentially interested persons of the motion and consideration be given to any comments made in response to such notification. Therefore, the United States has proposed and Ludowici has agreed to the following procedures:

(1) The United States will publish in The Federal Register a notice announcing Ludowici's motion to terminate the Decree and the United States' tentative consent to that motion. The notice will summarize the Petition and Decree, describe the procedures for inspecting and obtaining copies of relevant papers, and invite the submission of comments.

(2) Ludowici will publish notice of its motion in two consecutive issues of The Chicago Tribune and Professional Roofing. These periodicals are likely to be read by persons interested in the markets affected by the Decree.

(3) These published notices will provide a period for public comment during the sixty days following the publication of the notice.

(4) Within a reasonable time after the conclusion of the sixty-day period following publication of the last notice discussed above, the United States will file with the Court copies of any comments that it receives and its response to those comments.

(5) The parties request that the Court not rule upon Ludowici's motion to terminate the Decree until the United States has filed with the Court copies of any comments it receives along with its response to those comments. The United States reserves the right to withdraw its consent to Ludowici's motion at any time prior to entry of an order terminating the Decree.

CONCLUSION

For the foregoing reasons, the United States tentatively consents to the termination of the Decree in this case.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
Christine A. Hill
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Dated: November 4, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of the United States in Response to Motion of Defendant Ludowici Roof Tile, Inc. to Terminate Final Decree has been served upon counsel identified below via Federal Express on this 4th day of November 2005:

Robert L. Hickock
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_____/s/_____
Christine A. Hill

EXHIBIT A

In Equity No. 9223

In the District Court of the United States of America for the Northern District of Illinois, Eastern Division

UNITED STATES OF AMERICA, PETITIONER,

v.

LUDOWICI-CELADON COMPANY ET AL., DEFENDANTS.

PETITION

UNITED STATES OF AMERICA,
By GEORGE E. Q. JOHNSON,
United States Attorney.

William D. Mitchell,
~~JOHN G. SARGENT,~~
Attorney General.

~~WILLIAM A. JOHNSEN,~~
Assistant to the Attorney General.

HORACE R. LAMB,
RALSTONE R. IRVINE,
Special Assistants to the Attorney General.

U.S. GOVERNMENT PRINTING OFFICE: 1929

Filed Mar. 12, 1929

In the District Court of the United States of America for the Northern District of Illinois, Eastern Division

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IN EQUITY NO.

UNITED STATES OF AMERICA, PETITIONER,

v.

LUDOWICI-CELADON COMPANY, JAMES M. WILLIAMS, R. E. Sturtevant, A. N. Sorenson, Horace White, J. W. Stephens, Arthur W. Applewhite and George J. Lawler, doing business under the firm-name and style of Applewhite and Lawler Company, George T. Stafford, F. W. Holcomb, A. B. Byrnes, A. B. Sandoz, George S. Mears, R. T. Cole, H. F. Beyer, Alfred Lo Cascio, and B. A. Campbell, defendants.

PETITION

To The Honorable Judges Of The District Court of the United States for the Northern District of Illinois, Eastern Division:

Petitioner, United States of America, by its attorney for the Northern District of Illinois, Eastern Division, acting under the direction of the Attorney

General of the United States, brings this proceeding in equity against:

I

THE DEFENDANTS

The Ludowici-Celadon Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, (sometimes referred to hereinafter as the "corporate defendant"), which transacts business in this district and is found doing business therein at No. 104 South Michigan Avenue, in the city of Chicago, in this district and in this division, where its place of business is in charge of Mr. James M. Williams, its president;

James M. Williams, a citizen and resident of the State of Illinois, having a place of business at No. 104 South Michigan Avenue, in the City of Chicago, therein;

R. E. Sturtevant, a citizen and resident of the State of Illinois, having a place of business at No. 104 South Michigan Avenue, in the City of Chicago, therein;

A. N. Sorenson, a citizen and resident of the State of Illinois, having a place of business at No. 104 South Michigan Avenue, in the City of Chicago, therein;

Horace White, a citizen and resident of the State of Louisiana, having a place of business at No. 833 Howard Avenue, in the City of New Orleans, therein;

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J. W. Stephens, a citizen and resident of the State of Texas, who controls, through stock ownership, J. W. Stephens Roofing Tile Corporation, and having a place of business in the City of Dallas, therein;

