

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA) **Judge: Skretny**
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 v.) **Criminal No.**
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SKW METALS & ALLOYS, INC. and) **15 U.S.C. § 1**
CHARLES ZAK,)
) **Filed: [4/19/96]**
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 Defendants.)
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INDICTMENT

COUNT ONE -- CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

The Grand Jury charges:

1. SKW Metals & Alloys, Inc. (SKW) and Charles Zak are hereby indicted and made defendants in this Count.

DESCRIPTION OF THE OFFENSE

2. Beginning at least as early as late 1989 and continuing at least until mid 1991, the exact dates being unknown to the Grand Jury, the defendants and others engaged in a combination and conspiracy to fix prices of commodity ferrosilicon products sold in the United States. The combination and conspiracy engaged in by the defendants and co-conspirators in unreasonable restraint of interstate trade and commerce violated Section 1 of the Sherman Act (15 U.S.C. §1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to agree to fix prices of commodity ferrosilicon products sold in the United States.

4. For the purpose of forming and effectuating the charged conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do including, among other things, meeting at various hotels to discuss and agree to fix prices of commodity ferrosilicon products.

DEFENDANTS AND CO-CONSPIRATORS

5. SKW is a Delaware corporation with its principal office in Niagara Falls, New York. From late 1989 until late 1992, SKW was engaged in the sale of commodity ferrosilicon products and silicon metal throughout the United States.

6. From late 1989 until late 1992, Charles Zak was executive vice president of SKW.

7. Various persons and firms, not made defendants in this indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

8. Whenever in this indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

INTERSTATE TRADE AND COMMERCE

9. Commodity ferrosilicon products are alloys of iron and silicon. The most common products have silicon content of approximately 50% or 75%. Commodity ferrosilicon products also contain close to the maximum allowable amount of elements which are considered impurities, for example, phosphorus, sulphur, and aluminum. Commodity ferrosilicon products are sold by defendant SKW as its "regular grade". The principal use of commodity ferrosilicon products is as an alloying agent in the production of steel and cast iron to improve the finished product's properties, for example, its strength and corrosion resistance.

10. During the period covered by this Count, defendants and co-conspirators sold and shipped substantial quantities of commodity ferrosilicon products in a continuous and uninterrupted flow of interstate commerce to customers located in states other than states in which the defendants and co-conspirators manufactured commodity ferrosilicon products. During the period covered by this Count, the total sales of commodity ferrosilicon products in the United States were over \$100,000,000.

11. The business activities of defendants and co-conspirators that are the subject of this Count were within the flow of, and substantially affected, interstate trade and commerce.

JURISDICTION AND VENUE

12. The combination and conspiracy charged in Count One of this indictment was carried out, in part, within the Western District of New York within the five years preceding the return of this indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO -- CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

The Grand Jury further charges:

13. SKW and Charles Zak are hereby indicted and made defendants in this Count.

14. Each and every allegation contained in paragraphs 5 through 8 of Count One of this indictment are here realleged with the same full force and effect as though said paragraphs were set forth in full detail.

DESCRIPTION OF THE OFFENSE

15. Beginning at least as early as the spring of 1991 and continuing at least until late 1992, the exact dates being unknown to the Grand Jury, the defendants and others engaged in a combination and conspiracy to fix prices of silicon metal sold in the United States. The combination and conspiracy engaged in by the defendants and co-conspirators in unreasonable restraint of interstate trade and commerce violated Section 1 of the Sherman Act (15 U.S.C. §1).

16. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to agree to fix prices of silicon metal sold in the United States.

17. For the purpose of forming and effectuating the charged conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do,

including, among other things, meeting at various hotels to discuss and fix prices of silicon metal.

INTERSTATE TRADE AND COMMERCE

18. The raw material in silicon metal is silicon dioxide or quartzite. Silicon metal is produced, in an energy intensive process, by reacting high purity silica quartz with various carbon materials such as low ash coal, petroleum coke, charcoal and wood chips. Typically, silicon metal is produced to several different specifications of minimum amounts of silicon and maximum amounts of impurities such as iron and calcium. Minimum silicon content usually ranges from 98% to 99.5%, while maximum iron content is rarely above 1%, and calcium content may be as high as .4%. Silicon metal is sold in lump form. Silicon metal is used as an alloying agent in the production of secondary and primary aluminum. It serves to reduce shrinkage and hot cracking, and improves castability, corrosion resistance, hardness, tensile strength, wear resistance and weldability.

19. During the period covered by this Count, defendants and co-conspirators sold and shipped substantial quantities of silicon metal in a continuous and uninterrupted flow of interstate commerce to customers located in states other than states in which the defendants and co-conspirators manufactured silicon metal. During the period covered by this Count, the total sales of silicon metal in the United States were over \$100,000,000.

20. The business activities of defendants and co-conspirators that are the subject of this Count were within the flow of, and substantially affected, interstate trade and commerce.

JURISDICTION AND VENUE

21. The combination and conspiracy charged in Count Two of this indictment was carried out, in part, within the Western District of New York within the five years preceding the return of this indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

A TRUE BILL

Dated:

_____/s/_____
FOREPERSON

_____/s/_____
ANNE K. BINGAMAN
Assistant Attorney General

_____/s/_____
MELVIN LUBLINSKI

_____/s/_____
GARY R. SPRATLING
Deputy Assistant Attorney
General

_____/s/_____
EDWARD FRIEDMAN

_____/s/_____
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_____/s/_____
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