

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

UNITED STATES OF AMERICA)	
)	Civil Action No.
v.)	
)	Filed: April 8, 1982
ASHLAND-WARREN, INC.,)	
)	Entered: June 28, 2982
Defendant.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on April 8, 1982, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II.

As used in this Final Judgment:

A. "Person" means any natural person, partnership, firm, corporation, association or other business or legal entity;

B. "Ashland-Warren" means Ashland-Warren, Inc., and Ashland Oil, Inc., and each direct or indirect subsidiary, division and joint venture, which has sold any form of construction material or performed paving or construction work, and each predecessor, successor and assign to each of the foregoing. Excluded from the foregoing are United States Filter Corporation, Ashland Coal, Inc., and Arch Mineral Corporation and each direct or indirect subsidiary, division or joint venture thereof.

C. "Paving or construction work" means the building, rebuilding, surfacing, resurfacing and maintenance or repair of roads, bridges, culverts, ramps, grade separation structures, interchanges, parking structures and lots, airports, transit facilities, power plants, water and waste treatment plants, flood and erosion facilities, underground utilities, excavation, drainage, stripping, soil stabilization, pile driving, foundation and other site preparation, base work, recycling and reclamation work, as well as all materials and services, rented or supplied, in connection with this work; and

D. "Construction material" means asphalt (liquid, treated and mix), concrete (bituminous and portland cement), concrete block, dirt, sand, gravel and other aggregates.

III.

A. This Final Judgment applies to Ashland-Warren, as defined in Section II B, above, as well as its officers, directors, agents and employees. This Final Judgment shall also bind all persons in active concert or participation with Ashland-Warren or any of the foregoing who shall receive actual or constructive notice of this Final Judgment by personal service or otherwise.

B. This Final Judgment shall not apply to joint venture partners of Ashland-Warren, nor shall Sections IV and V hereof apply to any transactions or activities solely between or among the persons identified in Section III A hereof.

IV.

Ashland-Warren is enjoined and restricted from entering into, adhering to, maintaining, enforcing or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any person to:

A. Raise, fix, establish, maintain, or adhere to a price, a discount or any other term or condition of sale of any form of construction material or of paving or construction work;

B. Refrain from bidding to supply any form of construction material or paving or construction work;

C. Submit a collusive, noncompetitive or rigged bid to supply any form of construction material or paving or construction work; or

D. Allocate a job or customer, or to divide a market or a territory, with respect to any form of construction material or paving or construction work.

V.

Ashland-Warren is enjoined and restrained from communicating with or requesting from another seller of a construction material, or a person engaged in paving or construction work, information concerning:

A. Any past, present, future or proposed bid, or the consideration of whether to submit a bid to sell any form of construction material or to perform paving or construction work;

B. Any past, present, future or proposed bid or any prospective or proposed price for, or any discount or other term or condition for sale of, any form of construction material or the performance of paving or construction work;

C. The decision (or the consideration of whether) to make a change in an actual or proposed price, discount or other term or condition for sale of any form of construction material or the performance of paving or construction work; or

D. The production, sales volume or cost of any form of construction material or of paving or construction work.

VI.

This Final Judgment shall not apply to:

A. Any necessary communication with a person in connection with the formulation or submission of a bona fide joint bid or quotation, so long as the formulation or submission of such joint bid or quotation has been requested by or is known to the purchaser;

B. Any necessary communication relating to a bona fide contemplated or actual joint venture or subcontract agreement between or among the parties thereto;

C. Any necessary communication in connection with a bona fide contemplated or actual purchase, sale or lease transaction between the parties to the communication; or

D. Any communication that is made to the public or trade generally, but is not made directly to any other person engaged in paving or construction work or the sale of construction material.

VII.

A. Ashland-Warren shall, within sixty (60) days after entry of this Final Judgment, furnish a copy of it to each of its employees whose ordinary and regular duties include:

1. Bidding or estimating projects upon which Ashland-Warren may provide paving or construction work; or

2. Any responsibility for recommending or establishing the price of any form of construction material.

B. Ashland-Warren shall furnish a copy of this Final Judgment to each person who becomes an employee meeting the description in Section VII A within sixty (60) days of the date upon which he or she assumes the position bringing him or her within that description.

C. Ashland-Warren shall take the following affirmative steps to advise each employee meeting the description in Section VII A and B of its and of their obligations. At least once every two (2) years, copies of this Final Judgment and of a written directive describing Ashland-Warren's policy requiring compliance with the Sherman Act and with this Final Judgment shall be distributed to each such employee. The directive shall include an admonition that noncompliance will result in appropriate disciplinary action, which may include dismissal, and shall state that Ashland-Warren's legal counsel are available to confer about any compliance questions. Ashland-Warren shall require that each employee submit to it a signed statement (to be retained in its files) acknowledging:

1. That he or she has read this Final Judgment and the directive;

2. That he or she understands that noncompliance will result in appropriate disciplinary action, which may include dismissal; and

3. That he or she has been advised and understands that noncompliance with this Final Judgment may also result in conviction for contempt of court as well as a fine or imprisonment, or both.

In the event of a refusal by an employee to sign such a statement, Ashland-Warren shall not be deemed in contempt of this Final Judgment so long as, within thirty (30) days thereafter, such employee is removed from all duties meeting the description in Section VII A, or is discharged.

D. Ashland-Warren shall file with the Court and serve on the United States, within ninety (90) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Section VII A.

VIII.

Ashland-Warren shall require, as a condition of the sale or other disposition of all, or substantially all, of the stock or assets */ of any division or subsidiary which has sold any form of construction material or performed paving or construction work that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve on the United States, its consent to be bound by this Final Judgment.

*/ For the purposes of this section, "assets" shall mean assets committed to the performance of paving or construction work or the sale of construction materials.

IX.

For the purpose of determining or securing compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, or his or her agent, made to Ashland-Warren at its principal office, subject to any legally recognized privilege:

A. On reasonable notice to Ashland-Warren, which may have counsel present, duly authorized representatives of the Department of Justice shall be permitted:

1. To have access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Ashland-Warren relating to any matters covered by this Final Judgment; and

2. Subject to the reasonable convenience of Ashland-Warren and without restraint or interference from it, to interview officers, directors, employees or agents of Ashland-Warren, any of whom may have counsel present, regarding any matters covered by this Final Judgment.

B. Ashland-Warren shall submit reports in writing, under oath, with respect to any matters covered by this Final Judgment as may be reasonably requested.

No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the United

States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

If, at the time information or documents are furnished by Ashland-Warren to the United States pursuant to this Final Judgment, Ashland-Warren represents and identifies in writing the material in the information or documents to be of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) days notice to Ashland-Warren before divulging the material in any legal proceeding (other than a grand jury proceeding) to which Ashland-Warren is not a party.

X.

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance with it or for the punishment of any violation of it.

XI.

This Final Judgment shall be in effect for a period of ten (10) years following the date of its entry.

XII.

Entry of this Final Judgment is in the public interest.

/s/ Franklin T. Dupree, Jr.
Franklin T. Dupree, Jr.
United States District Judge