Arthur W. Applewhite and George J. Lawler, both being citizens and residents of the State of Georgia, doing business as a co-partnership, under the firm-name and style of Applewhite and Lawler Company, and having a place of business at No. 1316 Citizens and Southern Bank Building, in the City of Atlanta, therein;

George T. Stafford, a citizen and resident of the State of Alabama, having a place of business at No. 408½ North Nineteenth Street, in the City of Birmingham, therein;

F. W. Holcomb, a citizen and resident of the State of Ohio, and having a place of business in the Industries Building, in the City of Cincinnati, therein;

A. B. Byrnes, a citizen and resident of the State of Minnesota, having a place of business at No. 3635 South Columbus Avenue, in the City of Minneapolis, therein;

A. B. Sandoz, a citizen and resident of the State of Louisiana, and having a place of business at Room 200, Southern Building, No. 833 Howard Avenue, in the City of New Orleans, therein;

George S. Mears, a citizen and resident of the State of Florida, and having a place of business

in the Florida National Bank Building (care of Interlocking Tile Co.) in the City of Jacksonville, therein;

R. T. Cole, a citizen and resident of the State of Georgia, having a place of business at Room No. 1316 Citizens and Southern Bank Building (care of Applewhite and Lawler Company) in the City of Atlanta, therein;

H. F. Beyer, a citizen and resident of the State of New York, having a place of business at No. 565 Fifth Avenue, in the City of New York, therein;

Alfred Lo Cascio, a citizen and resident of the State of Massachusetts, having a place of business at No. 120 Boylston Street (care of E. Stanley Wires Co.) in the City of Boston, therein; and

B. A. Campbell, a citizen and resident of the State of Illinois, having a place of business at No. 104 South Michigan Avenue, in the City of Chicago, therein.

II

PURPOSE OF THE PETITION

This proceeding is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), commonly known as the "Sherman Anti-Trust Act", to prevent and restrain defendants from further engaging in this district and elsewhere in the United States in violation of the provisions of Sections 1 and 2 of that Act, in the manner and by the means hereinafter alleged.

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III

JURISDICTION AND DESCRIPTION OF THE COMMERCE

Roofing tile, which is the subject matter of the unlawful conspiracy hereinafter alleged, is produced from shale or clay, and is extensively used throughout this district and generally throughout the United States, as a covering for pitched roofs, cornices and other exposed surfaces of buildings and structures.

During many years last past, and continuing down to and including the date of the filing of this petition, a number of persons, firms and/or corporations, other than the corporate defendant, have been engaged from time to time in interstate trade and commerce in the manufacture and sale of roofing tile, and continuously during this period one or more of these persons, firms and/or corporations were respectively engaged in the manufacture and sale of roofing tile and the shipment thereof, in interstate trade and commerce, in and through this district, and throughout the United States, especially throughout those states lying east of the Rocky Mountains. These persons, firms and/or corporations sold and shipped, or shipped for sale, the greater part of the roofing tile, so manufactured, to users, dealers, contractors and to the agents of these persons, firms and/or corporations, whose several places of use and business have been situated in states other than those in which such roofing tile has been manufactured by the said per-

sons, firms and/or corporations respectively; and during the period referred to there has been a constant and continuous flow of shipments of roofing tile from the places of manufacture by such persons, firms and/or corporations to users, dealers, contractors and agents, in states other than those in which the roofing tile was manufactured. In and by so manufacturing, selling and shipping such roofing tile into states other than those of manufacture, each of the persons, firms and/or corporations, to which reference has been made, have been engaged, and in some instances are still engaged, in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies."

IV

DEFENDANTS' RELATION TO THE COMMERCE WHICH IS AND HAS BEEN RESTRAINED AND MONOPOLIZED

At all the times hereinafter mentioned, the corporate defendant was, and now is, engaged in the manufacture and sale, in interstate commerce, throughout the United States, of roofing tile. It owns and operates manufacturing plants for the production of roofing tile at New Lexington, Ohio, Coffeyville, Kansas, and Peru, Kansas. It maintains executive offices as well as a sales office at No. 104 South Michigan Avenue, in the City of Chicago, Illinois, in this district, and has branch sales offices

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in the City of New York, New York, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, Washington, D. C., Cleveland, Ohio, Cincinnati, Ohio, Detroit, Michigan, Minneapolis, Minnesota, St. Louis, Missouri, Kansas City, Missouri, Coffeyville, Kansas, Dallas, Texas, Atlanta, Georgia, Jacksonville, Florida, and New Orleans, Louisiana;

