

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil No. 79-4567
v.	)	
	)	Filed: December 14, 1979
BERGER INDUSTRIES, INC.;	)	
DAILY CORPORATION;	)	
HOFMANN INDUSTRIES, INC.;	)	
MARKIN TUBING INC.;	)	
MILLER TUBE CORPORATION OF	)	
AMERICA;	)	
ROTH STEEL TUBE COMPANY;	)	
TUESDAY INDUSTRIES INC.;	)	
U.S. METAL FORMS & TUBES, INC.;	)	
and VAN HUFFEL EASTERN	)	
CORPORATION,	)	
	)	
Defendants.	)	

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:

I

JURISDICTION AND VENUE

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

2. Daily Corporation, Hofmann Industries, Inc. and Tuesday Industries Inc. are located in, transact business, and are found within the Eastern District of Pennsylvania.

## II

### DEFENDANTS

3. Each of the corporations named below is made a defendant herein. Each of said defendants is incorporated and exists under the laws of the State listed opposite its name and has its principal place of business in the city indicated. During all or part of the period of time covered by this complaint, each of said defendants engaged in the manufacture and sale of electric weld steel tubing in the United States:

<u>Defendant Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place Of Business</u>
Berger Industries, Inc.	New York	Maspeth, New York
Daily Corporation	Pennsylvania	Montgomeryville, Pennsylvania
Hofmann Industries, Inc.	Delaware	Sinking Spring, Pennsylvania
Markin Tubing Inc.	New York	Wyoming, New York
Miller Tube Corporation of America	New York	Flushing, New York
Roth Steel Tube Company	Ohio	Cleveland, Ohio
Tuesday Industries Inc.	Pennsylvania	Cornwells Heights, Pennsylvania
U.S. Metal Forms & Tubes, Inc.	Maryland	Muirkirk, Maryland
Van Huffel Eastern Corporation	Massachusetts	Gardner, Massachusetts

### III

#### CO-CONSPIRATORS

4. Various corporations, firms and individuals not made defendants in this complaint have participated as co-conspirators with the defendants in the violation alleged herein and have performed acts and made statements in furtherance thereof.

### IV

#### TRADE AND COMMERCE

5. Electric weld steel tubing is tubing produced by an electric weld process. Electric weld steel tubing is made from flat steel strips, formed, welded electrically, cooled, sized to specified dimensions, and then cut to the desired length. The tubing may be painted, plated or otherwise coated. Generally, the shape, diameter, gauge, length, and finish of the tubing depend on customer specifications.

6. Electric weld steel tubing is used in a variety of structural, mechanical and electrical applications, including refrigeration and air conditioning, exercise and recreational equipment, fireplace accessories, furniture, umbrellas, lamps, automotive and truck components, and electrical conduit.

7. The defendant companies are among the major manufacturers of electric weld steel tubing in the Eastern United States. In 1978, the defendant companies had sales of electric weld steel tubing of approximately \$100,000,000. During the period of time covered by this complaint, the defendant and co-conspirator companies sold and shipped substantial quantities of electric weld steel tubing in a continuous and uninterrupted flow of interstate commerce to customers located in States other than the States in which such electric weld steel tubing was manufactured.

V

VIOLATION ALLEGED

8. Beginning at least as early as 1962, the exact date being unknown to the plaintiff, and continuing thereafter until the date of the filing of this complaint, the defendants and co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act. This combination and conspiracy will continue unless the relief hereinafter prayed for is granted.

9. 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 to raise, fix, maintain and stabilize the prices and terms and conditions of sale of electric weld steel tubing.

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

VI

EFFECTS

11. The aforesaid combination and conspiracy had the following effects, among others:

- (a) Prices and terms and conditions of sale of electric weld steel tubing sold by the defendant and co-conspirator companies have

been raised, fixed, maintained and stabilized at artificial and non-competitive levels;

(b) Buyers of electric weld steel tubing have been deprived of the benefits of free and open competition in the purchase of electric weld steel tubing; and

(c) Competition among the defendant and co-conspirator companies in the sale of electric weld steel tubing has been restrained.

#### PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the defendants and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended.

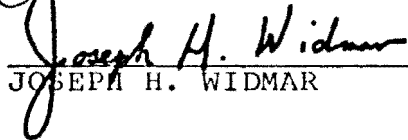
2. That each of the defendants, its subsidiaries, successors, transferees, assignees and the respective officers, directors, agents and employees thereof and all other persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from in any manner directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinabove alleged or 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.

3. That plaintiff have such other, further, general and different relief as the case may require and the Court may deem just and proper under the circumstances.

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



JOHN H. SHENEFIELD  
Assistant Attorney General



JOSEPH H. WIDMAR

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ROGER L. CURRIER

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R. J. SCOTT GRIFFITH

\_\_\_\_\_  
JOHN J. HUGHES

\_\_\_\_\_  
EDUARDO C. ROBRENO

\_\_\_\_\_  
RAYMOND D. CAULEY

Attorneys, Department of Justice

Attorneys, Department of Justice

\_\_\_\_\_  
PETER F. VAIRA  
United States Attorney

Antitrust Division  
Department of Justice  
3430 United States Courthouse  
Independence Mall West  
601 Market Street  
Philadelphia, Pennsylvania 19106  
(215) 597-7401