Defendant J. M. Williams is the president, general manager and a director of the corporate defendant, and has charge of its sales, especially in the eastern and New England territory;

Defendant R. E. Sturtevant is the vice-president, and treasurer of corporate defendant;

Defendant A. N. Sorenson is a sales manager of the corporate defendant for the middle-western, southwestern and southern states;

Defendant Horace White is engaged in the business of buying and selling roofing tile manufactured by the corporate defendant and in installing the same. At the times hereinafter mentioned, defendant White has had, and now has, an arrangement with the corporate defendant under which defendant White is the exclusive sales agent for the corporate defendant in the City of New Orleans, Louisiana, and is a so-called "preferred roofer" (to which term reference is hereinafter made) for the territory including southern Louisiana and along the Gulf coast;

Defendant J. W. Stephens is engaged in the business of buying and selling roofing tile manufac-

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tured by the corporate defendant and in installing the same. At the times hereinafter mentioned, defendant Stephens has had, and now has, an arrangement with the corporate defendant under which defendant Stephens is the exclusive sales agent for the corporate defendant in the cities of Dallas and Fort Worth, Texas, and is a so-called "preferred roofer" for the territory including the eastern part of the State of Texas, excepting the City of Houston;

Defendants Arthur W. Applewhite and George J. Lawler, doing business under the firm name and style of Applewhite and Lawler Company, are engaged in the business of buying and selling roofing tile manufactured by the corporate defendant and in installing the same. At the times hereinafter mentioned, defendants Applewhite and Lawler had, and now have, an arrangement with the corporate defendant under which defendants Applewhite and Lawler are the exclusive sales agents for the corporate defendant in the City of Atlanta, Georgia, and are so-called "preferred roofers" for the territory including Georgia and seventeen counties in northwestern South Carolina;

Defendant George T. Stafford is engaged in the business of selling roofing tile manufactured by the corporate defendant as its agent. At the times hereinafter mentioned, defendant Stafford has had, and now has, an arrangement with the corporate defendant under which defendant Stafford is the ex-

clusive sales agent for the corporate defendant in the City of Birmingham, Alabama, for the territory including Alabama, Tennessee, nine counties in Florida, and Mississippi, excepting eight counties;

Defendant F. W. Holcomb, at the times hereinafter mentioned, was, and now is, a salaried salesman in the employ of the corporate defendant, engaged in selling its roofing tile in the State of Ohio, especially the southern part thereof;

Defendant A. B. Byrnes, at the times hereinafter mentioned, was, and now is, a salaried salesman in the employ of the corporate defendant, engaged in selling its roofing tile in the State of Minnesota;

Defendant A. B. Sandoz, at the times hereinafter mentioned, was, and now is, a salaried salesman in the employ of the corporate defendant, engaged in selling its roofing tile in the State of Mississippi;

Defendant George S. Mears, at the times hereinafter mentioned, was, and now is, a salaried salesman in the employ of the corporate defendant, engaged in selling its roofing tile in the State of Florida;

Defendant R. T. Cole, at the times hereinafter mentioned, was, and now is, a salaried salesman in the employ of the corporate defendant, engaged in selling its roofing tile in the State of Georgia and surrounding territory;

Defendant H. F. Beyer, at the times hereinafter mentioned, was, and now is, a district sales manager

in the employ of the corporate defendant, having charge of the sales of its roofing tile, especially in the cities of New York and Philadelphia, and in the New England states;

Defendant Alfred Lo Cascio, at the times hereinafter mentioned, was, and now is, manager of the E. Stanley Wires Company, having an office at No. 120 Boylston Street, in the City of Boston, Massachusetts, and, as such, was and is engaged in buying, selling and installing roofing tile manufactured by the corporate defendant for the territory including the New England states; and

Defendant B. A. Campbell, at the times hereinafter mentioned, was, and now is, a stockholder in, and credit manager in the employ of, the corporate defendant, and under the direction of the late A. W. Brown, former president of the corporate defendant, conducted some of the preliminary negotiations on behalf of the corporate defendant, relative to the purchase by it of the business, property and assets of the Mid-Continent Clay Company, to which reference is hereinafter more fully made.

V

THE UNLAWFUL CONSPIRACY

Throughout many years last past, and continuing down to and including the date of the filing of this petition, the defendants (as well as their predecessors in interest) have conspired, and are con-

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tinuing to conspire, to restrain interstate trade and commerce in the manufacture and sale of roofing tile, and to monopolize, and to attempt to monopolize, such trade and commerce throughout this district and elsewhere in the United States, especially in the states lying generally east of the Rocky Mountains, all in the manner and by the means hereinafter alleged.

VI

EXECUTION OF THE CONSPIRACY

The conspiracy hereinbefore alleged was intended to be executed, and in fact was executed, by the defendants and their predecessors in interest, within this district, and within the jurisdiction of this court, and elsewhere throughout the United States by the following means and methods:

1. Dominant Position of Corporate Defendant

At the times hereinafter set forth, the corporate defendant made a series of acquisitions of the businesses, properties and assets of several corporations, the names of which are hereinafter stated, for the purpose and with the effect of eliminating competition in the manufacture and sale in interstate commerce of roofing tile, and to obtain for the corporate defendant a dominating position in this industry, especially in the states east of the Rocky Mountains, as hereinafter more fully set forth.

At the date of its organization in 1893, the corporate defendant, under its then name, Ludowici Roofing Tile Company, owned and operated a single plant for the production of roofing tile at Chicago Heights, Illinois. In about the year 1902, the corporate defendant constructed an additional plant for the manufacture of roofing tile at Ludowici in the State of Georgia.

On or about the twenty-third day of March, 1906, the defendant corporation, under its then name, Ludowici Roofing Tile Company, acquired the business, property and assets of the Celadon Roofing Tile Company, to which reference is hereinafter made.

Concurrently with the acquisition of this latter company, the name of the defendant corporation was changed to Ludowici-Celadon Company.

The Celadon Roofing Tile Company, the business, property and assets of which were acquired by the defendant corporation, as aforesaid, was a corporation organized in or about the year 1888, under the laws of the State of New York, under the name, Celadon Roofing Tile and Terra Cotta Company, engaged in the manufacture and sale in interstate commerce of roofing tile, and having its principal place of business and a manufacturing plant for the production of roofing tile at Alfred, New York. In the year 1899 this corporation acquired, by purchase, the business, property and assets of the Chi-

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cago Terra Cotta and Roofing and Siding Tile Company, a corporation of the State of Illinois, engaged in the business of manufacturing and selling in interstate commerce roofing tile and having its principal place of business and a plant for the manufacture of roofing tile at Ottawa, Illinois. In the year 1900, the name of the Celadon Roofing Tile and Terra Cotta Company was changed to the Celadon Roofing Tile Company.

Prior to the acquisition of the business, property and assets of the Celadon Roofing Tile Company, as aforesaid, on or about July 11, 1905, the Celadon Roofing Tile Company purchased the business, property and assets of the Imperial Clay Company, a corporation of the State of Ohio, engaged in the business of manufacturing and selling in interstate commerce roofing tile, and having its principal place of business and a manufacturing plant for the production of roofing tile at New Lexington, Ohio.

On or about August 21, 1908, the defendant corporation purchased the business, property and assets, including manufactured tile and shale deposits, of the Western Roofing Tile Company, a corporation in the State of Kansas, engaged in the business of manufacturing and selling, in interstate commerce, roofing tile, and having its principal place of business and a manufacturing plant for the production of roofing tile at Coffeyville, Kansas.

On or about July 15, 1924, after preliminary negotiations carried on in part by the defendant

Campbell, the corporate defendant purchased from Mrs. Neils Esperson residing in Houston, Texas, and then doing business under the trade name and style of Mid-Continent Clay Company, the manufacturing plant and business owned by her at Peru, Kansas, for the manufacture and sale in interstate commerce of roofing tile, together with all finished product, inventories, accounts receivable, and all other assets belonging to or appurtenant to the business and the manufacturing plant as a going concern.

Each of the acquisitions of the businesses and manufacturing plants, for the production and sale in interstate commerce of roofing tile, as aforesaid, were made for the purpose of excluding competitors of the corporate defendant from continuing to carry on the business of manufacturing and selling roofing tile in interstate commerce in competition with the corporate defendant; and concurrently with each of these acquisitions, as aforesaid, each of the corporations and Mrs. Esperson, whose business and property was acquired by the corporate defendant, ceased, and has not since resumed, carrying on the business of manufacturing and selling roofing tile.

As a result of the acquisitions made, as aforesaid, the corporate defendant has acquired a dominant position in the industry, especially in the territory included in the states lying east of the Rocky Mountains, in which territory the corporate defendant

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now transacts approximately 90 per cent of the total business in the manufacture and sale of roofing tile. This dominant position of the corporate defendant has not resulted entirely from normal expansion and legitimate business enterprises, but, especially in the acquisition of the Mid-Continent Clay Company, hereinbefore alleged, it has resulted from acquisitions of competing businesses by contracts and other arrangements deliberately intended to have, and actually having, the power to control the entire roofing tile industry, especially in the territory mentioned above.

2. Acts In Furtherance of the Conspiracy

The corporate defendant has entered into unlawful agreements and arrangements with defendants Horace White, J. W. Stephens, Arthur W. Applewhite and George J. Lawler, and under which these several individual defendants are designated "preferred roofers" for the purchase, resale and installation of roofing tile manufactured by the corporate defendant.

Moreover, pursuant to these unlawful agreements and arrangements, the several individual defendants named above receive special discounts on the purchase and resale of roofing tile manufactured by the corporate defendant, which special discounts are not given to other purchasers of roofing tile engaged in a similar business as the several individual defendants named above, and making purchases

and resales of roofing tile under substantially similar conditions. These agreements and arrangements have been entered into and carried out by the corporate defendant and the several individual defendants named above for the purpose or with the effect of (a) excluding competitors of the several individual defendants from carrying on their lawful business in competition with these individual defendants, and (b) preventing competitors of the corporate defendant from making sales of roofing tile in competition with the corporate defendant.

In further extension of the unlawful conspiracy the corporate defendant, through its responsible officers, sales manager and salesmen, some of whom are defendants herein, as indicated above, has done the following:

(a) Induced or attempted to induce purchasers of roofing tile from competitors of the corporate defendant to breach their contracts with such competitors, by changing and reducing bids for the sale of roofing tile below the prices originally offered by the corporate defendant and below the prices originally offered by competitors of the corporate defendant;

(b) Made false and/or unfair statements relative to the quality, durability and/or workmanship of roofing tile manufactured by competitors of the corporate defendant for the purpose or with the effect of inducing, or attempting to induce, purchasers of roofing tile from competitors of the cor-

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porate defendant to breach their contracts with such competitors, and of preventing, or attempting to prevent, the sale of roofing tile manufactured by competitors of the corporate defendant;

(c) Required persons engaged in the business of buying, selling and/or installing roofing tile, to purchase, use and/or install, or agree to purchase, use and/or install exclusively roofing tile manufactured by the corporate defendant as a condition to the sale, use and/or installation, or agreement to sell, use and/or install, roofing tile manufactured by the corporate defendant;

(d) Induced, or attempted to induce, persons engaged in the business of buying and selling roofing tile and/or installing the same, to refuse, or to agree to refuse, to sell and/or install roofing tile manufactured by competitors of the corporate defendant for the purpose or with the effect of excluding such competitors from carrying on their lawful business;

(e) Induced, or attempted to induce, persons who are selling agents for roofing tile manufactured by competitors of the corporate defendant, to enter into an agreement, arrangement or understanding, whereby such persons shall become the selling agents for the corporate defendant, and at the same time, retain the selling agency of competitors of the corporate defendant, but without intending in good faith to sell roofing tile manufactured by such competitors;

(f) Adopted the policy, either generally or with respect to particular communities, of inducing, or attempting to induce, salesmen employed by, and of sales agents of, competitors of the corporate defendant to discontinue in the employment or as representatives of such competitors, and to become salesmen and/or sales agents of the corporate defendant, for the purpose or with the effect of preventing such competitors from selling roofing tile in competition with the corporate defendant;

(g) Adopted the policy either generally or with respect to particular communities, of selling, or offering for sale, roofing tile manufactured and/or sold by the corporate defendant at unfair or discriminatory prices, terms and/or conditions of sale with the deliberate and unlawful intent to exclude competitors of the corporate defendant from carrying on the manufacture and sale of roofing tile in competition with the corporate defendant;

(h) Granted preferences, priorities, rebates and discriminations in favor of certain selected, so-called "preferred roofers," as hereinbefore described, for the purpose or with the effect of excluding competitors of such selected persons or "preferred roofers" from carrying on their lawful business.

The unlawful conspiracy and all of the foregoing acts, acquisitions and transactions, in further execution of the unlawful conspiracy, have been entered into and performed by these defendants with

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the intent and with the direct and necessary effect of restraining interstate trade and commerce in the manufacture and sale of roofing tile, and to monopolize and to attempt to monopolize such trade and commerce.

PRAYER FOR RELIEF

Wherefore your petitioner prays:

That writs of subpœna issue directed to each and every one of the defendants, commanding them, and each of them, to appear and answer, but not under oath (answer under oath being hereby expressly waived) the allegations contained in this petition, and to abide by and perform such orders and decrees as the court may make in the premises;

That this court order, adjudge and decree as follows:

1. That the combination and conspiracy to restrain interstate trade and commerce in roofing tile, and to monopolize, and to attempt to monopolize, such commerce, as described herein, is illegal and in violation of the Act of Congress of July 2, 1890 (26 Stat. 209), commonly called the Sherman Act, and the Acts amendatory thereof and supplemental and additional thereto.

2. That the defendants, and each of them, and each and all of the respective officers and directors of the corporate defendant, and each and all of the respective agents, servants, employees, and all persons acting, or claiming to act, on behalf of the defendants, or any of them, be perpetually enjoined

and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described herein, and from entering into, or performing, directly or indirectly, expressly or impliedly, any combination similar to that herein alleged to be illegal.

3. That the corporate defendant, its officers, agents, servants, and employees, and all persons acting, or claiming to act, on behalf of it, or them, or any of them, be enjoined from doing any or all of the following acts:

(a) Inducing, or attempting to induce, purchasers of roofing tile from competitors of the corporate defendant to breach their contracts with such competitors, either by reducing bids for the sale of roofing tile below prices originally offered by the corporate defendant, or by making false and/or unfair statements relative to the quality, durability and/or workmanship of roofing tile manufactured by such competitors.

(b) Preventing, or attempting to prevent, the sale of roofing tile manufactured by competitors of the corporate defendant by means of false and/or unfair statements relative to the quality, durability and/or workmanship of roofing tile manufactured by such competitors.

(c) Requiring persons engaged in the business of buying and selling and/or installing roofing tile, to purchase, use, and/or install exclusively roofing tile manufactured by the corporate defendant, as a

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condition to the sale, use and/or installation of roofing tile manufactured by the corporate defendant.

(d) Inducing, or attempting to induce, persons engaged in the business of buying and selling roofing tile and/or installing the same, to agree to refuse to sell and/or install roofing tile manufactured by competitors of the corporate defendant, for the purpose, or with the effect, of excluding such competitors from carrying on their lawful business.

(e) Inducing, or attempting to induce, persons who are selling agents for roofing tile manufactured by competitors of the corporate defendant, to enter into any arrangement or understanding whereby such persons shall become selling agents for the corporate defendant and at the same time retain the selling agency of competitors of the corporate defendant without intending in good faith to sell roofing tile manufactured by such competitors.

(f) Adopting a policy, either generally or with respect to a particular community, of inducing, or attempting to induce, salesmen employed by, and/or sales agents of, competitors of the corporate defendant, to discontinue in the employment, or as representatives, of such competitors and to become salesmen and/or sales agents of the corporate defendant, for the purpose, or with the effect, of preventing such competitors from selling roofing tile in competition with the corporate defendant.

(g) Adopting a policy, either generally or with respect to a particular community, of selling, or

offering for sale, roofing tile manufactured and/or sold by the corporate defendant at unfair or discriminatory prices, terms and/or conditions of sale with the intent to exclude competitors of the corporate defendant from carrying on the manufacture and/or sale of roofing tile in competition with the corporate defendant.

(h) Giving or granting any preference, priority, rebate, or any discrimination in favor of certain selected or "preferred" persons engaged in purchasing and selling and/or installing roofing tile, either generally or with respect to a particular community, for the purpose, or with the effect, of excluding competitors of either such persons or of the corporate defendant from continuing to carry on their lawful business.

4. That the corporate defendant be enjoined, until the further order of this court, from acquiring, directly or indirectly, the ownership or control, either by acquisition of shares of capital stock or by purchase of business, property and assets, of any additional plants engaged in the manufacture and sale of roofing tile.

5. That the terms of the decree made herein shall be binding upon, and shall extend to, each and every one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, copartnerships, and/or individuals who may acquire the ownership or control, directly or indirectly, of the shares of the capital stock, or of

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the property, business and assets of the corporate defendant, whether by merger, consolidation, reorganization, or otherwise.

6. That the court retain jurisdiction of this cause for the following purposes:

(a) Enforcing the decree to be made herein;

(b) Enabling the petitioner to apply to this court for a modification or enlargement of any of the provisions of the decree made herein on the ground that the same is inadequate, or

(c) Enabling the defendants, or any of them, to apply to this court for a modification of any of the provisions of the decree made herein on the ground that it has become inappropriate or unneccessary.

7. That the petitioner have such other, further and different relief as may be necessary and the court may deem proper in the premises.

8. That the petitioner recover its taxable costs.

UNITED STATES OF AMERICA,
By GEORGE E. Q. JOHNSON,
United States Attorney.

Under the direction of—
William D. Mitchell,
~~John G. Sargent,~~
Attorney General.
~~Willard Hogeboom,~~
Assistant to the Attorney General.
HORACE R. LAMB,
RALSTONE R. IRVINE,
Special Assistants to the Attorney General.

O

EXHIBIT B

IN THE

District Court of the United States

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

[redacted],
Petitioner,

vs.

LUDOWICI-CELADON COMPANY, JAMES M. WILLIAMS, R. R. STUBTEVANT, A. N. SORENSEN, HORACE WHITE, J. W. STEPHENS, ARTHUR W. APPLEWHITE and GEORGE J. LAWLOR, doing business under the firm name of APPLEWHITE & LAWLOR COMPANY, GEORGE T. STAFFORD, F. W. HOLCOMB, A. R. BYRNES, A. R. SANDOZ, GEORGE S. MEARS, R. T. COLE, H. F. REYER, ALFRED LO CASCIO, and E. A. CAMPBELL,
Defendants.

In Equity,
No. 9022.

FINAL DECREE.

WILLIAM D. MITCHELL,
Attorney General,
GEORGE E. Q. JOHNSON,
United States Attorney,
HORACE R. LAMB,
RALSTONE R. IRVINE,
Special Assistants to the Attorney General,
Solicitors for Petitioner.
BUTLER LAMB FOSTER & POPE,
Solicitors for Defendants.

[redacted]

JUN 26 '90 11:12 CT , EXEC. LEGAL&PLNG VF,PA P.3/8

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

UNITED STATES OF AMERICA, *Petitioner,* *vs.* LUDOWICI-CELADON COMPANY, JAMES M. WILLIAMS, R. E. STURTEVANT, A. N. SORENSEN, HORACE WHITE, J. W. STEPHENS, ARTHUR W. APPLEWHITE AND GEORGE J. LAWLER, DOING BUSINESS UNDER THE FIRM-NAME AND STYLE OF APPLEWHITE AND LAWLER COMPANY, GEORGE T. STAFFORD, F. W. HOLCOMB, A. R. BYRNES, A. R. SANDOZ, GEORGE S. MEARS, R. T. COLE, H. F. BEYER, ALFRED LO CASCIO, AND B. A. CAMPBELL, *Defendants.*	In Equity No. 9092.

FINAL DECREE.

This cause having regularly come on to be heard at this term and the defendants having duly appeared by their counsel, Messrs. Butler, Lamb, Foster & Pope of Chicago, Illinois, and having consented in open court to the making and entry of this decree, without any testimony whatever having been taken, now on motion of George E. Q. Johnson, Esquire, United States Attorney, and Horace R. Lamb, Esquire, of counsel for the petitioner, and after due consideration, it is ordered, adjudged and decreed as follows:

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DEFINITIONS.

The term "roofing tile," as used herein, shall mean tile produced from either shale or clay and used as a covering for pitched roofs, cornices, and/or other exposed surfaces of buildings and/or other structures.

The term "person," as used herein, shall include individuals, copartnerships, firms, associations, and/or corporations.

The term "corporate defendant," as used herein, shall mean the defendant Ludowici-Celadon Company.

1. That the combination and conspiracy to restrain interstate trade and commerce in roofing tile, and to monopolize, and to attempt to monopolize, such commerce, as described in the petition herein, is hereby declared illegal and in violation of the Act of Congress of July 2, 1890 (26 Stat. 209), commonly called the Sherman Act, and the acts amendatory thereof and supplemental and additional thereto.

2. That the defendants, and each of them, and each and all of the respective officers and directors of the corporate defendant, and each and all of the respective agents, servants, employees, and all persons acting, or claiming to act, on behalf of the defendants, or any of them, be and they hereby are, perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described in the petition herein, and from entering into, or performing, directly or indirectly, expressly or impliedly, any combination similar to that herein declared illegal.

3. That the corporate defendant, its officers, agents, servants, and employees, and all persons acting, or claiming to act, on behalf of it, or them, or any of them, be enjoined from doing any or all of the following acts:

(a) Inducing, or attempting to induce, purchasers of

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roofing tile from competitors of the corporate defendant to breach their contracts with such competitors by reducing bids for the sale of roofing tile below prices originally offered by the corporate defendant, or by making false and/or unfair statements relative to the quality, durability and/or workmanship of roofing tile manufactured by such competitors.

(b) Preventing, or attempting to prevent, the sale of roofing tile manufactured by competitors of the corporate defendant by means of false and/or unfair statements relative to the quality, durability and/or workmanship of roofing tile manufactured by such competitors.

(c) Requiring persons engaged in the business of buying and selling and/or of installing roofing tile, to purchase, use, and/or install exclusively roofing tile manufactured by the corporate defendant, as a condition to the sale, use, and/or installation of roofing tile manufactured by the corporate defendant.

(d) Inducing, or attempting to induce, persons engaged in the business of buying and selling roofing tile and/or installing the same, to agree to refuse to sell and/or install roofing tile manufactured by competitors of the corporate defendant, for the purpose, or with the effect, of excluding such competitors from carrying on their lawful business.

(e) Inducing, or attempting to induce, persons who are selling agents for roofing tile manufactured by competitors of the corporate defendant, to enter into any arrangement or understanding whereby such persons shall become selling agents for the corporate defendant and at the same time retain the selling agency of competitors of the corporate defendant without intending in good faith to sell roofing tile manufactured by such competitors.

(f) Adopting a policy, either generally or with respect to a particular community, of inducing, or attempting to in-

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duce, salesmen employed by, and/or sales agents of, competitors of the corporate defendant, to discontinue in the employment, or as representatives, of such competitors and to become salesmen and/or sales agents of the corporate defendant, for the purpose, or with the effect, of preventing such competitors from selling roofing tile in competition with the corporate defendant.

(g) Adopting a policy, either generally or with respect to a particular community, of selling, or offering for sale, roofing tile manufactured and/or sold by the corporate defendant at unfair or discriminatory prices, terms and/or conditions of sale with the intent to exclude competitors of the corporate defendant from carrying on the manufacture and/or sale of roofing tile in competition with the corporate defendant.

(h) Giving or granting any preference, priority, rebate, or any discrimination in favor of certain selected or preferred persons engaged in purchasing and selling and/or installing roofing tile, either generally or with respect to a particular community, for the purpose, or with the effect, of excluding competitors of either such persons or of the corporate defendant from continuing to carry on their lawful business.

4. That the corporate defendant be and it hereby is enjoined, until the further order of this court, from acquiring, directly or indirectly, the ownership or control, either by acquisition of shares of capital stock or by purchase of business, property and assets, of any additional plants engaged in the manufacture and sale of roofing tile.

5. That the terms of this decree shall be binding upon, and shall extend to, each and every one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, copartnerships, and/or individuals who may acquire the ownership or control, directly or indirectly, of the shares of the capital stock, or of the property, business and assets of the corporate defendant, whether by merger, consolidation, reorganization, or otherwise.

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6. That nothing contained in this decree shall be construed to prevent the corporate defendant from making discriminations in price between purchasers of roofing tile on account of differences in the grade, quality or quantity of the roofing tile sold, or on account of differences in the cost of selling or transportation, or for making discriminations in price in the same or different communities in good faith to meet competition; and that nothing contained in this decree shall prevent the corporate defendant from selecting its own customers in *bona fide* transactions and not in restraint of trade.

7. That jurisdiction of this cause be and it hereby is retained for the following purposes:

(a) Enforcing this decree,

(b) Enabling the petitioner to apply to this court for a modification or enlargement of any of the provisions of this decree on the ground that the same is inadequate, or,

(c) Enabling the defendants, or any of them, to apply to this court for a modification of any of the provisions of this decree on the ground that it has become inappropriate or unnecessary.

8. That the petitioner recover its taxable costs.

ENTER:

JAMES H. WILKERSON,
U. S. D. J.

March 18, 1929.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of the United States in Response to Motion of Defendant Ludowici Roof Tile, Inc. to Terminate Final Decree has been served upon counsel identified below via Federal Express on this 4th day of November 2005:

Robert L. Hickock
Barbara Sicalides
Barak A. Bassman
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799

Christine A. Hill